

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

CLAIMANTS: Kimie J. Denney; Kenneth S. Hayward;
Penny L. Hayward; Leonard L. Kopec;
Kenck Ranch LLC

CASE 41K-0302-R-2024
41K 22814-00
41K 22817-00
41K 96339-00

NOTICE OF INTENT TO APPEAR: Tee Bar Ranch Co.

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
FINDINGS OF FACT

1. Claims 41K 22814-00, 41K 22817-00, and 41K 96339-00 appeared in the 41K Preliminary Decree with DNRC issue remarks. Each of the claims received a Notice of Intent to Appear from Tee Bar Ranch Co.

2. Claim 41K 22814-00 is owned by Kimie Denney, Kenneth Hayward, and Penny Hayward. Claim 41K 22817-00 is owned by Leonard Kopec. Claim 41K 96339-00 is owned by Kenck Ranch LLC.

3. The claims in this case each received the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 100 MINER'S INCHES DECREED IN CASE NO. 4742 , LEWIS AND CLARK COUNTY. 41K 96339-00, 41K 22814-00, 41K 22817-00.

A settlement deadline was set for the parties to determine whether they could resolve the issues in the case through mutual agreement.

4. On July 16, 2024, Kenck Ranch filed a declaration indicating that it agreed to reduce the flow rate of its claim 41K 96339-00 from 2.5 cfs to 2.35 cfs, thereby resolving the decree exceeded issue remark for all three claims.

5. Claims 41K 22817-00 and 41K 96339-00 received issue remarks in addition to the decree exceeded remarks discussed above. The issue remark appearing on claim 41K 96339-00 is considered a notice issue remark that provides notice that the ditch name was modified during claims reexamination. It does not require further proceedings and should be removed from the claim abstract.

6. The issue remark appearing on claim 41K 22817-00 states that the claimed flow rate exceeds the 17 gpm per acre guideline and cannot be confirmed due to lack of data. The flow rate equals 48.00 gpm per acre.

A filing deadline was set for the Notice of Intent to Appear party, Tee Bar Ranch Co., to indicate whether it intended to participate in the resolution of the flow rate issue remark. Nothing was filed by the deadline.

The statement of claim form for claim 41K 22817-00 identified a flow rate of 48.00 gpm. No evidence has been presented to show that the claimed flow rate is incorrect. The flow rate should remain as claimed and the flow rate issue remark should be removed from claim 41K 22817-00.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

The issue remark appearing on claim 41K 96339-00 is a notice-type issue remark. The remark has served its purpose of providing notice. The remark does not overcome the prima facie status of the claim and should be removed from the claim abstract.

The issue remark appearing on claim 41K 22817-00 indicates that the flow rate exceeds the 17 gpm per acre guideline. A guideline does not constitute sufficient evidence to overcome the prima facie status of the claim. No evidence was presented to establish that the flow rate for claim 41K 22817-00 is incorrect. The flow rate should remain as claimed and the issue remark should be removed from the claim abstract.

3. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

The requested change to the flow rate of claim 41K 96339-00 constitutes a reduction to the claimed flow rate and should be accepted by the Court. The reduction to the flow rate of claim 41K 96339-00 resolves the decree exceeded issue remark appearing on all three claims in this case. The decree exceeded issue remark should be removed from the claims.

RECOMMENDATIONS

1. Claim 41K 96339-00 should be modified as provided above.
2. The issue remarks should be removed from the claims in this case.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 41K 22814-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KIMIE J DENNEY
PO BOX 693
AUGUSTA, MT 59410-0693

KENNETH S HAYWARD
PO BOX 693
AUGUSTA, MT 59410-0693

PENNY L HAYWARD
PO BOX 693
AUGUSTA, MT 59410-0693

Priority Date: JUNE 1, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 20.00 GPM

***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: 2.50

Source Name: ELK CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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		SENE	17	20N	6W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO SEPTEMBER 1

Diversion Means: PUMP

Period of Use: APRIL 1 TO SEPTEMBER 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	2.50		SENE	17	20N	6W	LEWIS AND CLARK

Total: 2.50

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

Water Right Number: 41K 22817-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LEONARD L KOPEC
PO BOX 666
AUGUSTA, MT 59410-0666

Priority Date: JUNE 1, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 48.00 GPM

***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:** 1.00

Source Name: ELK CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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		NWNENE	17	20N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: PUMP

Period of Use: MAY 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	1.00		NENE	17	20N	6W	LEWIS AND CLARK

Total: 1.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

22816-00 22817-00

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

Water Right Number: 41K 96339-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: KENCK RANCH LLC
PO BOX 308
AUGUSTA, MT 59410-0308

Priority Date: JUNE 1, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.35 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:** 165.00

Source Name: ELK CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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		SWSWNE	30	20N	6W	LEWIS AND CLARK

Period of Diversion: APRIL 20 TO OCTOBER 10

Diversion Means: HEADGATE

Ditch Name: AUCHARD (KENCK) DITCH

Period of Use: APRIL 20 TO OCTOBER 10

***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	110.00		N2	20	20N	6W	LEWIS AND CLARK
2	50.00		S2SE	17	20N	6W	LEWIS AND CLARK
3	5.00		SESW	17	20N	6W	LEWIS AND CLARK

Total: 165.00