

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

CLAIMANT: James K. & Dolores Keanne Family Trust

CASE 41E-0126-R-2024

41E 89441-00

41E 89442-00

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, conclusions 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 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

The water right claims listed above appeared in the Preliminary Decree for the Boulder River, Tributary of Jefferson River (Basin 41E) issued on October 19, 2022. Each claim received issue remarks from the Department of Natural Resources and

Conservation (“DNRC”) raising potential legal or factual issues with the claim. The Water Court consolidated the claims into case 41E-0126-R-2024 to address these issues.

The Court ordered the Claimant to work with the DNRC to resolve the issue remarks on the claims. Jim Keane met with DNRC on behalf of the Claimant. DNRC Water Resource Specialists Jason Larsen and Allison Calkins filed a Memorandum with the Court on March 22, 2024 (“DNRC Memo”). Doc. 2.00. ¹ Jason Larson filed an Addendum to that memorandum on June 12, 2024 (“Addendum”). Doc. 4.00. The DNRC Memo and Addendum make recommendations as to how to resolve the issue remarks based on DNRC’s discussion with the Claimant and review of the claim abstracts, claim files, aerial photos, cadastral information, and USA Topo maps of the area.

The Court Ordered the Claimant to review the DNRC Memo and Addendum and file a written response if the Claimant disagreed with the DNRC’s recommendations. The Court informed the Claimant that if nothing were filed, the Court would conclude the Claimant agrees with the DNRC recommendations. Nothing was filed by the deadline.

FINDINGS OF FACT

41E 89441-00:

1. Claim 41E 89441-00 appeared in the Preliminary Decree with the following substantive issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The following corrections should be made to the claim as recommended by the DNRC Memo and Addendum:²

¹ “Doc.” refers to the docket number of a document filed in the Water Court’s Full Court Enterprise Case Management system.

² The DNRC Memo recommends different coding for the means of diversion informational remarks. The use of “CMDI” remarks instead does not substantively affect the claims, but assists in the issuance of final decrees and enforcement.

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	NENENE	24	25	4N	7W JEFFERSON

Period of Diversion: APRIL 15 TO OCTOBER 31

Diversion Means: HEADGATE

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	25	4N	7W	JEFFERSON

Diversion to Reservoir: DIVERSION #4

Period of Use: APRIL 15 TO OCTOBER 31

Add CMDI "Means of diversion includes a headgate and a ditch"

Add CMDI "Ditch also known as Galetti Ditch"

41E 89442-00:

2. Claim 41E 89442-00 appeared in the Preliminary Decree with the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 8.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

The following corrections should be made to the claim as recommended by the DNRC Memo and Addendum:

Maximum Acres: ~~15.00~~ 5.14

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	5.14 15.00		SESE	24	4N	7W	JEFFERSON
Total:	5.14 15.00						

Evidence in the claim file does not suggest that the flow rate or volume of this claim are inaccurate and DNRC did not recommend a change to either.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claims should be modified as described above. The issue remarks are resolved by the modifications described above and the issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact above and remove the issue remarks from the claims.

A Post Decree Abstract of Water Right Claim for each claim reflecting the recommended changes is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

James K. & Dolores Keanne Family Trust
2131 Wall St
Butte, MT 59701

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

Water Right Number: 41E 89441-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KEANNE, JAMES K & DOLORES FAMILY TRUST
2131 WALL ST
BUTTE, MT 59701-5527

Priority Date: DECEMBER 31, 1938

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FURROW

Flow Rate: 85.00 GPM

Volume: 15.00 AC-FT

Climatic Area: 5 - LOW

Maximum Acres: 5.00

Source Name: UNNAMED TRIBUTARY OF SAWMILL 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		SWSESE	24	4N	7W	JEFFERSON

Period of Diversion: APRIL 15 TO OCTOBER 31

Diversion Means: HEADGATE

DITCH ALSO KNOWN AS GALETTI DITCH

MEANS OF DIVERSION INCLUDES A HEADGATE AND A DITCH

Period of Use: APRIL 15 TO OCTOBER 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	5.00		SWSESE	24	4N	7W	JEFFERSON

Total: 5.00

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

Water Right Number: 41E 89442-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KEANNE, JAMES K & DOLORES FAMILY TRUST
2131 WALL ST
BUTTE, MT 59701-5527

Priority Date: DECEMBER 31, 1938

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 100.00 GPM

Volume: 45.00 AC-FT

Climatic Area: 5 - LOW

Maximum Acres: 5.14

Source Name: SAWMILL 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		NWSWSW	19	4N	6W	JEFFERSON

Period of Diversion: APRIL 15 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 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	5.14		SESE	24	4N	7W	JEFFERSON

Total: 5.14