

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: Norman L. Boughner; Oralia S. Boughner

CASE 41E-0223-R-2024
41E 30113073

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

Claim 41E 30113073 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED MEANS OF DIVERSION APPEARS TO BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The February 6, 2024 Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set filing deadlines for the Montana Department of Natural Resources and Conservation [“DNRC”] and the claimants. On April 25, 2024 the DNRC Memorandum was filed providing recommendations based on discussions with the claimants. Nothing was filed by the claimants. The May 15, 2024 Order Setting Filing Deadline Pursuant To 85-2-248, MCA states:

If the claimants agree with the recommendations, they do not need to file anything. If the claimants disagree with the recommendations, a written response must be filed stating the items of disagreement. Therefore, it is

ORDERED that the deadline is **June 17, 2024** for Norman L. Boughner and Oralia S. Boughner to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed by June 17, 2024, the Court will conclude that Norman L. Boughner and Oralia S. Boughner agree with the DNRC recommendations.

Nothing was filed by the claimants. These documents are 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 means of diversion is OTHER. The following clarification remark should be added: MEANS OF DIVERSION IS A WATER WHEEL AND BUCKET. The means of diversion issue remark should be removed as addressed and resolved.

2. The Preliminary Decree also includes the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41E DECREE ISSUED 06/20/1985.

This remark does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the DNRC and the claimants is sufficient to resolve the issue remark 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:

Norman L. Boughner
Oralia S. Boughner
722 W Honey Locust Ave
San Tan Valley, AZ 85140

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

Water Right Number: 41E 30113073 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: NORMAN L BOUGHNER
722 W HONEY LOCUST AVE
SAN TAN VALLEY, AZ 85140-7993

ORALIA S BOUGHNER
722 W HONEY LOCUST AVE
SAN TAN VALLEY, AZ 85140-7993

Priority Date: DECEMBER 31, 1880

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 4.00 AC-FT

Source Name: CATARACT CREEK

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		NWSWNW	9	6N	5W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 30

Diversion Means: OTHER
MEANS OF DIVERSION IS A WATER WHEEL AND BUCKET

Period of Use: JANUARY 1 TO DECEMBER 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			NWSWNW	9	6N	5W	JEFFERSON