

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

\*\*\*\*\*

CLAIMANTS: Colleen B. Llewellyn; Steven R. Marquis; McCauley  
Family Ranch LLC; Jenifer Wise

**CASE 41E-0116-R-2024**

41E 93925-00

41E 94163-00

**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**

Claims 41E 93925-00 and 41E 94163-00 each appeared in the Preliminary Decree with the following issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41E 93925-00, 41E 94163-00.

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 claimants an opportunity to file additional information or evidence. On February 3, 2025 the parties filed a Stipulation And Agreement addressing and resolving the issue remarks. The Stipulation And Agreement is 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. Both of these claims are based on the Neil McCauley filed right for 75.00 miner's inches of Jack Creek water, priority date June 25, 1916. The combined flow rate of the two claims is 94.00 miner's inches.
2. For claim 41E 94163-00, the Preliminary Decree states that the flow rate is 1.52 CFS, the equivalent of 61.00 miner's inches.
3. For claim 41E 93925-00, the Preliminary Decree states that the flow rate is 372.50 GPM, the equivalent of 33.00 miner's inches. The flow rate should be 159.00 GPM, the equivalent of 14.00 miner's inches. With this reduction, the combined flow rate of the two claims is 75.00 miner's inches. The issue remarks should be removed as addressed and resolved.

CONCLUSION OF LAW

The Stipulation And Agreement 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:**

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

**Water Right Number:** 41E 93925-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** COLLEEN B LLEWELLYN  
PO BOX 1062  
BOULDER, MT 59632-1062  
  
STEVEN R MARQUIS  
PO BOX 1062  
BOULDER, MT 59632-1062  
  
JENIFER WISE  
PO BOX 1062  
BOULDER, MT 59632-1062

**Priority Date:** JUNE 25, 1916

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 159.00 GPM

**\*Volume:** 165.00 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 22.00

**Source Name:** JACK 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		NWNESW	8	4N	3W	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	22.00		SENW	8	4N	3W	JEFFERSON

**Total:** 22.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93925-00

93926-00

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

**Water Right Number:** 41E 94163-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MCCAULEY FAMILY RANCH LLC  
PO BOX 25  
BOULDER, MT 59632-0025

**Priority Date:** JUNE 25, 1916

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.52 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:** 40.00

**Source Name:** JACK 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		SWSWNE	8	4N	3W	JEFFERSON

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO OCTOBER 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	40.00		NE	8	4N	3W	JEFFERSON

**Total:** 40.00