

Montana Water Court  
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**FILED**  
10/11/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41K-0622-R-2023  
White, Eugene  
2.00

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-0622-R-2023**

41K 131427-00

41K 131428-00

**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 131427-00 and 41K 131428-00 each received issue remarks during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0622-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the duplicate filing issue remarks.

### FINDINGS OF FACT

1. Each of the claims received the following substantive issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 41K 131427-00, 41K 131428-00.

2. On July 18, 2023, the Water Court consolidated the claims and issued an Order setting Filing Deadline explaining that it did not appear the claims duplicated one another. The Order Setting Filing Deadline included the following language regarding the above-listed issue remark:

**ORDERED** that the Claimant review this order and, *if necessary*, file information or evidence disputing the proposed modification of the type of right for claim 41K 131428-00 from “use” to “filed” by **Wednesday, August 16, 2023**.

*If nothing is filed by the ordered deadline, this Master will conclude that the Claimant agrees that the type of historical right for claim 41K 131428-00 should be modified as described above, and the issue remarks will be removed from the claims.*

Nothing was filed by the ordered deadline.

3. Each claim also received notice-type issue remarks stating that part of the place of use was also claimed by the record owner of claim 41K 96362-00 and that the point of diversion and ditch name of each claim was modified by 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.

3. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSIONS OF LAW

1. The information in the record resolves issue remarks appearing on claims 41K 131427-00 and 41K 131428-00. Because nothing was filed at the filing deadline by the Claimant, the type of historical right for claim 41K 131428-00 should be changed from “use” to “filed” and the duplicate filing issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on claims 41K 131427-00 and 41K 131428-00 served their notice purpose and should be removed from the claims.

#### RECOMMENDATIONS

The type of historical right for claim 41K 131428-00 should be changed from “use” to “filed” and issue remarks should be removed 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 59410-0274

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

**Water Right Number:** 41K 131427-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** NOVEMBER 23, 1949

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.00 CFS

**\*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:** 258.50

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF ELK 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		NENENW	30	20N	6W	LEWIS AND CLARK

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

**Diversion Means:** HEADGATE

**Ditch Name:** MOSHER DITCH

**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	88.50		SE	18	20N	6W	LEWIS AND CLARK
2	34.00		SWSW	17	20N	6W	LEWIS AND CLARK
3	39.00		NWSW	17	20N	6W	LEWIS AND CLARK
4	20.00		NESW	17	20N	6W	LEWIS AND CLARK
5	15.00		NWSE	17	20N	6W	LEWIS AND CLARK
6	36.00		SWNW	17	20N	6W	LEWIS AND CLARK
7	26.00		SENW	17	20N	6W	LEWIS AND CLARK

**Total:** 258.50

**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 131428-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** NOVEMBER 23, 1949

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.00 CFS

**\*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:** 258.50

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF ELK 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		NENENW	30	20N	6W	LEWIS AND CLARK

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

**Diversion Means:** HEADGATE

**Ditch Name:** MOSHER DITCH

**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	88.50		SE	18	20N	6W	LEWIS AND CLARK
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131424-00

131425-00

131426-00

131427-00

131428-00