

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

CLAIMANT: V Bar K LLC

CASE 41E-0270-R-2024
41E 93900-00

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

This claim appeared in the Preliminary Decree with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

A LATE OBJECTION HAS BEEN FILED TO THE VOLUME, FLOW RATE, MAXIMUM ACRES, PLACE OF USE, AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

NO IRRIGATION TYPE HAS BEEN CLAIMED.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 1159.85 ACRE-FEET PER YEAR.

The issue remarks were 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 February 28, 2024 Order Consolidating Case And Setting Filing Deadline set an April 10, 2024 deadline for filing documentation addressing the irrigation type and volume issue remarks. Nothing was filed by the claimant.

The April 17, 2024 Order Entering Default And Setting Show Cause Deadline states:

As V Bar K LLC failed to comply with the Court's Order issued under section 85-2-248, MCA, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of V Bar K LLC is ENTERED.

The claimant can review the scanned copy of the claim file on the DNRC Water Right Query System at <http://wrqs.dnrc.mt.gov>. A review of the Statement of Claim shows that the type of irrigation was never specified; however, the markings on the map attached to the Statement of Claim suggest FLOOD irrigation. This claim appeared in the Preliminary Decree with a volume of 1,638.39 AC-FT. The issue remark states the maximum feasible volume is 1159.85 AC-FT. Therefore, it is

ORDERED that the deadline is **May 17, 2024** for V Bar K LLC to show cause in writing why the Court should not conclude that 1) the type of irrigation should be FLOOD, and 2) the volume should be reduced to 1159.85 AC-FT. If nothing is filed by this deadline, the Court will conclude the claimant agrees with the above changes and proceed with changing the claim accordingly.

Nothing was filed by the claimant. These documents 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 the type of irrigation. The type of irrigation should be FLOOD. The issue remark should be removed as addressed and resolved.
2. The Preliminary Decree states that the volume is 1,638.39 AC-FT. The volume should be 1,159.85 AC-FT. The issue remark should be removed as addressed and resolved.
3. There is nothing in the scanned copy of the claim file which could be considered late objections to the priority date, volume, flow rate, maximum acres, place of use, and point of diversion. There is no documented reason for the DNRC addition of the two late objection remarks. The two late objection remarks should be removed as erroneous.

CONCLUSION OF LAW

The Statement of Claim as filed is sufficient to resolve the issue remarks 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:

V Bar K LLC
35 Ben Hogan Dr
Butte, MT 59701

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

Water Right Number: 41E 93900-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: V BAR K LLC
35 BEN HOGAN DR
BUTTE, MT 59701-4320

Priority Date: JUNE 18, 1902

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 2.72 CFS

Volume: 1,159.85 AC-FT

Climatic Area: 5 - LOW

***Maximum Acres:** 72.00

Source Name: ROCK 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		NWNWSE	18	6N	7W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 1

***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	7.00		W2SWSE	18	6N	7W	JEFFERSON
2	45.00		NE	19	6N	7W	JEFFERSON
3	20.00		N2SE	19	6N	7W	JEFFERSON

Total: 72.00