

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

CLAIMANT: Broken O Land & Livestock LLC

CASE 41K-0680-R-2024
41K 110668-00

OBJECTOR: Broken O Land & Livestock LLC

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

Claim 41K 110668-00 appeared in the Preliminary Decree for the Sun River (Basin 41K) and received an objection from claimant Broken O Land & Livestock LLC (“Broken O”) seeking to correct the place of use legal land descriptions (POU) for POU IDs 1 and 2 from Section 10 to Section 1.

The claim was part of a stipulation filed in Water Court Case 41K-1A following the Temporary Preliminary Decree. A map attached to the stipulation shows claim 41K 110668-00 as being located in Sections 1 and 12. The map show no place of use located in the SWSE or SESE of Section 10. A copy of the map attached to the stipulation has been lodged in the Full Court case management system (Doc.¹ 1.00).

On June 6, 2024, the claim was consolidated into Water Court Case 41K-0680-R-2024 and an Order Setting Filing Deadline was issued. The Order was served on the signatories to the stipulation and ordered any party opposed to modifying POU IDs 1 and 2 from Section 10 to Section 1 to file documentation stating the same. The only party to respond to the Order was Tee Bar Ranch Co. who stated that they did not oppose the modification described in the order.

FINDINGS OF FACT

1. The objection seeks to modify 41K 110668-00 as follows:

*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.74		SWSE	140	20N	5W	LEWIS AND CLARK
2	2.61		SESE	140	20N	5W	LEWIS AND CLARK

2. The only party to respond to the Order stated that they did not oppose the modification.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it

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

existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. 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.

CONCLUSIONS OF LAW

1. The place of use modifications discussed in Finding of Fact #1 should be adopted. Adoption of the modifications resolves the objection to the claim.

RECOMMENDATIONS

1. The place of use should be modified as discussed above.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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

Water Right Number: 41K 110668-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: BROKEN O LAND & LIVESTOCK LLC
%DMS NATURAL RESOURCES LLC
602 S FERGUSON AVE STE 2
BOZEMAN, MT 59718-6483

Priority Date: OCTOBER 6, 1886

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.20 CFS

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

Climatic Area: 3 - MODERATE

***Maximum Acres:** 345.12

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		NENENE	8	20N	5W	LEWIS AND CLARK

Period of Diversion: MAY 15 TO SEPTEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 15 TO SEPTEMBER 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	8.74		SWSE	1	20N	5W	LEWIS AND CLARK
2	2.61		SESE	1	20N	5W	LEWIS AND CLARK
3	2.57		NWNW	12	20N	5W	LEWIS AND CLARK
4	22.69		NENW	12	20N	5W	LEWIS AND CLARK
5	37.80		NWNE	12	20N	5W	LEWIS AND CLARK
6	22.25		NENE	12	20N	5W	LEWIS AND CLARK
7	38.98		SWNE	12	20N	5W	LEWIS AND CLARK
8	38.97		SENE	12	20N	5W	LEWIS AND CLARK
9	38.98		SENE	12	20N	5W	LEWIS AND CLARK
10	36.77		SWNW	12	20N	5W	LEWIS AND CLARK
11	34.55		NWSE	12	20N	5W	LEWIS AND CLARK
12	32.71		NESW	12	20N	5W	LEWIS AND CLARK

13	<u>27.50</u>
Total:	345.12

NWSW 12 20N 5W LEWIS AND CLARK