

Montana Water Court
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FILED
09/27/2024
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Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
41E-0237-R-2024
Lambert, Kathryn
14.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANTS: Compton Ranch LLC; Paul B. Smith; Paul T. Smith
Ranches Inc.

CASE 41E-0237-R-2024
41E 214200-00

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 finding 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

Claim 41E 214200-00 appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNENW SEC 19 TWP 5N RGE 3W JEFFERSON COUNTY.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The February 6, 2024 Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set filing deadlines for the Montana Department of Natural Resources and Conservation [“DNRC”] and the claimants. On August 9, 2024 the DNRC Memorandum was filed. On September 6, 2024 Compton Ranch LLC filed its Notice Of Endorsement Of DNRC’s Memorandum. On September 6, 2024 Paul B. Smith and Paul T. Smith Ranches Inc. filed their endorsement (although entitled Unopposed Motion To Extend, the content is their endorsement). These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“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 objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the SWNENW section 19, T5N, R3W, JEFFERSON. The legal description should be the W2NENW section 19, T5N, R3W, JEFFERSON. The point of diversion issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the DNRC and the claimants is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding 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

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

Water Right Number: 41E 214200-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PAUL B SMITH
502 LOWER VALLEY RD
BOULDER, MT 59632-9728

COMPTON RANCH LLC
747 LOWER VALLEY RD
BOULDER, MT 59632-9707

SMITH, PAUL T RANCHES INC
502 LOWER VALLEY RD
BOULDER, MT 59632

***Priority Date:** JUNE 6, 1892

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 1.25 CFS

THE FLOW RATE IS DIVIDED SUCH THAT 40 MINERS INCHES IS ALLOCATED TO PAUL T. SMITH RANCHES, INC. AND 10 MINERS INCHES TO ED MURPHY RANCHES, INC.

***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:** 1,580.00

***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		W2NENW	19	5N	3W	JEFFERSON

Period of Diversion: MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: MCCAULEY-MURPHY-SMITH DITCH

***Period of Use:** MARCH 1 TO NOVEMBER 15

***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	330.00			14	5N	3W	JEFFERSON
2	42.00		NESE	20	5N	3W	JEFFERSON
3	16.00		SESE	21	5N	3W	JEFFERSON

4	606.00		27	5N	3W	JEFFERSON
5	133.00	NE	28	5N	3W	JEFFERSON
6	40.00	NW	28	5N	3W	JEFFERSON
7	125.00	SE	28	5N	3W	JEFFERSON
8	75.00	NE	33	5N	3W	JEFFERSON
9	113.00	NE	34	5N	3W	JEFFERSON
10	100.00	NW	34	5N	3W	JEFFERSON
Total:	<u>1580.00</u>					