

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

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CLAIMANT: United States of America (USDA Forest Service)

OBJECTOR: United States of America (USDA Forest Service)

CASE 41E-0213-R-2024

41E 54580-00

41E 54654-00

41E 54681-00

41E 54698-00

41E 54706-00

41E 54777-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

United States of America (USDA Forest Service) objected to claims 41E 54580-00, 41E 54654-00, 41E 54706-00, and 41E 54777-00. Claim 41E 54681-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 72.59 ACRE-FEET PER YEAR.

Claim 41E 54698-00 appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

On May 10, 2024 the United States' Response To Court Order was filed. The Response is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 41E 54580-00, the Preliminary Decree states that the point of diversion and place of use are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSWSW	10	7N	5W	JEFFERSON
S2S2	9	7N	5W	JEFFERSON
NWNWNW	16	7N	5W	JEFFERSON
SENE	17	7N	5W	JEFFERSON
NESWNE	17	7N	5W	JEFFERSON

The point of diversion and place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSWSW	10	7N	5W	JEFFERSON
S2S2	9	7N	5W	JEFFERSON
N2S2NE	17	7N	5W	JEFFERSON

The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION AND PLACE OF USE WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK

WILL BE REMOVED FROM THE CLAIM.

The remark provides notice of these changes made prior to issuance of the Preliminary Decree and does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

2. For claim 41E 54654-00, the Preliminary Decree states that the flow rate is 24.00 CFS. The flow rate should be 24.00 GPM.

The Preliminary Decree also includes the following notice remarks:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

The first and third remarks provide notice of possible issues. The second remark provides notice of the change made prior to issuance of the Preliminary Decree. These remarks do not raise unresolved issues which need to be addressed. The remarks should be removed as having served their notice purposes.

3. For claim 41E 54681-00, the Preliminary Decree states that the volume is 100.10 AC-FT. The volume should be 72.59 AC-FT. The volume issue remark should be removed as addressed and resolved.

The Preliminary Decree also includes the following notice remark:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

The remark provides notice of a possible issue. The remark should be removed as having served its notice purpose.

4. For claim 41E 54698-00, the Preliminary Decree includes two source names. The second source name - UNNAMED TRIBUTARY OF SAWMILL GULCH - should be removed. The source issue remark should be removed as addressed and resolved.

The point of diversion and place of use each include the N2NESE section 19, T4N, R6W, JEFFERSON. This should be removed from both the point of diversion and the place of use.

5. For claim 41E 54706-00, the point of diversion and place of use each include the N2N2 section 3, T4N, R6W, JEFFERSON. This legal description should be changed to the W2W2 section 3, T4N, R6W, JEFFERSON.

The Preliminary Decree also includes the following notice remark:

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The remark provides notice of this change made prior to issuance of the Preliminary Decree and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

6. For claim 41E 54777-00, the objection was unconditionally withdrawn.

The Preliminary Decree states that the source name is SPRING, MUD SPRING. This clerical error should be corrected by changing the source name to MUD SPRING.

The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION AND SOURCE USE WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The remark provides notice of these changes made prior to issuance of the Preliminary Decree and does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the claimant is sufficient to contradict and overcome the prima facie claims and to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 54580-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: APRIL 12, 1906

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: ROCKER CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	10	7N	5W	JEFFERSON

Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		S2S2	9	7N	5W	JEFFERSON
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Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		N2S2NE	17	7N	5W	JEFFERSON
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Period of Diversion: JULY 1 TO SEPTEMBER 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JULY 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2S2NE	17	7N	5W	JEFFERSON
2			S2S2	9	7N	5W	JEFFERSON
3			SWSWSW	10	7N	5W	JEFFERSON

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 54654-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1917

Type of Historical Right: USE

Purpose (Use): RECREATION
WHITEHOUSE CAMP AND PICNIC GROUND

Flow Rate: 24.00 GPM

Volume: 1.00 AC-FT

Source Name: BOULDER RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		NENWSE	21	6N	7W	JEFFERSON	
Period of Diversion:		JUNE 1 TO SEPTEMBER 30					
Diversion Means:		BUCKET					
Period of Use:		JUNE 1 TO SEPTEMBER 30					
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWSE	21	6N	7W	JEFFERSON

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 54681-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: NOVEMBER 9, 1971

Type of Historical Right: USE

Purpose (Use): RECREATION
SHEEPSHEAD MOUNTAIN HANDICAPPED CAMP USES MANEY LAKE FOR SWIMMING, FISHING AND BOATING.

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: 72.59 AC-FT

Source Name: LOWLAND CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESW	27	5N	7W	JEFFERSON

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** MANEY LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESESW	27	5N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 15.00 FEET

Surface Area: 14.00 ACRES

Capacity: 100.00 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESESW	27	5N	7W	JEFFERSON

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 54698-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JANUARY 12, 1956

Type of Historical Right: USE

Purpose (Use): DOMESTIC
KIRK SPECIAL USE CABINS

Flow Rate: 4.49 GPM

Volume: 1.50 AC-FT

Households: 3

Source Name: SPRING, UNNAMED TRIBUTARY OF SAWMILL GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	19	4N	6W	JEFFERSON

Period of Diversion: JUNE 1 TO OCTOBER 31

Diversion Means: FLOWING

Period of Use: JUNE 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSENE	19	4N	6W	JEFFERSON

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 54706-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: APRIL 12, 1906

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** UNNAMED TRIBUTARY OF BIG GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2W2	3	4N	6W	JEFFERSON
Period of Diversion:	JULY 1 TO OCTOBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2	1		4	4N	6W	JEFFERSON
Period of Diversion:	JULY 1 TO OCTOBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SE	33	5N	6W	JEFFERSON
Period of Diversion:	JULY 1 TO OCTOBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		W2SW	34	5N	6W	JEFFERSON
Period of Diversion:	JULY 1 TO OCTOBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

Period of Use: JULY 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2W2	3	4N	6W	JEFFERSON
2		1		4	4N	6W	JEFFERSON
3			SE	33	5N	6W	JEFFERSON

4	W2SW	34	5N	6W	JEFFERSON
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 54777-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: APRIL 12, 1906

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 4.49 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MUD SPRING

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESW	6	2N	3W	JEFFERSON

Period of Diversion: JUNE 1 TO OCTOBER 31

Diversion Means: SPRING BOX

Period of Use: JUNE 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSE	6	2N	3W	JEFFERSON