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**FILED**  
09/10/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41E-0150-R-2024  
Nordlund, Julia  
9.00

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

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CLAIMANT: Kimpton Ranch Co.

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

**CASE 41E-0150-R-2024**

41E 100238-00

41E 100241-00

41E 100265-00

**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, 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 claims in this case are owned by Kimpton Ranch Co. (“Kimpton”) 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 15, 2024 Parties BLM and Kimpton submitted a Stipulation (“Stipulation”)<sup>1</sup>.
2. Claims 41E 100238-00, 41E 100241-00, 41E 100265-00 are stock claims from unnamed tributaries of Boulder River and Rogers Spring. The parties agree that the legal land descriptions of the places of use needs further refinement.

3. The place of use for Claim 41E 100238-00 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			<b><u>SWSWNE</u></b>	25	5N	2W	JEFFERSON
2				26	5N	2W	JEFFERSON
3				30	5N	4W	JEFFERSON

4. The place of use for Claim 41E 100241-00 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			<b><u>W2NENW</u></b>	25	5N	2W	JEFFERSON
2				26	5N	2W	JEFFERSON
3				30	5N	4W	JEFFERSON

5. The place of use for Claim 41E 100265-00 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			<b><u>SESWNW</u></b>	3	5N	2W	JEFFERSON
2			<b><u>SWSENW</u></b>	10	5N	2W	JEFFERSON
3			<b><u>SWSENW</u></b>	15	5N	2W	JEFFERSON
4			<b><u>NWNWSE</u></b>	15 <sup>9</sup>	5N	2W	JEFFERSON
5			<b><u>E2E2</u></b>	8	5N	2W	JEFFERSON
6			<b><u>W2</u></b>	17	5N	2W	JEFFERSON

6. Claim 41E 100265-00 also has an issue remark which states the point of

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

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.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier 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 claims’ places of use.

## 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.

Post Decree Abstracts of Water Right Claims are 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

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

**Water Right Number:** 41E 100238-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** JUNE 10, 1959

**Type of Historical Right:** FILED

**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:** SPRING, UNNAMED TRIBUTARY OF BOULDER RIVER

**Source Type:** GROUNDWATER

**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		SWSWNE	25	5N	2W	JEFFERSON

**Period of Diversion:** APRIL 1 TO NOVEMBER 30

**Diversion Means:** DAM

**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			SWSWNE	25	5N	2W	JEFFERSON

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

**Water Right Number:** 41E 100241-00 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:** SPRING, UNNAMED TRIBUTARY OF BOULDER RIVER

**Source Type:** GROUNDWATER

**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		SWNENW	25	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>
	SWNENW	25	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			W2NENW	25	5N	2W	JEFFERSON

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

**Water Right Number:** 41E 100265-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** OCTOBER 31, 1972

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 5.00 GPM

**\*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:** ROGERS SPRING

**Source Type:** GROUNDWATER

**\*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		SESWSE	33	6N	2W	JEFFERSON

**Period of Diversion:** MAY 1 TO OCTOBER 31

**Diversion Means:** PUMP

**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			SESWNW	3	5N	2W	JEFFERSON
2			SWSNW	10	5N	2W	JEFFERSON
3			SWSNW	15	5N	2W	JEFFERSON
4			NWNWSE	15	5N	2W	JEFFERSON