FILED
07/28/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0221-R-2023
White, Eugene
3.00

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

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

* * * * * * * * * * * * * * * * * * * *

CLAIMANT: USA (Department of Agriculture Forest Service)	**CASE 41K-0221-R-2023**	
	41K 56633-00	41K 56634-00
	41K 56635-00	41K 56636-00
	41K 56637-00	41K 56638-00
	41K 56639-00	41K 56645-00
	41K 56647-00	41K 56698-00

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

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. The above-captioned claims received an issue remark during the DNRC's review of the claims.

Claims 41K 56633-00, 41K 56634-00, 41K 56635-00, 41K 56636-00, 41K 56637-00, 41K 56638-00, 41K 56639-00, 41K 56645-00, 41K 56647-00 and 41K 56698-00 were consolidated into Case 41K-0221-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remark.

FINDINGS OF FACT

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

> AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On May 3, 2023, Claimant United States Department of Agriculture, Forest service ("Forest Service") filed a *Response* which reiterated that the previously filed amendment resolved the issue remark and brought the claims into historical conformity. The *Response* states that correction to the flow rate is necessary to correct a decimal error in the original filing. The *Response* included attachments of the amendments requesting the following modifications to the claims:

41K 56633-00, 41K 56634-00, 41K 56635-00, 41K 56636-00, 41K 56637-00, 41K 56638-00, 41K 56639-00, 41K 56645-00, 41K 56647-00 and 41K 56698-00.

8. Flow Rate Claimed: 5.0

- [ ] cubic feet per second
- [x] gallons per minute
- [ ] miner's inches

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. 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 proposed modifications contained in the Forest Service's *Response* and previously filed *Motion to Amend* resolve the issue remarks appearing on the claims. Based on the information contained in the Forest Service's *Response*, along with the information contained in the attached *Motion to Amend*, the claims should be modified as described in Finding of Fact No. 2. The modifications resolve the issue remarks, and the issue remarks should be removed from the claims.

2. The requested amendment and modification does not have the reasonable potential to adversely affect other water rights as it is a correction to the abstracts which does not make any change to the actual historical use of the claimed rights on the ground. Notice by publication of this amendment is not required.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Electronically Signed By:
Hon. Judge Eugene White
Fri, Jul 28 2023 10:37:35 AM

Service via USPS Mail:

(Last Order)
USA (Department of Agriculture Forest Service)
Water Rights Program Manager, Northern Region
26 Fort Missoula Rd
Missoula, MT 59804-7203

Service Via Electronic Mail:
Mark J. Widerschein,
United States Department of Justice
ENRD NRS
PO Box 7611
Washington, DC 20044-7611
202-532-5803
Mark.Widerschein@Usdoj.Gov
Montanabasins.ENRD@USDOJ.GOV

Service List Updated: 7/15/2023

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

Water Right Number: **41K 56633-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: MAY 19, 1940

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENE	15	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NENE	15	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56634-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: APRIL 13, 1960

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNE	15	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNE	15	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56635-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: NOVEMBER 27, 1937

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENE	15	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NENE	15	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56636-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: JUNE 30, 1957

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56637-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: AUGUST 25, 1959

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56638-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 29, 1956

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56639-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: JUNE 20, 1950

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56645-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: OCTOBER 4, 1956

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56647-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: SEPTEMBER 24, 1930

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

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

Water Right Number: **41K 56698-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: DECEMBER 14, 1956

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: FORD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNW	14	19N	9W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNW	14	19N	9W	LEWIS AND CLARK

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.