

Montana Water Court
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0613-R-2024
Weisz, Madeleine
6.00

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

* * * * *

CLAIMANTS: Tara L. Nelson; Robbe-Jon Nelson;
Earl W. Nelson; Darlene P. Nelson

CASE 41G-0613-R-2024
41G 166916-00

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. Claim 41G 166916-00 appeared in the 41G Preliminary Decree with several issue remarks from the Department of Natural Resources. The Water Court is required by statute to address all issue remarks appearing on a water right.

2. In the Preliminary Decree, claim 41G 166916-00 was listed as being owned by Earl W. Nelson and Darlene P. Nelson. On August 28, 2022, DNRC updated the ownership of the claim and the following were listed as owners of the claim: Robbe Jon Nelson, Tara Lynn Nelson, Scott L. Pogh, and Kathy Pogh.

2. In an informal effort to resolve the issue remarks, the Claimants were ordered to meet with the DNRC to discuss possible resolutions.

3. The DNRC filed a memorandum on April 25, 2024. The memorandum explains that Scott Pogh and Kathy Pogh were added as owners of this claim by mistake due to an administrative error. DNRC also states that Earl Nelson was erroneously removed from ownership of the right. The Montana Cadastral database lists Earl Nelson and Darlene Nelson, and Robbe Jon Nelson and Tara Lynn Nelson as owners of the property identified in the place of use. It appears that both Earl Nelson and Darlene Nelson were erroneously removed as owners.

4. The DNRC memorandum recommends that the issue remarks appearing on the claim be removed and that no changes are made to any elements of the claim other than ownership.

5. A filing deadline was set for any of the parties to comment on the ownership of the claim. The order stated that if nothing was filed by the deadline, the court would conclude that the owners of claim 41G 166916-00 should be: Earl Nelson, Darlene Nelson, Robbe Jon Nelson, and Tara Lynn Nelson. Nothing was filed by the deadline. The ownership should be updated accordingly.

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. The DNRC's recommendations indicate that the issue remarks appearing on claim 41G 166916-00 do not overcome the *prima facie* status and should be removed from the claims.

4. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P. The ownership change was the result of a mistake and should be corrected as provided above.

RECOMMENDATIONS

1. Claim 41G 166916-00 should be modified as provided above.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the issue remarks have been removed from the abstract in the statewide database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Tara L. Nelson
Robbe-Jon Nelson
PO Box 865
Whitehall, MT 59759

Earl W. Nelson
Darlene P. Nelson
PO Box 122
Whitehall, MT 59759-0122

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: **41G 166916-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
DARLENE P NELSON
8565 TERRACE DR
SANDY, UT 84092

EARL W NELSON
PO BOX 122
WHITEHALL, MT 59759-0122

ROBBE-JON NELSON
PO BOX 865
WHITEHALL, MT 59759-0865

TARA L NELSON
PO BOX 865
WHITEHALL, MT 59759-0865

Priority Date: DECEMBER 31, 1913

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 171.00 GPM

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: 16.01

Source Name: JEFFERSON SLOUGH

Source Type: SURFACE WATER

ALSO KNOWN AS SPRING CREEK

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		SWSENW	15	1N	4W	MADISON

Period of Diversion: MARCH 1 TO SEPTEMBER 30

Diversion Means: PUMP

Subdivision: BOX LAZY L RANCHES SUBD TRACT/LOT: 27

Period of Use: MARCH 1 TO SEPTEMBER 30

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	5.71		SESWNW	15	1N	4W	MADISON

Subdivision:	BOX LAZY L RANCHES SUBD	TRACT/LOT: 25				
2	5.27	SESWNW	15	1N	4W	MADISON
Subdivision:	BOX LAZY L RANCHES SUBD	TRACT/LOT: 26				
3	5.03	SESWNW	15	1N	4W	MADISON
Subdivision:	BOX LAZY L RANCHES SUBD	TRACT/LOT: 27				
Total:	<u>16.01</u>					

Remarks:

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION ISSUED 09/16/1998. NOTICE OF COMPLETION DUE 12/31/1999. SEE 41G 166916-00.