

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

MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

CLAIMANTS: Leslie L. Colver; Fred W. Colver

CASE 41S-2145-R-2025
41S 48824-00

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 have 13 days from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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 irrigation claim 41S 48824-00.

2. Claim 41S 48824-00 was decreed with Montana Department of Natural Resources and Conservation (“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.
- THIS CLAIM WAS INCLUDED IN A WATER COURT CASE INITIATED PRIOR TO THE ISSUANCE OF THE BASIN 41S PRELIMINARY DECREE. THE CASE WAS NOT CLOSED PRIOR TO THE ISSUANCE OF THE DECREE, THEREFORE THE ABSTRACT MAY NOT REFLECT THE CURRENT ELEMENTS OF THIS CLAIM AS ADJUDICATED BY THE WATER COURT.
- 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, RESERVOIR RECORD AND MEANS OF DIVERSION 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.

3. On February 14, 2023, the Colvers objected to claim 41S 48824-00, stating:

Objectors herein are filing this objection solely for the purpose of preserving their objection and notifying the Water Court this water right is actively involved in a case. This water right is involved in *Water Court Case DCERT 003-WC-2021*. Objectors do not believe a new case is necessary, but they want to be sure their objections are preserved.

An Order Dismissing Case was issued in Case DCERT 003-WC-2021 on June 5, 2024. The Order indicated that it appeared there was no objection to pursue in this Case. The Order stated:

“If the Objectors disagree and there is an Objection to be pursued in this Case, a statement should be filed immediately.” (emphasis in original).

(Doc.¹1.00).

4. Irrigation claim 41S 48824-00 was decreed with the period of diversion identical to the period of use – March 1 to August 31. On March 7, 2022, the Colvers filed an Amendment to claim 41S 48824-00 indicating the period of diversion should be January 1 to December 31. The Colvers did not file any information to substantiate year-round diversion for irrigation use with the Amendment.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

5. An Order was issued setting a deadline for the Colvers to file evidence supporting a January 1 to December 31 period of diversion for claim 41S 48824-00. (Doc. 1.00).

6. On February 5, 2026, counsel for the Colvers filed a Notice of Appearance and Response to Order Setting Filing Deadline; the Declaration of Fred Colver was attached. (Doc. 2.00).

Born in 1958, Fred Colver has intimate knowledge of irrigation claim 41S 48824-00. Fred Colver grew up working the ranch and continues to do so. Fred Colver stated that the on-stream reservoir described by claim 41S 48824-00 diverts water whenever water is flowing in the stream, which is typically year-round.

PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Mont. Code Ann. § 85-2-248 (2025).

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. § 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, ¶ 34, 375 Mont. 86, 329 P.3d 558.

3. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

CONCLUSIONS OF LAW

1. The information in the record overcomes the prima facie status of claim 41S 48824-00, and it is appropriate to modify the period of diversion.

2. Claim 41S 48824-00 was decreed with a source name, reservoir record, or means of diversion issue remark indicating that the DNRC modified the elements under court reexamination orders. The remarks are notice-type remarks and state that if no objections are filed, the elements will remain as decreed, and the remarks will be removed. Nobody objected to the source name, reservoir record, or means of diversion

for claim 41S 48824-00, and no further proceedings are required because of the issue remarks.

RECOMMENDATIONS

1. The period of diversion for claim 41S 48824-00 should be modified to January 1 to December 31.

2. The issue remarks should be removed from the claim abstract.

An abstract is enclosed.

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 T. Scoones
Scoones Law PLLC
chris@scooneslaw.com
(Atty for: Leslie L. Colver & Fred W. Colver)

****Note: Service List Updated 3-03-2026****

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

Water Right Number: 41S 48824-00 STATEMENT OF CLAIM

Version: 5 -- 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: JUNE 16, 1892

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 180.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 48.83

***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: DAM

***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 AUGUST 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 | 1.25 | | SENESEW | 34 | 17N | 18E | FERGUS |
| 2 | 1.25 | | SWNWSE | 34 | 17N | 18E | FERGUS |
| 3 | 4.40 | | SENWSW | 34 | 17N | 18E | FERGUS |
| 4 | 2.50 | | NESESW | 34 | 17N | 18E | FERGUS |
| 5 | 8.75 | | NWSWSE | 34 | 17N | 18E | FERGUS |
| 6 | 4.40 | | NESWSE | 34 | 17N | 18E | FERGUS |
| 7 | 10.00 | | NESWSW | 34 | 17N | 18E | FERGUS |
| 8 | 7.50 | | NWSESW | 34 | 17N | 18E | FERGUS |
| 9 | 4.40 | | SENWSW | 34 | 17N | 18E | FERGUS |
| 10 | 1.25 | | SWNESW | 34 | 17N | 18E | FERGUS |
| 11 | 0.63 | | SWNWSW | 34 | 17N | 18E | FERGUS |
| 12 | 1.25 | | NWSWSW | 34 | 17N | 18E | FERGUS |
| 13 | 1.25 | | SESWSW | 34 | 17N | 18E | FERGUS |
| Total: | <u>48.83</u> | | | | | | |

Remarks:

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41S 4375-00. THEY SHARE A COMMON PLACE OF USE.