

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)  
PRELIMINARY DECREE

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CLAIMANT: Glynn Ranch Inc.

OBJECTOR: State of Montana (Attorney General)

**CASE 40A-0354-R-2022**  
40A 27143-00

**ORDER GRANTING SUMMARY JUDGMENT AND CLOSING CASE**

On May 23, 2025, Objector, State of Montana, Attorney General (“AG”) filed its Second Motion for Summary Judgment (“the Motion”). This Order addresses the Motion and closes proceedings in this case.

**BACKGROUND**

Claim 40A 27143-00 is owned by Glynn Ranch, Inc. (“Glynn”). The claim is for 30 acres of irrigation in the S2 of Section 2, Township 6N, Range 12E using water diverted in Section 3, Township 6N, Range 12E. The claim was included in the Preliminary Decree for Basin 40A with an issue remark indicating the Department of Natural Resources and Conservation (“DNRC”) questioned the point of diversion and could not identify the headgate and ditch.

The Statement of Claim for 40A 27143-00 lists a June 2, 1903 right decreed to Mattie A. Campbell for 1.20 CFS from “Dry Creek (or Cinnamon Creek)”, based on a 1911 Meagher County District Court Decree. During the DNRC examination of the claim, the source was modified to “Cinnamon Creek” and appeared in the Preliminary Decree as such.<sup>1</sup>

<sup>1</sup> The claim file which includes the original Statement of Claim filing and DNRC claim examination records are publicly available at: <https://gis.dnrc.mt.gov/apps/WRQS/>

The Water Master required Glynn to work with the DNRC to resolve the issue remark concerning the point of diversion, headgate and ditch. (Doc. 3.00).<sup>2</sup> In a June 26, 2023 filing, Glynn indicated it believed the point of diversion was correct, but that the place of use should be in Section 1, Township 6N, Range 12E. (Doc. 7.00). DNRC also reported the issue remark remained unresolved. (Doc. 4.00). Therefore, to resolve the issues, the Water Court ordered a DNRC Field Investigation. (Doc. 8.00).

DNRC Water Resource Specialist, Brandon Ahlgren, filed a Memorandum to report on the Field Investigation with Glynn. (Doc. 11.00). Ahlgren concluded the ditch could not convey water to place of use in Section 2, as claimed, nor to the place of use in Section 1, as suggested in Glynn's June 27, 2023 filing.

Ahlgren's Memorandum also noted the naming of sources in the area appeared to have changed over time. The names of creeks in the 1949 Water Resource Survey differ from names identified on the 1984 USGS map and may also differ from the 1911 Meagher County Decree. Ahlgren also reported that a post-Field Investigation review of Google Earth photos indicated the potential existence of a different ditch that could be the historical diversion. *Id.*

After the Field Investigation failed to produce information to resolve the issue remark, the Water Court joined the State of Montana Attorney General ("AG"), pursuant to § 85-2-248(7), MCA, requiring joinder of the AG when there is an unresolved issue that implicates nonperfection or abandonment. (Doc. 12.00).

According to the AG, a second Field Investigation was conducted with Ahlgren, Glynn and the AG to review the potential ditch Ahlgren identified on Google Earth photos. *See* (Doc. 22.00). However, during the Field Investigation, it was determined that what had appeared to be a ditch was likely a cattle trail. Thus, no further information was discovered to resolve the issue remark and the case was placed on a Scheduling Order. (Doc. 20.00).

In the Scheduling Order, Glynn was provided until December 6, 2024, to retain an attorney pursuant to Rule 16(c), W.R.Adj.R. (Doc. 20.00). The Scheduling Order stated,

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<sup>2</sup> As used in this Order, the abbreviation "Doc." refers to the document sequence number in the Court's Full Court Enterprise case management system.

“If Glynn Ranch Inc. fails to comply with the attorney representation requirement stated above, it will not be allowed to present a case at hearing or submit any filings to the Water Court and it may also be subject to sanctions up to and including termination of the water right claim.” *Id.* (citing Rule 22, W.R.Adj.R.). Glynn did not hire representation.

On January 3, 2025, the AG filed a Motion for Summary Judgment, requesting an order that claim 40A 27143-00 be dismissed based on non-perfection. (Doc. 22.00). The Motion was denied as the summary judgement standard set forth in Rule 56(c), M.R.Civ.P. was not met on non-perfection. A status conference was held on April 24, 2025 and Glynn Ranch did not attend. At the conference, the AG requested additional time to file a second Motion for Summary Judgment. The AG filed its Second Motion for Summary Judgment requesting an order that claim 40A 27143-00 was abandoned and should be dismissed. (Doc. 25.00). Glynn did not respond.

#### *Summary Judgment Standard*

Summary judgment is proper when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” M. R. Civ. P. 56(c)(3). A material fact is one that involves the elements of the cause of action or defense at issue to such an extent that it requires resolution of the issue by a trier of fact. *Williams v. Plum Creek Timber Co.*, 2011 MT 271, ¶ 14, 362 Mont. 368, 264 P.3d 1090. In determining whether a material fact exists, the court must view the evidence in the light most favorable to the non-moving party. *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 38, 345 Mont. 12, 192 P.3d 186.

The purpose of Rule 56, M.R.Civ.P. is to dispose promptly of actions in which there is no genuine issue of material fact. *Silloway v. Jorgensen*, 146 Mont. 307, 406 P.2d 167 (1965). However, the court has a duty to deny motions for summary judgment, even if there is no response, when a genuine issue of material fact still exists. *Cole v. Flathead Cty.*, 236 Mont 412, 415, 771 P.2d 97, 100 (1988) (citing *Krusemark v. Hansen*, 186 Mont. 174, 175, 606 P.2d 1082, 1084 (1980)).

### *Abandonment*

The AG argues claim 40A 27143-00 was abandoned and should be dismissed.

“A finding of abandonment requires showing both nonuse and intent to abandon.”

*Heavirland v. State*, 2013 MT 313, ¶ 23, 372 Mont. 300, 311 P.3d 813.

The Supreme Court has refined the abandonment standard as applied to existing (i.e. pre-July 1, 1973) water rights by assuming a long period of water nonuse creates a rebuttable presumption of intent to abandon the water right. The burden rests with the party asserting abandonment to prove a sufficiently long period of continuous nonuse to create this rebuttable presumption. If the presumption is established by lengthy non-use, the burden shifts to the appropriator to prove a lack of intent to abandon.

*In re Claimant: Red Dog Ranch LLC*, 2025 Mont. Water LEXIS at \*6 (internal citations omitted). “Ultimately, whether a water right is abandoned is a question of fact that depends on the conduct, acts, and intent of the parties claiming the usufruct of the water.” *Id.* Questions of abandonment may arise out of DNRC issue remarks. *Heavirland*, ¶ 6.

### **APPLICATION**

Claim 40A 27143-00 is based on a 1911 water right decreed to Mattie A. Campbell for 1.20 CFS from Dry Creek. See *Claim File for 40A 27143-00*. The decree described the right as diverted at a point on the right bank near the center Section 4, Township 6 North, Range 12 East, running easterly. The Statement of Claim for 40A 27143-00 listed the source as “Dry Creek (Cinnamon Creek).” *Id.*

There has been significant confusion over the source based on inconsistent naming and/or changing of the names of creeks. The first DNRC Memorandum opined that the source was “Cinnamon Creek,” referred to today as “Station Creek.” (Doc. 11.00). The AG agrees with this analysis and concludes that the place of use must be able to be irrigated by what was known as Cinnamon Creek. (Doc. 25.00).

The first field investigation conducted by DNRC concluded water could not reach the place of use. (Doc. 11.00). While reviewing maps, DNRC identified a potential ditch and conducted a second field investigation. *Id.* However, the second field investigation concluded the potential ditch was actually a cow trail, not a ditch. (Doc. 20.00). There is

no evidence regarding how water from Cinnamon Creek (i.e. Station Creek) reaches the claimed place of use.

The AG asserts “If the Water Right was ever used, it has not been used for a significant amount of time, at least long enough time for any conveyance system that may have existed to disappear from the landscape and records, i.e. 1949.” There is no evidence in the record how water was or is conveyed to the claimed place of use. It is unclear when water was conveyed from Cinnamon Creek to the place of use. This is enough to establish a long period of non-use, long enough to raise a rebuttable presumption of abandonment. The burden shifted to Glynn Ranch to rebut the presumption of abandonment. However, Glynn lost the opportunity to file documents in this case and has not otherwise filed any evidence sufficient to explain how water is conveyed or resolve the issue remark. Ultimately, there is no evidence to rebut the presumption of abandonment.

The AG requests an order that claim 40A 27143-00 is abandoned and dismissed.

### **ORDER**

Therefore, it is

ORDERED the AG’s Second Motion for Summary Judgment is GRANTED.

ORDERED that claim 40A 27143-00 is deemed abandoned and is DISMISSED.

ORDERED that this case is closed.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

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**Note: Service List Updated 7-1-25**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, ABOVE ROUNDUP  
BASIN 40A**

**Water Right Number:**      **40A 27143-00**    STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:**      **DISMISSED**

**Owners:**                      GLYNN RANCH INC  
   202 WESTVIEW  
   MISSOULA, MT 59803

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):**                      IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:**                      CINNAMON CREEK

**Source Type:**                      SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.