

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

\* \* \* \* \*

CLAIMANT: LF Ranch MT LLC

OBJECTOR: LF Ranch MT LLC

**CASE 41K-0006-R-2022**

41K 96250-00

41K 30131659

**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 96250-00 received a self-objection from LF Ranch MT LLC (“LF Ranch”), and both of the above-captioned claims received issue remarks during the DNRC’s review of the claims.

The claims were consolidated into Case 41K-0006-R-2022 to resolve the self-objection and issue remarks.

### FINDINGS OF FACT

1. Claim 41K 96250-00 appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remark:

THE LEGAL LAND DESCRIPTION FOR THE POINT OF DIVERSION NO. 5 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKES CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. On August 8, 2022, LF Ranch filed a *Response* stating that the modification to point of diversion, proposed in the above-listed issue remark, is incorrect, and noting that because the point of diversion was previously adjudicated in the Temporary Preliminary Decree, the issue remark was placed in error and should be removed from the claims. The *Response* states that upon the Court’s removal of the issue remarks, LF Ranch’s objection would be resolved.

3. Claim 41K 30131659 received a notice-type issue remark stating that the claim was not included in the preliminary decree.

### 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 issue remarks do not overcome the prima facie status of claim 41K 96250-00. Based on the information contained in LF Ranch's *Response*, along with the information contained in the DMS memo, the issue remarks were placed in error and should be removed from the claim. Removal of the issue remarks resolves the self-objection for claim 41K 96250-00.

2. The notice-type issue remark appearing on claim 41K 30131659 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.

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

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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

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

**Water Right Number:** 41K 96250-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** JULY 21, 1891

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.88 CFS

**Volume:** 468.00 AC-FT

**Climatic Area:** 5 - LOW

**\*Maximum Acres:** 80.00

**\*Source Name:** DUVAL CREEK

**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		NENSW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIKE					
2		SESWNW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIKE					
3		NESENW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIKE					
4		SWSWSW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DIKE					
5		NWNE	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 1 TO OCTOBER 1					
<b>Diversion Means:</b>	PUMP					

POINT OF DIVERSION NO. 5 DIVERTS DUVAL CREEK WATER AT A POINT ALONG SMITH CREEK. SMITH CREEK IS USED AS A NATURAL CARRIER OF WATER FROM DUVAL CREEK TO THE CLAIMANT'S POINT OF DIVERSION NO. 5 LOCATED ON SMITH CREEK. THE FLOW RATE DIVERTED FROM POINT OF DIVERSION NO. 5 SHALL NOT EXCEED THE FLOW OF WATER FROM DUVAL CREEK INTO SMITH CREEK.

**Period of Use:** MAY 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	45.00		NW	6	19N	7W	LEWIS AND CLARK
2	15.00		NE	6	19N	7W	LEWIS AND CLARK
3	20.00		S2	6	19N	7W	LEWIS AND CLARK
<b>Total:</b>	<u>80.00</u>						

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

**Water Right Number:** 41K 30131659 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** JANUARY 1, 1868

**Type of Historical Right:** USE

**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:** DUVAL CREEK

**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		NWNE	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SENENW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		S2NW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		W2SW	6	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NWNW	7	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		S2NW	7	19N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7 SW 7 19N 7W LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

8 E2SESE 1 19N 8W 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			NWNE	6	19N	7W	LEWIS AND CLARK
2			SENENW	6	19N	7W	LEWIS AND CLARK
3			S2NW	6	19N	7W	LEWIS AND CLARK
4			W2SW	6	19N	7W	LEWIS AND CLARK
5			NWNW	7	19N	7W	LEWIS AND CLARK
6			S2NW	7	19N	7W	LEWIS AND CLARK
7			SW	7	19N	7W	LEWIS AND CLARK
8			E2SESE	1	19N	8W	LEWIS AND CLARK