

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

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CLAIMANTS: Brennan BB Ranch LLC; Earl M. King; Suzanne  
L. King

OBJECTOR: Brennan BB Ranch LLC

COUNTEROBJECTOR: BFR Family Limited Partnership LLLP

**CASE 41G-0042-R-2020**

41G 203857-00

41G 203858-00

41G 203859-00

41G 203862-00

ON MOTION OF THE MONTANA WATER COURT

**ORDER DENYING MOTION TO WITHDRAW OR AMEND ADMISSIONS**

I. INTRODUCTION

Earl and Suzanne King claim water rights at issue in this case. The Kings' predecessor is King E & S Family LLC. Unless stated otherwise, the Kings and King E & S Family LLC are referred to collectively as King. BFR Family Limited Partnership and Brennan BB Ranch LLC oppose King's claim to ownership of water rights in this case. BFR and Brennan filed motions asserting that King failed to respond to Requests for Admission and asking that those unanswered RFAs be deemed admitted. This Court issued an order granting that request on September 28, 2022. Among the admissions recognized by the Court was an admission that King did not acquire an ownership interest in the water rights in this case when it acquired its property in 2016. King recently obtained counsel and seeks to have the admissions against it withdrawn.

The issue before the Court is whether King meets the criteria for withdrawal or amendment of its admissions.

## II. APPLICABLE LAW

Requests for Admission are governed by Rule 36, M. R. Civ. P. Part (b) of this rule states a court may permit withdrawal or amendment of an admission “if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.” The seminal case applying Rule 36(b) is *Bates v. Anderson*, 2014 MT 7, 373 Mont. 252, 316 P.3d 857. There, the Montana Supreme Court stated that a trial court should, in addition to applying the two-part test in the rule, focus on the effect of the defaulting party’s conduct upon the litigation and prejudice to the resisting party. *Bates*, ¶¶ 24, 25.

## III. ANALYSIS

The admissions made by King are serious and have the potential to invalidate its ownership of the water rights it claims. Allowing withdrawal of those admissions might promote King’s ability to address its claims on the merits, except for the Water Master’s prior ruling that King cannot present evidence at trial because it failed to retain counsel. Although withdrawal of King’s admissions might help resist an attack on its claims to ownership, it is not clear whether King can otherwise address its claims on the merits given the Water Master’s order limiting its ability to present a case.

The second question is whether allowing King to withdraw its admissions would prejudice the ability of the party obtaining the admissions to maintain or defend the action on the merits. Answering this question requires a review of procedural history. Earl and Suzanne King are successors to King E & S Family LLC, which was initially involved in this matter. This case was consolidated nearly three years ago on January 3, 2020. The Water Master issued a hearing track order on April 6, 2021. Hearing track orders trigger “the requirement that all parties, other than natural persons representing themselves, must be represented by an attorney in all water court proceedings.” Rule 16(c), W.R.Adj.R. The Water Master followed her hearing track order with an order

requiring King E & S Family LLC to obtain counsel. King E & S Family LLC did not comply, and the Water Master ruled on July 27, 2021, that King could not present a case at trial.

On March 11, 2022, Brennan filed a motion asking that unanswered Requests for Admission previously tendered to King E & S Family LLC be deemed admitted. The Water Master declined to do so because the hearing track order had been suspended at the time Brennan's motion was filed. Despite denying the motion, the Water Master stated the motion may be reconsidered if the case returned to hearing track. *Order Denying Motion to Deem RFAs Admitted and Order Extending Filing Deadline*, 1 (April 4, 2022).

This judge then took over the case and lifted suspension of the hearing track order. A new deadline was set for all parties to respond to Brennan's previously-filed *Motion to Deem Requests for Admission to King E & S Family, LLC Admitted*. Brennan's Requests for Admission were served on King on January 28, 2022. King E & S Family LLC and Earl and Suzanne King did not respond to those requests or provide a substantive response to any of the motions filed by Brennan or BFR. King's response was a short email dated August 26, 2022, stating King "would like to access and utilize the water claims historically connected to their property...." *King Email*, 1 (Aug. 26, 2022).

On September 27, 2022, nearly three years after this case began, King finally retained counsel. On October 3, 2022, King's new attorneys filed a motion to withdraw or amend King's prior admissions. At the time of that filing, the parties were subject to a scheduling order requiring submittal of a joint pretrial order on October 14, 2022, and attendance at a pretrial conference on October 21, 2022. By the time King retained counsel, the deadlines for completion of discovery and filing of pretrial motions had passed, the case had been active for nearly three years, and pretrial orders were due in less than two weeks.

Withdrawal of the King admissions at this late stage would likely require a new scheduling order. Rewinding the clock will cause prejudice to Brennan and BFR, both of whom have been active participants in these proceedings. In contrast, King has failed to

provide responses to motions, failed to respond to discovery, and failed to comply with the orders of this Court. King offers no explanation for its actions.

Finally, the DNRC filed a memorandum pursuant to an order by the Water Master. One of the questions addressed by the DNRC was whether the places of use for the four claims at issue were historically accurate. The DNRC noted evidence indicating there had never been a means of conveying water to the King property. “DNRC cannot conclude that the historical acreage is accurate for these claims given the new evidence for no historical conveyance structure to the King property.” *DNRC Memorandum*, 2 (May 31, 2022). The DNRC’s conclusion is not dispositive, but it suggests King may not have a strong claim to ownership of these rights even if it is granted an opportunity to present its case on the merits.

#### IV. CONCLUSION

Water rights litigation is different from other forms of civil litigation. All users of water from the same source are competitors for a limited resource. Water users are expected to participate in the adjudication process, and in return they are entitled to receive timely and accurate decisions about their rights. The Montana Supreme Court summarized the obligations of water users as follows:

The Montana Water Use Act anticipates that there will be disagreements over the use of water among varying interests and “the integrity of Montana’s adjudication process depends upon the assertion and ultimate resolution of these varying interests. The provisions of the Act charge all water users with the duty of asserting and defending their interests.” This Court has recognized the importance of an adjudication process to firmly establish existing water rights and the necessity of “comprehensive participation, extinguishing duplicative and exaggerated rights, and ridding local records of stale, unused water claims.”

*Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 42, 361 Mont. 77, 255 P.3d 179 (citations omitted).

This case is about competing claims for water. For reasons unexplained, King has not been an active participant in the adjudication of its water rights. It has disregarded the orders of this Court and been unresponsive to discovery requests of other parties. It

has failed to respond to motions and substantially delayed the progress of litigation. King's actions have prejudiced opposing parties and wasted judicial resources. Its decision to seek withdrawal of its admissions came less than two weeks before the deadline for filing a joint pretrial order, after the close of discovery, and after the deadline for filing pretrial motions. King has not upheld its obligation to assert and defend its interests as required by the Water Use Act and by *Montana Trout Unlimited v. Beaverhead Water Co.*

King's request to withdraw or amend its admissions is denied.

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Russ McElyea  
Chief Water Judge

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