

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

CLAIMANTS: Flint A. Sauke; Robb S. Sauke

CASE 41K-0505-R-2024
41K 12475-00

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. Claim 41K 12475-00 received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0505-R-2024 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 12475-00 received the following substantive issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE.
THE CLAIMED VOLUME EQUALS 126 TIMES THE CAPACITY OF THE RESERVOIR.

2. On January 3, 2024, the Court consolidated the claim and ordered the Claimants to work with the DNRC to resolve the issue remark.

3. On May 8, 2024, DNRC Water Resource Specialist Dixie Brough filed a *Memorandum* in this matter. In her *Memo*, Ms. Brough notes that the DNRC discussed proposed modifications to claim 41K 12475-00 with the Claimants that would resolve the above-listed issue remark. The *Memo* goes on to state that two reservoirs are associated with the claim, one on-stream and one off-stream. Further, the *Memo* states that DNRC Engineer for Trust Land Management Division, Scott Blossom, filed a letter on March 11, 2024, attesting that the dimensions of the on-stream reservoir were a maximum area of 11.3 acres and a depth of 11.0 feet for total capacity of 49.72 acre-feet. Subsequently, the Claimants filed a Verified Motion to Amend for claim 41K 12475-00 to amend the volume to 150.00 acre-feet based on the reservoirs ability to be filled three times per year.

4. Based on the information, including the Verified Motion to Amend filed by the Claimants, the DNRC made the following recommendations for modification of claim 41K 12475-00 to resolve the issue remark:

RECOMMENDATIONS:

Based on the above discussion, the DNRC recommends that the onstream reservoir information in Sec. 30, T19N R3W, be corrected per TLMD's measurements as follows:

Dam Height: 14.0 feet

Depth: 11.0 feet
Surface Area: 11.30 acres
Capacity: 49.72 acre-feet

The DNRC further recommends that the reservoir located in Sec. 20, T19N R03W be identified as off stream per the above discussion.

If the Water Court accepts the Claimants' volume amendment, the DNRC recommends the V40 issue remark be removed from the claim.

5. Claim 41K 12475-00 also received notice-type issue remarks denoting modifications made by the DNRC during its reexamination of claims. No objections were filed.

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 remark appearing on claim 41K 12475-00. Based on the information contained Ms. Brough's *Memo*, the reservoir record should be modified as described in Finding of Fact No. 4. Based on the Verified Motion to Amend filed by the Claimants, the volume should be amended to 150.00 acre-feet per Rule 17(c), W.R.Adj.R. The volume issue remark should be removed from the claim.

2. The notice-type issue remarks appearing on claim 41K 12475-00 served their notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify claim 41K 12475-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Flint A. Sauke
PO Box 12
Simms, MT 59477

Robb S. Sauke
PO Box 187
Simms, MT 59477

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

Water Right Number: 41K 12475-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: FLINT A SAUKE
PO BOX 12
SIMMS, MT 59477-0012

ROBB S SAUKE
PO BOX 187
SIMMS, MT 59477-0187

Priority Date: MAY 25, 1955

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.93 CFS

Volume: 150.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 130.00

Source Name: UNNAMED TRIBUTARY OF SIMMS CREEK, SOUTH FORK

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		NENENE	30	19N	3W	CASCADE

Period of Diversion: MARCH 1 TO JULY 1

Diversion Means: DAM

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESESE	20	19N	3W	CASCADE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 1.67 ACRES

Capacity: 3.34 ACRE-FEET

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	30	19N	3W	CASCADE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET
Depth: 11.00 FEET
Surface Area: 11.30 ACRES
Capacity: 49.72 ACRE-FEET

Period of Use: MARCH 1 TO JULY 1

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		N2	20	19N	3W	CASCADE
2	20.00		SE	20	19N	3W	CASCADE
3	70.00		SW	21	19N	3W	CASCADE
Total:	<u>130.00</u>						