

Montana Water Court
P. O. Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANTS: Burt J. Keltner; United States of America (Bureau
of Land Management)

CASE 42M-0013-I-2023

42M 30107244

42M 30142533

42M 30142536

42M 30142537

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. Burt J. Keltner is the record owner of claim 42M 30107244. The United States of America, Bureau of Land Management (BLM) is the record owner of claims 42M 30142533, 42M 30142536, and 42M 30142537.

2. The claims in Case 42M-0013-I-2023 were decreed with the following DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42M DECREE ISSUED 01/24/2014.
THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO
CLAIM OVERLAPPING PLACES OF USE. 30107244, 30142537, 30142533, 30142536.

3. Claimants Keltner and BLM filed a Stipulation on January 24, 2024, addressing the overlapping place of use issue. (Doc.¹6.00). The Stipulation states:

D. Most of the federal land included in the place of use for claim 42M 30107244 is part of the Deer Creek AMP grazing allotment (MT01329), for which Keltner is the federal permittee. Other federal land included in the place of use for claim 42M 30107244 is within the Windmill AMP allotment (MT01356) or the Renn Place allotment (MT01347), for which Keltner is not the permittee. Keltner asserts that the current fencing alignment on the allotments does not reflect what existed historically and may change in the future as needed for efficient livestock management.

The parties agree an information remark should be added to claim 42M 30107244, addressing the overlapping place of use issue on the claims in this Case:

THE CLAIMANT’S LIVESTOCK CAN ACCESS ONLY THE STRETCHES OF CABIN CREEK,
WITHIN THE DESCRIBED POINT OF DIVERSION AND PLACES OF USE, WHICH THEY
ARE AUTHORIZED TO USE THROUGH FEDERAL GRAZING ALLOTMENT PERMIT(S).

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.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

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. The remark indicating the claims in Case 42M-0013-I-2023 were not included in the 2014 decree have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The following information remark should be added to claim 42M 30107244:

THE CLAIMANT'S LIVESTOCK CAN ACCESS ONLY THE STRETCHES OF CABIN CREEK, WITHIN THE DESCRIBED POINT OF DIVERSION AND PLACES OF USE, WHICH THEY ARE AUTHORIZED TO USE THROUGH FEDERAL GRAZING ALLOTMENT PERMIT(S).

2. The issue remarks should be removed from claims 42M 30107244, 42M 30142533, 42M 30142536, and 42M 30142537.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Burt J. Keltner
2202 Cabin Creek Rd.
Ismay, MT 59336-7001
bjkeltner@yahoo.com

Service Via Electronic Mail:

Judith E. Coleman
U.S. Dept of Justice, ENRD-NRS
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3553
Judith.Coleman@usdoj.gov
MontanaBasins.ENRD@usdoj.gov

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

Water Right Number: 42M 30107244 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BURT J KELTNER
2202 CABIN CREEK RD
ISMAY, MT 59336-7001

***Priority Date:** DECEMBER 31, 1889

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: CABIN CREEK

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		SWSWSE	15	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2SW	15	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		N2NE	22	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SENE	22	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		E2NW	22	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		W2NW	22	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	NESE	22	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	SWNW	23	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	SE	23	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	SW	23	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11	SESE	24	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	W2SE	24	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
13	SW	24	11N	56E	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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSE	15	11N	56E	PRAIRIE
2			S2SW	15	11N	56E	PRAIRIE
3			N2NE	22	11N	56E	PRAIRIE
4			SENE	22	11N	56E	PRAIRIE
5			E2NW	22	11N	56E	PRAIRIE
6			W2NW	22	11N	56E	PRAIRIE
7			NESE	22	11N	56E	PRAIRIE
8			SWNW	23	11N	56E	PRAIRIE
9			SE	23	11N	56E	PRAIRIE
10			SW	23	11N	56E	PRAIRIE
11			SESE	24	11N	56E	PRAIRIE
12			W2SE	24	11N	56E	PRAIRIE
13			SW	24	11N	56E	PRAIRIE

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS.
THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE
FOLLOWING PRIVATE LANDS: S2; NE; E2NW SEC 22; SW SEC 23; W2W2 SEC 26 TWP
11N RGE 56E.

Remarks:

THE CLAIMANT'S LIVESTOCK CAN ACCESS ONLY THE STRETCHES OF CABIN CREEK, WITHIN THE DESCRIBED POINT OF DIVERSION AND PLACES OF USE, WHICH THEY ARE AUTHORIZED TO USE THROUGH FEDERAL GRAZING ALLOTMENT PERMIT(S).

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

Water Right Number: 42M 30142533 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

Priority Date: APRIL 8, 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: CABIN CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF COW CREEK

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	23	11N	56E	PRAIRIE
Source Name:		CABIN CREEK				
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
2		SWNW	23	11N	56E	PRAIRIE
Source Name:		CABIN CREEK				
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
3		SESE	24	11N	56E	PRAIRIE
Source Name:		CABIN CREEK				
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
4		NWNENE	25	11N	56E	PRAIRIE
Source Name:		CABIN CREEK				
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				

5 NWNW 25 11N 56E PRAIRIE

***Source Name:** UNNAMED TRIBUTARY OF COW CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6 NENE 26 11N 56E PRAIRIE

Source Name: CABIN 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			SE	23	11N	56E	PRAIRIE
2			SWNW	23	11N	56E	PRAIRIE
3			SESE	24	11N	56E	PRAIRIE
4			NWNENE	25	11N	56E	PRAIRIE
5			NWNW	25	11N	56E	PRAIRIE
6			NENE	26	11N	56E	PRAIRIE

Remarks:

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3175 AND GRAZING ALLOTMENT MT01329.

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

Water Right Number: 42M 30142536 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

Priority Date: APRIL 8, 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: CABIN CREEK

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		NENENE	1	11N	55E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SENE	1	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNE	8	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NENW	8	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NESE	8	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		SWSW	9	11N	56E	PRAIRIE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7 15 11N 56E PRAIRIE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

8 NWNENE 1 11N 55E 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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENENE	1	11N	55E	PRAIRIE
2			SENE	1	11N	56E	PRAIRIE
3			SWNE	8	11N	56E	PRAIRIE
4			NENW	8	11N	56E	PRAIRIE
5			NESE	8	11N	56E	PRAIRIE
6			SWSW	9	11N	56E	PRAIRIE
7				15	11N	56E	PRAIRIE
8			NWNENE	1	11N	55E	PRAIRIE

Remarks:

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3178 AND GRAZING ALLOTMENT MT01347.

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

Water Right Number: 42M 30142537 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

Priority Date: APRIL 8, 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: CABIN 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		SWSWSW	15	11N	56E	PRAIRIE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		W2NW	22	11N	56E	PRAIRIE
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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			SWSWSW	15	11N	56E	PRAIRIE
2			W2NW	22	11N	56E	PRAIRIE

Remarks:

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3179 AND GRAZING ALLOTMENT MT01356.