

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)

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CLAIMANTS: David J. Garman; Nicole E. Garman; Trevor  
Garman

CASE 39F-0007-I-2024  
39F 30139260

**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. David J. Garman, Nicole E. Garman, and Trevor Garman (the Garmans) are the record owners of claim 39F 30139260.

2. Claim 39F 30139260 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.

All issue remarks must be addressed.

3. A deadline was set for the Garmans to address the type of historical right issue remark decreed on claim 39F 30139260. (Doc.<sup>1</sup>1.00). On June 27, 2024, the Garmans filed a Notice of Objection and Request for Hearing form for Basin 39F. The Objection period in Basin 39F closed on January 23, 2024.<sup>2</sup> It appeared the Garmans intended the June 27, 2024 filing to be a response to the May 28, 2024 Order Setting Filing Deadline and it was taken as a response to the Order Setting Filing Deadline rather than an objection.

The June 27, 2024 filing indicated the following:

*Pursuant to the attached patents, the priority date should be changed to June 8, 1914.  
Claimants agree that the claim is a "use" right.*

Ten homestead patents were attached to the June 27, 2024 filing – the earliest dated June 3, 1914, and the latest dated June 28, 1939. A marked abstract attached to the June 27, 2024 filing suggests points of diversion and places of use may be related to the various patents. However, it was unclear how the Garmans determined that the proposed priority date for claim 39F 30139260 should be modified to June 8, 1914.

4. Another deadline was set for the Garmans to file evidence substantiating the priority date for claim 39F 30139260. (Doc. 4.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude that the Garmans agree

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

<sup>2</sup> The June 27, 2024 Garman filing suggests the Basin 39F Objection period closed on July 9, 2024, which is incorrect – this form does not appear to be an original objection form as it has typographical errors.

claim 39F 30139260 is a “use” right with a June 28, 1939 priority date (the latest patent submitted into the record).

5. On August 16, 2024, the Garmans moved for the Court to adopt the June 28, 1939 priority date for claim 39F 30139260. (Doc. 5.00).

6. A deadline was set for the Garmans to file additional evidence showing stock use on the place of use appurtenant to claim 39F 30139260 as of June 28, 1939. (Doc. 6.00).

7. On September 23, 2024, the Garmans filed a Motion to Adopt the June 28, 1939 priority date along with the Affidavit of Shane Garman. (Docs. 7.00 and 8.00). The Affidavit states the following, in part:

4. As a teenager, affiant worked for Danny Oliver who was the principal in Oliver Livestock Company. Oliver Livestock Company acquired this property from the Ball family whose patriarch was Ellis Ball who took title under a patent dated June 8, 1914 which is attached hereto as Exhibit A. Shelby Ball, another Ball family member took title to portions of the property by separate patents dated June 3, 1914 and December 3, 1915 and January 5, 1917, Exhibits B, C, & D hereto.

The Oliver family referred to this property as the “Ball place”. Affiant personally knew Danny Oliver who was the child of Joe Oliver who acquired the property from the Ball family. Affiant worked for Danny Oliver from 1985-1993 and was a pall bearer at Danny’s funeral. During this time he became familiar with the Oliver family history on this particular land and, in turn, the water on it. Specifically, Joe Oliver was one of the first in the Oliver family to own the land in the 1920's or 30's. The Oliver family ran sheep, horses, and cattle on this land for the entirety of their ownership.

(Doc. 8.00, pg. 2).

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient

basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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.

Shane Garman has sworn that claim 39F 30139260 has been used continually for stock purposes since the early 1900s. It is appropriate to modify the claim based on the information provided.

3. The issue remark indicating claim 39F 30139260 was not included in the 2019 decree in Basin 39F is a notice-type remark. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. Claim 39F 30139260 should be a “use” right and the priority date should be modified to June 28, 1939.

2. The issue remarks should be removed from claim 41S 30139260.

An abstract is enclosed for review.

**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 30139260 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID J GARMAN  
PO BOX 207  
BELLE FOURCHE, SD 57717  
  
NICOLE A GARMAN  
PO BOX 207  
BELLE FOURCHE, SD 57717-0207  
  
TREVOR J GARMAN  
PO BOX 207  
BELLE FOURCHE, SD 57717-0207

**Priority Date:** JUNE 28, 1939

**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:** HAY CREEK

**Source Type:** SURFACE WATER

**\*Source Name:** UNNAMED TRIBUTARY OF HAY 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	3	SW	30	6S	60E	CARTER

**Source Name:** HAY CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SWSE	30	6S	60E	CARTER
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**Source Name:** HAY CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		N2NE	31	6S	60E	CARTER
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**Source Name:** HAY CREEK

<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
4	W2NW 32 6S 60E CARTER
<b>*Source Name:</b>	UNNAMED TRIBUTARY OF HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
5	SWNWSE 32 6S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
6	W2 32 6S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
7	S2SE 32 6S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
8	W2NW 3 7S 60E CARTER
<b>*Source Name:</b>	UNNAMED TRIBUTARY OF HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
9	S2SWNW 3 7S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
10	NENWSW 3 7S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
11	N2SENE 4 7S 60E CARTER
<b>*Source Name:</b>	UNNAMED TRIBUTARY OF HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
12	NE 4 7S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE
13	N2NW 4 7S 60E CARTER
<b>Source Name:</b>	HAY CREEK
<b>Period of Diversion:</b>	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		3	SW	30	6S	60E	CARTER
2			SWSE	30	6S	60E	CARTER
3			N2NE	31	6S	60E	CARTER
4			W2NW	32	6S	60E	CARTER
5			SWNWSE	32	6S	60E	CARTER
6			W2	32	6S	60E	CARTER
7			S2SE	32	6S	60E	CARTER
8			W2NW	3	7S	60E	CARTER
9			S2SWNW	3	7S	60E	CARTER
10			NENWSW	3	7S	60E	CARTER
11			N2SENE	4	7S	60E	CARTER
12			NE	4	7S	60E	CARTER
13			N2NW	4	7S	60E	CARTER