

Montana Water Court
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FILED
02/16/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0003-R-2024
Lambert, Kathryn
3.00

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

CLAIMANTS: John H. Bailey; Katharine E. Wikstrom

CASE 41E-0003-R-2024
41E 179242-00

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

John H. Bailey and Katharine E. Wikstrom claim 41E 179242-00 appeared in the Preliminary Decree with the following issue remark:

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The January 3, 2024 Order Consolidating Case And Setting Filing Deadline states:

The Statement of Claim does not state whether the type of historical right is Decreed, Filed, or Use. No copy of a Decree or Notice of Appropriation was included, so it appears the type of historical right is Use. *If the claimants agree that Use is correct, nothing needs to be filed.* If the claimants do not agree that Use is correct, a copy of the Decree or filed Notice of Appropriation is needed to document that the right claimed is a Decreed right or a Filed right. Therefore, pursuant to 85-2-248(3), MCA, it is

ORDERED that the deadline for the claimants to file a copy of the Decree or filed Notice of Appropriation is **February 5, 2024**. *If not filed by the deadline, the Court will conclude the claimants agree the type of historical right is Use.*

(*Emphasis in original.*) Nothing was filed concerning the type of historical right. On January 19, 2024 Paul Wikstrom, Executor, Estate of Katharine E. Wikstrom, sent the Court an email stating that he sold the property in 2022. Information about updating the ownership of a claim is available at <http://dnrc.mt.gov/divisions/water/adjudication>, or by contacting the Helena DNRC Regional Office at (406) 444-6999.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(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. The Preliminary Decree does not include the type of historical right. The type of historical right should be USE. The issue remark should be removed as addressed and resolved.
2. The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION AND MEANS OF DIVERSION WERE 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.

This remark provides notice of changes made prior to issuance of the Preliminary Decree and does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information contained in the claim file is sufficient to resolve the issue remark 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 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:

John H. Bailey
PO Box 1424
Boulder, MT 59632

Katharine E. Wikstrom
200 Bridge St
Saint Paul, MN 55126

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

Water Right Number: 41E 179242-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN H BAILEY
PO BOX 1424
BOULDER, MT 59632-1424

KATHARINE E WIKSTROM
200 BRIDGE ST
SAINT PAUL, MN 55126-2152

Priority Date: SEPTEMBER 4, 1900

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 55.00 GPM

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

Source Name: ROCKER 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		NWSWNE	17	7N	5W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE
MEANS OF DIVERSION INCLUDES A DITCH AND A PIPELINE.

Period of Use: JANUARY 1 TO DECEMBER 31

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	17	7N	5W	JEFFERSON