

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: George Kralicek; Linda M. Passuccio

CASE 41E-0187-R-2024

41E 93856-00

OBJECTOR: United States of America (USDA Forest Service)

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

The United States of America (USDA Forest Service) objected to this George Kralicek and Linda M. Passuccio mining claim. On May 7, 2024, Linda M. Passuccio filed a Request To

Withdraw Statement Of Claim Or Interest In Statement Of Claim. On July 2, 2024, the United States' Motion For Show Cause Order was filed requesting an order for the claimants to show cause in writing why the claim should not be terminated. The July 5, 2024 Order Denying Motion For Show Cause Order stated that there is no known address for George Kralicek, so issuing a show cause order for him is fruitless and the Court will proceed with terminating the claim based on Ms. Passuccio's withdrawal. 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.

FINDINGS OF FACT

1. Harvey D. Allen prepared and filed the Statement of Claim for this 1939 Finn Gulch mining claim diverted and used in section 11, T6N, R7W, Jefferson County. He included George Kralicek as a co-owner. Harvey D. Allen's interest was later conveyed to Linda M. Passuccio. The March 12, 2024 Order Consolidating Case And Setting Scheduling Conference mailed to George Kralicek at his address of record was returned to the Court as undeliverable. Judicial Assistant Julie Cristiani researched various resources and could not find a new address for Mr. Kralicek.

2. The Montana Cadastral website states the entirety of section 11, T6N, 7W, Jefferson County is owned by the United States of America (USDA Forest Service).

3. On May 7, 2024, Linda Passuccio filed a Request To Withdraw Statement Of Claim Or Interest In Statement Of Claim stating "I/We have no existing water right to claim." Ms. Passuccio included a note which states: "These water rights were left to me when my father, Harvey Allen, passed away. I never knew George Kralicek. I'm not sure anything in regards to him."

4. Claim 41E 93856-00 should be dismissed as withdrawn by claimant Linda M. Passuccio.

CONCLUSION OF LAW

The withdrawal of claim is sufficient to contradict and overcome the prima facie claim.

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:

George Kralicek
~~Rt 1 Box 95~~
Sheridan, MT 59749
(Return mail received)

Linda M. Passuccio
4100 Mullan Rd Unit 906
Missoula, MT 59808

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 93856-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: GEORGE KRALICEK
RT 1 BOX 95
SHERIDAN, MT 59749

LINDA M PASSUCCIO
1027 2ND AVE NW
GREAT FALLS, MT 59404

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: FINN GULCH

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.