

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANT: Thomas Ranch Inc.

CASE 39F-0019-I-2024

39F 30134642

39F 30134643

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. Thomas Ranch Inc. (Thomas Ranch) is the record owner of claims 39F 30134642 and 39F 30134643.

2. Thomas Ranch was ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claims 39F 30134642 and 39F 30134643:

Claim 39F 30134642:

THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE NENENW SEC 12 TWP 7S RGE 81E CARTER COUNTY.

THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE.

THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 23.67 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES.

Claim 39F 30134643:

THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE NENENW SEC 12 TWP 7S RGE 81E CARTER COUNTY.

THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE.

3. DNRC Water Resource Specialist Kim Lindseth filed a Memorandum stating the Claimant did not contact the DNRC. (Doc.* 2.00). Ms. Lindseth indicated she reviewed scanned claim files to prepare the Memorandum; a proposed abstract and map were attached.

To address the issue remarks and represent historical uses of the claims, Ms. Lindseth recommended the following modifications be made to claims 39F 30134642 and 39F 30134643:

Claim 39F 30134642:

Flow Rate: 20.00 GPM ~~2.20 GPM~~

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>Countr</u>
1	1.00	NENENW	SWSESW	12 +	7S	81E	CARTER
Total:	1.00						

* "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Claim 39F 30134643:

Flow Rate: 20.00 GPM 2-20 GPM

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			NENENW	12	7S	81E	CARTER
2			SESESW	4	7S	81E	CARTER

4. To determine if Claimant Thomas Ranch agreed with the recommended modifications to claims 39F 30134642 and 39F 30134643, an Order was issued setting a deadline for Thomas Ranch to agree or disagree with the changes recommended by Ms. Lindseth. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Thomas Ranch agreed with the recommended modifications. 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.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 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. Claims 39F 30134642 and 39F 30134643 were also decreed with notice-type issue remarks stating that they were not included in the 2019 decree in Basin 39F. No objections were filed, and no further proceedings are required.

RECOMMENDATIONS

1. The claims in this Case should be modified as follows:

Claim 39F 30134642:

Flow Rate: 20.00 GPM ~~2-20 GPM~~

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	1.00	NENENW	SWSESW	12 4	7S	81E	CARTER
Total:		1.00					

Claim 39F 30134643:

Flow Rate: 20.00 GPM ~~2-20 GPM~~

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			NENENW	12	7S	81E	CARTER
2			SESESW	4	7S	81E	CARTER

2. The issue remarks should be removed from claims 39F 30134642 and 39F 30134643.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Thomas Ranch Inc.
2451 Little Missouri Rd
Belle Fourche, SD 57717

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

Water Right Number: 39F 30134642 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: DECEMBER 31, 1943

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 3.50 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***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		NENENW	12	7S	61E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.00		NENENW	12	7S	61E	CARTER

Total: 1.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30134642 30134643

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

Water Right Number: 39F 30134643 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: THOMAS RANCH INC
2451 LITTLE MISSOURI RD
BELLE FOURCHE, SD 57717

Priority Date: DECEMBER 31, 1943

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 20.00 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: GROUNDWATER

Source Type: GROUNDWATER

***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		NENENW	12	7S	61E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NENENW	12	7S	61E	CARTER

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30134642 30134643