

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SWEET GRASS - BASIN (43BV)

CLAIMANT: J Bar L Ranches, LLC

OBJECTOR: J Bar L Ranches, LLC

CASE 43BV-0352-R-2023

43BV 127347-00

43BV 127350-00

43BV 127351-00

43BV 127352-00

43BV 211802-00

43BV 211803-00

43BV 211804-00

43BV 211805-00

**ORDER DENYING OBJECTION TO MASTER’S REPORT
AND CLOSING CASE**

On November 9, 2023, claimant and objector J Bar L Ranches, LLC (“J Bar L”) objected to the Master’s Report filed in this case. The objection asks the Court to correct mistakes in the Master’s Report pursuant to Rule 60(a), M.R.Civ.P. and Rule 23, W.R.Adj.R. For the reasons set forth in this Order, the Court denies J Bar L’s objection, adopts the Master’s Report and closes the case.

BACKGROUND

The Court included claims 43BV 127347-00, 43BV 127350-00, 43BV 12751-00, and 43BV 127352-00 in the Preliminary Decree for the Sweet Grass Creek Basin (Basin 43BV). All four claims received issue remarks resulting from the Department of Natural

Resources and Conservation (“DNRC”) examination of the claims. J Bar L filed self-objections to the place of use/maximum acres and point of diversion/means of diversion on the claims. The Court referred these claims to Senior Water Master Anika Stern to address issue remarks and objections. On June 21, 2023, the Master consolidated the claims into case 43BV-352-R-2023. The Master set a filing deadline for J Bar L to file a response to resolve the issue remarks and objections.

On October 17, 2023, J Bar L filed a detailed response indicating it agreed with the point of diversion location described in the DNRC issue remarks on the four claims. J Bar L also requested that implied claims 43BV 211802-00, 43BV 211803-00, 43BV 211804-00, and 43BV 211805-00 be added to the case for the purpose of merging them back into the original parent claims (claims 43BV 127347-00, 43BV 127350-00, 43BV 127351-00, and 43BV 127352-00). The Master granted this request.

On October 30, 2023, the Master filed a Master’s Report resolving the point of diversion issue remarks and J Bar L’s objection. The Master’s Report also recombined the implied claims into their parent claims. The Master’s Report recommended approval of all relief J Bar L requested as of the date of the report.

On November 9, 2023, J Bar L objected to the Master’s Report, arguing that both the Water Master previously who presided over these claims in 1988 in case 43BV-26 and DNRC during its examination failed to properly apply the standard narrative volume information remark for direct flow irrigation water rights to claims 43BV 127347-00, 43BV 127350-00, 43BV 127351-00, and 43BV 127352-00. J Bar L also contends that Section 85-2-234(6), MCA, requires the Court to add the narrative volume remark rather than a numeric volume. J Bar L maintains decreeing the now-combined claims with a quantified volume could be construed as a limitation to the historical beneficial use of the claims. J Bar L seeks relief under Rule 60(a), M.R.Civ.P., arguing the Master’s Report’s failure to recommend modifications to the volume element is a clerical mistake.

ISSUE

Does J Bar L’s objection provide a basis to modify the volume of claims 43BV 127347-00, 43BV 127350-00, 43BV 127351-00, and 43BV 127352-00 to the standard

volume narrative remark used for direct flow irrigation claims under Rule 15
W.R.C.E.R.?

DISCUSSION

J Bar L seeks relief under Rule 60(a), M.R.Civ.P. which provides:

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.

Rule 60 only applies “to non-substantive clerical mistakes and oversights in the record; not to alter the record in a way that affects the substantive rights of the parties.” *In re Bloom*, Case 2019 Mont. Water LEXIS 127, *3-4 (claim 76GJ 6046-00). Clerical mistakes are errors “which misrepresent the court's original intention.” *Muri v. Frank*, 2001 MT 29, ¶ 12, 304 Mont. 171, 18 P.3d 1022. Rule 60(a) cannot be used to “set aside a judgment actually rendered nor change what was originally intended.” *In re Marriage of Schoenthal*, 2005 MT 24, ¶ 19, 326 Mont. 15, 106 P.3d 1162.

J Bar L’s objection does not identify any clerical mistakes. Including a quantified volume on the abstracts does not misrepresent what the Water Master recommended in the Master’s Report. The Master’s Report accurately incorporated J Bar L’s October 17, 2023 response. J Bar L’s response did not ask the Court to modify the volume remark. Absent any objection or mention of volume, volume was not an issue before the Master at the time the Master’s Report was issued. The Master’s Report made recommendations to for the claims consistent with J Bar L’s response, resolution of J Bar L’s objection and resolution of the issue remarks, with no identified clerical errors.

Additionally, even if the Court were to address the merits of J Bar L’s motion, the case 43BV-26 Master’s Report prepared in 1988 addressed the volume element in Section VIII of the report, so the issue was previously litigated. Moreover, to the extent J Bar L argues some of its decreed volume disappeared when the implied claims were recombined, the time to have addressed that concern was in the response J Bar L filed prior to the most recent Master’s Report, not in a Rule 60 clerical correction motion.

Finally, the Water Court decreed claims 43BV 127347-00, 43BV 127350-00, 43BV 127351-00, and 43BV 127352-00 in the Preliminary Decree with a quantified volume. Neither J Bar L nor anyone else objected based on volume. Volume did not appear on the objection list for these claims. Absent an objection or issue remark, no other water users were given notice of the possible correction to the volume and were not informed of these proceedings. Rule 60 does not provide a backdoor mechanism to raise a new issue that could have been raised and noticed with a proper objection.

CONCLUSION

Accordingly, J Bar L's Objection to the Master's Report is DENIED. The Master's Report is ADOPTED and the case is CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Michael J.L. Cusick, Esq.
Cusick, Farve, Mattick & Refling, P.C.
P.O. Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
(406) 587-9079 fax
office@cmrlawmt.com