

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

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

CLAIMANTS: Hugh (Dan) Sands; Rita D. Sands

OBJECTOR: State of Montana Board of Land
Commissioners

CASE 41K-0052-R-2023
41K 200202-00

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 claim appeared in the Preliminary Decree for the Sun River (Basin 41K) and received an objection from the State of Montana Board of Land

Commissioners. The claim was consolidated into Water Court Case 41K-0052-R-2023 on October 30, 2023.

On January 8, 2024, the parties filed a Stipulation for Resolution of Issue Remark seeking to transfer ownership of claim 41K 200202-00 to the Montana State Board of Land Commissioners. The Stipulation was signed by all parties.

FINDINGS OF FACT

1. Claim 41K 200202-00 appeared in the Preliminary Decree for the Sun River (Basin 41K). The Montana State Board of Land Commissioners (“TLMD”) filed an objection to the claim.

2. Pursuant to the Stipulation, ownership of claim 41K 200202-00 should be transferred to the TMLD.

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. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

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. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R.; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

CONCLUSION OF LAW

1. The Stipulation conforms to applicable law. Ownership of 41K 200202-00 should be transferred to the Montana State Board of Land Commissioners.

RECOMMENDATION

1. Upon review of the record in this case ownership should be transferred as discussed above. TLMD's objection should be resolved.

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:

Hugh (Dan) Sands
Rita D. Sands
175 N. Fort Shaw Road
Fort Shaw, MT 59443-9730

Service via Electronic Mail:

~~Michele L. Snowberger~~
(Last Order)
Terisa Oomens
Montana Attorney General
Agency Legal Services Bureau
PO Box 201440
Helena, MT 59620
(406) 444-2026
(406) 444-7375
BLCWaterCourt@mt.gov
Terisa.oomens@mt.gov
Rochell.standish@mt.gov
Kayla.churchill@mt.gov

Note: Service List Updated 1-24-2024

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

Water Right Number: 41K 200202-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: JULY 16, 1971

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 2.30 CFS

***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:** 8.30

Source Name: SUN RIVER

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	1	20N	2W	CASCADE

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: PUMP

Period of Use: APRIL 1 TO NOVEMBER 30

***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	8.30		NENE	36	21N	2W	CASCADE

Total: 8.30