

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: Bernadine K. Giulio; Dennis H. Giulio

CASE 41E-0217-R-2024

41E 89289-00

OBJECTOR: Dennis H. Giulio

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

Bernadine K. Giulio and Dennis H. Giulio claim 41E 89289-00 appeared in the Preliminary Decree with multiple notice remarks and issue remarks, including two which provide notice that late objections were filed during the Temporary Preliminary Decree

proceedings. Dennis Giulio filed both of the late objections. On March 29, 2024 Bernadine K. Giulio and Dennis Giulio filed a withdrawal of the objections, one conditional and the other unconditional. The withdrawal of objections is viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“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.

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. The Preliminary Decree states that the maximum acres irrigated is 12.00 and the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
6.00	NWSENE	23	6N	5W	JEFFERSON
<u>6.00</u>	NESWNE	23	6N	5W	JEFFERSON
12.00					

The Preliminary Decree included the following remarks concerning maximum acres and place of use:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE AND ACRES IRRIGATED OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. USDA AERIAL PHOTOGRAPH NO. 479-166, DATED 08/23/1979, SHOWS 6.0 ACRES BEING IRRIGATED. TO ASSURE THE ORDERLY ADJUDICATION OF WATER RIGHTS, THE WATER COURT WILL SET A HEARING IF NO OBJECTIONS ARE MADE.

THE JEFFERSON COUNTY WATER RESOURCES SURVEY (1956) APPEARS TO INDICATE 00.0 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

The conditional withdrawal of this objection states that the maximum acres irrigated and place of use should be changed as requested in the objection and its supporting affidavit. The maximum acres irrigated should be 6.00 and the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
2.00	NWSENE	23	6N	5W	JEFFERSON
<u>4.00</u>	NESWNE	23	6N	5W	JEFFERSON
6.00					

The late objection remark should be removed as it has served its notice purpose. The two issue remarks should be removed as addressed and resolved.

2. The Preliminary Decree includes the following remarks:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The unconditional withdrawal of objection states that the priority date and point of diversion should not be changed. The remark should be removed as having served its notice purpose.

3. The Preliminary Decree states that the type of historical right is FILED and includes the following issue remark:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

A copy of the handwritten Notice and a copy of the typed transcription of the Notice filed August 31, 1868 in Book D of Placer & Water Right Locations for Jefferson County are attached to the Statement of Claim. There is no issue concerning the type of historical right. The issue remark should be removed as erroneous.

4. The Preliminary Decree included two other notice remarks on the abstract of this claim:

CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 41I . CLAIM WAS NOT INCLUDED IN THE BASIN 41E TEMPORARY PRELIMINARY DECREE ISSUED 06/20/1985.

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 should be removed as having served their notice purposes.

CONCLUSION OF LAW

The settlement filed by the claimants is sufficient to contradict and overcome the prima facie claim 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 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:

Bernadine K. Giulio
Dennis H. Giulio
45 Galena Gulch Rd
Boulder, MT 59632

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

Water Right Number: 41E 89289-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: BERNADINE K GIULIO
45 GALENA GULCH RD
BOULDER, MT 59632

DENNIS H GIULIO
45 GALEN GULCH RD
BOULDER, MT 59632

Priority Date: AUGUST 31, 1868

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 20.00 GPM

***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: 6.00

Source Name: BOOMERANG 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		NWSENE	23	6N	5W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PUMP

2		SWSENE	23	6N	5W	JEFFERSON
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PUMP

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	2.00		NWSENE	23	6N	5W	JEFFERSON
2	4.00		NESWNE	23	6N	5W	JEFFERSON

Total: 6.00

Remarks:

APPLICATION TO CHANGE RECEIVED 06/28/1993, TERMINATED 01/23/1996. SEE 41E 97517.

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, PURPOSE ISSUED 08/26/98. NOTICE OF COMPLETION DUE 12/31/1999. SEE 41E 89289-00.