

Montana Water Court
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ELECTRONICALLY FILED

39F-0442-R-2022

July 29, 2022

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

* * * * *

CLAIMANTS: Jesse Glines; Tommi J. Glines

CASE 39F-0442-R-2022
39F 180688-00

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, conclusions 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 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

FINDINGS OF FACT

1. Jesse Glines and Tommi J. Glines stock claim 39F 180688-00 was decreed with DNRC 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 1050 TIMES THE CAPACITY OF THE RESERVOIR.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNWNW SEC 21 TWP 5S RGE 62E CARTER COUNTY.

2. All DNRC issue remarks must be resolved. The first two issue remarks are considered notice-type issue remarks. No objections were filed to claim 39F 180688-00 and no further proceedings are required for the remarks. The third issue remark is a volume remark; the nature of water-spreading and the prima facie status of the claim overcome the issue remark. However, the fourth issue remark requires additional attention.

3. Claim 39F 180688-00 was decreed with the following point 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		S2NWNW	21	5S	62E	CARTER

The point of diversion issue remark indicates that pursuant to information available to the DNRC, the point of diversion for claim 39F 180688-00 should be modified, as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SWNWNW	S2NWNW	21	5S	62E	CARTER

4. To determine if Claimants Jesse Glines and Tommie J. Glines agree or disagree with the proposed point of diversion modification to claim 39F 180688-00, an Order was issued setting a deadline for the Claimants to agree or disagree that the change be made. The Order indicated that if nothing were filed by the deadline, this Master would conclude the Claimants agree the change should be made to claim 39F 180688-00. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

3. The period of diversion and reservoir issue remarks decreed on claim 39F 180688-00 are notice-type issue remarks. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39F 180688-00 should be modified as shown in Finding of Fact No. 3.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Jesse Glines
Tommi J. Glines
P.O. Box 221
Buffalo, SD 57720

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

Water Right Number: 39F 180688-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JESSE GLINES
PO BOX 221
BUFFALO, SD 57720

TOMMI J GLINES
PO BOX 221
BUFFALO, SD 57720

Priority Date: NOVEMBER 23, 1901
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: 700.00 AC-FT

THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE 2.0 ACRE-FEET PER ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

Climatic Area: 2 - MODERATELY HIGH
Maximum Acres: 350.00
***Source Name** 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		SWNWNW	21	5S	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>
		S2NWNW	21	5S	62E	CARTER
Diversion to Reservoir:	DIVERSION # 1					
Dam Height:	12.00 FEET					
Depth:	10.00 FEET					
Surface Area:	0.25 ACRES					
Capacity:	1.00 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	93.00		SE	16	5S	62E	CARTER
2	101.00		SE	9	5S	62E	CARTER
3	50.00		NE	16	5S	62E	CARTER
4	30.00		NW	15	5S	62E	CARTER
5	18.00		E2SW	16	5S	62E	CARTER
6	9.00		E2NW	16	5S	62E	CARTER
7	43.00		S2NE	9	5S	62E	CARTER
8	1.00		SESENW	9	5S	62E	CARTER
9	5.00		E2NESW	9	5S	62E	CARTER
Total:		350.00					

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.

180688-00

180690-00

188135-00

188136-00