

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: Harrington Family LLC

OBJECTORS: United States of America (USDA Forest Service)

**CASE 41E-0184-R-2024**

41E 45243-00

41E 45247-00

**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, 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**

The United States of America (USDA Forest Service) objected to each of these claims.

Claim 41E 45243-00 appeared in the Preliminary Decree with the following remark:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

This late objection was filed by Daniel R. Harrington and Marie T. Harrington on October 13, 1989.

Claim 41E 45247-00 appeared in the Preliminary Decree with the following remark:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE, VOLUME, ACRES IRRIGATED AND FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

This late objection was filed by Daniel R. Harrington and Marie T. Harrington on October 13, 1989.

On July 1, 2024 the United States Status Report And Motion For Show Cause Order was filed. On July 18, 2024 the claimant filed its response. On July 22, 2024 the Court issued an Order Dismissing the late objections. On August 27, 2024 the parties filed a Stipulation To Resolve Objections. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

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 late objections were dismissed. The remark providing notice about the late objections should be removed from the abstract of each claim.

2. For each claim, the Preliminary Decree states that the point of diversion legal description is government lot 4 in the NESESE section 15, T4N, R7W, JEFFERSON. The legal description should be government lot 4 in the SESESE section 15, T4N, R7W, JEFFERSON.

3. The abstract of claim 41E 45243-00 includes the following notice remark:

POINT OF DIVERSION, MEANS OF DIVERSION AND DITCH NAME WERE 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 abstract of claim 41E 45247-00 includes the following notice remark:

POINT OF DIVERSION AND DITCH NAME WERE 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.

These remarks provide notice of the changes made prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. The remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims.

#### 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 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**

##### **Service via USPS Mail:**

Harrington Family LLC  
377 MT HWY 359  
Cardwell, MT 59721

##### **Service Via Electronic Mail:**

Maggie Woodward  
US Dept of Justice  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-4224  
Maggie.Woodward@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

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

**Water Right Number:** 41E 45243-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HARRINGTON FAMILY LLC  
377 MT HWY 359  
CARDWELL, MT 59721-9707

**Priority Date:** AUGUST 9, 1889

**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:** UNNAMED TRIBUTARY OF BISON CREEK

**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	4	SESESE	15	4N	7W	JEFFERSON

**Period of Diversion:** MARCH 10 TO DECEMBER 1

**Diversion Means:** DITCH

**Ditch Name:** FRANCONI DITCH

**Period of Use:** MARCH 10 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			N2NW	23	4N	7W	JEFFERSON

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

**Water Right Number:** 41E 45247-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HARRINGTON FAMILY LLC  
377 MT HWY 359  
CARDWELL, MT 59721-9707

**Priority Date:** AUGUST 9, 1889

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 102.00 GPM

**\*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:** 6.00

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

**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	4	SESESE	15	4N	7W	JEFFERSON

**Period of Diversion:** MARCH 10 TO DECEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** FRANCONI DITCH

**Period of Use:** MARCH 10 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	6.00		N2NW	23	4N	7W	JEFFERSON

**Total:** 6.00