

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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CLAIMANTS: Eileen E. Garman; John R. Garman

CASE 39F-0101-R-2021
39F 175587-00

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

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 Claim 39F 175587-00 appeared in the Preliminary Decree for the Little Missouri River, above Roundup (Basin 39F). The claim received an objection filed by The United States of America (Bureau of Land Management).

The Court consolidated this claim into Water Court Case 39F-0101-R-2021 on August 17, 2021. The Court held an initial status conference on September 16, 2021. As a result of this conference, the Court set a settlement deadline. Objector filed the parties' executed stipulation on March 30, 2022.

FINDINGS OF FACT

1. The United States of America (Bureau of Land Management) objected to the place of use and maximum acres of Claim 39F 175587-00.
2. The parties stipulate that part of the claimed place of use improperly includes federal land.
3. The parties agree that removal of Place of Use Nos. 2 and 5 and a reduction to the maximum acres to 33.00 would resolve the objection.
4. Place of Use Nos. 2 and 5 should be removed, and the total and maximum acres of Claim 39F 175587-00 should be reduced to 33.00.

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 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.
3. The Water Court is not bound by any settlement or stipulation filed to resolve objections. Rule 17(a), W.R.Adj.R. If a settlement seeks to expand or enlarge an element of a claim, the parties must present evidence sufficient to meet the appropriate burden of proof. Rule 17(b), W.R.Adj.R. If a Claimant agrees to reduce an element of their claim, the Court does not need to make a determination as to whether the burden of proof has been met. Rule 17(c), W.R.Adj.R.

CONCLUSION OF LAW

1. The Court may make the modifications to Claim 39F 175587-00 as described in the Findings of Fact because the parties agree to the modifications and the result is a reduction in the claimed acreage.

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

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

Water Right Number: 39F 175587-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN R GARMAN
HC 50 BOX 12
ALZADA, MT 59311

EILEEN E GARMAN
HC 50 BOX 12
ALZADA, MT 59311

Priority Date: SEPTEMBER 1, 1937

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: 117.60 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 33.00

Source Name UNNAMED TRIBUTARY OF COTTONWOOD 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		W2SWSE	8	8S	60E	CARTER

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: DIKE

Period of Use: MARCH 1 TO DECEMBER 1

***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	3.00		NWSWSE	8	8S	60E	CARTER
2	6.00		SWSWSE	8	8S	60E	CARTER
3	1.00		SWNESW	8	8S	60E	CARTER
4	23.00		SESW	8	8S	60E	CARTER

Total: 33.00