

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
Fax: (406) 522-4131  
[watercourt@mt.gov](mailto:watercourt@mt.gov)

**FILED**

JUN 25 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
ROCK CREEK BASIN (76E)  
PRELIMINARY DECREE

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CLAIMANTS: Hesse & Sons LLC; Tri Sky LLC

OBJECTOR: United States of America (USDA Forest Service)

COUNTEROBJECTOR: Robin C. Bauer

**CASE 76E-R125**  
76E 16572-00

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**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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**

### **FINDINGS OF FACT**

1. Irrigation claim 76E 16572-00 appeared in the Basin 76E Preliminary Decree with the following DNRC issue remarks:

POINT OF DIVERSION AND DITCH NAME 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.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 31.16 GPM PER ACRE.

2. The United States of America (Forest Service) objected to claim 76E 16572-00 indicating the flow rate is excessive. Robing Bauer filed a response to the Forest Service's Objection, using the Counterobjection form, stating the flow rate should be left as is, and filed documentation supporting the decreed flow rate. Claim 76H 16573-00 was consolidated into Case 76E-R125.

3. A Status Conference for Case 76E-R125 took place on January 14, 2020 by telephone conference call. Judith Coleman appeared for the Forest Service and Robin Bauer appeared for the other parties in the Case. A deadline was set for settlement documents to be filed.

4. On April 7, 2020, the Forest Service filed a Withdrawal of Objection conditioned on the flow rate and volume not being increased.

### **CONCLUSION OF LAW**

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

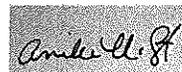
RECOMMENDATIONS

1. The issue remarks should be removed from claim 76E 16572-00 with no changes to the elements.

2. Robin Bauer's Counterobjection should be dismissed. It was filed as a response to the Objection and not as a proper counterobjection. Nevertheless, the concerns listed on the Counterobjection form have been addressed by leaving the flow rate as decreed.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm the removal of the issue remarks in the state's centralized record system.

DATED this *25<sup>th</sup>* day of *June*, 2020.

 Digitally signed  
by Anika Stern

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Anika M. Stern  
Senior Water Master

**Service via USPS Mail:**

Hesse & Sons LLC  
3615 Blue Key  
Corona Del Mar, CA 92625

Tri Sky LLC  
% Robin Bauer  
Robin C. Bauer  
165 Crying George Rd  
Butte, MT 59701  
(406) 498-4263  
rcbauer7@yahoo.com

**Service Via Electronic Mail:**

Judith E. Coleman  
Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 514-3553  
[judith.coleman@usdoj.gov](mailto:judith.coleman@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)