

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

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Estate of Paul & Marva D. Gneiting; Rieber Ranch;
Floyd Sayler; Patricia Sayler

OBJECTORS: Floyd Sayler; Patricia Sayler

CASE 41E-0182-R-2024
41E 102986-00
41E 30171170

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

Floyd Sayler and Patricia Sayler objected to this Estate of Paul & Marva D. Gneiting, Rieber Ranch, Floyd Sayler, and Patricia Sayler livestock direct from source claim. As settlement

was not filed, an Order was issued on January 10, 2025 placing the case on the hearing track and setting the deadline for Estate of Paul & Marva D. Gneiting and Rieber Ranch to file notices of appearance of counsel to represent them. No notices of appearance were filed. On February 25, 2025 the Court issued an Order Prohibiting The Estate Of Paul & Marva D. Gneiting And Rieber Ranch From Appearing In These Ongoing Proceedings Pursuant To Rules 16(c) And 33(a), W.R.Adj.R. and Order Setting Deadline For Saylers To File A Conditional Withdrawal Of Their Objection. On March 26, 2025 the Saylers filed their Notice Of Filing Information Resolving Objections [“Information”]. These filings are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“‘Implied Claim’ means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33), W.R.C.E.R.2019 Mont. Water LEXIS 8

From 41P-108 “Circle S Ranch, Inc.” Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, *78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, *6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). The implied claim process also cannot be used to expand the elements of a statement of claim. *In re Eliasson Ranch Company*, Order Amending and Adopting Master’s Report, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (Jun. 28, 2004).

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. A review of the Statement of Claim and its attachments shows that the claimed places of use and points of diversion include stockwatering on two different sources: Bison Creek and its tributary, Fourth of July Gulch. The Statement of Claim and its attachments meet the first two requirements for generating an implied claim. Dividing the claimed places of use and points of diversion into separate claims for each source will not change the historical pattern of use or increase the historical burden on other water users.

2. Claim 41E 102986-00 should be used for the Fourth of July Gulch portion of the claim. Implied claim 41E 30171170 should be used for the Bison Creek portion of the claim.

3. For claim 41E 102986-00, the Preliminary Decree states that the points of diversion and places of use are:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	N2	2	3N	7W	JEFFERSON
	SESW	35	4N	7W	JEFFERSON
1		11	3N	7W	JEFFERSON
	SE	2	3N	7W	JEFFERSON

The points of diversion and places of use should be:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	N2	2	3N	7W	JEFFERSON
	SE	2	3N	7W	JEFFERSON

As the Estate of Paul & Marva D. Gneiting and Rieber Ranch do not have an ownership interest in this section 2 place of use and as Fourth of July Gulch does not flow through their property in section 35, they should be removed from the ownership.

The Preliminary Decree includes the following notice remark:

POINT OF DIVERSION, PLACE OF USE 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 remark provides notice of these changes made prior to issuance of the Preliminary Decree. The remark should be removed as having served its notice purpose.

4. The elements of implied claim 41E 30171170 should be the same as 41E 102986-00 except the source should be Bison Creek, the points of diversion and places of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2	2	3N	7W	JEFFERSON
S2	35	4N	7W	JEFFERSON
NE	35	4N	7W	JEFFERSON

and the ownership should be the Estate of Paul & Marva D. Gneiting, Rieber Ranch, Floyd Sayler, and Patricia Sayler. The Information states the Estate of Paul & Marva D. Gneiting should not be included as an owner; however, the Montana Cadastral website states that the Estate of Paul & Marva D. Gneiting and Rieber Ranch are co-owners of the section 35 property included in the place of use.

CONCLUSION OF LAW

Statement of Claim 41E 102986-00 and its attachments plus the Information filed by Floyd Sayler and Patricia Sayler are sufficient to generate an implied claim, and sufficient to contradict and overcome the prima facie status of the claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court generate implied claim 41E 30171170 and 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:

Estate of Paul & Marva D. Gneiting
P.O. Box 7
Melrose, MT 59743

Rieber Ranch
P.O. Box 320005
Glen, MT 59732

Service Via Electronic Mail:

Benjamin S. Sudduth
Sudduth Law, PLLC
benjamin@sudduthlaw.com

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

Water Right Number: 41E 102986-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FLOYD SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

PATRICIA SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

Priority Date: DECEMBER 31, 1927

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:** FOURTH OF JULY GULCH

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		N2	2	3N	7W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SE	2	3N	7W	JEFFERSON
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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			N2	2	3N	7W	JEFFERSON
2			SE	2	3N	7W	JEFFERSON

Remarks:

IMPLIED CLAIM NO. 41E 30171170 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41E 30171170 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: GNEITING, PAUL & MARVA D ESTATE OF
PO BOX 7
MELROSE, MT 59743-0007

FLOYD SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

PATRICIA SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

RIEBER RANCH
PO BOX 320005
GLEN, MT 59732-0005

Priority Date: DECEMBER 31, 1927

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: BISON CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2	2	3N	7W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2	35	4N	7W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NE	35	4N	7W	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			N2	2	3N	7W	JEFFERSON
2			S2	35	4N	7W	JEFFERSON
3			NE	35	4N	7W	JEFFERSON

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41E 102986-00.