

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

* * * * *

CLAIMANTS: Scott Bradac; Cross W Livestock LLC

CASE 39F-0105-R-2021

39F 16187-00

39F 123288-00

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 16187-00 and 39F 123288-00 appeared in the Preliminary Decree for the Little Missouri River, above Roundup (Basin 39F). The claims 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 claims did not receive any objections or notices of intent to appear.

The Court consolidated these claims into Water Court Case 39F-0105-R-2021 on August 17, 2021. The Court requested through the consolidation order that Claimants file information resolving the issue remarks.

Claimants did not file anything by the filing deadline.

FINDINGS OF FACT

1. Claims 39F 16187-00 and 39F 123288-00 each appeared with an issue remark indicating the DNRC could not confirm the existence of the claimed reservoir with available data.
2. The Court requested information regarding the existence or location of the claimed reservoir.
3. Claimants did not file any responsive information.
4. The issue remarks should be removed from the above-captioned claims.

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 above-captioned claims may be decreed without modifications because the issue remarks do not overcome the prima facie status of each claim.

2. The evidence in the record 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. 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.

Colton J. Lauer
Water Master

Service via USPS Mail:

Scott Bradac
PO Box 10
Marmarth, ND 58643

Cross W Livestock LLC
PO Box 356
Ekalaka, MT 59324

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

Water Right Number: 39F 16187-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SCOTT BRADAC
PO BOX 10
MARMARTH, ND 58643 0010

CROSS W LIVESTOCK LLC
PO BOX 356
EKALAKA, MT 59324

OWNER SCOTT BRADAC RETAINED. CONTRACT FOR DEED INTEREST.

Priority Date: DECEMBER 31, 1970

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 HAY 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		NESESE	24	6S	59E	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>
	NESESE	24	6S	59E	CARTER

Diversion to Reservoir: DIVERSION # 1

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			NESESE	24	6S	59E	CARTER

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

Water Right Number: 39F 123288-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SCOTT BRADAC
PO BOX 10
MARMARTH, ND 58643 0010

CROSS W LIVESTOCK LLC
PO BOX 356
EKALAKA, MT 59324

OWNER SCOTT BRADAC RETAINED. CONTRACT FOR DEED INTEREST.

Priority Date: JULY 9, 1946

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 HAY 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		SWNWSW	20	6S	60E	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>
	SWNWSW	20	6S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

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			SWNWSW	20	6S	60E	CARTER