

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

CLAIMANT: Barbara A. Sutherlin

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

CASE 41E-0147-R-2024

41E 93970-00

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 this claim. On August 6, 2024 the United States’ Motion For Show Cause Order was filed requesting modification of the point of diversion. Exhibit 1 attached to this Motion is a copy of an email

from Barabara A. Sutherlin stating she agrees with the proposed modification. On August 13, 2024, while this master was on leave, another master issued an Order Denying Motion For Show Cause Order stating the email from Barabara A. Sutherlin is sufficient agreement and an order to show cause was not needed. 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 has six points of diversion including a point of diversion in government lot 8 SWSWNE section 22, T6N, R5W, JEFFERSON. This point of diversion should be removed.
2. As requested, the following remark should be added to the abstract of this claim: THE PLACE OF USE AND POINTS OF DIVERSION ARE LIMITED TO PRIVATE LAND.
3. The Preliminary Decree includes the following notice remark:

POINT OF DIVERSION 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.

The remark provides notice of this change made prior to issuance of the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The documentation 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:

Barbara A. Sutherlin
PO Box 525
Boulder, MT 59632

Service Via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
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Jennifer.Najjar@usdoj.gov
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**POST DECREE
 ABSTRACT OF WATER RIGHT CLAIM
 BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
 BASIN 41E**

Water Right Number: 41E 93970-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BARBARA A SUTHERLIN
 PO BOX 525
 BOULDER, MT 59632-0525

Priority Date: AUGUST 2, 1873

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.25 CFS

Volume: 216.89 AC-FT

Source Name: 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		NESWNE	22	6N	5W	JEFFERSON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	PUMP					
2		NWSENE	22	6N	5W	JEFFERSON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	PUMP					
3		SWNESE	22	6N	5W	JEFFERSON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	PUMP					
4		SENESE	22	6N	5W	JEFFERSON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	PUMP					
5		SENESE	22	6N	5W	JEFFERSON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	PUMP					

Period of Use: MAY 1 TO NOVEMBER 1

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			NESWNE	22	6N	5W	JEFFERSON
2			NWSENE	22	6N	5W	JEFFERSON
3			SWNESE	22	6N	5W	JEFFERSON
4			SENESE	22	6N	5W	JEFFERSON

5

NENENE

22

6N

5W

JEFFERSON

Remarks:

THE PLACE OF USE AND POINTS OF DIVERSION ARE LIMITED TO PRIVATE LAND.