

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-0772-R-2024
41S 48822-00

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 (the Colvers) are the record owners of domestic claim 41S 48822-00.

2. Claim 41S 48822-00 was decreed with 30.00 gallon per minute (gpm) flow rate and a DNRC issue remark stating:

- THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 8 GPM.

All issue remarks must be resolved.

3. The issue remark decreed on claim 41S 48822-00 appears to be based on a GW form – Declaration of Vested Groundwater Rights that was attached to the Statement of Claim. The form states that the 1930 well described by claim 41S 48822-00 pumps 8.00 gallons per minute (gpm):

3. Date or approximate date of earliest beneficial use; and how continuous the use has been. *Well dug when home was built. Daily use. Home built 1930.*

4. The amount of groundwater claimed (in miner's inches or gallons per minute) *8 gal per minute.*

Therefore, as claimed, claim 41S 48822-00 overclaims the documented flow rate. Based on the information provided with the Statement of Claim, the flow rate for claim 41S 48822-00 should be 8.00 gpm.

4. An Order was issued setting a deadline for Claimants Fred W. Colver and Leslie L. Colver to agree or disagree that the flow rate for claim 41S 48822-00 should be reduced from 30.00 gpm to 8.00 gpm. (Doc.¹1.00)

5. On September 11, 2024, the Colvers filed a statement agreeing that the flow rate for claim 41S 48822-00 should be 8.00 gpm. (Doc. 3.00).

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 issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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. The flow rate for claim 41S 48822-00 should be reduced to 8.00 gallons per minute.

2. The issue remark should be removed from 41S 48822-00.

An abstract of claim 41S 48822-00 is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

(Last Order)

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

Service Via Electronic Mail:

Christopher Scoones
Scoones Law PLLC
P.O. Box 4570
Bozeman, MT 59772
chris@scooneslaw.com

**Caption and Service List Updated:
9/12/2024**

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

Water Right Number: 41S 48822-00 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, 1930

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 8.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

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		NESWNE	34	17N	18E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.00		NESWNE	34	17N	18E	FERGUS

Total: 1.00