

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

* * * * *

CLAIMANT: LO Ranch Limited Partnership

OBJECTOR: USA (Dept. of Interior Bureau of Land Mgmt.)

CASE 39F-0451-R-2022

39F 123230-00

39F 123241-00

39F 123270-00

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. LO Ranch Limited Partnership (LO Ranch) is the record owner of claims 39F 123230-00, 39F 123241-00, and 39F 123270-00.

2. Claims 39F 123230-00, 39F 123241-00, and 39F 123270-00 were decreed with DNRC issue remarks:

Claim 39F 123230-00:

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

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 154 TIMES THE CAPACITY OF THE RESERVOIR.

Claim 39F 123241-00:

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

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 28.4 TIMES THE CAPACITY OF THE RESERVOIR.

Claim 39F 123270-00:

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

3. The United States of America (Bureau of Land Management) objected to claims 39F 123230-00 and 39F 123241-00.

4. On October 21, 2022, the parties filed a Stipulation resolving the Objections to claims 39F 123230-00 and 39F 123241-00, a copy of the Stipulation is attached.

5. Pursuant to the Stipulation, the following changes should be made to claims 39F 123230-00 and 39F 123241-00:

Maximum Acres: 40.00 39.00

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	39.00	SE	10	7S	59E	CARTER
Total:	40.00	39.00					

PLACE OF USE DOES NOT INCLUDE FEDERAL LAND IN THE NESE SECTION 10,
TOWNSHIP 7S, RANGE 59E, CARTER COUNTY.

6. Claims 39F 123230-00 and 39F 123241-00 are water spreading claims and both claims were decreed excessive volume issue remarks. The excessive volume issue remarks ignore the fact that the claims do not use the water stored in a reservoir but rather the water that *exceeds* the storage capacity of the reservoir. The storage capacity of the reservoir is not the correct guideline or limitation for determining the reasonableness of the claimed volume.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. 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.

3. The volume guideline applicable to direct flow water-spreading systems that do not utilize stored water is the number of acre-feet per acre based upon the climatic area for the claimed place of use. *See* Rule 15(b),(c),(e), W.R.C.E.R. The claimed place of use for claims 39F 123230-00 and 39F 123241-00 is in climatic area II. The guideline for climatic area II is 2.00-acre feet per acre. Nevertheless, the guideline is simply a guideline and not a limitation on a water right and the guideline does not overcome the prima facie statement of claim, the volume issue remarks can be removed.

4. The period of diversion and reservoir record issue remarks decreed on claims 39F 123230-00 and 39F 123241-00 are notice-type issue remarks. As the Objections in this Case have been resolved, no further proceedings are required.

RECOMMENDATIONS

1. Claims 39F 123230-00 and 39F 123241-00 should be modified as shown in Finding of Fact No. 5.

2. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

Anika M. Stern
Senior Water Master

Service Via Electronic Mail:

Mark Widerschein,
NRS-ENRD US DOJ
PO Box 7611
Washington, DC 20044-7611
202-532-5803
Mark.Widerschein@Usdoj.Gov
Montanabasins.ENRD@USDOJ.GOV

Service via USPS Mail:

Michael F. McGuinness
Patten, Peterman, Bekkedahl & Green, PLLC
2817 2nd Avenue North, Suite 300
Billings, MT 59101
(406) 252-8500
(Attorneys for LO Ranch Limited Partnership)

TODD KIM, Assistant Attorney General
Environment & Natural Resources Division

ELECTRONICALLY FILED

JESSE LASLOVICH, United States Attorney
District of Montana

39F-0451-R-2022

MARK J. WIDERSCHIEIN, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 532-5803 (Widerschein)

October 21, 2022

Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,
Bureau of Land Management

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

CLAIMANT: LO Ranch Limited Partnership

CASE 39F-0451-R-2022

OBJECTOR: USA (Dept. of Interior Bureau of Land Mgmt.)

39F 123230-00

39F 123241-00

39F 123270-00

STIPULATION TO RESOLVE OBJECTIONS

This Stipulation, entered into by the United States of America, Bureau of Land Management (the “United States”), and Claimant LO Ranch Limited Partnership (“Claimant”), is for the purpose of resolving the United States’ objections to Water Right Claim Nos. 39F 123230-00 and 39F 123241-00.

RECITALS

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimant, or a predecessor-in-interest to Claimant, timely filed Statements of Claim for claims 39F 123230-00, 39F 123241-00, and 39F 123270-00 with the Department of Natural Resources and Conservation.

B. Pursuant to Mont. Code Ann. § 85-2-233, the United States timely filed Notices of Objection to claims 39F 123230-00 and 39F 123241-00 as they appeared on the Preliminary Decree for Basin 39F.

C. Claim 39F 123230-00 asserts a use right on an Unnamed Tributary of South Butte Creek for irrigation of a maximum of 40 acres. As described on the Preliminary Decree for Basin 39F, the legal land description for the place of use is overbroad and inaccurately includes federal lands. Clarification of the legal land description will more accurately reflect current and historical use.

D. Claim 39F 123241-00 asserts a use right on an Unnamed Tributary of South Butte Creek for irrigation of Claimant's place of use for a maximum of 40 acres. As described on the Preliminary Decree for Basin 39F, the legal land description for the place of use is overbroad and inaccurately includes federal lands. Clarification of the legal land description will more accurately reflect current and historical use.

E. In the interest of resolving this case without the need for further litigation, Claimant and the United States stipulate to the modifications below.

STIPULATION

1. Claim No. 39F 123230-00

A. The place of use for claim 39F 123230-00 should be amended as follows:

<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	<u>39.00</u> 40.00		SE	10	7S	59E	CARTER
Total:	<u>39.00</u> 40.00						

B. The maximum acres for claim 39F 123230-00 should be 39.00 acres.

C. The following information remark should be added to the place of use for claim 39F 123230-00:

PLACE OF USE DOES NOT INCLUDE FEDERAL LAND IN THE NESE SECTION 10, TOWNSHIP 7S, RANGE 59E, CARTER COUNTY.

2. Claim No. 39F-123241-00

A. The place of use for claim 39F 123241-00 should be amended as follows:

<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	<u>39.00</u> 40.00		SE	10	7S	59E	CARTER
Total:	<u>39.00</u> 40.00						

B. The maximum acres for claim 39F 123241-00 should be 39.00 acres.

C. The following information remark should be added to the place of use for claim 39F 123241-00:

PLACE OF USE DOES NOT INCLUDE FEDERAL LAND IN THE NESE SECTION 10, TOWNSHIP 7S, RANGE 59E, CARTER COUNTY.

3. The map attached as **Exhibit 1** and proposed abstracts attached as **Exhibits 2 and 3** to this Stipulation accurately reflect the modifications stipulated above.

4. Upon entry of a ruling and final order in this case reflecting the amendments specified above for claims 39F 123230-00 and 39F 123241-00, the United States' objections to claims 39F 123230-00 and 39F 123241-00 shall be deemed resolved, provided that such order(s) do not expand or change other substantive elements of the claims.

5. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

6. The terms of this Stipulation are binding on the parties, their successors, and assignees. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.

7. Each party will bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court regarding this case.

8. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

9. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.

10. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

11. This document (§§ 1-11) embodies the entire Stipulation of the parties.

IT IS SO STIPULATED on the date last entered below:

TODD KIM, Assistant Attorney General
Environment & Natural Resources Division

JESSE LASLOVICH, United States Attorney
District of Montana

Dated: October 21, 2022

Mark J. Widerschein
MARK J. WIDERSCHIN, Trial Attorney

mark.widerschein@usdoj.gov | (202) 532-5803
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044-7611
Electronic Service: MontanaBasins.ENRD@usdoj.gov

ATTORNEYS FOR UNITED STATES OF AMERICA,
Bureau of Land Management

Dated: October 20, 2022



Michael F. McGuinness
Patten, Peterman, Bekkedahl & Green, PLLC
217 2nd Avenue North, Suite 300
Billings, MT 59101
(406) 252-8500

Counsel for LO Ranch Limited Partnership

ATTACHMENT 1

Octo

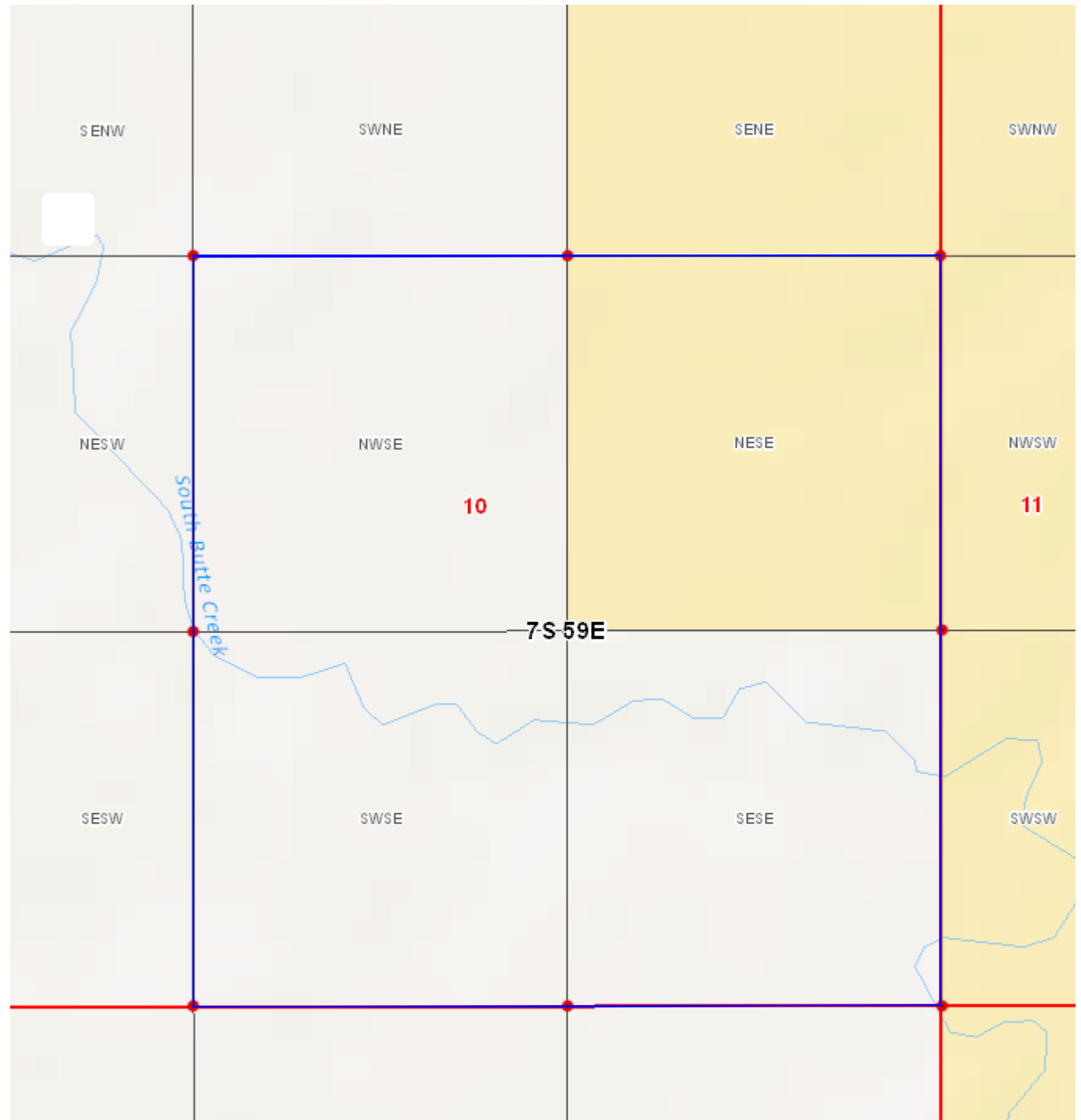
Water Right Numbers:

39F 123230 and 39F 123241

Legend

- ☒ Diversion Count:
 - Surface water diversion.
 - Ground water diversion.
- ☐ Adjacent Diversions
 - Surface water diversion.
 - Ground water diversion.
- ☒ Place of Use Legal Land Descriptions
- ☐ Adjacent POUs
- ☐ Cadastral ?
- ☒ PLSS Detail ?

Reference TOPO Map NHD Map Air Photo View Legend



ATTACHMENT 2

PROPOSED**PRELIMINARY DECREE****LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F****ABSTRACT OF WATER RIGHT CLAIM****IMPORTANT NOTICE**

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 39F 123230-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Status: ACTIVE

Owners: LO RANCH LIMITED PARTNERSHIP
266 GOVERNMENT CANYON RD
HULETT, WY 82720 9621

Priority Date: DECEMBER 31, 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: 40.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: ~~40.00~~ 39.00

Source Name: UNNAMED TRIBUTARY OF SOUTH BUTTE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SW	SENE	10	7S	59E 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>
		SWSENE	10	7S	59E	CARTER
Diversion to Reservoir:	DIVERSION # 1					
Dam Height:	8.00 FEET					
Depth:	5.00 FEET					
Surface Area:	0.13 ACRES					
Capacity:	0.26 ACRE-FEET					

THE AREA, DEPTH, DAM HEIGHT AND CAPACITY HAVE BEEN ESTIMATED BY DNRC.

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	39.00	SE	10	7S	59E	CARTER
Total:	40.00	39.00					

Remarks: Place of Use does not include federal land in the NESE Section 10, Township 7S, Range 59E, Carter County.

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.

123230-00 123241-00

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM.

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

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 154 TIMES THE CAPACITY OF THE RESERVOIR.

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

ATTACHMENT 3

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

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 39F 123241-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Status: ACTIVE

Owners: LO RANCH LIMITED PARTNERSHIP
 266 GOVERNMENT CANYON RD
 HULETT, WY 82720 9621

Priority Date: DECEMBER 31, 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:** 80.00 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: ~~40.00~~ 39.00

Source Name: UNNAMED TRIBUTARY OF SOUTH BUTTE 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		NENWSE	10	7S	59E	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>
		NENWSE	10	7S	59E	CARTER
Diversion to Reservoir:	DIVERSION # 1					
Dam Height:	8.00 FEET					
Depth:	5.00 FEET					
Surface Area:	2.25 ACRES					
Capacity:	4.50 ACRE-FEET					

THE SURFACE AREA, DEPTH, DAM HEIGHT AND CAPACITY HAVE BEEN ESTIMATED BY DNRC.

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	39.00	SE	10	7S	59E	CARTER
Total:	40.00	39.00					

Remarks: Place of Use does not include federal land in the NESE Section 10, Township 7S, Range 59E, Carter County.

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.

123230-00 123241-00

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM.

~~THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS TO BE ON THE BUREAU OF LAND MANAGEMENT.~~

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 28.4 TIMES THE CAPACITY OF THE RESERVOIR.

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, I sent a true and correct copy of the foregoing document to the following:

Service via USPS Mail:

Michael F. McGuinness
Patten, Peterman, Bekkedahl & Green, PLLC
2817 2nd Avenue North, Suite 300
Billings, MT 59101
(406) 252-8500
(Attorneys for LO Ranch Limited Partnership)

/s/ Melissa Saale

Melissa Saale, Law Clerk

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

Water Right Number: 39F 123230-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LO RANCH LIMITED PARTNERSHIP
266 GOVERNMENT CANYON RD
HULETT, WY 82720 9621

Priority Date: DECEMBER 31, 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: 40.00 AC-FT
Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 39.00

Source Name: UNNAMED TRIBUTARY OF SOUTH BUTTE 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		SWSENE	10	7S	59E	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>
	SWSENE	10	7S	59E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.13 ACRES

Capacity: 0.26 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	39.00		SE	10	7S	59E	CARTER

Total: 39.00

PLACE OF USE DOES NOT INCLUDE FEDERAL LAND IN THE NESE SECTION 10, TOWNSHIP 7S, RANGE 59E, CARTER COUNTY.

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.

123230-00

123241-00

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

Water Right Number: 39F 123241-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LO RANCH LIMITED PARTNERSHIP
266 GOVERNMENT CANYON RD
HULETT, WY 82720 9621

Priority Date: DECEMBER 31, 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: 80.00 AC-FT
Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 39.00

Source Name: UNNAMED TRIBUTARY OF SOUTH BUTTE 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		NENWSE	10	7S	59E	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>
	NENWSE	10	7S	59E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 2.25 ACRES

Capacity: 4.50 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	39.00		SE	10	7S	59E	CARTER

Total: 39.00

PLACE OF USE DOES NOT INCLUDE FEDERAL LAND IN THE NESE SECTION 10, TOWNSHIP 7S, RANGE 59E, CARTER COUNTY.

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.

123230-00

123241-00

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

Water Right Number: 39F 123270-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LO RANCH LIMITED PARTNERSHIP
266 GOVERNMENT CANYON RD
HULETT, WY 82720 9621

Priority Date: DECEMBER 31, 1945

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 SOUTH BUTTE 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		NWSESW	33	6S	59E	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>
	NWSESW	33	6S	59E	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			NWSESW	33	6S	59E	CARTER
2			SWNESW	33	6S	59E	CARTER