

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

CLAIMANTS: Amy S. Mills; Tucker G. Mills

CASE 41K-0434-R-2023
41K 30128225
41K 30128255
41K 30128459

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 issue remarks during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0434-R-2023 and an Order requiring the Claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 30128225 received the following substantive issue remarks:

THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

2. On September 26, 2023, the Court consolidated the claims and ordered the Claimants to work with the DNRC to resolve the issue remarks. Multiple extensions were granted by the Court to allow time for the DNRC to correctly gather the necessary information from the Claimants.

3. On May 15, 2024, DNRC Water Resource Specialist Jamie Verploegen filed a *Memorandum* in this matter. In her *Memo*, Ms. Verploegen notes that claimant Amy Mills contacted the DNRC on October 4, 2023, to discuss the issue remarks claim 41K 30128225. Afterward, Ms. Mills submitted a map identifying the place of use for claim 41K 30128225 as NWNENE in Sec 14, Twp 21N, Rge 6W in Teton County. Additionally, the *Memo* notes that the DNRC and Ms. Mills discussed a proposed modification of the volume based on Supreme Court Rule guidelines that would result in modifying the volume from 0.06 acre-feet to 2.75 acre-feet.

4. Based on the information, including the map submitted by Ms. Mills, the DNRC made the following recommendations for modifications to claim 41K 30128225 to resolve the issue remarks:

RECOMMENDATION:

Place of Use Issue Remark P306: Based on the above discussion, phone call with Claimant, information in the scanned claim file, and copy of USDA aerial photograph (Exhibit A) signed and dated by the Claimant showing the correct place of use, it is confirmed that the legal description for the place of use should be modified to NWNENE S14, T21N, R6W Teton County. With this information, DNRC considers this issue to be resolved. If this recommendation is accepted, the DNRC recommends the issue remark be removed.

Volume Issue Remark V45: Based on the above discussion, phone call with Claimant, information in the scanned claim file from the original filing, and the Supreme Court Rules standard for calculating volume, DNRC recommends the volume on this claim be changed from 0.06AF to 2.75AF. With this information, DNRC considers this issue to be resolved and if the recommendation is accepted, DNRC recommends the issue remark be removed.

5. Each of the above-captioned claims received a notice-type issue remark from the DNRC denoting that the claims were not included in the Temporary Preliminary Decree for Basin 41K.

PRINCIPLES OF LAW

1. 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.
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. 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.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the substantive issue remarks appearing on claim 41K 30128225. Based on the information contained Ms. Verploegen's *Memo*, the place of use and volume of claim 41K 30128225 should be modified as described in Finding of Fact No. 4 and the substantive issue remarks should be removed from the claim.
2. The notice-type issue remarks appearing on each of the claims served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify claim 41K 30128225 as described in Finding of Fact No. 4 and remove the issue remarks from the claims.

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:

Amy S. Mills
Tucker G. Mills
PO Box 710
Augusta, MT 59410

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

Water Right Number: 41K 30128225 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: AMY S MILLS
PO BOX 710
AUGUSTA, MT 59410-0710

TUCKER G MILLS
PO BOX 710
AUGUSTA, MT 59410-0710

Priority Date: DECEMBER 31, 1944

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 2.75 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

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 | | NWNE | 14 | 21N | 6W | TETON |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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 | 0.50 | | NWNE | 14 | 21N | 6W | TETON |

Total: 0.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30128225 30128255

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

Water Right Number: 41K 30128255 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: AMY S MILLS
PO BOX 710
AUGUSTA, MT 59410-0710

TUCKER G MILLS
PO BOX 710
AUGUSTA, MT 59410-0710

Priority Date: DECEMBER 31, 1944

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 25.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

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 | | SESENE | 14 | 21N | 6W | TETON |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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 | | | SESENE | 14 | 21N | 6W | TETON |

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30128225 30128255

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

Water Right Number: 41K 30128459 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: AMY S MILLS
PO BOX 710
AUGUSTA, MT 59410-0710

TUCKER G MILLS
PO BOX 710
AUGUSTA, MT 59410-0710

Priority Date: DECEMBER 15, 1888

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF ELK 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 | | SESWNE | 17 | 20N | 6W | LEWIS AND CLARK |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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 | | | SESWNE | 17 | 20N | 6W | LEWIS AND CLARK |