

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

\* \* \* \* \*

CLAIMANT: Willard & Shoquist Family Trust

**CASE 41K-0601-R-2023**

41K 96655-00  
41K 214568-00  
41K 214569-00

**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. Each claim received issue remarks during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0601-R-2023 and an Order Setting Filing Deadline was issued by the Court to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41K 96655-00 received the following substantive issue remarks:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A SUBIRRIGATION.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 41K 214568-00 received the following substantive issue remarks:

THE DITCH NAME APPEARS TO BE BALANGER DITCH.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON NORTH FORK WILLOW CREEK (WILLOW CREEK) WITH A PRIORITY DATE PREDATING CASE NO 4742, CASCADE COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

Claim 41K 214569-00 received the following substantive issue remarks:

THE DITCH NAME APPEARS TO BE BALANGER DITCH.

2. On August 11, 2023, after nothing was filed to the original filing deadline, the Court issued an Order Setting Show Cause Deadline for claimant Willard and Shoquist Family Trust to file information or evidence showing cause why the modifications proposed in the above-listed issue remarks should not be made to the claims.

3. On August 16, 2023, Jim F. Willard, a representative of claimant Willard and Shoquist Family Trust filed a *Response*. In the *Response*, Mr. Willard states his agreement to the proposed modifications to the claims.

### 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.

3. 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.

#### CONCLUSIONS OF LAW

1. Based on the information proffered in the issue remarks and the *Response* filed by claimant Willard & Shoquist Family Trust's representative Jim Willard, the means of diversion for claim 41K 96655-00 should be modified to subirrigation and the ditch name for claims 41K 214568-00 and 41K 214569-00 should be modified to Balanger Ditch. The means of diversion and ditch name issue remark should be removed from the claims.

2. The notice-type issue remarks appearing on claims 41K 96655-00 and 41K 214568-00 served their notice purpose and should be removed from the claims.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the means of diversion for claim 41K 96655-00 be modified to subirrigation and the ditch name for claims 41K 214568-00 and 41K 214569-00 be modified to Balanger Ditch and all issue remark be removed from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Willard & Shoquist Family Trust  
Co trustees James F. Willard & Darrell G. Shoquist  
251 Franklin Mine Rd  
Helena, MT 59602-7114

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

**Water Right Number:** **41K 96655-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
WILLARD & SHOQUIST FAMILY TRUST  
JAMES F WILLARD & DARRELL G SHOQUIST, CO-TRUSTEES  
67 FRANKLIN MINE RD  
HELENA, MT 59602

**\*Priority Date:** JUNE 14, 1911

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** NATURAL SUBIRRIGATION

THIS WATER RIGHT ALSO INCLUDES NATURAL FLOOD IRRIGATION AS AN INCIDENTAL TYPE OF IRRIGATION.

**Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

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

**Climatic Area:** 5 - LOW

**Maximum Acres:** 24.00

**Source Name:** SUBIRRIGATION, UNNAMED TRIBUTARY OF WILLOW CREEK, NORTH FORK

**Source Type:** GROUNDWATER

ALSO KNOWN AS WEST COULEE SPRING

**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		SWSESE	2	20N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	SUBIRRIGATION					
2		SESESE	2	20N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	SUBIRRIGATION					
3		SW	1	20N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	SUBIRRIGATION					
4		NWSE	1	20N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	SUBIRRIGATION					
<b>Period of Use:</b>	JANUARY 1 TO DECEMBER 31					

**Place of Use:**

<b><u>ID</u></b>	<b><u>Acres</u></b>	<b><u>Govt Lot</u></b>	<b><u>Qtr Sec</u></b>	<b><u>Sec</u></b>	<b><u>Twp</u></b>	<b><u>Rge</u></b>	<b><u>County</u></b>
1	2.00		SWSESE	2	20N	8W	LEWIS AND CLARK
2	2.00		SESESE	2	20N	8W	LEWIS AND CLARK
3	10.00		SW	1	20N	8W	LEWIS AND CLARK
4	10.00		NWSE	1	20N	8W	LEWIS AND CLARK
<b>Total:</b>	<b>24.00</b>						

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

**Water Right Number:** **41K 214568-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WILLARD & SHOQUIST FAMILY TRUST

JAMES F WILLARD & DARRELL G SHOQUIST, CO-TRUSTEES

67 FRANKLIN MINE RD

HELENA, MT 59602

**\*Priority Date:** DECEMBER 31, 1904

**\*Type of Historical Right:** USE

**\*Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 1.00 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:** 10.00

**\*Source Name:** WILLOW CREEK, NORTH FORK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>	
1		SESWNE		2	20N	8W	LEWIS AND CLARK

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** BALANGER DITCH

**\*Period of Use:** APRIL 1 TO OCTOBER 31

**\*Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	3.00		S2SWNW	1	20N	8W	LEWIS AND CLARK
2	1.00		SWSENW	1	20N	8W	LEWIS AND CLARK
3	1.00		SWSENE	2	20N	8W	LEWIS AND CLARK
4	5.00		SESENE	2	20N	8W	LEWIS AND CLARK
<b>Total:</b>	10.00						

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**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 96648-00.

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

**Water Right Number:** **41K 214569-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

WILLARD & SHOQUIST FAMILY TRUST

JAMES F WILLARD & DARRELL G SHOQUIST, CO-TRUSTEES

67 FRANKLIN MINE RD

HELENA, MT 59602

**\*Priority Date:** APRIL 1, 1935

**\*Type of Historical Right:** USE

**\*Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 1.00 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:** 59.00

**\*Source Name:** WILLOW CREEK, NORTH FORK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>	
1		SESWNE		2	20N	8W	LEWIS AND CLARK

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** BALANGER DITCH

**\*Period of Use:** APRIL 1 TO OCTOBER 31

**\*Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	7.00		SWNENW	1	20N	8W	LEWIS AND CLARK
2	5.00		SENENW	1	20N	8W	LEWIS AND CLARK
3	9.00		NWSENW	1	20N	8W	LEWIS AND CLARK
4	4.00		NESENW	1	20N	8W	LEWIS AND CLARK
5	1.00		SENWNW	1	20N	8W	LEWIS AND CLARK
6	3.00		NWSWNW	1	20N	8W	LEWIS AND CLARK
7	9.00		NESWNW	1	20N	8W	LEWIS AND CLARK
8	8.00		SESWNW	1	20N	8W	LEWIS AND CLARK
9	5.00		SWSWNW	1	20N	8W	LEWIS AND CLARK
10	2.00		SWSENW	1	20N	8W	LEWIS AND CLARK
11	2.00		SWSENE	2	20N	8W	LEWIS AND CLARK

12                    4.00                    SESENE            2    20N    8W    LEWIS AND CLARK  
**Total:**    59.00

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**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 096648-00.