

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: Treasure State Retriever Club

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41E-0274-R-2024

41E 94272-00

41E 94273-00

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 (Bureau of Reclamation) objected to each of these claims. Each of these claims appeared in the Preliminary Decree with the following remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME EXCEEDS THE 317.3 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The claimant did not appear at the February 13, 2024 scheduling conference and its default was entered in the February 13, 2024 Court Minutes, Order Entering Default, and Order Setting Filing Deadline. On May 14, 2024 the United States' Response To Court Order was filed stating the volume reductions for the claims pursuant to the default. On June 17, 2024 the United States' Response To Court Order was filed providing additional information. The June 18, 2024 Order Setting Show Cause Filing Deadline states:

On May 14, 2024, the United States' Response To Court Order states that the volume for claim 41E 94272-00 should be reduced to 304.00 AC-FT and the volume for claim 41E 94273-00 should be reduced to 317.30 AC-FT. On June 17, 2024, the United States' Response To Court Order explains the basis for the volume reductions. Both Responses were served on Treasure State Retriever Club. Therefore, it is

ORDERED that the deadline is **July 18, 2024**, for Treasure State Retriever Club to show cause in writing why the volume for claim 41E 94272-00 should not be reduced to 304.00 AC-FT and why the volume for claim 41E 94273-00 should not be reduced to 317.30 AC-FT. If nothing is filed by Treasure State Retriever Club by this deadline, the Court will conclude it agrees with these volume reductions.

Nothing was filed by the claimant. The Responses and Order 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. For claim 41E 94272-00, the Preliminary Decree states the volume is 8,103.00 AC-FT. The volume should be 304.00 AC-FT. The volume issue remark should be removed as addressed and resolved.

2. For claim 41E 94273-00, the Preliminary Decree states the volume is 8,103.00 AC-FT. The volume should be 317.30 AC-FT. The volume issue remark should be removed as addressed and resolved.

3. For both claims, the other two remarks provide notice of the period of diversion change and notice of a possible volume issue. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The Responses filed by the United States of America (Bureau of Reclamation) are sufficient to contradict and overcome the prima facie claims and 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:

Treasure State Retriever Club
2040 Utah Ave
Butte, MT 59701

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 94272-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TREASURE STATE RETRIEVER CLUB
2040 UTAH AVE
BUTTE, MT 59701-5851

Priority Date: JANUARY 1, 1950

Type of Historical Right: USE

Purpose (Use): RECREATION

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 304.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BISON CREEK

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		NESENW	25	4N	7W	JEFFERSON

***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** FULMER LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SEENW	25	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 15.00 FEET

Surface Area: 17.30 ACRES

Capacity: 103.80 ACRE-FEET

Reservoir: ONSTREAM **Reservoir Name:** B AND B FISH POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESENW	25	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 15.00 FEET

Surface Area: 16.80 ACRES

Capacity: 100.80 ACRE-FEET

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			NW	25	4N	7W	JEFFERSON
2			N2N2SW	25	4N	7W	JEFFERSON

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

Water Right Number: 41E 94273-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TREASURE STATE RETRIEVER CLUB
2040 UTAH AVE
BUTTE, MT 59701-5851

Priority Date: JANUARY 1, 1950

Type of Historical Right: USE

Purpose (Use): RECREATION

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 317.30 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: 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		NWSENW	25	4N	7W	JEFFERSON

***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: DAM

2		SESWNW	25	4N	7W	JEFFERSON
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** B AND B FISH POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSENW	25	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 18.00 FEET

Depth: 15.00 FEET

Surface Area: 17.30 ACRES

Capacity: 103.80 ACRE-FEET

Reservoir: ONSTREAM **Reservoir Name:** FULMER LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNW	25	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 18.00 FEET
Depth: 15.00 FEET
Surface Area: 16.80 ACRES
Capacity: 100.80 ACRE-FEET

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNW	25	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION # 2

Depth: 5.00 FEET
Surface Area: 2.70 ACRES
Capacity: 5.40 ACRE-FEET

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			NW	25	4N	7W	JEFFERSON
2			N2N2SW	25	4N	7W	JEFFERSON