

Montana Water Court
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ELECTRONICALLY FILED

39F-0423-R-2022

July 29, 2022

Montana Water Court

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

CLAIMANTS: Alvin L. Cordell; Marlee L. Cordell

CASE 39F-0423-R-2022
39F 172813-00
39F 172818-00
39F 172822-00

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 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 record owners of claims 39F 172813-00, 39F 172818-00, and 39F 172822-00 are Alvin L. Cordell and Marlee L. Cordell.

2. The claims were decreed with a variety of DNRC issue remarks. All issue remarks must be addressed.

3. Claim 39F 172813-00 was decreed with a notice type issue remark:

POINT OF DIVERSION AND RESERVOIR RECORD WERE 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.

No objections were filed, and no further proceedings are required for claim 39F 172813-00.

4. Claim 39F 172818-00 was decreed without a type of historical right and an issue remark stating nothing was filed to support the type of historical right:

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

Based on an Affidavit in the claim file, it appears the type of historical right should be “use.”

Claim 39F 172818-00 was also decreed with the following point of diversion:

***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		NWNWSW	4	5S	60E	CARTER

A point of diversion issue remark was decreed on the claim:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENESW SEC 4 TWP 5S RGE 60E CARTER COUNTY.

Based on the issue remark, it appears the point of diversion and reservoir legal land description should be modified, as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NENESW	NWNWSW	4	5S	60E	CARTER

5. Claim 39F 172822-00 was decreed with the following place of use:

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			NWSWNW	33	4S	60E	CARTER

A place of use issue remark was decreed on claim 39F 172822-00:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWSENW SEC 33 TWP 4S RGE 60E CARTER COUNTY.

Based on the issue remark, it appears the following change should be made to claim 39F 172822-00:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSENW	NWSWNW	33	4S	60E	CARTER

Claim 39F 172822-00 was also decreed with a notice-type issue remark:

POINT OF DIVERSION AND RESERVOIR RECORD WERE 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.

No objections were filed, and no further proceedings are required for claim 39F 172822-00.

6. An Order was issued setting a deadline to verify that Claimants Alvin L. Cordell and Marlee L. Cordell agreed with the proposed changes to the claims. The Order indicated that if nothing were filed by the July 14, 2022 deadline, this Master would conclude Alvin L. Cordell and Marlee L. Cordell agreed with the described changes. 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.

7. On July 1, 2022, Alvin Cordell filed a statement:

*Dear Personnel,
In reference to your letter of 6-2-2022, I agree that changes be made to the claims in 39F 172818-00 and 39F 172822-00. I believe the proposed changes are correct.*

*Thank you
Alvin Cordell*

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear 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. Pursuant 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.

4. The point of diversion and reservoir issue remark decreed on claims 39F 172813-00 and 39F 172822-00 are notice-type remarks. No objections were filed, and no further proceedings are required.

RECOMMENDATIONS

1. Claims 39F 172818-00 and 39F 172822-00 should be modified as described in the Findings of Fact.

2. The issue remarks should be removed from claims 39F 172813-00, 39F 172818-00, and 39F 172822-00.

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

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Alvin L. Cordell
Marlee L. Cordell
13126 Little Missouri Rd.
Capitol, MT 59319

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

Water Right Number: 39F 172813-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALVIN L CORDELL
13126 LITTLE MISSOURI RD
CAPITOL, MT 59319

MARLEE L CORDELL
13126 LITTLE MISSOURI RD
CAPITOL, MT 59319

Priority Date: SEPTEMBER 30, 1957

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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 STOCK WATERING 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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8	NWNENE	5	5S	60E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
8	NWNENE	5	5S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

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		9	NE	5	5S	60E	CARTER

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

Water Right Number: 39F 172818-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALVIN L CORDELL
13126 LITTLE MISSOURI RD
CAPITOL, MT 59319

MARLEE L CORDELL
13126 LITTLE MISSOURI RD
CAPITOL, MT 59319

Priority Date: SEPTEMBER 30, 1957

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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 STOCK WATERING 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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	4	5S	60E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENESW	4	5S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

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			NWNWSW	4	5S	60E	CARTER
2		11	NW	4	5S	60E	CARTER

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

Water Right Number: 39F 172822-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALVIN L CORDELL
13126 LITTLE MISSOURI RD
CAPITOL, MT 59319

MARLEE L CORDELL
13126 LITTLE MISSOURI RD
CAPITOL, MT 59319

Priority Date: SEPTEMBER 30, 1957

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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 STOCK WATERING 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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	33	4S	60E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSE	33	4S	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

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	33	4S	60E	CARTER