

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

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CLAIMANT: State of Montana Department of Fish, Wildlife & Parks | **CASE 41K-0707-R-2024**  
41K 30144465

**NOTICE OF FILING OF MASTER’S REPORT**

This Master’s Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master’s Report if you disagree or find errors with the Master’s Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master’s Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master’s Report be filed within 10 days of the date of the Master’s Report. Because this Master’s Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 30144465 received issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0707-R-2024 and the Court issued an Order Setting Filing Deadline for the claimant to file information or evidence addressing and resolving the issue remarks.

### FINDINGS OF FACT

1. Claim 41K 30144465 received the following substantive issue remark:

THIS CLAIM DOES NOT MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2- 222(1), MCA.

2. On October 24, 2024, claimant State of Montana Department of Fish, Wildlife and Parks (“FWP”) filed a *Notice of Filing Information*. The *Notice* asserts that claim 41K 30144465 does comport with the exempt claim requirements denoted in Mont. Code Ann. § 85-2-222(1) and that the issue remark was placed in error. Additionally, the *Notice* contained an attached Declaration of Andy Brummond, an FWP inflow stream specialist, who conducted a site visit and determined the claim did meet the definition listed in Mont. Code Ann. § 85-2-222(1). Mr. Brummond based his conclusion on the fact that Swazee Lake is, in fact, a natural but anthropogenically modified lake which holds water that at least in part is naturally arising and not diverted from Rose Creek. Finally, the *Notice* included pictures of the lake and a map showing water to be naturally occurring as opposed to strictly diverted.

3. Claim 41K 30144465 also received a notice type issue remark from the DNRC during its claims reexamination. No objections were filed.

### PRINCIPLES OF LAW

1. 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.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, 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).

5. 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.

6. 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.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSIONS OF LAW

1. Based on the information contained in FWP's *Notice*, including the Declaration of Mr. Brummond, and supporting pictures and map, the exempt claim issue remark does not overcome the prima facie status afforded the Statement of Claim for claim 41K 30144465. Therefore, the exempt claim issue remark should be removed from the claim.

2. The notice type issue remark appearing on claim 41K 30144465 served its notice purpose and should be removed from the claim.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court 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 Electronic Mail:**

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

**Water Right Number:** 41K 30144465 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS  
PO BOX 200701  
HELENA, MT 59620-0701

**Priority Date:** JUNE 1, 1891

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

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

**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		SWSESE	27	21N	8W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SESWSE	27	21N	8W	LEWIS AND CLARK
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Reservoir:** ONSTREAM **Reservoir Name:** SWAZEE LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSESE	27	21N	8W	LEWIS AND CLARK

**Diversion to Reservoir:** DIVERSION # 1

**Reservoir:** ONSTREAM **Reservoir Name:** SWAZEE LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWSE	27	21N	8W	LEWIS AND CLARK

**Diversion to Reservoir:** DIVERSION # 2

**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			SWSESE	27	21N	8W	LEWIS AND CLARK
2			SESWSE	27	21N	8W	LEWIS AND CLARK

**Remarks:**

FWP FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES MT FWP: WB295. ADDITIIONAL INFORMATION PROVIDED: 1ST USE COENCIDES WITH IRRIGATION USE.