

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

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CLAIMANTS: Nicholas D. Bonfilio; Debra H. Thatcher

**CASE 41K-0139-R-2024**  
41K 208775-00

**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. Claim 41K 208775-00 received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0139-R-2024 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41K 208775-00 received the following substantive issue remark:

THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF 500.00 GPM.

2. Currently, the flow rate on the Statement of Claim for claim 41K 208775-00 is 4.00 cfs.

3. On July 18, 2024, claimants Nicholas D. Bonfilio and Debra H. Thatcher filed a *Response*. The *Response* states that the claimants' successor in interest, Melvin Dawson, had historically utilized the entirety of the 4.00 cfs flow rate for claim 41K 208775-00. However, in the late 1990s Mr. Dawson was only able to utilize a towable pump that could output 500 gallons per minute because he was unable to repair or replace the deteriorated sprinkler irrigation system due to being in poor health. Mr. Bonfilio goes on to note that after he purchased the property in 1999, he was able to make the necessary repairs and rehabilitated the sprinkler irrigation system in order to utilize the entirety of the historical flow rate for claim 41K 208775-00 going forward. Based on these statements and background regarding the flow rate of claim 41K 208775-00, the Claimants assert that the issue remark regarding the flow rate does not overcome the prima facie status afforded the Statement of Claim.

4. Claim 41K 208775-00 also received a notice-type issue remark denoting modifications made by the DNRC during its reexamination of claims. 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.

6. 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.

7. 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. Based on the information contained in the Claimants’ *Response*, the flow rate issue remark does not overcome the prima facie status afforded the Statement of Claim for claim 41K 208775-00. The flow rate should remain unmodified at 4.00 cfs, and the flow rate issue remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 41K 208775-00 served its notice purpose and should be removed from the claim.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remarks from claim 41K 208775-00.

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:**

Nicholas D. Bonfilio  
Debra H. Thatcher  
PO Box 215  
Fort Shaw, MT 59443

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

**Water Right Number:** 41K 208775-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** NICHOLAS D BONFILIO  
PO BOX 215  
FORT SHAW, MT 59443

DEBRA H THATCHER  
PO BOX 215  
FORT SHAW, MT 59443

**Priority Date:** MAY 31, 1914

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**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:** 3 - MODERATE

**\*Maximum Acres:** 90.00

**\*Source Name:** SUN RIVER

**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		NWNWSW	2	20N	2W	CASCADE

**Period of Diversion:** MAY 15 TO SEPTEMBER 1

**Diversion Means:** PUMP

2	6	NESWSE	2	20N	2W	CASCADE
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**Period of Diversion:** MAY 15 TO SEPTEMBER 1

**Diversion Means:** PUMP

**Period of Use:** MAY 15 TO SEPTEMBER 1

**\*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	67.00		SE	2	20N	2W	CASCADE
2	23.00		SW	2	20N	2W	CASCADE

**Total:** 90.00