

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

CLAIMANTS: John Pullman; Susan Pullman

OBJECTORS: John Pullman; Susan Pullman

CASE 41E-0201-R-2024

41E 94208-00

41E 117695-00

41E 117701-00

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

John Pullman and Susan Pullman objected to each of these claims. On February 20, 2024 Claimants’ Motion To Amend To Resolve Objections And Brief In Support were filed. The

“amendments” are changes to elements within the scope of the objections and therefore, are not governed by section 85-2-233(6), MCA. This settlement documentation 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 94208-00, the Preliminary Decree states that the point of diversion and place of use are both the NWNENW section 14, T2N, R3W, JEFFERSON. The point of diversion and place of use should both be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2N2	14	2N	3W	JEFFERSON
SWNWNW	13	2N	3W	JEFFERSON
NWSWNW	13	2N	3W	JEFFERSON

2. For claim 41E 117695-00, the Preliminary Decree states that the place of use is the SENESW section 14, T2N, R3W, JEFFERSON. The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2SW	14	2N	3W	JEFFERSON
N2SE	14	2N	3W	JEFFERSON

3. For claim 41E 117701-00, the Preliminary Decree states that the point of diversion and diversion means are the SWNWSE section 12, T2N, R3W, JEFFERSON, HEADGATE, and DOWNS DITCH. The point of diversion and diversion means should be the SENWNW section 13, T2N, R3W, JEFFERSON and PUMP, with no ditch name.

The Preliminary Decree also includes the following notice remark:

DITCH 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.

The remark provides notice of this change made prior to issuance of the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for the remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the claimants is sufficient to contradict and overcome the prima facie claims.

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 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 94208-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN PULLMAN
1041 MT HIGHWAY 69
CARDWELL, MT 59721-9602

SUSAN PULLMAN
1041 MT HIGHWAY 69
CARDWELL, MT 59721-9602

Priority Date: JUNE 1, 1962

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: SPRING, UNNAMED TRIBUTARY OF BOULDER RIVER

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		N2N2	14	2N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SWNWNW	13	2N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NWSWNW	13	2N	3W	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			N2N2	14	2N	3W	JEFFERSON
2			SWNWNW	13	2N	3W	JEFFERSON
3			NWSWNW	13	2N	3W	JEFFERSON

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

Water Right Number: 41E 117695-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN PULLMAN
1041 MT HIGHWAY 69
CARDWELL, MT 59721-9602

SUSAN PULLMAN
1041 MT HIGHWAY 69
CARDWELL, MT 59721-9602

Priority Date: SEPTEMBER 15, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 2.00 GPM

***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: SPRING, UNNAMED TRIBUTARY OF CONROW CREEK

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		SENE SW	14	2N	3W	JEFFERSON

Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: PIPELINE

Period of Use: APRIL 15 TO NOVEMBER 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			N2SW	14	2N	3W	JEFFERSON
2			N2SE	14	2N	3W	JEFFERSON

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

Water Right Number: 41E 117701-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN PULLMAN
1041 MT HIGHWAY 69
CARDWELL, MT 59721-9602

SUSAN PULLMAN
1041 MT HIGHWAY 69
CARDWELL, MT 59721-9602

Priority Date: MARCH 1, 1892

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FURROW

***Flow Rate:** 287.20 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 31.70

Source Name: BOULDER RIVER

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		SENWNW	13	2N	3W	JEFFERSON

Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO NOVEMBER 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	8.20		NWSW	13	2N	3W	JEFFERSON
2	4.10		NESWSW	13	2N	3W	JEFFERSON
3	10.10		SESESW	13	2N	3W	JEFFERSON
4	9.30		SWSW	13	2N	3W	JEFFERSON

Total: 31.70