

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

CLAIMANTS: Mary E. Stansberry; Arnold Stansberry

CASE 41K-0532-R-2023
41K 30150316
41K 30150319

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 30150316 and 41K 30150319 each received issue remarks during the DNRC's review of the claims. The claims were consolidated into Case 41K-0532-R-2023 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Each of the claims received the following substantive issue remarks:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41K 30150316, 41K 30150319.

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

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

Claim 41K 30150316 also received the following substantive issue remark:

NO VOLUME HAS BEEN CLAIMED.

2. On July 18, 2023, the Water Court consolidated the claims and issued an Order Setting Filing Deadline for the Claimants to file information or evidence addressing the issue remarks.

3. On August 22, 2023, Bret Stansberry, son of Claimants Arnold and Mary Stansberry, filed an *Affidavit* with the Water Court. The *Affidavit* states that there was a well in existence when the Claimants purchased the property in 1961, but that a replacement well was later drilled in 1977. The *Affidavit* proposed a priority date of, “on or around September 1, 1961,” based on when the Claimants purchased the land and have historic knowledge of historical use of the well.

4. The Court determined that to resolve the issue remarks and modify the priority date as proposed in the *Affidavit*, the claims would need additional modifications including listing the type of historical right as “use,” the addition of a multiple use remark as described above, and a volume quantification of 2.75 acre-feet per year for claim 41K 30150316 based on DNRC guidelines for the claimed domestic purpose listing one household and 0.5 acres irrigated. The Court issued an Order Setting Filing Deadline for the Claimants to respond with whether they agreed to the proposed modifications. Nothing was filed by the ordered deadline. The Order Setting Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that the Claimants review this order and, *if necessary*, file a statement as to why the claims should not be modified as described above by **November 15, 2023**. *If nothing is filed by the deadline, the priority date of each claim will be modified to September 1, 1961, the type of historical right for each claim will be listed as “use,” a multiple use information remark will be added to each claim, a volume quantification of 2.75 acre-feet per year will be added to claim 41K 30150316, and the issue remarks appearing on the claims will be removed.*

5. Each of the above-captioned claims also received a notice-type issue remark stating that the claim was not included in the Basin 41K Decree issued May 14, 1985. 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 issue remarks appearing on the claims. Because the Claimants did not file a *Response* to the Court’s second Order Setting Filing Deadline, a preponderance of the evidence shows that the priority date of each claim should be modified to September 1, 1961, the type of historical right modified to “use,” a multiple use information remark should be added to each claim, and a volume

quantification of 2.75 acre-feet per year added to claim 41K 30150316. The issue remarks should be removed from the claims.

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 each of the claims 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:

Mary E. Stansberry
Arnold Stansberry
315 N Ft. Shaw Rd.
Fort Shaw, MT 59443-9718

Bret Stansberry
493 Hwy 93 N
Carmen, ID 83462

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

Water Right Number: 41K 30150316 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: ARNOLD STANSBERRY
315 N FT SHAW RD
FORT SHAW, MT 59443-9718

MARY E STANSBERRY
315 N FT SHAW RD
FORT SHAW, MT 59443-9718

Priority Date: SEPTEMBER 1, 1961

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 2.75 AC-FT

Households: 1

Maximum Acres: 0.50

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		NWSWNW	25	21N	2W	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	0.50		NWSWNW	25	21N	2W	CASCADE

Total: 0.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30150316 30150319

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

Water Right Number: 41K 30150319 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ARNOLD STANSBERRY
315 N FT SHAW RD
FORT SHAW, MT 59443-9718

MARY E STANSBERRY
315 N FT SHAW RD
FORT SHAW, MT 59443-9718

Priority Date: SEPTEMBER 1, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 10.00 GPM

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: 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		NWSWNW	25	21N	2W	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			NWSWNW	25	21N	2W	CASCADE

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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