

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: Harry A. Baker Jr.; Helen Ann Baker

CASE 41E-0159-R-2024

41E 103044-00

OBJECTOR: United States of America (USDA Forest Service)

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 (USDA Forest Service) objected to this claim. On September 20, 2024 the parties filed a Stipulation To Resolve Objections. The Stipulation is 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 point of diversion legal description is the NWNWSW section 16, T4N, R6W, JEFFERSON. The legal description should be the SWNWSW section 16, T4N, R6W, JEFFERSON.
2. The Preliminary Decree states that the place of use legal description for the 2.50 acre parcel is the NWSWNW section 16, T4N, R6W, JEFFERSON. The legal description should be the SENWSW section 16, T4N, R6W, JEFFERSON.
3. As requested, the following information remark should be added: POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim.

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

Service via USPS Mail:

Harry A. Baker Jr.
Helen Ann Baker
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Service Via Electronic Mail:

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

Water Right Number: 41E 103044-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HARRY A BAKER JR
245 NEZ PERCE RD
BUTTE, MT 59701

HELEN ANN BAKER
245 NEZ PERCE RD
BUTTE, MT 59701

Priority Date: JUNE 15, 1912

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FURROW

***Flow Rate:** 110.50 GPM

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

Climatic Area: 5 - LOW

***Maximum Acres:** 6.50

Source Name: UNNAMED TRIBUTARY OF NEZ PERCE CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS MOONLIGHT CREEK

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		SWNWSW	16	4N	6W	JEFFERSON

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 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	4.00		SWNWSW	16	4N	6W	JEFFERSON
2	2.50		SENWSW	16	4N	6W	JEFFERSON
Total:	6.50						

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.