

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: Cleve F. Fuller; Jamie L. Fuller; Kyle K. Inabnit;  
Lily J. Inabnit

CASE 41K-0641-R-2024  
41K 96421-00

**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 96421-00 received issue remarks during the DNRC’s review of the claims. The claim was consolidated into Case

41K-0641-R-2024 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41K 96421-00 received the following substantive issue remark:

THE TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

2. On February 28, 2024, the Water Court consolidated the claim and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimants. The Order Setting Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that the Claimants review this order and, *if necessary*, file a statement describing why the type of historical right for claim 41K 96421-00 should not be modified as proposed in the above-listed issue remark by **Wednesday, April 3, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree that the type of historical right of claim 41K 96421-00 should be modified from “decreed” to “use,” the modification will be made, and the issue remark will be removed from the claim.*

3. Claim 41K 96421-00 also received a notice type issue remark from the DNRC denoting modifications made during its claims reexamination.

### 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.

#### CONCLUSIONS OF LAW

1. The information in the record resolves the type of right issue remark appearing on claim 41K 96421-00. Because nothing was filed at the filing deadline by the Claimants, a preponderance of the evidence shows that the type of historical right of claim 41K 96421-00 should be modified from “decreed” to “use” and the issue remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 41K 96421-00 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 modify the type of historical right of claim 41K 96421-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

#### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Cleve F. Fuller  
Jamie L. Fuller  
PO Box 512  
Augusta, MT 59410

Kyle K. Inabnit  
Lily J. Inabnit  
PO Box 472  
Augusta, MT 59410

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

**Water Right Number:** 41K 96421-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CLEVE F FULLER  
PO BOX 512  
AUGUSTA, MT 59410

JAMIE L FULLER  
PO BOX 512  
AUGUSTA, MT 59410

KYLE K INABNIT  
PO BOX 472  
AUGUSTA, MT 59410-0472

LILY J INABNIT  
PO BOX 472  
AUGUSTA, MT 59410-0472

**\*Priority Date:** APRIL 1, 1965

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.00 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 13.00

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF ELK CREEK

**Source Type:** SURFACE WATER

ALSO KNOWN AS SUN RIVER, SOUTH FORK.

**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		SENWSW	17	20N	6W	LEWIS AND CLARK

**\*Period of Diversion:** MAY 1 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** EBERL DITCH

WATER IS COLLECTED IN THE BELL FLATS DRAIN DITCH IN SEC 19 TWP 20W RGE 06W AND SEC 24 AND 25 TWP 20N RGE 07W, LEWIS AND CLARK COUNTY.

**\*Period of Use:** MAY 1 TO NOVEMBER 15

**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	13.00		S2SE	8	20N	6W	LEWIS AND CLARK
<b>Total:</b>	<u>13.00</u>						