

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

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

\*\*\*\*\*

CLAIMANT: Robert E. Stephens Jr.

**CASE 41K-0621-R-2023**

41K 131424-00

41K 131429-00

41K 160850-00

**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. Each of the above-captioned claims received issue remarks during the DNRC’s review of the claims.

## FINDINGS OF FACT

1. Claim 41K 131424-00 received the following substantive issue remarks:

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

Claim 41K 131429-00 received the following substantive issue remarks:

THE CLAIMED MEANS OF DIVERSION APPEARS TO BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

Claim 41K 160850-00 received the following substantive issue remarks:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NENWSE SEC 29, T22N, R5W, TETON COUNTY.

2. The claims were consolidated into Case 41K-0621-R-2023 and an Order Setting Filing Deadline was issued by the Water Court for the Claimant to provide information or evidence addressing and resolving the issue remarks. Nothing was filed by the ordered deadline.

3. On September 28, 2023, the Court ordered the Claimant to work with the DNRC to resolve the above-listed issue remarks.

4. On March 5, 2024, DNRC Water Resources Specialist Jamie Verploegen filed a *Memorandum* in this matter. The *Memo* states that the DNRC received telephone correspondence from claimant Robert Stephens and from the claimant's son Tyler Stephens. Ms. Verploegen's *Memo* states that after speaking with the claimant, the DNRC received a map denoting the correct point of diversion for claim 41K 131424-00 in the NENENE of Sec 18, Twp 20N, Rge 6W in Lewis and Clark County. Additionally, the *Memo* notes that the Claimant stated that the correct means of diversion for claim 41K 131429-00 is a ditch and irrigation dam. Further, the *Memo* states that the Claimant agreed to the proposed modification to the place of use for claim 41K 160850-00. Therefore, the DNRC recommends that the location of the point of diversion for claim 41K 131424-00 be modified to NENENE of Sec 18, Twp 20N, Rge 6W in Lewis and

Clark County, the means of diversion for claim 41K 131429-00 be modified from flowing to ditch, the place of use for claim 41K 160850-00 modified to NENWSE in Sec 29, Twp 22N, Rge 5W in Teton County, and the issue remarks removed from the claims.

5. Claim 41K 160850-00 also received a notice-type issue remark from the DNRC during its claims reexamination. No Objections were filed.

#### 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.

#### CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the substantive issue remarks appearing on the above-captioned claims. Based on the information included in Ms. Verploegen's *Memo*, the location of the point of diversion for claim 41K 131424-00 should be modified to NENENE of Sec 18, Twp 20N, Rge 6W in Lewis and Clark County, the means of diversion for claim 41K 131429-00 modified from flowing to ditch, the place of use for claim 41K 160850-00 modified to NENWSE in Sec 29, Twp 22N, Rge 5W in Teton County, and the issue remarks removed from the claims.

2. The notice-type issue remark appearing on claim 41K 160850-00 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 claims as described in Conclusion of Law No. 1 and remove all 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:**

Robert E. Stephens Jr.  
P.O. Box 274  
Augusta, MT 59410

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

**Water Right Number:** 41K 131424-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROBERT E STEPHENS JR  
PO BOX 274  
AUGUSTA, MT 59410-0274

**\*Priority Date:** DECEMBER 31, 1913

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 200.00 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 15.00

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

**Source Type:** GROUNDWATER  
ALSO KNOWN AS REASMAN SPRING

**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		NENENE	18	20N	6W	LEWIS AND CLARK

**Period of Diversion:** MARCH 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MARCH 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	15.00		NWSE	17	20N	6W	LEWIS AND CLARK

**Total:** 15.00

**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.

131424-00      131425-00      131426-00      131427-00      131428-00

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

**Water Right Number:** 41K 131429-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ROBERT E STEPHENS JR  
PO BOX 274  
AUGUSTA, MT 59410-0274

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 25.00 GPM

**Volume:** 6.00 AC-FT

**Households:** 1

**Maximum Acres:** 2.50

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

**Source Type:** GROUNDWATER  
ALSO KNOWN AS REASMAN SPRING

**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		SWNWSE	17	20N	6W	LEWIS AND CLARK

**Period of Diversion:** MARCH 15 TO OCTOBER 31

**Diversion Means:** DITCH

**Period of Use:** MARCH 15 TO OCTOBER 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	2.50		NWSE	17	20N	6W	LEWIS AND CLARK

**Total:** 2.50

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

**Water Right Number:** 41K 160850-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ROBERT E STEPHENS JR  
PO BOX 274  
AUGUSTA, MT 59410-0274

**Priority Date:** DECEMBER 31, 1920

**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 BASIN LAKE

**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		NENWSE	29	22N	5W	TETON

**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>
	NENWSE	29	22N	5W	TETON

**Diversion to Reservoir:** DIVERSION # 1

**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			NENWSE	29	22N	5W	TETON