

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: Jason L. Garman

CASE 39F-0008-I-2024
39F 30129316

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. Jason L. Garman is the record owner of stock claim 39F 30129316.
2. Claim 39F 30129316 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.

3. The first-listed issue remark on the claim is a notice-type remark and does not require further proceedings.
4. 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. However, a sticky note is present on the Statement of Claim Form, stating “land patent 2/26/1916”:

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.

14. **ATTACH:** Copies of aerial photos, USGS topographic maps, or other documents necessary to show point of diversion and places of use.
- If needed, addendum forms for additional points of diversion and places of use are available.

Land
patent
2/26/1916

No land patent was filed with the Statement of Claim. Without further information, it appears the claim is a “use” right and the priority date should remain December 31, 1972, as decreed.

5. It appears claim 39F 30129316 is a “use” right. To provide Claimant Jason L. Garman the opportunity to file additional evidence supporting a type of historical right, an Order was issued. The Order set a deadline for Claimant Jason L. Garman to file a statement agreeing or disagreeing that claim 39F 30129316 be made a “use” right. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimant agrees the claim is a “use” right. 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.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim. Sections 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 notice-type issue remarks decreed on claim 39F 30129316 has served its purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39F 30129316 should be a “use” right.

2. The issue remarks should be removed from claim 39F 30129316.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jason L. Garman
41 Oliver Ln
Alzada, MT 59311

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

Water Right Number: 39F 30129316 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JASON L GARMAN
41 OLIVER LN
ALZADA, MT 59311

***Priority Date:** DECEMBER 31, 1972

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

***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	31	7S	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			SWSE	31	7S	61E	CARTER