

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

\*\*\*\*\*

CLAIMANTS: Alvin Hoff; Dena Hoff

**CASE 42M-0018-I-2023**

42M 30133477

42M 30133482

42M 30133484

**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. Alvin Hoff and Dena Hoff are the record owners of claims 42M 30133477, 42M 30133482, and 42M 30133484.

2. Claims 42M 30133477, 42M 30133482, and 42M 30133484 were decreed with DNRC issue remarks.

3. The Claimants were ordered to meet with the DNRC to address the following issue remarks:

**42M 30133477:**

THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS HAVE STATED DIFFERENT FLOW RATES. IT APPEARS THE FLOW RATE SHOULD BE THE CAPACITY OF THE PUMP. 30133477, 30133482.

ONLY .80 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 20.28 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES.

**42M 30133482:**

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS HAVE STATED DIFFERENT FLOW RATES. IT APPEARS THE FLOW RATE SHOULD BE THE CAPACITY OF THE PUMP. 30133482, 30133477.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE CLAIMED PLACE OF USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

4. The claims were also decreed with a notice-type remark indicating they were not included in the 2014 decree in Basin 42M.

5. On November 13, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum stating he was contacted by Alvin Hoff. (Doc.<sup>1</sup> 2.00). Mr. Hartwell explained that he reviewed the claim files and discussed the claims with Mr. Hoff to prepare the Memorandum.

6. During his discussion with Mr. Hoff, Mr. Hartwell confirmed that domestic claim 42M 30133477 and stock claim 42M 30133482 describe two separate wells and they are not multiple uses of the same claim.

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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.

7. Mr. Hartwell also explained that although 5.00 acres was decreed by claim 42M 30133477, “only .1 acres is all the lawn and garden that has been irrigated.”

8. According to information provided by Mr. Hoff to the DNRC, the flow rate for claim 42M 30133477 is 6.00 gallons per minute.

9. Pursuant to the information provided in the Memorandum, the place of use legal land description for claim 42M 30133482 should match the point of diversion – NENENWNE of Section 29, Township 15 North, Range 55 East, Dawson County.

10. A deadline was set for Claimants Alvin Hoff and Dena Hoff to agree or disagree with Mr. Hartwell’s Recommendations. The Order Setting Filing Deadline indicated that if nothing were filed by the deadline, this Water Master would conclude Claimants Alvin Hoff and Dena Hoff agree with Mr. Hartwell’s recommendations. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

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. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The issue remark indicating claims 42M 30133477, 42M 30133482, and 42M 30133484 were not included in the 2014 decree are notice-type remarks. No objections were filed, and no further proceedings are required.

**RECOMMENDATIONS**

1. Claim 42M 30133477 should be modified as follows:

<b>Flow Rate:</b>	<del>1.10 GPM</del>	<b>8.00 GPM</b>					
<b>Maximum Acres:</b>	<del>5.00</del>	<b>.10</b>					
<b>*Place of Use:</b>							
<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	<b>.10</b>	<del>5.00</del>		NENWNE	29	15N	55E DAWSON
<b>Total:</b>	<b>.10</b>	<del>5.00</del>					

THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY NO. 986.

Claim 42M 30133482 should be modified as follows:

<b>Place of Use:</b>							
<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			<b>NENENWNE</b>	29	15N	55E	DAWSON

THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY NO. 986.

2. The issue remarks should be removed from claims 42M 30133477, 42M 30133482, and 42M 30133484.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Alvin Hoff  
 Dena Hoff  
 426 Rd. 261  
 Glendive, MT 59330

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

**Water Right Number:** 42M 30133477 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** ALVIN HOFF  
426 RD 261  
GLEN DIVE, MT 59330

DENA HOFF  
426 RD 261  
GLEN DIVE, MT 59330

**\*Priority Date:** DECEMBER 31, 1942

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 6.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 0.10

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**\*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		NENWNE	29	15N	55E	DAWSON

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

**Diversion Means:** WELL

THE POINT OF DIVERSION IS LOCATED IN CERTIFICATE OF SURVEY NO. 986.

**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	0.10		NENWNE	29	15N	55E	DAWSON

**Total:** 0.10

THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY NO. 986.

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

**Water Right Number:** 42M 30133482 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** ALVIN HOFF  
426 RD 261  
GLENDDIVE, MT 59330

DENA HOFF  
426 RD 261  
GLENDDIVE, MT 59330

**\*Priority Date:** DECEMBER 31, 1942

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 6.28 GPM

**\*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:** GROUNDWATER

**Source Type:** GROUNDWATER

**\*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			29	15N	55E	DAWSON

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

**Diversion Means:** WELL

THE POINT OF DIVERSION IS LOCATED IN CERTIFICATE OF SURVEY NO. 986.

**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			NENENWNE	29	15N	55E	DAWSON

THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY NO. 986.

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

**Water Right Number:** 42M 30133484 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** ALVIN HOFF  
426 RD 261  
GLENDDIVE, MT 59330

DENA HOFF  
426 RD 261  
GLENDDIVE, MT 59330

**\*Priority Date:** DECEMBER 31, 1960

**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:** SPRING, UNNAMED TRIBUTARY OF SAND 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		SWSENW	29	15N	55E	DAWSON

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LOCATED IN FARM UNIT #110.

**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			SWSENW	29	15N	55E	DAWSON

THE PLACE OF USE IS LOCATED IN FARM UNIT #110.