

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

CLAIMANT: Kountz-Spire Rock LLC

OBJECTOR: Kountz-Spire Rock LLC

CASE 41E-0185-R-2024

41E 94019-00

41E 30129000

41E 30160076

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, conclusions 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

Kountz-Spire Rock LLC objected to claims 41E 94019-00 and 41E 30129000. Claim 41E 30129000 appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM APPEARS TO BE CLAIMING THREE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

On March 11, 2024 and April 3, 2024 the claimant filed Responses providing the needed information to address the objections and issue remark. The Responses 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.

"Implied Claim means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights." Rule 2(a)(33), W.R.C.E.R.

From 41P-108 "Circle S Ranch, Inc." Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, *78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, *6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). The implied claim process also cannot be used to expand the elements of a statement of claim. *In re Eliasson Ranch Company*, Order Amending and Adopting Master's Report, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (Jun. 28, 2004) ("*Eliasson*").

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. For claim 41E 94019-00, the Preliminary Decree states that the means of diversion is FLOWING. The means of diversion should be LIVESTOCK DIRECT FROM SOURCE.

The Preliminary Decree states that the point of diversion is the NWSENE section 19, T5N R6W, JEFFERSON. The Preliminary Decree states that the place of use is the NWNW section 19, T5N, R6W, Jefferson. The point of diversion and place of use should both be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
E2E2	19	5N	6W	JEFFERSON
SWNE	19	5N	6W	JEFFERSON
SWSW	20	5N	6W	JEFFERSON
N2N2	29	5N	6W	JEFFERSON

2. For claim 41E 30129000, a review of the Statement of Claim and its attachments shows that appropriations from two different springs were combined as a single claim. As suggested by the issue remarks and as requested by the claimant, a separate claim for each spring is needed.

3. Claim 41E 30129000 should be for the spring in section 19. Implied claim 41E 30160076 should be generated for the spring in section 20.

4. For claim 41E 30129000, the Preliminary Decree states that the point of diversion and means of diversion are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
SENE	19	5N	6W	JEFFERSON	SPRING BOX
SENWNW	20	5N	6W	JEFFERSON	SPRING BOX
NWSWNW	20	5N	6W	JEFFERSON	SPRING BOX

The point of diversion and means of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
SENE	19	5N	6W	JEFFERSON	SPRING BOX
MEANS OF DIVERSION INCLUDES A PIPELINE					

The Preliminary Decree states that the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SENE	19	5N	6W	JEFFERSON
SENWNW	20	5N	6W	JEFFERSON
NWSWNW	20	5N	6W	JEFFERSON
SESENE	20	5N	6W	JEFFERSON

The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
SENE	19	5N	6W	JEFFERSON	
SENWNW	20	5N	6W	JEFFERSON	
NESWNW	20	5N	6W	JEFFERSON	

STOCK DRINK FROM BOTH TANKS AND SMALL POND AT TERMINUS OF PIPELINE

The issue remark stating that more than one right may have been claimed should be removed as addressed and resolved.

The Preliminary Decree also includes the following notice remark:

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

The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

5. The elements of implied claim 41E 30160076 should be the same as 41E 30129000 except the flow rate should be 8.00 GPM; the point of diversion should be

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
SENWNW	20	5N	6W	JEFFERSON	SPRING BOX

MEANS OF DIVERSION INCLUDES A PIPELINE

and the place of use should be

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
NESWNW	20	5N	6W	JEFFERSON	

STOCK DRINK FROM STOCK TANK AND SMALL POND AT TERMINUS OF PIPELINE

6. The Responses request the addition of the following information remark to the implied claim: WATER IN THIS SYSTEM MAY BE ASSOCIATED WITH WATER RIGHT 41E 30129000 BECAUSE IT IS A COMBINED SYSTEM. The word “associated” has specific meaning for existing rights, permits, certificates, and reserved rights, and should not be used. The text should be modified and the remark should be added to both 41E 30129000 and 41E 30160076: WATER RIGHTS 41E 30129000 AND 41E 30160076 ARE A COMBINED DIVERSION AND DELIVERY SYSTEM.

CONCLUSIONS OF LAW

1. For claim 41E 94019-00, the settlement filed by the claimant is sufficient to contradict and overcome the prima facie claim.
2. Statement of Claim 41E 30129000 and its attachments plus the settlement filed by

the claimant are sufficient to prove: (1) two water rights are included on the statement of claim, (2) historical use corroborates the requested implied claim, and (3) the implied claim will not cause a change to historical water use or increase the historical burden to other water users. The settlement filed by the claimant 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 Conclusions of Law, this Master recommends that the Court make the changes to claim 41E 94019-00 specified in the Findings of Fact, and recommends that the Court generate implied claim 41E 30160076 and make the changes to claim 41E 30129000 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:

Kountz-Spire Rock LLC
830 Point of Rocks Rd
Whitehall, MT 59759

Note: Caption Updated 5-28-24

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

Water Right Number: 41E 94019-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KOUNTZ-SPIRE ROCK LLC
830 POINT OF ROCKS RD
WHITEHALL, MT 59759-9519

Priority Date: SEPTEMBER 4, 1902

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BISON CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2E2	19	5N	6W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SWNE	19	5N	6W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWSW	20	5N	6W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2N2	29	5N	6W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2E2	19	5N	6W	JEFFERSON
2			SWNE	19	5N	6W	JEFFERSON
3			SWSW	20	5N	6W	JEFFERSON
4			N2N2	29	5N	6W	JEFFERSON

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

Water Right Number: 41E 30129000 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KOUNTZ-SPIRE ROCK LLC
830 POINT OF ROCKS RD
WHITEHALL, MT 59759-9519

***Priority Date:** DECEMBER 31, 1880

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 10.43 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** SPRING, UNNAMED TRIBUTARY OF BISON CREEK

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	19	5N	6W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

MEANS OF DIVERSION INCLUDES A PIPELINE.

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SE	19	5N	6W	JEFFERSON
2			SE	20	5N	6W	JEFFERSON
3			SE	20	5N	6W	JEFFERSON

STOCK DRINK FROM BOTH TANKS AND SMALL POND AT TERMINUS OF PIPELINE

Remarks:

WATER RIGHTS 41E 30129000 AND 41E 30160076 ARE A COMBINED DIVERSION AND DELIVERY SYSTEM.

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

Water Right Number: 41E 30160076 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: KOUNTZ-SPIRE ROCK LLC
830 POINT OF ROCKS RD
WHITEHALL, MT 59759-9519

Priority Date: DECEMBER 31, 1880

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 8.00 GPM

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BISON CREEK

Source Type: GROUNDWATER

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		SENWNW	20	5N	6W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

MEANS OF DIVERSION INCLUDES A PIPELINE.

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			NESWNW	20	5N	6W	JEFFERSON

STOCK DRINK FROM STOCK TANK AND SMALL POND AT TERMINUS OF PIPELINE

Remarks:

WATER RIGHTS 41E 30129000 AND 41E 30160076 ARE A COMBINED DIVERSION AND DELIVERY SYSTEM.