

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: Thomas W. Harrington; Twila M. Harrington

CASE 41E-0132-R-2024

41E 93951-00

OBJECTOR: 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) objected to this claim. This claim also has an issue remark concerning the existence of the reservoir. On August 23,

2024 the parties filed a Stipulation To Resolve Objection. 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. The Preliminary Decree states the volume is 89.00 AC-FT. The volume quantification should be removed and replaced with the following remark: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

2. The Preliminary Decree states that the point of diversion and means of diversion are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESWSE	35	6N	7W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31			
Diversion Means:	PUMP			

The point of diversion and means of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESWSE	35	6N	7W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31			
Diversion Means:	PUMP			

SENWSE	35	6N	7W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31			
Diversion Means:	PUMP			

NESE 35 6N 7W JEFFERSON
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: PUMP

3. The Preliminary Decree states that the ONSTREAM reservoir is located in the:

QTRSEC SEC TWP RGE COUNTY
NESWSE 35 6N 7W JEFFERSON

The reservoir should be changed to ONSTREAM and the legal description for the location should be:

QTRSEC SEC TWP RGE COUNTY
SENWSE 35 6N 7W JEFFERSON

The issue remark concerning the existence of the reservoir should be removed as addressed and resolved.

CONCLUSION OF LAW

The settlement filed by the parties 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

Service via USPS Mail:

Thomas W. Harrington
Twila M. Harrington
PO Box 897
Whitehall, MT 59759

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 93951-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS W HARRINGTON
PO BOX 897
WHITEHALL, MT 59759-0897

TWILA M HARRINGTON
PO BOX 897
WHITEHALL, MT 59759-0897

Priority Date: JULY 11, 1953

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.00 CFS

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Source Name: SHEEP CREEK

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		NESWSE	35	6N	7W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

2		SENWSE	35	6N	7W	JEFFERSON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

3		NESE	35	6N	7W	JEFFERSON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

MEANS OF DIVERSION INCLUDES A HEADGATE, PIPELINE, DITCH AND INSTREAM USE.

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWSE	35	6N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

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			NESWSE	35	6N	7W	JEFFERSON
2			SENWSE	35	6N	7W	JEFFERSON

3

NESE 35 6N 7W 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.

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POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN MINERAL SURVEY NO. 165.