

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: Dennis S. Demers; Joseph E. Demers; Monty R.
Demers; Betty A. Hering; Julie M. Kresge; Darlene A.
Lawrence

CASE 41E-0131-R-2024
41E 93948-00

OBJECTOR: United States of America (Bureau of Reclamation)

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 finding 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

The United States of America (Bureau of Reclamation) objected to this Dennis S. Demers, Joseph E. Demers, Monty R. Demers, Betty A. Hering, Julie M. Kresge, and Darlene A. Lawrence power generation claim. The claimants are siblings. On May 9, 2024 Betty A. Hering, Julie M. Kresge, Darlene A. Lawrence (deceased, signer unidentified), and Dennis S. Demers filed a request To Withdraw Statement Of Claim Or Interest In Statement Of Claim stating: "I/We have no existing water right to claim." Joseph E. Demers and Monty R. Demers did not sign this withdrawal.

On May 13, 2024 the United States' Status Report And Motion For A Show Cause Order was filed. The May 31, 2024 Order Setting Show Cause Filing Deadline states:

ORDERED that the deadline is **June 28, 2024** for identification of the person who signed for Darlene A. Lawrence and confirmation he/she is her successor, and for Joseph E. Demers and Monty R. Demers to file a written statement explaining why claim 41E 93948-00 should not be dismissed as withdrawn by the other claimants. If nothing is filed by Joseph E. Demers and Monty R. Demers by this deadline, the Court will conclude they agree the claim should be dismissed.

Nothing was filed. Although the person who signed the withdrawal for Darlene A. Lawrence (deceased) was not identified, the Court should proceed with dismissing the claim as requested by the other claimants. These documents are 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.

FINDING OF FACT

Claim 41E 93948-00 should be dismissed as withdrawn by the claimants.

CONCLUSION OF LAW

The withdrawal filed by the claimants is sufficient to contradict and overcome the prima facie claim.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court dismiss the claim as stated in the Finding 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:

Dennis S. Demers
95 Modesty Cr Rd
Deer Lodge, MT 59722

Joseph E. Demers
42690 Smith Peak View 762
Aguila, AZ 85320

Monty R. Demers
PO Box 82
Jefferson City, MT 59638

Betty A. Hering
Darlene A. Lawrence
PO Box 415
Boulder, MT 59632

Julie M. Kresge
PO Box 114
Jefferson City, MT 59638

Service Via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 93948-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners:

DENNIS S DEMERS
95 MODESTY CR RD
DEER LODGE, MT 59722

JOSEPH E DEMERS
PO BOX 1067
BOULDER, MT 59632

MONTY R DEMERS
PO BOX 82
JEFFERSON CITY, MT 59638-0082

BETTY A HERING
PO BOX 415
BOULDER, MT 59632

JULIE M KRESGE
PO BOX 114
JEFFERSON CITY, MT 59638-0114

DARLENE A LAWRENCE
PO BOX 415
BOULDER, MT 59632

Priority Date:

Type of Historical Right:

Purpose (Use): POWER GENERATION, NONCONSUMPTIVE

Flow Rate:

Volume:

Source Name: LITTLE BOULDER RIVER, NORTH FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.