

Montana Water Court
P.O. Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

MONTANA WATER COURT
UPPER MISSOURI DIVISION
BOULDER RIVER, TRIBUTARY OF THE JEFFERSON RIVER
BASIN 41E
PRELIMINARY DECREE

* * * * *

CLAIMANT: Sandy Brown

CASE 41E-0146-R-2024

41E 93898-00

OBJECTORS: United States, DOA Forest Service; United States,
DOI Bureau of Land Management

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

United States, DOA Forest Service and United States, DOI Bureau of Land Management each objected to this claim. This claim appeared in the Preliminary Decree with the following issue remark:

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

On May 31, 2024 the parties filed a Stipulation To Resolve Objections which concerns only the place of use. A second copy of the same Stipulation was filed on June 28, 2024. The June 28, 2024 Order Setting Filing Deadline stated that the point of diversion issue remark and objection were not addressed and set a deadline for filing additional settlement documentation. On July 16, 2025 the parties filed their new Stipulation To Resolve Objections which revises the place of use as requested in the first Stipulation and includes the requested point of diversion change. The stipulations are viewable in the Court's FullCourt Enterprise case management system (documents numbered 5, 6, and 20).

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. The Preliminary Decree states that the point of diversion is in the SESE section 8, T6N, R5W, JEFFERSON. The point of diversion should be changed to the NWNW section 9, T6N, R5W, JEFFERSON. As requested, the two following remarks should be added to the point of diversion:

THE POINT OF DIVERSION IS ON PRIVATE LAND.

DIVERSION AND USE OF WATER PURSUANT TO THIS RIGHT IS SUBJECT TO THE TERMS OF A STIPULATION IN WATER COURT CASE NO. 41E-0146-R-2024.

The issue remark should be removed as addressed and resolved.

2. The Preliminary Decree states that the place of use is in the NE section 8, T6N, R5W, JEFFERSON and the NW section 9, T6N, R5W, JEFFERSON. The place of use should be the NENE section 8, T6N, R5W, JEFFERSON. As requested, the following remark should be added to the place of use: THE PLACE OF USE IS LIMITED TO THE PIRATE LODGE MS 9122.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim and to resolve the issue 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 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:

Sandy Brown
4409 7th Ave S
Great Falls, MT 59405

Service Via Electronic Mail:

Katharine L. Laubach
US Dept of Justice, ENRD-NRS
Katharine.Laubach@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV
(attorney for: United States, DOA Forest Service)

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
Jennifer.Najjar@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV
(attorney for: United States, DOI Bureau of Land Management)

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

Water Right Number: 41E 93898-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SANDY BROWN
3905 17TH AVE S
GREAT FALLS, MT 59405-5578

Priority Date: OCTOBER 1, 1879

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 5.00 CFS

***Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: CATARACT 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		NWNW	9	6N	5W	JEFFERSON

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

DIVERSION AND USE OF WATER PURSUANT TO THIS RIGHT IS SUBJECT TO THE TERMS OF A STIPULATION IN WATER COURT CASE NO. 41E-0146-R-2024.
THE POINT OF DIVERSION IS ON PRIVATE LAND

Period of Use: MAY 1 TO OCTOBER 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			NENE	8	6N	5W	JEFFERSON

THE PLACE OF USE IS LIMITED TO THE PIRATE LODGE MS 9122.