

Montana Water Court
PO 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: Anita L. McCauley; Edward K. McCauley

CASE 41E-0222-R-2024

41E 93865-00

41E 93868-00

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

Prior to issuance of the Preliminary Decree, Anita L. McCauley and Edward K. McCauley filed Amendments To Statement Of Claim for each of these claims. These amendments were included on the Objection List for the Preliminary Decree.

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 amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 41E 93865-00, the Preliminary Decree states that the place of use is the SW section 35, T6N, R4W, JEFFERSON. As requested in the August 22, 2022 Amendment To Statement Of Claim, the place of use should be E2 section 35, T6N, R4W, JEFFERSON.

The Preliminary Decree also includes the following notice remarks:

AN AMENDMENT WAS SUBMITTED ON 08/22/2022 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

POINT OF DIVERSION 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 that the amendment was filed and that the point of diversion was modified prior to issuance of the Preliminary Decree. The amendment has been addressed. There is no objection filed to the point of diversion. The remarks should be removed as having served their notice purposes.

2. For claim 41E 93868-00, the Preliminary Decree states that the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
60.00	N2SE	33	6N	4W	JEFFERSON
20.00	S2S2NE	33	6N	4W	JEFFERSON
<u>80.00</u>	N2SW	34	6N	4W	JEFFERSON
160.00					

As requested in the August 22, 2022 Amendment To Statement Of Claim, the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
45.00	N2SE	33	6N	4W	JEFFERSON
23.00	S2NE	33	6N	4W	JEFFERSON

80.00	N2SW	34	6N	4W	JEFFERSON
<u>12.00</u>	S2SW	34	6N	4W	JEFFERSON
160.00					

The Preliminary Decree also includes the following notice remarks:

AN AMENDMENT WAS SUBMITTED ON REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

POINT OF DIVERSION AND DITCH 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 that the amendment was filed and that the point of diversion and ditch name were modified prior to issuance of the Preliminary Decree. The amendment has been addressed. There is no objection filed to the point of diversion or ditch name. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The amendments filed by the claimants are 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 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:

Anita L. McCauley
Edward K. McCauley
PO Box 393
Boulder, MT 59632

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

Water Right Number: 41E 93865-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: EDWARD K MCCAULEY
PO BOX 393
BOULDER, MT 59632

ANITA L MCCAULEY
PO BOX 393
BOULDER, MT 59632

Priority Date: JANUARY 1, 1882

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: MCCARTY 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		NE	35	6N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NWNWSE	35	6N	4W	JEFFERSON
---	--	--------	----	----	----	-----------

Period of Diversion:

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			E2	35	6N	4W	JEFFERSON

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

Water Right Number: 41E 93868-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: EDWARD K MCCAULEY
 PO BOX 393
 BOULDER, MT 59632
 ANITA L MCCAULEY
 PO BOX 393
 BOULDER, MT 59632

Priority Date: MAY 10, 1897
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 9.00 CFS
***Volume:** 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: 160.00
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		SWSNW	33	6N	4W	JEFFERSON
Period of Diversion:		APRIL 1 TO NOVEMBER 1				
Diversion Means:		HEADGATE				
Ditch Name:		SHOPE DITCH				
Period of Use:		APRIL 1 TO NOVEMBER 1				

***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	45.00		N2SE	33	6N	4W	JEFFERSON
2	23.00		S2NE	33	6N	4W	JEFFERSON
3	80.00		N2SW	34	6N	4W	JEFFERSON
4	12.00		S2SW	34	6N	4W	JEFFERSON
Total:	<u>160.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

93859-00	93860-00	93861-00	93862-00	93864-00	93867-00
93868-00	93870-00	93871-00	93872-00	93873-00	93874-00
93875-00	93876-00				