

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

CLAIMANTS: Medicine River LLC; Broken O Land &
Livestock LLC

OBJECTOR: Broken O Land & Livestock LLC

NOTICE OF INTENT TO APPEAR: Broken O Land &
Livestock LLC; Tee Bar
Ranch Co.

CASE 41K-0304-R-2024
41K 49323-00
41K 49324-00

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
FINDINGS OF FACT

1. Claims 41K 49323-00 and 41K 49324-00 were consolidated in this case to address the issue remarks, objections, and notices of intent to appear that were associated with the claims. The case was placed on a settlement track and a deadline was set for the parties to file settlement documents or status reports.

2. Both claims received the following issue remarks:

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 150 MINER'S INCHES DECREED IN CASE NO. 4742 , LEWIS AND CLARK COUNTY. 41K 49324-00. 41K 49323-00.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 41K 49323-00 received a third issue remark stating:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNESE SEC 2 TWP 20N RGE 6W LEWIS AND CLARK COUNTY.

3. On June 12, 2024, Broken O Land & Livestock LLC (Broken O) filed a Motion to Remove Issue Remarks. Upon review of the decree exceeded issue remarks, it appears that the decree exceeded issue remarks were added in error and should be removed.¹

4. Both claims 41K 49323-00 and 41K 49324-00 are decreed water rights from Elk Creek with an April 1, 1880 priority date. Attached to both statement of claim forms is a portion of Case No. 4742, Cascade County, in which the Court decrees two separate 150 MI rights to Clara C. Woods, each with an April 1, 1880 priority date. One right was for use on property north of the South Fork of Sun River (which aligns with the place of use for claim 41K 49324-00) and the second right was for use on property south

¹ Broken O's arguments for removing the issue remarks were not addressed or accepted because it is clear the issue remarks were added in error.

of the South Fork of the Sun River (which aligns with the place of use for claim 41K 49323-00). Accordingly, there were two April 1, 1880 rights for 150 MI decreed in Case No. 4742 and there is not a decree exceeded situation between these two claims. The decree exceeded issue remarks were added in error. The issue remarks should be removed from the claims.

5. A filing deadline was set for the parties to address the other issue remarks appearing on the claims that relate to the legal land descriptions for the points of diversion. The Order stated that if nothing was filed by the deadline, the Court would conclude that the points of diversion should remain as they appeared in the Preliminary Decree and the issue remarks would be removed. Nothing was filed by the deadline. The issue remarks should be removed.

6. A filing deadline was set for the parties to indicate whether the issue remark resolution discussed above resolved their objections and NOIAs. The Order stated that if nothing was filed by the deadline, the Court would conclude that the parties' objections and NOIAs were resolved. Nothing was filed by the deadline. The Objections and NOIAs should be considered resolved.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing 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.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

3. Based on the information before the Court, the decree exceeded issue remarks appearing on claims 41K 49323-00 and 41K 49324-00 were added in error and should be removed from the claim. The issue remarks do not overcome the prima facie status of the claims.

4. The point of diversion issue remark appearing on claim 41K 49323-00 was added because the DNRC believed the previously litigated legal land description for claim 41K 49323-00 may need adjustment. The parties had an opportunity to address the issue remark and did not indicate that the point of diversion should be changed from how it appeared in the Preliminary Decree. The point of diversion legal land description should remain unchanged from how it was decreed and the issue remark should be removed.

5. Both claims received a notice only issue remark providing notice that the ditch name was modified during DNRC's reexamination review. The issue remark has provided the necessary notice and should be removed.

RECOMMENDATIONS

1. The issue remarks should be removed from the claims in this case.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 41K 49323-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: MEDICINE RIVER LLC
4316 NORTH AVE W
MISSOULA, MT 59804-5036

Priority Date: APRIL 1, 1880

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.75 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:** 125.00

Source Name: ELK CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SUN RIVER, SOUTH FORK.

***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		NWSWSE	2	20N	6W	LEWIS AND CLARK

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: SOUTH WOODS DITCH

Period of Use: MARCH 1 TO OCTOBER 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	62.30		E2SE	1	20N	6W	LEWIS AND CLARK
2	27.90		W2SE	1	20N	6W	LEWIS AND CLARK
3	34.80		NESW	1	20N	6W	LEWIS AND CLARK

Total: 125.00

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.

49321-00

49323-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**SUN RIVER
BASIN 41K**

Water Right Number: 41K 49324-00 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

MEDICINE RIVER LLC
4316 NORTH AVE W
MISSOULA, MT 59804-5036

Priority Date: APRIL 1, 1880

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.75 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:** 123.00

Source Name: ELK CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SUN RIVER, SOUTH FORK.

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		NESWNW	1	20N	6W	LEWIS AND CLARK

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: NORTH WOODS DITCH

Period of Use: MARCH 1 TO OCTOBER 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	60.20		N2NE	1	20N	6W	LEWIS AND CLARK
2	53.60		N2NW	6	20N	5W	LEWIS AND CLARK
3	9.20		S2SW	31	21N	5W	LEWIS AND CLARK

Total: 123.00

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.

49320-00

49324-00

AUTHORIZATION TO CHANGE THE PLACE OF USE ISSUED 07/16/1997. NOTICE OF COMPLETION DUE 12/31/1998. SEE 41K 49320-00 .