

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
[watercourt@mt.gov](mailto:watercourt@mt.gov)

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

\*\*\*\*\*

CLAIMANTS: Jerry G. Bowen; Brett R. Fagenstrom;  
Kim J. Fagenstrom; Kurt J.  
Fagenstrom; John Robert Sechena;  
Robert W. Sechena

**CASE 41K-0015-R-2023**  
41K 30127964

OBJECTORS: John Robert Sechena; United States of  
America (USDA Forest Service)

COUNTEROBJECTORS: John Robert Sechena

**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

The above-captioned claim appeared in the Preliminary Decree for the Sun River (Basin 41K) and received objections from claimant John Robert Sechena and the United States.

Mr. Sechena seeks to modify the point of diversion and places of use while the United States seeks the addition of a remark on the claim clarifying that the “place of use and point of diversion occur entirely on private lands”.

On October 30, 2023, the above-captioned claim was consolidated into Water Court Case 41K-0015-R-2023 and on November 30, 2023, the United States' filed a 'Response to Court Order'. The filing stated that the addition of the remark described above would resolve the United States' objection.

### FINDINGS OF FACT

1. The places of use and points of diversion should be modified to the following to reflect historical use:

#### **Places of Diversion & Use:**

- SE ¼ NE ¼ SW ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County
- SW ¼ NE ¼ SW ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County
- NW ¼ NE ¼ SW ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County
- NE ¼ NW ¼ SW ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County
- NE ¼ SE ¼ SW ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County
- NW ¼ SW ¼ SE ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County
- SW ¼ NW ¼ SE ¼ Section 3 Twp 20 N Range 9 W, Lewis & Clark County

2. The following remark should be placed on the claim:

Place of use and point of diversion occur entirely on private lands

3. The issue remark on the claim requires no additional proceedings or information to resolve and should be removed from the claim.

### 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(12), 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.

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents (including objections) filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

4. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claims.

### **CONCLUSIONS OF LAW**

1. The places of use and points of diversion should be modified as discussed above.
2. The remark discussed above should be placed on the claim.

### **RECOMMENDATION**

1. Upon review the record in this case, the claim should be modified as discussed above. The issue remark 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:**

Jerry G. Bowen  
1525 16<sup>th</sup> Ave. SW  
Great Falls, MT 59404

Brett R. Fagenstrom  
Kim J. Fagenstrom  
Kurt J. Fagenstrom  
PO Box 2623  
Great Falls, MT 59403-2623

John Robert Sechena  
12208 Greenwood Ave. N  
Seattle, WA 98133-8106

Robert W. Sechena  
1526 Central Ave.  
Great Falls, MT 59401-3836

**Service via Electronic Mail:**

Eve McDonald, Attorney  
US Dept of Justice-ENRD  
999 18<sup>th</sup> Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1381  
[evelyn.mcdonald@usdoj.gov](mailto:evelyn.mcdonald@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

Mark Widerschein, Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 532-5803  
[Mark.widerschein@usdoj.gov](mailto:Mark.widerschein@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

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

**Water Right Number:** 41K 30127964 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**

JERRY G BOWEN  
1525 16TH AVE SW  
GREAT FALLS, MT 59404

BRETT R FAGENSTROM  
PO BOX 2623  
GREAT FALLS, MT 59403-2623

KIM J FAGENSTROM  
PO BOX 2623  
GREAT FALLS, MT 59403-2623

KURT J FAGENSTROM  
PO BOX 2623  
GREAT FALLS, MT 59403-2623

JOHN ROBERT SECHENA  
12208 GREENWOOD AVE N  
SEATTLE, WA 98133-8106

ROBERT W SECHENA  
1526 CENTRAL AVE  
GREAT FALLS, MT 59401-3836

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

**Priority Date:** DECEMBER 20, 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 BEAVER CREEK, WEST FORK

**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		SENE SW	3	20N	9W	LEWIS AND CLARK

**Period of Diversion:** MAY 15 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 2 SWNESW 3 20N 9W LEWIS AND CLARK  
**Period of Diversion:** MAY 15 TO OCTOBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 3 NWNESW 3 20N 9W LEWIS AND CLARK  
**Period of Diversion:** MAY 15 TO OCTOBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 4 NENWSW 3 20N 9W LEWIS AND CLARK  
**Period of Diversion:** MAY 15 TO OCTOBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 5 NESESW 3 20N 9W LEWIS AND CLARK  
**Period of Diversion:** MAY 15 TO OCTOBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 6 NWSWSE 3 20N 9W LEWIS AND CLARK  
**Period of Diversion:** MAY 15 TO OCTOBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 7 SWNWSE 3 20N 9W LEWIS AND CLARK  
**Period of Diversion:** MAY 15 TO OCTOBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
**Period of Use:** MAY 15 TO OCTOBER 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			SENE SW	3	20N	9W	LEWIS AND CLARK
2			SWNE SW	3	20N	9W	LEWIS AND CLARK
3			NWNE SW	3	20N	9W	LEWIS AND CLARK
4			NENE SW	3	20N	9W	LEWIS AND CLARK
5			NESE SW	3	20N	9W	LEWIS AND CLARK
6			NWSE SE	3	20N	9W	LEWIS AND CLARK
7			SWNE SE	3	20N	9W	LEWIS AND CLARK

**Remarks:**

PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LANDS.