

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: Francone Ranch LLC; **Ross G. Rebich**

OBJECTOR: Ross G. Rebich

CASE 41E-0177-R-2024

41E 25406-00

41E 30160080

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

Ross G. Rebich objected to this claim. On June 13, 2024 the parties filed their Notice Of Filing Settlement Agreement with the Settlement Agreement attached. The Settlement Agreement is viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. Section 3-7-224, MCA.

The Water Court may split a claim with multiple owners into separate claims upon request of all of the claimants prior to issuance of the final decree. Rule 26, W.R.Adj.R.

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. Francone Ranch LLC stock claim 41E 25406-00 claims a stock water right diverted on and used on Francone Ranch LLC property and on Ross G. Rebich property. The parties' Settlement Agreement requests the claim be split between these two property owners, resulting in a separate claim for Francone Ranch LLC and a separate claim for Ross G. Rebich.

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

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESESW	2	4N	7W	JEFFERSON

and the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NE	11	4N	7W	JEFFERSON
N2	12	4N	7W	JEFFERSON

Prior to splitting the claim, the means of diversion should be LIVESTOCK DIRECT FROM SOURCE, and the point of diversion and place of use should both be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NE	11	4N	7W	JEFFERSON
NE	12	4N	7W	JEFFERSON
NW	12	4N	7W	JEFFERSON

3. Claim 41E 25406-00 should be modified to represent only the Francone Ranch LLC portion of the claimed right. Claim 41E 30160080 should be generated for the Ross G. Rebich portion of the claimed right.

4. Claim 41E 25406-00 should be modified as follows: the point of diversion and place of use should be

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NE	11	4N	7W	JEFFERSON
NE	12	4N	7W	JEFFERSON

As requested, the following remark should be added to this abstract: THIS WATER IS SUBJECT TO AN AGREEMENT ON FILE IN WATER COURT CASE 41E-0177-R-2024.

5. The elements of claim 41E 30160080 should be the same as 41E 25406-00 except: 1) the owner should be Ross G. Rebich, and 2) the point of diversion and place of use should be

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NW	12	4N	7W	JEFFERSON

As requested, the following remark should be added to the abstract: THIS WATER IS SUBJECT TO AN AGREEMENT ON FILE IN WATER COURT CASE 41E-0177-R-2024.

CONCLUSION OF LAW

The documentation filed by the parties provides sufficient information to contradict and overcome the prima facie claim and to split the claim in order to reflect the divided interests.

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 and split claim 41E 25406-00 as requested by the parties. A Post Decree Abstract of Water Right Claim for each 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

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Note: Caption Updated 9-13-24

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

Water Right Number: 41E 25406-00 STATEMENT OF CLAIM
Version: 3 -- SPLIT POST DECREE
Status: ACTIVE

Owners: FRANCONI RANCH LLC
25 CEDAR LAKE DR
BUTTE, MT 59701

Priority Date: DECEMBER 31, 1928

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 BISON CREEK

Source Type: GROUNDWATER
ALSO KNOWN AS JOHN'S SPRING

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		NE	11	4N	7W	JEFFERSON

Period of Diversion: JUNE 1 TO SEPTEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NE	12	4N	7W	JEFFERSON
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Period of Diversion: JUNE 1 TO SEPTEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO SEPTEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NE	11	4N	7W	JEFFERSON
2			NE	12	4N	7W	JEFFERSON

Remarks:

THIS WATER RIGHT IS SUBJECT TO AN AGREEMENT ON FILE IN WATER COURT CASE 41E-0177-R-2024.

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

Water Right Number: 41E 30160080 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: ROSS G REBICH
26 LESA MARIE LANE
KENNEWICK, WA 99338

Priority Date: DECEMBER 31, 1928

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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1		NW	12	4N	7W	JEFFERSON

Period of Diversion: JUNE 1 TO SEPTEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO SEPTEMBER 1

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