

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

\*\*\*\*\*

CLAIMANTS: Daun West Limited Partnership; Edward  
Lawrence; Mary Lawrence

CASE 39F-0096-R-2021  
39F 175290-00

**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 to 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**

Water Right Claim 39F 175290-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). The claim received issue remarks. Issue remarks result from Department of Natural Resources and

Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. The claim did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 39F-0096-R-2021 on August 12, 2021. The Court set a filing deadline regarding the ownership of the claim. Potential Owner Edward Lawrence filed a response on August 30, 2021.

On September 10, 2021, the Court referred Claimant to the Billings Regional Office of the DNRC pursuant to Section 85-2-248, MCA. The DNRC filed its responsive memorandum on January 6, 2022. The Court set a filing deadline for Claimant Daun West Limited Partnership to file additional information to resolve an issue remark on the above-captioned claim. Claimant filed a series of maps regarding the location of certain dikes on July 6, 2022. The Court then issued an order which described the proposed locations of the subject dikes and set a filing deadline by which Claimants could critique the proposed legal land descriptions. No Claimant filed a response by the filing deadline.

### **FINDINGS OF FACT**

1. Claim 39F 175290-00 appeared with the following issue remarks:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 39F 175290 00, 39F 175305 00.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 08/23/2018, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY EDWARD LAWRENCE, PO BOX 63, ALZADA, MT 59311.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKES FOR POINTS OF DIVERSION 1, 2, 3, 4, 6, AND 8 CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. Edward and Mary Lawrence were added to the ownership of this claim on September 27, 2021.

3. The DNRC states in its January 6, 2022 responsive memorandum that Claims 39F 175290-00 and 39F 175305-00 are not claims for multiple uses of a single right.

4. Upon review of Claimant Daun West Limited Partnership's maps filed on July 6, 2022, the Court proposed modifying relevant points of diversion so they are described as follows:

POD ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	1	NWNW	19	9S	60E	CARTER
2		S2NESW	18	9S	60E	CARTER
3		NWSWNW	18	9S	60E	CARTER
4		SESENE	13	9S	59E	CARTER
6	1	NW	7	9S	60E	CARTER
8		S2SENE	24	9S	59E	CARTER

5. No Claimant filed a response disputing the above proposed modifications.

6. Point of Diversion Nos. 1, 2, 3, 4, 6, and 8 of Claim 39F 175290-00 should be described as noted above.

7. The issue remarks should be removed from this claim.

#### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the

claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

### **CONCLUSIONS OF LAW**

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

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Colton J. Lauer  
Water Master

#### **Service via USPS Mail:**

Daun West Limited Partnership  
PO Box 48  
Chilton, WI 53014

Edward Lawrence  
Mary Lawrence  
PO Box 63  
Alzada, MT, 59311

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

**Water Right Number:** 39F 175290-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MARY LAWRENCE  
 PO BOX 63  
 ALZADA, MT 59311 0063

EDWARD LAWRENCE  
 PO BOX 63  
 ALZADA, MT 59311 0063

DAUN WEST LIMITED PARTNERSHIP  
 PO BOX 48  
 CHILTON, WI 53014 0048

**Priority Date:** DECEMBER 31, 1928

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION  
**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 394.00 AC-FT  
**Climatic Area:** 2 - MODERATELY HIGH

**\*Maximum Acres:** 156.00

**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	1	NWNW	19	9S	60E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
2		S2NESW	18	9S	60E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
3		NWSWNW	18	9S	60E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
4		SESENE	13	9S	59E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					

5		E2SE	12	9S	59E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
6	1	NW	7	9S	60E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
7		E2SESE	1	9S	59E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
8		S2SENE	24	9S	59E	CARTER
<b>Period of Diversion:</b>	MARCH 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
<b>Period of Use:</b>	MARCH 15 TO OCTOBER 15					

**\*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	8.00		N2SESW	18	9S	60E	CARTER
2	8.00		E2SWSW	18	9S	60E	CARTER
3	8.00		E2NWSW	18	9S	60E	CARTER
4	16.00	1	NWNW	19	9S	60E	CARTER
5	13.00		NESW	18	9S	60E	CARTER
6	17.00		S2NW	18	9S	60E	CARTER
7	29.00		E2NE	13	9S	59E	CARTER
8	28.00		E2SE	12	9S	59E	CARTER
9	19.00		NENE	12	9S	59E	CARTER
10	10.00		SESE	1	9S	59E	CARTER
<b>Total:</b>	<u>156.00</u>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

162790-00      175287-00      175290-00      175291-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

203-00      175287-00      175290-00      175291-00

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