

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

CLAIMANTS: Muddy Creek Farms LLC; Somerfeld and Sons
Land and Livestock, LLC; Ted J. Neuman; Stevie
ML Neuman

CASE 41K-0447-R-2023
41K 200181-00
41K 210531-00
41K 210540-00
41K 211783-00

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. Each of the above-captioned claims

received issue remarks during the DNRC's review of the claims. The claims were consolidated into Case 41K-0447-R-2023 and an Order requiring the Claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 200181-00 received the following substantive issue remark:
THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA

Claim 41K 210540-00 received the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 87.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

2. On October 3, 2023, the Court consolidated the claims and ordered the Claimants to work with the DNRC to resolve the issue remarks.

3. On December 11, 2023, DNRC Water Resource Specialist Dixie Brough filed a *Memorandum* in this matter. In her *Memo*, Ms. Brough states that she received a Statement from Brandon Neuman of Muddy Creek Farms, LLC on October 30, 2023, agreeing to the proposed 87.00 acres irrigated for claim 41K 210540-00. Ms. Brough also states that she received a similar statement from Stevie and Ted Neuman reiterating their agreement with the 87.00 acres irrigated for claim 41K 210540-00. Therefore, the DNRC recommends the acres irrigated be modified to reflect 87.00 acres and the flow rate proportionally reduced from 3.68 cfs to 3.29 cfs to account for the reduction in acres.

Regarding the point of diversion issue remark appearing on claim 41K 200181-00, Ms. Brough states that she received information from claimant Somerfield and Sons Land and Livestock, LLC indicating that the headgate was correctly listed as SESENW of Sec 30, Twp 22N, Rge 1E in Cascade County. Additionally, Ms. Brough states that she also received information from claimant Muddy Creek Farms, LLC stating that the correct point of diversion was the NENESW of Sec 30, Twp 22N, Rge 1E in Cascade County. Ms. Brough goes on to note that because the DNRC received conflicting information regarding the historically accurate point of diversion, the DNRC was

therefore unable to provide a recommendation to the Court regarding the correct point of diversion.

4. A Status Conference for Case 41K-0447-R-2023 took place on March 20, 2024, by telephone conference call. Water Master Eugene C. White presided; claimants Dave and Leona Somerfeld were present on behalf of Somerfeld and Sons Land and Livestock, LLC; a representative of Muddy Creek Farms, LLC did not appear for the conference. During the conference, the Court intended to discuss the conflicting information provided to the DNRC by the parties regarding the historically accurate point of diversion for claim 41K 200181-00.

5. On March 22, 2024, the Court issued an Order Setting Filing Deadline for claimant Muddy Creek Farms, LLC to file any additional information regarding its proposed legal land description for the point of diversion for claim 41K 200181-00. Nothing was filed by the ordered deadline. The following language was included in the Order Setting Filing Deadline:

*ORDERED that the claimant Muddy Creek Farms, LLC review this order and, if necessary, file information or evidence showing cause why the point of diversion for claim 41K 200181-00 should not remain as listed on the abstract as SESENW of Sec 30, Twp 22N, Rge 1E in Cascade County by **Wednesday, April 24, 2024**. If nothing is filed by the deadline, this Water Master will conclude that claimant Muddy Creek Farms, LLC agrees that the point of diversion for claim 41K 200181-00 should remain listed as SESENW of Sec 30, Twp 22N, Rge 1E in Cascade County, and the issue remark will be removed from the claim.*

6. Claims 41K 210531-00, 41K 210540-00, and 41K 211783-00 each received notice-type issue remarks from the DNRC during its reexamination of claims. No objections were filed.

PRINCIPLES OF LAW

1. 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.

2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

3. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the point of diversion issue remark appearing on claim 41K 200181-00 and the acres irrigated issue remark appearing on claim 41K 210540-00. Based on the information contained Ms. Brough's *Memo*, the point of diversion for claim 41K 200181-00 should remain listed as SESENW of Sec 30, Twp 22N, Rge 1E in Cascade County, and the acres irrigated for claim 41K 210540-00 should be reduced to 87.00 acres and the flow rate reduced to 3.29 cfs per Rule 17(c), W.R.Adj.R.. The point of diversion and acres irrigated issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on claims 41K 210531-00, 41K 210540-00, and 41K 211783-00 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 claims 41K 200181-00 and 41K 210540-00 as described in Conclusion of Law No. 1 and remove all 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:

Muddy Creek Farms LLC
1490 2nd Rd NE
Vaughn, MT 59487

Somerfeld and Sons Land and Livestock, LLC
550 15th Lane NE
Power, MT 59468

Ted J. Neuman
5823 Greenock Rd
Lothian, MD 20711

Stevie ML Neuman
639 US HWY 89
Vaughn, MT 59487

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

Water Right Number: 41K 200181-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: MUDDY CREEK FARMS LLC
1490 2ND RD NE
VAUGHN, MT 59487-9605

SOMERFELD AND SONS LAND AND LIVESTOCK, LLC
550 15TH LN NE
POWER, MT 59468-9301

Priority Date: APRIL 15, 1932

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.48 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 65.50

Source Name: UNNAMED TRIBUTARY OF MUDDY 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		SESENW	30	22N	1E	CASCADE

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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	8.30		NENW	30	22N	1E	CASCADE
2	8.00		SESW	30	22N	1E	CASCADE
3	11.40		SWNE	30	22N	1E	CASCADE
4	12.90		SENE	30	22N	1E	CASCADE
5	21.60		NESE	30	22N	1E	CASCADE
6	2.30		SWNW	29	22N	1E	CASCADE
7	1.00		NWSW	29	22N	1E	CASCADE

Total: 65.50

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION AND RESERVOIR.

8775-00 61484-00 200181-00 211783-00

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

61484-00 200181-00 211783-00

AUTHORIZATION TO CHANGE ISSUED 08/17/1977 FOR CHANGE IN POINT OF DIVERSION COMPLETED 10/13/1977. SEE 41K 200181-00. AUTHORIZATION TO CHANGE ISSUED 06/05/1987 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE COMPLETED 10/13/1988 SEE 41K 200181-01.

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

Water Right Number: 41K 210531-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: A

Owners: TED J NEUMAN
5675 SOUTHERN MD DRIVE
LOTHIAN, MD 20711

MUDDY CREEK FARMS LLC
1490 2ND RD NE
VAUGHN, MT 59487-9605

Priority Date: MAY 25, 1928

CLAIM FILED LATE 05/03/1982 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 36.00

Source Name: LARGENT COULEE

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		NWSWNE	32	22N	1E	CASCADE

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 15

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	25.00		SE	32	22N	1E	CASCADE
2	11.00		SWNE	32	22N	1E	CASCADE

Total: 36.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**SUN RIVER
BASIN 41K**

Water Right Number: 41K 210540-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: A

Owners: STEVIE ML NEUMAN
639US HWY 89
VAUGHN, MT 59487-9534

TED J NEUMAN
5675 SOUTHERN MD DRIVE
LOTHIAN, MD 20711

MUDDY CREEK FARMS LLC
1490 2ND RD NE
VAUGHN, MT 59487-9605

Priority Date: JUNE 30, 1932

CLAIM FILED LATE 05/03/1982 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.29 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 87.00

Source Name: LARGENT COULEE

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		NE	31	22N	1E	CASCADE

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: BUBNASH LATERAL

Period of Use: APRIL 1 TO OCTOBER 15

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	23.00		NWNW	32	22N	1E	CASCADE
2	40.00		S2NW	32	22N	1E	CASCADE

3	14.00	NWSW	32	22N	1E	CASCADE
4	<u>10.00</u>	NENW	32	22N	1E	CASCADE
Total:	87.00					

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**SUN RIVER
BASIN 41K**

Water Right Number: 41K 211783-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: MUDDY CREEK FARMS LLC
1490 2ND RD NE
VAUGHN, MT 59487-9605

Priority Date: MAY 15, 1928

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/02/1986 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.81 CFS

Volume: 375.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 75.00

Source Name: UNNAMED TRIBUTARY OF MUDDY 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		SWSWSW	30	22N	1E	CASCADE

Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: HEADGATE

2		NENESW	30	22N	1E	CASCADE
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Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 15 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	58.00		SE	30	22N	1E	CASCADE
2	17.00		E2E2SW	30	22N	1E	CASCADE

Total: 75.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION AND RESERVOIR.

8775-00 61484-00 200181-00 211783-00

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

61484-00 200181-00 211783-00