

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

CLAIMANTS: Janice K. Thomas; Lyle E. Thomas

CASE 41K-0546-R-2023
41K 200240-00

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, 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. Claim 41K 200240-00 received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0546-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 200240-00 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 FLOW RATE AND VOLUME.

2. On June 26, 2023, the Court consolidated the claim and set a filing deadline for the Claimants to file information or evidence addressing and resolving the issue remark. Nothing was filed by the ordered deadline.

3. On September 22, 2023, the Court ordered the Claimants to work with the DNRC to resolve the issue remark.

4. On January 16, 2024, DNRC Water Resource Specialist Dixie Brough filed a *Memorandum* in this matter. In her *Memo*, Ms. Brough notes that the DNRC discussed proposed modification to claim 41K 200240-00 with the Claimants that would resolve the above-listed issue remark. The *Memo* goes on to state that the Claimants filed a Verified Motion to Amend for claim 41K 200240-00 to 10.00 acres irrigated, but also indicated they wished to send additional information regarding the acres irrigated and flow rate to the Water Court.

5. Based on the information, including the Verified Motion to Amend filed by the Claimants, the DNRC made the following recommendations for modification of claim 41K 200240-00 to resolve the issue remark:

RECOMMENDATIONS:

Based on the above discussion, the DNRC recommends the irrigated acreage be corrected to 10.00 acres according to the Verified Motion to Amend received from the claimants. The DNRC further recommends the flow rate be standardized to 17.0 gpm per acre. If the Montana Water Court agrees with the DNRC recommendations, the GIIS issue is resolved and the remark can be removed.

6. Because the Claimants conveyed an interest to the DNRC that they wished to file additional information with the Water Court regarding the acres irrigated and flow rate of claim 41K 200240-00, the Court set a second filing deadline in an order issued on

March 7, 2024, for the Claimants to file any additional information. Nothing was filed by the ordered deadline. The following language was included in the second Order Setting Filing Deadline:

ORDERED that the Claimants review this order and, *if necessary*, file any additional information necessary to resolve the issue remark by **Wednesday, April 10, 2024**. *If nothing is filed by the ordered deadline, the Court will conclude that the Claimants agree to the proposed modifications to the acres irrigated and flow rate listed above, the acres irrigated will be modified to 10.00 acres as described in the Verified Motion to Amend and the flow rate will be modified to 17.00 gpm per acre, and the issue remark will be removed from the claim.*

7. Claim 41K 200240-00 also received a notice-type issue remark denoting modifications made by the DNRC during its reexamination of claims. 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.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the acres irrigated issue remark appearing on claim 41K 200240-00. Based on the information contained Ms. Brough's *Memo*, the acres irrigated should be reduced to 10.00 acres as stated in the Verified Motion to Amend filed by the Claimants. Because the Claimants did not provide any additional evidence regarding the flow rate of claim 41K 200240-00, the flow rate should be standardized to the 17.00 GPM guideline. The acres irrigated issue remark should be removed from the claim.
2. The notice-type issue remark appearing on claim 41K 200240-00 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 claim 41K 200240-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Janice K. Thomas
Lyle E. Thomas
P.O. Box 272
Simms, MT 59477

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

Water Right Number: 41K 200240-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JANICE K THOMAS
PO BOX 272
SIMMS, MT 59477

LYLE E THOMAS
PO BOX 272
SIMMS, MT 59477

Priority Date: FEBRUARY 10, 1969

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 170.00 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 10.00

Source Name: SIMMS 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		SESWSW	11	20N	3W	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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	10.00		S2SWSW	11	20N	3W	CASCADE

Total: 10.00