

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: ~~Mike T. Quinn~~; Paul T. Smith Ranches Inc.

**CASE 41E-0202-R-2024**  
41E 110739-00

OBJECTOR: Paul T. Smith Ranches Inc.

**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**

Paul T. Smith Ranches Inc. objected to this claim. This claim appeared in the Preliminary Decree with the following remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41E 94271-00, 41E 110739-00, 41E 110740-00, 41E 110741-00, 41E 110742-00, 41E 110743-00.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

At the February 14, 2024 scheduling conference, counsel for Paul T. Smith Ranches informed the Court that Mike T. Quinn is deceased. On April 12, 2024 Paul T. Smith Ranches Inc. filed a Motion For Summary Judgment. The information provided in the Motion clearly substantiates that Mike T. Quinn never should have been added as a co-owner on this claim. This is deemed Paul T. Smith Ranches Inc.'s conditional withdrawal of its objection to its claim, and the required in-depth analysis for summary judgment will not be undertaken. The Motion For Summary Judgment is 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.

Judicial notice is taken of the Temporary Preliminary Decree proceedings for this claim in Case 41E-87. Rule 202, M.R.Evid.

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 owners of this claim are Mike T. Quinn and Paul T. Smith Ranches Inc. The claimed water right was originally appropriated by Mike T. Quinn and Paul T. Smith Ranches Inc. However, claim 41E 110739-00 is only for the Paul T. Smith Ranches Inc. portion of the appropriation. Mike T. Quinn should be removed as an owner.

2. During the 1991 Temporary Preliminary Decree proceedings for this claim in Case 41E-87, it was determined that the place of use/ownership overlap remark was erroneous and

should be removed. However, the remark was not then removed from the abstract of claim. The remark should now be removed as already determined in 1991.

3. The ditch name remark provides notice of the change made prior to issuance of the Preliminary Decree and 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 settlement filed by the claimant is sufficient to contradict and overcome the prima facie claim and to remove the erroneous 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:**

#### ***Last Order:***

Mike T. Quinn  
502 Lower Valley Rd  
Boulder, MT 59632

#### **Service Via Electronic Mail:**

William Driscoll  
Ryan McLane  
FRANZ & DRISCOLL, PLLP  
PO Box 1155  
Helena, MT 59624-1155  
(406) 442-0005  
WPD@franzdriscoll.com  
Ryan@franzdriscoll.com  
Office@franzdriscoll.com

#### **Note: Caption and Service List Updated 6-18-24**

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

**Water Right Number:** 41E 110739-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SMITH, PAUL T RANCHES INC  
502 LOWER VALLEY RD  
BOULDER, MT 59632

**Priority Date:** JUNE 1, 1950

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.50 CFS

**\*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:** 120.00

**Source Name:** 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		NWSESW	28	5N	3W	JEFFERSON

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** QUINN DITCH

**Period of Use:** MAY 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	20.00		SWNW	34	5N	3W	JEFFERSON
2	15.00		SENE	33	5N	3W	JEFFERSON
3	25.00		NENE	33	5N	3W	JEFFERSON
4	20.00		NWNE	33	5N	3W	JEFFERSON
5	20.00		SESW	28	5N	3W	JEFFERSON
6	20.00		SWSE	28	5N	3W	JEFFERSON

**Total:** 120.00

**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.

110739-00

110741-00

110742-00

110743-00