

Montana Water Court
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ELECTRONICALLY FILED

41K-0007-R-2022

November 28, 2022

Montana Water Court

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-0007-R-2022

41K 96256-00

41K 96267-00

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

The claims were consolidated into Case 41K-0007-R-2022 to resolve the self-objection and issue remarks.

FINDINGS OF FACT

1. Claim 41K 96267-00 received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSNW SEC 6 TWP 19N RGE 8W LEWIS AND CLARK COUNTY.

2. On August 16, 2022, LF Ranch filed a *Notice of Filing* which included additional information in the form of a memo from DMS Natural Resources and maps of the point of diversion and place of use for each claim. The DMS memo states that the modification to the point of diversion for claim 41K 96267-00, proposed in the above-listed issue remark, is correct. The *Notice of Filing* also includes proposed abstracts for each claim reflecting the modification to the point of diversion for claim 41K 96267-00 as listed above and proposing the following additional places of use be added to claim 41K 96256-00 in order to resolve the self-objection. The proposed modification to the place of use for claim 41K 96256-00 include:

Additional Place of Use:							
ID	Acres	Govt Lot	Qrt Sec	Sec	Twp	Rge	County
8			SESWNE	24	20N	8W	Lewis & Clark
9			S2SW	24	20N	8W	Lewis & Clark

3. Claim 41K 96256-00 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 contained in LF Ranch’s *Notice of Filing* resolve the self-objections and issue remarks appearing on each claim. Based on the information contained in LF Ranch’s *Notice of Filing*, along with the information contained in the DMS memo, the claims should be modified as described in Finding of Fact No. 2. The modifications resolve the self-objections for both claims and the point of diversion issue remark appearing on claim 41K 96267-00. The issue remark should be removed.

2. The notice-type issue remark appearing on claim 41K 96256-00 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.

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

Eugene C. White
Water Master

Service Via Electronic Mail:

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\\JUDGALH2OSRV\Data\o\Share\WC-BASIN FOLDERS\41K PD\Cases\7\41K-0007-R-2022 MR (multiple claims, response filed resolves self objection and IRs) vh
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 96256-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

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

***Priority Date:** APRIL 30, 1952

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 STOCKWATERING 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: FORD 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		NESESW	26	20N	8W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: NILAN SUPPLY CANAL

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			SESWSW	18	20N	7W	LEWIS AND CLARK
2			N2	19	20N	7W	LEWIS AND CLARK
3			S2NW	20	20N	7W	LEWIS AND CLARK
4			N2N2SW	20	20N	7W	LEWIS AND CLARK
5			E2NE	24	20N	8W	LEWIS AND CLARK
6			W2NW	25	20N	8W	LEWIS AND CLARK
7				26	20N	8W	LEWIS AND CLARK
8			SESWNE	24	20N	8W	LEWIS AND CLARK
9			S2SW	24	20N	8W	LEWIS AND CLARK

Remarks:

THE USE OF THIS CLAIM IS REFERENCED IN A WARRANTY DEED (BOOK 164, PAGES 45-46), A RIGHT OF WAY EASEMENT DEED (BOOK 164, PAGES 47-50) AND AN AGREEMENT, ALL DATED APRIL 16, 1951; AND AN EASEMENT DATED DECEMBER 6, 1965 (BOOK 242, PAGES 579-582), RECORDS OF THE CLERK AND RECORDER OF LEWIS & CLARK COUNTY.

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

Water Right Number: 41K 96267-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

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

Priority Date: JUNE 1, 1888

***Type of Historical Right:** DECREED

Purpose (use): STOCK

***Flow Rate:** 8.14 CFS

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

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:** FORD 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		SWSE	6	19N	8W	LEWIS AND CLARK

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

Diversion Means: HEADGATE

Ditch Name: FORD-BEACH DITCH

***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				26	20N	8W	LEWIS AND CLARK
2				27	20N	8W	LEWIS AND CLARK
3				28	20N	8W	LEWIS AND CLARK
4			SESW	29	20N	8W	LEWIS AND CLARK
5			S2SE	29	20N	8W	LEWIS AND CLARK
6			NENW	32	20N	8W	LEWIS AND CLARK
7			N2NE	32	20N	8W	LEWIS AND CLARK
8			N2N2	33	20N	8W	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.

96267-00

96311-00