

**Office of Administrative Hearings
Department of Natural Resources and Conservation
1539 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
Phone: (406) 444-6615**

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

**IN THE MATTER OF CHANGE APPLICATION)
NO. 41K-30111184 BY BROKEN O LAND &)
LIVESTOCK LLC)
FINAL ORDER OF
DETERMINATION**

PROCEDURAL HISTORY

For present purposes, the tangled procedural history of this Change Application may be largely summarized as follows. On January 29, 2018, the Department of Natural Resources and Conservation (DNRC) issued a Preliminary Determination to Deny (PDD) this Change Application. Applicant Broken O Land & Livestock LLC (Broken O) requested and received a Show Cause hearing to contest the PDD, but the DNRC Hearing Examiner, in a Final Order of July 31, 2018, concluded that Broken O had failed to meet its burden under Mont. Code Ann. §85-2-402(2)(b) that the requested change would not cause adverse effect to existing appropriators. On August 27, 2018, Broken O filed a Petition for Judicial Review (PJR) with the Montana Water Court to challenge the Final Order. The Water Court, by order of September 9, 2019, reversed the Final Order and ordered DNRC to issue a Preliminary Determination to Grant (PDG), which DNRC did on March 20, 2020. After public notice of the PDG, two valid objections to the Change application were timely filed, one by the Greenfields Irrigation District on May 22, 2020, and one by the Fort Shaw Irrigation District on May 28, 2020. Both districts have now filed conditional withdrawals of their objections. I held a status conference on August 13, 2020, to discuss the requested conditions, the Objectors subsequently filed revised conditional notices of withdrawal, and I now enter this Final Order of Determination.

THE APPLICATION

Broken O proposes to change Statements of Claim No. 41K 49404-00, 41K 49405- 00, 41K 49406-00, and 41K 49407-00 to add eighteen stock tanks, a secondary point of diversion, and conveyance pipeline. All four of the water rights proposed for change are claimed for the purpose of irrigation and water is diverted from the Sun River. They share a common point of diversion and are supplemental over the entire 474.35-acre place of use associated with each claim. Table 1 and Table 2 provide basic information about the rights proposed to be changed.

Table 1: Water Rights Proposed for Change

W.R. NO.	Flow Rate (CFS)	Volume (AF)	Purpose	Period of Use	Point of Diversion	Priority Date
41K 49404-00	1.30	*	Irrigation	4/1 to 12/4	NENENE Sec 8 20N 5W	3/1/1880
41K 49405-00	1.25	*	Irrigation	1/1 to 12/31	NENENE Sec 8 20N5W	3/1/1880
41K 49406-00	1.50	*	Irrigation	4/1 to 12/4	NENENE Sec 8 20N 5W	5/9/1883
41K 49407-00	8.30	*	Irrigation	4/1 to 12/4	NENENE Sec 8 20N5W	5/9/1883

Table 2: Place of use for all rights proposed for change

ID	Acres	Qtr Sec	Sec	Twp	Rge	County
1	0.18	SESW	5	20N	4W	Lewis and Clark
2	13.06	SWSE	5	20N	4W	Lewis and Clark
3	32.55	SESE	5	20N	4W	Lewis and Clark
4	18.91	NWNW	8	20N	4W	Lewis and Clark
5	34.21	NENW	8	20N	4W	Lewis and Clark
6	32.96	NWNE	8	20N	4W	Lewis and Clark
7	39.08	NENE	8	20N	4W	Lewis and Clark
8	36.68	SWNW	8	20N	4W	Lewis and Clark
9	35.96	SENW	8	20N	4W	Lewis and Clark
10	36.50	SWNE	8	20N	4W	Lewis and Clark
11	38.88	SENE	8	20N	4W	Lewis and Clark
12	2.63	NWSW	8	20N	4W	Lewis and Clark
13	5.28	NESW	8	20N	4W	Lewis and Clark
14	7.51	NWSE	8	20N	4W	Lewis and Clark
15	1.71	NESW	8	20N	4W	Lewis and Clark
16	35.15	NWNW	9	20N	4W	Lewis and Clark

ID	Acres	Qtr Sec	Sec	Twp	Rge	County
17	15.49	NENW	9	20N	4W	Lewis and Clark
18	18.33	NWNE	9	20N	4W	Lewis and Clark
19	0.01	NENE	9	20N	4W	Lewis and Clark
20	29.74	SWNW	9	20N	4W	Lewis and Clark
21	16.76	SEnw	9	20N	4W	Lewis and Clark
22	22.21	SWNE	9	20N	4W	Lewis and Clark
23	0.56	SENE	9	20N	4W	Lewis and Clark

Broken O seeks authorization to add eighteen stock tanks, a secondary point of diversion, conveyance pipeline, and new places of use to the original claims. The pump, pipeline, and eleven tanks were installed in 2008. An additional seven tanks were installed in 2011. The system uses a 3 horsepower Aeromotor submersible pump that has a pump rate of 25 GPM. The pipeline is a 2-inch polyethylene pipe. In its June 1, 2017 deficiency response, the Applicant indicated it will install overflow protection devices to prevent waste and overflow from the system. The Applicant historically watered 1,000 animal units (AU) from the irrigation ditch and proposes to continue to provide stockwater for 1,000 AU. Table 3 sets forth basic information about the tanks.

Table 3: Stock Tank Information

Stock Tank	Geocodes	Legal Land Description	Tank Diameter (ft)	Tank Capacity (Acre Feet)
1 (Figure 1)	0530071710101AG00	20 N 04 W Sec. 17 NWSW	10	0.003
2 (Figure 2)	0530072010101AG00	20 N 04 W Sec. 20 SWNE	10	0.003
3 (Figure 3)	0530072710101AG00	20 N 04 W Sec. 27 SWNW	25	0.018
4 (Figure 4)	0530072710101AG00	20 N 04 W Sec. 27 SWSE	10	0.003
5 (Figure 5)	0530072020101AG00	20 N 04 W Sec. 20 NWNW	10	0.003
6 (Figure 6)	0530072020101AG00	20 N 04 W Sec. 20 SWNW	10	0.003
7 (Figure 7)	0530072020101AG00	20 N 04 W Sec. 20 SESW	10	0.003
8 (Figure 8)	0530072910101AG00	20 N 04 W Sec. 29 NENW	10	0.003
9 (Figure 9)	0530072910101AG00	20 N 04 W Sec. 29 NWSE	10	0.003
10 (Figure 10)	0530073210101AG00	20 N 04 W Sec. 32 NWNE	10	0.003
11 (Figure 11)	0528860510101AG00	19 N 04 W Sec. 05 Lot 2 (NWNE)	10	0.003
12 (Figure 12)	0530071710101AG00	20 N 04 W Sec. 17 SWSE	12	0.004
13 (Figure 13)	05300716101010000	20 N 04 W Sec. 16 SWSW	12	0.004
14 (Figure 14)	05300716101010000	20 N 04 W Sec. 16 SWSE	12	0.004
15 (Figure 15)	0530071510101AG00	20 N 04 W Sec. 15 SWSW	25	0.018
16 (Figure 16)	0530071510101AG00	20 N 04 W Sec. 15 SESW	12	0.004
17 (Figure 17)	0530071510101AG00	20 N 04 W Sec. 15 NESE	12	0.004
18 (Figure 18)	05300714201010000	20 N 04 W Sec. 14 NWSW	12	0.004

FINAL ORDER OF DETERMINATION TO GRANT

As the objections to the PDG have been conditionally withdrawn, and the requested condition, which I find makes explicit an implicit limit of the authorization pursuant to 85-2-402, MCA, is included below, I hereby DISMISS the Objections and GRANT the application for the reasons set forth in the PDG and subject to the following terms and conditions:

1. WATER MEASUREMENT RECORDS REQUIRED

THE APPLICANT SHALL INSTALL A DEPARTMENT-APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPLICANT SHALL KEEP A WRITTEN **MONTHLY** RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30TH OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THIS CHANGE AUTHORIZATION. THE RECORDS MUST BE SENT TO THE HAVRE WATER RESOURCES REGIONAL OFFICE. THE APPLICANT SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

2. NO INCREASE IN FLOW RATE OF UNDERLYING WATER RIGHTS

IN NO EVENT SHALL THIS CHANGE AUTHORIZATION INCREASE THE FLOW RATE DECREED FOR WATER RIGHTS 41K 49404-00, 41K 49405-00, 41K 49406-00, AND 41K 49407-00. THE FLOW RATE DECREED FOR WATER RIGHTS 41K 49404-00, 41K 49405-00, 41K 49406-00, AND 41K 49407-00 IS MEASURED AT THE POINT OF DIVERSION ON THE SUN RIVER.

//

Dated this 4th day of September 2020.

/Original signed by Jay D. Weiner/
Jay D. Weiner, Hearing Examiner
Department of Natural Resources
and Conservation
Office of Administrative Hearings
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-1510

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the FINAL ORDER OF DETERMINATION was served upon all parties listed below on this 4th day of September 2020 by first class United States mail and/or by electronic mail (e-mail).

JOHN W TIETZ - ATTORNEY
BROWNING KALECZYC BERRY & HOVEN PC
PO BOX 1697
HELENA, MT 59624-1697
john@bkbh.com

COLLEEN COYLE - ATTORNEY
COYLE LAW FIRM, PLLC
PO BOX 1326
BOZEMAN, MT 59771
colleen@coylelawmt.com

MATT WILLIAMS – ATTORNEY
MW LAW FIRM PLLC
777 E MAIN ST STE 205
BOZEMAN, MT 59715-4714
mattheww53@aol.com

Cc:
DEBORAH STEPHENSON - CONSULTANT
DMS NATURAL RESOURCES LLC
602 S FERGUSON AVE STE 2
BOZEMAN, MT 59718-6483
stephenson@dmsnaturalresources.com

/Original signed by Jamie Price/
Jamie Price, Administrative Assistant
(406) 444-6615; jsprice@mt.gov