

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: Donna L. Fraser; Michael S. Fraser

CASE 41S-0901-R-2024
41S 138274-00

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. Donna L. Fraser and Michael S. Fraser (the Frasers) are the record owners of irrigation claim 41S 138274-00.

2. The Frasers were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claim 41S 138274-00:

- 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). 30027-178-57 , DATED 09/18/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum on December 10, 2024. (Doc.¹ 3.00). Ms. Bluhm reported that the Frasers failed to contact the DNRC. Ms. Bluhm indicated that she reviewed the Fergus County Water Resources Survey field notes and aerial photographs to prepare the Memorandum. Ms. Bluhm stated:

During initial examination, the DNRC found 0 acres of irrigation. After this investigation and no additional information from the claimant, the DNRC found 0 acres of irrigation.

Ms. Bluhm recommended claim 41S 138274-00 be dismissed.

4. An Order was issued to determine if Claimants Donna L. Fraser and Michael S. Fraser agreed or disagreed with Ms. Bluhm's recommendation to dismiss claim 41S 138274-00. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimants Donna L. Fraser and Michael S. Fraser agree with the recommended dismissal of claim 41S 138274-00 and a Master's Report would be issued recommending the claim be dismissed. Nothing was filed.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

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.

RECOMMENDATION

1. Claim 41S 138274-00 should be dismissed.
An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Donna L. Fraser
Michael S. Fraser
3345 Hanover Rd.
Lewistown, MT 59457

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

Water Right Number: 41S 138274-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DONNA L FRASER
3345 HANOVER RD
LEWISTOWN, MT 59457

MICHAEL S FRASER
3345 HANOVER RD
LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BIG SPRING 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.