

Montana Water Court
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FILED
12/02/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0314-R-2024
Weisz, Madeleine
5.00

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

CLAIMANT: Blenton Ranch Co.

CASE 41K-0314-R-2024
41K 160371-00
41K 30127883

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

FINDINGS OF FACT

1. Claims 41K 160371-00 and 41K 30127883 are owned by Blenton Ranch Co. The claims appeared in the 41K Preliminary Decree with several issue remarks placed on the claims by the Department of Natural Resources (DNRC).

2. On October 15, 2024, the Claimant filed a Motion to Amend to Resolve Issue Remarks. The Motion to Amend requests modifications to the claims that address the issue remarks appearing on the claims.

3. Claim 41K 160371-00 received two DNRC issue remarks that concern an error in the legal land description for the point of diversion and place of use ID no. 2. The remarks indicate that the legal land description for the point of diversion and place of use ID no. 2 appears to be incorrect and should be identified as the SESW of Section 8, T21N, R6W. The Preliminary Decree abstract identifies the point of diversion and place of use as being located in Section 7.

4. The claimant agrees that point of diversion and place of use ID no. 2 should be corrected pursuant to the issue remarks. The claimant notes that the discrepancy arose from a clerical error made during Temporary Preliminary Decree proceedings in Case 41K-258. The clerical error should be corrected. The point of diversion and place of use legal land descriptions for ID no. 2 should be modified to the SESW of Section 8, T21N, R6W and the issue remarks should be removed.

5. Claim 41K 30127883 is a stock claim that appeared in the Preliminary Decree with two issue remarks:

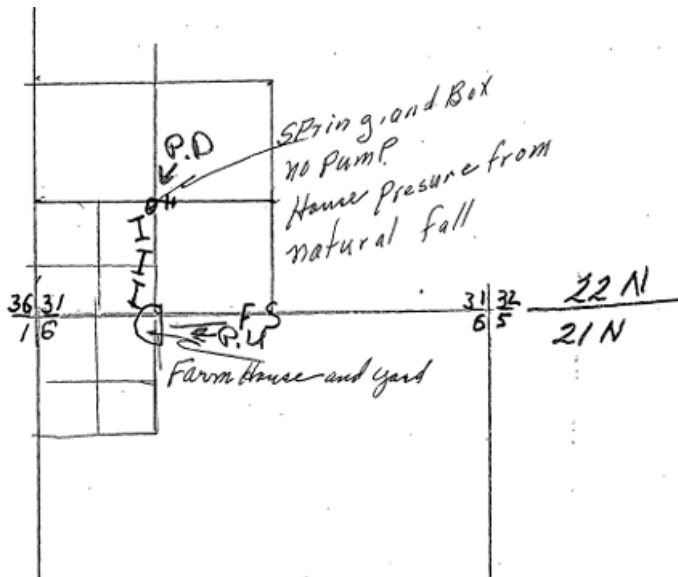
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41K DECREE ISSUED 05/14/1985.

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The first remark is a notice issue remark that has served its purpose and should be removed from the abstract.

To resolve the second issue remark, the claimant agrees to reduce the flow rate from 99 gpm to 35 gpm. The flow rate issue remark should be removed from the abstract.

6. Additionally, the claimant requests the point of diversion be modified from the NENWNW of Section 6, T21N, R6W to the NESWSW of Section 31, T22N, R6W. In support, the claimant points out that the same spring box is used for claim 41K 160377-00, which is a domestic claim from the same source. The point of diversion for claim 41K 160377-00 is identified as being in the NESWSW of Section 31, T22N, R6W. The map from the claim file clearly shows that the spring box is located in the NESWSW of Section 31, while the place of use (the farm house and yard) is located just over the Section line in Section 6, T21N, R6W.



7. The requested modification to the point of diversion is supported by the information provided by the Claimant and the evidence in the claim files. The requested modification adjusts the legal land description to accurately describe the historical location of the spring box; the correction will not adversely affect other water rights. The point of diversion should be modified accordingly.

8. The claimant indicates that the priority date was claimed incorrectly as January 1, 1935. The spring box was not constructed until 1940. Accordingly, the priority date should be reduced to December 31, 1940.

9. The claimant requests a remark be added to the claim identifying claims 41K 30127883 and 41K 160377-00 as associated because they share the same spring box. Associated rights remarks are added to claims when a Statement of Claim uses the same development as a Federal Reserved water right claim, a New Appropriation, or an Exempt Notice. See DNRC's 2024 Exempt Claims Guidelines at 99. Claims 41K 30127883 and 41K 160377-00 are both Statement of Claims, and the associated right remark does not apply, nor is it necessary for administration of the rights. An associated rights remark should not be added to claims 41K 30127883 and 41K 160377-00.

CONCLUSIONS OF LAW

1. 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 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.

The evidence before the Court supports correcting the place of use and point of diversion no. 2 for claim 41K 160371-00 pursuant to the issue remarks appearing on the claim.

The evidence supports correcting the point of diversion for claim 41K 30127883 from the NENWNW of Section 6, T21N, R6W to the NESWSW of Section 31, T22N, R6W.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

The claimant agrees with the issue remarks appearing on claim 41K 160371-00 and the point of diversion and place of use legal land descriptions should be modified accordingly. The issue remarks should be removed.

Claim 41K 30127883 received a notice issue remark noting that it was not included in the previous decree. This remark has served its purpose and should be removed. Claim 41K 30127883 received a second issue remark concerning flow rate, which has been addressed by the claimant's request to reduce the flow rate to the 35 gpm standard flow rate.

3. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA must be applied. Rule 17(c), W.R.Adj.R. The claimant requests that the priority date for claim 41K 30127883 be reduced from January 1, 1935 to December 31, 1940 and that the flow rate for the claim be reduced from 99 gpm to 35 gpm. Both requested reductions should be accepted by the court without further presentation of evidence.

RECOMMENDATION

1. The claimant's motion to amend to resolve issue remarks should be accepted by the Court.
2. Claims 41K 160371-00 and 41K 30127883 should be modified as discussed above.
3. The issue remarks should be removed from claims 41K 160371-00 and 41K 30127883.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

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 160371-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BLENTON RANCH CO
PO BOX 308
AUGUSTA, MT 59410-0308

Priority Date: DECEMBER 31, 1947

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: UNNAMED TRIBUTARY OF SUN RIVER

Source Type: SURFACE WATER

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		NENW	8	21N	6W	TETON

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

Period of Diversion: OCTOBER 1 TO MAY 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SESW	8	21N	6W	TETON
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Source Name: UNNAMED TRIBUTARY OF SUN RIVER

Period of Diversion: OCTOBER 1 TO MAY 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: OCTOBER 1 TO MAY 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			NENW	8	21N	6W	TETON
2			SESW	8	21N	6W	TETON

Remarks:

IMPLIED CLAIM NO. 41K 216308-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41K 30127883 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BLENTON RANCH CO
PO BOX 308
AUGUSTA, MT 59410-0308

Priority Date: DECEMBER 31, 1940

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

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: SPRING, UNNAMED TRIBUTARY OF SUN RIVER

Source Type: GROUNDWATER
ALSO KNOWN AS HOUSE SPRING

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		NESWSW	31	22N	6W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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			NESWSW	31	22N	6W	TETON