

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)

CLAIMANT: J & S Ranch Properties LP

CASE 39F-0021-I-2024
39F 30139257

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. J & S Ranch Properties LP is the record owner of claim 39F 30139257.
2. Claim 39F 30139257 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39F DECREE ISSUED 05/23/2019.
NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL
RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

All issue remarks must be addressed.

3. The first issue remark decreed on claim 39F 30139257 is a notice-type remark and does not require further attention.
4. The second remark references the Statement of Claim form and the fact that the type of historical right portion of the form was blank as to the type of historical right:

13. TYPE OF HISTORIC RIGHT: Decreed Filed Appropriation Use Date of first use: Historic-pre 1973

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 was submitted with the Statement of Claim. Without further information, it appears the claim is a “use” right.

5. An Order was issued setting a deadline for Claimant J & S Ranch Properties LP to file a statement agreeing or disagreeing that claim 39F 30139257 be changed to a “use” right. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimant J & S Ranch Properties LP agrees claim 39F 30139257 is a “use” right and a Master’s Report would be issued recommending the change be made. 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. 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.

2. 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.

3. The remark indicating claim 39F 30139257 was not included in the 2019 decree is a notice-type remark. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39F 30139257 should be modified to a “use” right.
2. The issue remarks should be removed from the claim.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

J & S Ranch Properties LP
5013 Road 1006
Bainville, MT 59212-9632

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

Water Right Number: 39F 30139257 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: J & S RANCH PROPERTIES LP
5013 ROAD 1006
BAINVILLE, MT 59212-9632

***Priority Date:** DECEMBER 31, 1972

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:** NORTH BUTTE CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF NORTH 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>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	15	6S	59E	CARTER
*Source Name: UNNAMED TRIBUTARY OF NORTH BUTTE CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		NWNWNE	22	6S	59E	CARTER
*Source Name: UNNAMED TRIBUTARY OF NORTH BUTTE CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3		W2SWNE	22	6S	59E	CARTER
*Source Name: UNNAMED TRIBUTARY OF NORTH BUTTE CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4		W2NWSE	22	6S	59E	CARTER
*Source Name: UNNAMED TRIBUTARY OF NORTH BUTTE CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						

5	SESE	22	6S	59E	CARTER
Source Name:	NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
6	SWSE	26	6S	59E	CARTER
Source Name:	NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
7	SWNE	28	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	SE	28	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	NENE	33	6S	59E	CARTER
Source Name:	NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	NW	34	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11	SWNE	34	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	N2SE	34	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
13	N2SESE	34	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
14	NE	35	6S	59E	CARTER
Source Name:	NORTH BUTTE CREEK				
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
15	S2SW	35	6S	59E	CARTER
*Source Name:	UNNAMED TRIBUTARY OF NORTH BUTTE CREEK				

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 16 3 N2NENW 2 7S 59E CARTER

***Source Name:** UNNAMED TRIBUTARY OF NORTH BUTTE CREEK

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	15	6S	59E	CARTER
2			NWNWNE	22	6S	59E	CARTER
3			W2SWNE	22	6S	59E	CARTER
4			W2NWSE	22	6S	59E	CARTER
5			SESE	22	6S	59E	CARTER
6			SWSE	26	6S	59E	CARTER
7			SWNE	28	6S	59E	CARTER
8			SE	28	6S	59E	CARTER
9			NENE	33	6S	59E	CARTER
10			NW	34	6S	59E	CARTER
11			SWNE	34	6S	59E	CARTER
12			N2SE	34	6S	59E	CARTER
13			N2SESE	34	6S	59E	CARTER
14			NE	35	6S	59E	CARTER
15			S2SW	35	6S	59E	CARTER
16		3	N2NENW	2	7S	59E	CARTER