

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

CLAIMANT: Paul T. Smith Ranches Inc.; Paul B. Smith

OBJECTOR: Paul B. Smith

CASE 41E-0199-R-2024

41E 110741-00

41E 110743-00

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

Paul B. Smith objected to each of these claims. Each of these claims appeared in the Preliminary Decree with the following notice remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41E 94271-00, 41E 110739-00, 41E 110740-00, 41E 110741-00, 41E 110742-00, 41E 110743-00.

On March 7, 2024 co-claimants Paul T. Smith Ranches Inc. and Paul B. Smith filed a Motion For Summary Judgment. Rule 56, M.R.Civ.P. requires filing a motion seeking relief against an adverse party. There is no adverse party in this Case. For both claims, the relief requested in the Motion For Summary Judgment is removal of the above notice remark. The Motion For Summary Judgment is deemed a conditional withdrawal of objections. The Motion For Summary Judgment is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

Judicial notice is taken of the Temporary Preliminary Decree proceedings for these two claims in Case 41E-87. Rule 202, M.R.Evid.R.

FINDINGS OF FACT

1. The Temporary Preliminary Decree included the following remark on the abstract for each of these claims:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT CLAIM OVERLAPPING PLACES OF USE.
THE WATER COURT DECREES THIS RIGHT AND MAKES ALL CLAIMS A MATTER OF RECORD.
W110739-00, W110740-00, W110741-00, W110742, W110743-00, W094271-00, W180957-00.

The remark was called in on motion of the Water Court to be addressed at that time. Both claims were in Case 41E-87 but were addressed in separate Master's Reports (both filed January 3, 1991, and Orders Adopting Master's Report entered January 23, 1991). The clear import of each Master's Report is that the remark was determined to be incorrect and that all issues were addressed. Regrettably, when the abstracts were later marked for revision to reflect the changes recommended in the Master's Reports, the remark was not removed from either abstract. The contemporary text version of the remark appeared on the abstract of each claim in the Preliminary Decree.

2. The notice remark concerning overlapping place of use should be removed from both abstracts as erroneously included on the abstracts.

3. The Preliminary Decree includes the following additional notice remark:

DITCH 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 remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The notice remarks should be removed as having served their notice purposes.

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 USPS Mail:

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

Water Right Number: 41E 110741-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PAUL T PAUL T SMITH RANCHES
502 LOWER VALLEY RD
BOULDER, MT 59632

PAUL B SMITH
502 LOWER VALLEY RD
BOULDER, MT 59632-9728

Priority Date: MAY 31, 1888

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 4.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 1,538.00

Source Name: ELKHORN 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		SESENW	10	5N	3W	JEFFERSON

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: HEADGATE

Ditch Name: DULANEY-SMITH DITCH

Period of Use: MARCH 1 TO DECEMBER 1

***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	606.00			27	5N	3W	JEFFERSON
2	133.00		NE	28	5N	3W	JEFFERSON
3	125.00		SE	28	5N	3W	JEFFERSON
4	40.00		NW	28	5N	3W	JEFFERSON
5	113.00		NE	34	5N	3W	JEFFERSON
6	16.00		SESE	21	5N	3W	JEFFERSON
7	75.00		NE	33	5N	3W	JEFFERSON
8	100.00		NW	34	5N	3W	JEFFERSON

9	<u>330.00</u>	14	5N	3W	JEFFERSON
Total:	1538.00				

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

110739-00 110741-00 110742-00 110743-00

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

Water Right Number: 41E 110743-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PAUL T PAUL T SMITH RANCHES
502 LOWER VALLEY RD
BOULDER, MT 59632

Priority Date: MARCH 1, 1865

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 1,216.00

Source Name: ELKHORN 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		SESENW	10	5N	3W	JEFFERSON

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: HEADGATE

Ditch Name: DULANEY-SMITH DITCH

Period of Use: MARCH 1 TO DECEMBER 1

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	590.00			27	5N	3W	JEFFERSON
2	140.00		NE	28	5N	3W	JEFFERSON
3	165.00		SE	28	5N	3W	JEFFERSON
4	40.00		NW	28	5N	3W	JEFFERSON
5	90.00		NE	34	5N	3W	JEFFERSON
6	16.00		SESE	21	5N	3W	JEFFERSON
7	75.00		NE	33	5N	3W	JEFFERSON
8	100.00		NW	34	5N	3W	JEFFERSON

Total: 1216.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

110739-00 110741-00 110742-00 110743-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

110743-00 110753-00