

Montana Water Court
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FILED
06/26/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0259-R-2024
Lambert, Kathryn
4.00

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

* * * * *

CLAIMANT: McCauley Ranches LLP

CASE 41E-0259-R-2024
41E 8372-00

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

Claim 41E 8372-00 appeared in the Preliminary Decree with the following issue remarks:

THE MEANS OF DIVERSION FOR POINT OF DIVERSION NO. 1 APPEARS INCORRECT. THE MEANS OF DIVERSION FOR POINT OF DIVERSION NO. 1 APPEARS TO BE A DAM.

THE POINT OF DIVERSION NO. 1 APPEARS TO BE INCORRECT. THE POINT OF DIVERSION FOR POINT OF DIVERSION NO. 1 APPEARS TO BE SWNWNW SEC 36 TWP 6N RGE 4W JEFFERSON COUNTY.

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 March 4, 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 May 20, 2024 the DNRC Memorandum was filed making recommendations for resolving the issue remarks. On May 30, 2024 the claimant’s response was filed stating agreement with the DNRC Memorandum. 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. The Preliminary Decree includes a point of diversion in the NWNWNW section 36, T6N, R4W, JEFFERSON with means of diversion DIVERSION DAM. The legal description should be the SWNWNW section 36, T6N, R4W, JEFFERSON with means of diversion DAM. The two issue remarks should be removed as addressed and resolved.

2. The Preliminary Decree also includes the following notice remark:

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.

This notice remark do 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 information provided by the DNRC and the claimant 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 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:

McCauley Ranches LLP
PO Box 25
Boulder, MT 59632

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

Water Right Number: 41E 8372-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: MCCAULEY RANCHES LLP
PO BOX 25
BOULDER, MT 59632-0025

Priority Date: DECEMBER 31, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

*Flow Rate: 1.67 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: 109.00

Source Name: MCCARTY CREEK

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		SWNWNW	36	6N	4W	JEFFERSON
*Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DAM						
2		NENESW	35	6N	4W	JEFFERSON
*Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DIVERSION DAM						
Ditch Name: HOLT DITCH						
3		NESWSW	35	6N	4W	JEFFERSON
*Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DIVERSION DAM						
Ditch Name: HOLT DITCH						

Period of Use: MAY 1 TO SEPTEMBER 30

*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	109.00		W2	35	6N	4W	JEFFERSON
Total:		109.00					