

Montana Water Court
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FILED
08/05/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0310-R-2024
Weisz, Madeleine
15.00

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

* * * * *

CLAIMANTS: Montana State Board of Land
Commissioners; Blenton Ranch Co.

CASE 41K-0310-R-2024
41K 11389-00
41K 35197-00
41K 160385-00

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. The claims in this case were consolidated together to address an over-filed Notice of Appropriation issue remark that appears on all three claims. The remark states:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41K 11389-00, 41K 35197-00, 41K 160385-00, 41K 35196-00.¹

Claims 41K 11389-00 and 41K 35197-00 are owned by Montana State Board of Land Commissioners - Forestry and Trust Lands Division. Claim 41K 160385-00 is owned by Blenton Ranch Co.

2. On December 17, 2024, the parties filed a Stipulation and Settlement Agreement (Doc.² 10.00). The terms of the Stipulation were not adequately supported, and a filing deadline was set for the parties to file additional evidence or amend the Stipulation. The parties filed an Amended Stipulation and Settlement Agreement on April 7, 2025. (Doc. 12.00).

3. To address the over-filed Notice of Appropriation issue remark, the parties explain the history of the three claims in this case. To resolve the over-filed Notice of Appropriation the parties propose that claim 41K 11389-00 be modified from a “filed” right to a “use” right with a priority date of November 6, 1958; and the type of right for claim 41K 35197-00 be modified from a “filed” right to a “use” right based on previous Water Court proceedings.

Claim 41K 11389-00

4. To support the requested modifications to claim 41K 11389-00, the parties attach a Verified Motion to Amend from Elizabeth Miller as Exhibit K. The Exhibit establishes that Section 31 of Township 22 North, Range 6 West came under state ownership on November 6, 1958 under the provisions of Section 8 of the Act of June 28,

¹ Claim 41K 35196-00 was dismissed in Case 41K-2000-R-2021 pursuant to a Withdrawal filed the Montana State Board of Land Commissioners.

² “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

1934 (48 Stat. 1269) which was “An Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement and development, to stabilize the livestock industry dependent upon the public range, and for other purposes.” The Motion to Amend is sufficient to show that claim 41K 11389-00 should be modified to a use right with a November 6, 1958 priority date.

Claim 41K 35197-00

5. The parties explain that during prior proceedings, the Court found that the source for claim 41K 35197-00 was not Seepage Creek as identified in the Notice of Appropriation attached to the statement of claim but instead was determined to be a “swamp.”

8. The Stipulation of the parties calls for changing the source for claim 41K-W-035197-00 to "groundwater" and the means of diversion to drainage ditch. The term groundwater by itself is not an acceptable source name. It appears that this claim uses a drainage ditch system to take water from a swamp or marsh area for use on nearby land. The source is actually the swamp. The intent of the Stipulation can be obtained by changing the source to an unnamed tributary of the Sun River and the means of diversion to drainage ditch.

Master’s Report, Case No. 41K-41, FOF 8 (Dec. 5, 1996).

Because claim 41K 35197-00 relies on a different source than the source identified in the Notice of Appropriation, the claimants explain that the type of right should have been modified from “filed” to “use” during the previous proceedings.

To more clearly identify the source for claim 41K 35197-00, an information remark will be added to the source element stating, “source is a swamp.”

6. The requested modifications to claims 41K 11389-00 and 41K 35197-00 are supported by a preponderance of the evidence and resolve the over-filed Notice of Appropriation issue remarks appearing on the three claims.

Other Issue Remarks

7. The claims in this case received the following additional issue remarks:

Claim 41K 11389-00:

POINT OF DIVERSION 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.

Claim 41K 35197-00:

THE TIMELY FILED OBJECTION OF UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE SOURCE AND MEANS OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

PART OF THE PLACES OF USE OF FILE NOS. W160384-00 AND W160385-00 WERE ALSO CLAIMED BY THE CLAIMANT OF FILE NO. W035197-00. THE WATER COURT DECREES THESE RIGHTS AND MAKES ALL CLAIMS A MATTER OF RECORD.

Claim 41K 160385-00:

THE TIMELY FILED OBJECTION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE SOURCE. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH 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.

The above remarks are considered notice issue remarks. The purpose of the remarks is to provide notice of certain aspects of the claim. The issue remarks have served their notice purposes and may be removed from the claim abstracts.

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.

The parties have submitted sufficient evidence to support the modifications requested to claims 41K 11389-00 and 41K 35197-00.

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 over-filed Notice of Appropriation issue remarks have been addressed and resolved by the requested modifications to claims 41K 11389-00 and 41K 35197-00. The over-filed Notice of Appropriation issue remarks should be removed from all three claims.

The remaining issue remarks appearing on the claims in this case are considered notice issue remarks. The notice issue remarks do not overcome the prima facie status of claims. The remarks have served their notice purpose and should be removed from the claim abstracts.

3. The Water Court is not bound by settlement agreements. Settlement agreements are subject to review and approval of the Water Court. Rule 17, W.R.Adj.R. The settlement agreement filed by the parties in this case should be accepted by the Water Court.

RECOMMENDATION

1. Claims 41K 11389-00 and 41K 35197-00 should be modified as provided above.

2. The issue remarks should be removed from the claims in this case.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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

Water Right Number: 41K 11389-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: NOVEMBER 6, 1958

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 255.82 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 15.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF SUN RIVER

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	1	NWNWNW	31	22N	6W	TETON

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	15.00		SENW	31	22N	6W	TETON
Total:	15.00						

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

Water Right Number: 41K 35197-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: OCTOBER 2, 1919

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.00 CFS

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 173.00

***Source Name:** UNNAMED TRIBUTARY OF SUN RIVER

Source Type: SURFACE WATER

THE SOURCE IS A SWAMP

***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		NWNENE	36	22N	7W	TETON

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: DRAIN DITCH

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	102.00		NE	36	22N	7W	TETON
2	26.00		SW	36	22N	7W	TETON
3	45.00		SE	36	22N	7W	TETON

Total: 173.00

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

Water Right Number: 41K 160385-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BLENTON RANCH CO
PO BOX 308
AUGUSTA, MT 59410-0308

Priority Date: OCTOBER 2, 1919

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.00 CFS

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

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 69.00

Source Name: UNNAMED TRIBUTARY OF SUN RIVER

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	36	22N	7W	TETON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: YOUNG DITCH

Period of Use: MAY 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	69.00		W2	31	22N	6W	TETON

Total: 69.00