

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

CLAIMANT: Nilan Water Users Association

CASE 41K-0464-R-2023

41K 119363-00

41K 30046594

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. Claims 41K 119363-00 and 41K 30046594 each received issue remarks during the DNRC's review of the claims. The claims were

consolidated into Case 41K-0464-R-2023 and an Order Setting Filing Deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 119363-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESESE SEC 33 TWP 20N RGE 7W LEWIS AND CLARK COUNTY.

Claim 41K 30046594 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESESE SEC 33 TWP 20N RGE 7W LEWIS AND CLARK COUNTY.

2. On October 3, 2023, the Water Court consolidated the claims and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimant. The Order Setting Filing Deadline included the following language regarding the above-listed issue remark:

ORDERED that claimant Nilan Water Users Association review this order and, *if necessary*, file a statement of why the point of diversion of claims 41K 119363-00 and 41K 30046594 should not be modified as described in the above-listed issue remarks by **Wednesday, November 1, 2023**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees to the proposed modification to the point of diversion of claims 41K 119363-00 and 41K 30046594, the point of diversion will be modified from SENESE Sec 33, Twp 20N, Rge 7W in Lewis and Clark County to NESESE of Sec 33, Twp 20N, Rge 7W in Lewis and Clark County, and the issue remarks will be removed from the claims.*

3. Claim 41K 119363-00 also received a notice-type issue remark detailing modifications made by the DNRC during its claims reexamination. No Objections were filed.

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 point of diversion issue remarks appearing on claim 41K 119363-00 and 41K 30046594. Because nothing was filed at the filing deadline by the Claimant, a preponderance of the evidence shows that the point of diversion of each claim, should be modified from the SENESE of Section 33, Twp 20N, Rge 7W in Lewis and Clark County to the NESESE of Section 33, Twp 20N, Rge 7W in Lewis and Clark County and the issue remarks should be removed from the claims.

2. The notice type issue remark appearing on claim 41K 119363-00 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 point of diversion of each claim as described in Conclusion of Law No. 1 and remove the 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:

Nilan Water Users Association
PO Box 486
Augusta, MT 59410

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

Water Right Number: 41K 119363-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

***Owners:** NILAN WATER USERS ASSOCIATION
PO BOX 486
AUGUSTA, MT 59410

* OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

***Priority Date:** MAY 1, 1955

***Type of Historical Right:** USE

Purpose (Use): STOCK

***Flow Rate:** 10.00 CFS

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: 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		NESESE	33	20N	7W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: FLORENCE CANAL

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			NENESW	33	20N	7W	LEWIS AND CLARK
2			SE	33	20N	7W	LEWIS AND CLARK
3			SESW	33	20N	7W	LEWIS AND CLARK
4			S2	34	20N	7W	LEWIS AND CLARK
5			S2S2	35	20N	7W	LEWIS AND CLARK
6			NE	2	19N	7W	LEWIS AND CLARK
7			NWNW	1	19N	7W	LEWIS AND CLARK
8			NE	1	19N	7W	LEWIS AND CLARK
9			SESESW	36	20N	7W	LEWIS AND CLARK
10			E2E2SE	36	20N	7W	LEWIS AND CLARK
11			SW	31	20N	6W	LEWIS AND CLARK
12			N2NE	6	19N	6W	LEWIS AND CLARK
13			N2N2	5	19N	6W	LEWIS AND CLARK

14	S2N2	4	19N	6W	LEWIS AND CLARK
15	N2	3	19N	6W	LEWIS AND CLARK
16	NWNW	2	19N	6W	LEWIS AND CLARK
17	N2N2	1	19N	6W	LEWIS AND CLARK
18	S2	35	20N	6W	LEWIS AND CLARK
19	SWSW	36	20N	6W	LEWIS AND CLARK
20	SESE	36	20N	6W	LEWIS AND CLARK
21	S2SW	31	20N	5W	LEWIS AND CLARK
22	N2SE	31	20N	5W	LEWIS AND CLARK
23	W2	32	20N	5W	LEWIS AND CLARK

THE PLACE OF USE GENERALLY DESCRIBES THE COURSE OF THE FLORENCE CANAL.

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.

119363-00

119364-00

30046594

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

Water Right Number: 41K 30046594 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NILAN WATER USERS ASSOCIATION
PO BOX 486
AUGUSTA, MT 59410

***Priority Date:** MAY 1, 1955

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 75.00 CFS

THE COMBINED FLOW RATES FOR DIVERSIONS BY CLAIMS 41K 119362-00 AND 41K 30046594 CANNOT EXCEED 200.00 CFS.

***Volume:** 797.00 AC-FT

VOLUME RETAINED BY ORDER OF THE WATER COURT

***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		NESESE	33	20N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO JUNE 30

Diversion Means: HEADGATE

Ditch Name: FLORENCE CANAL

***Period of Use:** APRIL 1 TO JUNE 30

***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			NENESW	33	20N	7W	LEWIS AND CLARK
2			SE	33	20N	7W	LEWIS AND CLARK
3			SESW	33	20N	7W	LEWIS AND CLARK
4			S2	34	20N	7W	LEWIS AND CLARK
5			S2S2	35	20N	7W	LEWIS AND CLARK
6			NE	2	19N	7W	LEWIS AND CLARK
7			NWNW	1	19N	7W	LEWIS AND CLARK
8			NE	1	19N	7W	LEWIS AND CLARK
9			SESESW	36	20N	7W	LEWIS AND CLARK
10			E2E2SE	36	20N	7W	LEWIS AND CLARK
11			SW	31	20N	6W	LEWIS AND CLARK
12			N2NE	6	19N	6W	LEWIS AND CLARK
13			N2N2	5	19N	6W	LEWIS AND CLARK

14	S2N2	4	19N	6W	LEWIS AND CLARK
15	N2	3	19N	6W	LEWIS AND CLARK
16	NWNW	2	19N	6W	LEWIS AND CLARK
17	N2N2	1	19N	6W	LEWIS AND CLARK
18	S2	35	20N	6W	LEWIS AND CLARK
19	SWSW	36	20N	6W	LEWIS AND CLARK
20	SESE	36	20N	6W	LEWIS AND CLARK
21	S2SW	31	20N	5W	LEWIS AND CLARK
22	N2SE	31	20N	5W	LEWIS AND CLARK
23	W2	32	20N	5W	LEWIS AND CLARK

THE PLACE OF USE GENERALLY DESCRIBES THE COURSE OF THE FLORENCE CANAL

THIS CLAIM REPRESENTS USE OF THE FLORENCE CANAL BY CONTRACT WATER USERS FROM THE NILAN PROJECT. THERE ARE NO QUANTIFIED MAXIMUM ACRES IRRIGATED. THE ACRES IRRIGATED AND PLACE OF USE ARE LIMITED TO HISTORICAL PRACTICES.

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.

119363-00 119364-00 30046594

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 119362-00.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41K TEMPORARY PRELIMINARY DECREE ISSUED 05/14/1985.