

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: Arena M. De La Cruz; Kenck Ranch LLC

NOTICE OF INTENT TO APPEAR: Tee Bar Ranch Co.

CASE 41K-0495-R-2023

41K 22816-00

41K 96340-00

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 claims received an issue remark during the DNRC's claims reexamination.

The claims were consolidated into Case 41K-0495-R-2023 to resolve the issue remarks.

FINDINGS OF FACT

1. Each of the claims 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 96340-00 & 41K 22816-00.

2. A Status Conference for Case 41K-0495-R-2023 took place on October 25, 2023, by telephone conference call. Water Master Eugene C. White presided; claimant Arena M. De La Cruz was present; Abby Brown was present on behalf of claimant Kenck Ranch, LLC; and Ryan McLane was present on behalf of NOIA party Tee Bar Ranch Co. During the conference, the parties discussed the decree exceeded issue remark appearing on the above-captioned claims and agreed on a timeline to file information or evidence resolving the issue remarks.

3. On January 22, 2024, claimant Kenck Ranch, LLC ("Kenck Ranch") filed an *Unopposed Statement and Motion to Resolve Issue Remarks*. The *Motion* states that the decree exceeded issue remarks appearing on claim 41K 22816-00 and 41K 96340-00 were already addressed and resolved during the 41K Temporary Preliminary Decree in in a Master's Report for Case 41K-4 issued on February 23, 1998. Additionally, the *Motion* recounts then-claimant Larry Lucero's Amendment to Statement of Claim for claim 41K 22816-00 which showed the claim was based on the June 1, 1871 J.W. Eberl right, rather than the June 1, 1871 Richard Auchard right.

4. Claim 41K 96340-00 also received a notice-type issue remark stating that the ditch name was modified by 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. Based on the information contained in Kenck Ranch's *Unopposed Motion*, the decree exceeded issue remarks appearing on claims 41K 22816-00 and 41K 96340-00 were previously addressed and resolved during the 41K Temporary Preliminary Decree. The elements of each claim should remain as they appear on the abstracts and the decree exceeded issue remarks should be removed from the claims.

2. The notice-type issue remark appearing on claim 41K 96340-00 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 remove all issue remarks from the above-captioned claims.

Post decree abstracts of the water right claims reflecting the removal of the issue remarks are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Arena M. De La Cruz
6888 N Overfield Rd
Casa Grande, AZ 85194

Service Via Electronic Mail:

William Driscoll
Ryan McLane
FRANZ & DRISCOLL, PLLP
PO Box 1155
Helena, MT 59624-1155
(406) 442-0005
WPD@franzdriscoll.com
Ryan@franzdriscoll.com
Office@franzdriscoll.com

Abigail R. Brown
Attorney at Law
Parsons Behle & Latimer
127 East Main Street, Suite 301
Missoula, MT 59802
Main: 406-317-7220
Direct: 406-317-7243
AbbyBrown@parsonsbehle.com
ecf@parsonsbehle.com

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

Water Right Number: 41K 22816-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ARENA M DE LA CRUZ
6888 N OVERFIELD RD
CASA GRANDE, AZ 85194-7373

Priority Date: JUNE 1, 1871

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: 5.50

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		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	5.50		NENE	17	20N	6W	LEWIS AND CLARK

Total: 5.50

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 96340-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: JUNE 1, 1871

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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 1 TO AUGUST 31

Diversion Means: HEADGATE

Ditch Name: AUCHARD (KENCK) DITCH

Period of Use: APRIL 1 TO AUGUST 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	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