

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: McCauley Family Ranch LLC

CASE 41E-0258-R-2024  
41E 94168-00

**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 recommend-dations. 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**

McCauley Family Ranch LLC claim 41E 94168-00 appeared in the Preliminary Decree with the following remarks:

THE SETTLEMENT AGREEMENT AND STIPULATION FILED BY THE PARTIES ON 09/09/1992 SPECIFIES CHANGES TO PRIORITY DATE, ACRES IRRIGATED, PLACE OF USE, VOLUME AND PERIOD OF USE. THESE ISSUES WILL BE HEARD AFTER ISSUANCE OF THE NEXT OBJECTION LIST.

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.

POINT OF DIVERSION, MEANS OF DIVERSION AND SOURCE NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 21.9 TIMES THE CAPACITY OF THE RESERVOIR.

The volume issue remark was 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 claimant an opportunity to file additional information or evidence. The various changes to the elements listed in the first remark are described in Attachment 34 to the September 9, 1992 Stipulation. A copy of Attachment 34 was included with the March 13, 2024 Order Consolidating Case And Setting Scheduling Conference.

The April 5, 2024 Court Minutes and Order Setting Filing Deadline state:

The changes requested in "Attachment 34" from the 1992 Stipulation were discussed. Mr. McCauley will file documentation supporting the requested priority date; confirm that the requested increase in maximum acres and place of use accurately reflects where the water was used prior to July 1, 1973; explain how the reservoir is repeatedly filled and used rather than a single fill for storage; confirm the requested volume increase is accurate, and clarify the period of *diversion* rather than the period of *use* that should be changed to January 1 to December 31. Mr. McCauley agreed to a settlement filing deadline.

The requested priority date in Attachment 34 is August 2, 1947.

On June 17, 2024 McCauley Family Ranch LLC filed a Response concerning the 1902 Margaret Wickham Desert Land Act acquisition of most of the claimed place of use. This Response states that "[t]he reservoir is opened to release the water then allowed to rebuild again to repeat" and "[t]he DNRC has the surface area of the reservoir at 305 acres. This is not the case. The surface area is approximately 4 acres. The capacity of it is largely irrelevant as the use is to build flow."

The August 13, 2024 Order Setting Scheduling Conference noted that the connection between these documents and the requested 1947 priority date was unclear and set a scheduling conference stating it “appears additional discussion will help secure the needed information to support/explain the changes requested in the 1992 Stipulation and Agreement and its Attachment 34.” McCauley Family Ranch LLC did not appear at the time set for the scheduling conference. The September 12, 2024 Order Entering Default and Order Setting Final Filing Deadline stated:

The Court cannot proceed with implementing the changes requested in the 1992 Settlement Agreement and Stipulation without the needed supporting evidence and clarification of the requested changes detailed in the April 5, 2024 Court Minutes and Order Setting Filing Deadline. One last opportunity is given for the claimant to file this needed information. Therefore, it is

ORDERED that the final deadline for McCauley Family Ranch LLC to file the information detailed in the April 24, 2024 Court Minutes and Order Setting Filing Deadline is **November 12, 2024**. If not filed by November 12, 2024, the Court will act on the default entered above, reject the 1992 Settlement Agreement and Stipulation as it pertains to claim 41E 94168-00, and close the case with no changes made to the elements of claim 41E 94168-00.

(**Emphasis** in original).

The October 15, 2024 Response filed McCauley Family Ranch LLC includes copies of August 2, 1947 aerial photographs marked to locate the reservoir and ditches used to irrigate the maximum acres and place of use as requested in Attachment 34. The irrigated acreage specified in Attachment 34 are discernable on these copies. This response states:

These photo’s represent what Emmett J. McCauley based the request upon as the earliest evidence of diversion he was able to attain at the time of the stipulation. Mrs. Margaret Wickham’s affidavit’s, as the court has pointed out, state that water was first put to use in June of 1902. It would appear that this claim should have a Priority Date of June 10, 1902 with an enforceable Priority Date of August 2, 1947 per the photo evidence presented to the Court. I think this is all that we can present to satisfy the court’s request.

These documents are 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 priority date is APRIL 1, 1950 and the type of historical right is FILED. Attachment 34 to the 1992 Stipulation [“Attachment 34”] states the priority date should be August 2, 1947. The type of historical right was not specified. No notice of appropriation or district court decree supporting that date has been filed. The August 2, 1947 aerial photograph copies show irrigation in the place of use specified in Attachment 34. The claimant’s October 15, 2024 Response suggests a priority date of “June 10, 1902 with an enforceable Priority Date of August 2, 1947.” Enforceable priority dates are used for remitted forfeit late-filed claims which are all given a June 30, 1973 enforceable priority date as a sanction pursuant to section 85-2-221, MCA, and Rules 2(a)(20) and 13(c)(3), W.R.C.E.R. An enforceable priority date is not applicable for this claim. The multiple parties to the 1992 Stipulation agreed the priority date for this claim should be August 2, 1947. The 1947 aerial photographs evidence the place of use was irrigated at that time. The priority date should be AUGUST 2, 1947 as stipulated in 1992. The type of historical right should be USE.

2. The Preliminary Decree states that the maximum acres irrigated is 40.00 and the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
15.00	NWNE	6	4N	2W	JEFFERSON
15.00	SWNE	6	4N	2W	JEFFERSON
<u>10.00</u>	NWSE	6	4N	2W	JEFFERSON
40.00					

As specified in Attachment 34 and as evidenced by the 1947 aerial photograph copies, the maximum acres should be 149.30 and the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
5.30	NWNE	6	4N	2W	JEFFERSON
20.00	SWNE	6	4N	2W	JEFFERSON

54.40	S2	6	4N	2W	JEFFERSON
<u>69.60</u>	NW	7	4N	2W	JEFFERSON
149.30					

3. At the time of the 1992 Stipulation, abstracts of claims included the period of use but not the period of diversion. Attachment 34 requests a period of use from January 1 to December 31 and states “the water appropriated under this right is appropriated by means of a reservoir year round.” The period of diversion is the period during which the water is diverted into the reservoir. The period of use is the period during which water is turned out of the reservoir to irrigate the place of use. The Preliminary Decree states that the period of diversion and period of use are both MAY 1 TO OCTOBER 15. The period of use should remain as is. The period of diversion should be changed to reflect the intent of the change specified in Attachment 34: JANUARY 1 TO DECEMBER 31.

4. The Preliminary Decree states that the volume is 214.88 AC-FT to irrigate 40.00 acres. The ratio is 5.37 ac-ft per acre. Attachment 34 requested increasing the volume to 460.00 acre-feet and the acres irrigated to 149.30 acres. This ratio is 3.08 ac-ft per acre. The volume should be increased coincident with the acres irrigated increase. The volume should be 460.00 AC-FT.

The issue remark raises a concern that the Preliminary Decree volume “appears to be excessive for the purpose” then bases this observation on the capacity of the reservoir rather than on the volume of water to irrigate the place of use. The Preliminary Decree states that the reservoir capacity is 21.00 ACRE-FEET. Whether referencing 214.88 AC-FT or 460.00 AC-FT, it is readily apparent that the reservoir does not hold all of the volume used on an annual basis; instead, this claimed system is primarily a direct flow system which utilizes the reservoir to help facilitate a steady flow through the reservoir into the ditches. A system with a small capacity reservoir is typically classified as “primarily direct flow” and the volume is not quantified. In this instance, Attachment 34 indicates that the parties to the 1992 Stipulation determined that this right should have a quantified volume. The volume should remain quantified. The following remark should be added to the volume entry: THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT. The volume issue remark should be removed as addressed and resolved.

5. In addition, an obvious error in the description of the reservoir should be corrected. The reservoir record states that the capacity is 21.00 ACRE-FEET with a surface area of 305.00

ACRES. This is nonsensical. The ReExamination Worksheet states the surface area is 3.50 acres. This obvious keypunch error should be corrected. The surface area should be 3.50 ACRES.

6. The first three remarks on the abstract of this claim are notice remarks. They do not raise unresolved issues which need to be addressed. These remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The information provided by the claimant is sufficient to bolster the record and support the changes requested in the 1992 Stipulation, and sufficient to resolve the volume issue remark 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:**

McCauley Family Ranch LLC  
PO Box 25  
Boulder, MT 59632

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

**Water Right Number:** 41E 94168-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** AUGUST 2, 1947

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

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

**Volume:** 460.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 149.30

**\*Source Name:** UNNAMED TRIBUTARY OF BOULDER RIVER

**Source Type:** SURFACE WATER

SOURCE INCLUDES WATER FROM SPRING KNOWN AS SPRING CREEK 1.

**\*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		SWSESE	31	5N	2W	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>
	SWSESE	31	5N	2W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 15.00 FEET

**Surface Area:** 3.50 ACRES

**Capacity:** 21.00 ACRE-FEET

**Period of Use:** MAY 1 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	5.30		NWNE	6	4N	2W	JEFFERSON
2	20.00		SWNE	6	4N	2W	JEFFERSON
3	54.40		S2	6	4N	2W	JEFFERSON

4	<u>69.60</u>	NW	7	4N	2W	JEFFERSON
<b>Total:</b>	149.30					

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

76287-00            94168-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

76287-00            94136-00            94137-00            94138-00            94168-00            94170-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

94168-00            94169-00

APPLICATION TO CHANGE RECEIVED 04/27/1989, TERMINATED 01/04/1996. SEE 41E 97519.