

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
02/18/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: Regina Certalic  
41S-0848-R-2024  
Stern, Anika  
5.00

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

\*\*\*\*\*

CLAIMANTS: Beverly J. Farr; Victor T. Farr

**CASE 41S-0848-R-2024**  
41S 30131360  
41S 30131364

**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. Beverly J. Farr and Victor T. Farr (the Farrs) are the record owners of claims 41S 30131360 and 41S 30131364.

2. Claims 41S 30131360 and 41S 30131364 were decreed with DNRC issue remarks:

**41S 30131360:**

- THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A PIPELINE .
- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

**41S 30131364:**

- A PORTION OF THE CLAIMED POINT OF DIVERSION AND PLACE OF USE DOES NOT MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER 85-2-222, MCA, AND INVOLVES A DITCH
- THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.
- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S DECREE ISSUED 05/17/1984.

3. The Farrs were ordered to meet with a DNRC employee to address the unresolved issue remarks. (Doc.<sup>1</sup>1.00).

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating she spoke with “the claimant” – it is unclear to whom Ms. Bluhm spoke. (Doc. 3.00). Ms. Bluhm indicated she reviewed the Judith Basin County Water Resources Survey and a 1979 aerial photo to prepare the Memorandum.

5. **41S 30131360:** Ms. Bluhm indicated that the means of diversion for claim 30131360 should be modified from spring box to pipeline.

6. **41S 30131364:** Ms. Bluhm explained the following:

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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.

The DNRC assumed the claimant was claiming a point of diversion that includes a man-made ditch, under 85-2-222, MCA, a ditch does not meet the definition of an exempt right. After speaking with the claimant, it was explained that it is not a manmade ditch, and didn't know what else to call the small stream. The DNRC determined the clarification from the claimant is enough to remove the issue remark and leave the right as is.

The claimant claimed an undeveloped spring as the source for stock direct from source. After the initial investigation, the DNRC found the claimant appears to be claiming 2 sources of water. After this investigation, the DNRC found that the spring feeds the unnamed tributary claimed. The DNRC concluded that removing the unnamed tributary of Cottonwood Creek and adding an informational remark should resolve the issue remark.

Ms. Bluhm recommended the following modifications be made to claim 41S 30131364 to address the issue remarks:

\*Source Name: UNNAMED TRIBUTARY OF COTTONWOOD CREEK  
Source Type: SURFACE WATER  
\*Source Name: SPRING, UNNAMED TRIBUTARY OF COTTONWOOD CREEK  
Source Type: SURFACE WATER  
THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM AN UNNAMED TRIBUTARY OF COTTONWOOD CREEK.

7. An Order was issued to determine if the Farris agreed or disagreed with the recommendations made by Ms. Bluhm. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agreed with the recommended modifications. 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.

3. The remark noting claims 41S 30131360 and 41S 30131364 were not included in the May 17, 1984 decree are notice remarks and do not require further action.

RECOMMENDATIONS

1. Claim 41S 30131360 should be modified as follows:

Diversion Means: ~~SPRING-BOX~~ PIPELINE

Claim 41S 30131364 should be modified as follows:

\*Source Name: ~~UNNAMED-TRIBUTARY-OF-COTTONWOOD-CREEK~~  
Source Type: SURFACE-WATER  
\*Source Name: SPRING, UNNAMED TRIBUTARY OF COTTONWOOD CREEK  
Source Type: SURFACE WATER  
\*Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		SE	3	13N	18E	FERGUS
*Source Name: <b>SPRING</b> UNNAMED TRIBUTARY OF COTTONWOOD CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: OTHER						
2		NWNE	10	13N	18E	FERGUS
*Source Name: <b>SPRING</b> UNNAMED TRIBUTARY OF COTTONWOOD CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: OTHER						
3		SE	10	13N	18E	FERGUS
*Source Name: SPRING, UNNAMED TRIBUTARY OF COTTONWOOD CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: UNDEVELOPED SPRING						

~~THE CLAIMED MEANS OF DIVERSION IS: "FROM SPRING AND THE STREAM THAT IS BELOW IT."~~

**CMSI: THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM AN UNNAMED TRIBUTARY OF COTTONWOOD CREEK.**

2. The issue remarks should be removed from claims 41S 30131360 and 41S 30131364.

Abstracts are attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Beverly J. Farr  
Victor T. Farr  
12096 Cottonwood Creek Rd  
Lewistown, MT 59457

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

**Water Right Number:** 41S 30131360 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BEVERLY J FARR  
 12096 COTTONWOOD CREEK RD  
 LEWISTOWN, MT 59457  
 VICTOR T FARR  
 12096 COTTONWOOD CREEK RD  
 LEWISTOWN, MT 59457

**\*Priority Date:** DECEMBER 31, 1945

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 4.00 GPM

**Volume:** 4.00 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF COTTONWOOD 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		SWNESE	4	13N	18E	FERGUS

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

**Diversion Means:** PIPELINE

**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		SWNWNWSE	3	13N	18E	FERGUS

**Total:** 1.00

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30131360      30131361

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

**Water Right Number:** 41S 30131364 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** BEVERLY J FARR  
12096 COTTONWOOD CREEK RD  
LEWISTOWN, MT 59457

VICTOR T FARR  
12096 COTTONWOOD CREEK RD  
LEWISTOWN, MT 59457

**\*Priority Date:** DECEMBER 31, 1945

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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:** SPRING, UNNAMED TRIBUTARY OF COTTONWOOD CREEK

**Source Type:** SURFACE WATER

THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM AN UNNAMED TRIBUTARY OF COTTONWOOD CREEK.

**\*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		SE	3	13N	18E	FERGUS

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

**Diversion Means:** OTHER

2		NWNE	10	13N	18E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** OTHER

3		SEWNNE	10	13N	18E	FERGUS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** UNDEVELOPED SPRING

**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			SE	3	13N	18E	FERGUS
2			NWNE	10	13N	18E	FERGUS

3

SEWNE 10 13N 18E FERGUS