

Montana Water Court
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FILED
09/05/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0214-R-2024
Lambert, Kathryn
6.00

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

CLAIMANTS: Annalisa Given; Joanne Given; Trevor Given;
Wayne Given

CASE 41E-0214-R-2024
41E 94013-00

OBJECTOR: 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

The United States of America (USDA Forest Service) objected to this claim. On June 21, 2024 the parties filed a Stipulation To Resolve Objection. On July 11, 2024 the United States of America (USDA Forest Service) filed a marked aerial photograph illustrating the requested changes. This settlement documentation 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 point of diversion is the NESESW section 3, T4N, R7W, JEFFERSON. The point of diversion should be the NWNENE section 10, T4N, R7W, JEFFERSON.

2. The Preliminary Decree states that the place of use is:

| <u>ACRES</u> | <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|--------------|---------------|------------|------------|------------|---------------|
| 30.00 | N2NE | 10 | 4N | 7W | JEFFERSON |
| <u>36.00</u> | S2S2 | 3 | 4N | 7W | JEFFERSON |
| 66.00 | | | | | |

The place of use should be:

| <u>ACRES</u> | <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|--------------|---------------|------------|------------|------------|---------------|
| 30.00 | NENE | 10 | 4N | 7W | JEFFERSON |
| <u>36.00</u> | N2SE | 3 | 4N | 7W | JEFFERSON |
| 66.00 | | | | | |

3. As requested the following general remark should be added: POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.

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

POINT OF DIVERSION 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.

The remark provides notice of this change made prior to issuance of the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for the remark. The remark should be removed as having served its notice purpose.

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:

Annalisa Given
Joanne Given
Trevor Given
Wayne Given
1199 Baguette Dr
Castle Rock, CO 80108

Service Via Electronic Mail:

Katharine L. Laubach
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-8568
Katharine.Laubach@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 94013-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANNALISA GIVEN
1199 BAGUETTE DR
CASTLE ROCK, CO 80108-3062

JOANNE GIVEN
1199 BAGUETTE DR
CASTLE ROCK, CO 80108-3062

TREVOR GIVEN
1199 BAGUETTE DR
CASTLE ROCK, CO 80108-3062

WAYNE GIVEN
1199 BAGUETTE DR
CASTLE ROCK, CO 80108-3062

Priority Date: MAY 1, 1938

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.84 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 66.00

Source Name: LOWLAND CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SAWMILL GULCH

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 | | NWNENE | 10 | 4N | 7W | JEFFERSON |

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 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 | 30.00 | | NENE | 10 | 4N | 7W | JEFFERSON |

| | | | | | | |
|---------------|--------------|------|---|----|----|-----------|
| 2 | <u>36.00</u> | N2SE | 3 | 4N | 7W | JEFFERSON |
| Total: | 66.00 | | | | | |

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.