

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

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CLAIMANT: Pamela C. Graff

CASE 41S-0936-R-2024

NOTICE OF INTENT TO APPEAR: Crowley Ditch, Co.

41S 28138-00

41S 28139-00

**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. Pamela C. Graff is the record owner of claims 41S 28138-00 and 41S 28139-00.

2. Claims 41S 28138-00 and 41S 28139-00 were decreed with DNRC issue remarks:

**Claim 41S 28138-00:**

- 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). 30027-278-194 , 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.
- THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON BIG SPRING CREEK WITH A PRIORITY DATE PREDATING CASE NO 319, FERGUS COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK

**Claim 41S 28139-00:**

- THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

3. Crowley Ditch, Co. filed a Notice of Intent to Appear to claim 41S 28138-00 on September 29, 2023, indicating:

6. State the changes that you think should be made to this claim and why.

Crowley Ditch Co. has water rights on Big Spring Creek that may be impacted by any changes made to this water right. The purpose of this NOIA is to monitor and participate in the resolution of the DNRC Issue Remarks.

4. Pamela C. Graff was ordered to meet with a DNRC employee to address the unresolved issue remarks.

5. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on November 1, 2024. (Doc.<sup>1</sup> 3.00). The Memorandum reported Ms. Bluhm communicated with Pamela C. Graff on October 3, 2024. Ms. Bluhm indicated that she reviewed aerial photographs and the Fergus Count Water Resources Survey field notes to prepare the Memorandum.

6. **41S 28138-00:** Ms. Bluhm indicated that she “found no field boundaries, hydration, or evidence of a ditch to indicate irrigation.” Ms. Bluhm recommended claim 41S 28138-00 be dismissed.

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

7. **41S 28139-00:** Claim 41S 28139-00 was decreed with a 40.00 gallon per minute (gpm) flow rate and nothing to support the claimed flow. Ms. Bluhm recommended, “With no additional information from the claimant, the DNRC found the flow rate should be 35 GPM, based on the WRCER guideline.”

8. An Order was issued to determine if Pamela C. Graff agreed claim 41S 28138-00 should be dismissed and the flow rate for claim 41S 28139-00 should be reduced to 35.00 gpm. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Pamela C. Graff agreed with the recommended modifications. 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.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed 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.
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. Claim 41S 28138-00 should be dismissed.

2. The flow rate for claim 41S 28139-00 should be reduced from 40.00 gpm to 35.00 gpm.
  3. Crowley Ditch Co.'s Notice of Intent to Appear filed for claim 41S 28138-00 should be dismissed, as claim 41S 28138-00 has been dismissed.
  4. The issue remark should be removed from claim 41S 28139-00.
- Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

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**Service via USPS Mail:**

Pamela C. Graff  
PO Box 14  
Chester, MT 59522

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

**Water Right Number:** 41S 28138-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** PAMELA C GRAFF  
PO BOX 14  
CHESTER, MT 59522

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** BIG SPRING CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 41S 28139-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** PAMELA C GRAFF  
PO BOX 14  
CHESTER, MT 59522

**Priority Date:** AUGUST 1, 1961

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 35.00 GPM

**Volume:** 4.00 AC-FT

**Maximum Acres:** 2.00

**Source Name:** BIG SPRING CREEK

**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		NWSWNE	26	15N	18E	FERGUS

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** PUMP

**Period of Use:** APRIL 1 TO OCTOBER 31

**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	2.00		NWSWNE	26	15N	18E	FERGUS
<b>Total:</b>	<u>2.00</u>						