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FILED
04/30/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
41K-0471-R-2023
White, Eugene
3.00

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

CLAIMANT: John K. Olson Living Trust

CASE 41K-0471-R-2023

41K 210352-00
41K 210353-00
41K 210354-00
41K 216259-00

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. Claims 41K 210352-00, 41K 210353-00,

41K 210354-00, and 41K 216259-00 each received issue remarks during the DNRC's review of the claims. The claims were consolidated into Case 41K-0471-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 210352-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWSE SEC 35 TWP 21N RGE 2E CASCADE COUNTY.

Claim 41K 210353-00 received the following substantive issue remark:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

Claim 41K 210354-00 received the following substantive issue remark:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

Claim 41K 216259-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWSE SEC 35 TWP 21N RGE 2E CASCADE COUNTY.

2. On October 11, 2023, the Water Court consolidated the claims and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimant.

3. On January 23, 2024, the Water Court issued an Order Setting Show Cause Filing Deadline. Again, nothing was filed by the ordered deadline. The Order Setting Show Cause Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that claimant Olson, John K Living Trust review this order and, if necessary, file a statement *showing cause* why the point of diversion of claim 41K 210352-00 and claim 41K 216259-00 and the type of right for claim 41K 210353-00 and 41K 210354-00 should not be modified as described in the above-listed issue remarks by **Wednesday, March 6, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees to the proposed modifications to the point of diversion of claims 41K 210352-00 and 41K 216259-00 and the proposed modification to the type of right for claims 41K 210353-00 and 41K 210354-00, the point of diversion for claims 41K 210352-00 and 41K 216259-00 will be modified from NWNWSE of Sec 35, Twp 21N, Rge 2E in Cascade County to NENWSE of Sec 35, Twp 21N, Rge 2E, the type of historical right for claim 41K 210353-00 modified from “decreed” to “filed,” the type of historical right for claim 41K 210354-00 modified from “use” to “filed,” and the issue remarks will be removed from the claims.*

4. Claim 41K 210352-00 also received a notice-type issue remark from the DNRC during its claims reexamination. No Objections were filed.

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.

CONCLUSIONS OF LAW

1. The information in the record resolves the issue remarks appearing on claims 41K 210352-00, 41K 210353-00, 41K 210354-00, and 41K 216259-00. Because nothing was filed at either filing deadline by the Claimant, a preponderance of the

evidence shows that, the point of diversion for claims 41K 210352-00 and 41K 216259-00 should be modified from NWNWSE of Sec 35, Twp 21N, Rge 2E in Cascade County to NENWSE of Sec 35, Twp 21N, Rge 2E, the type of historical right for claim 41K 210353-00 modified from “decreed” to “filed,” the type of historical right for claim 41K 210354-00 modified from “use” to “filed,” and the issue remarks should be removed from the claims.

2. The notice type issue remark appearing on claim 41K 210352-00 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 claims 41K 210352-00, 41K 210353-00, 41K 210354-00, and 41K 216259-00 as described in Conclusion of Law No. 1 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:

John K. Olson Living Trust
PO Box 18
Black Eagle, MT 59414

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

Water Right Number: 41K 210352-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: OLSON, JOHN K LIVING TRUST
PO BOX 18
BLACK EAGLE, MT 59414-0018

***Priority Date:** OCTOBER 7, 1892

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 211.00 GPM

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT USE THE SAME PUMP. THE COMBINED FLOW RATE FOR THESE RIGHTS IS LIMITED TO THE HISTORICAL PUMP CAPACITY. 41K 199346-00, 41K 208704-00, 41K 210352-00.

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

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 48.90

***Source Name:** 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		NENWSE	35	21N	2E	CASCADE

***Period of Diversion:** MAY 1 TO OCTOBER 15

Diversion Means: PUMP

***Period of Use:** MAY 1 TO OCTOBER 15

***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	18.90		NWSE	35	21N	2E	CASCADE
2	30.00		W2SE	35	21N	2E	CASCADE

Total: 48.90

Remarks:

IMPLIED CLAIM NO. 41K 216259-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41K 210353-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: OLSON, JOHN K LIVING TRUST
 PO BOX 18
 BLACK EAGLE, MT 59414-0018

***Priority Date:** OCTOBER 1, 1960

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

***Flow Rate:** 30.70 GPM

Volume: 11.00 AC-FT

Households: 1

Maximum Acres: 5.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		SWSWSE	35	21N	2E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

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		SWSWSE	35	21N	2E	CASCADE

Total: 5.00

Remarks:

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.

210353-00 210354-00

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

Water Right Number: 41K 210354-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: OLSON, JOHN K LIVING TRUST
PO BOX 18
BLACK EAGLE, MT 59414-0018

***Priority Date:** OCTOBER 1, 1960

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** 30.70 GPM

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: GROUNDWATER

Source Type: GROUNDWATER

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		SWSWSE	35	21N	2E	CASCADE

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: APRIL 1 TO DECEMBER 31

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			SWSWSE	35	21N	2E	CASCADE

Remarks:

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.

210353-00 210354-00

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

Water Right Number: 41K 216259-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: OLSON, JOHN K LIVING TRUST
PO BOX 18
BLACK EAGLE, MT 59414-0018

***Priority Date:** DECEMBER 31, 1935

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

***Flow Rate:** 6.21 CFS

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

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 48.90

***Source Name:** 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		NENWSE	35	21N	2E	CASCADE

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: PUMP

***Period of Use:** MAY 1 TO OCTOBER 15

***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	18.90		NWSE	35	21N	2E	CASCADE
2	30.00		W2SE	35	21N	2E	CASCADE

Total: 48.90

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 210352-00.