

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: Doris S. Nyquist; Nils C. Nyquist

OBJECTOR: United States of America (Bureau of Land Management)

CASE 41E-0152-R-2024

41E 94180-00

41E 127759-00

41E 127760-00

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 Land Management) objected to each of these claims.

The March 6, 2024 Court Minutes, Order Entering Defaults, and Order Setting Filing Deadline entered the defaults of Doris S. Nyquist and Nils C. Nyquist for failure to appear at the

scheduling conference. It is noted that the Order Consolidating Case And Setting Scheduling Conference mailed to Doris S. Nyquist and Nils C. Nyquist was returned to the Court as undeliverable. Judicial Assistant Julie Cristiani researched various resources and could not find a different address for the Nyquists.

On August 6, 2024 the United States' Motion To Terminate Claims was filed requesting termination of these claims. This was served on the Nyquists at their last known address. No response was filed.

These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

“Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

The water court “may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.” Section 85-2-227(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. Claim 41E 94180-00 is for an August 25, 1962 use right for 44.88 GPM from an unnamed tributary of High Ore Creek for mining. The claimed pump diversion is in the SENE section 11, T6N, R5W, Jefferson. The claimed place of use is the NESE and the S2SENE section 11, T6N, R5W, Jefferson.

2. Claim 41E 127759-00 is for an April 15, 1971 use right for 45.00 GPM from Boomerang Gulch for mining. The claimed pump diversions are in government lot 9 SENENE section 23 and the W2SW section 13, both in T6N, R5W, Jefferson. The claimed place of use is the NENE section 23 and the W2SW section 13, both in T6N, R5W, Jefferson.

3. Claim 41E 127760-00 is for a September 10, 1972 use right for 2.00 AC-FT from an unnamed tributary of High Ore Creek for mining. The claimed dam diversion is the SWNESW section 1, T6N, R5W, Jefferson. The claimed place of use is the S2SENW section 1, T6N, R5W, Jefferson.

4. The Declaration of Melissa Norris is attached to the United States' Motion To Terminate Claims. Paragraphs 3 through 6 of the Declaration of Melissa Norris state that the legal land description(s) "for the point of diversion and place of use are overbroad and include federal land administered by BLM" for claims 41E 94180-00 and 41E 127759-00; the "point of diversion, onstream reservoir, and place of use are located entirely on federal land administered by BLM" for claim 41E 127760-00; the claimants "do not have authorization from BLM to divert or use water on federal land" for all three claims; "[t]o mine on BLM land, a water right holder must have authorization from BLM for the use"; the BLM's Mineral and Land Records System "contains information about past and current mining claims authorized for use on federal land" which shows the claimants "have no active mining claims on BLM-administered land in their names", and "the mining claims that were once held in Claimants' names were closed between 1985 and 1991 due to abandonment. There is no indication that the mining claims have been used after their identified closure dates. Even if there was evidence, none of the mines have the requisite authorization to operate on lands administered by BLM."

5. Each of these claims should be dismissed as they do not claim valid existing water rights.

CONCLUSION OF LAW

The Declaration of Melissa Norris is sufficient to contradict and overcome the prima facie claims.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claims 41E 94180-00, 41E 127759-00, and 41E 127760-00 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 claim has been dismissed in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Doris S. Nyquist
Nils C. Nyquist
(Return mail received)

Service Via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-0476
Jennifer.Najjar@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 94180-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DORIS S NYQUIST
PO BOX 260
BOULDER, MT 59632-0260

NILS C NYQUIST
PO BOX 260
BOULDER, MT 59632-0260

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF HIGH ORE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 127759-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DORIS S NYQUIST
PO BOX 260
BOULDER, MT 59632-0260

NILS C NYQUIST
PO BOX 260
BOULDER, MT 59632-0260

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: BOOMERANG GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

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 127760-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DORIS S NYQUIST
PO BOX 260
BOULDER, MT 59632-0260

NILS C NYQUIST
PO BOX 260
BOULDER, MT 59632-0260

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF HIGH ORE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.