

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: Buster Bullock; Megan F. Bullock; Paul T. Smith
Ranches Inc.

CASE 41E-0163-R-2024
41E 110742-00

OBJECTOR: Paul T. Smith Ranches Inc.

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

Paul T. Smith Ranches Inc. objected to this claim. This claim appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SESENW SEC 10 TWP 5N RGE 3W JEFFERSON COUNTY.

On June 4, 2024 the parties filed a Stipulation And Agreement. On September 4, 2024 the parties filed a Joint Response To Water Court's Order Setting Filing Deadline. These settlement documents are 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 that the point of diversion legal description is the SWSWNE section 10, T5N, R3W, JEFFERSON. The point of diversion legal description should be the SESENE section 10, T5N, R3W, JEFFERSON. The issue remark should be removed as addressed and resolved.

2. The following clarification remark should be added to the priority as requested by the parties:

THIS WATER RIGHT IS SUBJECT TO FINDINGS OF FACT 21, 22, AND 24, AND CONCLUSION OF LAW XI, OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THE JUDGMENT ENTERED IN PAUL T. SMITH ET AL., PLAINTIFFS, V. MCGOWANS, DEFENDANTS, MONTANA FIFTH JUDICIAL DISTRICT COURT, JEFFERSON COUNTY, CAUSE NO. 4479 (JUNE 18, 1971) HOLDING THAT WHEN THIS RIGHT WAS APPROPRIATED THE CO-OWNERS OWNED THE SAME NUMBER OF IRRIGABLE ACRES REQUIRING USE OF THIS WATER RIGHT; THAT NO CO-OWNER EVER GAINED GREATER RIGHTS TO THE USE OF THIS WATER RIGHT; AND THAT WHILE THE CO-OWNERS ARE ENTITLED TO EQUAL USAGE OF THE RIGHT, THE LADDER OF PRIORITY FOR THIS RIGHT SHALL BE SUCCESSORS TO SMITH, AND THEN SUCCESSORS TO CAREY.

The requested italicized text is appearing without italics because the programming for the state's centralized record system does allow for italicized text.

3. The Preliminary Decree also includes the following notice remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41E 94271-00, 41E 110739-00, 41E 110740-00, 41E 110741-00, 41E 110742-00, 41E 110743-00.

DITCH NAME 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 first remark was supposed to have been removed per the Master's Reports issued for these claims during the Temporary Preliminary Decree proceedings. It should be removed as erroneously appearing on the abstract.

The second remark provides notice of this change made prior to issuance of the Preliminary Decree and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

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:

Buster Bullock
Megan F. Bullock
PO Box 364
Boulder, MT 59632

Service Via Electronic Mail:

William Driscoll
Ryan McLane
FRANZ & DRISCOLL, PLLP
PO Box 1155
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 110742-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BUSTER BULLOCK
PO BOX 364
BOULDER, MT 59632-0364

MEGAN F BULLOCK
PO BOX 364
BOULDER, MT 59632-0364

SMITH, PAUL T RANCHES INC
502 LOWER VALLEY RD
BOULDER, MT 59632

Priority Date: APRIL 2, 1880

THIS WATER RIGHT IS SUBJECT TO FINDINGS OF FACT 21, 22, AND 24, AND CONCLUSION OF LAW XI, OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THE JUDGMENT ENTERED IN PAUL T. SMITH ET AL., PLAINTIFFS, V. MCGOWANS, DEFENDANTS, MONTANA FIFTH JUDICIAL DISTRICT COURT, JEFFERSON COUNTY, CAUSE NO. 4479 (JUNE 18, 1971) HOLDING THAT WHEN THIS RIGHT WAS APPROPRIATED THE CO-OWNERS OWNED THE SAME NUMBER OF IRRIGABLE ACRES REQUIRING USE OF THIS WATER RIGHT; THAT NO CO-OWNER EVER GAINED GREATER RIGHTS TO THE USE OF THIS WATER RIGHT; AND THAT WHILE THE CO-OWNERS ARE ENTITLED TO EQUAL USAGE OF THE RIGHT, THE LADDER OF PRIORITY FOR THIS RIGHT SHALL BE SUCCESSORS TO SMITH, AND THEN SUCCESSORS TO CAREY.

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 6.25 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 1,686.00

***Source Name:** ELKHORN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		SE	ENW	10	5N	3W	JEFFERSON

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: HEADGATE

Ditch Name: DULANEY-SMITH DITCH

DITCH NAME ALSO KNOWN AS SMITH-CAREY DITCH OR HOOPES DITCH.

Period of Use: MARCH 1 TO DECEMBER 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	16.00		SESE	21	5N	3W	JEFFERSON
2	30.00		SWSE	21	5N	3W	JEFFERSON
3	20.00		SESW	21	5N	3W	JEFFERSON
4	40.00		S2N2NE	22	5N	3W	JEFFERSON
5	80.00		S2NE	22	5N	3W	JEFFERSON
6	300.00		S2	22	5N	3W	JEFFERSON
7	590.00			27	5N	3W	JEFFERSON
8	140.00		NE	28	5N	3W	JEFFERSON
9	40.00		NW	28	5N	3W	JEFFERSON
10	165.00		SE	28	5N	3W	JEFFERSON
11	75.00		NE	33	5N	3W	JEFFERSON
12	90.00		NE	34	5N	3W	JEFFERSON
13	100.00		NW	34	5N	3W	JEFFERSON
Total:	1686.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

110739-00 110741-00 110742-00 110743-00

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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