

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: Cassandra J. Fadness; Leroy H. Fadness

OBJECTOR: Hamilton Farms

**CASE 41E-0216-R-2024**

41E 93954-00

41E 93955-00

**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 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**

The Temporary Preliminary Decree for Basin 41E was issued on June 20, 1985. The objection filing deadline was December 17, 1985. On November 24, 1987 Hamilton Farms filed an objection to each of these claims. The objections were signed and filed by attorney David C. Moon. These are late filed objections which were docketed and held to address after issuance of the Preliminary Decree. The following notice remark was added to the abstract of each claim:

A LATE OBJECTION HAS BEEN FILED TO THE TEMPORARY PRELIMINARY DECREE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The Preliminary Decree was issued on October 19, 2022. No other objections, counterobjections, or notices of intent to appear were filed on these claims. The Order Consolidating Case And Setting Scheduling Conference was issued on January 10, 2024 to begin addressing the 1987 Hamilton Farms late objections. This Order was sent to attorney David Moon at the address specified on the objections. The Order was returned by the law firm now at that same address stating that Mr. Moon is not and has never been a member of that firm and that law firm does not represent Hamilton Farms. Mr. Moon is not listed in the 2023 State Bar of Montana Deskbook as an attorney practicing in Montana.

The scheduling conference was held before Senior Water Master Kathryn L. W. Lambert on February 7, 2024. Claimant Leroy Fadness appeared. The February 8, 2024 Court Minutes, Order Updating Service List, and Order Setting Deadline For Hamilton Farms To Show Cause In Writing Why Its Objections Should Not Be Dismissed [“Court Minutes and Orders”] states:

Mr. Fadness stated that Hamilton Farms sold out years ago and that Mr. Hamilton died in a plane crash in the 1990s. The Court noted that the Hamilton Farms attorney listed on the objections no longer practices in Montana. The successor law firm to that which previously employed him, filed a letter on January 26, 2024 confirming that Mr. Moon is not with the firm and that Hamilton Farms is not their client. The Court also noted that these claims appeared in the Basin 41E Preliminary Decree and no one – including whoever Hamilton Farms’ successor may be – objected to these claims. Mr. Fadness agreed with the Court’s suggestion to restore Hamilton Farms to the service list using its last known address and setting a 30 day deadline for Hamilton Farms to show cause why its 1987 objections should not be dismissed. Therefore, pursuant to Rule 16, M.R.Civ.P. and Rules 16 and 18, W.R.Adj.R., it is

ORDERED that the service list is UPDATED by removing attorney David C. Moon and by adding objector Hamilton Farms, and pursuant to Rule 16, M.R.Civ.P. and Rules 16 and 18, W.R.Adj.R., it is

ORDERED that the deadline is **March 7, 2024** for Hamilton Farms to show cause in writing why its objections should not be dismissed.

The Court Minutes and Orders sent to Hamilton Farms was returned to the Court as undeliverable. Judicial Assistant Julie Cristiani was unable to find a new address for Hamilton Farms. Consequently, nothing was filed by Hamilton Farms. These 2024 documents are viewable in the Court’s FullCourt Enterprise case management system.

### FINDINGS OF FACT

1. Objector Hamilton Farms cannot be located. Possible successor(s) have not appeared and requested substitution to prosecute the objections.

2. Claim 41E 93954-00 appeared in the Preliminary Decree with the following notice remarks:

A LATE OBJECTION HAS BEEN FILED TO THE TEMPORARY PRELIMINARY DECREE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

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.

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

3. Claim 41E 93955-00 appeared in the Preliminary Decree with the following notice remarks:

A LATE OBJECTION HAS BEEN FILED TO THE TEMPORARY PRELIMINARY DECREE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

POINT 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.

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

### RECOMMENDATIONS

Based upon the above Findings of Fact, this Master recommends that the Court dismiss the 1987 Hamilton Farms objections as no one has appeared for the purpose of prosecuting the objections, and recommends removal of the notice remarks as 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:**

Cassandra J. Fadness  
Leroy H. Fadness  
205 Upper Valley Rd  
Boulder, MT 59632

Hamilton Farms  
% Doug Dryden  
~~PO Box 948~~  
~~Boulder, MT 59632~~  
**(Return mail received)**

**Note: Service List Updated 3-12-24**

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

**Water Right Number:** 41E 93954-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CASSANDRA J FADNESS  
205 UPPER VALLEY RD  
BOULDER, MT 59632-9705

LEROY H FADNESS  
205 UPPER VALLEY RD  
BOULDER, MT 59632-9705

**Priority Date:** JUNE 7, 1879

**Type of Historical Right:** FILED

**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:** SLOAN 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		SENESE	22	6N	4W	JEFFERSON

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			SENESE	22	6N	4W	JEFFERSON

**Remarks:**

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.

93954-00

93955-00

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

**Water Right Number:** 41E 93955-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CASSANDRA J FADNESS  
205 UPPER VALLEY RD  
BOULDER, MT 59632-9705

LEROY H FADNESS  
205 UPPER VALLEY RD  
BOULDER, MT 59632-9705

**Priority Date:** JUNE 7, 1879

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.00 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:** 120.00

**Source Name:** SLOAN 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		SENESE	22	6N	4W	JEFFERSON

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

**Diversion Means:** DIKE

**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	80.00		S2SE	27	6N	4W	JEFFERSON
2	40.00		NENE	34	6N	4W	JEFFERSON

**Total:** 120.00

**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.

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.

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