

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: State of Montana Department of Health and
Human Services

CASE 41E-0210-R-2024
41E 27441-00

OBJECTOR: Montana Highway Patrol

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 Montana Highway Patrol objected to this claim. This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED PURPOSE (USE) COULD NOT BE IDENTIFIED DUE TO LACK OF DATA.

On November 6, 2024 the parties filed a Stipulation And Agreement. 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. The Preliminary Decree states that the purpose is MUNICIPAL. The purpose should be INSTITUTIONAL. The issue remark should be removed as addressed and resolved.

2. The Preliminary Decree states that the place of use is the SW section 33, T6N, R4W, JEFFERSON. The place of use should be 47.00 acres in the NW section 33, T6N, R4W, JEFFERSON.

3. Due to the place of use change, this right is no longer supplemental to the two other rights identified in the supplemental rights remark. The supplemental rights remark should be removed.

4. As requested, the following information remark should be added: THIS WATER RIGHT IS SUBJECT TO A STIPULATION AND AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 41E-0210-R-2024.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

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

Water Right Number: 41E 27441-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF HEALTH & HUMAN SER
MONTANA DEVELOPMENT CENTER
PO BOX 87
BOULDER, MT 59632

Priority Date: JUNE 1, 1948

Type of Historical Right: USE

Purpose (Use): INSTITUTIONAL

Flow Rate: 400.00 GPM

Volume: 164.00 AC-FT

Source Name: GROUNDWATER

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		SESWNW	33	6N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 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	47.00		NW	33	6N	4W	JEFFERSON
Total:	47.00						

Remarks:

THIS WATER RIGHT IS SUBJECT TO A STIPULATION AND AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 41E-0210-R-2024.