

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)
PRELIMINARY DECREE

CLAIMANT: Frances Creek, LLC

CASE 41K-0021-R-2023

41K 200232-00

41K 200233-00

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

The above-captioned claims appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following remarks:

41K 200232-00:

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

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED RIGHT ON FRANCIS CREEK WITH A PRIORITY DATE PREDATING CASE NO 4742, CASCADE COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

41K 200233-00:

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

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The claims were consolidated into Case 41K-0021-R-2023 on August 1, 2023, and the claimants were ordered to work with the Department of Natural Resources and Conservation to resolve the issue remarks on the claims. On April 17, 2024, a Memorandum was filed (Doc.¹ 7.00).

Attached to the Memorandum was a letter, a Verified Motion to Amend, two maps and a Request to Withdraw Statement of Claim for 41K 200233-00. Two proposed abstracts were also attached to the Memo.

FINDINGS OF FACT

1. Pursuant to the Motion to Amend the maximum acres and place of use for claim 41K 200232-00 should be modified as follows:

Maximum Acres:		20.00	100.00				
	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
13.00	100.00		W2 SW	29	22N	8W	TETON
al: 7.00	100.00		E2NESE	30	22N	R8W	Teton

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

2. Pursuant to the Request to Withdraw Claim, claim 41K 200233-00 should be dismissed.

3. The Memo recommends the removal of the ‘acres irrigated’ issue remark on claim 41K 200232-00 based on the adoption of the modifications described in the Motion to Amend.

4. The remaining issue remark on claim 41K 200232-00 is a notice-type remark that states that if no objections were filed that the remark would be removed. No objections were filed, the remarks should be removed as it has served its purpose and require 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 200232-00 should be modified as discussed above. Claim 41K 200233-00 should be dismissed pursuant to the Request to Withdraw Claim. The issue remarks on claim 41K 200232-00 should be removed.

RECOMMENDATION

1. Upon review the record in this case, claim 41K 200232-00 should be modified as discussed above. Claim 41K 200233-00 should be dismissed pursuant to the Request to Withdraw. The issue remark should be removed from claim 41K 200232-00.

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:

Frances Creek, LLC
4000 Deal Ln.
Helena, MT 59602

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

Water Right Number: 41K 200232-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: FRANCES CREEK LLC
4000 DEAL LN
HELENA, MT 59602

Priority Date: MAY 21, 1910

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FURROW

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: 5 - LOW

Maximum Acres: 20.00

Source Name: FRANCIS CREEK

Source Type: SURFACE WATER

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	30	22N	8W	TETON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 30

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	13.00		W2SW	29	22N	8W	TETON
2	7.00		E2NESE	30	22N	8W	TETON

Total: 20.00

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

Water Right Number: 41K 200233-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: FRANCES CREEK LLC
4000 DEAL LN
HELENA, MT 59602

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: FRANCIS CREEK

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.