

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BOX ELDER CREEK BASIN (39E)
PRELIMINARY DECREE

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CLAIMANT: Four Star Inc.

CASE 39E-0183-P-2022
39E 4448-00

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

FINDINGS OF FACT

1. The current record-owner of claim 39E 4448-00 is Four Star Inc.

2. Claim 39E 4448-00 was decreed with the following place of use:

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			SENE SW	1	1S	58E	CARTER

3. Claim 39E 4448-00 was decreed with the following DNRC issue remark that has not been resolved:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NESENE SEC 1, T1S, R58E, CARTER COUNTY.

Another issue remark decreed on claim 39E 4448-00 is a notice-type remark and does not require further attention.

4. All DNRC issue remarks must be resolved. Based on the record, it appears the following changes are appropriate for claim 39E 4448-00:

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		NESENE	SENE SW	1	1S	58E	CARTER

5. To determine if Claimant Four Star Inc. agreed or disagreed with the proposed change, an Order was issued setting a November 4, 2022 deadline for Four Star Inc. to indicate whether it agreed or disagreed with the proposed change to the place of use for claim 39E 4448-00. The Order stated that if nothing were filed by the deadline, this Master would conclude Claimant Four Star Inc. agrees that claim 39E 4448-00 should be modified as shown in Finding of Fact No. 4. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS 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.

2. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The point of diversion and reservoir record issue remark decreed on claim 39E 4448-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39E 4448-00 should be modified as shown in Finding of Fact No. 4.

2. The issue remark should be removed from claim 39E 4448-00.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Four Star Inc.
C/O Brad McCabe
211 Perishing Cutoff
Ekalaka, MT 59324

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 4448-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FOUR STAR INC
% BRAD MCCABE
211 PERISHING CUTOFF
EKALAKA, MT 59324

Priority Date: JUNE 9, 1949

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: BIG RAMME 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		NESENE	1	1S	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESENE	1	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

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			NESENE	1	1S	58E	CARTER