

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

* * * * *

CLAIMANTS: Jerry D. Cathey; Norma A. Cathey

CASE 39F-0073-R-2021

39F 6252-00

39F 6260-00

39F 6265-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 6252-00, 39F 6260-00, and 39F 6265-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F).

Each claim received issue remarks as a result of the Department of Natural Resources and Conservation's (DNRC) preparation for the Decree. The claims did not receive any objections or notices of intent to appear.

The Court does not require additional information to resolve the issue remarks on these claims. However, for organizational purposes, these claims are consolidated into Water Court Case 39F-0073-R-2021.

FINDINGS OF FACT

1. Each above-captioned claim appeared with an issue remark stating that the type of right, priority date, and flow rate may be questionable because the combined flow rate of the three claims exceeds the filed appropriation used as the basis for each claim.

2. Claims 39F 6260-00 and 39F 6265-00 also each appeared with two issue remarks indicating the DNRC modified certain elements and added a period of diversion to each claim. These remarks state that they may be removed absent objections.

3. All three above-captioned claims are for livestock using an onstream reservoir. Stock claims on onstream reservoirs are not decreed with quantified flow rates.

4. Unquantified flow rates cannot have a cumulative flow rate and therefore cannot exceed the claimed appropriation.

5. None of the above-captioned claims received an objection.

6. The issue remarks should be removed. The information remark on each claim regarding reservoir estimates 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.

CONCLUSIONS OF LAW

1. The above-captioned claims do not require modification because the issue remarks do not overcome the prima facie status of each claim and because the unquantified nature of onstream reservoirs cannot reflect a cumulatively excess of the filed appropriation.

2. The information in the record and the unquantified nature of each above-captioned claims' flow rate provide the Court with a sufficient basis to resolve and remove each issue remark.

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:

Jerry D. Cathey
Norma A. Cathey
PO Box 334
Hammond, MT 59332

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

Water Right Number: **39F 6252-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JERRY D CATHEY
 PO BOX 334
 HAMMOND, MT 59332

 NORMA A CATHEY
 PO BOX 334
 HAMMOND, MT 59332

Priority Date: MAY 11, 1944

Type of Historical Right: FILED

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		SESWSE	5	8S	56E	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>
	SESWSE	5	8S	56E	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			S2SWSE	5	8S	56E	CARTER

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

Water Right Number: 39F 6260-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JERRY D CATHEY
PO BOX 334
HAMMOND, MT 59332

NORMA A CATHEY
PO BOX 334
HAMMOND, MT 59332

Priority Date: MAY 11, 1944

Type of Historical Right: FILED

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		SESESE	5	8S	56E	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>
	SESESE	5	8S	56E	CARTER

Diversion to Reservoir: DIVERSION # 1

Depth: 8.00 FEET

Surface Area: 1.70 ACRES

Capacity: 5.44 ACRE-FEET

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			SESESE	5	8S	56E	CARTER
2			N2NENE	8	8S	56E	CARTER

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

Water Right Number: **39F 6265-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JERRY D CATHEY
 PO BOX 334
 HAMMOND, MT 59332

 NORMA A CATHEY
 PO BOX 334
 HAMMOND, MT 59332

Priority Date: MAY 11, 1944

Type of Historical Right: FILED

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		SESWW	17	8S	56E	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>
	SESWW	17	8S	56E	CARTER

Diversion to Reservoir: DIVERSION # 1

Depth: 8.00 FEET

Surface Area: 2.50 ACRES

Capacity: 8.00 ACRE-FEET

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			E2SWW	17	8S	56E	CARTER