

Montana Water Court
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FILED
04/30/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
41K-0466-R-2023
White, Eugene
3.00

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

CLAIMANT: Norris Family LLC

CASE 41K-0466-R-2023

41K 96450-00

41K 96451-00

41K 96452-00

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 96450-00, 41K 96451-00, and 41K 96452-00 each received issue remarks during the DNRC’s review of the claims. The

claims were consolidated into Case 41K-0466-R-2023 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claims 41K 96450-00 and 41K 96452-00 received the following substantive issue remark:

IT APPEARS THE PRIORITY DATE FOR THIS CLAIM SHOULD BE 12/31/1947.

Claim 41K 96451-00 received the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. CLAIMANT STATED THAT A DAM WAS BUILT TO DIVERT WATER BUT WASHED OUT IN 1964.

2. On October 3, 2023, the Water Court consolidated the claims and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimant.

3. On January 23, 2024, the Water Court issued an Order Setting Show Cause Filing Deadline. Again, nothing was filed by the ordered deadline. The Order Setting Show Cause Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that claimant Norris Family, LLC (“Claimant”) review this order and, *if necessary*, file a statement of why the priority date of claim 41K 96450-00 and claim 41K 96452-00 should not be modified as described in the above-listed issue remark by **Wednesday, March 6, 2024**. *If nothing is filed by the deadline, this Water Master will conclude that the Claimant agrees to the proposed modification to the priority date of claim 41K 96450-00 and claim 41K 96452-00, the priority date for each claim will be modified to December 31, 1947, and the priority date issue remarks will be removed from the claims.*

ORDERED that the Claimant review this order and file a statement regarding the historical use of the dam listed as the means of diversion for claim 41K 96451-00 by **Wednesday, March 6, 2024**. *If nothing is filed by the ordered deadline, this Water Master will conclude that the Claimant agrees that claim 41K 96451-00 should be terminated.*

4. Each of the claims also received notice-type issue remarks from the DNRC during its claims reexamination. 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. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.
7. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record resolves the issue remarks appearing on claims 41K 96450-00, 41K 96451-00, and 41K 96452-00. Because nothing was filed at either filing deadline by the Claimant, a preponderance of the evidence shows that the priority date for claims 41K 96450-00 and 41K 96452-00 should be modified to December 31, 1947, and the priority date issue remarks should be removed from the claims.
2. Because nothing was filed at either filing deadline by the Claimant, a preponderance of the evidence shows that claim 41K 96451-00 should be terminated pursuant to Rule 22, W.R.Adj.R.

3. The notice type issue remark appearing on each of the claims served their notice purpose and 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 modify the priority date of claims 41K 96450-00 and 41K 96452-00 as described in Conclusion of Law No. 1, remove the issue remarks from claims 41K 96450-00 and 41K 96452-00, and terminate claim 41K 96451-00.

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:

Norris Family LLC
3370 ~~Cathy Ct~~
~~Missoula, MT 59803~~
c/o John Alfson
12658 Alfson Ln
Missoula, MT 59808

Note: Service List Updated 4-19-24

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

Water Right Number: 41K 96450-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: NORRIS FAMILY LLC
3370 CATHY CT
MISSOULA, MT 59803-2757

Priority Date: DECEMBER 31, 1947

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 30.00 GPM

Volume: 5.00 AC-FT

Source Name: ROSE 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		S2SE	29	21N	8W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: INSTREAM

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			S2SE	29	21N	8W	LEWIS AND CLARK

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

Water Right Number: 41K 96451-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: NORRIS FAMILY LLC
3370 CATHY CT
MISSOULA, MT 59803-2757

Priority Date:

Type of Historical Right:

Purpose (Use): RECREATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF ROSE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41K 96452-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: NORRIS FAMILY LLC
3370 CATHY CT
MISSOULA, MT 59803-2757

Priority Date: DECEMBER 31, 1947

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 50.00 GPM

Volume: 10.00 AC-FT

Source Name: UNNAMED TRIBUTARY OF ROSE 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		N2NE	29	21N	8W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: INSTREAM

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			N2NE	29	21N	8W	LEWIS AND CLARK