

Montana Water Court
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FILED
02/07/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0150-R-2023
Block, Nathaniel
4.00

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

CLAIMANTS: Dixie Brookings; Ron Brookings

CASE 41K-0150-R-2023
41K 30112681
41K 30112682

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) with the following remarks:

41K 30112681:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41K DECREE ISSUED 05/14/1985.

41K 30112682:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41K DECREE ISSUED 5/14/1985.

THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

These remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

On June 12, 2023, the above-captioned claims were consolidated into case 41K-0150-R-2023 and an Order was issued requiring the claimants to work with the Department of Natural Resources and Conservation (DNRC) to resolve the issue remark on claim 41K 30112682. On November 6, 2023, the DNRC filed a Memorandum stating that the claimants had not been in contact with DNRC and that claim 41K 30112682 should be dismissed unless claimants resolve the issue remark.

On October 24, 2023, an Order was issued requiring the claimants to file documentation stating their position on the DNRC Memo. The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that claim 41K 30112682 should be dismissed”. Nothing was filed in response to the order.

FINDINGS OF FACT

1. Claim 41K 30112682 should be dismissed as a sanction for failure to participate in proceedings and because it appears the claim was not put to beneficial use before July 1, 1973.
2. The issue remark on claim 41K 30112681 should be removed from the claim as it has served its notice purpose and requires no additional proceedings to resolve.

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.

CONCLUSION OF LAW

1. Claim 41K 30112682 should be dismissed as discussed above. The issue remark on claim 41K 30112681 should be removed.

RECOMMENDATION

1. Upon review the record in this case, the above-captioned claims should be modified as discussed above.

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:

Dixie Brookings
Ron Brookings
23 Sun River Cascade Road
Sun River, MT 59483

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

Water Right Number: 41K 30112681 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: DIXIE BROOKINGS
23 SUN RIVER CASCADE RD
SUN RIVER, MT 59483

RON BROOKINGS
23 SUN RIVER CASCADE RD
SUN RIVER, MT 59483

Priority Date: DECEMBER 31, 1950

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 7.50 AC-FT

Households: 1

Maximum Acres: 2.50

Source Name: GROUNDWATER

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		NWNESE	34	21N	1W	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	2.50		NWNESE	34	21N	1W	CASCADE

Total: 2.50

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

Water Right Number: 41K 30112682 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: DIXIE BROOKINGS
23 SUN RIVER CASCADE RD
SUN RIVER, MT 59483

RON BROOKINGS
23 SUN RIVER CASCADE RD
SUN RIVER, MT 59483

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: SUN RIVER

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.