

Montana Water Court
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FILED
09/24/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0159-R-2024
White, Eugene
4.00

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

CLAIMANT: Triple DJ LLC

CASE 41K-0159-R-2024
41K 160256-00
41K 184580-00
41K 30139353

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-0159-R-2024 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 160256-00 received the following substantive issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

2. On April 18, 2024, the Court consolidated the claims and issued an order requiring the Claimant to work with the DNRC to address and resolve the reservoir issue remark appearing on claim 41K 160256-00.

3. On June 28, 2024, DNRC Water Resource Specialist Jamie Verploegen filed a *Memorandum* in this matter. In the *Memo*, Ms. Verploegen states that the DNRC was contacted by attorney Ryan Mattick on behalf of claimant Triple DJ, LLC. Mr. Mattick identified the location of the reservoir as being in the SESE of Sec 20, Twp 22N, Rge 8W and included recent aerial photographs corroborating the location of the reservoir. Upon review, the DNRC concurred with the locations of the reservoir and recommends modifying the reservoir record to SESE of Sec 20, Twp 22N, Rge 8W in order to resolve the issue remark.

4. On August 14, 2024, the Court set a filing deadline for the Claimant to file a statement if they disagreed with the DNRC’s proposed modifications to the point of diversion and place of use for claim 41K 160256-00. Nothing was filed by the ordered deadline.

5. Claim 41K 184580-00 and 41K 30139353 each received notice-type issue remarks 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. 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 160256-00 Based on the information contained Ms. Verploegen's *Memo*, the reservoir location for claim 41K 160256-00 should be modified to the SESE of Sec 20, Twp 22N, Rge 8W in Teton County. The substantive issue remark should be removed from the claim.

2. The notice-type issue remarks appearing on claims 41K 184580-00 and 41K 30139353 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 160256-00 as described in Conclusion of Law No. 1 and remove all 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.

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\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Data\vol)\Share\WC-BASIN FOLDERS\41K PD\41K Cases\159\41K-0159-R-2024 MR (multiple claims, 248 memo resolves substantive IR, notice on others) 8-8-24.jbc.docx

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

Water Right Number: 41K 160256-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: TRIPLE DJ LLC
% JILL A DYAL
PO BOX 857
CHOTEAU, MT 59422

Priority Date: DECEMBER 31, 1919

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 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		SESE	20	22N	8W	TETON

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESE	20	22N	8W	TETON

Diversion to Reservoir: DIVERSION # 1

Period of Use: MARCH 1 TO DECEMBER 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			SESE	20	22N	8W	TETON

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

Water Right Number: 41K 184580-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: TRIPLE DJ LLC
% JILL A DYAL
PO BOX 857
CHOTEAU, MT 59422

Priority Date: MAY 1, 1933

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.00 CFS

Volume: 1,080.00 AC-FT

Climatic Area: 5 - LOW

Maximum Acres: 10.00

Source Name: UNNAMED TRIBUTARY OF 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		SESENW	20	22N	8W	TETON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SLATER DITCH

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESENW	20	22N	8W	TETON

Diversion to Reservoir: DIVERSION # 1

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	5.00		SESENE	20	22N	8W	TETON
2	5.00		E2NESE	20	22N	8W	TETON

Total: 10.00

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

Water Right Number: 41K 30139353 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TRIPLE DJ LLC
% JILL A DYAL
PO BOX 857
CHOTEAU, MT 59422

Priority Date: SEPTEMBER 25, 1923

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: RICHARDSON 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		S2SE	18	22N	8W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		E2SW	20	22N	8W	TETON
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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			S2SE	18	22N	8W	TETON
2			E2SW	20	22N	8W	TETON