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FILED
01/14/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0048-R-2023
White, Eugene
15.00

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

CLAIMANTS: Danielle M. Neal; Lloyd Neal

OBJECTOR: Greenfields Irrigation District

CASE 41K-0048-R-2023

41K 10770-00

41K 10771-00

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.

Each of the claims received an objection to the flow rate, means of diversion, point of diversion, priority date, and volume elements from Greenfields Irrigation District (“Greenfields”) as well as issue remarks from the DNRC. Claims 41K 10770-00 and 41K 10771-00 were consolidated into Case 41K-0048-R-2023 and an Order Setting Status Conference was issued by the Water Court to resolve the objections and issue remarks.

FINDINGS OF FACT

1. A Status Conference for Case 41K-0048-R-2023 took place on October 11, 2023, by telephone conference call. Water Master Eugene C. White presided; Paul Neal was present on behalf of claimants Danielle M. Neal and Lloyd Neal; Colleen Coyle was present on behalf of objector Greenfields.

During the conference, Ms. Coyle noted that the objections to the above-captioned claims centered on the potential resolution of the issue remarks appearing on the claims and requested a separate filing deadline for the Claimants to work with DNRC to resolve the issue remarks before the deadline set for the parties to file settlement documents.

2. Claim 41K 10770-00 received the following substantive issue remark:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A DECREED RIGHT. IF THE WATER COURT AUTHORIZES THIS CHANGE TO A DECREED RIGHT, THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WOULD BE DETERMINED TO BE FILED ON THE SAME FORMERLY DECREED WATER RIGHT AND EXCEED A DECREED FLOW RATE. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 40 MINER'S INCHES DECREED IN CASE NO. 4742 , CASCADE COUNTY. 41K 10770-00, 41K 10771-00.

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

Claim 41K 10771-00 received the following substantive issue remark:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A DECREED RIGHT. IF THE WATER COURT AUTHORIZES THIS CHANGE TO A DECREED RIGHT, THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WOULD BE DETERMINED TO BE FILED ON THE SAME FORMERLY DECREED WATER RIGHT AND EXCEED A DECREED FLOW RATE. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 40 MINER'S INCHES DECREED IN CASE NO. 4742 , CASCADE COUNTY. 41K 10770-00, 41K 10771-00.

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

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS JUNE 1, 1903.

3. On June 4, 2024, Claimants Danielle M. Neal and Llyod Neal filed a *Proposed Issue Remark Resolution*. (Doc.¹ 8.00). The *Resolution* states that the type of right issue remarks appearing on each claim and the priority date issue remark appearing on claim 41K 10771-00 were resolved in Case 41K-37 during the Temporary Preliminary Decree in Basin 41K and therefore, the issue remarks should be removed. Further, the *Resolution* notes that the issue remarks pertaining to the timely filed objections of Lloyd and Danielle Neal have served their notice purpose and should be removed. Finally, the *Resolution* addresses the point of diversion issue remarks appearing on each claim stating that the points of diversion for each claim are historically accurate and the issue remarks should, therefore, be removed.

4. On July 10, 2024, Objector Greenfields filed a status report requesting additional time to review the *Resolution*.

5. On July 24, 2024, Objector Greenfields filed a second status report which included a request for a field investigation of the Claimants' property regarding the locations of the points of diversion of each claim.

6. On August 2, 2024, the Court issued a second Order Setting Status Conference to allow the parties to discuss the necessity of a field investigation.

7. A Status Conference for Case 41K-0048-R-2023 took place on September 11, 2024, by telephone conference call. Water Master Eugene C. White presided; Paul Neal was present on behalf of claimants Danielle M. Neal and Llyod Neal; no representative was present on behalf of objector Greenfields Irrigation District.

During the conference, the Court intended to discuss the necessity of the requested filed investigation. However, without participation from both parties, a discussion was unable to take place. Subsequently, objector Greenfield's request for a field investigation was denied and the Court issued an Order Setting Show Cause Filing Deadline for objector Greenfields to file information or evidence showing cause why

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

their objections should not be considered resolved by the Claimants' *Proposed Resolution*.

8. On October 17, 2024, objector Greenfields filed a *Withdrawal of Objection* for claims 41K 10770-00 and 41K 10771-00.

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.

5. 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.

6. 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.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. Based on the *Withdrawal of Objection* filed by Greenfields on October 17, 2024, Greenfield's objections to claims 41K 10770-00 and 41K 10771-00 are resolved.

2. Based on the information contained in the Claimants' *Proposed Issue Remark Resolution*, the issue remarks appearing on claims 41K 10770-00 and 41K

10771-00 were either previously adjudicated during the 41K Temporary Preliminary Decree, have served their notice purpose, or, regarding the points of diversion of each claim, do not overcome the prima facie status afforded the statement of claim. Therefore, the issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove all issue remarks from claims 41K 10770-00 and 41K 10771-00.

Post decree abstracts of the water right claims reflecting the removal of the remarks are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 41K 10770-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DANIELLE M NEAL
PO BOX 293
AUGUSTA, MT 59410

LLOYD NEAL
PO BOX 293
AUGUSTA, MT 59410

***Priority Date:** JUNE 1, 1903

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 1.00 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:** 170.00

Source Name: SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: GROUNDWATER

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		SWSESW	28	21N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 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	31.00		SWNW	27	21N	7W	LEWIS AND CLARK
2	30.00		NWSW	27	21N	7W	LEWIS AND CLARK
3	36.60		SESW	27	21N	7W	LEWIS AND CLARK
4	33.90		NESW	27	21N	7W	LEWIS AND CLARK
5	38.50		S2S2	28	21N	7W	LEWIS AND CLARK

Total: 170.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

10765-00

10766-00

10770-00

10771-00

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

Water Right Number: 41K 10771-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DANIELLE M NEAL
PO BOX 293
AUGUSTA, MT 59410

LLOYD NEAL
PO BOX 293
AUGUSTA, MT 59410

***Priority Date:** APRIL 30, 1885

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.75 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:** 170.00

***Source Name:** SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: GROUNDWATER

***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		SESWW	28	21N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 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	31.00		SWNW	27	21N	7W	LEWIS AND CLARK
2	30.00		NWSW	27	21N	7W	LEWIS AND CLARK
3	36.60		SESW	27	21N	7W	LEWIS AND CLARK
4	33.90		NESW	27	21N	7W	LEWIS AND CLARK
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10765-00

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