

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)

CLAIMANTS: Elaine M. Gross; Douglas K. Melum

CASE 39F-0009-I-2024

39F 30134734

39F 30134735

39F 30134736

39F 30134737

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. Elaine M. Gross and Douglas K. Melum are the record owners of claims 39F 30134734, 39F 30134735, 39F 30134736, and 39F 30134737.

2. Claims 39F 30134734, 39F 30134735, 39F 30134736, and 39F 30134737 were all decreed with a notice-type remark indicating the claims were not included in the 2019 decree; the remark does not require further attention. Claim 39F 30134735 was decreed with additional issue remarks:

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.

The above-listed issue remarks must be addressed.

3. The issue remarks decreed on claim 39F 30134735 reference the Statement of Claim form and the fact that the “type of historical right” and “date of first use” portions of the form were blank:

13. TYPE OF HISTORIC RIGHT: ☒ Decreed ☐ Filed Appropriation ☐ Use Date of first use: _____
Attach copies of the decree, record of filing, or proof of use right.

As indicated by the issue remark, no documentation supporting the type of historical right or priority date were submitted with the Statement of Claim. Without further information, it appears claim 39F 30134735 is not valid.

4. An Order was issued setting a deadline for Claimants Elaine M. Gross and Douglas K. Melum to file evidence supporting the type of historical right and priority date for claim 39F 30134735. The Order indicated that if nothing were filed by the deadline, this Master would conclude Elaine M. Gross and Douglas K. Melum agree claim 39F 30134735 should be dismissed as it is not a valid right. 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 by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed 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 July 5, 2019 Statement of Claim for claim 39f 30134735 failed to provide any information to support a priority date or type of historical right. The priority date is a necessary element to enforce a water right.

4. According to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

5. The notice-type issue remark decreed on the claims in this Case have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39F 30134735 should be dismissed.

2. The issue remarks should be removed from claims 39F 30134734, 39F 30134736, and 39F 30134737.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Elaine M. Gross
43 Washington Ave
Leonardo, NJ 07737

Douglas K. Melum
830 Steamboat Trail
Brookings, SD 57006

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

Water Right Number: 39F 30134734 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ELAINE M GROSS
43 WASHINGTON AVE
LEONARDO, NJ 07737

DOUGLAS K MELUM
830 STEAMBOAT TRAIL
BROOKINGS, SD 57006-8509

***Priority Date:** JUNE 30, 1919

***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: LITTLE MISSOURI RIVER

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		NWSW	34	4S	62E	CARTER
Period of Diversion:	NOVEMBER 1 TO APRIL 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSW	3	5S	62E	CARTER
Period of Diversion:	NOVEMBER 1 TO APRIL 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NESW	3	5S	62E	CARTER
Period of Diversion:	NOVEMBER 1 TO APRIL 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	NOVEMBER 1 TO APRIL 30					

***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			NWSW	34	4S	62E	CARTER
2			NWSW	3	5S	62E	CARTER
3			NESW	3	5S	62E	CARTER

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

Water Right Number: **39F 30134735** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: ELAINE M GROSS
 43 WASHINGTON AVE
 LEONARDO, NJ 07737

 DOUGLAS K MELUM
 830 STEAMBOAT TRAIL
 BROOKINGS, SD 57006-8509

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SWNW	27	4S	62E	CARTER
Period of Diversion:	APRIL 1 TO JUNE 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSW	27	4S	62E	CARTER
Period of Diversion:	APRIL 1 TO JUNE 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NESWSW	27	4S	62E	CARTER
Period of Diversion:	APRIL 1 TO JUNE 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SESW	27	4S	62E	CARTER
Period of Diversion:	APRIL 1 TO JUNE 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		S2N2	28	4S	62E	CARTER
Period of Diversion:	APRIL 1 TO JUNE 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

6 N2NW 28 4S 62E CARTER

Period of Diversion: APRIL 1 TO JUNE 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 1 TO JUNE 30

*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			W2SWNW	27	4S	62E	CARTER
2			NWSW	27	4S	62E	CARTER
3			NESWSW	27	4S	62E	CARTER
4			SESW	27	4S	62E	CARTER
5			S2N2	28	4S	62E	CARTER
6			N2NW	28	4S	62E	CARTER

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

Water Right Number: 39F 30134737 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: ELAINE M GROSS
43 WASHINGTON AVE
LEONARDO, NJ 07737

DOUGLAS K MELUM
830 STEAMBOAT TRAIL
BROOKINGS, SD 57006-8509

***Priority Date:** MARCH 3, 1958

***Type of Historical Right:** USE

Purpose (Use): STOCK

Flow Rate: 5.00 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		NESWSW	27	4S	62E	CARTER

Period of Diversion: MARCH 1 TO MAY 31

Diversion Means: WELL

Period of Use: MARCH 1 TO MAY 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			NESWSW	27	4S	62E	CARTER