

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

CLAIMANTS: David Phillips; Misty Phillips

CASE 41K-0254-R-2024
41K 157015-00

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 157015-00 received an issue remark during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0254-R-2024 and an Order Requiring the Claimant to consult with the DNRC to resolve the issue remark was issued by the Water Court.

FINDINGS OF FACT

1. Claim 41K 157015-00 received the following substantive issue remark:

THE MAXIMUM ACRES CLAIMED MAY BE QUESTIONABLE. DNRC VERIFICATION WAS ABLE TO IDENTIFY 0.00 ACRES IRRIGATED. THIS MAY ALSO INDICATE QUESTIONS CONCERNING THE FLOW RATE.

THE PRIORITY DATE MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN 1979.

2. On July 30, 2024, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that Claimant David Phillips contacted the DNRC on May 22, 2024, regarding the aforementioned issue remarks. Further, the *Memo* states that the Claimants provided documentation and maps, including a soil survey historical map that collectively show adequate acreage irrigated to support the claimed 90.0 acres. Additionally, the *Memo* states that on February 7, 1994, then-claimant Sylvan Susag filed an amendment to correct the priority date from 1979 to December 31, 1934, because he had mistakenly used the date that he first owned the property when he filed for the claim. Therefore, the DNRC recommends removing the issue remarks.

3. Claim 41K 157015-00 also received a notice-type issue remark from the DNRC during its claims examination. 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.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the substantive issue remarks appearing on claim 41K 157015-00. Based on the information contained Ms. Brough's *Memo*, the issue remarks should be removed from the claim.

2. The notice-type issue remark appearing on claim 41K 157015-00 served its notice purpose and can 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 157015-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David Phillips
Misty Phillips
561 4th Lane NE
Fairfield, MT 59436

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

Water Right Number: 41K 157015-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID PHILLIPS
561 4TH LANE NE
FAIRFIELD, MT 59436

MISTY PHILLIPS
561 4TH LANE NE
FAIRFIELD, MT 59436

***Priority Date:** DECEMBER 31, 1934

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 250.00 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 90.00

Source Name: SPRING, UNNAMED TRIBUTARY OF LITTLE MUDDY CREEK, SOUTH FORK

Source Type: GROUNDWATER

ALSO KNOWN AS CLEIV SPRING

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	5	22N	2W	TETON

***Period of Diversion:** APRIL 1 TO OCTOBER 1

Diversion Means: PUMP

***Period of Use:** APRIL 1 TO OCTOBER 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	90.00		NW	5	22N	2W	TETON

Total: 90.00