

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

CLAIMANTS: Joseph E. Boyce; Kristine Boyce

CASE 41I-0090-R-2023

41I 30146547

OBJECTORS: NR & EJ Limited Partnership; United States of
America (Dept of Agriculture Forest Services)

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, conclusions 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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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

Claim 41I 30146547 appeared in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Joseph E.

Boyce and Kristine Boyce. NR & EJ Limited Partnership and the United States Department of Agriculture, Forest Service (Forest Service) objected to the claim.

FINDINGS OF FACT

1. Claim 41I 30146547 appeared in the Basin 41I Preliminary Decree as a claim for stock drinking directly from Travis Creek throughout Section 32, T9N, R4W, Jefferson County.

2. NR & EJ Limited Partnership objected to the claim, stating:

The place of use has been overclaimed, and includes property not owned by Claimant. Place of use needs to be revised to only reflect property owned by Claimants.

3. The Forest Service objected to the claim, stating:

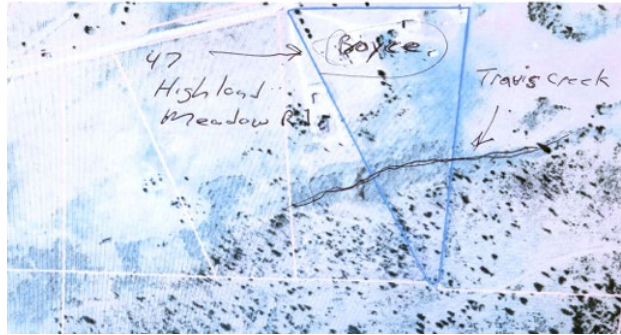
The point of diversion and place of use should be refined to the NENE Sec. 32 T9N R4W where claimants' parcel is located.

4. The Court held a status conference in this matter. Claimants did not appear.

5. At the status conference, the United States indicated that refinement of the point of diversion and place of use to the NENE of Section 32, T9N, R4W would resolve their objection. NR & EJ Limited Partnership also indicated the refinement to the NENE of Section 32, T9N, R4W would also resolve their objection, although the NENE of Section 32 may still be an overly broad legal land description. Claimants did not appear at the status conference.

6. Although the exempt claim filing form did not outline the quarter sections within Section 32 being claimed, the certificate of survey parcel, geocode, and attached map show Claimants intended to claim the parcel they own in the NENENE of Section 32, T9N, R4W, Jefferson County:

PLACE OF USE: Same as Point of Diversion? Yes No If yes, proceed to #8.
1/4 1/4 1/4 Section 32, Twp 09N R 04E County Jefferson
Lot Block Tract No. Subdivision Name
Government Lot No. COS No. 96737 F32B Geocode 51-1783-32-1-01-13-0000
Street or Road Address, including City, State & Zip Code of the Development Same



7. Based on this information and Claimants' failure to appear at the status conference, the Court ordered Claimants to show cause why the point of diversion and place of use should not be refined to the NENENE of Section 32, T9N, R4W, Jefferson County. The order stated that “[i]f nothing is filed by the deadline, the point of diversion and place of use will be refined to the NENENE of Section 32, T9N, R4W, Jefferson County.” (Doc.¹ 3.00). Nothing was filed by the deadline.

8. Claim 41I 30146547 also received the following notice-type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41I DECREE ISSUED 03/08/1995.

9. This remark served its notice purpose.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The objections overcome the prima facie status of claim 41I 30146547. The historical point of diversion and place of use are in the NENENE of Section 32, T9N, R4W, Jefferson County.

2. The notice-type remark served its notice purpose.

RECOMMENDATIONS

1. The point of diversion and place of use of claim 41I 30146547 should be refined to the NENENE of Section 32, T9N, R4W, Jefferson County.

2. The issue remark should be removed from the claim abstract.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 30146547 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOSEPH E BOYCE
47 HIGHLAND MEADOW RD
CLANCY, MT 59634-9776

KRISTINE BOYCE
47 HIGHLAND MEADOW RD
CLANCY, MT 59634-9776

***Priority Date:** DECEMBER 31, 1899

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: TRAVIS 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		NENENE	32	9N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			NENENE	32	9N	4W	JEFFERSON