

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: Francone Ranch LLC

OBJECTORS: Ross G. Rebich; United States of America (USDA  
Forest Service)

**CASE 41E-0178-R-2024**

41E 25395-00

41E 25401-00

**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 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 and the United States of America (USDA Forest Service) objected to claim 41E 25395-00. The United States of America (USDA Forest Service) objected to claim 41E 25401-00.

On June 13, 2021 Francone Ranch LLC and Ross G. Rebich filed a Settlement Agreement resolving the Ross G. Rebich objection to claim 41E 25395-00. On June 21, 2024 Francone Ranch LLC and the United States of America (USDA Forest Service) filed a Stipulation To Resolve Objections resolving the United States of America (USDA Forest Service) objections to both claims. On July 18, 2024 a comment on the settlements was filed by Harrington Family LLC, which is not a party in this Case. On July 26, 2024 Francone Ranch LLC and the United States of America (USDA Forest Service) filed an Amended Stipulation To Resolve Objections which includes additional changes to the source name and source type on each claim. As these elements are not at issue, this is deemed a motion to amend each claim pursuant to section 85-2-233(6), MCA. On August 23, 2024 Francone Ranch LLC filed a Response To Harrington Family LLC's *Pro Se* Filing and Motion To Amend 41E 25395 00 To Add Information Remark. No response or answer was filed by Ross G. Rebich or United States of America (USDA Forest Service).

The settlement documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

"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 amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The changes requested in the motions to amend arise out of the same conduct, transaction, or occurrence specified on the original Statements of Claim, are based on the same operative facts specified in the Statements of Claim, and merely make more specific that which was already claimed on the original Statements of Claim.

2. For claim 41E 25395-00, the Preliminary Decree states the source type is GROUNDWATER and the source name is SPRING, UNNAMED TRIBUTARY OF BISON CREEK with clarification remark: ALSO KNOWN AS JOE’S SPRING. The source type should be SURFACE, the source name should be UNNAMED TRIBUTARY OF BISON CREEK with clarification remark: THE SOURCE IS AN UNNAMED TRIBUTARY OF BISON CREEK WHICH IS FED BY WATER FROM JOE’S SPRING, A NATURALLY FLOWING SPRING.

The Preliminary Decree states the point of diversion legal description is the SWSWSW section 15, T4N, R7W, JEFFERSON. The legal description should be government lot 4, SESESE section 15, T4N, R7W, JEFFERSON.

The Preliminary Decree states that the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
219.00	S2	14	4N	7W	JEFFERSON
<u>127.00</u>	W2	13	4N	7W	JEFFERSON
346.00					

The place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
219.00	S2	14	4N	7W	JEFFERSON
66.00	NW	13	4N	7W	JEFFERSON
<u>61.00</u>	W2SW	13	4N	7W	JEFFERSON
346.00					

THE PLACE OF USE IS LIMITED TO THE W2 OF SECTION 13 LYING TO THE WEST OF I-15.

The Preliminary Decree also includes the following remark which was added during the Temporary Preliminary Decree proceedings for this claim in Case 41E-3:

THE WATER RIGHT AND PERIOD OF USE IS MODIFIED BY RIGHT 45247-00, WHICH IS ENTITLED TO ALL OF THE FLOW FROM JOE'S SPRING DURING THE PERIOD OF APRIL 15 TO MAY 15 AND ALL THE FLOW DURING THE PERIOD THAT THE HAY CROP IS HARVESTED ON S2 OF SEC 14 AND W2 OF SEC 13, TWP 04N, RGE 07W, MPM.

The text of this remark is one the stipulated changes to be made to this claim per the April 27, 1990 Agreement And Stipulation To Settle Objections To Water Rights. This specific text was added by the November 5, 1990 Master's Report (December 4, 1990 Order Adopting Master's Report). Rather than add the more generic remark requested in the August 23, 2024 Francone Ranch LLC Motion To Amend 41E 25395 00 To Add Information Remark, this remark should be modified to reference its origin. The following text should be added to the end of the above remark: SEE THE APRIL 27, 1990 AGREEMENT AND STIPULATION, AND THE NOVEMBER 5, 1990 MASTER'S REPORT FILED IN CASE 41E-3.

3. For claim 41E 25401-00, the Preliminary Decree states the source type is GROUNDWATER and the source name is SPRING, UNNAMED TRIBUTARY OF BISON CREEK with clarification remark: ALSO KNOWN AS DEEP SPRINGS. The source type should be SURFACE, the source name should be UNNAMED TRIBUTARY OF BISON CREEK with clarification remark: THE SOURCE IS AN UNNAMED TRIBUTARY OF BISON CREEK WHICH IS FED BY WATER FROM DEEP SPRINGS, A NATURALLY FLOWING SPRING.

The Preliminary Decree states the point of diversion legal description is the SESENE section 16, T4N, R7W, JEFFERSON. The legal description should be government lot 4, SESESE section 15, T4N, R7W, JEFFERSON.

4. Each claim appeared in the Preliminary Decree with the following remark:

THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE. 41E 25395-00, 41E 25401-00.

This remark provides notice of a possible legal issue to be pursued by objection. No objection was filed to pursue this possible issue. The remark has served its notice purpose and should be removed from each abstract without further proceedings.

#### CONCLUSIONS OF LAW

1. The requested amendments do not adversely affect other water rights as they are corrections to the abstracts which do not make any changes to the actual historical use of the

claimed rights on the ground. Notice by publication of these amendments are not required. Section 85-2-233(6), MCA.

2. Each requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The settlement documents are sufficient to contradict and overcome the prima facie claims.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court grant the motions to amend the claims and 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 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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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER**  
**BASIN 41E**

**Water Right Number:** 41E 25395-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 11, 1880

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 10.00 CFS

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

**Climatic Area:** 5 - LOW

**\*Maximum Acres:** 346.00

**Source Name:** UNNAMED TRIBUTARY OF BISON CREEK

**Source Type:** SURFACE WATER

THE SOURCE IS AN UNNAMED TRIBUTARY OF BISON CREEK WHICH IS FED BY WATER FROM JOE'S SPRING, A NATURALLY FLOWING SPRING.

**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	4	SESESE	15	4N	7W	JEFFERSON

**Period of Diversion:** APRIL 1 TO DECEMBER 1

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 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	219.00		S2	14	4N	7W	JEFFERSON
2	66.00		NW	13	4N	7W	JEFFERSON
3	61.00		W2SW	13	4N	7W	JEFFERSON
<b>Total:</b>	<b>346.00</b>						

THE PLACE OF USE IS LIMITED TO THE W2 OF SECTION 13 LYING TO THE WEST OF I-15

**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.

25395-00

25401-00

THE WATER RIGHT AND PERIOD OF USE IS MODIFIED BY RIGHT 45247-00, WHICH IS ENTITLED TO ALL OF THE FLOW FROM JOE'S SPRING DURING THE PERIOD OF APRIL 15 TO MAY 15 AND ALL THE FLOW DURING THE PERIOD THAT THE HAY CROP IS HARVESTED ON S2 OF SEC 14 AND W2 OF SEC 13, TWP 04N, RGE 07W, MPM. SEE THE APRIL 27, 1990 AGREEMENT AND STIPULATION, AND THE NOVEMBER 5, 1990 MASTER'S REPORT FILED IN CASE 41E-3.



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

**Water Right Number:** 41E 25401-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 11, 1880

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 10.00 CFS

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

**Climatic Area:** 5 - LOW

**\*Maximum Acres:** 346.00

**Source Name:** UNNAMED TRIBUTARY OF BISON CREEK

**Source Type:** SURFACE WATER

THE SOURCE IS AN UNNAMED TRIBUTARY OF BISON CREEK WHICH IS FED BY WATER FROM DEEP SPRINGS, A NATURALLY FLOWING SPRING.

**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	4	SESESE	15	4N	7W	JEFFERSON

**Period of Diversion:** APRIL 1 TO DECEMBER 1

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 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	219.00		S2	14	4N	7W	JEFFERSON
2	127.00		W2	13	4N	7W	JEFFERSON
<b>Total:</b>	<b>346.00</b>						

**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.

25395-00            25401-00