

39F-0087-R-2021

September 17, 2021

Montana Water Court

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

CLAIMANT: Daun West Limited Partnership

CASE 39F-0087-R-2021

39F 162786-00

39F 175289-00

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 162786-00 and 39F 175289-00 appeared in the Preliminary Decree for the Little Missouri River, above Little beaver Creek (Basin 39F).

The claims 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 need additional information to resolve the issue remarks on this claim. No proceedings are ordered. However, this claim is consolidated into water Court Case 39F-0087-R-2021 for organizational purposes.

FINDINGS OF FACT

1. Claims 39F 162786-00 and 39F 175289-00 each appeared with three issue remarks. One issue remark states that the volume appears to be excessive exceeds the capacity of the reservoir. The remaining issue remarks indicate that the DNRC modified the period of diversion and reservoir record. Those issue remarks state that they may be removed absent objections.

2. These claims are for water spreading irrigation systems. Such irrigation systems do not generally use stored water in significant amounts. Rather, they typically function as direct flow systems and use large quantities of water. Accordingly, reservoir capacity is not generally a limit on volume for water spreading systems.

3. 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.

CONCLUSIONS OF LAW

1. The above-captioned claims should remain as decreed because the issue remarks and information behind 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 the issue remarks on 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. 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.

Colton J. Lauer
Water Master

Service via USPS Mail:

Daun West Limited Partnership
PO Box 48
Chilton, WI 53014

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

Water Right Number: 39F 162786-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAUN WEST LIMITED PARTNERSHIP
PO BOX 48
CHILTON, WI 53014 0048

Priority Date: MARCH 2, 1914

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 80.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 40.00

Source Name: UNNAMED TRIBUTARY OF LITTLE MISSOURI RIVER

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		NWSENE	30	9S	60E	CARTER

Period of Diversion: MARCH 15 TO SEPTEMBER 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>
	NWSENE	30	9S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.40 ACRES

Capacity: 0.80 ACRE-FEET

Period of Use: MARCH 15 TO SEPTEMBER 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	40.00		S2NE	30	9S	60E	CARTER

Total: 40.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

162786-00

162787-00

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

Water Right Number: **39F 175289-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAUN WEST LIMITED PARTNERSHIP
PO BOX 48
CHILTON, WI 53014 0048

Priority Date: JULY 31, 1957

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 184.00 AC-FT

THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE 2.0 ACRE-FEET PER
ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED
BY PROPER OBJECTION.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 92.00

Source Name: UNNAMED TRIBUTARY OF LITTLE MISSOURI RIVER

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		NENENE	19	9S	60E	CARTER

Period of Diversion: MARCH 15 TO SEPTEMBER 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>
	NENENE	19	9S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.30 ACRES

Capacity: 0.60 ACRE-FEET

Period of Use: MARCH 15 TO SEPTEMBER 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	78.00		N2	19	9S	60E	CARTER

2	14.00	S2SW	18	9S	60E	CARTER
Total:	92.00					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

162788-00 162791-00 175289-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

162780-00 175289-00