

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: Garman Ranch Revocable Trust

CASE 39F-0005-I-2024

39F 30129318

39F 30129319

39F 30129320

**ORDER DENYING MOTION TO ADOPT PRIORITY DATES PURSUANT TO
PATENTS**

BACKGROUND

On August 16, 2024, Garman Ranch Revocable Trust (the “Trust”) filed a Motion to Adopt New Priority Dates Pursuant to Patents for claims 39F 30129318, 39F 30129319, and 39F 30129320. The motion asks the Court to change the priority dates of the claims to a more senior date.

The Water Court included claims 39F 30129318, 39F 30129319, and 39F 30129320 in the Interlocutory Decree for Basin 39F, re-issued on July 27, 2023. Issuance of the decree opened an objection period. As part of issuing the decree, a notice was sent to all water right owners in the basin. The notice contained specific instructions about how to file an objection. The notice stated the objection period would close on January 23, 2024.

The Interlocutory Decree included abstracts of the water right claims subject to the decree, including the abstracts for claims 39F 30129318, 39F 30129319, and 39F 30129320. The abstracts identify the Trust as the owner of the claims. The Trust did not file an objection by the objection deadline.

The Interlocutory Decree abstracts for claims 39F 30129318, 39F 30129319, and 39F 30129320 set a priority date of December 31, 1972. The abstracts for claims 39F 30129318, 39F 30129319, and 39F 30129320 also include the following substantive issue remark:

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

The senior water master assigned to Basin 39F consolidated the claims into this case to resolve the issue remarks. The consolidation order set a deadline for the Trust to file information to resolve the remark or agree with the Court that the type of historical right should be changed to “use” for each claim. The Trust did not file anything by the specified deadline. On May 28, 2024, the water master issued a Master’s Report. The Master’s Report recommended changing the historical type of right of each claim to “use.” The water master sent the report to the Trust with a statement that if a timely objection to the report was not filed, “the Water Court will conclude you agree with the content of the Master’s Report.” The Trust did not object. The Water Court adopted the report in an order dated June 14, 2024, and closed the case. The Trust filed its motion to adopt different priority dates over two months later.

DISCUSSION

The procedures the Water Court follows to adjudicate water right claims are specified in the Water Use Act and the Court’s adjudication rules. After the Court issues a decree, parties may file objections to claims. The Act requires that objections “be filed with the water judge within 180 days after entry of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree.” Section 85-2-233(2), MCA.

The Water Use Act also authorizes a claimant to move to amend a water right claim. Section 85-2-233(6), MCA. Though the Trust's motion is not titled a motion to amend, the Court treats the motion as one due to the nature of the relief sought – amendment to priority dates.

Unlike objections, the Act does not set specific deadlines to file motions to amend, nor does it always bar them after issuance of an interlocutory decree or the close of an objection period. Although the Act does not prohibit post-interlocutory decree motions to amend, it also does not authorize them in all circumstances. The motion to amend statute provision is part of the same code section as the objection provisions. Section 85-2-233, MCA. When construing the motion to amend statute, the Court must “harmonize it in such a way as to not nullify the objection provision of the statute.” *In re Brewer Ranch LLC*, Case 41I-2003-R-2023, 2023 Mont. Water LEXIS 393, *7. This means the Court will scrutinize a post-objection period motion to amend to determine whether it could have been filed within the objection period. The Court may reject the motion as a disguised untimely objection. *Brewer Ranch*; see also *In re Sieben Livestock Co.*, 41I-2002-R-2023, 2023 Mont. Water LEXIS 7, *5-6.

Against this backdrop, the Court must deny the Trust's motion. The motion contains no information to indicate why the priority date issue could not have been raised by filing a timely self-objection; the patents attached to the motion to substantiate the proposed priority dates were issued over half a century before the opening of the objection period. Further, the motion cites no other new information that became available after the decree and the motion cites no information that the Trust did not receive notice of the decree or the objection deadlines.

Had the Trust timely objected, the objections would have been put on the Basin 39F objection list to give notice to other water users who might believe it necessary to appear in proceedings to resolve the objection. W.R.Adj.R. 9. If the Court now allows the motion, the objection list and notice of intent to appear process will have been bypassed and the Court will have to address whether a new notice process must be initiated under the provisions of Section 85-2-233(6)(a)(i), MCA. Absent a compelling reason why a

timely objection was not filed, the Court does not interpret this statute as a mechanism to essentially reopen the objection period. The Trust's motion provides no reason to consider amendments that could have been raised during the statutory objection period.

The Trust's motion is also not well taken in light of the failure to respond to orders issued by the senior water master. The master gave the Trust two opportunities to correspond with the Court, both with specific deadlines: (1) upon consolidation and the order setting filing deadline; and (2) upon issuance of the Master's Report (Doc. 4.00). The Trust's motion fails to explain why the Trust did not file a response to the Court's consolidation order or object to the Master's Report raising the priority date issue. The Trust's counsel filed a notice of appearance following issuance of the Master's Report, but the notice is not treated as an objection or reserve the opportunity to file an objection.

Parties often file motions to amend as the procedural mechanism to resolve timely-filed objections or issue remarks, and nothing in this Order should be construed as foreclosing that process in the future. However, the Trust's motion does not fit that scenario. Once deadlines run and cases close, the motion to amend statute is not intended to cure missed procedural opportunities. The Trust was given an opportunity to raise any issues with the priority date and let those opportunities pass. Under these circumstances, the Court must deny the motion.

ORDER

Therefore, it is ORDERED that the Motion to Adopt New Priority Dates Pursuant to Patents is DENIED.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

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

Water Right Number: 39F 30129318 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GARMAN RANCH REVOCABLE TRUST
GARMAN, JOHN R & EILEEN E TRUSTEES
6261 HWY 323
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: NINEMILE 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		S2NE	10	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2SE	10	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		W2SW	11	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2NW	14	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SENW	14	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		E2SWNW	14	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
7 E2SW 14 8S 60E CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
8 E2NWSW 14 8S 60E 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			S2NE	10	8S	60E	CARTER
2			E2SE	10	8S	60E	CARTER
3			W2SW	11	8S	60E	CARTER
4			N2NW	14	8S	60E	CARTER
5			SEnw	14	8S	60E	CARTER
6			E2SWNW	14	8S	60E	CARTER
7			E2SW	14	8S	60E	CARTER
8			E2NWSW	14	8S	60E	CARTER

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

Water Right Number: 39F 30129319 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GARMAN RANCH REVOCABLE TRUST
GARMAN, JOHN R & EILEEN E TRUSTEES
6261 HWY 323
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: 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		NESW	8	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SENE	8	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNE	8	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NWSE	8	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		S2SE	8	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		SW	9	8S	60E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 7 S2N2NW 10 8S 60E CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 8 S2NW 10 8S 60E 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			NESW	8	8S	60E	CARTER
2			SEnw	8	8S	60E	CARTER
3			SWNE	8	8S	60E	CARTER
4			NWSE	8	8S	60E	CARTER
5			S2SE	8	8S	60E	CARTER
6			SW	9	8S	60E	CARTER
7			S2N2NW	10	8S	60E	CARTER
8			S2NW	10	8S	60E	CARTER

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

Water Right Number: 39F 30129320 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GARMAN RANCH REVOCABLE TRUST
GARMAN, JOHN R & EILEEN E TRUSTEES
6261 HWY 323
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.

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***Source Name:** SOUTH BUTTE CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF SOUTH BUTTE 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		N2NW	28	7S	60E	CARTER

***Source Name:** UNNAMED TRIBUTARY OF SOUTH BUTTE CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2	28	7S	60E	CARTER
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Source Name: SOUTH BUTTE 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			N2NW	28	7S	60E	CARTER
2			N2	28	7S	60E	CARTER