

Montana Water Court
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FILED
06/18/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0192-R-2024
Lambert, Kathryn
8.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANT: State of Montana Department of Transportation

CASE 41E-0192-R-2024

41E 142639-00

OBJECTOR: Kountz-Spire Rock LLC

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 finding 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

Kountz-Spire Rock LLC objected to this claim. On April 17, 2024 the parties filed a Stipulation resolving the objection. This settlement documentation is 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.

FINDING OF FACT

The Stipulation identifies Montana Department of Transportation [“MDT”] water right 41E 142639-00 and Kountz-Spire Rock LLC [“KSR”] claim 41E 30128999. Paragraph 10 of the Stipulation states: “MDT hereby SUBORDINATES the MDT right to the KSR right.” The following remark should be added to the abstract of claim 41E 142639-00 to memorialize this settlement of the objection:

THIS WATER RIGHT IS SUBORDINATE TO WATER RIGHT 41E 30128999. SEE THE STIPULATION FILED APRIL 17, 2024 IN MONTANA WATER COURT CASE 41E-0192-R-2024.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim.

RECOMMENDATIONS

Based upon the above Finding 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:

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

Service Via Electronic Mail:

Tyler G. Moss
Valerie A. Balukas
Montana Department of Transportation
PO Box 201001
Helena, MT 59620
tmoss@mt.gov
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E**

Water Right Number: 41E 142639-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF TRANSPORTATION
PO BOX 201001
HELENA, MT 59620-1001

Priority Date: JULY 15, 1888

THIS WATER RIGHT IS SUBORDINATE TO WATER RIGHT 41E 30128999. SEE THE STIPULATION FILED APRIL 17, 2024 IN MONTANA WATER COURT CASE 41E-0192-R-2024.

Type of Historical Right: FILED

Purpose (Use): INDUSTRIAL

Flow Rate: 170.54 GPM

Volume: 137.90 AC-FT

Source Name: UNNAMED TRIBUTARY OF BISON CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SLOCUM CREEK

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		SESE	20	5N	6W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

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			NE	29	5N	6W	JEFFERSON