

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

CLAIMANTS: Shirley A. Artz; Barbara M. Krause Survivors Trust;
John W. Krause Jr. Bypass Trust

CASE 41K-0672-R-2024
41K 21068-00
41K 21071-00
41K 95813-00

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 issue remarks during the DNRC's review of the claims.

The claims were consolidated into Case 41K-0672-R-2024 and an Order requiring the Claimants to work with the DNRC was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claims 41K 21068-00 and 41K 21071-00 received the following substantive issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 41K 21068-00, 41K 21071-00.

Claim 41K 95813-00 received the following substantive issue remarks:

POINT OF DIVERSION AND RESERVOIR NO. 2 APPEAR TO BE LOCATED IN THE SENENE OF SEC. 16 TWP 20N RGE 6W.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM WASTE & SEEPAGE, ELK CREEK.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 50.6 TIMES THE CAPACITY OF THE RESERVOIR.

2. On April 12, 2024, the Court consolidated the claims and issued an order for the Claimants to work with the DNRC to address and resolve the issue remarks.

3. On August 12, 2024, DNRC Water Resource Specialist Jamie Verploegen filed a *Memorandum* in this matter. Ms. Verploegen states the DNRC was contacted by Justin Krause on behalf of his mother, claimant Barbara Krause to assist in the resolution of the issue remarks. Based on information in the claim files, as well as information provided by the Claimants, the DNRC made recommendations for the resolution of the issue remarks. Those recommendations are as follows:

RECOMMENDATION:

CLAIM 41K 95813-00 Irrigation Use – Sprinkler/Flood

Point of Diversion Issue PDIS: DNRC recommends the Point of Diversion be modified from SWSWSW S10 T20N R6W to NWNWSW S16 T20N R6W and that the legal description for the location of reservoir No. 2 remain as it appears on the claim. If this is accepted, the issue remark can be removed from the claim.

Source Name Issue S126: DNRC recommends the source be changed to Elk Creek and that the issue remark be removed and replaced with source information remark C123 which reads: WATER DIVERTED FROM ELK CREEK IS CONVEYED TO HOGAN SLOUGH WHICH IS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION LOCATED IN S10 T20N R6W LEWIS AND CLARK COUNTY.

Volume Issue Remark V40: DNRC found that with the reservoir in question not being involved with this claim that this issue remark is not pertinent and recommends the removal of this issue remark.

CLAIM 41K 21071-00 and 21068 Stock Use – Livestock Direct

Duplicate Right Issue Remark D94: DNRC recommends claim number 41K 21068-00 be withdrawn. If this recommendation is accepted, the issue remark on claim 41K 21071 can be removed as it will no longer be pertinent.

4. On September 27, 2024, the Court set a filing deadline for the Claimants to file a statement if they disagreed with the above-listed recommendations from the DNRC. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **October 30, 2024**, for claimants Shirley Artz, Barbara M. Krause Survivors Trust, and John W. Krause Jr. Bypass Trust to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed by the above-listed deadline, the Court will conclude that the claimants agree with the DNRC recommendations.

5. Claim 41K 95813-00 also received notice-type issue remarks from 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.

3. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the substantive issue remark appearing on the above-captioned claims. Based on the information contained Ms. Verploegen's *Memorandum*, and the lack of response by the Claimants to the Court's Order Setting Filing Deadline, the claims should be modified as described in Finding of Fact No. 3. Claim 41K 21068-00 should be dismissed and the substantive issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on claim 41K 95813-00 served their 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 modify the claims as described above and remove all issue remarks 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:

Shirley A. Artz
PO Box 262
Augusta, MT 59410

Barbara M. Krause Survivors Trust
Barbara M. Krause, Trustee
John W. Krause Jr. Bypass Trust
Barbara M. Krause, Trustee
PO Box 362
Augusta, MT 59410

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

Water Right Number: 41K 21068-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: KRAUSE, BARBARA M SURVIVORS TRUST
BARBARA M KRAUSE TRUSTEE
PO BOX 362
AUGUSTA, MT 59410-0362

KRAUSE, JOHN W JR BYPASS TRUST
BARBARA M KRAUSE TRUSTEE
PO BOX 362
AUGUSTA, MT 59410-0362

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: ELK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41K 21071-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KRAUSE, BARBARA M SURVIVORS TRUST
BARBARA M KRAUSE TRUSTEE
PO BOX 362
AUGUSTA, MT 59410-0362

KRAUSE, JOHN W JR BYPASS TRUST
BARBARA M KRAUSE TRUSTEE
PO BOX 362
AUGUSTA, MT 59410-0362

Priority Date: JUNE 1, 1871

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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		NWNWSW	10	20N	6W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 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			NWNWSW	10	20N	6W	LEWIS AND CLARK

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.

21071-00

21075-00

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

Water Right Number: 41K 95813-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KRAUSE, BARBARA M SURVIVORS TRUST
BARBARA M KRAUSE TRUSTEE
PO BOX 362
AUGUSTA, MT 59410-0362

KRAUSE, JOHN W JR BYPASS TRUST
BARBARA M KRAUSE TRUSTEE
PO BOX 362
AUGUSTA, MT 59410-0362

Priority Date: APRIL 28, 1934

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

***Volume:** 392.70 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 160.00

Source Name: ELK CREEK

Source Type: SURFACE WATER

WATER DIVERTED FROM ELK CREEK IS CONVEYED TO HOGAN SLOUGH WHICH IS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION LOCATED IN S10 T20N R6W LEWIS AND CLARK COUNTY.

***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		SWSWSW	10	20N	6W	LEWIS AND CLARK

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: DAM

2		NWNWSW	16	20N	6W	LEWIS AND CLARK
---	--	--------	----	-----	----	-----------------

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: DAM

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
		SWSWSW	10	20N	6W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

***Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSW	10	20N	6W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JUNE 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	160.00		SW	10	20N	6W	LEWIS AND CLARK
Total:	160.00						

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.

21075-00 95813-00 132528-00