

Montana Water Court
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FILED
01/30/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0018-R-2023
Block, Nathaniel
6.00

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

CLAIMANTS: John R. Cobb; Cobb & Cobb LLC;
Michaela Sarah Hamilton Howe-Cobb
Trust; Morgan Helen Worthington
Howe-Cobb Trust

OBJECTOR: United States of America (USDA Forest
Service)

CASE 41K-0018-R-2023

41K 96002-00
41K 96121-00
41K 96122-00
41K 96142-00
41K 96155-00

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

The above-captioned claims appeared in the Preliminary Decree for the Sun River (Basin 41K) and received objections from the United States of America (United States).

On January 2, 2024, the parties filed a Stipulation to Resolve Objections, detailing modifications to the claims that would reflect historic use and resolve the objections. The Stipulation was signed by all parties.

FINDINGS OF FACT

- Pursuant to the Stipulation, claim 41K 96002-00 should be modified as follows:

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>
4		S2SENE	25	20N	9W	LEWIS AND CLARK
Period of Diversion: MARCH 1 TO SEPTEMBER 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		E2NESE	25	20N	9W	LEWIS AND CLARK
Period of Diversion: MARCH 1 TO SEPTEMBER 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
Period of Use: MARCH 1 TO SEPTEMBER 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>
4			S2SENE	25	20N	9W	LEWIS AND CLARK
2			E2NESE	25	20N	9W	LEWIS AND CLARK

Remarks: POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

- Pursuant to the Stipulation, claim 41K 96121-00 should be modified as follows:

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	NENESE	36	20N	9W LEWIS AND CLARK
Period of Diversion: MAY 1 TO NOVEMBER 1						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
Period of Use: MAY 1 TO NOVEMBER 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	NENESE	36	20N	9W LEWIS AND CLARK

Remarks: POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

- Pursuant to the Stipulation, claim 41K 96122-00 should be modified as follows:

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		SWNW	NW NE	36	20N	9W LEWIS AND CLARK

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MARCH 1 TO NOVEMBER 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			SWNW	NW NE	36	20N	9W LEWIS AND CLARK

Remarks: POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

4. Pursuant to the Stipulation, claim 41K 96142-00 should be modified as follows:

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	N2NESW	S2SE NW	25	20N	9W	LEWIS AND CLARK

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		N2NESW	S2SE NW	25	20N	9W	LEWIS AND CLARK

Remarks: POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

5. Pursuant to the Stipulation, the following remark should be placed on claim 41K 96155-00:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

6. Adoption of the modifications discussed above resolves the objections filed by the United States.

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(13), 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. 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.

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 above-captioned claims should be modified as described above to reflect historical use of the claims.

2. Modification of the claims resolves the objections filed by the United States.

RECOMMENDATIONS

1. The POU's & PODs for claims 41K 96002-00, 41K 96121-00, 41K 96122-00 and 41K 96142-00 should be modified as described in Findings of Fact 1-5.

2. The information remark described above should be added to the above-captioned claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

John R. Cobb
PO Box 388
Augusta, MT 59410-0388

Cobb & Cobb LLC
PO Box 348
Augusta, MT 59410-0348

Michaela Sarah Hamilton Howe-Cobb Trust
PO Box 289
Augusta, MT 59410-0289

Morgan Helen Worthington Howe-Cobb Trust
Morgan Helen Worthington Howe-Cobb Trustee
14970 Dark Star Ct
Morgan Hill, CA 95037-6011

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

Water Right Number: 41K 96002-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JOHN R COBB
PO BOX 388
AUGUSTA, MT 59410-0388

COBB & COBB LLC
PO BOX 348
AUGUSTA, MT 59410-0348

HOWE-COBB, MICHAELA SARAH HAMILTON TRUST
PO BOX 289
AUGUSTA, MT 59410-0289

HOWE-COBB, MORGAN HELEN WORTHINGTON TRUST
MORGAN HELEN WORTHINGTON HOWE-COBB TRUSTEE
14970 DARK STAR CT
MORGAN HILL, CA 95037-6011

***Priority Date:** JANUARY 1, 1868

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 WILLOW 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		E2NESE	25	20N	9W	LEWIS AND CLARK

Period of Diversion: MARCH 1 TO SEPTEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MARCH 1 TO SEPTEMBER 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			E2NESE	25	20N	9W	LEWIS AND CLARK

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND

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

Water Right Number: 41K 96121-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JOHN R COBB
PO BOX 388
AUGUSTA, MT 59410-0388

COBB & COBB LLC
PO BOX 348
AUGUSTA, MT 59410-0348

HOWE-COBB, MICHAELA SARAH HAMILTON TRUST
PO BOX 289
AUGUSTA, MT 59410-0289

HOWE-COBB, MORGAN HELEN WORTHINGTON TRUST
MORGAN HELEN WORTHINGTON HOWE-COBB TRUSTEE
14970 DARK STAR CT
MORGAN HILL, CA 95037-6011

***Priority Date:** JANUARY 1, 1868

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 WILLOW 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		SESENE	36	20N	9W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO NOVEMBER 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			SESENE	36	20N	9W	LEWIS AND CLARK

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND

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

Water Right Number: 41K 96122-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JOHN R COBB
PO BOX 388
AUGUSTA, MT 59410-0388

COBB & COBB LLC
PO BOX 348
AUGUSTA, MT 59410-0348

HOWE-COBB, MICHAELA SARAH HAMILTON TRUST
PO BOX 289
AUGUSTA, MT 59410-0289

HOWE-COBB, MORGAN HELEN WORTHINGTON TRUST
MORGAN HELEN WORTHINGTON HOWE-COBB TRUSTEE
14970 DARK STAR CT
MORGAN HILL, CA 95037-6011

***Priority Date:** JANUARY 1, 1868

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: SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: GROUNDWATER

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		SWNWNE	36	20N	9W	LEWIS AND CLARK

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MARCH 1 TO NOVEMBER 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			SWNWNE	36	20N	9W	LEWIS AND CLARK

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND

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

Water Right Number: 41K 96142-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JOHN R COBB
PO BOX 388
AUGUSTA, MT 59410-0388

COBB & COBB LLC
PO BOX 348
AUGUSTA, MT 59410-0348

HOWE-COBB, MICHAELA SARAH HAMILTON TRUST
PO BOX 289
AUGUSTA, MT 59410-0289

HOWE-COBB, MORGAN HELEN WORTHINGTON TRUST
MORGAN HELEN WORTHINGTON HOWE-COBB TRUSTEE
14970 DARK STAR CT
MORGAN HILL, CA 95037-6011

***Priority Date:** JANUARY 1, 1868

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: SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: GROUNDWATER

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		N2NESW	25	20N	9W	LEWIS AND CLARK

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			N2NESW	25	20N	9W	LEWIS AND CLARK

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND

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

Water Right Number: 41K 96155-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JOHN R COBB
PO BOX 388
AUGUSTA, MT 59410-0388

COBB & COBB LLC
PO BOX 348
AUGUSTA, MT 59410-0348

HOWE-COBB, MICHAELA SARAH HAMILTON TRUST
PO BOX 289
AUGUSTA, MT 59410-0289

HOWE-COBB, MORGAN HELEN WORTHINGTON TRUST
MORGAN HELEN WORTHINGTON HOWE-COBB TRUSTEE
14970 DARK STAR CT
MORGAN HILL, CA 95037-6011

***Priority Date:** JANUARY 1, 1868

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 WILLOW 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		S2SESW	25	20N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		W2SWSE	25	20N	9W	LEWIS AND CLARK
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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			S2SESW	25	20N	9W	LEWIS AND CLARK
2			W2SWSE	25	20N	9W	LEWIS AND CLARK

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND