

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BEAVER CREEK, TRIBUTARY TO LITTLE MISSOURI RIVER-BASIN 39G
INTERLOCUTORY DECREE

CLAIMANTS: Barbara K. Maus; David L. Maus

CASE 39G-0002-I-2023
39G 30123887

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 39G 30123887 appeared in the Interlocutory Decree for Beaver Creek (Basin 39G) issued November 2, 2022. The claim received issue remarks from the Department of Natural Resources and Conservation (DNRC) identifying potential legal or factual issues with the claim. The claim was consolidated into Case 39G-0002-I-2023 to resolve these issues.

FINDINGS OF FACT

1. Claim 39G 30123887 is a stock claim to surface water from Beaver Creek with a priority date of December 31, 1964. It received the following substantive issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30123887, 16959-00.

2. Claims 39G 30123887 and 39G 16959-00 are both use-based water rights and are identical except priority date.

3. When the Claimants filed claim 39G 30123887 on April 22, 2019, they included the following note, which suggests 39G 30123887 was meant only to correct the period of diversion for their earlier claim, 39G 16959-00:

*On previous water right
#39G - 16959-00
the period of diversion
was from Oct 1 - Jun 1.
When purchased by Oscar
Brunyard use was from
Jan 1 - Dec. 31.*

4. The Court requested that the Claimants inform the Court if they believe these claims are not duplicate filings. It stated that if nothing were filed by the deadline, the Court would conclude the Claimants agree these claims are duplicate filings, and the junior claim – claim 39G 30123887 – should be dismissed. Nothing was filed by the deadline. The Court concludes the Claimants agree claims 39G 30123887 and 39G 16959-00 are duplicate filings and claim 39G 30123887 should be dismissed.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the

water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also*, Rule 7, W.R.Adj.R. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. § 85-2-247(2), MCA.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. Claim 39G 30123887 should be dismissed as a duplicate of claim 39G 16959-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends claim 39G 30123887 be dismissed.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Barbara K Maus
David L Maus
6151 Highway 7
Wibaux, MT 59353

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BEAVER CREEK, TRIBUTARY TO LITTLE MISSOURI RIVER
BASIN 39G

Water Right Number: 39G 30123887 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: BARBARA K MAUS
6151 HIGHWAY 7
WIBAUX, MT 59353-9128

DAVID L MAUS
6151 HWY 7
WIBAUX, MT 59353-9128

***Priority Date:**

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: BEAVER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.