

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

CLAIMANT: Galloway Investments Inc.

CASE 41K-0644-R-2024
41K 208417-00

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 208417-00 received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0644-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 208417-00 received the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. THE CLAIMED FLOW RATE IS IN QUESTION.

2. On March 6, 2024, the Water Court issued an Order Setting Filing Deadline with the following language regarding the above-listed issue remark:

ORDERED that the Claimant review this order and, *if necessary*, file a statement describing why the flow rate for claim 41K 208417-00 is not historically accurate as listed on the abstract by **Wednesday, April 10, 2024**. *If nothing is filed by the ordered deadline, the Court will conclude that the Claimant believes that the flow rate is historically accurate as it currently appears.*

3. Claim 41K 208417-00 also received a notice type issue remark from the DNRC during its claims reexamination. 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. 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.

3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

CONCLUSIONS OF LAW

1. The information in the record resolves issue remark appearing on claim 41K 208417-00. Because nothing was filed at the filing deadline by the Claimant, and the

DNRC did not provide sufficient information supporting the issue remark, the issue remark does not overcome the prima facie status afforded the Statement of Claim for claim 41K 208417-00, the flow rate should remain as it appears on the abstract, and the issue remark should be removed from the claim.

2. The notice type issue remark appearing on claim 41K 208417-00 served its 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 remove the issue remarks from claim 41K 208417-00.

A post decree abstract of the water right claim reflecting the removal of the issue remarks is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Galloway Investments Inc.
310 6th St S
Great Falls, MT 59405

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

Water Right Number: 41K 208417-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GALLOWAY INVESTMENTS INC
310 6TH ST S
GREAT FALLS, MT 59405-1922

Priority Date: APRIL 15, 1938

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 4.46 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 25.60

Source Name: SUN RIVER

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		SESESE	32	21N	2E	CASCADE

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Subdivision: SUN PRAIRIE ESTATES

Period of Use: APRIL 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	25.60		SESE	32	21N	2E	CASCADE

Subdivision: SUN PRAIRIE ESTATES

Total: 25.60