

Montana Water Court
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FILED

09/18/2024

Sara Calkins
CLERK

Montana Water Court
STATE OF MONTANA

By: D'Ann CIGLER

41E-0128-R-2024

Lambert, Kathryn

13.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANT: Peace Valley Partnership

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41E-0128-R-2024

41E 94075-00

41E 94076-00

41E 94078-00

41E 94083-00

41E 94087-00

41E 94096-00

41E 94097-00

41E 94101-00

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 Reclamation) objected to each of these claims. On August 23, 2024 the parties filed a Stipulation To Resolve Objections. The Stipulation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), 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. For claim 41E 94075-00, the Preliminary Decree includes the following remarks:

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.

THE CLAIMED VOLUME EXCEEDS THE 10.4 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The Preliminary Decree states that the volume is 18,095.00 AC-FT. This volume quantification should be removed and the following remark should be added: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED. The issue remark should be removed as addressed and resolved.

- The Preliminary Decree also includes the following notice remarks:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

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.

RESERVOIR RECORD 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.

These remarks provide notice of possible issues and notice of changes made prior to issuance of the Preliminary Decree. These possible issues and changes were not contested by objection.

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

2. For claim 41E 94076-00, the Preliminary Decree states that the volume is 18,095.00 AC-FT. This volume quantification should be removed and the following remark should be added: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

The Preliminary Decree also includes the following notice remarks:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

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.

RESERVOIR RECORD 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.

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 possible issues and notice of changes made prior to issuance of the Preliminary Decree. These possible issues and changes were not contested by objection.

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

3. Claim 41E 94078-00 should be dismissed as withdrawn by the claimant.

4. Claim 41E 94083-00 should be dismissed as withdrawn by the claimant.

5. Claim 41E 94087-00 should be dismissed as withdrawn by the claimant.

6. For claim 41E 94096-00, the Preliminary Decree states the volume is 1613.00 AC-FT.

The following remark should be added: THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

7. For claim 41E 94097-00, the Preliminary Decree states the volume is 1613.00 AC-FT. The following remark should be added: THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

The Preliminary Decree also includes the following notice remarks:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. 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.

8. Claim 41E 94101-00 should be dismissed as withdrawn by the claimant.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims and to resolve the issue remarks 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 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

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

Water Right Number: 41E 94075-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date: SEPTEMBER 19, 1959

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 25.00 CFS

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.
THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: LITTLE BOULDER RIVER

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		SESWNW	10	5N	4W	JEFFERSON

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

Diversion Means: DIVERSION DAM

***Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSNW	10	5N	4W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 10.00 FEET

Surface Area: 1.50 ACRES

Capacity: 6.00 ACRE-FEET

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			SESWNW	10	5N	4W	JEFFERSON
2			SWSNW	10	5N	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.

94075-00

94076-00

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

Water Right Number: 41E 94076-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date: SEPTEMBER 19, 1959

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 25.00 CFS

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.
THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: LITTLE BOULDER RIVER

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		SESWNW	10	5N	4W	JEFFERSON

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

Diversion Means: DIVERSION DAM

***Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSNW	10	5N	4W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 10.00 FEET

Surface Area: 1.50 ACRES

Capacity: 6.00 ACRE-FEET

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			SESWNW	10	5N	4W	JEFFERSON
2			SWSNW	10	5N	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.

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

Water Right Number: 41E 94078-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: LITTLE BOULDER RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 94083-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: FARNHAM CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 94087-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF FARNHAM CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 94096-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date: APRIL 5, 1867

Type of Historical Right: FILED

Purpose (Use): GEOTHERMAL

***Flow Rate:** 2.23 CFS

Volume: 1,613.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

***Source Name:** BOULDER HOT SPRINGS

Source Type: SURFACE WATER

SOURCE IS COMPOSED OF 34 SPRINGS, GENERALLY GROUPED IN SIX CLUSTERS, WITH A COLLECTION BOX FOR EACH CLUSTER.

***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		NWNESW	10	5N	4W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	OTHER					
2		S2SESW	10	5N	4W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	OTHER					
3		SWNESW	10	5N	4W	JEFFERSON
*Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	OTHER					
4		NENWSW	10	5N	4W	JEFFERSON
*Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	OTHER					
5		N2SESW	10	5N	4W	JEFFERSON
*Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	OTHER					
6		NWSESW	10	5N	4W	JEFFERSON
*Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	OTHER					

THE MEANS OF DIVERSION IS A COLLECTION BOX.

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			NENWSW	10	5N	4W	JEFFERSON
2			N2NESW	10	5N	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.

94096-00 94097-00 94098-00

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

Water Right Number: 41E 94097-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date: APRIL 5, 1867

Type of Historical Right: FILED

Purpose (Use): RECREATION

***Flow Rate:** 2.23 CFS

***Volume:** 1,613.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

***Source Name:** BOULDER HOT SPRINGS

Source Type: SURFACE WATER

SOURCE IS COMPOSED OF 34 SPRINGS, GENERALLY GROUPED IN SIX CLUSTERS, WITH A COLLECTION BOX FOR EACH CLUSTER

***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		NWNESW	10	5N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER

2		S2SESW	10	5N	4W	JEFFERSON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER

3		SWNESW	10	5N	4W	JEFFERSON
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER

4		NENWSW	10	5N	4W	JEFFERSON
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER

5		N2SESW	10	5N	4W	JEFFERSON
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER

6		NWSESW	10	5N	4W	JEFFERSON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER

THE MEANS OF DIVERSION IS A COLLECTION BOX.

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			NENWSW	10	5N	4W	JEFFERSON
2			N2NESW	10	5N	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.

94096-00 94097-00 94098-00

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

Water Right Number: 41E 94101-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: PEACE VALLEY PARTNERSHIP LLC
PO BOX 930
BOULDER, MT 59632-0930

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: BOULDER HOT SPRINGS

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.