

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

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CLAIMANT: Sun River Sawtooth Ranch, LLC

**CASE 41K-0591-R-2023**

41K 96440-00  
41K 96443-00  
41K 160857-00

**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.

Claims 41K 96440-00, 41K 96443-00, and 41K 160857-00 were consolidated into Case 41K-0591-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the objections and issue remark.

### FINDINGS OF FACT

1. Claim 41K 96440-00 received the following substantive issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT FEWER ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

- Claim 41K 96443-00 received the following substantive issue remark:

POINT OF DIVERSION NO. 8 IS THE SAME AS POINT OF DIVERSION NO. 6.

- Claim 41K 160857-00 received the following substantive issue remark:

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

2. On April 26, 2023, Claimant Sun River Sawtooth Ranch, LLC (“SRS Ranch”) filed a *Response* to the Court’s Order Setting Filing Deadline. The *Response* stated that a *Motion to Amend* resolving the issues with claim 41K 96440-00 was forthcoming. Additionally, the *Response* contained a Statement by SRS Ranch that they agree to remove the redundant point of diversion No. 8 from claim 41K 96443-00. Finally, the *Response* included an attached *Affidavit of Merle D. Morris* which attests to the location of the headgates for claim 41K 160857-00. The *Affidavit* further refines the point of diversion stating that the headgates were historically located in the SWSENW and SESENW of Sec 31, Twp 22N, Rge 8W in Teton County rather than the SENW and SWNE as listed on the abstract for claim 41K 160857-00.

3. A new Order Setting Filing Deadline was issued by the Court on June 26, 2023, for the Claimant to file the *Motion to Amend* for claim 41K 96440-00. Nothing was filed by the ordered deadline.

4. On September 28, 2023, the Court set a second filing deadline for the Claimant to file the *Motion to Amend* for claim 41K 96440-00.

5. On November 29, 2023, Claimant SRS Ranch filed a second *Response*. Attached to the second *Response* was a *Motion to Amend* water right claim 41K 96440-00, a proposed abstract detailing requested modifications to resolve the acres irrigated issue remark, and a map of the place of use. The *Motion to Amend* requests the following modifications to the claim:

**Maximum Flow Rate:** 73.60 GPM

**Maximum Volume:**

**Climatic Area:** 5 - LOW

**Maximum Acres:** 4.33

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**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	32	22N	8W	LEWIS AND CLARK

**Period of Diversion:** JUNE 1 TO AUGUST 31

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 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	3.67		<del>N</del> 2N2SW	32	22N	8W	LEWIS AND CLARK
2	0.66		S2SWNW	32	22N	8W	LEWIS AND CLARK

**Total:** 4.33

### 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. 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.

5. 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 proposed modifications contained in Sun River Sawtooth Ranch, LLC's *Response* and *Motion to Amend* resolve the issue remark appearing on claim 41K 96440-00. Based on the information contained in the SRS Ranch's *Response*, along with the information contained in the attached *Motion to Amend*, claim 41K 96440-00 should be modified as described in Finding of Fact No. 5. Per Rule 17(c), W.R.Adj.R., the modifications constitute a reduction of the acres irrigated and place of use elements and may be accepted by the Court without further presentation of evidence. The modifications resolve the issue remark, and the issue remark should be removed from the claim.

2. Point of diversion No. 8 and the corresponding place of use No. 8 should be removed from claim 41K 96443-00 per Rule 17(c), W.R.Adj.R. and the issue remark should be removed from the claim.

3. Based on the information contained in the *Affidavit of Merle D. Morris*, the points of diversion for claim 41K 160857-00 should be refined according to the statement made in the *Affidavit*, as described in Finding of Fact No. 2, and the issue remark should be removed from 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.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Sun River Sawtooth Ranch, LLC  
1320 Mills St.  
Menlo Park, CA 94025-3210

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

**Water Right Number:** 41K 96440-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** SUN RIVER SAWTOOTH RANCH LLC  
1320 MILLS ST  
MENLO PARK, CA 94025-3210

**Priority Date:** MAY 25, 1932

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 73.60 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:** 4.33

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**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		NENWSW	32	22N	8W	LEWIS AND CLARK

**Period of Diversion:** JUNE 1 TO AUGUST 31

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 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	3.67		N2SW	32	22N	8W	LEWIS AND CLARK
2	0.66		S2SWNW	32	22N	8W	LEWIS AND CLARK
<b>Total:</b>	<u>4.33</u>						

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 96443-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SUN RIVER SAWTOOTH RANCH LLC  
1320 MILLS ST  
MENLO PARK, CA 94025-3210

**Priority Date:** APRIL 20, 1932

**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:** SUN RIVER

**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		N2SE	31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SWNE	31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		SENE	31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		NENE	31	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NW	32	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		W2NE	32	22N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b>	MAY 15 TO OCTOBER 15					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7 N2SW 32 22N 8W LEWIS AND CLARK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** MAY 15 TO OCTOBER 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			N2SE	31	22N	8W	LEWIS AND CLARK
2			SWNE	31	22N	8W	LEWIS AND CLARK
3			SENE	31	22N	8W	LEWIS AND CLARK
4			NENE	31	22N	8W	LEWIS AND CLARK
5			NW	32	22N	8W	LEWIS AND CLARK
6			W2NE	32	22N	8W	LEWIS AND CLARK
7			N2SW	32	22N	8W	LEWIS AND CLARK



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

**Water Right Number:** 41K 160857-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SUN RIVER SAWTOOTH RANCH LLC  
1320 MILLS ST  
MENLO PARK, CA 94025-3210

**Priority Date:** APRIL 15, 1932

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 374.00 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:** 22.00

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF SUN RIVER

**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	31	22N	8W	TETON

**Period of Diversion:** APRIL 5 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

2		SWSENW	31	22N	8W	TETON
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**Period of Diversion:** APRIL 5 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 5 TO SEPTEMBER 30

**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	8.00		SENW	31	22N	8W	TETON
2	14.00		SWNE	31	22N	8W	TETON

**Total:** 22.00