

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: Butte LLP

CASE 39F-0003-I-2024

39F 30139272

OBJECTOR: Butte LLP

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. Butte LLP is the record owner of stock claim 39F 30139272.
2. Claim 39F 30139272 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39F DECREE ISSUED 05/23/2019.
THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS
TO BE ON FEDERAL LAND.

The first issue remark is a notice-type remark, indicating the claim was not included in the 2019 decree Preliminary Decree; the remark does not require further attention. The second remark provides notice that an ownership update may be warranted. Ownership updates may be filed at any time; the remark does not require further attention.

3. Butte LLP objected to claim 39F 30139272, stating:

This claim includes additional points of diversion and places of use located in SWSWNE-27-5S-81E and SESENW-27-5S-81E.

Evidence supporting the historical use of the claim, as identified in the Objection was not included with the Objection, nor was a map, or proposed abstract.

4. On June 28, 2024, Butte LLP filed its Response to Order Setting Filing Deadline. (Doc.¹2.00). The Response explained that at filing, errors were made for the point of diversion and place of use legal land description for this livestock direct from source claim. The errors placed portions of the claim on federal land and incorrect private land and omitted portions of the claim on Butte LLP land. Butte LLP attached a Motion to Amend, an Affidavit of Butte LLP manager, Jim McGinnis, a proposed abstract, and a map, to correct the errors. According to the record, the following modifications should be made to claim 39F 30139272, resolving the Objection:

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

The following point of diversion and place of use legal land descriptions should be deleted:

<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			NWNWNE	21	5S	61E	CARTER
2			S2NWNE	21	5S	61E	CARTER
3			SENE	21	5S	61E	CARTER
4			N2SWNE	21	5S	61E	CARTER
5			N2NENW	21	5S	61E	CARTER
6			SENE	21	5S	61E	CARTER
7			S2NENE	22	5S	61E	CARTER
8			E2NWNE	22	5S	61E	CARTER
9			W2SENE	22	5S	61E	CARTER
10			E2SWNE	22	5S	61E	CARTER
11			W2NESE	22	5S	61E	CARTER
12			SENWSE	22	5S	61E	CARTER
13			W2NESW	22	5S	61E	CARTER
14			NWSW	22	5S	61E	CARTER
15		2	S2	22	5S	61E	CARTER
16		3	S2	22	5S	61E	CARTER
17			W2NWNE	27	5S	61E	CARTER
18			NWSWNE	27	5S	61E	CARTER
19			N2SENE	27	5S	61E	CARTER
20			NWNWSE	27	5S	61E	CARTER
21			E2NESW	27	5S	61E	CARTER

The following point of diversion and place of use legal land descriptions should be added (period of diversion and means of diversion should match for both):

			SWSWNE	27	5S	61E	CARTER
			SESENE	27	5S	61E	CARTER
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							

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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

3. The notice-type issue remarks decreed on claim 39F 30139272 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39F 30139272 should be modified as shown in Finding of Fact No. 4.
2. The issue remarks should be removed from claim 39F 30139272.
An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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

Water Right Number: 39F 30139272 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BUTTE LLP
792 BICKERDYKE RD
CAPITOL, MT 59319-4100

Priority Date: DECEMBER 31, 1914

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: UNNAMED TRIBUTARY OF COTTONWOOD 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		NWNWNE	21	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2NWNE	21	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SENE	21	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2SWNE	21	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		N2NENW	21	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		SENE	21	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	S2NENE	22	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	W2SENE	22	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	W2NESE	22	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	W2NESW	22	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11	NWSW	22	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	2 S2	22	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
13	NWSWNE	27	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
14	E2NESW	27	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
15	SWSWNE	27	5S	61E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
16	SESENE	27	5S	61E	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			NWNWNE	21	5S	61E	CARTER
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7			S2NENE	22	5S	61E	CARTER
8			W2SENE	22	5S	61E	CARTER
9			W2NESE	22	5S	61E	CARTER
10			W2NESW	22	5S	61E	CARTER