

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

\*\*\*\*\*

CLAIMANT: Ronald V. Hepp

**CASE 41K-0242-R-2024**

41K 104411-00  
41K 104412-00  
41K 104413-00  
41K 104414-00  
41K 104415-00  
41K 200425-00

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

The claims were consolidated into Case 41K-0242-R-2024 and a filing deadline was issued by the Court to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41K 104411-00 received the following substantive issue remark:

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

Claim 41K 104413-00 received the following substantive issue remarks:

THE CLAIMANT FILED AN AFFIDAVIT ON DECEMBER 1, 1993 STATING THAT THIS CLAIM IRRIGATES 350.00 ACRES. THIS ISSUE WILL BE ADDRESSED IN THE NEXT OBJECTION PERIOD FOR THIS BASIN.

At the time of consolidation, claim 41K 104411-00 already displayed a volume of 1,100.00 acre-feet and the maximum acres element of claim 41K 104413-00 showed 130.00 acres.

2. On May 21, 2024, claimant Ronald V. Hepp filed a *Response*. The *Response* addresses first the issue remark noting that a quantified volume is needed for claim 41K 104411-00 and states that the 1,100.00 acre-feet quantification already appearing on the abstract is historically accurate. Additionally, Mr. Hepp's *Response* reaffirms his statements in his December 1, 1993 Affidavit that the maximum acres element for claim 41K 104413-00 should be modified from 130.00 acres to 350.00 acres. Mr. Hepp bases this assertion off the fact that at the time of filing, his father only owned 130.00 of the total 350.00 acres irrigated by the pump diverting water for this claim but that the neighboring property also used the claim to irrigate the remaining 220.00 acres. All of which are now owned and irrigated by Mr. Hepp. Further, Mr. Hepp states that the place of use for 41K 104413-00 should be modified to reflect the same legal land descriptions as claim 41K 104414-00 as the two claims share an incremental development relationship irrigating the aforementioned 350.00 acres. For reference, the place of use for claim 41K 104414-00 appears as follows:

**\*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		S2S2	1	20N	2E	CASCADE
2	39.00		N2	1	20N	2E	CASCADE
3	175.00		S2	1	20N	2E	CASCADE
4	100.00		SW	6	20N	3E	CASCADE
5	6.00		S2SENW	6	20N	3E	CASCADE
6	3.00		SWSWNE	6	20N	3E	CASCADE
7	26.00		W2SE	6	20N	3E	CASCADE
<b>Total:</b>	<b>350.00</b>						

3. The proposed modifications to the place of use and acres irrigated elements for claim 41K 104413-00 listed above matches a place of use addendum found in the claim file of claim 41K 104413-00 associated with Mr. Hepp's December 1, 1993 Affidavit which denotes the following legal land descriptions:

**PLACE OF USE  
ADDENDUM**

Water Right No. 41K-W104413-00

<u>PARCEL</u>	<u>ACRES</u>		<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
001	1.00		S2S2	01	20N	02E	CASCADE
002	39.00		N2	01	20N	02E	CASCADE
003	175.00	**	S2	01	20N	02E	CASCADE
004	100.00	**	SW	06	20N	03E	CASCADE
005	6.00		S2SENW	06	20N	03E	CASCADE
006	3.00		SWSWNE	06	20N	03E	CASCADE
007	26.00		W2SE	06	20N	03E	CASCADE
<b>TOTAL</b>	<b>350.00</b>						

4. Claims 41K 104412-00, 41K 104413-00, 41K 104414-00, 41K 104415-00, and 41K 200425-00 each received notice-type issue remarks from the DNRC during its reexamination of claims in Basin 41K. No objections were filed.

**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.

8. Notice is required to other water users if a motion to amend will adversely affect other water rights. Section 85-2-233(6), MCA.

#### CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the substantive issue remarks appearing on claims 41K 104411-00 and 41K 104413-00. Based on the *Response* filed by Mr. Hepp, the volume quantification appearing on claim 41K 104411-00 is already historically accurate and the volume issue remark should be removed from claim 41K 104411-00. Based on the December 1, 1993 Affidavit and *Response* filed by Mr. Hepp, a preponderance of the evidence shows that the place of use and maximum acres for claim 41K 104413-00 should be modified as described in Finding of Fact No. 2 and the substantive issue remark should be removed from claim 41K 104413-00.

2. The proposed modifications to the acres irrigated and place of use for claim 41K 104413-00 were given basin-wide notice on the objection list for the Preliminary Decree in Basin 41K and no objections were filed. Therefore, no additional notice is necessary, and the acres irrigated and place of use for claim 41K 104413-00 should be modified as described above.

3. The notice-type issue remarks appearing on claims 41K 104412-00, 41K 104413-00, 41K 104414-00, 41K 104415-00, and 41K 200425-00 served their notice purpose and should be removed from the claims.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the claims as described above and remove all issue remarks from the claims.

Post-decree abstracts of each water right claim reflecting the recommended changes is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Ronald V. Hepp  
2373 MT Highway 83 N  
Seeley Lake, MT 59868

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

**Water Right Number:** 41K 104411-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** RONALD V HEPP  
 2373 MT HIGHWAY 83 N  
 SEELEY LAKE, MT 59868

**Priority Date:** APRIL 15, 1901

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 5.00 CFS

**\*Volume:** 1,100.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**\*Maximum Acres:** 502.50

**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		NWNWSE	1	20N	2E	CASCADE

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

**Diversion Means:** PUMP

2		SWNWNW	1	20N	2E	CASCADE
---	--	--------	---	-----	----	---------

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

**Diversion Means:** PUMP

**Period of Use:** APRIL 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	36.60		S2S2	36	21N	2E	CASCADE
2	195.00		N2	1	20N	2E	CASCADE
3	194.20		S2	1	20N	2E	CASCADE
4	61.70		SW	6	20N	3E	CASCADE
5	1.50		S2SENE	6	20N	3E	CASCADE
6	1.00		SWSWNE	6	20N	3E	CASCADE
7	12.50		W2SE	6	20N	3E	CASCADE

**Total:** 502.50

**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.

104411-00

104412-00

104413-00

104414-00

104415-00

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

**Water Right Number:** 41K 104412-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** RONALD V HEPP  
2373 MT HIGHWAY 83 N  
SEELEY LAKE, MT 59868

**Priority Date:** DECEMBER 31, 1911

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 1.96 CFS

**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:** 190.00

**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		SWNWNW	1	20N	2E	CASCADE

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 TO OCTOBER 15

**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	150.00		N2	1	20N	2E	CASCADE
2	40.00		S2S2	36	21N	2E	CASCADE

**Total:** 190.00

**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.

104411-00      104412-00      104413-00      104414-00      104415-00



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

**Water Right Number:** 41K 104413-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** RONALD V HEPP  
 2373 MT HIGHWAY 83 N  
 SEELEY LAKE, MT 59868

**Priority Date:** DECEMBER 31, 1911

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 1.51 CFS

**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:** 350.00

**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		NWNWSE	1	20N	2E	CASCADE

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 TO OCTOBER 15

**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		S2S2	1	20N	2E	CASCADE
2	39.00		N2	1	20N	2E	CASCADE
3	175.00		S2	1	20N	2E	CASCADE
4	100.00		SW	6	20N	3E	CASCADE
5	6.00		S2SENE	6	20N	3E	CASCADE
6	3.00		SWSWNE	6	20N	3E	CASCADE
7	26.00		W2SE	6	20N	3E	CASCADE

**Total:** 350.00

**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.

104411-00

104412-00

104413-00

104414-00

104415-00

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

**Water Right Number:** 41K 104414-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** RONALD V HEPP  
2373 MT HIGHWAY 83 N  
SEELEY LAKE, MT 59868

**Priority Date:** DECEMBER 31, 1949

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FURROW/FLOOD

**Flow Rate:** 2.67 CFS

**\*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:** 350.00

**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		NWNWSE	1	20N	2E	CASCADE

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 TO OCTOBER 15

**\*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		S2S2	1	20N	2E	CASCADE
2	39.00		N2	1	20N	2E	CASCADE
3	175.00		S2	1	20N	2E	CASCADE
4	100.00		SW	6	20N	3E	CASCADE
5	6.00		S2SE	6	20N	3E	CASCADE
6	3.00		SWSWNE	6	20N	3E	CASCADE
7	26.00		W2SE	6	20N	3E	CASCADE

**Total:** 350.00

**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.

104411-00

104412-00

104413-00

104414-00

104415-00

THE PLACE OF USE WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

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

**Water Right Number:** 41K 104415-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** RONALD V HEPP  
 2373 MT HIGHWAY 83 N  
 SEELEY LAKE, MT 59868

**Priority Date:** DECEMBER 31, 1945

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 2.56 CFS

**\*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:** 190.00

**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		SWNWNW	1	20N	2E	CASCADE

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 TO OCTOBER 15

**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	150.00		N2	1	20N	2E	CASCADE
2	40.00		S2S2	36	21N	2E	CASCADE

**Total:** 190.00

**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.

104411-00      104412-00      104413-00      104414-00      104415-00

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

**Water Right Number:** 41K 200425-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** RONALD V HEPP  
2373 MT HIGHWAY 83 N  
SEELEY LAKE, MT 59868

**Priority Date:** FEBRUARY 1, 1889

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 5.00 CFS

**\*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:** 180.00

**Source Name:** UNNAMED TRIBUTARY OF 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		SESWSW	6	20N	3E	CASCADE

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

**Diversion Means:** DIKE

2		SESESE	1	20N	2E	CASCADE
---	--	--------	---	-----	----	---------

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

**Diversion Means:** DIKE

**Period of Use:** APRIL 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	85.00		SW	6	20N	3E	CASCADE
2	60.00		SE	1	20N	2E	CASCADE
3	6.00		S2SESW	6	20N	3E	CASCADE
4	3.00		SWSWNE	6	20N	3E	CASCADE
5	26.00		W2SE	6	20N	3E	CASCADE

**Total:** 180.00

---

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

200425-00

200428-00