

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

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CLAIMANT: LF Ranch MT LLC

OBJECTOR: Montana State Board of Land Commissioners

CASE 41K-0005-R-2022

41K 96248-00

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 96248-00 is owned by LF Ranch MT, LLC (“LF Ranch”). Claim 41K 96248-00 received an objection from Montana State Board of Land Commissioners (“TLMD”) and received issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0005-R-2022 to resolve the objection and issue remarks.

FINDINGS OF FACT

1. On July 19, 2022, the Court consolidated the above-captioned claim and set a filing deadline for the Claimant and Objector to file settlement documents resolving the objection to claim 41K 96248-00.

2. On August 17, 2022, claimant LF Ranch and objector TLMD filed a *Stipulation* stating that the parties agree to the removal of place of use no. 2, the reduction of total acres from 62.00 to 44.00, and reduction of the flow rate from 1.34 cfs to 427gpm. The *Stipulation* states that upon the Court’s acceptance of the proposed modifications, TLMD’s objection would be resolved.

3. Claim 41K 96248-00 also received a notice-type issue remark during the DNRC 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.

CONCLUSIONS OF LAW

1. The proposed modifications included in the parties' *Stipulation* resolve the objection to claim 41K 96248-00. The claim should be modified as described in Finding of Fact No. 2, and the objection should be considered resolved.

2. The notice-type issue remark appearing on claim 41K 96248-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

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

Eugene C. White
Water Master

Service Via Electronic Mail:

Benjamin Sudduth
Sudduth Law PLLC
PO Box 507
Bozeman, MT 59771-0507
(406) 272-2390
Benjamin@Sudduthlaw.com

Michele L. Snowberger
Assistant Attorney General
P.O. Box 201440
Helena, MT 59620-1440
406-444-2026
BLCwatercourt@Mt.Gov

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

Water Right Number: 41K 96248-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LF RANCH MT LLC
PO BOX 6196
DENVER, CO 80206 0196

Priority Date: JULY 28, 1960

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 427.00 GPM

***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: 44.00

Source Name: UNNAMED TRIBUTARY OF DUVAL CREEK (SMITH LAKE)

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		SESENW	8	19N	7W	LEWIS AND CLARK

Period of Diversion: JULY 1 TO AUGUST 31

Diversion Means: PUMP

Period of Use: JULY 1 TO AUGUST 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	3.00		SESENW	8	19N	7W	LEWIS AND CLARK
2	29.00		E2SESW	8	19N	7W	LEWIS AND CLARK
3	12.00		W2SE	8	19N	7W	LEWIS AND CLARK
Total:	44.00						