

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

CLAIMANTS: Angela Hastings; Kory Hastings

CASE 41K-0664-R-2024
41K 208704-00
41K 216246-00

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. Claims 41K 208704-00 and 41K 216246-00 each received issue remarks during the DNRC’s review of the claims. The claims were consolidated into Case 41K-0664-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 216246-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWSE SEC 35 TWP 21N RGE 2E CASCADE COUNTY.

2. On March 15, 2024, 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 the Claimants review this order and, *if necessary*, file a statement describing why the point of diversion for claim 41K 216246-00 should not be modified as proposed in the issue remark above by **Wednesday, April 24, 2024**. *If nothing is filed by the deadline, this Master will conclude that the Claimants agree that the point of diversion of claim 41K 216246-00 should be modified from NWNWSE of Sec 35, Twp 21N, Rge 2E in Cascade County to NENWSE of Sec 35, Twp 21N, Rge 2E in Cascade County, the modification will be made, and the issue remark will be removed from the claim.*

4. Claim 41K 208704-00 received notice-type issue remarks from 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 issue remark appearing on claim 41K 216246-00. Because nothing was filed at the filing deadline by the Claimant, a preponderance of the evidence shows that the point of diversion of claim 41K 216246-00 should be modified from NWNWSE of Sec 35, Twp 21N, Rge 2E in Cascade County to NENWSE of Sec 35, Twp 21N, Rge 2E in Cascade County, and the issue remark should be removed from the claim.

2. The notice type issue remarks appearing on claim 41K 216246-00 served their 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 216246-00 as described in Conclusion of Law No. 1 and remove all 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:

Angela Hastings
Kory Hastings
197 Ulm Vaughn Rd
Great Falls, MT 59404

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**SUN RIVER
BASIN 41K**

Water Right Number: 41K 208704-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANGELA HASTINGS
197 ULM VAUGHN RD
GREAT FALLS, MT 59404-6357

KORY HASTINGS
197 ULM VAUGHN RD
GREAT FALLS, MT 59404-6357

Priority Date: OCTOBER 7, 1892

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 359.00 GPM

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT USE THE SAME PUMP.
THE COMBINED FLOW RATE FOR THESE RIGHTS IS LIMITED TO THE HISTORICAL
PUMP CAPACITY. 41K 199346-00, 41K 208704-00, AND 41K 210352-00.

***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:** 33.70

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 | 35 | 21N | 2E | CASCADE |

***Period of Diversion:** APRIL 1 TO OCTOBER 1

Diversion Means: PUMP

***Period of Use:** APRIL 1 TO OCTOBER 1

***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 | 8.00 | | SWNESW | 35 | 21N | 2E | CASCADE |
| 2 | 20.00 | | SESW | 35 | 21N | 2E | CASCADE |
| 3 | 1.00 | | SESW | 35 | 21N | 2E | CASCADE |
| 4 | 4.70 | | W2SESW | 35 | 21N | 2E | CASCADE |

Total: 33.70

Remarks:

IMPLIED CLAIM NO. 41K 216246-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41K 216246-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANGELA HASTINGS
197 ULM VAUGHN RD
GREAT FALLS, MT 59404-6357

KORY HASTINGS
197 ULM VAUGHN RD
GREAT FALLS, MT 59404-6357

***Priority Date:** DECEMBER 31, 1935

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

***Flow Rate:** 2.80 CFS

***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:** 38.00

***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 | 35 | 21N | 2E | CASCADE |

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: PUMP

***Period of Use:** APRIL 1 TO OCTOBER 15

***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 | 20.00 | | SESW | 35 | 21N | 2E | CASCADE |
| 2 | 10.00 | | SWNESW | 35 | 21N | 2E | CASCADE |
| 3 | 8.00 | | SENESW | 35 | 21N | 2E | CASCADE |

Total: 38.00

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 208704-00.