

Montana Water Court
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FILED
07/08/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0158-R-2024
Lambert, Kathryn
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANTS: Mary K. Anderson; Robert L. Anderson

CASE 41E-0158-R-2024

OBJECTOR: United States of America (USDA Forest Service)

41E 133574-00

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 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 (USDA Forest Service) objected to this claim. The May 23, 2024 Order Granting Motion And Setting Show Cause Filing Deadline ["Order"] states:

On May 3, 2024 the United States' Motion For Filing Deadline ["Motion"] was filed. In addition to not appearing at the February 8, 2024 scheduling conference, it states that claimants Mary K. Anderson and Robert L. Anderson have not responded to the United States' letter explaining the objection and

proposed resolution. Exhibit B attached to this Motion details the United States' proposed resolution of its objection. No response to this Motion was filed by claimants Mary K. Anderson and Robert L. Anderson. Therefore, pursuant to Rule 16, M.R.Civ.P., and Rule 22, W.R.Adj.R., it is

ORDERED that the Motion is GRANTED and the deadline is **June 21, 2024** for claimants Mary K. Anderson and Robert L. Anderson to show cause in writing why the Court should not proceed with modifying the point of diversion and place of use of claim 41E 133574-00 as detailed on Exhibit B attached to the Motion. If nothing is filed by the deadline, the Court will conclude claimants Mary K. Anderson and Robert L. Anderson agree with these modifications and proceed with making them.

Nothing was filed by the 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

For this instream mining claim, the Preliminary Decree states that the point of diversion is the SWSESW section 11, T6N, R3W, JEFFERSON, and the place of use is the S2SW section 11, T6N, R3W, JEFFERSON. The point of diversion and place of use should both be the SWSW section 11, T6N, R3W, JEFFERSON.

CONCLUSION OF LAW

The Motion and its attachments filed by the United States of America (USDA Forest Service) are 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 make the changes specified 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:

Mary K. Anderson
Robert L. Anderson
1995 MN NWY #3
Villanueva, NM 87583

Service Via Electronic Mail:

Katharine L. Laubach
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-8568
Katharine.Laubach@usdoj.gov
MontanaBasins.ENRD@usdoj.gov

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

Water Right Number: 41E 133574-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARY K ANDERSON
1995 MN NWWY #3
VILLANUEVA, NM 87583

ROBERT L ANDERSON
1995 NM HWY #3
VILLANUEVA, NM 87583

Priority Date: JULY 29, 1892

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 1.88 CFS

Volume: 175.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: SLAUGHTERHOUSE GULCH

Source Type: SURFACE WATER

ALSO KNOWN AS MILL CREEK

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		SWSW	11	6N	3W	JEFFERSON

Period of Diversion: MAY 15 TO NOVEMBER 15

Diversion Means: INSTREAM

Period of Use: MAY 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			SWSW	11	6N	3W	JEFFERSON