

Montana Water Court
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FILED
08/29/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0244-R-2024
White, Eugene
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

CLAIMANTS: Brian S. French; Jennie W. French

CASE 41E-0244-R-2024
41E 211116-00

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, conclusions 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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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

All water right claims that appeared in the Preliminary Decree for Boulder River (Basin 41E) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41E 211116-00 received an issue remark during the DNRC’s review of the claims.

The claim was consolidated into Case 41E-0244-R-2024 and an Order Requiring the Claimants to consult with the DNRC to resolve the issue remark was issued by the Water Court.

FINDINGS OF FACT

1. Claim 41E 211116-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM UNNAMED TRIBUTARY OF KLEINSMITH GULCH.

2. On May 15, 2024, DNRC Water Resources Specialist Jason Larsen filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted by claimant Brian French regarding the aforementioned issue remarks on March 8, 2024. The *Memo* goes on to note that Mr. French stated that he did not believe the claim was accurate and did not think there were any water rights used on the property. When asked by the DNRC if he would like to fill out a Request to Withdraw the Statement of Claim, Mr. French responded that, “he wasn’t interested in filling out paperwork but ... he and his wife had no interest in the claim.” Therefore, the DNRC made the following recommendations regarding the disposition of the issue remarks:

RECOMMENDATION(S):

Claim 41E 211116-00

Based on the claimant’s statement that there is no place of use on their property, and that they have no interest in the claim, the DNRC recommends that the right be dismissed.

3. On June 6, 2024, the Court set a filing deadline for claimants Brian S. French and Jennie W. French to file a statement if they disagreed with the above-listed recommendations from the DNRC to dismiss claim 41E 211116-00. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **July 5, 2024** for Brian S. French and Jennie W. French to file a written response to the DNRC recommendation *if they disagree with this recommendation*. If no written response is filed by July 5, 2024, the Court will conclude that Brian S. French and Jennie W. French agree with the DNRC recommendation and proceed with issuing an order dismissing claim 41E 211116-00.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

CONCLUSION OF LAW

1. The information in the record is sufficient to resolve the issue remarks appearing on claim 41E 211116-00. Based on the information contained in Mr. Larsen's *Memo*, claim 41E 211116-00 should be dismissed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusion of Law, this Water Master recommends that the Court dismiss claim 41E 211116-00.

A post-decree abstract of the water right claim reflecting the recommended dismissal is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Brian S. French
Jennie W. French
PO Box 262
Jefferson City, MT 59638

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

Water Right Number: 41E 211116-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BRIAN S FRENCH
PO BOX 262
JEFFERSON CITY, MT 59638-0262

JENNIE W FRENCH
PO BOX 262
JEFFERSON CITY, MT 59638-0262

***Priority Date:**

Type of Historical Right:

***Purpose (Use):** MINING

Flow Rate:

Volume:

Source Name: SULLIVAN 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.