

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

OBJECTOR: Harrington Family LLC

**CASE 41E-0245-R-2024**

41E 45244-00

41E 45245-00

**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, conclusions 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**

Daniel Harrington and Marie Harrington filed a late objection to each of these claims in 1986 during the Temporary Preliminary Decree proceedings. These claims are now owned by Harrington Family LLC. The Preliminary Decree includes the following remark on the abstract of each claim:

A LATE OBJECTION HAS BEEN FILED TO THE PURPOSE AND ACRES IRRIGATED OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

On July 9, 2024 the Order Substituting Parties was entered, substituting Harrington Family LLC as the objector.

On June 6, 2024 Harrington Family LLC filed a statement withdrawing its objection to claim 41E 45244-00. On June 19, 2024 Harrington Family LLC filed information to change claim 41E 45245-00 from a stock claim to an irrigation claim. On July 16, 2024 Harrington Family LLC filed additional information. For claim 41E 45245-00, the late objection was only to the purpose and acres irrigated. These are the only elements which appeared on the Objection List. The settlement requests changes to additional elements in order to change the purpose from stock to irrigation. The additional elements are: irrigation type, flow rate, volume, point of diversion, means of diversion, reservoir data, and place of use. These requested changes are deemed a motion to amend pursuant to section 85-2-233(6), MCA. This settlement documentation is viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), 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 and amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 41E 45244-00, the notice remark concerning the late objection should be removed as having served its notice purpose.

2. For claim 41E 45245-00, the claimed right is not changed, only its purpose and the description of its historical use. The changes requested in the motion to amend arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are primarily based on the same operative facts specified in the Statement of Claim, and make more specific that which was already claimed on the original Statement of Claim.

3. For claim 41E 45245-00, the Preliminary Decree states the purpose is STOCK. The purpose should be IRRIGATION and the irrigation type should be FLOOD.

The Preliminary Decree does not include a quantified flow rate but does include the standard flow rate remark for livestock direct from source claims. The remark should be removed. The flow rate should be 221.00 GPM.

The Preliminary Decree does not include a quantified volume but does include the standard volume remark for livestock direct from source claims. The remark should be removed. This claim includes an onstream reservoir but it is primarily a direct flow irrigation system rather than storage. The volume should not be quantified. The following standard remark for such claims should be added: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

The Preliminary Decree states that the point of diversion and means of diversion are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SENENW	23	4N	7W	JEFFERSON

Means of Diversion: FLOWING

The point of diversion and means of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSWNW	23	4N	7W	JEFFERSON

Means of Diversion: DAM

The following reservoir data should be added to the abstract:

Reservoir: ONSTREAM

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSWNW	23	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 2.50 FEET

Surface Area: 0.02 ACRES  
Capacity: 0.07 AC-FT

The Preliminary Decree does not include maximum acres irrigated. The maximum acres irrigated should be 13.00.

The Preliminary Decree states that the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	SWSWNW	23	4N	7W	JEFFERSON

The place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
13.00	S2SW	23	4N	7W	JEFFERSON

The late objection remark should be removed as having served its notice purpose.

#### CONCLUSIONS OF LAW

1. The requested amendments do not adversely affect other water rights as they are do not make any changes to the actual historical use of the claimed right on the ground. Notice by publication of these amendments is not required. Section 85-2-233(6), MCA.
2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).
3. The documents submitted are sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree.

#### RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the motion to amend claim 41E 45245-00 and 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 Electronic Mail:**

Harrington Family LLC  
377 MT HWY 359  
Cardwell, MT 59721  
patsy.h.hayes@gmail.com  
lew.hayes@h6resources.com

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

**Water Right Number:** 41E 45244-00 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 FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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		SWSWNW	23	4N	7W	JEFFERSON

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	23	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**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			S2S2NW	23	4N	7W	JEFFERSON

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

**Water Right Number:** 41E 45245-00 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:** 221.00 GPM

**Volume:**  
PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

**Maximum Acres:** 13.00

**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		SWSWNW	23	4N	7W	JEFFERSON

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	23	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 2.50 FEET

**Surface Area:** 0.02 ACRES

**Capacity:** 0.07 ACRE-FEET

**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	13.00		S2SW	23	4N	7W	JEFFERSON

**Total:** 13.00