

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

CLAIMANTS: Seth Woodhouse; Ginny L. Woodhouse

OBJECTOR: Seth Woodhouse

CASE 41K-0071-R-2023
41K 160263-00

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

Claim 41K 160263-00 appeared in the Preliminary Decree for the Sun River (Basin 41K) and Seth Woodhouse filed an objection to the claim stating that the reservoir record appeared to be incorrect. The objection did not state what the reservoir record should be modified to.

The claim was additionally decreed with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

On October 31, 2023, the claim was consolidated into Water Court Case 41K-0071-R-2023 and a filing deadline was set requiring Mr. Woodhouse to file documentation to describe what modifications were necessary to correct the reservoir record pursuant to the objection. The order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the objection to the claim should be dismissed and the claim should be decreed as it appeared in the Preliminary Decree”. Nothing was filed in response to the order.

FINDINGS OF FACT

1. Seth Woodhouse failed to respond or otherwise comply with the October 31, 2023, order requiring him to file documentation necessary to resolve the objection.
2. No objections were received to period of diversion, period of use, or volume. The issue remarks on the claim do not require additional proceedings to resolve and should be removed from the claim pursuant to the language of the remarks.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. 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.

3. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

4. The Water Court may issue sanctions against any party who fails to comply with a Court order. Sanctions may include dismissal or modification of a claim or objection according to information before the Court. The sanction must be just. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The objector failed to pursue the objection and failed to overcome the prima facie status of the claim. The objection should be dismissed as a sanction and because the objection did not overcome the prima facie status of the claim.

2. The notice type issue remarks on the claim have served their purpose and should be removed from the claim.

3. The claim should be decreed as it appeared in the Preliminary Decree.

RECOMMENDATIONS

1. The objection should be dismissed.

2. The claim should be decreed with the elements as they appeared in the Preliminary Decree. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Seth Woodhouse
Ginny L. Woodhouse
PO Box 506
Fairfield, MT 59436-0506

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

Water Right Number: 41K 160263-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GINNY L WOODHOUSE
PO BOX 506
FAIRFIELD, MT 59436-0506

SETH WOODHOUSE
PO BOX 506
FAIRFIELD, MT 59436-0506

Priority Date: APRIL 4, 1964

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE
THIS RIGHT IS ALSO INCIDENTALLY USED FOR RECREATION.

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 1,825.00 AC-FT
THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF CASCADE COULEE

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 | | SESWNW | 28 | 22N | 1W | TETON |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SESWNW | 28 | 22N | 1W | TETON |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 5.68 ACRES

Capacity: 18.17 ACRE-FEET

THE DAM EXTENDS INTO THE SWSNW SEC 28 TWP 22N RGE 01W TETON COUNTY.

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 | | | NWSWNW | 28 | 22N | 1W | TETON |

| | | | | | |
|---|--------|----|-----|----|-------|
| 2 | NESWNW | 28 | 22N | 1W | TETON |
| 3 | SESWNW | 28 | 22N | 1W | TETON |
| 4 | SWSEW | 28 | 22N | 1W | TETON |
| 5 | NWSEW | 28 | 22N | 1W | TETON |