

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

CLAIMANTS: Cari A. Kent; Larry B. Kent

CASE 41K-0268-R-2024
41K 210177-00

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 210177-00 received issue remarks during the DNRC’s review of the claims. The claim was consolidated into Case 41K-0268-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 210177-00 received the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 8.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH THE FLOW RATE AND VOLUME.
2. On January 18, 2024, the Water Court consolidated the claim and issued an Order Setting Filing Deadline.
3. On February 14, 2024, claimants Cari A. and Larry B. Kent filed a *Response*. The *Response* asserts that the issues noted in the acres irrigated issue remark above were previously adjudicated during the 41K Temporary Preliminary Decree. Therefore, the Claimants assert that the issue remark was placed in error. To corroborate their assertions, the Claimants attached copies of the Master's Report issued October 18, 1993, and the Order Adopting Master's Report issued on November 5, 1993, for Case 41K-W-210177-00.

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. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. Based on the information provided by and the *Response* filed by claimants Cari A. and Larry B. Kent, the acres irrigated issue remark was previously adjudicated

during the Temporary Preliminary Decree. 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 issue remark be removed from the claim.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Cari A. Kent
Larry B. Kent
104 Manchester Ln
Great Falls, MT 59404

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

Water Right Number: 41K 210177-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CARI A KENT
104 MANCHESTER LN
GREAT FALLS, MT 59404

LARRY B KENT
104 MANCHESTER LN
GREAT FALLS, MT 59404

Priority Date: JUNE 1, 1970

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 50.00 GPM

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

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 10.00

Source Name: SUN RIVER

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		NENWSE	33	21N	2E	CASCADE

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: APRIL 1 TO OCTOBER 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	10.00		NWSE	33	21N	2E	CASCADE

Total: 10.00