

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: Eric J. Belford; Sheryl Belford

CASE 41E-0134-R-2024

41E 94337-00

OBJECTORS: United States of America (Bureau of Land
Management); United States of America (Bureau
of Reclamation)

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

The United States of America (USDI Bureau of Reclamation) and the (USDI Bureau of Land Management) each objected to this claim. This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED VOLUME EXCEEDS THE 15.4 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The claimants did not appear at the March 7, 2024 scheduling conference and their defaults were entered in the March 7, 2024 Court Minutes, Order Entering Defaults, and Order Setting Filing Deadline. On July 8, 2024 the United States' Response To Court Order was filed stating the proposed modifications of the claim pursuant to the default. On August 13, 2024, while this Master was on leave, another Master issued an Order Setting Show Cause Deadline which states:

ORDERED that the Claimants have until **September 16, 2024**, to show cause why the Court should not adopt the United States' proposed modifications to claim 41E 94337-00. If nothing is filed by the deadline, the Court will modify the claim in accordance with the United States' proposed modifications outlined in this Order and close these proceedings.

Nothing was filed by the claimants. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

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. The Preliminary Decree states that the volume is 905.00 AC-FT. The volume should be 15.40 AC-FT. The volume issue remark should be removed as addressed and resolved.
2. The following clarification remark should be added to the point of diversion: THE

POINT OF DIVERSION IS LOCATED IN SKIPPER LODE, MINERAL SURVEY NO. 9690.

3. The Preliminary Decree states that the place of use legal description is section 7, T6N, R4W, JEFFERSON. The legal description should be the SENESW of section 7, T6N, R4W, JEFFERSON. The following clarification remark should be added: THE PLACE OF USE IS LOCATED IN SKIPPER LODE, MINERAL SURVEY NO. 9690.

4. The Preliminary Decree includes the following notice remarks:

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.

POINT OF DIVERSION, SOURCE NAME AND RESERVOIR RECORD 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.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. 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.

These remarks provide notice of changes made prior to issuance of the Preliminary Decree and possible issues. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The United States' Response to Court Order is sufficient to contradict and overcome the *prima facie* claim, and to resolve the issue remark 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 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

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

Water Right Number: **41E 94337-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
ERIC J BELFORD
300 GRASSY HILL LANE
HELENA, MT 59602

SHERYL BELFORD
300 GRASSY HILL LANE
HELENA, MT 59602

Priority Date: JUNE 5, 1899

Type of Historical Right: FILED

Purpose (Use): RECREATION

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 15.40 AC-FT

***Source Name:** BOOMERANG GULCH

Source Type: SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENESW	7	6N	4W	JEFFERSON

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

Diversion Means: DIKE

THE POINT OF DIVERSION IS LOCATED IN SKIPPER LODE, MINERAL SURVEY NO. 9690.

***Reservoir:** ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SENESW	7	6N	4W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 12.00 FEET

Surface Area: 2.00 ACRES

Capacity: 9.60 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SENESW	7	6N	4W	JEFFERSON

THE PLACE OF USE IS LOCATED IN SKIPPER LODE, MINERAL SURVEY NO. 9690.