

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

\*\*\*\*\*

CLAIMANT: Wade W. Jacobsen

OBJECTOR: United States of America (Bureau of Land  
Management)

NOTICE OF INTENT TO APPEAR: Broken O Land &  
Livestock LLC

**CASE 41K-0026-R-2023**

41K 187161-01

**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 187161-01 received an objection from the United States Bureau of Land Management (“BLM”), a Notice of Intent to Appear from Broken O Land and Livestock, LLC (“Broken O”), and issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0026-R-2023 to resolve the objection, NOIA, and issue remarks.

### FINDINGS OF FACT

1. The BLM withdrew its objection to claim 41K 187161-01 on October 10, 2023.
2. Claim 41K 187161-01 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 187161-00, 41K 215211-00.
3. A Status Conference for Case 41K-0026-R-2023 took place on October 11, 2023, by telephone conference call. Water Master Eugene C. White presided; claimant Wade W. Jacobsen was not present and Judith Coleman, standing in for Eve McDonald appeared on behalf of objector United States BLM.

During the conference, Ms. Coleman noted that the United States had previously withdrawn its objection, however, due to an error in filing, that withdrawal had not been included in the claim file for claim 41K 187161-01.

4. After the status conference, the Court issued a deadline for claimant Wade Jacobsen to confer with the DNRC regarding the above-listed issue remark.
5. Deb Stephenson, a water rights consultant for Broken O, contacted the Court after the issuance of the deadline to confer with DNRC and stated that it appeared that the overlapping place of use remark was placed on claim 41K 187161-01 in error.
6. Upon review, the Court concurred that the overlapping place of use issue remark was placed in error and issued an Order Vacating DNRC Conference and an Order Setting Filing Deadline for Broken O to comment on the status of its NOIA.

7. On November 17, 2023, Broken O filed a *Response*. In its *Response*, Broken O states that it concurred that the overlapping place of use issue remark was placed in error.

8. Claim 41K 187161-01 also received a notice-type issue remark noting that the ditch name was modified by the DNRC during its claims reexamination.

#### 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. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSIONS OF LAW

1. Based on the BLM's *Withdrawal of Objection*, the information provided by Ms. Stephenson, and the *Response* filed by Broken O, the objection, NOIA, and overlapping place of use issue remark are resolved. The overlapping place of use issue remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 41K 187161-01 served its notice purpose and should be removed from the claim.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends issue remarks be removed from the claim.

A post decree abstract of the water right claim reflecting the removal of the issue remarks is 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 187161-01 STATEMENT OF CLAIM

**Version:** 6 -- POST DECREE

**Status:** ACTIVE

**Owners:** WADE W JACOBSEN  
1282 US HWY 89  
SUN RIVER, MT 59483 9729

**Priority Date:** JANUARY 16, 1900

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 27.50 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:** 3,640.00

**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		NWNESW	20	21N	6W	TETON

**Period of Diversion:** MARCH 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** FLOWEREE (HAMILTON) CANAL

**Period of Use:** MARCH 15 TO SEPTEMBER 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	160.00		SE	18	21N	2W	CASCADE
2	80.00		E2SW	18	21N	2W	CASCADE
3	40.00		NWSW	18	21N	2W	CASCADE
4	40.00		SWNW	18	21N	2W	CASCADE
5	80.00		E2NW	19	21N	2W	CASCADE
6	160.00		NE	19	21N	2W	CASCADE
7	80.00		W2SW	19	21N	2W	CASCADE
8	40.00		SESW	19	21N	2W	CASCADE
9	40.00		NESW	19	21N	2W	CASCADE
10	160.00		N2N2	30	21N	2W	CASCADE
11	40.00		SENE	30	21N	2W	CASCADE
12	160.00		S2	30	21N	2W	CASCADE
13	320.00		N2	31	21N	2W	CASCADE

14	160.00	S2S2	31	21N	2W	CASCADE
15	40.00	NWSW	31	21N	2W	CASCADE
16	40.00	NESE	31	21N	2W	CASCADE
17	40.00	NW	32	21N	2W	CASCADE
18	40.00	NWSW	32	21N	2W	CASCADE
19	160.00	NE	29	21N	2W	CASCADE
20	160.00	SW	29	21N	2W	CASCADE
21	80.00	N2NW	29	21N	2W	CASCADE
22	40.00	SWNW	29	21N	2W	CASCADE
23	40.00	SENW	29	21N	2W	CASCADE
24	40.00	SWSE	29	21N	2W	CASCADE
25	160.00	SE	20	21N	2W	CASCADE
26	80.00	N2SW	20	21N	2W	CASCADE
27	80.00	S2NW	20	21N	2W	CASCADE
28	40.00	W2NE	20	21N	2W	CASCADE
29	40.00	SWSW	18	21N	2W	CASCADE
30	160.00	SW	17	21N	2W	CASCADE
31	80.00	W2SE	17	21N	2W	CASCADE
32	40.00	SESE	17	21N	2W	CASCADE
33	320.00	W2	21	21N	2W	CASCADE
34	80.00	W2NE	21	21N	2W	CASCADE
35	80.00	W2SE	19	21N	2W	CASCADE
36	40.00	SESW	19	21N	2W	CASCADE
37	80.00	E2SE	19	21N	2W	CASCADE
38	40.00	SWSW	20	21N	2W	CASCADE
39	80.00	S2NW	30	21N	2W	CASCADE
<b>Total:</b>	<u>3640.00</u>					

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**Remarks:**

AUTHORIZATION TO CHANGE THE PLACE OF USE ISSUED 07/27/1992 SEE 41K-G(W)187161-02 NOTICE OF COMPLETION DUE 11/30/1994.

AUTHORIZATION TO CHANGE THE PLACE OF USE OF A PORTION ISSUED 04/02/1990 COMPLETED 02/26/1992. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41K-G(W)187161-01