

Montana Water Court
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FILED
10/26/2023
Sara Calkins
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0058-R-2023
White, Eugene
7.00

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

CLAIMANT: Sun River Sawtooth Ranch LLC

CASE 41K-0058-R-2023

41K 160856-00

OBJECTORS: Christine F. Clarke; Michael F. Clarke;
United States of America (Bureau of
Land Management)

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 claim received objections and issue remarks during the DNRC's review of the claims.

Claim 41K 160856-00 received a self-objection from the owners of Sun River Sawtooth Ranch, LLC, an objection to the maximum acres and place of use from The United States Bureau of Land Management (“BLM”), and issue remarks from the DNRC. Claim 41K 160856-00 was consolidated into Case 41K-0058-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the objections and issue remarks.

FINDINGS OF FACT

1. Claimant Sun River Sawtooth Ranch, LLC’s Objection is to the period of diversion and period of use for claim 41K 160856-00. However, the Objections appear to be intended to counter the acres irrigated issue remark that appeared on the claim. Attached to the Objection is the Affidavit of Merle Morris, a longtime neighbor of the place of use for claim 41K 160856-00 having lived on the adjacent property from the 1950s through 2020. Morris attests to irrigation at the place of use for claim 41K 160856-00 as well as diversion at the listed point of diversion. Also attached was the Affidavit of William Thurns from 1982 which echoes the attestation made in the Morris Affidavit.

2. Claim 41K 160855-00 received the following substantive issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT NO ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. On April 14, 2023, the BLM filed a *Status Report*. The *Status Report* indicates that if the modifications proposed in Claimant Sun River Sawtooth Ranch, LLC’s *Motion to Amend* are implemented by the Court, the BLM’s objection would be resolved.

4. On April 26, 2023, Claimant Sun River Sawtooth Ranch, LLC filed a *Response* to the Court’s Order Setting Filing Deadline. The *Response* states that modifications proposed by the Claimant would resolve the objections and issue remarks

appearing on claim 41K 160856-00 and stated that a *Motion to Amend* resolving the issues with this claim was forthcoming. A new Order Setting Filing Deadline was issued by the Court for the Claimant to file the *Motion to Amend*.

5. On July 13, 2023, Claimant Sun River Sawtooth Ranch, LLC filed a second *Response* to the Court's Order setting Filing Deadline. Attached to the *Response* was a *Motion to Amend* water right claim 41K 160856-00 and a map of the point of diversion and place of use. The *Motion to Amend* requests the following modifications to the claim:

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Claim 41K 160856-00

The point of diversion, place of use is being amended as follows to reflect use of this right prior to July 1, 1973:

Point of Diversion – This amendment clarifies the POD in NENWNW Section 32, T22N R08W, Teton County. Although there currently is no headgate on Francis Creek, a conveyance ditch to the creek is present as shown on attached map - rl178050 (USDA, 8-3-1978). The diversion and ditch are physically present. They historically conveyed water from Francis Creek to the place of use.

Place of Use – This amendment clarifies the historical POU #1 as 10 acres in W2 Section 32, T22N R08W, Teton County. Evidence of this POU is provided by the conveyance ditch, field boundaries and the attached 1978 USDA map.

This amendment removes POU #2 from the claim, which was 2.0 acres of BLM land incorrectly claimed. Correspondence with BLM (attached) indicates their plan to withdraw their objection based on removal of POU #2 from this claim.

6. The *Motion to Amend* and the Turns Affidavit both note that there is no longer a headgate associated with the point of diversion of claim 41K 160856-00. Based on this information, the means of diversion should be changed to “ditch” to correctly reflect historical usage.

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 information attached to the objection filed by Sun River Sawtooth Ranch, LLC along with proposed modifications contained in Sun River Sawtooth Ranch, LLC’s *Response* and *Motion to Amend* resolves the objections and issue remarks appearing on claim 41K 160856-00. Based on the information contained in the Sun River Sawtooth Ranch LLC’s *Response*, along with the information contained in the attached *Motion to Amend*, claim 41K 160856-00 should be modified as described in Finding of Fact No. 5. The modifications resolve the objections and issue remarks, and the issue remark should be removed from the claim.

2. The requested amendment does not have the reasonable potential to adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

3. Based on the information contained in the *Motion to Amend* and the Turns Affidavit, the means of diversion for claim 41K 160856-00 should be modified from “headgate” to “ditch.”

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.

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

Water Right Number: 41K 160856-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SUN RIVER SAWTOOTH RANCH LLC
1320 MILLS ST
MENLO PARK, CA 94025 3210

Priority Date: APRIL 15, 1932

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 204.00 GPM

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

Climatic Area: 5 - LOW

Maximum Acres: 10.00

Source Name: FRANCIS 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		NENWNW	32	22N	8W	TETON	
Period of Diversion: MAY 1 TO AUGUST 31							
Diversion Means: DITCH							
Period of Use: MAY 1 TO AUGUST 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	10.00		W2	32	22N	8W	TETON
Total:		10.00					