

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

CLAIMANT: Shaw Butte Land Co., LLC

OBJECTOR: Shaw Butte Land Co., LLC

CASE 41K-0055-R-2023

41K 208425-00

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

Claim 41K 208425-00 appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 00.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

Claimant Shaw Butte Land Co., LLC (“Shaw Butte”) filed an objection to the claim seeking to modify the flow rate, volume and place of use. The claim was consolidated into Water Court Case 41K-0055-R-2023 on August 9, 2023, and a filing deadline was set requiring the claimant to provide additional information regarding the place of use (Doc.¹ 1.00). Nothing was filed in response to the Order.

On October 26, 2023, an Order Setting Show Cause Filing Deadline was issued, requiring the claimant to file documentation and evidence resolving the issue remark discussed above (Doc. 2.00). The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the issue remark stating 0 acres are irrigated is correct and that the above-captioned claim should be dismissed”. Nothing was filed in response to the Order.

FINDINGS OF FACT

1. The claimant has failed to participate despite having opportunity to do so.
2. The claim should be dismissed for non-perfection/abandonment and for failure to comply with Orders of this Court.

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. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.
3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

17, *6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, *6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22. W.R.Adj.R.

CONCLUSION OF LAW

1. The claimants have failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Consolidating Case and Order Filing Deadline*, August 9, 2023; *Order Setting Show Cause Filing Deadline*, October 26, 2023. Accordingly, the record supports the dismissal of the claim as a sanction for failing to comply with this Court’s previous Order and to resolve the issue remark appearing on the claim.

RECOMMENDATION

1. Upon review the record in this case, the claim should be dismissed as discussed above.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Lind Dallin
Jardine, Stephenson, Blewett & Weaver, P.C.
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 208425-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: SHAW BUTTE LAND CO LLC
300 CENTRAL AVE
FL 7
GREAT FALLS, MT 59401-3127

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: PREVO COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.