

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

CLAIMANTS: Donna J. Gilmer; Deborah J. McCauley; Douglas J. McCauley; Ryan Topel-Gilmer

CASE 41E-0180-R-2024
41E 19268-00

OBJECTORS: Donna J. Gilmer; United States of America (USDA Forest Service)

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

Donna J. Gilmer and the United States of America (USDA Forest Service) each objected to Donna J. Gilmer, Deborah J. McCauley, Douglas J. McCauley, and Ryan Topel-Gilmer claim 43B 19268-00. On February 27, 2024 the parties filed a Stipulation To Resolve Objection which

resolves both objections. The Stipulation 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.

FINDINGS OF FACT

1. The Preliminary Decree states that the means of diversion is FLOWING. The means of diversion should be PIPELINE.

2. The Preliminary Decree states that the place of use legal description is the SESENW section 34, T6N, R3W, Jefferson. The legal description should be the NESWSW section 34, T6N, R3W, JEFFERSON. The following clarification remark should be added to the place of use: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND.

CONCLUSION OF LAW

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

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:

Donna J. Gilmer
Deborah J. McCauley
Ryan Topel-Gilmer
PO Box 6
Boulder, MT 59632

Douglas J. McCauley
PO Box 328
Boulder, MT 59632

Service Via Electronic Mail:

Maggie Woodward
US Dept of Justice
PO Box 7611
Washington, DC 20044-7611
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MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 41E 19268-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DONNA J GILMER
PO BOX 6
BOULDER, MT 59632-0006

DEBORAH J MCCAULEY
PO BOX 6
BOULDER, MT 59632-0006

DOUGLAS J MCCAULEY
PO BOX 328
BOULDER, MT 59632-0328

RYAN TOPEL-GILMER
PO BOX 6
BOULDER, MT 59632-0006

Priority Date: JUNE 1, 1941

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 WATER TANK GULCH

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 | | SWNESE | 33 | 6N | 3W | JEFFERSON |

Period of Diversion: JUNE 1 TO SEPTEMBER 30

Diversion Means: PIPELINE

Period of Use: JUNE 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 | | | NESWSW | 34 | 6N | 3W | JEFFERSON |

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND