

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

CLAIMANTS: Reann Kautzman; Ted Kautzman

OBJECTOR: United States of America (Bureau of Land
Management)

CASE 39F-0033-R-2020

39F 134037-00

39F 145554-00

39F 145576-00

39F 145577-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the 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 134037-00, 39F 145554-00, 39F 145576-00, and 39F 145577-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). These claims received issue remarks. Issue remarks result

from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Each claim also received an objection filed by the United States of America (Bureau of Land Management).

The Court consolidated these claims into Water Court case 39F-0033-R-2020 on November 12, 2020. The consolidation order scheduled an initial status conference during which the parties could discuss how they would like to proceed. The Court set a settlement period as a result of the status conference.

Objector filed an executed stipulation with the Court on January 18, 2022. Objector filed a withdrawal of counsel on March 4, 2022. Attorney James Dubois will be removed from the service list accordingly.

FINDINGS OF FACT

1. Water Right Claim 39F 134037-00 appeared with the following issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

2. Water Right Claim 39F 145554-00 appeared with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NESESW SEC 19 TWP 4S RGE 61E CARTER COUNTY.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE RESERVOIR APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT RESERVOIR LEGAL LAND DESCRIPTION APPEARS TO BE THE NESESW SEC 19 TWP 4S RGE 61E CARTER COUNTY.

3. Water Right Claim 39F 145576-00 appeared with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

4. Water Right Claim 39F 145577-00 appeared with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 4.4 TIMES THE CAPACITY OF THE RESERVOIR.

5. The United States of America (Bureau of Land Management) objected to the place of use and maximum acres of each above-captioned claim.

6. The parties agree that the rights claimed by each above-captioned claim are not used on federal land and that each above-captioned claim should be modified to remove federal land from each claimed legal land description. Proposed abstracts and marked-up aerial images are attached to the stipulation to support proposed and agreed-upon modifications.

7. The place of use of Claim 39F 134037-00 should be described as follows:

| ID | Acres | Qtr Sec | Sec | Twps | Rge |
|----|--------|---------|-----|------|-----|
| 1 | 20.00 | SESE | 19 | 4S | 61E |
| 2 | 50.00 | S2S2 | 20 | 4S | 61E |
| 3 | 1.50 | NENWNW | 29 | 4S | 61E |
| 4 | 100.00 | SE | 29 | 4S | 61E |
| 5 | 220.00 | W2 | 28 | 4S | 61E |
| 6 | 60.00 | SE | 28 | 4S | 61E |
| 7 | 29.30 | E2NW | 29 | 4S | 61E |
| 8 | 119.20 | NE | 29 | 4S | 61E |

Total: 600

8. The point of diversion, reservoir location, and place of use of Claim 39F 145554-00 should be described as follows:

| ID | Govt Lot | Qtr Sec | Sec | Twps | Rge |
|----|----------|---------|-----|------|-----|
| 1 | | N2SESW | 19 | 4S | 61E |

9. The place of use of Claim 39F 145576-00 should be described as follows:

| ID | Acres | Qtr Sec | Sec | Twps | Rge |
|----|--------|---------|-----|------|-----|
| 1 | 68.00 | N2SE | 19 | 4S | 61E |
| 2 | 19.00 | SESE | 19 | 4S | 61E |
| 3 | 111.00 | SW | 20 | 4S | 61E |
| 4 | 1.50 | NENWNW | 29 | 4S | 61E |
| 5 | 20.00 | W2NE | 29 | 4S | 61E |
| 6 | 31.50 | E2NW | 29 | 4S | 61E |

Total: 251.00

10. The place of use of Claim 39F 145577-00 should be described as follows:

| ID | Acres | Qtr Sec | Sec | Twp | Rge |
|----|-------|---------|-----|-----|-----|
| 1 | 76.00 | S2S2 | 20 | 4S | 61E |
| 2 | 50.00 | N2N2 | 29 | 4S | 61E |
| 3 | 4.00 | S2N2SW | 29 | 4S | 61E |

Total: 130.00

11. Objector states in the stipulation that if the places of use of each above-captioned claim are modified as agreed upon in the stipulation and as described above, the objections will be resolved.

12. Claim 39F 145577-00 is for a water spreading irrigation system. 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 generally a limit on volume for water spreading systems.

13. The issue remarks should be removed from each above-captioned claim.

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.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, 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 each issue remark from each above-captioned claim.

3. The information in the record and stipulation provides the Court with a sufficient basis to resolve and remove each issue remark from 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. Post-decree Abstracts of Water Right Claims are 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:

Reann Kautzman
Ted Kautzman
1081 Sheep Mountain Rd
Capitol, MT 59319

Service Via Electronic Mail:

James J. DuBois, Attorney (Last Order)

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william.bridges@usdoj.gov
efile_nrs.enrd@usdoj.gov

Note: Service List Updated 6-24-22

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: 39F 134037-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TED KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319
REANN KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

Priority Date: DECEMBER 17, 1949
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: 900.00 AC-FT
Climatic Area: 2 - MODERATELY HIGH
Maximum Acres: 600.00
***Source Name** HACKBERRY 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 | | NENESW | 19 | 4S | 61E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NENESW | 19 | 4S | 61E | CARTER |

Diversion to Reservoir: DIVERSION # 1

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 | 20.00 | | SESE | 19 | 4S | 61E | CARTER |
| 2 | 50.00 | | S2S2 | 20 | 4S | 61E | CARTER |
| 3 | 60.00 | | SE | 28 | 4S | 61E | CARTER |
| 4 | 220.00 | | W2 | 28 | 4S | 61E | CARTER |
| 5 | 119.20 | | NE | 29 | 4S | 61E | CARTER |
| 6 | 29.30 | | E2NW | 29 | 4S | 61E | CARTER |

| | | | | | | |
|---------------|---------------|--------|----|----|-----|--------|
| 7 | 1.50 | NENWNW | 29 | 4S | 61E | CARTER |
| 8 | <u>100.00</u> | SE | 29 | 4S | 61E | CARTER |
| Total: | 600.00 | | | | | |

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.

134035-00 134037-00 145576-00 145577-00

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: 39F 145554-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: TED KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

REANN KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

***Priority Date:** MAY 6, 1941

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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 UNNAMED TRIBUTARY OF HACKBERRY 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 | | N2SESW | 19 | 4S | 61E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | N2SESW | 19 | 4S | 61E | CARTER |

Diversion to Reservoir: DIVERSION # 1

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 | | | N2SESW | 19 | 4S | 61E | CARTER |

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: 39F 145576-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TED KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

REANN KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

Priority Date: JUNE 17, 1902

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: 435.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 251.00

Source Name UNNAMED TRIBUTARY OF HACKBERRY 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 | | NWSWNE | 24 | 4S | 60E | CARTER |

Period of Diversion: MARCH 20 TO AUGUST 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NWSWNE | 24 | 4S | 60E | CARTER |

Diversion to Reservoir: DIVERSION # 1

Period of Use: MARCH 20 TO AUGUST 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 | 68.00 | | N2SE | 19 | 4S | 61E | CARTER |
| 2 | 19.00 | | SESE | 19 | 4S | 61E | CARTER |
| 3 | 111.00 | | SW | 20 | 4S | 61E | CARTER |
| 4 | 20.00 | | W2NE | 29 | 4S | 61E | CARTER |
| 5 | 1.50 | | NENWNW | 29 | 4S | 61E | CARTER |

| | | | | | | |
|---------------|--------|------|----|----|-----|--------|
| 6 | 31.50 | E2NW | 29 | 4S | 61E | CARTER |
| Total: | 251.00 | | | | | |

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.

| | | | |
|-----------|-----------|-----------|-----------|
| 134035-00 | 134037-00 | 145576-00 | 145577-00 |
|-----------|-----------|-----------|-----------|

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: 39F 145577-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TED KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

REANN KAUTZMAN
1081 SHEEP MOUNTAIN RD
CAPITOL, MT 59319

Priority Date: JULY 30, 1904
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: 195.00 AC-FT
Climatic Area: 2 - MODERATELY HIGH
Maximum Acres: 130.00

***Source Name** UNNAMED TRIBUTARY OF HACKBERRY 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 | | SESWNE | 20 | 4S | 61E | CARTER |

Period of Diversion: MARCH 20 TO AUGUST 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SESWNE | 20 | 4S | 61E | CARTER |

Diversion to Reservoir: DIVERSION # 1
Dam Height: 13.00 FEET
Depth: 10.00 FEET
Surface Area: 11.00 ACRES
Capacity: 44.00 ACRE-FEET

Period of Use: MARCH 20 TO AUGUST 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 | 76.00 | | S2S2 | 20 | 4S | 61E | CARTER |

| | | | | | | |
|---------------|---------------|--------|----|----|-----|--------|
| 2 | 50.00 | N2N2 | 29 | 4S | 61E | CARTER |
| 3 | 4.00 | S2N2SW | 29 | 4S | 61E | CARTER |
| Total: | <u>130.00</u> | | | | | |

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.

134035-00

134037-00

145576-00

145577-00