

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

\* \* \* \* \*

CLAIMANTS: Daniel A. Dinstel; Roxie A. Dinstel

CASE 39F-0074-R-2021  
39F 175173-00

**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 Claim 39F 175173-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). The claim received an issue remark as a result of the Department of Natural Resources and Conservation's

(DNRC) preparation for the Decree. The claim did not receive any objections or notices of intent to appear.

The information in the claim file resolves the issue remark. For organization purposes, this claim is consolidated into Water Court Case 39F-0074-R-2021

### **FINDINGS OF FACT**

1. Claim 39F 175173-00 appeared with one issue remark. This issue remark states: “No type of historical right was claimed. Documentation to support the type of historical right was not submitted with this claim.”

2. The Preliminary Decree Abstract for Claim 39F 175173-00 appeared without a claimed “Type of Historical Right.”

3. Claim 39F 175173-00 is a claim for a groundwater well used for stock water. The claimed priority date is September 15, 1972. Original claimant Jessie Harris filed the Statement of Claim for this claim on November 30, 1981. The boxes for “Use Water Right” and “Filed Appropriation Right” are both marked with an “X.”

4. Attached to the statement of claim is an affidavit containing the following statement: “This well was dug Sept. 15, 1972.” This document is signed by Otto Borchgrevink and is undated.

5. A Notice of Completion of Ground Water Development (DNRC Form 602) is also included with the Statement of Claim. The DNRC received this Form 602 on September 24, 1982. The form indicates that the well was dug in the Fall of 1972.

6. The “Type of Right” should be “Filed.”

7. The priority date should be changed to “November 30, 1981,” the filing date of the Statement of Claim.

8. The issue remark 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. Section 85-2-248(3), MCA.

4. “An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion. . . with the department to perfect the water right. The *filing of a claim pursuant to 85-2-221* is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice or the *date of the filing of the claim of existing water right.*” Section 85-2-306(4), MCA. (Emphasis Added).

5. “A person claiming an existing right, unless provided for under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department. . . a statement of claim for each water right asserted on a form provided by the department.” Section 85-2-221(1), 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 the issue remark from the above-captioned claim.

3. The priority date should be changed as described in the Findings of Fact because the “Type of Right” issue necessarily raises the issue of the priority date pursuant to §85-2-306(4), MCA.

## **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:**

Daniel A. Dinstel  
Roxie A. Dinstel  
112 Ridge Rd S  
Alzada, MT 59311

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

**Water Right Number:**      **39F 175173-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      DANIEL A DINSTEL  
   112 RIDGE RD S  
   ALZADA, MT 59311

   ROXIE A DINSTEL  
   112 RIDGE RD S  
   ALZADA, MT 59311

**Priority Date:**                      NOVEMBER 30, 1981

**Type of Historical Right:**      FILED

**Purpose (Use):**                      STOCK

**Flow Rate:**                      30.00 GPM

**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:**                      GROUNDWATER

**Source Type:**                      GROUNDWATER

**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		NENWNW	28	9S	55E	CARTER

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

**Diversion Means:**              WELL

**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			NENWNW	28	9S	55E	CARTER