

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

CLAIMANTS: George M. Springer III; Jennifer L. Springer

CASE 41K-0536-R-2023
41K 5435-00

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 5435-00 received an issue remark during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0536-R-2023 and the Water Court issued an Order Setting Filing Deadline to resolve the issue remark.

FINDINGS OF FACT

1. Claim 41K 5435-00 received the following substantive issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THE OWNER MADE AN UNAUTHORIZED CHANGE IN THE POINT OF DIVERSION AFTER JULY 1, 1973. 85-2-402 REQUIRES DEPARTMENT APPROVAL OF THIS CHANGE TO PERFECT THIS RIGHT.

2. On July 19, 2023, claimant George Springer filed a *Response*. In the *Response*, Mr. Springer asserts that after discussion with the Lewistown Regional Office of the DNRC, he has attached sufficient proof that the point of diversion has not moved. Attached to the *Response* was page four of 160 of the file dated 2/24/2011 in the claim file, which includes a map dated August of 1980 and an aerial photo of his property showing the point of diversion in the same place.

3. The abstract for claim 41K 5435-00 includes an information remark with the following language:

AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION COMPLETED 11/13/1990 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. 41K G005435-00

4. On September 28, 2023, the Court issued an order requiring the Claimant to work with the DNRC to clarify the point of diversion issues associated with claim 41K 5435-00 and resolve the issue remark.

5. On February 22, 2024, DNRC Water Resource Specialist Jamie Verploegen filed a *Memorandum* in this matter. In her *Memo*, Ms. Verploegen states that she was contacted by claimant George Springer on October 2, 2023, to address the point of diversion issue remark. Further, the *Memo* states that an application to change the point of diversion was filed by the Claimant's predecessor, permission to change the point of diversion was subsequently granted by the DNRC in April of 1990, and the DNRC received notice of completion of the change in the point of diversion on November 13, 1990. Based on this information, the DNRC recommends that the issue remark be removed from the claim.

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.
6. 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.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSION OF LAW

1. Based on the information contained in claimant George Springer’s *Response*, the information appearing on the abstract for claim 41K 5435-00 described in the information remark listed in Finding of Fact No. 3., and the information and subsequent recommendation found in Ms. Verploegen’s *Memo*, the point of diversion should remain as it appears on the abstract, and issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remark from claim 41K 5435-00.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

George M. Springer III
Jennifer L. Springer
135 Riverfront Ln.
Great Falls, MT 59404

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

Water Right Number: 41K 5435-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: GEORGE M SPRINGER III
135 RIVERFRONT LN
GREAT FALLS, MT 59404 6237

JENNIFER L SPRINGER
135 RIVERFRONT LN
GREAT FALLS, MT 59404 6237

Priority Date: OCTOBER 7, 1892

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 31.00 GPM

***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: 5.00

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		SENWSW	32	21N	2E	CASCADE

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: PUMP

Subdivision: TWIN SILOS RANCHETTES TRACT/LOT: 11 BLOCK: 5

Period of Use: MAY 1 TO OCTOBER 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	2.50		S2NWSW	32	21N	2E	CASCADE

Subdivision: TWIN SILOS RANCHETTES TRACT/LOT: 11 BLOCK: 5

2	2.35		SENWSW	32	21N	2E	CASCADE
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Subdivision: TWIN SILOS RANCHETTES TRACT/LOT: 12 BLOCK: 5

3	0.15		NESWSW	32	21N	2E	CASCADE
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Subdivision: TWIN SILOS RANCHETTES TRACT/LOT: 12 BLOCK: 5

Total: 5.00

Remarks:

AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION COMPLETED 11/13/1990 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.
41K G005435-00