

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

CLAIMANTS: Jonathan C. Leach; Jennifer L. Leach

CASE 41K-0313-R-2024
41K 208742-00

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

FINDINGS OF FACT

1. Claim 41K 208742-00 is a stock claim owned by Jonathan Leach and Jennifer Leach. It appeared in the 41G Preliminary Decree with issue remarks. It did not receive objections during the 41G Preliminary Decree objection period.
2. The claim received the following issue remarks:

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. 41K 208742-00 is a direct from source stock water right from Antelope Creek. The legal land description for the points of diversion and places of use for claim 41K 208742-00 appeared in the Preliminary Decree as:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NENE	3	20N	1W	CASCADE
2			SESE	34	21N	1W	CASCADE

However, only the first legal land description describes an area where Antelope Creek water can be used directly from the source by livestock. The second legal land description, (SESE of Section 34, 21N, 1W) describes the parcel to the North, through which Sun River flows. The May Hall affidavit submitted with the statement of claim form confirms this assessment.

The statement of claim was filed on December 4, 1981 by Marjorie Gilmore. On the same day in 1981, Marjorie Gilmore also filed a statement of claim for stock use from the Sun River - claim 41K 208741-00 in the SESE of Section 34, T21N, R1W.

It appears that the second point of diversion and place of use for claim 41K 208742-00 is redundant with the point of diversion and place of use for claim 41K 208741-00 (which is also owned by Jonathan Leach and Jennifer Leach). Additionally, the legal land description for point of diversion and place of use no. 2 is inaccurate because claim 41K 208742-00 claims water from Antelope Creek, which does not flow through the SESE of Section 34, T21N, R1W.

4. A filing deadline was set for the claimants to comment on the point of diversion issue remark and indicate whether they agreed with the proposal to resolve the issue remark by removing point of diversion and place of use no. 2. The Order setting filing deadline stated that if nothing was filed by the deadline, the Court would conclude that the claimant agreed with the proposed issue remark resolution. Nothing was filed by the deadline. Accordingly, point of diversion and place of use no. 2 should be removed from the 41K 208742-00 claim abstract. The issue remark concerning point of diversion should be removed from the claim abstract.

The second issue remark appearing on claim 41K 208742-00 is a notice issue remark. It provides notice that the source name was modified by the DNRC during claim examination.¹ The remark has served its purpose and should be removed from the claim abstract.

¹ It is unclear why this remark was placed on the claim because it does not appear that the source name was changed. It has consistently been referred to as Antelope Creek, which is how the claim appeared in the Preliminary Decree. Regardless, the issue remark should be removed.

CONCLUSIONS OF LAW

1. 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.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The information in the claim file shows that point of diversion no. 2 is claimed by a different water right owned by Jonathan Leach and Jennifer Leach and supports removing the second point of diversion and place of use from claim 41K 208742-00.

3. If a claimant fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Rule 22, W.R.Adj.R. Claimant failed to respond to the court's order setting filing deadline. The claim will be modified to conform with the best information before the court.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41K 208742-00.
2. Point of diversion and place of use no. 2 should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jonathan C. Leach
1900 32nd Ave. NE
Black Eagle, MT 59414

Jennifer L. Leach
4501 Willowdale Lane
Great Falls, MT 59404

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

Water Right Number: 41K 208742-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JENNIFER L LEACH
4501 WILLOWDALE LN
GREAT FALLS, MT 59404

JONATHAN C LEACH
1900 32ND AVE NE
BLACK EAGLE, MT 59414

Priority Date: APRIL 17, 1932

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: ANTELOPE 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		NENE	3	20N	1W	CASCADE

Source Name: ANTELOPE CREEK

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			NENE	3	20N	1W	CASCADE