

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

CLAIMANT: Robert H. Polich

CASE 41K-0486-R-2023
41K 208700-00

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 208700-00 received an issue remark during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0486-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remark.

FINDINGS OF FACT

1. Claim 41K 208700-00 received the following substantive issue remark:
THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.
2. Currently, the flow rate listed on the Statement of Claim for claim 41K 208700-00 is 40.00 gpm.

3. On October 11, 2023, the Water Court issued an Order Setting Filing Deadline with the following language regarding the above-listed issue remark:

ORDERED that the Claimant review this order and, *if necessary*, file a statement denoting that the flow rate of claim 41K 208700-00 should be modified as described in the above-listed issue remark by **Wednesday, November 8, 2023**. *If nothing is filed by the deadline, this Master will conclude that the Claimant agrees that the flow rate of claim 41K 208700-00 is historically accurate as listed on the Statement of Claim, no modification will be made, and the issue remark will be removed from the claim.*

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).

CONCLUSIONS OF LAW

1. The information in the record resolves issue remark appearing on claim 41K 208700-00. Because nothing was filed at the filing deadline by the Claimant, and the DNRC did not provide sufficient information supporting the issue remark, the issue remark does not overcome the prima facie status afforded the Statement of Claim for claim 41K 208700-00. Therefore, the flow rate should remain as it appears on the abstract, 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 remove the issue remark from claim 41K 208700-00.

A post decree abstract of the water right claim reflecting the removal of the issue remark is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Robert H. Polich
PO Box 1631
Great Falls, MT 59403

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

Water Right Number: 41K 208700-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROBERT H POLICH
PO BOX 1631
GREAT FALLS, MT 59403-1631

Priority Date: MAY 24, 1921

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 40.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 0.50

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		NWSESE	22	20N	2E	CASCADE

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	0.50		NWSESE	22	20N	2E	CASCADE

Total: 0.50

Remarks:

CLAIM FILED 05/03/1982 . THIS IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION 85-2-222, MCA.