

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

CLAIMANTS: John J. Scott; Laverna J. Scott

CASE 41K-0515-R-2023

41K 199367-00

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. Claim 41K 199367-00 received issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0515-R-2023 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 199367-00 received the following substantive issue remarks:
THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES.

2. On February 23, 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 information or evidence supporting the issue remark by **Wednesday, March 27, 2024**.

If nothing is filed by the ordered deadline, this Master will conclude that the claimants agree that the flow rate element for claim 41K 199367-00 should remain as it currently appears, and the issue remark will be removed from the claim.

3. Claim 41K 199367-00 also received notice-type issue remarks from the DNRC denoting modifications made during the DNRC’s 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. 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 remark appearing on claim 41K 199367-00. 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

claim 41K 199367-00, the flow rate should remain as it appears on the abstract, and the issue remark should be removed from the claim.

2. The notice-type issue remarks appearing on claim 41K 199367-00 served their notice purpose and 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 remarks from claim 41K 199367-00.

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:

John J. Scott
Laverna J. Scott
68 Wibaux Rd.
Vaughn, MT 59487

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

Water Right Number: 41K 199367-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN J SCOTT
68 WIBAUX RD
VAUGHN, MT 59487-9529

LAVERNA J SCOTT
68 WIBAUX RD
VAUGHN, MT 59487

Priority Date: DECEMBER 31, 1967

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 6.68 CFS

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MUDDY 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		NESEW	13	21N	1E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSE	13	21N	1E	CASCADE

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 5.24 ACRES

Capacity: 16.78 ACRE-FEET

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			SWSE	13	21N	1E	CASCADE