

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

CLAIMANT: United States of America (Fish & Wildlife Service)

CASE 41K-0708-R-2024
41K 188174-00

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. The Claim United States Fish and Wildlife

4. 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.

5. Notice is required to other water users if a motion to amend will adversely affect other water rights. Section 85-2-233(6), MCA.

6. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

CONCLUSIONS OF LAW

1. The information in the record resolves issue remarks appearing on claim 41K 188174-00. Based on the information presented in the amendment filed by the United States, a preponderance of the evidence shows that the point of diversion for claim 41K 188174-00 should be modified as described in Finding of Fact No. 2, and the substantive issue remarks should be removed from the claim.

2. The requested amendment and modification do not have the reasonable potential to adversely affect other water rights as they are a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

3. The notice type issue remarks appearing on claim 41K 188174-00 served their 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 modify the point of diversion of claim 41K 188174-00 as described above and 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 USPS Mail:

USA (Dept of Interior Fish & Wildlife Service)
Denver Federal Center
PO Box 25486, MS #60189
Denver, CO 80225

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

Water Right Number: 41K 188174-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR FISH & WILDLIFE SERVICE)
DENVER FEDERAL CENTER
PO BOX 25486, MS #60189
DENVER, CO 80225-0486

Priority Date: APRIL 28, 1958

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 50.00 CFS

Volume: 14,600.00 AC-FT

Source Name: MUDDY 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		NWSENW	2	22N	1W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

2 - SECONDARY		NWNWSW	27	23N	1W	TETON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

WATER DIVERTED FROM MUDDY CREEK IS CONVEYED TO LAKE CREEK WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

Reservoir: OFFSTREAM **Reservoir Name:** BENTON LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
					CASCADE

Diversion to Reservoir: DIVERSION # 1

Surface Area: 5,673.00 ACRES

Capacity: 14,222.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

RESERVOIR SURFACE AREA IS 5607 ACRES WITH SEVERAL SPILLWAYS TO CONTROL WATER SEE FILE FOR MORE INFORMATION

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			W2	2	22N	3E	CASCADE
2				3	22N	3E	CASCADE

3		4	22N	3E	CASCADE
4		5	22N	3E	CASCADE
5	E2E2	6	22N	3E	CASCADE
6	SWSE	6	22N	3E	CASCADE
7	N2N2	8	22N	3E	CASCADE
8	SE	8	22N	3E	CASCADE
9	E2SW	8	22N	3E	CASCADE
10	SWSW	8	22N	3E	CASCADE
11		9	22N	3E	CASCADE
12		10	22N	3E	CASCADE
13	W2	11	22N	3E	CASCADE
14	S2N2	13	22N	3E	CASCADE
15	S2	13	22N	3E	CASCADE
16		14	22N	3E	CASCADE
17		15	22N	3E	CASCADE
18	N2	16	22N	3E	CASCADE
19	SE	16	22N	3E	CASCADE
20	E2SW	16	22N	3E	CASCADE
21	N2	17	22N	3E	CASCADE
22	N2N2	22	22N	3E	CASCADE
23	SENE	22	22N	3E	CASCADE
24		23	22N	3E	CASCADE
25		24	22N	3E	CASCADE
26		25	22N	3E	CASCADE
27	NE	26	22N	3E	CASCADE
28	W2SW	18	22N	4E	CASCADE
29	W2	19	22N	4E	CASCADE
30	W2	30	22N	4E	CASCADE

Remarks:

THIS APPROPRIATION OF WATER TAKES WATER FROM THE SUN RIVER DRAINAGE (BASIN 41K) AND USES IT IN THE MISSOURI RIVER, FROM SUN TO MARIAS RIVERS DRAINAGE (BASIN 41Q). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.