

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

**FILED**  
01/17/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41K-0542-R-2023  
White, Eugene  
8.00

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)

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CLAIMANT: Tee Bar Ranch Co.

**CASE 41K-0542-R-2023**  
41K 96581-00

**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 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**

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41K 96581-00 received issue remarks during the DNRC's review of the claims. The claim was consolidated into Case 41K-0542-R-2023 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

## FINDINGS OF FACT

1. Claim 41K 96581-00 received the following substantive issue remark:  
THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 1066.04 ACRE-FEET PER YEAR.
2. On June 12, 2023, the Water Court consolidated the claim and issued an Order Setting Filing Deadline for the Claimant to file information regarding the historically accurate volume for claim 41K 96581-00. Nothing was filed by the Claimant to the initial filing deadline.
3. On August 11, 2023, the Court issued an Order to Show Cause why the volume of the claim should not be modified as described in the issue remark.
4. On September 26, 2023, Claimant Tee Bar Ranch, Co. (“Tee Bar”) filed a *Response*. Tee Bar’s *Response* states that the volume issue was previously adjudicated when claim 41K 96581-00 was consolidated into Water Court Case 41K-208 during the Temporary Preliminary Decree for Basin 41K. Consequently, the Master’s Report issued in that case held that the quantified volume for claim 41K 96581-00 should be removed as the claim is a direct flow irrigation claim. However, the volume element was never modified to remove the quantification, and claim 41K 96581-00 incorrectly appeared in the Basin 41K Temporary Preliminary Decree with a volume of 1,070 acre-feet. Tee Bar proffers in its *Response* that the volume quantification should be removed and replaced with the standard volume remark stating, “the total volume of this water right shall not exceed the amount put to historical and beneficial use,” in order to resolve the volume issue remark.
5. Claim 41K 96581-00 also received a notice-type issue remark denoting modifications made by the DNRC during its claims reexamination. No Objections were filed.

## PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

### CONCLUSIONS OF LAW

1. The information in the record resolves the volume issue remark appearing on claim 41K 96581-00. Based on the *Response* filed by claimant Tee Bar, the volume quantification for claim 41K 96581-00 should be removed and replaced with the information remark described in Finding of Fact No. 4 and the issue remark should be removed from the claim.

2. The notice type issue remark appearing on claim 41K 96581-00 served its notice purpose and should be removed from the claim.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the volume element of claim 41K 96581-00 as described in Finding of Fact No. 4 and remove the issue remarks from the claim.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Electronic Mail:**

William Driscoll  
Ryan McLane  
FRANZ & DRISCOLL, PLLP  
PO Box 1155  
Helena, MT 59624-1155  
(406) 442-0005  
WPD@franzdriscoll.com  
[Ryan@franzdriscoll.com](mailto:Ryan@franzdriscoll.com)  
[Office@franzdriscoll.com](mailto:Office@franzdriscoll.com)

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 96581-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** TEE BAR RANCH CO  
PO BOX 389  
AUGUSTA, MT 59410

**\*Priority Date:** DECEMBER 31, 1871

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.50 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 77.00

**Source Name:** ELK 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		NWNENW	11	19N	7W	LEWIS AND CLARK

**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** COSTLEY-MOSHER DITCH

**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	50.00		E2NE	2	19N	7W	LEWIS AND CLARK
2	27.00		W2NW	1	19N	7W	LEWIS AND CLARK

**Total:** 77.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96517-00      96581-00      96582-00      96594-00      96595-00      96596-00