

Montana Water Court  
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**FILED**  
07/29/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41S-0805-R-2024  
Stern, Anika  
1.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
JUDITH RIVER BASIN (41S)  
PRELIMINARY DECREE

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CLAIMANTS: Kolstad Livestock Co.

**CASE 41S-0805-R-2024**  
41S 162195-00

**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. Kolstad Livestock Co. is the record owner of domestic claim 41S 162195-00.

2. Claim 41S 162195-00 was decreed with a 7.00 acre-feet volume and the following DNRC issue remark:

ON 07/07/2000 HOWARD KOLSTAD FILED A LATE OBJECTION TO CHANGE THE VOLUME TO 3.14 ACRE FEET PER YEAR. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

The issue remark referenced a July 7, 2000 letter and Affidavit filed by Howard Kolstad, president of Kolstad Livestock Co., indicating the volume for claim 41S 162195-00 should be reduced to 3.14 acre-feet (2.00 acre feet for household irrigation and 1.14 acre-feet for lawn and garden irrigation). Copies of the documents are available in the claim file.

3. The deadline to file objections in Basin 41S was August 4, 1984. Therefore, Water Master Kathryn Lambert sent a letter to Kolstad Livestock Co., explaining that an issue remark would be added to claim 41S 162195-00, and Howard Kolstad's letter would be docketed as a late objection to be addressed after notice in the Preliminary Decree.

### PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 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. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA must be applied. Rule 17(c), W.R.Adj.R..

CONCLUSION OF LAW

1. The volume of claim 41S 162194-00 should be reduced, as proposed by Kolstad Livestock Co., resolving the issue remark decreed on the claim.

RECOMMENDATIONS

1. The volume of claim 41S 162194-00 should be reduced to 3.14 acre-feet.
2. The issue remark should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Kolstad Livestock Co.  
PO Box 405  
Lewistown, MT 59457

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

**Water Right Number:** 41S 162195-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** KOLSTAD LIVESTOCK CO  
PO BOX 405  
LEWISTOWN, MT 59457

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 25.00 GPM

**Volume:** 3.14 AC-FT

**Households:** 1

**Maximum Acres:** 3.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF CASTLE CREEK

**Source Type:** GROUNDWATER

**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		NWNENE	36	14N	18E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** FLOWING

**Period of Use:** JANUARY 1 TO DECEMBER 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	3.00		NENENE	36	14N	18E	FERGUS

**Total:** 3.00

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

115051-00      162195-00