

Montana Water Court
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FILED
01/03/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0440-R-2023
White, Eugene
2.00

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

CLAIMANT: Tari F. Mord

CASE 41K-0440-R-2023

41K 38466-00
41K 96453-00
41K 96456-00
41K 96599-00
41K 210854-00

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, conclusion 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

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claims 41K 38466-00, 41K 96453-00,

41K 96456-00, 41K 96599-00, and 41K 210854-00 each received issue remarks during the DNRC's review of the claims. The claims were consolidated into Case 41K-0440-R-2023 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 96599-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWSESW SEC 17 TWP 20N RGE 6W LEWIS AND CLARK COUNTY.

2. On September 20, 2023, the Water Court consolidated the claims and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimant. The Order Setting Filing Deadline included the following language regarding the above-listed issue remark:

*ORDERED that claimant Tari F. Mord review this order and, if necessary, file a statement of why the point of diversion of claim 41K 96599-00 should not be modified as described in the above-listed issue remark by **Wednesday, October 18, 2023**. If nothing is filed by the deadline, this Master will conclude that the Claimant agrees to the proposed modification to the point of diversion of claim 41K 96599-00, the point of diversion will be modified from the SESW of Section 17, Twp 20N, Rge 6W in Lewis and Clark County to the NWSESW of Section 17, Twp 20N, Rge 6W in Lewis and Clark County, and the issue remark will be removed from the claim.*

3. Each of the claims also received notice-type issue remarks detailing modifications made by the DNRC during its claims reexamination. No Objections were filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record resolves the point of diversion issue remark appearing on claim 41K 96599-00. Because nothing was filed at the filing deadline by the Claimant, the Claimant appears to agree with the DNRC’s determination that the point of diversion of claim 41K 96599-00, should be modified from the SESW of Section 17, Twp 20N, Rge 6W in Lewis and Clark County to the NWSESW of Section 17, Twp 20N, Rge 6W in Lewis and Clark County and the issue remark should be removed from the claim.

2. The notice type issue remarks appearing on the claims served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the point of diversion of claim 41K 96599-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Tari F. Mord
P.O. Box 267
Havre, MT 59501-026

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41K PD\41K Cases\440\41K-0440-R-2023 MR (multiple claims, no response to FD, make changes per IR, remove IRs) 12-20-23 jbc.docx

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

Water Right Number: 41K 38466-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: TARI F MORD
 PO BOX 267
 HAVRE, MT 59501 0267

Priority Date: JUNE 1, 1871

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 100.00

Source Name: ELK CREEK
Source Type: SURFACE WATER
 ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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		NWSEW	17	20N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: BERUBE-EBERL-TRAUTMAN DITCH

Period of Use: MAY 1 TO OCTOBER 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	38.00		SWNE	9	20N	6W	LEWIS AND CLARK
2	25.00		NWNE	9	20N	6W	LEWIS AND CLARK
3	12.00		NENE	9	20N	6W	LEWIS AND CLARK
4	25.00		SENE	9	20N	6W	LEWIS AND CLARK
Total:	<u>100.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

38466-00

210854-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE ISSUED 11/04/1999. NOTICE OF COMPLETION DUE 12/31/2000. SEE 41K 38466-00.

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

Water Right Number: 41K 96453-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TARI F MORD
PO BOX 267
HAVRE, MT 59501 0267

Priority Date: DECEMBER 31, 1878

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 ELK CREEK

Source Type: SURFACE WATER
SPRING HYDROLOGICALLY RELATED TO SOURCE.

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		SWSE	3	20N	6W	LEWIS AND CLARK
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		FLOWING				
2		SESE	3	20N	6W	LEWIS AND CLARK
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
3		NWSW	2	20N	6W	LEWIS AND CLARK
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
4		NESW	2	20N	6W	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			SWSE	3	20N	6W	LEWIS AND CLARK
2			SESE	3	20N	6W	LEWIS AND CLARK
3			NWSW	2	20N	6W	LEWIS AND CLARK

4

NESW 2 20N 6W LEWIS AND CLARK

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

Water Right Number: 41K 96456-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TARI F MORD
PO BOX 267
HAVRE, MT 59501 0267

Priority Date: APRIL 30, 1880

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.60 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 224.40

Source Name: ELK CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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	9	20N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: BOONE DITCH

Period of Use: MAY 1 TO OCTOBER 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	60.00		NWSE	2	20N	6W	LEWIS AND CLARK
2	35.00		N2SW	2	20N	6W	LEWIS AND CLARK
3	129.40		SE	3	20N	6W	LEWIS AND CLARK
Total:	<u>224.40</u>						

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

96597-00

96599-00

96600-00

215754-00

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

Water Right Number: 41K 210854-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TARI F MORD
 PO BOX 267
 HAVRE, MT 59501 0267

Priority Date: DECEMBER 31, 1871

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 100.00

Source Name: ELK CREEK
Source Type: SURFACE WATER
 ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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		NWSEW	17	20N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: BERUBE-EBERL-TRAUTMAN DITCH

Period of Use: MAY 1 TO OCTOBER 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	38.00		SWNE	9	20N	6W	LEWIS AND CLARK
2	25.00		NWNE	9	20N	6W	LEWIS AND CLARK
3	12.00		NENE	9	20N	6W	LEWIS AND CLARK
4	25.00		SENE	9	20N	6W	LEWIS AND CLARK
Total:	<u>100.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

38466-00

210854-00