

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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CLAIMANTS: Mary E. Maguire; Owen F. Shields

OBJECTOR: United States of America (Bureau of Land Management)

**CASE 41E-0142-R-2024**

41E 27996-00

41E 27997-00

**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**

The United States of America (Bureau of Land Management) objected to each of these claims. The claimants did not appear at the March 6, 2024 scheduling conference and their defaults were entered in the March 6, 2024 Court Minutes, Order Entering Defaults, and Order Setting Filing Deadline. On August 6, 2024 the United States’ Motion For Show Cause Order was filed requesting dismissal of both claims. The Declaration Of Melissa Norris is attached to

the Motion. No response to the Motion was filed by the claimants. On August 21, 2024, while this Master was on leave, another Master issued an Order Setting Show Cause Filing Deadline which states:

ORDERED that the deadline is **September 20, 2024** for Mary E. Maguire and Owen F. Shields to show cause in writing why the Court should not terminate claims 41E 27996-00 and 41E 27997-00. If nothing is filed by Mary E. Maguire and Owen F. Shields, the Court will conclude they agree that claims 41E 27996-00 and 41E 27997-00 should be terminated.

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

#### APPLICABLE LAW

"Existing right' or 'existing water right' means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973." Section 85-2-102(13), 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. Claim 41E 27996-00 is for a July 28, 1911 use right for 2.00 GPM from a spring, unnamed tributary of High Ore Creek, for domestic use. The claimed point of diversion and place of use are in the NENESE section 15, T6N, R5W, JEFFERSON. The claimed means of diversion is FLOWING.

2. For claim 41E 27996-00, paragraphs 3 and 4 of the Declaration of Melissa Norris state that the "claimed point of diversion and place of use are located entirely on federal land"; the "Claimants do not have a special use permit for use of water claimed under 41E 27966-00 on federal land", and the "Claimants do not have authorization from BLM to divert or use water from the claimed diversion in the NENESE of Section 15, Township 6N, Range 5W, Jefferson County."

3. Claim 41E 27997-00 is for a July 28, 1911 use right for 0.50 GPM from High Ore Creek for mining. The claimed point of diversion is the NENESE section 15, T6N, R5W, JEFFERSON, with means of diversion PUMP. The claimed place of use is the SESENE and the NENESE section 15, T6N, R5W, JEFFERSON, and the NWNWSW section 14, T6N, R5W, JEFFERSON.

4. For claim 41E 27997-00, paragraphs 5 and 6 of the Declaration of Melissa Norris state that the “points of diversion and place of use include federal land”; “to mine on BLM land, a water right holder must have authorization from BLM for the use”; the BLM’s Mineral and Land Records System [“MLRS database”] shows that “Claimants have no active mining claims in their names”; “MLRS database records show that all of Mr. Shields’ past mining claims were permanently closed between 1991 and 2002”; there “is no record in the MLRS database that Mary E. Maguire or Mary Maguire ever had an active mining claim”; the “Claimants do not have authorization to divert or use water from the claimed diversion and place of use”, and “there is no evidence of mining within the claimed place of use since at least 2002.”

5. Claims 41E 27996-00 and 41E 27997-00 should be dismissed as they do not claim valid existing water rights.

#### CONCLUSION OF LAW

The Declaration of Melissa Norris is sufficient to contradict and overcome the prima facie claims.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claims 41E 27996-00 and 41E 27997-00 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 claims have been dismissed in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

**Service via USPS Mail:**

Mary E. Maguire  
% John Bermingham  
4897 Oakland St  
Denver, CO 80239

Owen F. Shields  
**(Return mail received)**

**Service Via Electronic Mail:**

Jennifer A. Najjar  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
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MontanaBasins.ENRD@USDOJ.GOV

**Note: Service List Updated 9-30-24**

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

**Water Right Number:** 41E 27996-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** MARY E MAGUIRE  
% JOHN BERMINGHAM  
4897 OAKLAND ST  
DENVER, CO 80239  
  
OWEN F SHIELDS  
-  
BOULDER, MT 59632

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** DOMESTIC

**Flow Rate:**

**Volume:**

**Source Name:** SPRING, UNNAMED TRIBUTARY OF HIGH ORE CREEK

**Source Type:** GROUNDWATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 41E 27997-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** MARY E MAGUIRE  
% JOHN BERMINGHAM  
4897 OAKLAND ST  
DENVER, CO 80239  
  
OWEN F SHIELDS  
-  
BOULDER, MT 59632

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** HIGH ORE CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.