

39F-0108-R-2021

September 9, 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

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CLAIMANT: Thomas Ranch Inc.

CASE 39F-0108-R-2021

39F 176116-00

39F 176118-00

39F 176121-00

39F 176122-00

39F 176125-00

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 176116-00, 39F 176118-00, 39F 176121-00, 39F 176122-00, 39F 176125-00 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 these claims. No proceedings are ordered. However, these claims are consolidated into Water Court Case 39F-0108-R-2021 for organizational purposes.

FINDINGS OF FACT

1. Claims 39F 176116-00, 39F 176118-00, 39F 176121-00, 39F 176122-00, 39F 176125-00 each appeared with three issue remarks. One issue remark states that the volume appears to be excessive and 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 volume elements of 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:

Thomas Ranch Inc.
2451 Little Missouri Rd
Belle Fourche, SD 57717

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

Water Right Number: 39F 176116-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: JUNE 1, 1903

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: 1,120.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 746.00

Source Name: ELKHORN 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		NENWSE	7	7S	62E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

2		SESENE	7	7S	62E	CARTER
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

3		SWSESE	7	7S	62E	CARTER
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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>
	NENWSE	7	7S	62E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 8.00 FEET

Surface Area: 20.00 ACRES

Capacity: 64.00 ACRE-FEET

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SESENE		7	7S	62E	CARTER

Diversion to Reservoir: DIVERSION # 2

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.39 ACRES

Capacity: 0.39 ACRE-FEET

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SESENE		7	7S	62E	CARTER

Diversion to Reservoir: DIVERSION # 2

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.39 ACRES

Capacity: 0.39 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	12.00		SE	7	7S	62E	CARTER
2	70.00		N2SW	7	7S	62E	CARTER
3	150.00		NW	7	7S	62E	CARTER
4	65.00		W2NE	7	7S	62E	CARTER
5	72.00		S2SW	6	7S	62E	CARTER
6	18.00		N2SW	6	7S	62E	CARTER
7	26.00		S2SE	6	7S	62E	CARTER
8	35.00		N2SE	6	7S	62E	CARTER
9	34.00		SWNE	6	7S	62E	CARTER
10	15.00		SENE	6	7S	62E	CARTER
11	28.00		N2NE	6	7S	62E	CARTER
12	26.00		E2NW	6	7S	62E	CARTER
13	144.00		NE	12	7S	61E	CARTER
14	43.00		N2SE	12	7S	61E	CARTER
15	8.00		S2SE	1	7S	61E	CARTER
Total:	746.00						

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

Water Right Number: 39F 176118-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: DECEMBER 1, 1940

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:** 94.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 94.00

Source Name: UNNAMED TRIBUTARY OF NORTH BUTTE 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		NENESE	15	7S	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>
	NENESE	15	7S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.60 ACRES

Capacity: 1.20 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	48.00		SESE	15	7S	60E	CARTER
2	17.00		S2S2SW	14	7S	60E	CARTER

3	29.00	N2NW	23	7S	60E	CARTER
Total:	94.00					

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

Water Right Number: 39F 176121-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: SEPTEMBER 26, 1960

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: 120.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 61.00

Source Name: UNNAMED TRIBUTARY OF HAY DRAW

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		NESWNW	27	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>
	NESWNW	27	6S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 8.00 FEET

Surface Area: 1.90 ACRES

Capacity: 6.08 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	28.00		SENE	27	6S	60E	CARTER
2	26.00		W2NE	27	6S	60E	CARTER
3	4.00		E2NE	27	6S	60E	CARTER

4	3.00	E2SWNW	27	6S	60E	CARTER
Total:	61.00					

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

Water Right Number: **39F 176122-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: NOVEMBER 25, 1963

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:** 98.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 98.00

Source Name: NORTH BUTTE 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		NWSWSW	14	7S	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>
	NWSWSW	14	7S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 3.30 ACRES

Capacity: 13.20 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	54.00		S2SW	14	7S	60E	CARTER
2	44.00		N2NW	23	7S	60E	CARTER

Total: 98.00

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

Water Right Number: 39F 176125-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: DECEMBER 1, 1924

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: 160.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 79.00

Source Name: UNNAMED TRIBUTARY OF ELKHORN 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		SENESE	18	7S	62E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIKE

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENESE	18	7S	62E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 1.50 ACRES

Capacity: 4.80 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	23.00		SWSW	7	7S	62E	CARTER
2	39.00		SESW	7	7S	62E	CARTER
3	15.00		NENW	18	7S	62E	CARTER

4	2.00	NWNW	18	7S	62E	CARTER
Total:	79.00					