

Montana Water Court
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FILED
03/27/2024
Sara Calkins
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0254-R-2024
Lambert, Kathryn
2.00

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

CLAIMANT: Lattin Family Trust

CASE 41E-0254-R-2024
41E 214763-00

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 finding 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

Claim 41E 214763-00 appeared in the Preliminary Decree with the following issue remark:

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS AREA IS 1.00 ACRE-FEET PER ACRE.

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 16, 2024 Order Consolidating Case And Setting Filing Deadline states:

For this claim, it appears the volume should be 1.00 AC-FT as suggested in the issue remark. Pursuant to 85-2-248(3), MCA, it is ORDERED that the deadline for the claimant to file documentation resolving the issue remark is **March 18, 2024**. *If nothing is filed, the Court will conclude the claimant agrees the volume should be 1.00 AC-FT.*

(**Bold** and *Italics* emphases in original.) Nothing was filed. The Order Consolidating Case and Setting Filing Deadline is 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.

FINDING OF FACT

The Preliminary Decree does not include a volume quantification. The volume should be 1.00 AC-FT. The volume issue remark should be removed as resolved.

CONCLUSION OF LAW

The information provided in the claim file and issue remark is sufficient to resolve the issue remark without evidentiary hearing. Section 85-2-248(9), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding 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:

Lattin Family Trust
PO Box 105
Boulder, MT 59632

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

Water Right Number: 41E 214763-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LATTIN FAMILY TRUST
PO BOX 105
BOULDER, MT 59632-0105

Priority Date: JUNE 1, 1900

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 8.00 GPM

Volume: 1.00 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF LITTLE BOULDER RIVER

Source Type: GROUNDWATER

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		NWNWSW	32	5N	5W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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			NWNWSW	32	5N	5W	JEFFERSON