

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

FILED
04/26/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
41K-0538-R-2023
White, Eugene
10.00

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

CLAIMANT: Sun River Land & Livestock, LLC

CASE 41K-0538-R-2023
41K 14527-00

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. Claim 41K 14527-00 received issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0538-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 14527-00 received the following substantive issue remarks:
THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

2. On June 28, 2023, the Court consolidated the claim and set a filing deadline for the claimant to file information or evidence addressing and resolving the issue remark.

3. On August 18, 2023, claimant Sun River Land and Livestock, LLC filed a *Response*. The *Response* states that claim 41K 14527-00 is a flood irrigation claim with from an unnamed tributary of Mill Coulee Creek known as Lacher Creek. After reviewing the *Response*, the Court determined further clarification of the source issue was necessary to resolve the above-listed issue remark.

4. On November 3, 2023, the Court ordered the Claimant to work with the DNRC to resolve the issue remark.

5. On February 12, 2024, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted by Todd Banner on behalf of claimant Sun River Land and Livestock, LLC on December 18, 2023. Further, the *Memo* states that the multiple source issue remark was added during the reexamination of Basin 41K and that the claim is claiming two diversion which are both tributaries of Mill Coulee Creek but divert from the same source. Upon review, the DNRC recommended removing the issue remark.

6. Claim 41K 14527-00 also received a notice-type issue remark from the DNRC during its claims reexamination. No objections were filed to the claim.

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 is sufficient to resolve the multiple source issue remark appearing on claim 41K 14527-00. Based on the information contained Ms. Brough's *Memo*, the multiple source issue remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 41K 14527-00 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 remove the issue remarks from claim 14527-00.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Sun River Land & Livestock, LLC
1231 US Hwy 89
Sun River, MT 59483

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

Water Right Number: 41K 14527-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SUN RIVER LAND & LIVESTOCK LLC
1231 US HWY 89
SUN RIVER, MT 59483

Priority Date: JANUARY 1, 1961

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.13 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 125.00

Source Name: UNNAMED TRIBUTARY OF MILL COULEE 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		NESENE	18	21N	1W	CASCADE

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: HEADGATE

2		SESWNE	18	21N	1W	CASCADE
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Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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	25.00		S2NE	18	21N	1W	CASCADE
2	65.00		E2SE	18	21N	1W	CASCADE
3	5.00		SESWSE	18	21N	1W	CASCADE
4	30.00		N2N2NE	19	21N	1W	CASCADE

Total: 125.00