

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

CLAIMANT: Nichols Family LLC

CASE 41K-0463-R-2023
41K 35766-00
41K 35771-00

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, conclusion 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. Claims 41K 35766-00 and 41K 35771-00 each received issue remarks during the DNRC's review of the claims. The claims were

consolidated into Case 41K-0463-R-2023 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 35771-00 received the following substantive issue remarks:

INFORMATION IN THE CLAIM FILE DESCRIBES A HISTORIC FLOW RATE OF 3.00 GPM AND A VOLUME OF 2.52 ACRE-FEET PER YEAR.

THE FLOW RATE IS MISSING.

2. On October 6, 2023, the Water Court consolidated the claims and issued an Order Setting Filing Deadline for the claimants to provide information or evidence addressing the above-listed issue remarks. Nothing was filed at the ordered deadline by the Claimant.

3. On January 23, 2024, the Court issued an Order Setting Show Cause Deadline requiring the claimant to file information or evidence why the modification proposed in the above-listed issue remark should not be applied to claim 41K 35771-00. Again, nothing was filed by the claimant at the ordered deadline. The Order Setting Show Cause Filing Deadline included the following language regarding the above-listed issue remark:

*ORDERED that the Claimant review this order and, if necessary, file a statement showing cause why the flow rate and volume of claim 41K 35771-00 should not be modified as described in the above-listed issue remark by **Wednesday, February 28, 2024**. If nothing is filed by the deadline, this Master will conclude that the Claimant agrees to the proposed modifications to the flow rate and volume of claim 41K 35771-00, the flow rate will be modified to 3.00 gpm and the volume modified to 2.52 acre-feet per year, and the issue remarks will be removed from the claim.*

4. Each of the above-captioned claims also received a notice-type issue remark detailing modifications made by the DNRC during its claims reexamination. No Objections were filed.

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 claim 41K 35771-00. Because nothing was filed at either the filing deadline or the show cause filing deadline by the Claimant, a preponderance of the evidence shows that the flow rate should be modified to 3.00 gpm and the volume modified to 2.52 acre-feet and the issue remarks should be removed from the claim.
2. The notice type issue remarks appearing on the claims served their notice purpose and should be removed from the claims.

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 elements of claim 41K 35771-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Nichols Family LLC
4426 N Montana Ave
Helena, MT 59602

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

Water Right Number: 41K 35766-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: NICHOLS FAMILY LLC
4426 N MONTANA AVE
HELENA, MT 59602-7235

Priority Date: OCTOBER 19, 1888

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 HAY 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>
1		SW	11	18N	7W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SW	11	18N	7W	LEWIS AND CLARK

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

Water Right Number: 41K 35771-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: NICHOLS FAMILY LLC
4426 N MONTANA AVE
HELENA, MT 59602-7235

Priority Date: OCTOBER 1, 1888

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 3.00 GPM

Volume: 2.52 AC-FT

Source Name: SPRING, UNNAMED TRIBUTARY OF HAY 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>
1		SWNWNE	14	18N	7W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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			SWNWNE	14	18N	7W	LEWIS AND CLARK