

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

CLAIMANT: United States of America (Bureau of Land
Management)

CASE 39F-0023-I-2024
39F 30140303

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 United States of America (Bureau of Land Management) is the record owner of livestock direct from source claim 39F 30140303.

2. Claim 39F 30140303 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39F DECREE ISSUED 05/23/2019.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 174190-00, 30140303.

3. The first-listed remark is a notice-type remark and does not require further attention.

4. The second-listed remark indicates the place of use described on the abstract of claim 39F 30140303 may overlap with the place of use described on the abstract of direct from source stock claim 39F 174190-00. Claim 39F 174190-00 was decreed in the 2019 Preliminary Decree for Basin 39F; the Bureau of Land Management did not object to the place of use for the claim (nor did any other party).

5. A deadline was set for the Bureau of Land Management to address the overlapping place of use issue remark decreed on claim 39F 30140303. On July 10, the Bureau of Land Management filed its Response to Court Order. (Doc.¹3.00). The Response references *BLM v. Barthelmess Ranch Corp.*, 2016 MT 348, 386 Mont. 121, 386 P.3d 952, where the Montana Supreme Court recognized private appropriators and the United States of America (Bureau of Land Management) can have an appropriation from the same source. When means of diversion are for livestock direct from source, overlapping places of use result because the place of use is the source. There is no issue to resolve.

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. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the Claimant an opportunity to file additional information or evidence.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

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 notice-type issue remark decreed on claim 39F 30140303 has served its purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from claim 39F 30140303 with no changes to the elements of the claim.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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Service List Updated: 7/15/2024

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

Water Right Number: 39F 30140303 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101-4669

Priority Date: APRIL 8, 1935

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 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: WILLOW 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		NWNW	31	8S	59E	CARTER

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			NWNW	31	8S	59E	CARTER