

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: Kevin J. Fraser; Steven T. Fraser;  
Lawrence F. Helmer

CASE 41S-0903-R-2024  
41S 101579-00  
41S 138275-00

**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. Kevin J. Fraser, Steven T. Fraser, and Lawrence F. Helmer (Claimants) are the record owners of claim 41S 101579-00; Kevin J. Fraser is the record owner of claim 41S 138275-00.

2. Claims 41S 126809-00, 41S 126810-00, 41S 126811-00, 41S 126813-00, and 41S 131778-00 were decreed with DNRC issue remarks:

**41S 101579-00:**

- 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). 30027-278-60 AND 30027-278-62 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.
- THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE PUMP(S) CANNOT BE IDENTIFIED FROM AVAILABLE DATA..

**41S 138257-00:**

- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY( 1970 )APPEARS TO INDICATE 2.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.
- THE SOURCE NAME AND POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA. SEE NOTES IN THE CLAIM FILE ON REVIEW ABSTRACT DATED 05/09/2018 FOR MORE INFORMAITON.

3. The Claimants were ordered to meet with a DNRC employee to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating Claimant Lawrence F. Helmer met with the DNRC. (Doc.<sup>1</sup> 3.00). Ms. Bluhm indicated she reviewed the Fergus County Water Resource Survey field notes and aerial photos to prepare the Memorandum.

5. **41S 101579-00:** Ms. Bluhm stated that she identified no historical irrigation at the claimed place of use and recommended dismissal of claim 41S 101579-00.

6. **41S 138275-00:** Ms. Bluhm confirmed 4.00 acres of historical irrigation at the claimed place of use, as claimed. Additionally, Ms. Bluhm confirmed the claimed point of diversion. Ms. Bluhm recommended no modifications be made to claim 41S 138275-00.

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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. An Order was issued to determine if the Claimants agreed or disagreed with the proposed dismissal of claim 41S 101579-00. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agreed claim 41S 101579-00 should be dismissed. 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.

#### RECOMMENDATIONS

1. Claim 41S 101579-00 should be dismissed.
2. The issue remarks should be removed from claim 41S 138275-00.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Kevin J. Fraser  
PO Box 3553  
Lewistown, MT 59457-3553

Steven T. Fraser  
140 Green Hills Loop  
Lewistown, MT 59457

Lawrence F. Helmer  
923 W Spring St  
Lewistown, MT 59457-2828

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

**Water Right Number:** 41S 101579-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** KEVIN J FRASER  
PO BOX 3553  
LEWISTOWN, MT 59457-3553

STEVEN T FRASER  
140 GREEN HILLS LOOP  
LEWISTOWN, MT 59457

LAWRENCE F HELMER  
923 W SPRING ST  
LEWISTOWN, MT 59457-2828

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** JUDITH RIVER

**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 138275-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** KEVIN J FRASER  
PO BOX 3553  
LEWISTOWN, MT 59457-3553

**Priority Date:** DECEMBER 1, 1889

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 12.00 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 4.00

**Source Name:** UNNAMED TRIBUTARY OF 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		SWSESE	5	15N	18E	FERGUS

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** DIKE

**Period of Use:** APRIL 15 TO OCTOBER 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	4.00		SESE	5	15N	18E	FERGUS

**Total:** 4.00