

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: Duane A. Diekman; Steve E. Diekman

CASE 41S-0812-R-2024
41S 15765-00

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. Duane A. Diekman and Steve E. Diekman are the record co-owners of claim 41S 15765-00.

2. Duane A. Diekman and Steve E. Diekman mining claim 41S 15765-00 was decreed with the means of diversion listed as:

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE
POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

3. Claim 41S 30131011 was decreed with the following DNRC issue remark:

THE MEANS OF DIVERSION DOES NOT APPEAR TO BE STANDARDIZED. THE MEANS OF DIVERSION APPEARS TO BE A PUMP.

All DNRC issue remarks must be resolved. Based on the issue remark, it appears the DNRC examiner that reviewed the claim believed the means of diversion for claim 41S 15765-00 should be “pump.”

4. An Order was issued on May 28, 2024 to determine if Claimants Duane A. Diekman and Steve E. Diekman agreed or disagreed with modifying the means of diversion for claim 41S 15765-00 to “pump.” The Order included the following language:

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. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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.

RECOMMENDATIONS

1. The means of diversion for claim 41S 15765-00 should be modified to “pump.”
 2. The issue remark should be removed from claim 41S 15765-00.
- Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Duane A. Diekman
1500 Blueberry Hill Rd
Lewistown, MT 59457-8925

Steve E. Diekman
52 Lisa Ann Ct
Bozeman, MT 59718-4682

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

Water Right Number: 41S 15765-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DUANE A DIEKMAN
1500 BLUEBERRY HILL RD
LEWISTOWN, MT 59457-8925

STEVE E DIEKMAN
52 LISA ANN CT
BOZEMAN, MT 59718-4682

Priority Date: AUGUST 7, 1947

Type of Historical Right: FILED

Purpose (Use): MINING

Flow Rate: 26.93 GPM

***Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.
THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Source Name: IRON GULCH

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		NENWSE	25	18N	17E	FERGUS

Period of Diversion: MARCH 1 TO DECEMBER 15

Diversion Means: PUMP

Period of Use: MARCH 1 TO DECEMBER 15

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			NENWSE	25	18N	17E	FERGUS