

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

CLAIMANT: Kendall Ditch Co.

OBJECTOR: Montana Dept. of Fish Wildlife & Parks

CASE 41S-2035-R-2025
41S 40139-00

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 have 13 days from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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. The record owner of power generation claim 41S 40139-00 is Kendall Ditch Co. (Claimant).

2. Claim 41S 40139-00 was decreed with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks:

- AN AMENDMENT WAS SUBMITTED ON 01/20/2006 REQUESTING TO AMEND THE FLOW RATE AND VOLUME .
- THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME..

3. On April 17, 2023, the State of Montana Department of Fish, Wildlife and Parks (FWP) objected to all elements of claim 41S 40139-00 stating:

This claim for power generation has not been perfected and/or has been abandoned.

4. A status conference was conducted on October 2, 2025 by telephone conference call. Anika M. Stern presided and Alexander R. Scolavino III appeared on behalf of the FWP. Nobody appeared on behalf of Kendall Ditch Co.

During the Conference Mr. Scolavino explained that claim 41S 40139-00 is for power generation and has been abandoned; the hydropower generator is no longer at the claimed place of use.

5. A deadline was set for Kendall Ditch Co. to show cause why claim 41S 40139-00 should not be dismissed as abandoned. The Order indicated that following:

ORDERED that the Kendall Ditch Co. show cause why claim 41S 40139-00 should not be abandoned by **November 14, 2025. If nothing is filed by the November 14, 2025 filing deadline, this Water Master will conclude that Kendall Ditch Co. agrees claim 41S 40139-00 has been abandoned.**

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).

(Doc.¹2.00). Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. 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.

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

2. 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.

3. Dismissing claim 41S 40139-00 is consistent with FWP's Objection.

RECOMMENDATION

Claim 41S 40139-00 should be dismissed.

An abstract is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Kendall Ditch Co.
c/o James E. Phillips
37166 MT Hwy. 81
Lewistown, MT 59457

Service Via Electronic Mail:

Alexander R. Scolavino III
Agency Legal Counsel
alexander.scolavino@mt.gov;
Audrey.Kelly@mt.gov
(Atty for: Montana Dept. of Fish Wildlife & Parks)

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

Water Right Number: **41S 40139-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: KENDALL DITCH CO
 % JAMES E PHILLIPS
 37166 MT HWY 81
 LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): POWER GENERATION

Flow Rate:

Volume:

Source Name: GIANT WARM SPRING

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.