

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: Shirley Co.

OBJECTOR: United States of America (USDA Forest Service)

**CASE 41E-0208-R-2024**  
41E 90263-00

**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 this claim. The claimant did not appear at the April 3, 2024 scheduling conference and its default was entered in the April 3, 2024 Court Minutes, Order Entering Default, and Order Setting Filing Deadlines. On

June 17, 2024 the United States' Status Report And Motion For Show Cause Order was filed. On June 20, 2024 the United States' Response To Court Order was filed providing exhibits which were not attached to the Motion. The claimant did not file a response to the Motion.

On August 13, 2024, while this Master was on leave, another Master issued an Order Setting Show Cause Deadline which states:

ORDERED that the Claimant has until **September 11, 2024**, to show cause why the Court should not adopt the United States' proposed modifications to claim 41E 90263-00. If nothing is filed by the deadline, the Court will modify the claim in accordance with the United States' proposed modifications outlined in this Order and close these proceedings.

Nothing was filed by the claimant. 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 Preliminary Decree states that the point of diversion is the NENESE of section 4, T6N, R6W, JEFFERSON, and the place of use legal description is the E2NESE of section 4, T6N, R6W, JEFFERSON. The legal description should be the NESESE of section 4, T6N, R6W, JEFFERSON. As requested, the following remark should be added to the abstract: THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON M.S. 10425.

2. The Preliminary Decree states that the means of diversion is FLOWING. The Statement of Claim has "Gravity flow" selected as the means of diversion. The copy of a plat map attached to the Statement of Claim locates the spring and the three cabins where the water is used, some distance from the spring. "Flowing" refers to both instream use and pipeline diversion. As the cabins are shown some distance from spring, it appears the means of diversion is pipeline rather than instream. The means of diversion should be PIPELINE.

CONCLUSION OF LAW

The settlement documentation is sufficient to contradict and overcome the prima facie claim. The Statement of Claim and its attachments are sufficient to correct the means of diversion.

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:**

Shirley Co.  
5291 N Mesa Dr  
Castle Rock, CO 80108

**Service Via Electronic Mail:**

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

**Water Right Number:** 41E 90263-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** SHIRLEY CO  
5291 N MESA DR  
CASTLE ROCK, CO 80108-9343

**Priority Date:** AUGUST 31, 1923

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 4.49 GPM

**Volume:** 3.00 AC-FT

**Households:** 3

**Maximum Acres:** 6.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF RED ROCK CREEK

**Source Type:** GROUNDWATER  
ALSO KNOWN AS JETTIE PEARL 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		NESESE	4	6N	6W	JEFFERSON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**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		NESESE	4	6N	6W	JEFFERSON

**Total:** 6.00

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**Remarks:**

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY WITHIN M.S. 10425.