

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

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CLAIMANTS: Maureen Nixon Revocable Trust; **Montana State Board of Land Commissioners**

**CASE 39F-0013-I-2024**  
39F 30139296  
39F 30139298

INTERESTED PARTY: Montana State Board of Land Commissioners

**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. The Maureen Nixon Revocable Trust is the present record-owner of claims 39F 30139296 and 39F 30139298.

2. On April 8, 2024, an Order was issued, setting a deadline for record-owner Maureen Nixon Revocable Trust to address the following issue remarks decreed on claims 39F 30139296 and 39F 30139298<sup>1</sup>:

**39F 30139296:**

NO PRIORITY DATE WAS CLAIMED.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

**39F 30139298:**

NO PRIORITY DATE WAS CLAIMED.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

(Doc.<sup>2</sup>1.00). The April 8, 2024 Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimant Maureen Nixon Revocable Trust agreed claims 39F 30139296 and 39F 30139298 should be dismissed. The Order included the following language:

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.

The Maureen Nixon Revocable Trust did not file anything by the deadline.

3. The April 8, 2024 Order also set a deadline for the State of Montana to address an ownership issue remark decreed on claim 39F 30139298. On May 24, 2024, the State of Montana Board of Land Commissioners (TLMD) filed a Motion to Intervene and for Status Conference and Brief in Support. (Doc. 3.00). The Motion to Intervene was granted and deadlines were set for TLMD as to claim 39F 30139298. (Doc. 5.00).

4. On July 26, 2024, TLMD filed its Intent to Claim an Interest in Claim 39F 30139298 along with Declaration of Elizabeth Miller in Support of Objector Montana State Board of Land Commissioners' Response to Court Order filed by State of Montana, Board of Land Commissioners.<sup>3</sup> (Docs. 7.00 and 8.00). A Motion to Amend Claim 39F

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<sup>1</sup> In addition to the listed issue remarks, both claims were decreed with a notice-type remark indicating the claims were not included in the 2019 decree.

<sup>2</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

<sup>3</sup> Note, the State of Montana is *not* an Objector in this Case.

30139298 was attached. The Motion to Amend Claim is consistent with information attached to Elizabeth Miller’s Declaration, showing the General Land Office survey for this parcel was accepted on February 5, 1923.

Pursuant to the Motion to Amend Claim 39F 30139298, the following modifications should be made to claim 39F 30139298, resolving the issue remarks and reflecting historical use of the claim:

Owners:	NIXON, MAUREEN REVOCABLE TRUST NIXON, MAUREEN TRUSTEE 2491 ALZADA RIDGE RD ALZADA, MT 59311-8505	Please add co-owner TLMD: ID # 7582
Priority Date:	FEBRUARY 5, 1923	
Type of Historical Right:	USE	

### CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), 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 other evidence that proves that one or more elements of the prima facie Statement of Claim are incorrect. This is the applicable standard of proof regardless of whether the objectors are adverse parties or are the claimants objecting to their own water right claims. See Memorandum Opinion, Order Adopting Master's Report, Water Court Case 40G-2 (March 11, 1997).

3. The Objection List issued in this basin gave all water users notice of the possible correction of the elements addressed in this Master’s Report. This notice is reasonably calculated to inform parties of proceedings affecting their water rights. Thus, additional notice is not required before these corrections are implemented. *Geil v. Missoula Irrigation District*, 2002 MT 269, ¶ 53, 312 Mont. 320, 59 P.3d 398.

4. The filed documentation and supporting evidence entered into the record are enough to contradict and overcome the prima facie claims.

5. If, at the time an appropriation is made, the appropriator is a lessee of school trust land and if the lessee makes and uses the appropriation on school trust land, the appropriation is owned by the State of Montana rather than the lessee. *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985). Implicit in this rule is the determination that the land was indeed fully vested as state school trust land at the time the appropriation was made. See *Harper, et al. v. Montana, State of, Board of Land Commissioners*, Case 43A-A, at p. 10-13, (Memorandum June 29, 2000); *Hamilton Ranches Partnership v. United States of America, et al.*, Case 41G-190, at p. 32 (Opinion July 19, 2005); and *Huckaba Ranch, Inc. v. Golden Sunlight Mines, Inc.*, Case 41G-3, at p. 7-9, (Opinion August 3, 2005).

6. The issue remark decreed on claim 39F 30139298 indicating that it was not included in the 2019 decree has served its notice purpose. No objections were filed, and the remark can be removed.

#### RECOMMENDATIONS

1. Claim 39F 30139296 should be dismissed.
2. The ownership of claim 39F 30139298-00 should be changed to include the State of Montana (Montana State Board of Land Commissioners), and the other modifications shown in Finding of Fact No. 4 should be made. The Maureen Nixon Revocable Trust should remain a co-owner of the claim.
3. The issue remarks should be removed from claim 39F 30139298.  
Post Decree Abstracts of Water Right Claims are served with the Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Blake Koemans  
Aislinn Brown  
Montana Department of Justice AG  
PO Box 201440  
Helena, MT 59620  
(406) 444-2026  
Blake.Koemans2@mt.gov  
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BLCWaterCourt@mt.gov

**Service via USPS Mail:**

Maureen Nixon Revocable Trust  
2491 Alzada Ridge Rd  
Alzada, MT 59311

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

**Water Right Number:** 39F 30139296 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** NIXON, MAUREEN REVOCABLE TRUST  
NIXON, MAUREEN TRUSTEE  
2491 ALZADA RIDGE RD  
ALZADA, MT 59311-8505

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

**Source Name:** NORTH THOMPSON CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 39F 30139298 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA STATE BOARD OF LAND COMMISSIONERS  
TRUST LAND MANAGEMENT DIVISION  
PO BOX 201601  
HELENA, MT 59620-1601

NIXON, MAUREEN REVOCABLE TRUST  
NIXON, MAUREEN TRUSTEE  
2491 ALZADA RIDGE RD  
ALZADA, MT 59311-8505

**Priority Date:** FEBRUARY 5, 1923

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 NORTH THOMPSON 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		SWSE	9	9S	56E	CARTER

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2			16	9S	56E	CARTER
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**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**\*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			SWSE	9	9S	56E	CARTER
2				16	9S	56E	CARTER