

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: Leslie L. Colver; Fred W. Colver

CASE 41S-0771-R-2024
41S 48821-00

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. Fred W. Colver and Leslie L. Colver stock claim 41S 48821-00 was decreed with DNRC issue remarks:

AN AMENDMENT WAS SUBMITTED ON 03/07/2022 REQUESTING TO AMEND THE PERIOD OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

SOURCE NAME AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

All DNRC issue remarks must be resolved.

2. No objections were filed to claim 41S 48821-00, therefore, the second and third issue remarks do not require further proceedings.

3. On March 7, 2022, Claimants Fred. W. Colver and Leslie L. Colver filed an Amendment to Statement of Claim indicating the historical period of diversion for claim 41S 48821-00 is January 1 to December 31 – not March 1 to November 30, as decreed.

PRINCIPLES AND CONCLUSIONS 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. The Montana Water Court has exclusive jurisdiction to interpret and determine all existing water rights. *Mildenberger v. Galbraith*, (1991) 249 Mont. 161, 166, 815 P.2d 130. An “existing water right” is defined as “a right to the use of water that would be protected under the law as it existed before July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.” Section 85-2-102(10), MCA. This includes jurisdiction to review all objections to preliminary decrees, Section 85-2-233, MCA, and all issue remarks resulting from Montana Department of Natural Resources and Conservation claim examination, Section 85-2-248, MCA.

3. Period of diversion was not an element on the Statement of Claim. In 2008, it was decided that the period of diversion will appear on all abstracts of claim in addition to the period of use. DNRC added a period of use identical to the period of use. In the Amendment, Claimants Fred W. Colver and Leslie L. Colver indicate the accurate historical period of diversion for the onstream reservoir described by claim 41S 48821-00 is January 1 to December 31.

4. The source and reservoir issue remarks decreed on claim 41S 48821-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The period of diversion for claim 41S 48821-00 should be modified to January 1 to December 31 and the issue remarks 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:

Leslie L. Colver
Fred W. Colver
42039 MT Hwy 81
Lewistown, MT 59457

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

Water Right Number: 41S 48821-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FRED W COLVER
42039 MT HWY 81
LEWISTOWN, MT 59457

LESLIE L COLVER
42039 MT HWY 81
LEWISTOWN, MT 59457

Priority Date: DECEMBER 31, 1922

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS BIG COULEE

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		NESWSE	3	16N	18E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

***Reservoir:** ONSTREAM **Reservoir Name:** CLOVER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSE	3	16N	18E	FERGUS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 25.00 FEET

Depth: 22.00 FEET

Surface Area: 12.16 ACRES

Capacity: 107.00 ACRE-FEET

THE DAM EXTENDS INTO THE SENWSE , SEC 03 TWP 16N RGE 18E FERGUS COUNTY.

Period of Use: MARCH 1 TO NOVEMBER 30

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			NESWSE	3	16N	18E	FERGUS
2			NWSWSE	3	16N	18E	FERGUS
3			SWNWSE	3	16N	18E	FERGUS
4			NESWSW	3	16N	18E	FERGUS