

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)

CLAIMANTS: Lori L. Garman; Benjamin N. Garman

CASE 39F-0006-I-2024
39F 30139256

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. Benjamin N. Garman and Lori L. Garman (the Garmans) stock water claim 39F 30139256 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.

2. The first issue remark decreed on claim 39F 30139256 explains that the claim was not included in the last decree for this Basin.

3. 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.

4. On March 25, 2024, the Garmans filed a Motion to Amend Water Right Claim indicating the priority date should be changed from December 31, 1972 to December 14, 1918. As support for the priority date change, the Garmans attached Bureau of Land Management General Land Office records showing the *latest* patent date for a place of use appurtenant to claim 39F 30139256 is a December 14, 1918 patent.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed 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. The land patent information provided by Claimant Benjamin N. Garman

and Lori L. Garman overcomes the priority date information provided on the Statement of Claim.

3. The remark indicating claim 39F 30139256 was not included in the 2019 decree is a notice-type remark. No objections were received, and no further proceedings are needed.

RECOMMENDATIONS

1. The priority date for claim 39F 30139256 should be changed to December 14, 1918 and the type of historical right should be “use.”

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:

Lori L. Garman
Benjamin N. Garman
61 Highway 212
Belle Fourche, SD 57717-1023

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

Water Right Number: 39F 30139256 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BENJAMIN N GARMAN
61 HIGHWAY 212
BELLE FOURCHE, SD 57717-1023

LORI L GARMAN
61 HIGHWAY 212
BELLE FOURCHE, SD 57717-1023

***Priority Date:** DECEMBER 14, 1918

***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:** TWELVEMILE CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE 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		S2	5	8S	61E	CARTER

Source Name: TWELVEMILE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SWNW	5	8S	61E	CARTER
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Source Name: TWELVEMILE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SWSE	5	8S	61E	CARTER
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***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		SESW	5	8S	61E	CARTER
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***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
5 NE 6 8S 61E CARTER
Source Name: TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
6 NENESE 6 8S 61E CARTER
Source Name: TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
7 NENENE 8 8S 61E CARTER
Source Name: TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
8 W2NENE 8 8S 61E CARTER
***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
9 W2NE 8 8S 61E CARTER
***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
10 NENWSE 8 8S 61E CARTER
***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
11 W2NE 9 8S 61E CARTER
Source Name: TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
12 W2NE 9 8S 61E CARTER
***Source Name:** UNNAMED TRIBUTARY OF TWELVEMILE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
13 N2NW 9 8S 61E CARTER
Source Name: TWELVEMILE 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			S2	5	8S	61E	CARTER
2			SWNW	5	8S	61E	CARTER
3			SWSE	5	8S	61E	CARTER
4			SESW	5	8S	61E	CARTER
5			NE	6	8S	61E	CARTER
6			NENESE	6	8S	61E	CARTER
7			NENENE	8	8S	61E	CARTER
8			W2NENE	8	8S	61E	CARTER
9			W2NE	8	8S	61E	CARTER
10			NENWSE	8	8S	61E	CARTER
11			W2NE	9	8S	61E	CARTER
12			W2NE	9	8S	61E	CARTER
13			N2NW	9	8S	61E	CARTER