

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

\*\*\*\*\*

CLAIMANT: Flora LLC

**CASE 41K-0635-R-2024**  
41K 96438-00

**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 96438-00 received an issue remark during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0635-R-2024 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remark.

## FINDINGS OF FACT

1. Claim 41K 96438-00 received the following substantive issue remark:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

2. On February 28, 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 the historically accurate point of diversion for claim 41K 96438-00 by **Wednesday, April 3, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees that the point of diversion of claim 41K 96438-00 is already historically accurate, no modification will be made, and the issue remark will be removed from the claim.*

3. Claim 41K 96438-00 also received a notice type issue remark from the DNRC during its 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 96438-00. 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 96438-00, the point of diversion should remain as it appears on the abstract, and the issue remark should be removed from the claim.

2. The notice type issue remark appearing on claim 41K 96438-00 served its notice purpose and should be removed from the claim.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court remove the issue remarks from claim 41K 96438-00.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Flora LLC  
1319 S Church Ave  
Bozeman, MT 59715

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

**Water Right Number:** 41K 96438-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FLORA LLC  
1319 S CHURCH AVE  
BOZEMAN, MT 59715-5803

**Priority Date:** FEBRUARY 27, 1901

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 30.00 GPM

**Volume:** 2.00 AC-FT

**Households:** 2

**Maximum Acres:** 0.10

**Source Name:** SMITH 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		NESE	33	20N	7W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PUMP

**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	0.10		NESE	33	20N	7W	LEWIS AND CLARK

**Total:** 0.10