

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

CLAIMANTS: Barrett Family Trust; David J. Langlois; Lynn M. Langlois

CASE 41K-0673-R-2024
41K 96406-00

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 96406-00 received an issue remark during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0673-R-2024 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 96406-00 received the following substantive issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. On April 12, 2024, the Water Court issued an Order Setting Filing Deadline with the following language regarding the above-listed issue remark:

ORDERED that the Claimants review this order and, *if necessary*, file a statement describing the historically accurate point of diversion for claim 41K 96406-00 by **Wednesday, May 15, 2024**. *If nothing is filed by the deadline, the Water Master will conclude that the Claimants believe that the point of diversion of claim 41K 96406-00 is already correctly listed on the abstract, 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).

CONCLUSION OF LAW

1. The information in the record resolves issue remark appearing on claim 41K 96406-00. Because nothing was filed at the filing deadline by the Claimants, 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 96406-00, the point of diversion 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 96406-00.

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:

Barrett Family Trust
Joseph J. & Margaret E. Barrett, Trustees
PO Box 548
Augusta, MT 59410

David J. Langlois
Lynn M. Langlois
PO Box 482
Augusta, MT 59410

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

Water Right Number: 41K 96406-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

DAVID J LANGLOIS
PO BOX 482
AUGUSTA, MT 59410-0482

LYNN M LANGLOIS
PO BOX 482
AUGUSTA, MT 59410-0482

BARRETT FAMILY TRUST
JOSEPH J & MARGARET E BARRETT TRUSTEES
PO BOX 548
AUGUSTA, MT 59410-0548

Priority Date: NOVEMBER 7, 1893

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 219.70

Source Name: ELK 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		SESEW	28	19N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 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	65.40			13	19N	7W	LEWIS AND CLARK
2	48.10		E2	23	19N	7W	LEWIS AND CLARK
3	106.20			24	19N	7W	LEWIS AND CLARK

Total: 219.70