

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

CLAIMANTS: Leland E. Smith; Sharon C. Smith

CASE 41E-0278-R-2024
41E 30873-00

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 finding 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

Claim 41E 30873-00 appeared in the Preliminary Decree with the following means of diversion for each of the points of diversion: PUMP/HEADGATE W/DITCH OR PIPELINE and with the following clarification remarks:

MEANS OF DIVERSION INCLUDES A INSTREAM, HEADGATE, AND DITCHES.

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

The Preliminary Decree also includes the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A PUMP.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. In this instance, the Statement of Claim and its attachments provide the needed information. The means of diversion as shown in the Preliminary Decree describes what was claimed. There does not appear to be any basis for limiting the means of diversion to just PUMP. It appears the means of diversion, including the clarification remarks, should remain as they appeared in the Preliminary Decree, with the exception of correcting the typographical error in the first clarification remark.

The February 28, 2024 Order Consolidating Case And Setting Filing Deadline states:

Under Section 85-2-248(3), MCA, the Court can provide the claimants an opportunity to file additional information or evidence. If the claimants do not agree with the Court's observation that the means of diversion, including clarification remarks, should appear as stated immediately above, they may file additional information to resolve the means of diversion issue remark.

Therefore, pursuant to 85-2-248(3), MCA, it is

ORDERED that the deadline for the claimants to file documentation resolving the means of diversion issue remark is **April 10, 2024**. If nothing is filed by April 10, 2024, the Court will conclude the claimants agree with the Court's conclusion that the means of diversion should be:

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE
MEANS OF DIVERSION INCLUDES INSTREAM, HEADGATE, AND DITCHES.
PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND
DESCRIPTION.

Nothing was filed by the claimants. The Order Consolidating Case And Setting Filing Deadline Stipulation 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.

FINDING OF FACT

The Preliminary Decree includes the following clarification remark: MEANS OF DIVERSION INCLUDES A INSTREAM, HEADGATE, AND DITCHES. It should be corrected to: MEANS OF DIVERSION INCLUDES INSTREAM, HEADGATE, AND DITCHES. There are no other changes to be made to the means of diversion. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided on the Statement of Claim and its attachments is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right 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 USPS Mail:

Leland E. Smith
Sharon C. Smith
4180 Fox Den Dr
Helena, MT 59602

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

Water Right Number: 41E 30873-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: SEVERED

Owners: LELAND E SMITH
4180 FOX DEN DR
HELENA, MT 59602-8956

SHARON C SMITH
4180 FOX DEN DR
HELENA, MT 59602-8956

Priority Date: DECEMBER 2, 1886

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 2.00 CFS

***Volume:** THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: BASIN 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		SENE	16	7N	6W	JEFFERSON
Source Name:		BASIN CREEK				
Period of Diversion:		MAY 1 TO NOVEMBER 19				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				
2		SWNW	15	7N	6W	JEFFERSON
Source Name:		BASIN CREEK				
Period of Diversion:		MAY 1 TO NOVEMBER 19				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				
3		W2SW	15	7N	6W	JEFFERSON
Source Name:		BASIN CREEK				
Period of Diversion:		MAY 1 TO NOVEMBER 19				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				
4		NW	22	7N	6W	JEFFERSON
Source Name:		BASIN CREEK				
Period of Diversion:		MAY 1 TO NOVEMBER 19				
Diversion Means:		PUMP/HEADGATE W/DITCH OR PIPELINE				
5		S2	22	7N	6W	JEFFERSON
Source Name:		BASIN CREEK				

Period of Diversion: MAY 1 TO NOVEMBER 19

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

6 E2 27 7N 6W JEFFERSON

Source Name: BASIN CREEK

Period of Diversion: MAY 1 TO NOVEMBER 19

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

MEANS OF DIVERSION INCLUDES INSTREAM, HEADGATE, AND DITCHES.

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

Period of Use: MAY 1 TO NOVEMBER 19

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			SENE	16	7N	6W	JEFFERSON
2			SWNW	15	7N	6W	JEFFERSON
3			W2SW	15	7N	6W	JEFFERSON
4			NW	22	7N	6W	JEFFERSON
5			S2	22	7N	6W	JEFFERSON
6			E2	27	7N	6W	JEFFERSON

THIS WATER RIGHT HAS BEEN SEVERED FROM THE PLACE OF USE. CONTINUED USE OF THIS WATER RIGHT IN ACCORD WITH HISTORICAL PRACTICES IS ALLOWED. YOU MUST CONTACT DNRC AND OBTAIN A CHANGE AUTHORIZATION PRIOR TO CHANGING THE PLACE OF USE OF THIS WATER RIGHT.