

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

\* \* \* \* \*

CLAIMANTS: Richard A. Dinstel; W Butte Ranch

**CASE 39F-0128-R-2021**  
39F 176530-00  
39F 176538-00

**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 176530-00 and 39F 176538-00 appeared in the Preliminary Decree for the Little Missouri River, above -Little Beaver Creek (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-0128-R-2021 on August 24, 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. Claim 39F 176530-00 appeared with an issue remark indicating the DNRC could not confirm the existence of the claimed reservoir with available data.

2. Claim 39F 176538-00 appeared with two issue remarks. One issue remark states the DNRC modified the period of diversion and reservoir record. That remark states it may be removed absent objections. The other issue remark states that place of use may be in the SENESW of Section 34, T8S, R55E.

3. The Court requested information regarding the existence or location of the claimed reservoir and whether the proposed place of use legal land description is accurate.

4. Claimants did not file any responsive information.

5. The proposed place of use for Claim 39F 176538-00 matches the point of diversion and reservoir record descriptions for this onstream reservoir.

6. The place of use for Claim 39F 176538-00 should be SENESW of Section 34, T8S, R55E.

7. 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. Claim 39F 176530-00 may be decreed without modifications because the issue remark does not overcome the prima facie status of the claim.

2. The change to the place of use of Claim 39F 176538-00 may be made because the evidence in the record overcomes the prima facie status for the claim by a preponderance of the evidence.

3. The evidence in the record provides 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:**

Richard A. Dinstel  
-  
Alzada, MT 59311

W Butte Ranch  
290 W Butte Lane  
Alzada, MT 59311

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

**Water Right Number:** 39F 176530-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** RICHARD A DINSTEL

-  
ALZADA, MT 59311

W BUTTE RANCH  
290 W BUTTE LANE  
ALZADA, MT 59311

**Priority Date:** JUNE 20, 1945

**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 NORTH 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	33	8S	55E	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>
	SESESW	33	8S	55E	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			SESESW	33	8S	55E	CARTER
2			NESESW	33	8S	55E	CARTER

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

**Water Right Number:** 39F 176538-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** RICHARD A DINSTEL

-  
ALZADA, MT 59311

W BUTTE RANCH  
290 W BUTTE LANE  
ALZADA, MT 59311

**Priority Date:** JULY 20, 1950

**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 COAL 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		SENESW	34	8S	55E	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>
	SENESW	34	8S	55E	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			SENESW	34	8S	55E	CARTER