

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: Kimpton Ranch Co.; ~~Mulvey Gulch Ranch LLC~~

CASE 41E-0149-R-2024
41E 100243-00

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

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, conclusions 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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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 claim in this case is owned by Kimpton Ranch Co. (“Kimpton”) and Mulvey Gulch Ranch LLC (“Mulvey”) and appeared in the Preliminary Decree for Basin 41E

with issue remarks and received objections from USA Bureau of Land Management (“BLM”).

FINDINGS OF FACT

1. On August 29, 2024, Mulvey submitted a Withdrawal of Interest in Water Right Claim 41E 100243-00.

2. On August 30, 2024 remaining Parties BLM and Kimpton submitted a Stipulation (“Stipulation”)¹.

3. Claim 41E 100243-00 is stock claim from a reservoir on an unnamed tributary of Boulder River. The parties agree that the legal land description of the place of use needs further refinement.

4. The place of use for Claim 41E 100243-00 should be clarified as follows:

<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			<u>SWNWSW</u>	23	5N	2W	JEFFERSON
2				14	5N	2W	JEFFERSON
3			SW	11	5N	2W	JEFFERSON
4			W2	15	5N	2W	JEFFERSON
5			NW	27	5N	2W	JEFFERSON

5. Claim 41E 100243-00 also has issue remarks which state the point of diversion and reservoir record were modified by DNRC. No objections were filed to these elements so the remark should be removed.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

¹ The Stipulation and all other case documents are viewable in the Water Court’s FullCourt Enterprise case management system.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeyer et al. v. Burkhartsmeyer et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

5. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant’s requested reduction or limitation without further presentation of evidence. Rule 17(c) W.R.Adj.R.

6. The evidence entered into the record is sufficient to make the changes to the claim’s place of use and remove Mulvey as an owner.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above 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 corrections have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Kimpton Ranch Co.
50 Kimpton Rd
Toston, MT 59643

Service Via Electronic Mail:

Last Order:

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

Water Right Number: 41E 100243-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: KIMPTON RANCH CO
50 KIMPTON RD
TOSTON, MT 59643-9742

Priority Date: DECEMBER 31, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF 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		SWNWSW	23	5N	2W	JEFFERSON

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

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWSW	23	5N	2W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO NOVEMBER 30

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			SWNWSW	23	5N	2W	JEFFERSON