

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

CLAIMANTS: William L. Gause; Montana Hidden Valley
Ranch

CASE 41K-0022-R-2023
41K 96620-00

OBJECTOR: United States Forest Service

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 claim received an objection to the place of use and maximum acres elements from the United States Forest

Service (“Forest Service”) as well as an issue remark during the DNRC’s claims reexamination.

The claim was consolidated into Case 41K-0022-R-2023 to resolve the objection and issue remarks.

FINDINGS OF FACT

1. Claim 41K 96620-00 received the following issue remark:

THE LOCATION OF THE CLAIMED POINTS OF DIVERSION CANNOT BE IDENTIFIED FROM THE INFORMATION IN THE CLAIM FILE.

2. A Status Conference for Case 41K-0022-R-2023 took place on October 4, 2023, by telephone conference call. Water Master Eugene C. White presided; Claimant William L. Gause was present on behalf of himself and Montana Hidden Valley Ranch; Maggie Woodward was present on behalf of Objector United States Forest Service. During the conference, the parties discussed the Forest Service’s objection to the above-captioned claim.

3. On March 19, 2024, claimants William L. Gause and Montana Hidden Valley Ranch and objector Forest Service filed a *Stipulation*. (Doc 8.00)¹ The *Stipulation* contains proposed modifications to claim 41K 96620-00 that would resolve the objection and issue remark appearing on the claim. Those proposed modifications are as follows:

STIPULATION

1. Point of Diversion ID No. 2 should be removed from the Claim.

2. Place of Use ID No. 2 should be amended from the W2SWSE to the **W2SW**.

3. The following informational remark should be added to the claim:

“THE PLACE OF USE AND POINT OF DIVERSION ARE LOCATED ENTIRELY ON PRIVATE LAND”.

¹ “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

PRINCIPLES OF LAW

1. 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.

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. 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.

4. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The proposed modifications included in the parties' *Stipulation* resolve the objection and point of diversion issue remark appearing on claim 41K 96620-00.

2. The claim should be modified as described in Finding of Fact No. 3, the objection should be considered resolved, and the issue remark 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 point of diversion and place of use elements as described in Finding of Fact No. 3, add the information remark regarding the point of diversion and place of use, and remove the issue remark as outlined above.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 41K 96620-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MONTANA HIDDEN VALLEY RANCH INC
2896 MACEDONIA RD
POWDER SPRINGS, GA 30127-2105

WILLIAM L GAUSE
2896 MACEDONIA RD
POWDER SPRINGS, GA 30127-2105

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 426.00 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: 25.00

Source Name: MCCARTY 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		SWSNW	23	20N	9W	LEWIS AND CLARK

Source Name: MCCARTY CREEK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Period of Use: MAY 1 TO JULY 15

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	23.00		S2NW	23	20N	9W	LEWIS AND CLARK
2	2.00		W2SW	23	20N	9W	LEWIS AND CLARK
Total:	<u>27.00</u>						

Remarks:

THE PLACE OF USE AND POINT OF DIVERSION ARE LOCATED ENTIRELY ON PRIVATE LAND.