

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: John W. Dawson

**CASE 41E-0242-R-2024**

41E 93930-00

41E 93934-00

**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**

Each of these claims appeared in the Preliminary Decree with an issue remark. The issue remarks were 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 claimant an opportunity to file additional information or evidence.

The March 4, 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 claimant. On May 20, 2024 the DNRC Memorandum was filed making recommendations. On July 29, 2024, while this master was on leave, another master issued an Order Setting Filing Deadline [“July 29, 2024 Order”] which states:

The DNRC Memorandum recommended several amendments to the claims. However, based upon a review of the claim files it appears the issue remarks were placed on the claims in error.

- Claim file 41E 93930-00 includes an April 28, 1980 certification from the Jefferson County Clerk and Recorder, that the copy of the John W. Dawson Notice of Water Right “is a true, full, and correct copy...as found on record in Book G, of Water Rights Page 412.” The DNRC claims examiner that added the issue remark questioning the priority date and type of historical right for claim 41E 93930-00 noted that “No copy of the Appropriation document is in the file. Only the clerks record of the location of the document was supplied.” However, the Notice of Water Right is included in the claim file and supports the priority date and type of historical right identified by statement of claim 41E 93930-00.

- The Preliminary Decree abstract for claim 41E 93934-00 reflects a completed post-1973 change authorization for the point of diversion, not the historical point of diversion. In lieu of the point of diversion issue remark, the following information remark should appear on the abstract:

THIS WATER RIGHT WAS SUBJECT TO A CHANGE APPLICATION APPROVED BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE MONTANA WATER COURT INCLUDED SOME OR ALL OF THE CHANGES APPROVED BY THE DEPARTMENT IN THE DECREE OF THIS WATER RIGHT.

Based upon the claim files no changes should be made to the elements of the claims, the issue remarks should be removed from the claims, and the change authorization information remark should be added to claim 41E 93934-00.

Accordingly, it is

ORDERED that if John W. Dawson agrees that no changes should be made to the elements of the above captioned claims, the issue remarks should be removed from the claims, and the change authorization information remark should be added to claim 41E 93934-00, Mr. Dawson shall file a statement of agreement with the Montana Water Court no later than **August 28, 2024**.

ORDERED that if John W. Dawson disagrees with the foregoing, he shall file evidence supporting his disagreement. This evidence must be filed with the Montana Water Court no later than **August 28, 2024**.

ORDERED that the failure to comply with this filing deadline will be viewed as John W. Dawson's agreement that no changes should be made to the elements of the above captioned claims, the issue remarks should be removed from the claims, and the change authorization information remark should be added to claim 41E 93934-00.

Nothing was filed by John W. Dawson.

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.

#### FINDINGS OF FACT

1. For claim 41E 93930-00, the Preliminary Decree states that the priority date is NOVEMBER 10, 1889 and the type of historical right is FILED. The following issue remark appeared on the abstract of claim in the Preliminary Decree:

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE.  
DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS  
NOT SUBMITTED WITH THIS CLAIM.

The DNRC Memorandum states that John W. Dawson did not provide any historical documentation. However, as noted in the July 29, 2024 Order, a copy of the 1891 Notice of Appropriation describing an 1889 Boulder River appropriation is in the claim file. Obviously the issue remark should not have been added and there is no basis for the DNRC Memorandum

recommendation to change the claim to a use right. The issue remark should be removed as erroneous.

The abstract also includes the following notice remark:

POINT OF DIVERSION, DITCH NAME AND MEANS OF DIVERSION 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 remark provides notice of these changes made prior to issuance of the Preliminary Decree.

The remark does not raise unresolved issues which need to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

2. For claim 41E 93934-00, the Preliminary Decree states that the point of diversion legal description is the NWNW section 20, T3N, R2W, JEFFERSON. The following issue remark appeared on the abstract of claim in the Preliminary Decree:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

A review of the claim file shows that the point of diversion specified on the 1982 Statement of Claim is the NENWNE section 8, T3N, R2W, Jefferson, and that the DNRC authorized changing the point of diversion in 1983 to the NWNW section 20, T3N, R2W, Jefferson. In 1983, the following remark was added to the abstract: FILE REFLECTS AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 05/26/1983. The 1985 Temporary Preliminary Decree states that the point of diversion is NWNW section 20, T3N, R2W, JEFFERSON and includes the remark: FILE REFLECTS AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 05/26/1983. It appears the change authorization history was not reviewed during ReExamination resulting in the erroneous addition of the point of diversion issue remark.

The point of diversion should not be changed. The issue remark should be removed as erroneous. The remark providing notice about the 1983 change authorization appearing on the Preliminary Decree abstract should be replaced with the following current standard remark for change authorizations: THIS WATER RIGHT WAS SUBJECT TO A CHANGE APPLICATION APPROVED BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND

CONSERVATION. THE MONTANA WATER COURT INCLUDED SOME OR ALL OF THE CHANGES APPROVED BY THE DEPARTMENT IN THE DECREE OF THIS WATER RIGHT.

CONCLUSION OF LAW

The information in the claim files is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

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:**

John W. Dawson  
1672 MT Highway 69  
Boulder, MT 59632

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

**Water Right Number:** 41E 93930-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN W DAWSON  
1672 MT HIGHWAY 69  
BOULDER, MT 59632-9702

**Priority Date:** NOVEMBER 10, 1889

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.17 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:** 110.00

**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		NWNESE	8	3N	2W	JEFFERSON

**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** DAWSON DITCH

2		NWNWSE	17	3N	2W	JEFFERSON
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**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 TO OCTOBER 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	100.00		SE	17	3N	2W	JEFFERSON
2	10.00		E2E2SW	17	3N	2W	JEFFERSON

**Total:** 110.00

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

**Water Right Number:** 41E 93934-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN W DAWSON  
1672 MT HIGHWAY 69  
BOULDER, MT 59632-9702

**Priority Date:** MAY 20, 1891

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.04 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:** 27.50

**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		NWNW	20	3N	2W	JEFFERSON

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO OCTOBER 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		SESENW	17	3N	2W	JEFFERSON
2	15.00		NESW	17	3N	2W	JEFFERSON
3	5.50		W2SESW	17	3N	2W	JEFFERSON
4	2.00		SESWSW	17	3N	2W	JEFFERSON

**Total:** 27.50

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**Remarks:**

THIS WATER RIGHT WAS SUBJECT TO A CHANGE APPLICATION APPROVED BY THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE MONTANA WATER COURT INCLUDED SOME OR ALL OF THE CHANGES APPROVED BY THE DEPARTMENT IN THE DECREE OF THIS WATER RIGHT.