

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

CLAIMANT: Charles R. Mathews; Rodney H. Mindrup
Living Family Trust

CASE 41K-0417-R-2023
41K 200297-00

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 claim received issue remarks during the DNRC’s review of the claims. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

The claim was consolidated into Case 41K-0417-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 200297-00 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 FEWER ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

2. On August 29, 2023, the Court consolidated the claim and issued an order for the Claimants to work with the DNRC to address and resolve the issue remark.

3. On August 6, 2024, DNRC Water Resource Specialist Jamie Verploegen filed a *Memorandum* in this matter. Ms. Verploegen states that claimant Rodney Mindrup and Connie Matthews, on behalf of claimant Charles Matthews, contacted the DNRC to address the issue remark. Based on the information provided by the Claimants, the DNRC was able to confirm 53 of the 78 acres listed for the claim. Further, the DNRC notes that per the Montana Supreme Court Claim Examination Rules guideline of 17 GPM per acre, the flow rate should equal 901GPM. Therefore, the DNRC made recommendations to facilitate resolution of the issue remark. Those recommendations are as follows:

Maximum Flow Rate:	2.96-CFS 901 GPM						
Maximum 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:	78.00 53						
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	38.00 30		NWSE	20	21N	1W	CASCADE
2	40.00 23		SWNE	20	21N	1W	CASCADE
Total:	78.00 53						

4. On September 27, 2024, the Court issued an Order Setting Filing Deadline for the Claimants to file a statement if they disagreed with the above-listed recommendations from the DNRC. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **October 30, 2024**, for claimants Charles R. Matthews and Rodney H. Mindrup Living Family Trust to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed by the above-listed deadline, the Court will conclude that the claimants agree with the DNRC recommendations.

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.

CONCLUSION OF LAW

1. The information in the record is sufficient to resolve the substantive issue remark appearing on claim 41K 200297-00. Based on the information contained Ms. Verploegen's *Memo*, and the lack of response to the September 27, 2024 Order Setting Filing Deadline, the claim should be modified as described in Finding of Fact No. 3¹. The substantive issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify claim 41K 200297-00 as described above and remove the issue remark from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

¹ The value of 901GPM listed as the proposed modification to the flow rate of claim 41K 200297-00 will be converted to 2.01CFS as the value is over 1.00CFS.

Service via USPS Mail:

Charles R. Mathews
P.O. Box 44
Sun River, MT 59483

Rodney H. Mindrup Living Family Trust
1155 US Highway 89
Sun River, MT 59483-9728

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**SUN RIVER
BASIN 41K**

Water Right Number: 41K 200297-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: EVANNA F KROPF
1139 US HWY 89
SUN RIVER, MT 59483-9728

JESSE E KROPF
1139 US HWY 89
SUN RIVER, MT 59483-9728

CONNIE MATHEWS
PO BOX 44
SUN RIVER, MT 59483-0044

MINDRUP, RODNEY H FAMILY LIVING TRUST
1155 US HIGHWAY 89
SUN RIVER, MT 59483-9728

Priority Date: SEPTEMBER 1, 1953

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.01 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: 53.00

Source Name: UNNAMED TRIBUTARY OF MILL COULEE 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		NWSWNE	20	21N	1W	CASCADE

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 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	30.00		NWSE	20	21N	1W	CASCADE
2	23.00		SWNE	20	21N	1W	CASCADE

Total: 53.00