

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Kenneth F. Biehl; Deborah L. Biehl

CASE 41S-0686-R-2024
41S 131779-00

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. Kenneth F. Biehl and Deborah Biehl are the record co-owners of claim 41S 131779-00.

2. Claim 41S 131779-00 was decreed with DNRC issue remarks:

THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 30.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 30045-179-34 , DATED 09/17/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

ACCORDING TO INFORMATION IN THE CLAIM FILE, THE DAM WASHED OUT IN 1970 .

3. Claimants Kenneth F. Biehl and Deborah Biehl were ordered to meet with a DNRC employee to address the issue remarks decreed on claim 41S 131779-00.

4. On June 24, 2024, DNRC Water Resource Specialist Carli Bluhm filed a Memorandum indicating the Claimants failed to contact her. (Doc.* 2.00). Ms. Bluhm reported that she reviewed the claim abstract, the scanned claim file, an aerial photograph, and the 1970 Fergus County Water Resources Survey to prepare the Memorandum.

Ms. Bluhm stated that the DNRC examination found 0.00 acres of irrigation present on the property. Ms. Bluhm's research confirmed the earlier examination, and she was unable to confirm irrigation at the claimed place of use and she recommended claim 41S 131779-00 be dismissed.

5. An Order was issued to determine if the Claimants agreed or disagreed with Ms. Bluhm's recommendations. (Doc. 3.00).

* "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

The Order set a deadline for Claimants Kenneth F. Biehl and Deborah Biehl to file statements agreeing or disagreeing that claim 42M 131779-00 be dismissed. The Order indicated that if nothing were filed by the deadline, this Master would conclude Claimants Kenneth F. Biehl and Deborah Biehl agree claim 42M 131779-00 should be dismissed and a Master's Report would be issued. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATION

1. Claim 41S 131779-00 should be dismissed.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Kenneth F. Biehl
Deborah L. Biehl
1545 Buffalo Canyon Rd
Buffalo, MT 59418-8000

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 131779-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DEBORAH L BIEHL
1545 BUFFALO CANYON RD
BUFFALO, MT 59418-8000

KENNETH F BIEHL
1545 BUFFALO CANYON RD
BUFFALO, MT 59418-8000

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: ROSS FORK 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.