

Montana Water Court
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FILED
10/06/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42M-0006-I-2023
Stern, Anika
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER BELOW POWDER RIVER - BASIN (42M)
INTERLOCUTORY DECREE

* * * * *

CLAIMANT: ~~Montana State Board of Land Commissioners;~~
United States of America (Bureau of Land Management)

CASE 42M-0006-I-2023
42M 30142597

OBJECTOR: United States of America (Bureau of Land
Management)

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. Exempt stock claim 42M 30142597 was decreed with a notice-type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42M DECREE ISSUED 01/24/2014.

2. The United States of America (Bureau of Land Management) objected to claim 42M 30142597, stating:

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based.

42M 30142597 is a Bureau of Land Management (BLM) water right claim that was split to create 42M 30152743 in 2021 when certain lands in the place of use were transferred to the State of Montana. 42M 30142597 retains the points of diversion and places of use on federal land, while 42M 30152743 contains the points of diversion and places of use on what is now state land. The abstracts generated after the split erroneously list the Montana State Board of Land Commissioners as the owner of 42M 30142597. Ownership should be corrected to the United States of America (Bureau of Land Management).

3. As the DNRC handles ownership changes and can correct ownership errors it may have made in splitting claim 42M 30142597, it was unclear how the Bureau of Land Management intended to resolve its Objection at the Water Court. An Order was issued on September 18, 2023 setting a deadline for the Bureau of Land Management to file a statement indicating how the Objection to claim 42M 30142597 should be resolved.

4. On September 28, 2023, the Bureau of Land Management confirmed ownership of claim 42M 30142597 has been updated and the Objection to claim 42M 30142597 “may be deemed resolved or withdrawn.”

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim as well as any objections filed. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. The issue remark stating claim 42M 30142597 was not included in the 2014 Decree has served its notice purpose. As the Objection to claim 42M 30142597 has been resolved, the issue remark can be removed from the claim.

RECOMMENDATION

1. The issue remark should be removed from 42M 30142597.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Judith E. Coleman
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PO Box 7611
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Service via USPS Mail:

Montana State Board of Land Commissioners
Trust Land Management Division
P.O. Box 201601
Helena, MT 59620-1601
(Last Order)

Caption and Service List Updated: 10/6/2023

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, BELOW POWDER RIVER
BASIN 42M

Water Right Number: 42M 30142597 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

Priority Date: JULY 11, 1935

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 STOCK WATERING 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: YELLOWSTONE RIVER

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		SE	11	12N	51E	PRAIRIE
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2	3		11	12N	51E	PRAIRIE
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3	4		11	12N	51E	PRAIRIE
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4	1		18	12N	52E	PRAIRIE
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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SE	11	12N	51E	PRAIRIE
2		3		11	12N	51E	PRAIRIE
3		4		11	12N	51E	PRAIRIE
4		1		18	12N	52E	PRAIRIE

Remarks:

SPLIT CLAIM NO. 42M 30152743 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3239 AND GRAZING ALLOTMENT MT01254.