

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

CLAIMANTS: Nicholas D. & Marlene R. Konen Living Trust;
Amber Larson; Brian Larson; Hilary Pearson; Spencer
Pearson; Terri J. Pearson; William Pearson

CASE 41K-0281-R-2024
41K 41865-00
41K 216279-00

NOTICE OF FILING OF MASTER’S REPORT

This Master’s Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master’s Report if you disagree or find errors with the Master’s Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master’s Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master’s Report be filed within 10 days of the date of the Master’s Report. Because this Master’s Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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. Claims 41K 41865-00 and 41K 216279-00 received issue remarks during the DNRC’s review of the claims.

The claims were consolidated into Case 41K-0281-R-2024 and a filing deadline was issued by the Water Court to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41K 216279-00 received the following substantive issue remark:
THE DITCH NAME APPEARS TO BE SHUCK DITCH.
2. On January 26, 2024, the Court consolidated claims into case 41K-0281-R-2024 and set a filing deadline for the Claimants to provide information or evidence regarding the proposed modification to the ditch name for claim 41K 216279-00. Nothing was filed by the ordered deadline.
3. On April 30, 2024, the Water Court issued an Order Setting Show Cause Filing Deadline for the Claimants to provide information or evidence showing cause why the ditch name for claim 41K 216279-00 should not be modified as described in the issue remark. Nothing was filed by the ordered deadline. The following language regarding the above-listed issue remark was included in the order:

*ORDERED that the Claimants review this order and, if necessary, file information or evidence showing cause why “Shuck Ditch” should not be added to the abstract of claim 41K 216279-00 by **Wednesday, May 29, 2024**. If nothing is filed by the deadline, this Water Master will conclude that the Claimants agree to the addition of Shuck Ditch as the ditch name for claim 41K 216279-00, the ditch name will be added, and the issue remark will be removed from the claim.*
4. Claim 41K 41865-00 received a notice type issue remark from the DNRC during its claims reexamination. No objections were filed.

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. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.
3. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record resolves the issue remark appearing on claim 41K 216279-00. Because nothing was filed at the show cause filing deadline by the Claimants, the ditch name “Shuck Ditch” should be added to the abstract of claim 41K 216279-00 pursuant to Rule 22, W.R.Adj.R.
2. The notice type issue remark appearing on claim 41K 41865-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court add the ditch name as described in Conclusion of Law No. 1 to claim 41K 216279-00 and remove the issue remarks from the claims.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Nicholas D. & Marlene R. Konen Living Trust
Nicholas D. & Marlene R. Konen, Trustees
PO Box 663
Fairfield, MT 59436

Amber Larson
Brian Larson
590 8th Ln NE
Fairfield, MT 59436

Hilary Pearson
Spencer Pearson
148 5th Ln NE
Fairfield, MT 59436

Terri J. Pearson
William Pearson
426 1st Rd NE
Fairfield, MT 59436

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

Water Right Number: 41K 41865-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

AMBER LARSON
590 8TH LANE NE
FAIRFIELD, MT 59436

BRIAN LARSON
590 8TH LANE NE
FAIRFIELD, MT 59436

HILARY PEARSON
148 5TH LN NE
FAIRFIELD, MT 59436-9224

SPENCER PEARSON
148 5TH LN NE
FAIRFIELD, MT 59436-9224

TERRI J PEARSON
426 1ST RD NE
FAIRFIELD, MT 59436-9222

WILLIAM PEARSON
426 1ST RD NE
FAIRFIELD, MT 59436-9222

KONEN, NICHOLAS D & MARLENE R LIVING TRUST
KONEN, NICHOLAS D & MARLENE R TRUSTEES
PO BOX 663
FAIRFIELD, MT 59436-0663

Priority Date: DECEMBER 31, 1928

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 3.34 CFS

WATER RIGHTS 41K 41865-00 AND 41K 216279-00 ARE LIMITED TO A COMBINED
FLOW RATE OF 1500 GPM

***Volume:** 641.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS
REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 170.00

Source Name: LITTLE MUDDY CREEK, SOUTH FORK

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		NESESE	33	23N	2W	TETON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: SHUCK DITCH

Period of Use: MAY 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	77.00		NE	34	23N	2W	TETON
2	81.00		SW	26	23N	2W	TETON
3	12.00		N2N2SE	34	23N	2W	TETON
Total:	170.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

41865-00 216279-00

IMPLIED CLAIM NO. 41K 216279-00 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 216279-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

AMBER LARSON
590 8TH LANE NE
FAIRFIELD, MT 59436

BRIAN LARSON
590 8TH LANE NE
FAIRFIELD, MT 59436

HILARY PEARSON
148 5TH LN NE
FAIRFIELD, MT 59436-9224

SPENCER PEARSON
148 5TH LN NE
FAIRFIELD, MT 59436-9224

TERRI J PEARSON
426 1ST RD NE
FAIRFIELD, MT 59436-9222

WILLIAM PEARSON
426 1ST RD NE
FAIRFIELD, MT 59436-9222

KONEN, NICHOLAS D & MARLENE R LIVING TRUST
KONEN, NICHOLAS D & MARLENE R TRUSTEES
PO BOX 663
FAIRFIELD, MT 59436-0663

***Priority Date:** JANUARY 1, 1948

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 3.34 CFS

WATER RIGHTS 41K 41865-00 AND 41K 216279-00 ARE LIMITED TO A COMBINED FLOW RATE OF 1500 GPM.

***Volume:** 359.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 95.40

***Source Name:** LITTLE MUDDY CREEK, SOUTH FORK

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		NESESE	33	23N	2W	TETON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: SHUCK DITCH

***Period of Use:** MAY 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	48.40		NE	34	23N	2W	TETON
2	47.00		SW	26	23N	2W	TETON
Total:	95.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

41865-00 216279-00

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 041865-00.