ELECTRONICALLY FILED

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

CLAIMANT: Thomas Ranch Inc.

CASE 39F-0108-R-2021 39F 176116-00 39F 176118-00 39F 176121-00 39F 176122-00 39F 176122-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. <u>Please</u> 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.*

Montana Water Court PO Box 1389 Bozeman, MT 59771-1389 (406) 586-4364 1-800-624-3270 watercourt@mt.gov

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

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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

	39F 17611	6-00	STATEMEN	T OF (CLAIM		
	Version: 3 POST DECREE						
		Status	: ACTIVE				
Owners:	THOMAS R 2451 LITTL BELLE FOU	E MISS	OURI RD				
Priority Date:	JUNE 1, 19	03					
Type of Historical Right:	FILED						
Purpose (Use):	IRRIGATIO	N					
Irrigation Type:	WATER SP	READI	NG				
Flow Rate:			RATE HAS I				D BECAUSE THIS USE
Volume:	1,120.00 AC	C-FT					
Climatic Area:	2 - MODER	ATELY	HIGH				
*Maximum Acres:	746.00						
Source Name:	ELKHORN	CREEK					
Source Type:	SURFAC	E WAT	ER				
Point of Diversion and Means	s of Diversion	:					
<u>ID</u> 1	<u>Govt Lot</u>		<u>Qtr Sec</u> NENWSE	<u>Sec</u> 7	<u>Twp</u> 7S	<u>Rge</u> 62E	<u>County</u> CARTER
Period of Diversion:	JANUARY 1	TO DE	CEMBER 31				
Diversion Means:	DAM						
				_		~ ~ -	
2			SESENE	7	7S	62E	CARTER
2 Period of Diversion:	JANUARY 1	TO DE	SESENE CEMBER 31	7	7S	62E	CARTER
2 Period of Diversion: Diversion Means:		TO DE	CEMBER 31		_		
2 Period of Diversion: Diversion Means: 3	JANUARY ² DAM		CEMBER 31 SWSESE	7	7S 7S	62E 62E	CARTER
2 Period of Diversion: Diversion Means: 3	JANUARY ² DAM		CEMBER 31	7	_		
2 Period of Diversion: Diversion Means: 3 Period of Diversion:	JANUARY 1 DAM JANUARY 1	TO DE	CEMBER 31 SWSESE	7	_		
2 Period of Diversion: Diversion Means: 3 Period of Diversion: Diversion Means:	JANUARY ² DAM JANUARY 1 DAM	I TO DE	CEMBER 31 SWSESE	7	_		
2 Period of Diversion: Diversion Means: 3 Period of Diversion: Diversion Means:	JANUARY A DAM JANUARY A DAM ONSTREAM <u>Govt Lo</u>	TO DE	ECEMBER 31 SWSESE ECEMBER 31 <u>Otr Sec</u> NENWSE	7 <u>Sec</u>	7S <u>Twp</u>	62E <u>Rge</u>	CARTER <u>County</u>
2 Period of Diversion: Diversion Means: 3 Period of Diversion: Diversion Means: Reservoir:	JANUARY A DAM JANUARY A DAM ONSTREAM <u>Govt Lo</u>	ТО DE И 1 ION # 1	ECEMBER 31 SWSESE ECEMBER 31 <u>Otr Sec</u> NENWSE	7 <u>Sec</u>	7S <u>Twp</u>	62E <u>Rge</u>	CARTER <u>County</u>
2 Period of Diversion: Diversion Means: 3 Period of Diversion: Diversion Means: Reservoir: Diversion to Reserve	JANUARY DAM JANUARY DAM ONSTREAM <u>Govt Lo</u> Dir: DIVERS	ТО DE И 1 ION # 1	ECEMBER 31 SWSESE ECEMBER 31 <u>Otr Sec</u> NENWSE	7 <u>Sec</u>	7S <u>Twp</u>	62E <u>Rge</u>	CARTER <u>County</u>
2 Period of Diversion: Diversion Means: 3 Period of Diversion: Diversion Means: Reservoir: Diversion to Reserve Dam Height:	JANUARY DAM JANUARY DAM ONSTREAM <u>Govt Lo</u> oir: DIVERS 10.00 FEET	1 TO DE 1 1 10N # 1	ECEMBER 31 SWSESE ECEMBER 31 <u>Otr Sec</u> NENWSE	7 <u>Sec</u>	7S <u>Twp</u>	62E <u>Rge</u>	CARTER <u>County</u>

Reservoir:	ONSTREAM					
	<u>Govt Lot</u>	<u>Qtr Sec</u> SESENE	<u>Sec</u> 7	<u>Twp</u> 7S	<u>Rge</u> 62E	<u>County</u> CARTER
Diversion to Reser	voir: DIVERSION # 2	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> SESENE	<u>Sec</u> 7	<u>Twp</u> 7S	<u>Rge</u> 62E	<u>County</u> CARTER
Diversion to Reser	voir: DIVERSION # 2	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>	Acres	Govt Lot	<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						

Water I	Right Number:	39F 176118	00	STATEMEN	T OF (CLAIM			
		Version:	Version: 3 POST DECREE						
			Status: ACTIVE						
Owners	5:	THOMAS RA 2451 LITTLE BELLE FOUI	MISSO	URI RD					
Priority	y Date:	DECEMBER	1, 1940)					
Type of	f Historical Right:	USE							
Purpos	e (Use):	IRRIGATION							
Ir	rigation Type:	WATER SPF	EADIN	G					
Flow R	ate:	A SPECIFIC CONSISTS (ED BECAUSE THIS USE G.	
*Volume	2:	94.00 AC-FT							
C	limatic Area:	2 - MODERA	TELY H	lIGH					
*Maxim	um Acres:	94.00							
Source	Name:	UNNAMED 1	RIBUT	ARY OF NO	RTHE	BUTTE	CREEK	Κ	
Se	ource Type:	SURFACI	E WATE	R					
Point of	f Diversion and Me	ans of Diversion:							
<u>ID</u> 1		<u>Govt Lot</u>		<u>Qtr Sec</u> NENESE	<u>Sec</u> 15	<u>Twp</u> 7S	<u>Rge</u> 60E	<u>County</u> CARTER	
Р	eriod of Diversion:	JANUARY 1	TO DEC	CEMBER 31					
D	iversion Means:	DAM							
	Reservoir:	ONSTREAM							
		<u>Govt Lot</u>	I	<u>Qtr Sec</u> NENESE	<u>Sec</u> 15	<u>Twp</u> 7S	<u>Rge</u> 60E	<u>County</u> CARTER	
	Diversion to Rese	rvoir: DIVERSI	ON # 1						
	Dam Height:	8.00 FEET							
	Depth:	5.00 FEET							
	Surface Area:	0.60 ACRES							
	Capacity:	1.20 ACRE-F	EET						
Period		JANUARY 1	TO DEC	CEMBER 31					
*Place of		C (T)		01 5	G	т	р		
		res <u>Govt Lot</u>		<u>Otr Sec</u>	<u>Sec</u>	Twp	Kge	<u>County</u>	
<u>ID</u> 1	<u>Ac</u> 48	.00		SESE	15	7S	-	CARTER	

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

Water Right Number:	39F 176121	-00 STATEMEN	T OF (CLAIM		
	Version:	3 POST DECREE	Ξ			
		Status: ACTIVE				
Owners:		ANCH INC E MISSOURI RD RCHE, SD 57717				
Priority Date:	SEPTEMBEI	R 26, 1960				
Type of Historical Right:	USE					
Purpose (Use):	IRRIGATION	N				
Irrigation Type:	WATER SPF	READING				
Flow Rate:		FLOW RATE HAS I				ED BECAUSE THIS USE G.
Volume:	120.00 AC-F	т				
Climatic Area:	2 - MODERA	ATELY HIGH				
*Maximum Acres:	61.00					
Source Name:	UNNAMED TRIBUTARY OF HAY DRAW					
Source Type:	SURFAC	E WATER				
Point of Diversion and Means	s of Diversion:					
<u>ID</u> 1	<u>Govt Lot</u>	<u>Qtr Sec</u> NESWNW	<u>Sec</u> 27	<u>Twp</u> 6S	<u>Rge</u> 60E	<u>County</u> CARTER
Period of Diversion:	JANUARY 1	TO DECEMBER 31				
Diversion Means:	DAM					
Reservoir:	ONSTREAM	1				
	<u>Govt Lot</u>	<u>Qtr Sec</u> NESWNW	<u>Sec</u> 27	<u>Twp</u> 6S	<u>Rge</u> 60E	<u>County</u> CARTER
Diversion to Reserve	oir: DIVERSI	ON # 1				
Dam Height:	10.00 FEET					
Depth:	8.00 FEET					
Depth: Surface Area:	8.00 FEET 1.90 ACRES					
-						
Surface Area:	1.90 ACRES 6.08 ACRE-F					
Surface Area: Capacity:	1.90 ACRES 6.08 ACRE-F	EET				
Surface Area: Capacity: Period of Use: *Place of Use: <u>ID Acres</u>	1.90 ACRES 6.08 ACRE-F JANUARY 1 <u>6 Govt Lot</u>	TO DECEMBER 31	<u>Sec</u> 27	<u>Twp</u>	-	<u>County</u>
Surface Area: Capacity: Period of Use: *Place of Use:	1.90 ACRES 6.08 ACRE-F JANUARY 1 <u>6</u> <u>Govt Lot</u>	EET TO DECEMBER 31	<u>Sec</u> 27 27	<u>Twp</u> 6S 6S	60E	<u>County</u> CARTER CARTER

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

Water Right Number:	39F 17612	2-00 STATE	IENT OF	CLAIM		
	Version:	3 POST DEC	REE			
		Status: ACTIV	E			
Owners:		RANCH INC E MISSOURI RE JRCHE, SD 5771				
Priority Date:	NOVEMBE	R 25, 1963				
Type of Historical Right:	USE					
Purpose (Use):	IRRIGATIO	N				
Irrigation Type:	WATER SP	PREADING				
Flow Rate:		C FLOW RATE H				ED BECAUSE THIS USE G.
*Volume:	98.00 AC-F	Т				
Climatic Area:	2 - MODER	ATELY HIGH				
*Maximum Acres:	98.00					
Source Name:	NORTH BU	JTTE CREEK				
Source Type:	SURFAC	CE WATER				
Point of Diversion and Me	ans of Diversion	:				
<u>ID</u> 1	<u>Govt Lo</u>	t <u>Qtr S</u> NWSWS		<u>Twp</u> 7S	<u>Rge</u> 60E	<u>County</u> CARTER
Period of Diversion:	JANUARY ²	1 TO DECEMBE	R 31			
Diversion Means:	DAM					
Reservoir:	ONSTREAM	Μ				
	<u>Govt Lo</u>	<u>ot</u> <u>Qtr S</u> NWSWS\		<u>Twp</u> 7S	<u>Rge</u> 60E	<u>County</u> CARTER
Diversion to Rese	rvoir: DIVERS	SION # 1				
Dam Height:	13.00 FEET	-				
Depth:	10.00 FEET	-				
Surface Area:	3.30 ACRES	S				
Capacity:	13.20 ACRE	E-FEET				
Period of Use:	JANUARY [·]	1 TO DECEMBE	R 31			
*Place of Use:	~		~	-	-	~ .
<u>ID</u> <u>Ac</u> 1 54.	<u>res Govt Lo</u> .00	o <u>t</u> <u>Qtr So</u> S2S\		<u>Twp</u> 7S		<u>County</u> CARTER
2 44.		N2N\		7S		CARTER
Total: 98.	.00					

Water Right Number:	39F 17	6125-00	STATEMEN	IT OF (CLAIM		
	Version	Version: 3 POST DECREE					
		Statu	s: ACTIVE				
Owners:	2451 LI	THOMAS RANCH INC 2451 LITTLE MISSOURI RD BELLE FOURCHE, SD 57717					
Priority Date:	DECEM	BER 1, 19	24				
Type of Historical Rig	ht: USE						
Purpose (Use):	IRRIGA	TION					
Irrigation Type:	WATER	SPREAD	ING				
Flow Rate:			V RATE HAS RECT FLOW				ED BECAUSE THIS USE G.
Volume:	160.00	AC-FT					
Climatic Area:	2 - MOE	ERATELY	' HIGH				
*Maximum Acres:	79.00	79.00					
Source Name:	UNNAM	UNNAMED TRIBUTARY OF ELKHORN CREEK					
Source Type:	SUR	FACE WA	TER				
Point of Diversion and	Means of Divers	sion:					
<u>ID</u> 1	<u>Govt</u>	<u>: Lot</u>	<u>Qtr Sec</u> SENESE	<u>Sec</u> 18	<u>Twp</u> 7S	<u>Rge</u> 62E	<u>County</u> CARTER
Period of Diversi	ion: JANUA	RY 1 TO D	ECEMBER 31				
Diversion Means	: DIKE						
Reservoir:	ONSTR	EAM					
	Gov	<u>t Lot</u>	<u>Qtr Sec</u> SENESE	<u>Sec</u> 18	<u>Twp</u> 7S	<u>Rge</u> 62E	<u>County</u> CARTER
Diversion to I	Reservoir: DIVE	ERSION #	1				
Dam Height:	11.00 FE	ET					
Depth:	8.00 FEI	ΞT					
Surface Area	: 1.50 AC	RES					
Capacity:	4.80 AC	RE-FEET					
Period of Use:	JANUA	RY 1 TO D	ECEMBER 31				
*Place of Use:							
<u>ID</u> 1	<u>Acres</u> <u>Gov</u> 23.00	<u>t Lot</u>	<u>Qtr Sec</u> SWSW	<u>Sec</u> 7	<u>Twp</u> 7S		<u>County</u> CARTER
2	39.00		SESW	7	7S		CARTER
3	15.00		NENW	18	7S	62E	CARTER

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