

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

\*\*\*\*\*

CLAIMANTS: Adam J. Smith; Taegen L. Smith

**CASE 41K-0266-R-2024**  
41K 30132657

**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. Claim 41K 30132657 received issue remarks during the DNRC's review of the claims. The claim was consolidated into Case 41K-0266-R-2024 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

## FINDINGS OF FACT

1. Claim 41K 30132657 received the following substantive issue remarks:  
NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 11.50 ACRE-FEET PER YEAR.

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

2. On January 18, 2024, the Water Court consolidated the claim and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimants. The Order Setting Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that the Claimants review this order and, *if necessary*, file a statement of why the flow rate and volume of claim 41K 30132657 should not be modified as described above by **Wednesday, February 21, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree to the proposed modifications to the flow rate and volume of claim 41K 30132657, the flow rate will be modified to 35.00 gpm and the volume modified to 11.50 acre-feet per year, and the issue remarks will be removed from the claim.*

3. Claim 41K 30132657 also received a notice type issue remark from the DNRC denoting that the claim was not included in the Basin 41K Decree issued on May 14, 1985.

## 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. 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.

#### CONCLUSIONS OF LAW

1. The information in the record resolves the flow rate and volume issue remarks appearing on claims 41K 30132657. Because nothing was filed at the filing deadline by the Claimant, a preponderance of the evidence shows that the flow rate of claim 41K 30132657 should be modified to 35.00 gpm, the volume of claim 41K 30132657 modified to 11.50 acre-feet, and the issue remarks should be removed from the claim.

2. The notice-type issue remark appearing on claim 41K 30132657 served its notice purpose and 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 the flow rate and volume of claim 41K 30132657 as described in Conclusion of Law No. 1 and remove the issue remarks 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.**

**Service via USPS Mail:**

Adam J. Smith  
Taegen L. Smith  
PO Box 635  
Augusta, MT 59410

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

**Water Right Number:** 41K 30132657 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ADAM J SMITH  
PO BOX 635  
AUGUSTA, MT 59410-0635  
  
TAEGEN L SMITH  
PO BOX 635  
AUGUSTA, MT 59410-0635

**Priority Date:** JUNE 26, 2019  
**Enforceable Priority Date:** JULY 5, 2019

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

**Type of Historical Right:** FILED  
**Purpose (Use):** DOMESTIC  
**Flow Rate:** 35.00 GPM  
**Volume:** 11.50 AC-FT  
**Households:** 1  
**Maximum Acres:** 4.00  
**Source Name:** GROUNDWATER  
**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		SESWSW	3	20N	6W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** WELL  
**Subdivision:** PARK ADDN (GILMAN) TRACT/LOT: 7 BLOCK: 2

**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	4.00		SESWSW	3	20N	6W	LEWIS AND CLARK

**Subdivision:** PARK ADDN (GILMAN) TRACT/LOT: 6-9 BLOCK: 2

**Total:** 4.00