

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

\*\*\*\*\*

CLAIMANTS: Barbara M. Krause Survivors Trust; John W. Krause  
Jr. Bypass Trust

CASE 41K-0675-R-2024  
41K 21076-00

**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. The above-captioned claim received issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 41K-0675-R-2024 and an Order Requiring the Claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 21076-00 received the following information remark that appears to have been miscoded during the DNRC’s reexamination of claims and should have been coded as a substantive issue remark:

THE SUN RIVER DECREE, CASE NO. 4742 IN CASCADE COUNTY, DECREES 151.04 ACRES FOR THIS RIGHT.

2. On May 3, 2024, the Court consolidated the claim and issued an order for the Claimants to work with the DNRC to address and resolve the issue remarks.

3. On July 10, 2024, DNRC Water Resource Specialist Dixie Brough filed a *Memorandum* in this matter. Ms. Brough states that, at the time the *Memo* was filed, the DNRC had not received any contact from the Claimants. Based in the information found in the claim file, the DNRC notes that there are duplicate places of use legal land descriptions in the Case 4742 Decree. Taking these duplications into account, along with an excerpt of the Case 4742 Decree which notes 92.00 acres for the A.R. Van Eman right, the DNRC identified 92.00 acres irrigated for claim 41K 21076-00. Therefore, the DNRC made recommendations for modification of the place of use for claim 41K 21076-00 to allow resolution of the issue remark. Those recommendations are as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	33.00	80.00	SE	S2NW	15	20N	6W	LEWIS AND CLARK
2	35.00	80.00	NW	N2SW	15	20N	6W	LEWIS AND CLARK
3	14.00	100.00	NESW	NE	15 21	20N	6W	LEWIS AND CLARK
4	10.00	60.00	SW	E2NW	15 21	20N	6W	LEWIS AND CLARK
<b>Total:</b>	<b>92.00</b>	<b>320.00</b>						

4. On August 20, 2024, the Court issued an Order Setting Filing Deadline for the Claimants to file a statement if they disagreed with the above-listed recommendations from the DNRC. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **October 30, 2024**, for claimants Barbara M. Krause Survivors Trust and John W. Krause Jr. Bypass Trust to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed, the Court will conclude that the Claimants agree with the DNRC recommendations.

5. Claim 41K 21076-00 also received a notice-type issue remark from the DNRC during its claims reexamination. 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 substantive issue remark appearing on claim 41K 21076-00. Based on the information contained Ms. Brough's *Memo*, and the lack of response to the August 20, 2024 Order Setting Filing Deadline, the claim should be modified as described in Finding of Fact No. 3<sup>1</sup>. The substantive issue remark should be removed from the claim.
2. The notice-type issue remark appearing on claim 41K 21076-00 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 21076-00 as described above and remove the issue remark 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.**

---

<sup>1</sup> The maximum acres element of claim 41K 21076-00 will also be modified from 320.00 acres to 92.00 acres to conform with the modifications made to the place of use element.

**Service Via Electronic Mail:**

Robert Erickson  
Rhoades & Erickson PLLC  
430 Ryman Street  
Missoula, MT 59802  
(406) 721-9700  
[erickson@montanalawyer.com](mailto:erickson@montanalawyer.com)  
[courtdocs@montanalawyer.com](mailto:courtdocs@montanalawyer.com)

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

**Water Right Number:** 41K 21076-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** KRAUSE, BARBARA M SURVIVORS TRUST  
BARBARA M KRAUSE TRUSTEE  
PO BOX 362  
AUGUSTA, MT 59410-0362

KRAUSE, JOHN W JR BYPASS TRUST  
BARBARA M KRAUSE TRUSTEE  
PO BOX 362  
AUGUSTA, MT 59410-0362

**Priority Date:** MARCH 1, 1882

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 2.10 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:** 92.00

**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 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** HOGAN DITCH

**Period of Use:** APRIL 1 TO NOVEMBER 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	33.00		SE	15	20N	6W	LEWIS AND CLARK
2	35.00		NW	15	20N	6W	LEWIS AND CLARK
3	14.00		NESW	15	20N	6W	LEWIS AND CLARK
4	10.00		SW	15	20N	6W	LEWIS AND CLARK

**Total:** 92.00

**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.

21076-00

132529-00