FILED
08/09/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0229-R-2023
White, Eugene
3.00

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

* * * * * * * * * * * * * * * * * * * *

CLAIMANT: USA (Department of Agriculture Forest Service)	**CASE 41K-0229-R-2023** 41K 56667-00 41K 56668-00 41K 56669-00 41K 56670-00

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. The above-captioned claims received an issue remark during the DNRC's review of the claims.

Claims 41K 56667-00, 41K 56668-00, 41K 56669-00, and 41K 56670-00. were consolidated into Case 41K-0229-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. Each of the claims received the following substantive issue remark:

> AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On May 17, 2023, Claimant United States Department of Agriculture, Forest service ("Forest Service") filed a *Response* which reiterated that the previously filed amendment resolved the issue remark and brought the claims into historical conformity. The *Response* states that corrections to the flow rates are necessary to correct a decimal error in the original filings. The *Response* included attachments of the amendments requesting the following modifications to the claims:

41K 56667-00, 41K 56668-00, 41K 56669-00, and 41K 56670-00.

8. Flow Rate Claimed: 5.0

- [ ] cubic feet per second
- [x] gallons per minute
- [ ] miner's inches

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. 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 proposed modifications contained in the Forest Service's *Response* and previously filed *Motion to Amend* resolve the issue remarks appearing on the claims. Based on the information contained in the Forest Service's *Response*, along with the information contained in the attached *Motion to Amend*, the claims should be modified as described in Finding of Fact No. 2. The modifications resolve the issue remarks, and the issue remarks should be removed from the claims.

2. The requested amendments do not have the reasonable potential to adversely affect other water rights as they are corrections to the abstracts which do not make any change to the actual historical use of the claimed rights on the ground. Notice by publication of these amendments is not required.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Electronically Signed By:
Hon. Judge Eugene White
Wed, Aug 09 2023 11:08:24 AM

Service Via Electronic Mail:

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26 Fort Missoula Rd
Missoula, MT 59804-7203

Service List Updated: 8/1/23

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

Water Right Number: **41K 56667-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: OCTOBER 18, 1934

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF NORWEGIAN GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNE	3	21N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWNE	3	21N	9W	LEWIS AND CLARK

SWNE SECTION 3 IS PROTRACTION BLOCK PB40

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

Water Right Number: **41K 56668-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: OCTOBER 18, 1934

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF NORWEGIAN GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNE	3	21N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWNE	3	21N	9W	LEWIS AND CLARK

SECTION 3 IS PPROTRACTION BLOCK PB40.

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

Water Right Number: **41K 56669-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: OCTOBER 18, 1934

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF NORWEGIAN GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNE	3	21N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWNE	3	21N	9W	LEWIS AND CLARK

SWNE SECTION 3 IS PROTRACTION BLOCK PB40.

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

Water Right Number: **41K 56670-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: OCTOBER 18, 1934

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF NORWEGIAN GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNE	3	21N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

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