

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
06/20/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
41E-0120-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

CLAIMANT: Kelly Dean O'Connor Living Trust

CASE 41E-0120-R-2024
41E 94182-00
41E 94183-00

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, 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

Claims 41E 94182-00 and 41E 94183-00 each appeared in the Preliminary Decree with the following issue remarks:

NO MEANS OF DIVERSION WAS CLAIMED.

CLAIM NOS. 41E 94182-00 AND 41E 94183-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.

The issue remarks were 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 claimant an opportunity to file additional information or evidence.

The January 8, 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 claimant. On March 12, 2024 the DNRC Memorandum was filed with its recommendations. Nothing was filed by the claimant.

The April 25, 2024 Order Setting Show Cause Filing Deadlines states:

ORDERED that the deadline is **May 24, 2024** for the claimant to show cause in writing why the Court should not remove all of the issue remarks on claim 41E 94182-00 and dismiss claim 41E 91483-00 as recommended in the Memorandum, pursuant to section 85-2-248(9)(b), MCA.

Nothing was filed by the claimant. 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. As is evident by reviewing the Statements of Claims and as concluded in the DNRC Memorandum, these two claims are redundant except for the priority dates. The DNRC Memorandum recommends dismissal of the claim with the junior priority date, 41E 94183-00. Claim 41E 94183-00 should be dismissed as redundant with claim 41E 94182-00.

2. For claim 41E 94182-00, the issue remark concerning redundant claims should be removed as addressed and resolved.

The Memorandum confirmed that the means of diversion is NATURAL OVERFLOW as stated on the Preliminary Decree abstract and that the place of use has been irrigated. The issue remarks concerning the means of diversion and non-perfection should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the DNRC is sufficient to resolve the issue remarks 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 for each 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:

Kelly Dean O'Connor Living Trust
PO Box 207
East Helena, MT 59635

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

Water Right Number: 41E 94182-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: O'CONNOR, KELLY DEAN LIVING TRUST
PO BOX 207
EAST HELENA, MT 59635

Priority Date: JULY 9, 1887

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: NATURAL OVERFLOW

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 15.00

Source Name: LITTLE BOULDER RIVER

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		W2NENE	9	5N	4W	JEFFERSON

Period of Diversion: MARCH 1 TO OCTOBER 1

Diversion Means: NATURAL OVERFLOW
NATURAL FLOOD IRRIGATION - NO MAN MADE MEANS OF DIVERSION.

Period of Use: MARCH 1 TO OCTOBER 1

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	15.00		W2NENE	9	5N	4W	JEFFERSON

Total: 15.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

94182-00 94183-00

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

Water Right Number: 41E 94183-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: O'CONNOR, KELLY DEAN LIVING TRUST
PO BOX 207
EAST HELENA, MT 59635

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: LITTLE BOULDER RIVER

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.