

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: Connie R. Bowen; Ronald E. Bowen

CASE 41S-0709-R-2024
41S 44766-00

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, conclusion 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. Connie R. Bowen and Ronald E. Bowen (the Bowens) are the record owners of irrigation claim 41S 44766-00.

2. The Bowens were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claim 41S 44766-00:

- 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). 30027-278-212 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on September 19, 2024. (Doc.¹ 3.00). The Memorandum reports “the claimant” contacted Ms. Bluhm, but did not provide Ms. Bluhm with additional information. It is not clear from the Memorandum who Ms. Bluhm spoke to. Ms. Bluhm reports she reviewed the Fergus County Water Resources Survey and an aerial photograph to prepare the Memorandum; a proposed abstract was attached to the Memorandum. Ms. Bluhm stated:

During examination the DNRC found 0 acres of irrigation. As part of this investigation, the DNRC could not locate any irrigation present on the property. With no additional documentation provided by the claimant the DNRC found 0 acres of irrigation. The claimant agreed with these findings.

Ms. Bluhm recommended claim 41S 44766-00 be dismissed.

3. An Order was issued to determine if the Bowens agreed or disagreed with the dismissal of claim 41S 44766-00. (Doc. 5.00). The Order indicated that if nothing were filed by the October 21, 2024 deadline, this Water Master would conclude the Bowens agree claim 41S 44766-00 should be dismissed. The following language was included in the Order:

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

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. (emphasis in original)

Nothing was filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim. 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.

RECOMMENDATION

1. Claim 41S 44766-00 should be dismissed.
An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Connie R. Bowen
Ronald E. Bowen
652 E. Fork Rd
Lewistown, MT 59457

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

Water Right Number: 41S 44766-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: CONNIE R BOWEN
652 E. FORK RD.
LEWISTOWN, MT 59457-8804

RONALD E BOWEN
652 E. FORK RD.
LEWISTOWN, MT 59457-8804

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: BIG SPRING CREEK, EAST FORK

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.