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FILED
05/21/2025
Sara Calkins
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0129-R-2024
Lambert, Kathryn
22.00

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

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41E-0129-R-2024

41E 94169-00

41E 94170-00

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

The United States of America (Bureau of Reclamation) objected to each of these claims. Claim 41E 94169-00 appeared in the Preliminary Decree with the following issue remark:

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 41E 94170-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 106 TIMES THE CAPACITY OF THE RESERVOIR.

On April 22, 2025 the parties filed a Stipulation To Resolve Objections. This Stipulation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

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. For claim 41E 94169-00, the Preliminary Decree states that the volume is 460.00 AC-FT. The volume should be 48.00 AC-FT and the volume issue remark should be removed as addressed and resolved.

The Preliminary Decree includes the following notice remarks:

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.

These remarks provide notice of these changes made prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

2. For claim 41E 94170-00, the Preliminary Decree states that the volume is 275.00 AC-FT. The volume quantification should be removed and the following remarks added as requested by the parties:

PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

The volume issue remark should be removed as addressed and resolved.

The Preliminary Decree includes the following notice remarks:

THE TIMELY FILED OBJECTION OF EMMET J. MCCAULEY AND MARGY B. MCCAULEY WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PERIOD OF USE, POINT OF DIVERSION AND MEANS OF DIVERSION. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAYBE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

SOURCE NAME WAS 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.

These remarks provide notice of these changes made during the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims and 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:

McCauley Family Ranch LLC
P.O. Box 25
Boulder, MT 59632

Service Via Electronic Mail:

Jennifer A. Najjar
Katharine L. Laubach
U.S. Dept of Justice, ENRD-NRS
Jennifer.Najjar@usdoj.gov
Katharine.Laubach@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 41E 94169-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: APRIL 1, 1950

Type of Historical Right: FILED

Purpose (Use): FISH AND WILDLIFE

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

Volume: 48.00 AC-FT
THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

*Source Name: UNNAMED TRIBUTARY OF BOULDER RIVER
Source Type: GROUNDWATER
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: 4.00 ACRES					
Capacity: 24.00 ACRE-FEET					

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			NESESE	31	5N	2W	JEFFERSON

Remarks:

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.

94168-0094169-00

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

Water Right Number: 41E 94170-00 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: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 170.60 GPM

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

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

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:** 124.10

Source Name: UNNAMED TRIBUTARY OF BOULDER RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS SPRING CREEK 2

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		NESWSE	6	4N	2W	JEFFERSON
*Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: HEADGATE						
2		SENWSE	6	4N	2W	JEFFERSON
*Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: HEADGATE						
3		SWNESE	6	4N	2W	JEFFERSON
*Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: HEADGATE						
MEANS OF DIVERSION INCLUDES A DITCH AND DAM.						

