

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

OBJECTOR: State of Montana Board of Land Commissioners

**CASE 39F-0072-R-2021**  
39F 2818-00

**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 Claim 39F 2818-00 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 Water Court Case 39F-0072-R-2021 on July 19, 2021. The consolidation order scheduled an initial status conference for August 25, 2021. The parties appeared to this conference and agreed to begin settlement negotiations.

The Court received a finalized stipulation on December 6, 2021.

### **FINDINGS OF FACT**

1. Claim 39F 2818-00 appeared with the following two issue remarks:

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. The State of Montana (hereafter, Objector) objected to the ownership of Claim 39F 2818-00.

3. Place of Use No. 2 of Claim 39F 2818-00 is located on school trust land owned by the State of Montana.

4. The parties state in the stipulation that place of Use No. 2 was in the state of Montana’s possession prior to the perfection of the claimed water right.

5. The parties stipulate that if the Court adds the State of Montana as Co-owner of Claim 39F 2818-00 the objection will be resolved.

6. The State of Montana Board of Land Commissioners should be added as a Co-owner of Claim 39F 2818-00.

7. The issue remarks should be removed.

### **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.

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 Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Court. Rule 17(a), W.R.Adj.R. The Court may request that the parties file additional evidence to support an expansion to any element of a claim if the Court determines that the evidence filed as part of settlement is insufficient. Rule 17(b), W.R.Adj.R.

6. 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).

### **CONCLUSIONS OF LAW**

1. The Court may add the State of Montana as a Co-owner of Claim 39F 2818-00 because part of the place of use exists on land owned by the state of Montana prior to the claimed water right’s perfection.

2. The evidence in the record and the proposed change provides the Court with a sufficient basis to resolve and remove each issue remark from the 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. A post-decree abstract of Water Right Claim is 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:**

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**Note: Service List Updated 12-16-21**

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

**Water Right Number:**      **39F 2818-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      COCHRAN GRAZING ASSN  
                                     PO BOX 125  
                                     BOYES, MT 59316 0125  
  
                                     MONTANA STATE BOARD OF LAND COMMISSIONERS  
                                     TRUST LAND MANAGEMENT DIVISION  
                                     PO BOX 201601  
                                     HELENA, MT 59620 1601

**Priority Date:**              JULY 15, 1955

**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 WILLOW CREEK, NORTH FORK

**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		SWNWSW	15	8S	57E	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>
	SWNWSW	15	8S	57E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Depth:**                      10.00 FEET

**Surface Area:**            4.75 ACRES

**Capacity:**                19.00 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			W2NWSW	15	8S	57E	CARTER

2

NENESE 16 8S 57E CARTER