

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

\*\*\*\*\*

CLAIMANTS: Bret Lesh; Kimberly Lesh

**CASE 39F-0126-R-2021**

39F 175941-00

39F 175942-00

**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 175941-00 and 39F 175942-00 appeared in the Preliminary Decree for the Little Missouri River, above Little beaver Creek (Basin 39F).

These 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-0126-R-2021 for organizational purposes.

### **FINDINGS OF FACT**

1. Claims 39F 175941-00 and 39F 175942-00 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 certain elements of each claim. 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. They typically function as direct flow systems and use large quantities of water. Accordingly, reservoir capacity is not necessarily 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 element of each above-captioned claim 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 each issue remark 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.

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Colton J. Lauer  
Water Master

### **Service via USPS Mail:**

Bret Lesh  
Kimberly Lesh  
PO Box 356  
Ekalaka, MT 59324

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

**Water Right Number:**      **39F 175941-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      BRET LESH  
                                     PO BOX 356  
                                     EKALAKA, MT 59324

                                     KIMBERLY LESH  
                                     PO BOX 356  
                                     EKALAKA, MT 59324

**Priority Date:**              APRIL 17, 1908

**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:**                    100.00 AC-FT

**Climatic Area:**            2 - MODERATELY HIGH

**\*Maximum Acres:**           109.00

**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         |                 | NESWNE         | 28         | 7S         | 62E        | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
|                 | NESWNE         | 28         | 7S         | 62E        | CARTER        |

**Diversion to Reservoir:**      DIVERSION # 1

**Dam Height:**              13.00 FEET

**Depth:**                    10.00 FEET

**Surface Area:**            5.05 ACRES

**Capacity:**                20.20 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             | 40.00        | NWSW | 21 | 7S | 62E | CARTER |
| 2             | 19.00        | SWSW | 21 | 7S | 62E | CARTER |
| 3             | 37.00        | SESW | 21 | 7S | 62E | CARTER |
| 4             | 13.00        | SWSE | 21 | 7S | 62E | CARTER |
| <b>Total:</b> | <hr/> 109.00 |      |    |    |     |        |

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

**Water Right Number:**      **39F 175942-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      BRET LESH  
                                     PO BOX 356  
                                     EKALAKA, MT 59324

                                     KIMBERLY LESH  
                                     PO BOX 356  
                                     EKALAKA, MT 59324

**\*Priority Date:**              OCTOBER 10, 1932

**Type of Historical Right:**      USE

**Purpose (Use):**                  IRRIGATION

**Irrigation Type:**              SPRINKLER

**Flow Rate:**                      A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS  
   ONSTREAM RESERVOIR.

**Volume:**                        60.00 AC-FT

**Climatic Area:**                2 - MODERATELY HIGH

**Maximum Acres:**              160.00

**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         |                 | SESWSE         | 27         | 7S         | 62E        | CARTER        |

**Period of Diversion:**      APRIL 1 TO NOVEMBER 30

**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         | 27         | 7S         | 62E        | CARTER        |

**Diversion to Reservoir:**      DIVERSION # 1

**Dam Height:**                8.00 FEET

**Depth:**                      5.00 FEET

**Surface Area:**              0.50 ACRES

**Capacity:**                  1.00 ACRE-FEET

**Period of Use:**                APRIL 1 TO NOVEMBER 30

**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             | 60.00        | N2NE | 34 | 7S | 62E | CARTER |
| 2             | 30.00        | SWNE | 34 | 7S | 62E | CARTER |
| 3             | 40.00        | NENW | 34 | 7S | 62E | CARTER |
| 4             | 30.00        | SESW | 27 | 7S | 62E | CARTER |
| <b>Total:</b> | <hr/> 160.00 |      |    |    |     |        |