

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

\*\*\*\*\*

CLAIMANTS: Grace B. Doughty; Phillip H. Doughty;  
Ronald E. Mills

**CASE 41K-0186-R-2024**  
41K 96240-00

**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 96240-00 received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0186-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 96240-00 received the following substantive issue remark:  
THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNWNE SEC 17 TWP 20N RGE 6W LEWIS AND CLARK COUNTY.
2. On April 26, 2024, the Water Court consolidated the claim and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimants.
3. On July 11, 2024, the Court issued an Order Setting Show Cause Filing Deadline for the Claimants to filing information or evidence showing cause why the point of diversion for claim 41K 96240-00 should not be modified as described in the above-listed issue remark. The Order Setting Show Cause Filing Deadline included the following language regarding the above-listed issue remarks:

ORDERED that the Claimants review this order and, *if necessary*, file information or evidence showing cause why the point of diversion for claim 41K 96240-00 should not be modified as proposed in the above-listed issue remark by **Wednesday, August 14, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree that the point of diversion of claim 41K 96240-00 should be modified from NWSWSW in Sec 17, Twp 20N, Rge 6W in Lewis and Clark County to NWNWNE in Sec 17, Twp 20N, Rge 6W in Lewis and Clark County, the modification will be made, and the issue remark will be removed from the claim.*

### 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 issue remark appearing on claim 41K 96240-00. Because nothing was filed at the filing deadline by the Claimants, a preponderance of the evidence shows that the point of diversion for claim 41K 96240-00 should be modified as described in Finding of Fact No. 3 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 modify the point of diversion of claim 41K 96240-00 as described in Conclusion of Law No. 1 and remove the issue remark 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:**

Grace B. Doughty  
~~13 Ave 3~~  
Challis, ID 83226  
(Return mail received)

Phillip H. Doughty  
~~PO Box 1305~~  
Challis, ID 83226  
(Return mail received)

Ronald E. Mills  
PO Box 2  
Augusta, MT 59410

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

**Water Right Number:** 41K 96240-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** GRACE B DOUGHTY  
13 AVE 3  
CHALLIS, ID 83226  
  
PHILLIP H DOUGHTY  
PO BOX 1305  
CHALLIS, ID 83226-1305  
  
RONALD E MILLS  
PO BOX 2  
AUGUSTA, MT 59410-0002  
  
OWNER PHILLIP H. & GRACE B DOUGHTY RETAINED. CONTRACT FOR DEED INTEREST.

**Priority Date:** AUGUST 5, 1955

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 20.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**\*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	17	20N	6W	LEWIS AND CLARK

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

**Diversion Means:** WELL

**Subdivision:** AMERICAN LEGION TRACTS TRACT/LOT: 10 BLOCK: 11

**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	0.25		NWSWSW	17	20N	6W	LEWIS AND CLARK

**Subdivision:** AMERICAN LEGION TRACTS TRACT/LOT: 9,10 BLOCK: 11

**Total:** 0.25