

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

CLAIMANT: Shane A. Nelson

CASE 41K-0456-R-2023
41K 210408-00

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

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 210408-00 received an issue remark during the DNRC's review of the claims.

FINDINGS OF FACT

1. Claim 41K 210408-00 received the following substantive issue remark:
THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT FEWER ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

2. The claim was consolidated into Case 41K-0456-R-2023 and the Water Court issued an Order requiring the Claimant to work with the DNRC to resolve the substantive issue remark appearing on claim 41K 210408-00.

3. On January 23, 2024, DNRC Water Resources Specialist Dixie Brough filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted on January 22, 2024, by claimant Shane A. Nelson who stated that he does not irrigate with water based on this water right. Ms. Brough's *Memo* states that on January 23, 2024, the DNRC received a *Request to Withdraw Statement of Claim* (Doc. 4.00)¹ for claim 41K 210408-00 from Mr. Nelson. Therefore, the DNRC recommends the claim be withdrawn.

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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Based on the information contained Ms. Brough's *Memo*, including the *Request to Withdraw Statement of Claim* filed by claimant Shane A. Nelson for claim 41K 210408-00, the claim should be terminated per Rule 17(c), W.R.Adj.R.

¹ "Doc." Numerical references correlate to case file docket numbers in the Water Court's Full Court case management system. The Request to Withdraw was attached with the Memo filed by the DNRC on January 23, 2024.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the Court terminate claim 41K 210408-00.

A post decree abstract of the water right claim reflecting the termination of claim 41K 210408-00 is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Shane A. Nelson
306 W Morase St
Lewistown, MT 59457

Service Via Electronic Mail:

This Order Only:
Havre Regional Office, DNRC
P.O. Box 1828
Havre, MT 59501-1828
mmiles@mt.gov
dbrough@mt.gov
jamie.verploegen@mt.gov

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

Water Right Number: 41K 210408-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Late Claim: A

Owners: SHANE A NELSON
306 WEST MORASE ST
LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SIMMS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.