

Montana Water Court
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FILED
08/23/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0072-R-2023
White, Eugene
9.00

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

CLAIMANTS: Tee Bar Ranch Co.; Mark E. Young; Allen Beck;
Daphne Beck; Sally K. Shortridge

OBJECTOR: Tee Bar Ranch Co.; Broken O Land & Livestock
LLC

NOTICE OF INTENT TO APPEAR: Broken O Land Livestock
LLC

CASE 41K-0072-R-2023

41K 27423-00

41K 96336-00

41K 96337-00

41K 96422-00

41K 96584-00

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 96422-00 received an objection to all elements from Tee Bar Ranch Co. Claim 41K 27423-00 received an objection to “remove incorrect Decree Exceeded issue remark” from Tee Bar Ranch Co. Claim 41K 96584-00 received an objection to the means of diversion and point of diversion elements and to “remove incorrect Decree Exceeded issue remark and add information remark” from Tee Bar Ranch Co. Claim 41K 96336-00 received an objection to the place of use and maximum acres elements from Broken O Land and Livestock, LLC. Claim 41K 96337-00 received an objection to all elements from Tee Bar Ranch Co. and a notice of intent to appear from Broken O Land and Livestock, LLC.

The above-captioned claims also received issue remarks during the DNRC’s claims reexamination.

The claims were consolidated into Case 41K-0072-R-2023 to resolve the objections, NOIAs, and issue remarks.

FINDINGS OF FACT

1. Claims 41K 96422-00, 41K 96584-00, 41K 96377-00, and 41K 27423-00 each received the following substantive issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 350 MINER'S INCHES DECREED IN CASE NO. 4742 , LEWIS AND CLARK COUNTY. 41K 96584-00, 41K 96337-00, 41K 96422-00, 41K 27423-00.

Claim 41K 96422-00 also received the following substantive issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 22.00 GPM PER ACRE.

Claim 41K 27423-00 also received the following substantive issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41K 027423-00, 41K 215246-00.

Claim 41K 96584-00 also received the following substantive issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SENWSW SEC 35 TWP 20N RGE 7W LEWIS AND CLARK COUNTY.

2. A Status Conference for Case 41K-0072-R-2023 took place on November 29, 2023, by telephone conference call. Water Master Eugene C. White presided; claimant Allen Beck was present on behalf of himself and Daphne Beck and stated that he would be relaying information to claimant Sally K. Shortridge who was not in attendance; Abby Brown and Diana Abbot were present on behalf of claimant Mark E. Young; Ryan McLane was present on behalf of claimant/objector Tee Bar Ranch Co.; and John Tietz and Hailey Frandsen were present on behalf of objector/NOIA party Broken O Land & Livestock, LLC.

During the conference, the parties discussed the decree exceeded issue remark appearing on claims 41K 96422-00, 41K 96584-00, 41K 96377-00, and 41K 27423-00. Mr. McLane explained the objections filed by Tee Bar Ranch Co., and Mr. Tietz explained Broken O Land & Livestock LLC's objections.

3. On April 12, 2024, claimants Mark E. Young, Allen Beck, Daphne Beck, and Sally Shortridge and claimant/objector Tee Bar Ranch Co filed a *Stipulation*. (Doc 6.00)¹ The *Stipulation* notes at the outset that objector/NOIA party Broken O Land and Livestock, LLC ("Broken O") was not a signatory to the *Stipulation* and would be filing its own concurrence if the terms listed in the *Stipulation* resolved its objection and NOIA. Further, the *Stipulation* begins by addressing the potential decree exceeded issue amongst claims 41K 27423-00, 41K 96337-00, 41K 96433-00, and 41K 96584-00 was previously resolved during the Temporary Preliminary Decree for Basin 41K and therefore, the decree exceeded issue remarks should be removed. Similarly, the *Stipulation* states that the flow rate for claim 41K 96422-00 was already addressed during the 41K Temporary Preliminary Decree. The *Stipulation* also contains proposed modifications that would

¹ "Doc." Numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

resolve the objections and issue remarks appearing on the claims. Those proposed modifications are as follows:

41K 27423-00

4. Statement of Claim 41K 27423-00 should be adjudicated as it appeared in the 41K Preliminary Decree, except as follows.

a. The following information remark should be added:

THIS WATER RIGHT IS APPURTANENT TO THE NENE OF SECTION 26, T20N, R7W.

41K 96422-00

6. Statement of Claim 41K 96422-00 should be adjudicated as it appeared in the 41K Preliminary Decree.

41K 96584-00

9. Statement of Claim 41K 96584-00 should be adjudicated as it appeared in the 41K Preliminary Decree, except as follows:

a. The point of diversion should be modified as follows:

<u>ID</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SWNESW	35	20N	7W	LEWIS AND CLARK
	<u>SENWSW</u>				

Period of Diversion: April 1 to November 1
Diversion Means: Headgate
Ditch Name: Vaughn Ditch

b. The following information remarks should be added:

THE PLACE OF USE IS LOCATED WEST OF HWY 435.

THE WATER RIGHT IS NOT APPURTENANT TO THE SENE OF SECTION 25, T20N R7W.

41K 96336-00 & 41K 96337-00

10. Statements of Claim 41K 96336-00 and 41K 96337-00 should adjudicated as they appeared in the 41K Preliminary Decree, except as follows:

a. The place of use should be modified as follows:

<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	6.00		S2SESW	13	20N	6W <u>7W</u>	LEWIS AND CLARK
2	24.00		NENW	24	20N	6W <u>7W</u>	LEWIS AND CLARK

4. On May 30, 2024, objector/NOIA party Broken O filed a *Statement Regarding Stipulation*. (Doc 7.00)² In the *Statement*, Broken O addresses the *Stipulation* and states “[t]he proposed correction to the Place of Use for claims 41K 96336-00 and 41K 96337-00 from Range 6W to Range 7W resolves Broken O’s objection to claim 41K 96336-00 and Broken O’s Notice of Intent to Appear on claim 41K 96337-00.”

5. The claims also received notice-type issue remarks from the DNRC during its claims reexamination. The parties agree that these remarks have served their notice purpose and should be removed from the claims.

PRINCIPLES OF LAW

1. 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.

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. 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. Based on the information contained in the *Stipulation*, the decree exceeded issue remarks appearing on claims 41K 27423-00, 41K 96337-00, 41K 96433-00, and 41K 96584-00, as well as the flow rate for claim 41K 96422-00, were previously resolved during the Temporary Preliminary Decree for Basin 41K. Additionally, based on the information contained in the *Stipulation*, coupled with the concurrence with the

² *Id.*

Stipulation denoted in the *Statement* filed by Broken O, the claims should be modified as described in Finding of Fact No. 3. These modifications resolve the objections, NOIAs, and issue remark and the issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on the claims served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court modify the claims as described above and remove all issue remarks from the above-captioned claims.

Post decree abstracts of the water right claims reflecting the modifications and removal of the issue remarks are 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 27423-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TEE BAR RANCH CO
PO BOX 389
AUGUSTA, MT 59410

Priority Date: SEPTEMBER 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 291.72 GPM

Volume: 92.50 AC-FT

Climatic Area: 5 - LOW

Maximum Acres: 25.00

Source Name: SMITH 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		SENWSW	35	20N	7W	LEWIS AND CLARK

***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: VAUGHN DITCH

***Period of Use:** APRIL 1 TO NOVEMBER 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	25.00		N2NE	26	20N	7W	LEWIS AND CLARK

Total: 25.00

Remarks:

THIS WATER RIGHT IS APPURTANENT TO THE NENE OF SECTION 26, T20N, R7W.

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

Water Right Number: 41K 96336-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARK E YOUNG
PO BOX 211
AUGUSTA, MT 59410-0211

Priority Date: SEPTEMBER 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 30.00

Source Name: SMITH 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		SENWSW	35	20N	7W	LEWIS AND CLARK

***Period of Diversion:** APRIL 1 TO JUNE 30

Diversion Means: HEADGATE

Ditch Name: VAUGHN DITCH

***Period of Use:** APRIL 1 TO JUNE 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	6.00		S2SESW	13	20N	7W	LEWIS AND CLARK
2	24.00		NENW	24	20N	7W	LEWIS AND CLARK
Total:	30.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96336-00

96337-00

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.

96328-00

96336-00

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

Water Right Number: 41K 96337-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARK E YOUNG
PO BOX 211
AUGUSTA, MT 59410-0211

Priority Date: SEPTEMBER 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 6.85 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 30.00

Source Name: SMITH 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		SENWSW	35	20N	7W	LEWIS AND CLARK

***Period of Diversion:** APRIL 1 TO JUNE 30

Diversion Means: HEADGATE

Ditch Name: VAUGHN DITCH

***Period of Use:** APRIL 1 TO JUNE 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	6.00		S2SESW	13	20N	7W	LEWIS AND CLARK
2	24.00		NENW	24	20N	7W	LEWIS AND CLARK
Total:	30.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96336-00

96337-00

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

Water Right Number: 41K 96422-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ALLEN BECK
78 1ST LN NE
FAIRFIELD, MT 59436-9355

DAPHNE BECK
78 1ST LN NE
FAIRFIELD, MT 59436-9355

SALLY K SHORTRIDGE
PO BOX 333
AUGUSTA, MT 59410-0333

***Priority Date:** SEPTEMBER 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 224.41 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: 10.00

Source Name: SMITH 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		SENWSW	35	20N	7W	LEWIS AND CLARK

Period of Diversion: MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: VAUGHN DITCH

Period of Use: MARCH 1 TO NOVEMBER 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	10.00		NESE	35	20N	7W	LEWIS AND CLARK

Total: 10.00

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

Water Right Number: 41K 96584-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TEE BAR RANCH CO
PO BOX 389
AUGUSTA, MT 59410

Priority Date: SEPTEMBER 15, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 300.00

***Source Name:** SMITH 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		SENWSW	35	20N	7W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: VAUGHN DITCH

Period of Use: APRIL 1 TO NOVEMBER 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	150.00		S2	24	20N	7W	LEWIS AND CLARK
2	150.00		N2	25	20N	7W	LEWIS AND CLARK
Total:	300.00						

THE PLACE OF USE IS LOCATED WEST OF HWY 435.

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96519-00	96553-00	96584-00	96585-00	96586-00	96587-00
96589-00					

THE WATER RIGHT IS NOT APPURTENANT TO THE SENE OF SECTION 25, T20N, R7W.