

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

\*\*\*\*\*

CLAIMANT: Clarence (Wally) Hitchcock

**CASE 41K-0248-R-2024**  
41K 208427-00  
41K 208428-00

**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. The above captioned claims each received issue remarks during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0248-R-2024 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 208428-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESENW SEC 15 TWP 21N RGE 1W CASCADE COUNTY.

2. On May 15, 2024, the Water Court consolidated the claim into case 41K-0248-R-2024 and issued an Order Setting Filing Deadline. Nothing was filed by the deadline.

3. On August 2, 2024, the Water Court issued an Order Setting Show Cause Filing Deadline. Again, nothing was filed by the deadline. The Order Setting Show Cause Filing Deadline included the following language regarding the above-listed issue remark:

ORDERED that the Claimant review this order and, *if necessary*, file a statement showing cause why the point of diversion for claim 41K 208428-00 should not be modified as proposed in the above-listed issue remark by **Wednesday, August 28, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree that the point of diversion of claim 41K 208428-00 should be modified from NENESW in Sec 15, Twp 21N, Rge 1W in Cascade County to NESENW in Sec 15, Twp 21N, Rge 1W in Cascade County, the modification will be made, and the issue remark will be removed from the claim.*

4. Each of the above-captioned claims received notice-type issue remarks 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).

#### CONCLUSION OF LAW

1. The information in the record resolves issue remark appearing on claim 41K 208428-00. Because nothing was filed at the show cause filing deadline by the Claimant, and the DNRC provided sufficient information supporting the issue remark, the issue remark overcomes the prima facie status afforded the Statement of Claim for claim 41K 208428-00, a preponderance of the evidence shows that the point of diversion should be modified as described in Finding of Fact No. 3, and the issue remark should be removed from the claim.

2. The notice type issue remarks 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 Master recommends that the Court modify the point of diversion for claim 41K 208428-00 should be modified from NENESW in Sec 15, Twp 21N, Rge 1W in Cascade County to NESENEW in Sec 15, Twp 21N, Rge 1W in Cascade County and the issue remarks should be removed from the claims.

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:**

Clarence (Wally) Hitchcock  
64 Memory Ln  
Vaughn, MT 59487

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

**Water Right Number:** 41K 208427-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CLARENCE (WALLY) HITCHCOCK  
64 MEMORY LN  
VAUGHN, MT 59487-9538

**Priority Date:** AUGUST 1, 1963

**Type of Historical Right:** USE

**Purpose (Use):** COMMERCIAL  
RAISING FISH

**Flow Rate:** 100.00 GPM

**Volume:** 150.00 AC-FT

**Source Name:** UNNAMED TRIBUTARY OF MILL COULEE 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		SEWNNE	22	21N	1W	CASCADE

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SEWNNE	22	21N	1W	CASCADE

**Diversion to Reservoir:** DIVERSION # 1

**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			NWNE	22	21N	1W	CASCADE

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

**Water Right Number:** 41K 208428-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CLARENCE (WALLY) HITCHCOCK  
64 MEMORY LN  
VAUGHN, MT 59487-9538

**Priority Date:** DECEMBER 31, 1948

**Type of Historical Right:** USE

**Purpose (Use):** RECREATION

**Flow Rate:** 100.00 GPM

**Volume:** 150.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** UNNAMED TRIBUTARY OF MILL COULEE 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		NESENW	15	21N	1W	CASCADE

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

**Diversion Means:** HEADGATE

**Ditch Name:** HAMANN DITCH

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNE	22	21N	1W	CASCADE

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 14.00 FEET

**Depth:** 11.00 FEET

**Surface Area:** 5.38 ACRES

**Capacity:** 23.67 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			NWNE	22	21N	1W	CASCADE

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

208426-00

208428-00