

Montana Water Court
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MONTANA WATER COURT
UPPER MISSOURI DIVISION
BOULDER RIVER, TRIBUTARY OF THE JEFFERSON RIVER
BASIN 41E
TEMPORARY PRELIMINARY DECREE

CLAIMANT: City of Boulder

OBJECTORS: XC Ranch Inc.; Dunn Canyon Cattle Co.; McCauley
Ranches General Partnership; McCauley Family
Ranch LLC; Edward McCauley; Anita McCauley;
Compton Ranch LLC

CASE 41E-6002-A-2022

41E 5589-00

41E 5590-00

41E 5591-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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

On January 28, 2022 Claimant City Of Boulder's Motion To Amend Claims ("Motion") was filed, prior to issuance of the Preliminary Decree on October 19, 2022. It states there are clerical errors in the places of use plus "the City's place of use should be defined as the current and future anticipated outer limits of the City's service area for its public water system." Motion, page 1. This Case was consolidated and the City of Boulder published notice of the Motion in the *Montana Standard*, *Bozeman Daily Chronicle*, and *Boulder Monitor* as required by section 85-2-233(6), MCA. Objections to the Motion were filed by XC Ranch Inc., Dunn Canyon Cattle Co., McCauley Ranches General Partnership, McCauley Family Ranch LLC, Edward McCauley, Anita McCauley, and Compton Ranch LLC. The proceedings were stayed on November 12, 2022 pending the close of the notice of intent to appear filing period for the Preliminary Decree. No additional objections, counterobjections, or notices of intent to appear were filed for the three claims. The stay was lifted on January 6, 2024.

After multiple extensions with no settlement filed, the Case was placed on the Hearing Track on March 3, 2025, and the Scheduling Order was issued April 16, 2025. Multiple extensions of the deadlines set in the Scheduling Order were given, often stating that the parties were still trying to reach settlement. On July 13, 2026 a Stipulation was filed, signed by each of the parties but not signed or otherwise endorsed by their counsels. (FCE Doc. 68.00) Between July 20, 2026 and August 24, 2026, counsel for every party filed their endorsement of the Stipulation. On September 9, 2026 the claimant filed a revised Exhibit A with the sections identified. (FCE Doc. 77.00) The documents in this Case are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15, Montana Rules of Civil Procedure, restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423, 708 P.2d 1014, 1017 (1985). The requested amendment "merely makes more specific what has already been alleged." *Prentice Lumber Company v. Hukill*, 161

Mont. 8, 15, 504 P.2d 277, 281 (1972).

Notice must be published by newspaper if the requested amendments “may adversely affect other water rights.” Section 85-2-233(6)(a)(i), MCA.

“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.

“The law disregards trifles.” Section 1-3-224, 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 claimants amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The changes requested in the Motion to Amend arise out of the same conduct, transaction, or occurrence specified on the original Statements of Claim, are based on the same operative facts specified in the original Statements of Claim, and merely make more specific that which was already claimed on the original Statements of Claim.

2. A comparison of the marked aerial photographs and the texts of the Motion and the Stipulation, show that the place of use agreed upon in the Stipulation is significantly smaller than what was requested in the Motion.

3. Although formatted a little differently, the Temporary Preliminary Decree and Preliminary Decree each state that the place of use for claim 41E 5589-00 is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSW	28	7N	4W	JEFFERSON
Subdivision: ELDER AND PARSON ADD (BOULDER)				
SESE	29	7N	4W	JEFFERSON
Subdivision: ELDER AND PARSON ADD (BOULDER)				
NENE	32	7N	4W	JEFFERSON
Subdivision: ELDER AND PARSON ADD (BOULDER)				
NWNW	33	6N	4W	JEFFERSON
Subdivision: ELDER AND PARSON ADD (BOULDER)				
THE PLACE OF USE IS USED THROUGHOUT ENTIRE TOWN OF BOULDER.				

4. Although formatted a little differently, the Temporary Preliminary Decree and

Preliminary Decree each state that the place of use for claim 41E 5590-00 is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSW	28	7N	4W	JEFFERSON
Subdivision: WARNER, DG ADD				
SESE	29	7N	4W	JEFFERSON
Subdivision: WARNER, DG ADD				
NENE	32	7N	4W	JEFFERSON
Subdivision: WARNER, DG ADD				
NWNW	33	7N	4W	JEFFERSON
Subdivision: WARNER, DG ADD				

THE PLACE OF USE IS USED THROUGHOUT ENTIRE TOWN OF BOULDER.

5. Although formatted a little differently, the Temporary Preliminary Decree and Preliminary Decree each state that the place of use for claim 41E 5591-00 is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSW	28	7N	4W	JEFFERSON
Subdivision: BOULDER ORIGINAL TOWNSITE				
SESE	29	7N	4W	JEFFERSON
Subdivision: BOULDER ORIGINAL TOWNSITE				
NENE	32	7N	4W	JEFFERSON
Subdivision: BOULDER ORIGINAL TOWNSITE				
NWNW	33	7N	4W	JEFFERSON
Subdivision: BOULDER ORIGINAL TOWNSITE				

THE PLACE OF USE IS USED THROUGHOUT ENTIRE TOWN OF BOULDER.

6. For each of these claims, the place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWNW	28	6N	4W	JEFFERSON
SW	28	6N	4W	JEFFERSON
SWSWSE	28	6N	4W	JEFFERSON
S2SENE	29	6N	4W	JEFFERSON
SE	29	6N	4W	JEFFERSON
NE	32	6N	4W	JEFFERSON
N2NESE	32	6N	4W	JEFFERSON
NW	33	6N	4W	JEFFERSON
N2SW	33	6N	4W	JEFFERSON
W2NWNE	33	6N	4W	JEFFERSON
W2SWNE	33	6N	4W	JEFFERSON
NWSE	33	6N	4W	JEFFERSON
N2SWSE	33	6N	4W	JEFFERSON
S2NESE	33	6N	4W	JEFFERSON
N2SESE	33	6N	4W	JEFFERSON

7. Each of these claims appeared in the Preliminary Decree with the following remark:

THIS CLAIM WAS INCLUDED IN A WATER COURT CASE INITIATED PRIOR TO THE ISSUANCE OF THE BASIN 41E PRELIMINARY DECREE. THE CASE WAS NOT CLOSED PRIOR TO THE ISSUANCE OF THE DECREE, THEREFORE THE ABSTRACT MAY NOT REFLECT THE CURRENT ELEMENTS OF THIS CLAIM AS ADJUDICATED BY THE WATER COURT.

The remark should be removed as having served its notice purpose.

8. The Temporary Preliminary Decree and Preliminary Decree each state that the volume for claims 41E 5590-00 and 41E 5591-00 is 806.65 AC-FT. The Preliminary Decree includes the following issue remark on each claim:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 805.75 ACRE-FEET PER YEAR.

A difference of 0.90 AC-FT (0.11% of the claimed volume) is trifling and does not warrant further review or proceedings. The volume issue remark should be removed from each claim without further proceedings.

CONCLUSIONS OF LAW

1. The notice requirements for a motion to amend claim specified in section 85-2-233(6), MCA have been met.
2. The requested amendment “merely makes more specific what has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).
3. The Motion and Stipulation are sufficient to contradict and overcome the prima facie claims as they appeared in the Preliminary Decree.
4. The issue raised in the volume issue remarks is trifling.

RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the Motion to Amend these claims 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 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 Electronic Mail

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

Water Right Number: 41E 5589-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BOULDER, CITY OF
PO BOX 68
BOULDER, MT 59632-0068

Priority Date: SEPTEMBER 20, 1969

Type of Historical Right: USE

Purpose (Use): MUNICIPAL

Flow Rate: 400.00 GPM

Volume: 642.40 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		NWNENW	33	6N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: ELDER AND PARSON ADD (BOULDER) TRACT/LOT: 008 BLOCK: 043

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			SWNW	28	6N	4W	JEFFERSON
2			SW	28	6N	4W	JEFFERSON
3			SWSWSE	28	6N	4W	JEFFERSON
4			S2SENE	29	6N	4W	JEFFERSON
5			SE	29	6N	4W	JEFFERSON
6			NE	32	6N	4W	JEFFERSON
7			N2NESE	32	6N	4W	JEFFERSON
8			NW	33	6N	4W	JEFFERSON
9			N2SW	33	6N	4W	JEFFERSON
10			W2NWN	33	6N	4W	JEFFERSON
11			W2SWNE	33	6N	4W	JEFFERSON
12			NWSE	33	6N	4W	JEFFERSON
13			N2SWSE	33	6N	4W	JEFFERSON
14			S2NESE	33	6N	4W	JEFFERSON
15			N2SESE	33	6N	4W	JEFFERSON

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

Water Right Number: 41E 5590-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BOULDER, CITY OF
PO BOX 68
BOULDER, MT 59632-0068

Priority Date: JULY 15, 1953

Type of Historical Right: USE

Purpose (Use): MUNICIPAL

Flow Rate: 1.11 CFS

Volume: 806.65 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		NWNENE	32	6N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: WARNER, DG ADD TRACT/LOT: 006 BLOCK: 00E

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			SWNW	28	6N	4W	JEFFERSON
2			SW	28	6N	4W	JEFFERSON
3			SWSWSE	28	6N	4W	JEFFERSON
4			S2SENE	29	6N	4W	JEFFERSON
5			SE	29	6N	4W	JEFFERSON
6			NE	32	6N	4W	JEFFERSON
7			N2NESE	32	6N	4W	JEFFERSON
8			NW	33	6N	4W	JEFFERSON
9			N2SW	33	6N	4W	JEFFERSON
10			W2NWNE	33	6N	4W	JEFFERSON
11			W2SWNE	33	6N	4W	JEFFERSON
12			NWSE	33	6N	4W	JEFFERSON
13			N2SWSE	33	6N	4W	JEFFERSON
14			S2NESE	33	6N	4W	JEFFERSON
15			N2SESE	33	6N	4W	JEFFERSON

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

Water Right Number: 41E 5591-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BOULDER, CITY OF
PO BOX 68
BOULDER, MT 59632-0068

Priority Date: MAY 20, 1960

Type of Historical Right: USE

Purpose (Use): MUNICIPAL

Flow Rate: 1.11 CFS

Volume: 806.65 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		NWNWNW	33	6N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: BOULDER ORIGINAL TOWNSITE TRACT/LOT: 002 BLOCK: 012

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			SWNW	28	6N	4W	JEFFERSON
2			SW	28	6N	4W	JEFFERSON
3			SWSWSE	28	6N	4W	JEFFERSON
4			S2SENE	29	6N	4W	JEFFERSON
5			SE	29	6N	4W	JEFFERSON
6			NE	32	6N	4W	JEFFERSON
7			N2NESE	32	6N	4W	JEFFERSON
8			NW	33	6N	4W	JEFFERSON
9			N2SW	33	6N	4W	JEFFERSON
10			W2NWNE	33	6N	4W	JEFFERSON
11			W2SWNE	33	6N	4W	JEFFERSON
12			NWSE	33	6N	4W	JEFFERSON
13			N2SWSE	33	6N	4W	JEFFERSON
14			S2NESE	33	6N	4W	JEFFERSON
15			N2SESE	33	6N	4W	JEFFERSON