

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

CLAIMANT: The Nature Conservancy

CASE 41K-0454-R-2023

41K 160746-00

41K 160753-00

41K 160759-00

41K 160760-00

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

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. Each of the above-captioned claims received issue remarks during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0454-R-2023 and a filing deadline was issued by the Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 160759-00 received the following substantive issue remark:

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

2. On February 13, 2024, claimant The Nature Conservancy filed a *Response*. The *Response* addressed the above-listed issue remark and included the following legal land description for the point of diversion No. 2 for claim 41K 160759-00:

In response to the **ORDER** dated January 16, 2024 regarding consolidated **CASE 41K-0454-R-2023, CLAIM 41K 160759-00**, the legal description for point of diversion No. 2 should read as follows:

<u>ID</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2	SESENW	25	22N	7W	TETON

3. Claims 41K 160746-00, 41K 160753-00, and 41K 160760-00 each received notice-type issue remarks denoting modification made during the DNRC claims reexamination.

PRINCIPLES 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; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. 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.

6. 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.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. The proposed modifications contained in The Nature Conservancy's *Response* resolves the point of diversion issue remark appearing on claim 41K 160759-00. Based on the information contained the *Response*, point of diversion No. 2 for claim 41K 160759-00 should be modified as described in Finding of Fact No. 2. The modifications resolve the point of diversion issue remark appearing on claim 41K 160759-00. The issue remark should be removed.

2. The notice-type issue remarks appearing on claims 41K 160746-00, 41K 160753-00, and 41K 160760-00 served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify point of diversion No. 2 of claim 41K 160759-00 from SW in Sec 25, Twp 22N, Rge 7W to the SESENW of Sec 25, Twp 22N, Rge 7W, and remove all issue remarks from the claims.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

The Nature Conservancy
32 S Ewing St Ste 215
Helena, MT 59601

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

Water Right Number: 41K 160746-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NATURE CONSERVANCY (THE)
32 S EWING ST STE 215
HELENA, MT 59601-5749

Priority Date: OCTOBER 31, 1944

Type of Historical Right: USE

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: UNNAMED TRIBUTARY OF SUN RIVER

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		NENESE	24	22N	7W	TETON

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>
	NENESE	24	22N	7W	TETON

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 1 TO SEPTEMBER 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			NENESE	24	22N	7W	TETON

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

Water Right Number: 41K 160753-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NATURE CONSERVANCY (THE)
32 S EWING ST STE 215
HELENA, MT 59601-5749

Priority Date: OCTOBER 31, 1944

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: UNNAMED TRIBUTARY OF SUN RIVER

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		SWSW	23	22N	7W	TETON

Period of Diversion: MAY 1 TO DECEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2SESW	23	22N	7W	TETON
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Period of Diversion: MAY 1 TO DECEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO DECEMBER 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			SWSW	23	22N	7W	TETON
2			SWSESW	23	22N	7W	TETON

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

Water Right Number: 41K 160759-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NATURE CONSERVANCY (THE)
32 S EWING ST STE 215
HELENA, MT 59601-5749

Priority Date: OCTOBER 31, 1944

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.00 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: 58.50

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF SUN RIVER

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		SWSENW	25	22N	7W	TETON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

2		SESENW	25	22N	7W	TETON
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 30

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	5.00		SWNESW	25	22N	7W	TETON
2	4.00		SWSENW	25	22N	7W	TETON
3	10.00		SESENW	25	22N	7W	TETON
4	10.00		NENESW	25	22N	7W	TETON
5	8.00		NWNWSE	25	22N	7W	TETON
6	3.00		NENWSE	25	22N	7W	TETON
7	10.00		SEWSE	25	22N	7W	TETON
8	5.00		SWNESE	25	22N	7W	TETON
9	0.50		NWSESE	25	22N	7W	TETON

10	<u>3.00</u>	NESESW	25	22N	7W	TETON
Total:	58.50					

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.

160759-00

160760-00

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

Water Right Number: 41K 160760-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NATURE CONSERVANCY (THE)
32 S EWING ST STE 215
HELENA, MT 59601-5749

Priority Date: OCTOBER 31, 1944

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.00 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: 63.50

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF SUN RIVER

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		SWSNW	25	22N	7W	TETON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DITCH

Ditch Name: WEST BOADLE DITCH

2		NENSW	25	22N	7W	TETON
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DITCH

Ditch Name: WEST BOADLE DITCH

3		W2SE	25	22N	7W	TETON
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DITCH

Ditch Name: EAST BOADLE DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

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	10.00		SWNESW	25	22N	7W	TETON
2	4.00		SWSNW	25	22N	7W	TETON
3	10.00		SESENW	25	22N	7W	TETON

4	10.00	NENESW	25	22N	7W	TETON
5	8.00	NWNWSE	25	22N	7W	TETON
6	3.00	NENWSE	25	22N	7W	TETON
7	10.00	SEWSE	25	22N	7W	TETON
8	5.00	SWNESE	25	22N	7W	TETON
9	0.50	NWSESE	25	22N	7W	TETON
10	3.00	NESESW	25	22N	7W	TETON
Total:	<u>63.50</u>					

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.

160759-00 160760-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

160752-00 160760-00