

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)

CLAIMANT: Sun River Sawtooth Ranch, LLC

OBJECTORS: Christine F. Clarke; Michael F. Clarke

CASE 41K-0590-R-2023

41K 160855-00

41K 160881-00

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.

FINDINGS OF FACT

1. Claim 41K 160855-00 received the following substantive issue remark:

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

2. Claim 41K 160855-00 received a self-objection from the owners of Sun River Sawtooth Ranch, LLC and an issue remark from the DNRC. Claim 41K 160881-00 received an objection from the United States Bureau of Land Management (“BLM”). Claims 41K 160855-00 and 41K 160881-00 were consolidated into Case 41K-0590-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 remark.

3. The objection to claim 41K 160881-00 was withdrawn by the BLM on August 26, 2021.

4. On April 26, 2023, Claimant Sun River Sawtooth Ranch, LLC filed a *Response* to the Court’s Order Setting Filing Deadline. The *Response*, however, was unclear as to the modifications proposed by the Claimant to resolve the objection and issue remark appearing on claim 41K 160855-00 but 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 160855-00 and a map of the point of diversion and place of use. The *Motion to Amend* requests the following modifications to the claim:

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	SE	12 32	22N	8W	TETON	
Period of Diversion:		APRIL 5 TO SEPTEMBER 30					
Diversion Means:		HEADGATE					
Period of Use:		APRIL 5 TO SEPTEMBER 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	8.00	NWNW	SE	32	22N	8W	TETON
Total:		8.00					

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.

2. 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.

CONCLUSIONS OF LAW

1. The proposed modifications contained in Sun River Sawtooth Ranch, LLC’s *Response* and *Motion to Amend* resolve the objection and issue remark appearing on claim 41K 160855-00. 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 160855-00 should be modified as described in Finding of Fact No. 4. The modifications resolve the objection and issue remark, 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. Claim 41K 160881-00 requires no modification.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that point of diversion No. 1 for claim 41K 160855-00 be modified to NENWNW Sec 12, Twp 22N, Rge 8W in Teton County, place of use No. 1 be modified to 8.0 acres in the NWNW of Sec 32, Twp 22N, Rge 8W in Teton County, and the issue remarks be removed from the claim.

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:

Sun River Sawtooth Ranch, LLC
1320 Mills St.
Menlo Park, CA 94025-3210

Christine F. Clarke
Michael F. Clarke
P.O. Box 205
Augusta, MT 59410

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Data\vol)\Share\WC-BASIN FOLDERS\41K PD\41K Cases\590\41K-0590-R-2023 MR (multiple claims, MTa filed for 160855 resolves self objections and IRs, objection withdrawn for 160881) 9-26-23 jbc.docx

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

Water Right Number: 41K 160855-00 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: 136.00 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: 8.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF SUN RIVER
Source Type: SURFACE WATER
SEEPAGE FROM GREENFIELD IRRIGATION CANAL

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	12	22N	8W	TETON

Period of Diversion: APRIL 5 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 5 TO SEPTEMBER 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	8.00		NWNW	32	22N	8W	TETON

Total: 8.00

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

Water Right Number: 41K 160881-00 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: NOVEMBER 21, 1899

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

***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:** 108.00

Source Name: RICHARDSON 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		SWSWSE	29	22N	8W	TETON

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: MAY 15 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	40.00		SWSW	28	22N	8W	TETON
2	30.00		E2SE	29	22N	8W	TETON
3	38.00		NWNW	33	22N	8W	TETON

Total: 108.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

160881-00 160882-00