

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

* * * * *

CLAIMANTS: Gay Arpan; Robert D. Arpan

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

CASE 39F-0084-R-2021
39F 22123-00

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 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 22123-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). The claim received an objection filed by the United States of America (Bureau of Land Management).

The Court consolidated this case into Water Court Case 39F-0084-R-2021 on August 4, 2021. The consolidation order set an initial status conference. No party appeared at that conference, so the Court set a filing deadline for Objector to state whether it would pursue its objection. On October 6, 2021, Objector filed a response indicating it would participate in the case. The Court subsequently set a settlement deadline by an order issued on October 13, 2021.

On January 10, 2022, Objector filed a Motion to Set Filing Deadline. In that motion, Objector indicated it had not heard or received anything from Claimants. Objector requested a filing deadline by which Claimants were to review and comment on certain proposed amendments to the above-captioned claim. Objector requested that the Court make the requested changes to the claim abstract if Claimants did not respond by the filing deadline.

On January 11, 2022, the Court set a filing deadline according to Objector's motion. The order setting that deadline included a summary of Objector's requested modifications to the claim. The order included language indicating that if Claimants did not respond, the Court would modify the claim as requested by Objector.

Claimants did not file a response by the filing deadline.

FINDINGS OF FACT

1. Claim 39F 22123-00 appeared with the following issue remarks:

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE.
PART OF THE PLACE OF USE APPEARS TO BE ON LAND OWNED
BY THE BUREAU OF LAND MANAGMENT.

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 AND POINT OF DIVERSION WERE
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.

2. Objector states that Place of Use No. 6 incorrectly includes Federal land administered by the Bureau of Land Management. Objector requests this parcel be removed from the claim and the corresponding acres be removed from the maximum and total acres of the claim.

3. The Court issued an order on January 11, 2022 which set a 60-day filing deadline. In this order, the Court stated the following:

On January 11, 2022, Objector filed a request for a filing deadline. Objector states Claimants have not responded regarding Objector's proposed changes to the above-captioned claim. Objector's proposed changes are as follows:

Remove Place of Use No. 6

Reduce Maximum Acres to 66.00 Acres

Objector requests the Court set a deadline by which Claimant shall file a response regarding these proposed changes. If Claimant does not respond by the filing deadline, the Court may modify the above-captioned claim according to Objector's proposal.

4. Objector included a map and marked-up abstract with its January 10, 2022 motion. The map depicts land ownership and the claimed place of use. Place of Use ID. No. 6 is labelled and appears to be located on Federal land. The marked-up abstract depicts the following (only relevant portions shown here):

***Maximum Acres:**

~~74.00~~ **66.00**

Source Name:

UNNAMED TRIBUTARY OF NORTH COTTONWOOD CREEK

Source Type:

SURFACE WATER

***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 | 8.00 | | NENESE | 21 | 7S | 59E | CARTER |
| 2 | 2.00 | | SENESE | 21 | 7S | 59E | CARTER |
| 3 | 8.00 | | SWSW | 22 | 7S | 59E | CARTER |
| 4 | 34.00 | | NWSW | 22 | 7S | 59E | CARTER |
| 5 | 14.00 | | NESW | 22 | 7S | 59E | CARTER |
| 6 | 8.00 | | NWSESW | 22 | 7S | 59E | CARTER |
| Total: | 74.00 66.00 | | | | | | |

5. The Court's January 11, 2022 order included language referencing Rule 22 of the Water Right Adjudication Rules and the possibility of sanctions if parties fail to participate.

6. Claimants did not file a response to the Court's January 11, 2022 order.

7. Place of use ID. No. 6 of the above-captioned claim should be removed.
The maximum acres should be reduced to 66.00 acres.

8. The issue remarks should be removed from the 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 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 may issue sanctions against any party who fails to comply with a Court order. Sanctions may include dismissal or modification of a claim according to information before the Court. The sanction must be just. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the claim by a preponderance of the evidence.

2. Granting Objector's request to modify the above-captioned claim absent Claimant input is proper because the evidence in the record supports the requested modifications and Claimants did not respond to the Court's January 11, 2022 order.

3. The evidence in the record and changes described in the Findings of Fact provide the Court with a sufficient basis to resolve and remove each issue remark from the 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

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Note: Service List Updated 10-26-22

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

Water Right Number: 39F 22123-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROBERT D ARPAN
PO BOX 38
ALZADA, MT 59311 0038

GAY ARPAN
PO BOX 38
ALZADA, MT 59311 0038

Priority Date: OCTOBER 31, 1955
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:** 155.40 AC-FT
Climatic Area: 2 - MODERATELY HIGH
***Maximum Acres:** 66.00
Source Name: UNNAMED TRIBUTARY OF NORTH 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 | | NENESE | 21 | 7S | 59E | CARTER |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | DAM | | | | | |
| 2 | | NESWSW | 22 | 7S | 59E | CARTER |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | DIKE | | | | | |
| 3 | | NWSESW | 22 | 7S | 59E | CARTER |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | DIKE | | | | | |

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NENESE | 21 | 7S | 59E | CARTER |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.20 ACRES

Capacity: 0.64 ACRE-FEET

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NWSESW | 22 | 7S | 59E | CARTER |

Diversion to Reservoir: DIVERSION # 3

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.20 ACRES

Capacity: 0.40 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 | 8.00 | | NENESE | 21 | 7S | 59E | CARTER |
| 2 | 2.00 | | SENESE | 21 | 7S | 59E | CARTER |
| 3 | 14.00 | | NESW | 22 | 7S | 59E | CARTER |
| 4 | 34.00 | | NWSW | 22 | 7S | 59E | CARTER |
| 5 | 8.00 | | SWSW | 22 | 7S | 59E | CARTER |
| Total: | <u>66.00</u> | | | | | | |