

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: Anita L. McCauley; Edward K. McCauley

OBJECTORS: Anita L. McCauley; Edward K. McCauley

COUNTEROBJECTORS: Lori Norby; Pallister Joint Living Trust

CASE 41E-0191-R-2024

41E 93860-00

41E 93870-00

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

Anita L. McCauley and Edward K. McCauley objected to each of these claims. Lori Norby and Pallister Joint Living Trust counterobjected to each of these claims. Claim 41E 93860-00 appeared in the Preliminary Decree with the following remark:

AN AMENDMENT WAS SUBMITTED ON REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

On May 20, 2024 Anita L. McCauley and Edward K. McCauley each filed an unconditional Withdrawal Of Objection for each claim. On September 5, 2024 Counterobjectors Lori Norby And Pallister Joint Living Trust's Conditional Withdrawal Of Counterobjections was filed. The withdrawals 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 amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 41E 93860-00, the Preliminary Decree states that the place of use is the NWNWSE of section 33, T6N, R4W, JEFFERSON. As requested in the August 22, 2022 Amendment To Statement Of Claim, the place of use should be the NESWNE of section 33, T6N, R4W, JEFFERSON. The remark concerning the amendment should be removed as addressed and resolved.

The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION 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.

This remark provides notice that the point of diversion was modified prior to issuance of the Preliminary Decree. The remark should be removed as having served its notice purpose.

2. For claim 41E 93870-00, the Preliminary Decree includes the following notice remarks:

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE CHANGE IN MAXIMUM ACRES IRRIGATED.

THE LATE OBJECTION TO POINT OF DIVERSION AND SOURCE WAS ADDRESSED DURING THE TEMPORARY PRELIMINARY DECREE PROCEEDINGS. BECAUSE THESE ELEMENTS WERE NOT ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

POINT OF DIVERSION, SOURCE NAME, 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.

These remarks provide notice of changes made during the Temporary Preliminary Decree proceedings or prior to issuance of the Preliminary Decree. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The amendment filed by the claimants is sufficient to contradict and overcome the prima facie claim.

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 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:

Anita L. McCauley
Edward K. McCauley
PO Box 393
Boulder, MT 59632

Service Via Electronic Mail:

Hallee C. Frandsen
W. John Tietz
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 93860-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANITA L MCCAULEY
PO BOX 393
BOULDER, MT 59632

EDWARD K MCCAULEY
PO BOX 393
BOULDER, MT 59632

Priority Date: JANUARY 1, 1865

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 45.00 GPM

***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: 5.00

Source Name: GROUNDWATER

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		NESWNE	33	6N	4W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: WELL

Period of Use: APRIL 1 TO NOVEMBER 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	5.00		NESWNE	33	6N	4W	JEFFERSON

Total: 5.00

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.

93859-00	93860-00	93861-00	93862-00	93864-00	93867-00
93868-00	93870-00	93871-00	93872-00	93873-00	93874-00
93875-00	93876-00				

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

Water Right Number: 41E 93870-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANITA L MCCAULEY
PO BOX 393
BOULDER, MT 59632

EDWARD K MCCAULEY
PO BOX 393
BOULDER, MT 59632

Priority Date: MAY 31, 1884

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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:** 99.00

***Source Name:** BOULDER RIVER

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		NENWNE	32	6N	4W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: WARNER DITCH

2		SWNENW	32	6N	4W	JEFFERSON
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: STATE-WAHLE DITCH

3		SWNWNW	32	6N	4W	JEFFERSON
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***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: BOULDER SLOUGH

WATER DIVERTED FROM BOULDER RIVER IS CONVEYED TO THE BOULDER SLOUGH WHICH HISTORICALLY WAS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION. TODAY THE BOULDER SLOUGH IS NO LONGER USED AS HISTORICALLY DECREED AS IT IS A DITCH WITH A HEADGATE.

Period of Use: APRIL 1 TO NOVEMBER 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	39.50		NWNE	33	6N	4W	JEFFERSON
2	39.50		SWNE	33	6N	4W	JEFFERSON
3	10.00		NWNENE	33	6N	4W	JEFFERSON
4	10.00		SWNENE	33	6N	4W	JEFFERSON
Total:	<u>99.00</u>						

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.

93859-00	93860-00	93861-00	93862-00	93864-00	93867-00
93868-00	93870-00	93871-00	93872-00	93873-00	93874-00
93875-00	93876-00				