

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

CLAIMANTS: ~~Catherine M. Henning~~ **Kathy Henning;**
Lawrence C. Henning

CASE 41K-0241-R-2024
41K 34719-00

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 34719-00 received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0241-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. Claim 41K 34719-00 received the following substantive issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

2. On May 14, 2024, the Water Court issued an Order Setting Filing Deadline with the following language regarding the above-listed issue remark:

ORDERED that the Claimant review this order and, *if necessary*, file a statement describing why the flow rate should be modified for claim 41K 34719-00 by **Wednesday, June 19, 2024**. *If nothing is filed by the deadline, the Water Master will conclude that the Claimant believes that the flow of claim 41K 34719-00 is already historically accurate, no modification will be made, and the issue remark will be removed from the claim.*

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 the issue remark appearing on claim 41K 34719-00. Because nothing was filed at the filing deadline by the Claimant, nothing in the claim file indicates that the flow rate is historically inaccurate, and a guideline,

without further explanation, is not evidence sufficient to overcome the prima facie status afforded the Statement of Claim for claim 41K 34719-00, the flow rate should remain as it appears on the abstract, and the issue remark 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 remove the issue remark from claim 41K 34719-00.

A post decree abstract of the water right claim reflecting the removal of the issue remark is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

**Kathy Henning
Lawrence C. Henning
PO Box 291
Fairfield, MT 59436**

Last Order:
Catherine M. Henning
PO Box 291
Fairfield, MT 59436

Note: Caption and Service List Updated 7-24-24

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

Water Right Number: 41K 34719-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: KATHY HENNING
PO BOX 291
FAIRFIELD, MT 59436

LAWRENCE C HENNING
PO BOX 291
FAIRFIELD, MT 59436

Priority Date: SEPTEMBER 19, 1947

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 40.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

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		NWNWNE	16	22N	2W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.00		NWNWNE	16	22N	2W	TETON

Total: 1.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

34718-00 34719-00