

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
LITTLE MISSOURI RIVER BASIN ABOVE LITTLE BEAVER CREEK (39F)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Little Missouri River Ranch LLC

OBJECTOR: State of Montana Board of Land Commissioners

**CASE 39F-0067-R-2021**

39F 174383-00

39F 30153430

**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, conclusion 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**

Water Right Claim 39F 174383-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). The claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims

examination cannot confirm some aspect of a claim, an issue remark is added to the claim. The claim also received an objection filed by the State of Montana Board of Land Commissioners.

The Court consolidated this claim into Case 39F-0067-R-2021 on June 11, 2021. The consolidation order set a filing deadline by which the parties were to file status reports or settlement documents. The parties filed a stipulation on September 13, 2021.

### **FINDINGS OF FACT**

1. Claim 39F 174383-00 appeared with the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 39F 174383-00, 39F 181532-00, 39F 215443-00, 39F 215611-00.

DITCH NAME AND SOURCE NAME 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.

2. The State of Montana Board of Land Commissioners objected to the ownership of Claim 39F 174383-00.

3. The State of Montana asserts the application of *Pettibone v. Department of State Lands* to certain places of use of this claim.

4. The parties stipulate that the parcels reflected by Place of Use Nos. 11 through 17 and 37 and 38 were acquired by the State on March 30, 1892.

5. Attached to the stipulation as an exhibit is Patent Book vol. 4, p. 463 and p. 465 demonstrating the State's acquisition of the above-described places of use.

6. The priority date of Claim 39F 174383-00 is May 21, 1903.

7. The parties stipulate to the creation of an implied claim owned by the State using Place of Use Nos. 11 through 17, 37, and 38.

8. An implied claim, 39F 30153430, should be generated with the same elements as Claim 39F 174383-00 except for the following:

#### **Ownership:**

MONTANA STATE BOARD OF LAND COMMISSIONERS  
TRUST LAND MANAGEMENT DIVISION PO BOX 201601  
HELENA, MT 59620 1601

**Flow Rate:** 22.37 CFS  
**Volume:** 578.70 AC-FT  
**Maximum Acres:** 386.00

**Place of Use:**

ID	Acres	Qtr Sec	Sec	Twp	Rge	County
1	28.00	SWNW	36	5S	61E	CARTER
2	28.00	SENW	36	5S	61E	CARTER
3	2.00	SEWNNE	36	5S	61E	CARTER
4	5.00	S2NWNW	36	5S	61E	CARTER
5	157.00	SW	36	5S	61E	CARTER
6	80.00	N2SE	36	5S	61E	CARTER
7	12.00	SWSE	36	5S	61E	CARTER
8	34.00	SWNE	36	5S	61E	CARTER
9	<u>40.00</u>	SENE	36	5S	61E	CARTER

**Total:** 386.00

9. The State of Montana withdrew 39F 215443-00 and 39F 215611-00 through Water Court Case 39F-0063-R-2021. *See* Order Adopting Master’s Report, August 18, 2021.

10. The issue remarks should be removed from Claim 39F 174383-00.

**APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties may confer with each other and exchange information before the case is put on a hearing track. Parties may file settlement documents during these initial settlement proceedings. Rule 16(a), W.R.Adj.R.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

5. The State of Montana holds title to water rights perfected on state school trust lands if the water right was perfected after the State gained title to the land. See *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985).

6. An implied water right claim, or implied claim, “is a claim authorized by the water court to be separated and individually identified from multiple rights evident in one or more claims.” W.R.C.E.R. 2(a)(33).

### **CONCLUSIONS OF LAW**

1. The evidence in the record supports generating an implied claim based on Claim 39F 174383-00.

2. The evidence in the record provides the Court with a sufficient basis to resolve and remove the issue remarks from Claim 39F 174383-00.

3. The State’s objection is resolved through generation of an implied claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

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Colton J. Lauer  
Water Master

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Billings, MT 59105

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**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 174383-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LITTLE MISSOURI RIVER RANCH LLC  
6806 ALEXANDER RD  
BILLINGS, MT 59105 4541

**Priority Date:** MAY 21, 1903

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 52.63 CFS

CASE NO.1923-C IN CARTER COUNTY DECREES 3000 MINERS INCHES,WHICH INCLUDES THE ENTIRE FLOW OF FINGER BUTTE CREEK.

**Volume:** 1,361.30 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 908.00

**Source Name:** FINGER BUTTE CREEK

**Source Type:** SURFACE WATER

**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		NWNWNW	33	5S	61E	CARTER

**Period of Diversion:** FEBRUARY 15 TO NOVEMBER 15

**Diversion Means:** DIKE

**Ditch Name:** VAUGHN DITCH

**Period of Use:** FEBRUARY 15 TO NOVEMBER 15

**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	20.00		SWNE	34	5S	61E	CARTER
2	23.00		SENE	34	5S	61E	CARTER
3	39.00		NESE	34	5S	61E	CARTER
4	30.00		NWSE	34	5S	61E	CARTER
5	9.00		SESE	34	5S	61E	CARTER
6	13.00		S2SWNW	35	5S	61E	CARTER
7	4.00		S2SENW	35	5S	61E	CARTER
8	5.00		SWSWNE	35	5S	61E	CARTER
9	153.00		SW	35	5S	61E	CARTER
10	160.00		SE	35	5S	61E	CARTER

11	31.00	4	NWNW	5	6S	62E	CARTER
12	40.00	3	NENW	5	6S	62E	CARTER
13	40.00	2	NWNE	5	6S	62E	CARTER
14	40.00	1	NENE	5	6S	62E	CARTER
15	36.00	4	NWNW	4	6S	62E	CARTER
16	1.00	1	S2NWNW	31	5S	62E	CARTER
17	40.00	2	SWNW	31	5S	62E	CARTER
18	40.00	3	NWSW	31	5S	62E	CARTER
19	27.00	4	SWSW	31	5S	62E	CARTER
20	28.00		SENW	31	5S	62E	CARTER
21	39.00		NESW	31	5S	62E	CARTER
22	1.00		NWSESW	31	5S	62E	CARTER
23	6.00		S2SWNE	31	5S	62E	CARTER
24	6.00		S2SENE	31	5S	62E	CARTER
25	18.00		NESE	31	5S	62E	CARTER
26	28.00		NWSE	31	5S	62E	CARTER
27	2.00		SWNWNW	32	5S	62E	CARTER
28	23.00		SWNW	32	5S	62E	CARTER
29	6.00		NWNWSW	32	5S	62E	CARTER
<b>Total:</b>						908.00	

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

174381-00      174382-00      174383-00      181532-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

76844-00      174383-00      174397-00      174398-00      174399-00      174400-00  
174401-00      174402-00

**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 30153430 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** MONTANA STATE BOARD OF LAND COMMISSIONERS  
TRUST LAND MANAGEMENT DIVISION  
PO BOX 201601  
HELENA, MT 59620 1601

**Priority Date:** MAY 21, 1903

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7	12.00		SWSE	36	5S	61E	CARTER
8	34.00		SWNE	36	5S	61E	CARTER



9	40.00	SENE	36	5S	61E	CARTER
<b>Total:</b>	<hr/> 386.00					