

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

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CLAIMANTS: Forrest L. Klies

OBJECTOR: United States of America (Bureau of Reclamation)

**CASE 41E-0143-R-2024**

41E 30871-00

41E 30872-00

**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**

The United States of America (Bureau of Reclamation) objected to each of these claims. Claim 41E 30871-00 appeared in the Preliminary Decree with the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30871-00 30872-00

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A PUMP.

THE PRIORITY DATE IS MISSING.

Claim 41E 30872-00 appeared in the Preliminary Decree with the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30871-00 30872-00

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A PUMP.

The claimant did not appear at the March 7, 2024 scheduling conference and his default was entered in the March 7, 2024 Court Minutes, Order Entering Default, Order Setting Filing Deadline, and Order Updating Service List. On August 2, 2024 the United States' Response To Court Order was filed stating the claims are duplicate claims for the same right and therefore, claim 41E 30871-00 should be terminated. The August 13, 2024 Order Setting Show Cause Filing Deadline states:

On August 2, 2024, the United States' Response to Court Order was filed. The Response included evidence supporting the resolution of the United States' objections. The United States requests the termination of claim 41E 30871-00 as it duplicates claim 41E 30872-00. Therefore, it is

ORDERED that the deadline is **September 13, 2024** for Forrest L. Klies to show cause in writing why the Court should not terminate claim 41E 30871-00. If nothing is filed by Forrest L. Klies the Court will conclude Forrest L. Klies agrees that claim 41E 30871-00 should be terminated.

Nothing was filed by the claimant. The Response and Order are 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. As claim 41E 30871-00 is a duplicate claim for the same water right claimed on 41E 30872-00, claim 41E 30871-00 should be terminated.

2. For claim 41E 30872-00, the duplicate claim issue remark should be removed as addressed and resolved.

The Preliminary Decree states that the means of diversion is PUMP/HEADGATE W/DITCH OR PIPELINE with the following clarification remarks added during ReExamination:

MEANS OF DIVERSION INCLUDES A INSTREAM, HEADGATE, AND DITCHES.

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

The DNRC ReExamination notes state: "Appears this is a placer mining claim that uses multiple means of diversion and is transient along the stream." The issue remark statement that the means of diversion should only be PUMP makes no sense given the addition of the two clarification remarks and the comment in the notes. The issue remark should be removed as erroneous. The two clarification remarks should have modest adjustments to state:

MEANS OF DIVERSION INCLUDES INSTREAM, HEADGATE, AND DITCHES.

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTIONS.

### CONCLUSION OF LAW

The Response filed by the United States of America (Bureau of Reclamation) is sufficient to contradict and overcome the prima facie claims and 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:**

Forrest L. Klies  
PO Box 153  
Basin, MT 59631

**Service Via Electronic Mail:**

Jennifer A. Najjar  
Alexa Penalosa  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-0476  
Jennifer.Najjar@usdoj.gov  
Alexa.Penalosa@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

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

**Water Right Number:** 41E 30871-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** FORREST L KLIES  
PO BOX 153  
BASIN, MT 59631-0153

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** JACK CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 41E 30872-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** SEVERED

**Owners:** FORREST L KLIES  
PO BOX 153  
BASIN, MT 59631-0153

**Priority Date:** JULY 29, 1879

**Type of Historical Right:** FILED

**Purpose (Use):** MINING

**\*Flow Rate:** 2.00 CFS

**\*Volume:** THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

**Source Name:** JACK 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		N2	14	7N	6W	JEFFERSON

**Period of Diversion:** MAY 1 TO NOVEMBER 19

**Diversion Means:** PUMP/HEADGATE W/DITCH OR PIPELINE

2		SW	14	7N	6W	JEFFERSON
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**Period of Diversion:** MAY 1 TO NOVEMBER 19

**Diversion Means:** PUMP/HEADGATE W/DITCH OR PIPELINE

3			22	7N	6W	JEFFERSON
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**Period of Diversion:** MAY 1 TO NOVEMBER 19

**Diversion Means:** PUMP/HEADGATE W/DITCH OR PIPELINE

MEANS OF DIVERSION INCLUDES INSTREAM, HEADGATE, AND DITCHES.

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTIONS.

**Period of Use:** MAY 1 TO NOVEMBER 19

**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			N2	14	7N	6W	JEFFERSON
2			SW	14	7N	6W	JEFFERSON
3				22	7N	6W	JEFFERSON
4			E2	27	7N	6W	JEFFERSON

THIS WATER RIGHT HAS BEEN SEVERED FROM THE PLACE OF USE. CONTINUED USE OF THIS WATER RIGHT IN ACCORD WITH HISTORICAL PRACTICES IS ALLOWED. YOU MUST CONTACT DNRC AND OBTAIN A CHANGE AUTHORIZATION PRIOR TO CHANGING THE PLACE OF USE OF THIS WATER RIGHT.