

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

CLAIMANTS: Quenby K. Klippenes; Shane Klippenes

CASE 41K-0275-R-2024
41K 30114482
41K 30114483

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 30114482 and 41K 30114483 each received issue remarks during the DNRC’s review of the claims. The claims were consolidated into Case 41K-0275-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 30114483 received the following substantive issue remark:

THE CLAIMED VOLUME EXCEEDS THE 1.50 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

2. On January 18, 2024, the Water Court consolidated the claims and issued an Order Setting Filing Deadline. Nothing was filed at the ordered deadline by the Claimants. The Order Setting Filing Deadline included the following language regarding the above-listed issue remark:

ORDERED that the Claimants review this order and, *if necessary*, file a statement of why the volume of claim 41K 30114483 should not be modified as described in the above-listed issue remark by **Wednesday, February 21, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree to the proposed modifications to the volume of claim 41K 30114483, the volume modified to 1.50 acre-feet per year, and the issue remark will be removed from the claim.*

3. Each of the above-captioned claims also received a notice-type issue remark from the DNRC denoting that the claim was not included in the Basin 41K Decree issued on May 14, 1985.

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 volume issue remark appearing on claim 41K 30114483. Because nothing was filed at the filing deadline by the Claimants, a preponderance of the evidence shows that the volume of claim 41K 30114483 should be modified to 1.50 acre-feet, and the volume issue remark should be removed from the claim.

2. The notice-type issue remark appearing on each claim 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 the volume of claim 41K 30114483 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:

Quenby K. Klippenes
Shane Klippenes
~~2217 6th Ave N~~
~~Great Falls, MT 59401~~
145 New Dracut Hill Rd
Vaughn, MT 59487

Note: Service List Updated 4-5-24

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

Water Right Number: 41K 30114482 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: QUENBY K KLIPPENES
2217 6TH AVE N
GREAT FALLS, MT 59401-1819

SHANE KLIPPENES
2217 6TH AVE N
GREAT FALLS, MT 59401

Priority Date: DECEMBER 31, 1940

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 20.00 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		SENWSE	12	21N	1W	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			SENWSE	12	21N	1W	CASCADE

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

Water Right Number: 41K 30114483 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: QUENBY K KLIPPENES
2217 6TH AVE N
GREAT FALLS, MT 59401-1819

SHANE KLIPPENES
2217 6TH AVE N
GREAT FALLS, MT 59401

Priority Date: DECEMBER 31, 1940

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 1.50 AC-FT

Households: 1

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		SWNWSE	12	21N	1W	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			SWNWSE	12	21N	1W	CASCADE