

Montana Water Court
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MONTANA WATER COURT
UPPER MISSOURI DIVISION
SUN RIVER
BASIN 41K
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Dean Neuman; Lucille E. Neuman; Sue Ann
Neuman; Ted J. Neuman; Peggy L. Neuman Toeckes;
Emlyn M. Neuman-Javornik

CASE 41K-0458-R-2023

41K 210463-00

41K 210465-00

41K 210467-00

41K 210530-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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. Dean Neuman, Lucille E. Neuman, Sue Ann Neuman, Ted J. Neuman, Peggy L. Neuman Toeckes, and Emlyn M. Neuman-Javornik ("Claimants") are the

record holders of claims 41K 210463-00, 41K 210465-00, 41K 210467-00, and 41K 210530-00.

2. All captioned claims received issue remarks. All claims included in the Decree were subject to pre-decree examination by the Montana Department of Natural Resources and Conservation (“DNRC”). If during claims examination the DNRC cannot confirm some aspect of a claim, an issue remark is added to the claim for review by the Water Court.

3. On February 8, 2024, Claimants were ordered to meet with the DNRC to address the unresolved issue remarks on the above captioned claims. (Doc.¹ 4.00).

4. DNRC Water Resource Specialist Jamie Verploegen filed a Memorandum on June 19, 2025. (Doc. 3.00). Ms. Verploegen reported that Claimant Emyln M. Neuman-Javornik contacted the DNRC regarding an ownership update. Subsequently, no ownership update was received and Ms. Verploegen states that no further contact was made by any of the claimants regarding information about the claims.

5. 41K 210530-00 received the following substantive issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 61.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 126.2 TIMES THE CAPACITY OF THE RESERVOIR.

6. Utilizing 1979 aerial photographs and Water Resource Survey photographs, Ms. Verploegen identified 53.00 acres of irrigation.

7. After review of claim 41K 210530-00 by the DNRC, which estimated capacity, it was determined that the claimed volume was excessive relative to the size of the reservoir. Per the Montana Supreme Court Claims Examination Rules for calculating volume, the guideline for systems involving reservoirs is 2.5 times the capacity of the reservoir. The current capacity for claim 41K 210530-00 was estimated at 0.99 Acre-Feet. The volume was calculated at 0.99 Acre-Feet x 2.5 (fills per year) for a total volume of 2.5 Acre-Feet per year.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

8. On June 20, 2025, an Order Setting Filing Deadline was issued stating:

ORDERED that the deadline is **August 13, 2025**, for the Claimants 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.

(Doc.10.00). Nothing was filed.

9. These claims also received the following notice-type issue remarks:

41K 210463-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

41K 210465-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

41K 210467-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

41K 210530-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

POINT OF DIVERSION AND RESERVOIR RECORD WERE 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.

14. No objections were filed on the claims; therefore, their elements should remain as they appear on the abstract, and the issue remarks should be removed.

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. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. 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.
6. 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.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA.
8. 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. Section 85-2-248(3), MCA.
9. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.
10. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order

issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

CONCLUSIONS OF LAW

1. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the maximum acres should be reduced as suggested by the Memorandum to reflect the historical use and resolve the acres irrigated issue remark.
2. Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the volume should be reduced as suggested by the Memorandum to reflect the historical use and resolve the volume issue remark.
3. The notice type issue remarks received on claims 41K 210463-00, 41K 210465-00, 41K 210467-00, and 41K 210530-00 have served their purposes.

RECOMMENDATIONS

1. The maximum acres for claim 41K 210530-00 should be reduced to 53.00 acres.
2. The volume for claim 41K 210530-00 should be reduced to 2.5 Acre-Feet.
3. The issue remarks on Claims 41K 210463-00, 41K 210465-00, 41K 210467-00, and 41K 210530-00 should be removed.

Post decree abstracts of water right claim reflecting the recommendations are attached to this Report.

Service via USPS Mail

Dean Neuman
Lucille E. Neuman
360 Neuman School Rd
Power, MT 59468

Sue Ann Neuman
181 Claire Dr
Clayton, NC 27520

Ted J. Neuman
5675 Southern MD Drive
Lothian, MD 20711

Peggy L. Neuman Toeckes
820 13th Ln NE
Power, MT 59468

Emlyn M. Neuman-Javornik
264 Bess Dr
Clayton, NC 27520

Note: Service List Updated 9-25-26

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

Water Right Number: 41K 210463-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

DEAN NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

LUCILLE E NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

SUE ANN NEUMAN
181 CLAIRE DR
CLAYTON, NC 27520-5539

TED J NEUMAN
5675 SOUTHERN MD DRIVE
LOTHIAN, MD 20711

PEGGY L NEUMAN TOECKES
820 13TH LN NE
POWER, MT 59468

EMLYN M NEUMAN-JAVORNIK
264 BESS DR
CLAYTON, NC 27520

Priority Date: JUNE 19, 1950

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: 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		NWSWSE	36	22N	1E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSE	36	22N	1E	CASCADE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 0.37 ACRES

Capacity: 1.48 ACRE-FEET

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			NWSWSE	36	22N	1E	CASCADE

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

Water Right Number: 41K 210465-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

DEAN NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

LUCILLE E NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

SUE ANN NEUMAN
181 CLAIRE DR
CLAYTON, NC 27520-5539

TED J NEUMAN
5675 SOUTHERN MD DRIVE
LOTHIAN, MD 20711

PEGGY L NEUMAN TOECKES
820 13TH LN NE
POWER, MT 59468

EMLYN M NEUMAN-JAVORNIK
264 BESS DR
CLAYTON, NC 27520

Priority Date: APRIL 15, 1948

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: 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		SWSWNW	31	22N	2E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	31	22N	2E	CASCADE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.27 ACRES

Capacity: 0.86 ACRE-FEET

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			SWSWNW	31	22N	2E	CASCADE

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

Water Right Number: 41K 210467-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

DEAN NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

LUCILLE E NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

SUE ANN NEUMAN
181 CLAIRE DR
CLAYTON, NC 27520-5539

TED J NEUMAN
5675 SOUTHERN MD DRIVE
LOTHIAN, MD 20711

PEGGY L NEUMAN TOECKES
820 13TH LN NE
POWER, MT 59468

EMLYN M NEUMAN-JAVORNIK
264 BESS DR
CLAYTON, NC 27520

Priority Date: MAY 6, 1969

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: 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		NESENE	11	21N	1E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESENE	11	21N	1E	CASCADE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 2.46 ACRES

Capacity: 7.87 ACRE-FEET

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			NESENE	11	21N	1E	CASCADE

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

Water Right Number: 41K 210530-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: A

Owners:

DEAN NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

LUCILLE E NEUMAN
360 NEUMAN SCHOOL RD
POWER, MT 59468

SUE ANN NEUMAN
181 CLAIRE DR
CLAYTON, NC 27520-5539

TED J NEUMAN
5675 SOUTHERN MD DRIVE
LOTHIAN, MD 20711

PEGGY L NEUMAN TOECKES
820 13TH LN NE
POWER, MT 59468

EMLYN M NEUMAN-JAVORNIK
264 BESS DR
CLAYTON, NC 27520

Priority Date: AUGUST 8, 1939

CLAIM FILED LATE 05/03/82. 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: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 2.50 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 53.00

Source Name: BRIGGS 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>
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1

SWNWNE

5

21N

1E

CASCADE

Period of Diversion:

APRIL 1 TO OCTOBER 15

Diversion Means:

DAM

THE DAM EXTENDS INTO THE NESENW SEC 5 TWP 21N RGE 1E CASCADE COUNTY.

Reservoir:

ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNE	5	21N	1E	CASCADE

Diversion to Reservoir:

DIVERSION # 1

Dam Height:

11.00 FEET

Depth:

8.00 FEET

Surface Area:

0.31 ACRES

Capacity:

0.99 ACRE-FEET

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	36.00		NW	4	21N	1E	CASCADE
2	5.00		SWNE	4	21N	1E	CASCADE
3	2.00		SWSWSW	33	22N	1E	CASCADE
4	10.00		E2SESE	32	22N	1E	CASCADE
Total:	53.00						