

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

CLAIMANT: Paul F. Edwards

CASE 41K-0193-R-2024

41K 131414-00

41K 131415-00

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. Claims 41K 131414-00 and 41K 131415-00 each received an issue remark during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0193-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

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

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE, FLOW RATE IS IN QUESTION.

2. Currently, the flow rate for claim 41K 131414-00 appears on the abstract as 112.20 GPM and the flow rate claim 41K 131415-00 appears on the abstract as 75.00 GPM. For each claim, the flow rate appearing on the abstract matches the flow rate appearing on the Statement of Claim.

3. On April 26, 2024, the Water Court issued an Order Setting Filing Deadline with the following language regarding the above-listed issue remark:

ORDERED that the Claimants review this order and, *if necessary*, file a statement describing why the flow rate for claims 41K 131414-00 and 41K 131415-00 should be modified by **Wednesday, June 5, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree that flow rates for claims 41K 131414-00 and 41K 131415-00 are historically accurate as they appear on the abstracts and the Statements of Claim, no modifications will be made, and the issue remarks will be removed from the claims.*

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. 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.

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).

CONCLUSIONS OF LAW

1. The information in the record resolves issue remarks appearing on claims 41K 131414-00 and 41K 131415-00. Because nothing was filed at the filing deadline by the Claimants, and the DNRC did not provide sufficient information supporting the issue remark, the issue remark does not overcome the prima facie status afforded the Statement of Claim for claims 41K 131414-00 and 41K 131415-00, the flow rates should remain as they appear on the abstracts, and the issue remarks 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 remove the issue remarks from claim 41K 131414-00 and 41K 131415-00.

Post decree abstracts of the water right claims reflecting the removal of the issue remarks are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Paul F. Edwards
630 Monroe Ave
Helena, MT 59601

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

Water Right Number: 41K 131414-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PAUL F EDWARDS
630 MONROE AVE
HELENA, MT 59601-2643

Priority Date: MAY 1, 1922

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 112.20 GPM

Volume: 3.50 AC-FT

Source Name: SPRING, UNNAMED TRIBUTARY OF SUN RIVER

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	4	SWSWSW	31	22N	8W	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		4	SWSW	31	22N	8W	LEWIS AND CLARK

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

Water Right Number: 41K 131415-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PAUL F EDWARDS
630 MONROE AVE
HELENA, MT 59601-2643

Priority Date: DECEMBER 31, 1930

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 75.00 GPM

Volume: 5.00 AC-FT

Source Name: SPRING, UNNAMED TRIBUTARY OF SUN RIVER

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	4	SESWSW	31	22N	8W	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		4	SWSW	31	22N	8W	LEWIS AND CLARK