

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

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

CLAIMANT: SWAK, LLC

OBJECTOR: SWAK, LLC

CASE 41K-0061-R-2023

41K 200610-00

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

The above-captioned claim appeared in the Preliminary Decree for the Sun River (Basin 41K) and received a self objection from claimant SWAK, LLC (“SWAK”).

The claim was decreed with the following issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT ZERO ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

The issue remark was originally placed on the claim during claim examination on June 26, 1984.

On August 2, 2023, the above-captioned claim was consolidated into Water Court Case 41K-0061-R-2023 and on October 3, 2023 SWAK filed ‘Documentation Resolving Objection’. The filing provided evidence supporting the claim as filed.

FINDINGS OF FACT

1. The October 3, 2023 filing states that the 1961 Cascade Water Resource Survey stating that 0 acres were irrigated contradicts the Water Resource Survey field notes. Attached to the filing as ‘Exhibit B’ are the field notes showing 90 irrigated acres as well as a map highlighting portions of Sections 27 and 28. The field notes include the notation ‘Sun River Project – Greenfield Irrigation District – 43 Acres’.

2. The October 3 filing further states that there is no overlap between the place of use claimed by Greenfield Irrigation District under claim 41K 40871-00 and the place of use for the above captioned claim.

3. Lastly, the filing states that as the Department of Natural Resources provided no basis for the reduction of the claimed flow rate, the originally claimed flow rate should be reinstated.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents (including objections) filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

4. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claims.

CONCLUSIONS OF LAW

1. The evidence provided in the Documentation Resolving Objection resolves the issue identified by the issue remark.

2. The flow rate should be restored to 2 CFS as originally claimed.

RECOMMENDATION

1. Upon review the record in this case, flow rate should be restored to the 2 CFS originally claimed. The issue remark should be removed from the claim.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Last order:

Christopher Scoones
Scoones Law PLLC
P.O. Box 4570
Bozeman, MT 59772
chris@scooneslaw.com

Hertha L. Lund
Peter B. Taylor
Lund Law PLLC
662 S. Ferguson Ave., Unit 2
Bozeman, MT 59718
(406) 586-6254
Lund@Lund-Law.com
Taylor@lund-law.com

Note: Service List Updated 10-23-23

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

Water Right Number: 41K 200610-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SWAK LLC
1419 CONNOLY DR
ELKO, NV 89801 4770

Priority Date: FEBRUARY 19, 1935

Type of Historical Right: FILED

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: 3 - MODERATE

Maximum Acres: 40.00

Source Name: 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		NWNE	28	21N	1W	CASCADE

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: APRIL 1 TO OCTOBER 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		W2NWNW	27	21N	1W	CASCADE
2	30.00		NENE	28	21N	1W	CASCADE
Total:	<u>40.00</u>						