

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

\* \* \* \* \*

CLAIMANT: Cochran Grazing Assn

**CASE 39F-0068-R-2021**

39F 2776-00

39F 2822-00

39F 2828-00

**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, 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 Claims 39F 2776-00, 39F 2822-00, and 39F 2828-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). The claim received an issue remark. 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 Court consolidated these claims into Water Court Case 39F-0068-R-2021 on July 19, 2021. The consolidation order set a deadline by which Claimant was to file responsive information resolving the issue remarks.

Claimant filed a response on August 31, 2021.

### **FINDINGS OF FACT**

1. Claim 39F 2776-00 appeared with the following three issue remarks:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 39F 2762 00, 39F 2776 00.

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.

RESERVOIR RECORD WAS 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. Claim 39F 2822-00 appeared with the following issue remarks:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION AND RESERVOIR RECORD. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NESWSE SEC 13 TWP 8S RGE 57E CARTER COUNTY.

POINT OF DIVERSION 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.

3. Claim 39F 2828-00 appeared with the following issue remark:  
EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

4. Claimant’s response is a statement signed by Larry Pilster, President of Cochran Grazing Association.

5. Mr. Pilster states that the water rights claimed by Claims 39F 2776-00 and 39F 2762-00 are separate and distinct rights, so no multiple use remark is necessary.

6. Mr. Pilster states that Place of Use No. 1 of Claim 39F 2822-00 should be NESWSE of Section 13, T8S, R57E. Mr. Pilster included a signed Verified Motion to Amend and marked up aerial imagery to support changing the place of use as requested.

7. Mr. Pilster indicates that the dam claimed by Claim 39F 2828-00 washed out in 1996 and there are no plans to rebuild. Accordingly, a signed withdrawal form is included with the response.

8. Place of Use No. 1 of Claim 39F 2822-00 should be described as NESWSE of Section 13, T8S, R57E.

9. Claim 39F 2828-00 should be dismissed.

10. The issue remarks should be removed from each above-captioned claim.

#### **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 must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

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.

#### **CONCLUSIONS OF LAW**

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned 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

**Service via USPS Mail:**

Cochran Grazing Assn  
PO Box 125  
Boyes, MT 59316

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

**Water Right Number:** 39F 2776-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** COCHRAN GRAZING ASSN  
PO BOX 125  
BOYES, MT 59316 0125

**Priority Date:** MARCH 19, 1910

**Type of Historical Right:**

**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 THOMPSON 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		SESESW	19	9S	58E	CARTER

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESESW	19	9S	58E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 8.00 FEET

**Surface Area:** 2.90 ACRES

**Capacity:** 9.28 ACRE-FEET

**Period of Use:** MAY 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			SESESW	19	9S	58E	CARTER
2			NENENW	30	9S	58E	CARTER
3			SWSWSE	19	9S	58E	CARTER

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

**Water Right Number:** 39F 2822-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** COCHRAN GRAZING ASSN  
PO BOX 125  
BOYES, MT 59316 0125

**Priority Date:** JULY 15, 1937

**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 ZIMMERMAN DRAW

**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		NESWSE	13	8S	57E	CARTER

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSE	13	8S	57E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** MAY 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			NESWSE	13	8S	57E	CARTER

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**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.

2767-00

2822-00

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

**Water Right Number:**      **39F 2828-00**    STATEMENT OF CLAIM  
**Version:**            3 -- POST DECREE  
**Status:**    **DISMISSED**

**Owners:**                    COCHRAN GRAZING ASSN  
                                    PO BOX 125  
                                    BOYES, MT 59316 0125

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):**                    STOCK

**Flow Rate:**

**Volume:**

**Source Name:**                    MADIGAN CREEK

**Source Type:**                    SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.