

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

CLAIMANTS: Glacier County Honey Company; Robert E. Page

CASE 41K-0651-R-2024

41K 96602-00
41K 96603-00
41K 96606-00
41K 30127656

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. The above-captioned claims received issue remarks during the DNRC’s review of the claims.

The claims were consolidated into Case 41K-0651-R-2024 and an Order Requiring the claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 96603-00 received the following substantive issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

Claim 41K 96606-00 received the following substantive issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 22.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

2. On March 6, 2024, the Court consolidated the claims and issued an order for the Claimants to work with the DNRC to address and resolve the issue remarks.

3. On May 30, 2024, DNRC Water Resource Specialist Dixie Brough filed a *Memorandum* in this matter. Ms. Brough notes that as of the date of filing, the DNRC had not received any contact from the claimants regarding the above listed claims. Ms. Brough's *Memo* addressed each of the above-listed claims and their corresponding substantive issue remarks and included recommendation from the DNRC for the resolution of the issue remarks. Those recommendations are as follows:

RECOMMENDATIONS:

Claim 41K 96603-00:

Without documentation to support the claimed flow rate of 37.5 gpm, the DNRC recommends the flow rate be reduced to the DNRC standard of 35.00 gpm, and the F205 flow rate issue remark be removed.

Claim 41K 96606-00:

Without further documentation and based on the above discussion, the DNRC recommends the place of use acres and maximum acres be reduced to 22.00 acres, and the GIIS issue remark be removed. The DNRC further recommends that the flow rate be reduced to 0.83 cfs, 17.0 gpm/acre.

4. On July 11, 2024, the Court set a filing deadline for claimants Glacier County Honey Company and Robert E. Page to file a statement if they disagreed with the above-listed recommendations from the DNRC. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the Claimants review this order and, *if necessary*, file information or evidence showing cause why claims 41K 96603-00 and 41K 96606-00 should not be modified as recommended by the DNRC by **Wednesday, August 14, 2024**. *If nothing is filed by the deadline, this Water Master will conclude that the Claimants agree to the proposed modification of flow rate for claim 41K 96603-00 and the modification of the flow rate and acres irrigated for claim 41K 96606-00, the modifications will be made, and the issue remarks will be removed from the claims.*

5. Claim 41K 96602-00 and 41K 30127656 each 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. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

3. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the substantive issue remark appearing on claims 41K 96603-00 and 41K 96606-00. Based on the information contained in Ms. Brough's *Memo*, the claims should be modified as described in Finding of Fact No. 3. The substantive issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on claims 41K 96602-00 and 41K 30127656 served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify claims 41K 96603-00 and 41K 96606-00 as described in Conclusion of Law No. 1 and remove all issue remarks 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:

Glacier County Honey Company
PO Box 251
Augusta, MT 59410

Robert E. Page
PO Box 678
Augusta, MT 59410

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Data\vol)\Share\WC-BASIN FOLDERS\41K PD\41K Cases\651\41K-0651-R-2024 MR (multiple claims, 248 memo filed, no response about recommendations, make changes per memo) 9-26-24 jbc.docx

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

Water Right Number: 41K 96602-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT E PAGE
PO BOX 678
AUGUSTA, MT 59410-0678

GLACIER COUNTY HONEY COMPANY
PO BOX 251
AUGUSTA, MT 59410-0251

Priority Date: MAY 1, 1953

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.00 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: 295.00

Source Name: WILLOW 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		SWSWNW	4	20N	7W	LEWIS AND CLARK

Period of Diversion: MAY 15 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: KIRKALDIE CANAL

Period of Use: MAY 15 TO SEPTEMBER 1

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	22.00		SWNE	2	20N	7W	LEWIS AND CLARK
2	74.00		E2NE	2	20N	7W	LEWIS AND CLARK
3	85.00		NW	1	20N	7W	LEWIS AND CLARK
4	114.00		SW	31	21N	6W	LEWIS AND CLARK

Total: 295.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96602-00

96606-00

96607-00

96617-00

96618-00

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

Water Right Number: 41K 96603-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GLACIER COUNTY HONEY COMPANY
PO BOX 251
AUGUSTA, MT 59410-0251

Priority Date: MARCH 1, 1951

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

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: 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		NENSW	35	21N	7W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NENSW	35	21N	7W	LEWIS AND CLARK

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

Water Right Number: 41K 96606-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GLACIER COUNTY HONEY COMPANY
PO BOX 251
AUGUSTA, MT 59410-0251

Priority Date: DECEMBER 31, 1890

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 0.83 CFS

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

Climatic Area: 5 - LOW

Maximum Acres: 22.00

Source Name: WILLOW 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	34	21N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO NOVEMBER 1

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	22.00		NESW	35	21N	7W	LEWIS AND CLARK
Total:	22.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96602-00 96606-00 96607-00 96617-00 96618-00

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

Water Right Number: 41K 30127656 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GLACIER COUNTY HONEY COMPANY
PO BOX 251
AUGUSTA, MT 59410-0251

Priority Date: JUNE 1, 1884

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: WILLOW CREEK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF WILLOW 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		SWNW	35	21N	7W	LEWIS AND CLARK
Source Name: WILLOW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		SESE	34	21N	7W	LEWIS AND CLARK
Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3			35	21N	7W	LEWIS AND CLARK
Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4		S2S2	35	21N	7W	LEWIS AND CLARK
Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						

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			SWNW	35	21N	7W	LEWIS AND CLARK
2			SESE	34	21N	7W	LEWIS AND CLARK
3				35	21N	7W	LEWIS AND CLARK
4			S2S2	35	21N	7W	LEWIS AND CLARK

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.

96607-00 30127656