

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

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

CASE 41E-0186-R-2024

41E 30129263

41E 30129436

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 30129263 appeared in the Preliminary Decree with the following issue remarks:

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

A PORTION OF THE CLAIMED POINT OF DIVERSION AND PLACE OF USE DOES NOT MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER 85-2-222, MCA, AND INVOLVES AN ON-STREAM RESERVOIR.

Claim 41E 30129436 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS .58 ACRE-FEET PER YEAR.

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 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 claimant. On April 25, 2024 the DNRC Memorandum was filed stating recommendations for resolving the issue remarks. Nothing was filed by the claimant.

The May 14, 2024 Order Setting Filing Deadline Pursuant To 85-2-248, MCA states:

The February 6, 2024 Order Consolidating Case and Order Setting Filing Deadlines Pursuant To Section 85-2-248(5), MCA set filing deadlines for the DNRC *and for the claimant*. On April 25, 2024 the DNRC filed its Memorandum with recommendations. The DNRC sent the Memorandum to the claimant. Nothing was filed by the claimant. If the claimant agrees with the recommendations, it does not need to file anything. If the claimant disagrees with the recommendations, a written response must be filed stating the items of disagreement. Therefore, it is

ORDERED that the deadline is **June 14, 2024** for Kountz-Spire Rock LLC to file a written response to the DNRC recommendations *if it disagrees with the recommendations*. If no written response is filed by June 14, 2024, the Court will conclude that Kountz-Spire Rock LLC agrees with the DNRC recommendations.

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. For claim 41E 30129263, the Preliminary Decree point of diversion includes two dams and reservoirs. These should be removed so only the stream course from which the livestock drink is described. The Preliminary Decree states that the point of diversion legal descriptions and the means of diversion are:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
	NENW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
	S2NENW	24	4N	7W	JEFFERSON	DAM
	SENW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
	N2SENW	24	4N	7W	JEFFERSON	DAM
	SWNW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
2		24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
3		24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE

There are also two reservoir records included on the abstract.

There is a typographical error in one of the recommended point of diversion legal descriptions: per the map attached to the Memorandum, the NESENW should be the NWSENW.

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>	
N2NENW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
SENEW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
SEWNW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
NWSEW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
SWNW	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
NWNE	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE
SWNE	24	4N	7W	JEFFERSON	LIVESTOCK DIRECT FROM SOURCE

The two reservoir records should be removed. As requested, the following clarification remark should be added: THIS RIGHT DOES NOT INCLUDE A RESERVOIR.

The Preliminary Decree states that the place of use is:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	NENW	24	4N	7W	JEFFERSON
	S2NENW	24	4N	7W	JEFFERSON
	SENW	24	4N	7W	JEFFERSON
	N2SENW	24	4N	7W	JEFFERSON
	SWNW	24	4N	7W	JEFFERSON
2		24	4N	7W	JEFFERSON
3		24	4N	7W	JEFFERSON

The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2NENW	24	4N	7W	JEFFERSON
SEENW	24	4N	7W	JEFFERSON
SEWNW	24	4N	7W	JEFFERSON
NWSENW	24	4N	7W	JEFFERSON
SWNW	24	4N	7W	JEFFERSON
NWNE	24	4N	7W	JEFFERSON
SWNE	24	4N	7W	JEFFERSON

The means of diversion, point of diversion, and place of use issue remarks 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.

This notice remark should be removed as having served its notice purpose.

2. For claim 41E 30129436, the Preliminary Decree states that the period of diversion and period of use are each MAY 1 TO OCTOBER 31. For this domestic claim, the period of diversion and period of use should each be JANUARY 1 TO DECEMBER 31. This change in the period of diversion and period of use resolves the volume issue remark. The volume issue remark should be removed.

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 notice remark should be removed as having served its notice purpose.

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:

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

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

Water Right Number: 41E 30129263 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, 1907

***Type of Historical Right:** FILED

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 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: UNNAMED TRIBUTARY OF BISON CREEK

Source Type: SURFACE WATER

***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		N2N	NENW	24	4N	7W	JEFFERSON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31							
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE							
2		SE	NENW	24	4N	7W	JEFFERSON	
*Period of Diversion:	JANUARY 1 TO DECEMBER 31							
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE							
3		SE	NWNW	24	4N	7W	JEFFERSON	
*Period of Diversion:	JANUARY 1 TO DECEMBER 31							
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE							
4		NW	SE	NW	24	4N	7W	JEFFERSON
*Period of Diversion:	JANUARY 1 TO DECEMBER 31							
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE							
5		S	WNW	24	4N	7W	JEFFERSON	
*Period of Diversion:	JANUARY 1 TO DECEMBER 31							
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE							
6		NW	N	NE	24	4N	7W	JEFFERSON
*Period of Diversion:	JANUARY 1 TO DECEMBER 31							
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE							

7 SWNE 24 4N 7W JEFFERSON

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
THIS RIGHT DOES NOT INCLUDE A RESERVOIR.

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			N2NENW	24	4N	7W	JEFFERSON
2			SENENW	24	4N	7W	JEFFERSON
3			SENWNW	24	4N	7W	JEFFERSON
4			NWSENW	24	4N	7W	JEFFERSON
5			SWNW	24	4N	7W	JEFFERSON
6			NWNE	24	4N	7W	JEFFERSON
7			SWNE	24	4N	7W	JEFFERSON

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

Water Right Number: 41E 30129436 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:** SEPTEMBER 20, 1902

Type of Historical Right: DECREED

Purpose (Use): DOMESTIC

Flow Rate: 0.71 GPM

Volume: 1.15 AC-FT

Households: 1

Maximum Acres: 0.25

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		NESE	29	5N	6W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

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	0.25		NESW	29	5N	6W	JEFFERSON

Total: 0.25