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FILED
03/29/2024
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0240-R-2024
Lambert, Kathryn
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

CLAIMANT: Dawson Family Ranch LLC

CASE 41E-0240-R-2024
41E 30144008

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

This Dawson Family Ranch LLC claim appeared in the Preliminary Decree with the following issue remark:

NO PRIORITY DATE WAS CLAIMED.

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 claimant an opportunity to file additional information or evidence. The January 26, 2024 Order Consolidating Case And Setting Scheduling Conference set a scheduling conference to discuss resolution of the issue remark with the claimant. Dawson Family Ranch LLC did not appear. The February 21, 2024 Court Minutes, Order Entering Default, and Order Setting Deadline For Claimant To Show Cause Why Claim Should Not Be Amended Pursuant To 85-2-248(9)(a), MCA state:

As Dawson Family Ranch LLC did not appear as directed in the January 26, 2024 Order Consolidating Case And Setting Scheduling Conference, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of Dawson Family Ranch LLC is ENTERED.

Under Section 85-2-248(9)(a), MCA, when a claimant fails to comply with an Order issued by the Water Court concerning resolution of an issue remark, the Court can amend the claim to conform it to information in the claim file.

Although the Statement of Claim form for claim 41E 30144008 is blank where the priority date is supposed to be inserted, it does state that the type of historical right is a USE right. The Statement of Claim form states: "Attach copies of the decree, record of filing, or proof of use." There is no copy of a decree or record of filing attached. The Affidavit of Thomas Dawson is attached to the Statement of Claim. It lists three different priority dates based on the DNRC database "screen shot" of Dawson Family Ranch irrigation claims. Priority date "12/31/1927" is the only one that is for a USE right – the other two priority dates are for FILED rights. The information attached to the Statement of Claim indicates the priority date for this claimed BOULDER RIVER STOCK USE right should be DECEMBER 31, 1927. Therefore, it is

ORDERED that the deadline for Dawson Family Ranch to show cause in writing why the Court should not proceed with amending claim 41E 30144008 to state that the priority date is DECEMBER 31, 1927 pursuant to section 85-2-248(9)(a), MCA, is **March 21, 2024**. If no additional information is filed by March 21, 2024, the Court will proceed with amending the claim as detailed above.

(**Emphasis** in original.) Nothing was filed. The Court Orders and Minutes are viewable in the Court's FullCourt Enterprise case management system.

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 a priority date. The priority date should be DECEMBER 31, 1927. The priority date issue remark should be removed as addressed and resolved.

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

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41E DECREE ISSUED 06/20/1985.

This remark provides notice that the claim was not included in the Temporary Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information 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:

Dawson Family Ranch LLC
2360B MT Highway 69
Boulder, MT 59632

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

Water Right Number: 41E 30144008 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DAWSON FAMILY RANCH LLC
2360B MT HIGHWAY 69
BOULDER, MT 59632-9732

***Priority Date:** DECEMBER 31, 1927

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: BOULDER RIVER

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		W2NENW	19	5N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		N2SENW	19	5N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NESE	19	5N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NENWSE	19	5N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SWSW	20	5N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		NENW	29	5N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

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			W2NENW	19	5N	3W	JEFFERSON
2			N2SEW	19	5N	3W	JEFFERSON
3			NESE	19	5N	3W	JEFFERSON
4			NENWSE	19	5N	3W	JEFFERSON
5			SWSW	20	5N	3W	JEFFERSON
6			NENW	29	5N	3W	JEFFERSON