

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

CLAIMANT: Lyle J. Wittrock; Roxanne Wittrock

CASE 41K-0070-R-2024

OBJECTOR: United States Forest Service

41K 200314-00

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 claim received an objection to the place of use and maximum acres elements from the United States Forest Service (“Forest Service”).

The claim was consolidated into Case 41K-0070-R-2024 to resolve the objection.

FINDINGS OF FACT

1. A Status Conference for Case 41K-0070-R-2024 took place on January 31, 2024, by telephone conference call. Water Master Eugene C. White presided; claimants Lyle J. Wittrock and Roxanne Wittrock were in attendance and Mark Widerschein was present on behalf of objector United States Forest Service. During the conference, the parties discussed the objection to claim 41K 200314-00.

2. On April 10, 2024, claimants Lyle J. and Roxanne Wittrock and objector Forest Service filed a *Stipulation*. (Doc 5.00)¹ The *Stipulation* contains a proposed modification to claim 41K 200314-00 that would resolve the objection appearing on the claim. The proposed modification is as follows:

1. The following information remark should be added to the abstract for claim 41K 200314-00:

**THE POINT OF DIVERSION AND PLACE OF USE ARE
LOCATED ENTIRELY ON PRIVATE LAND.**

PRINCIPLES OF LAW

1. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), 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.

3. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

¹ "Doc." Numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

CONCLUSIONS OF LAW

1. The proposed modification included in the parties' *Stipulation* resolves the objection appearing on claim 41K 200314-00.
2. The claim should be modified as described in Finding of Fact No. 2, and the objection should be considered resolved.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court add the information remark regarding the point of diversion and place of use as outlined above.

A post decree abstract of the water right claim reflecting the recommended change is 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 200314-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LYLE J WITTROCK
1463 DELTA AVE
ADAIR, IA 50002-8004

ROXANNE WITTROCK
1463 DELTA AVE
ADAIR, IA 50002-8004

Priority Date: JULY 1, 1916

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 7.00 AC-FT

Households: 7

Source Name: SPRING, UNNAMED TRIBUTARY OF MORTIMER GULCH

Source Type: GROUNDWATER

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		NESWSW	33	22N	9W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Subdivision: GIBSON LAKE TRACTS

Period of Use: JANUARY 1 TO DECEMBER 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			NESWSW	33	22N	9W	TETON

Subdivision: GIBSON LAKE TRACTS

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

SECTION 33 IS PROTRACTION BLOSCK PB49.

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.