

Montana Water Court  
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**FILED**  
05/20/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41K-0506-R-2024  
White, Eugene  
5.00

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

\*\*\*\*\*

CLAIMANTS: Barbara G. Savoy; Walter H. Savoy

**CASE 41K-0506-R-2024**  
41K 208423-00  
41K 208424-00

**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 an issue remark during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0506-R-2024 and the Water Court issued an Order Setting Filing Deadline to resolve the issue remarks.

### FINDINGS OF FACT

1. Each of the above-captioned claims received the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 117.0 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

2. On April 22, 2024, claimant George J. Savoy, representative for claimant Walter H. Savoy Estate, filed a *Response*. In the *Response*, Mr. Savoy asserts that after review of the issue remarks and the claims, the claimants do not agree with the modifications proposed to the acres irrigated by the DNRC, and that the acres irrigated listed on the abstracts are historically accurate. Additionally, Mr. Savoy states that the claimants do not believe that the DNRC provided sufficient evidence to overcome the prima facie status of the Statements of Claim regarding the maximum acres element of claims 41K 208423-00 and 41K 208434-00.

3. Each of the claims received notice type issue remarks denoting modifications made by the DNRC during its claims reexamination.

### 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 representative George J. Savoy's *Response*, the issue remarks do not overcome the prima facie status afforded the Statements of Claim for claims 41K 208423-00 and 41K 208424-00, the maximum acres irrigated should remain as they appear on the abstracts, and issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing each of the claims 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 Court remove all issue remarks from claims 41K 208423-00 and 41K 208424-00.

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:**

Barbara G. Savoy  
1701 Honeysuckle Ln  
Prosper, TX 75078

Walter H. Savoy  
93 N Fort Shaw Rd  
Fort Shaw, MT 59443

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

**Water Right Number:** 41K 208423-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BARBARA G SAVOY  
1701 HONEYSUCKLE LN  
PROSPER, TX 75078

WALTER H SAVOY  
93 N FORT SHAW RD  
FORT SHAW, MT 59443

**Priority Date:** JUNE 1, 1962

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/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:** 3 - MODERATE

**Maximum Acres:** 164.63

**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	5	NWSWNW	3	20N	2W	CASCADE

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

**Diversion Means:** HEADGATE

**Ditch Name:** ROCKY REEF CANAL

**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	40.00		SWNW	1	20N	2W	CASCADE
2	20.00	2	NWNE	1	20N	2W	CASCADE
3	42.41	3	NENW	1	20N	2W	CASCADE
4	42.22	4	NWNW	1	20N	2W	CASCADE
5	20.00	5	SENW	1	20N	2W	CASCADE

**Total:** 164.63

**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.

208423-00

208424-00

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

**Water Right Number:** 41K 208424-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BARBARA G SAVOY  
1701 HONEYSUCKLE LN  
PROSPER, TX 75078

WALTER H SAVOY  
93 N FORT SHAW RD  
FORT SHAW, MT 59443

**Priority Date:** JUNE 20, 1912

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/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:** 3 - MODERATE

**Maximum Acres:** 164.63

**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	5	NWSWNW	3	20N	2W	CASCADE

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

**Diversion Means:** HEADGATE

**Ditch Name:** ROCKY REEF CANAL

**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	40.00		SWNW	1	20N	2W	CASCADE
2	20.00	2	NWNE	1	20N	2W	CASCADE
3	42.41	3	NENW	1	20N	2W	CASCADE
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208423-00

208424-00