

Montana Water Court  
PO 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  
BASIN (42M) INTERLOCUTORY DECREE

CLAIMANTS: David G. Winchell; Thomas J. Winchell

**CASE 42M-0032-I-2023**

42M 30133498

42M 30133505

42M 30133508

**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 G. Winchell and Thomas J. Winchell are the record owners of claims 42M 30133498, 42M 30133505, and 42M 30133508.

2. Claims 42M 30133498 and 42M 30133508 were decreed with the following DNRC issue remarks:

**42M 30133498:**

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

**42M 30133508:**

ONLY .1 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.  
VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Additionally, claims 42M 30133498, 42M 30133505, and 42M 30133508 were decreed with a remark indicating they were not included in the 2014 decree in Basin 42M.

3. Claimants David G. Winchell and Thomas J. Winchell were ordered to meet with the DNRC to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Ryan Hartwell filed Memorandums stating he discussed the issue remarks with Claimant David G. Winchell. (Doc. 2.00 and 4.00).

Based on information in the claim files, information provided by David G. Winchell, and aerial photographs, Mr. Hartwell made the following recommendations for the disposition of the issue remarks.

**42M 30133498:**

Type of Historical Right: FILED  USE

**42M 30133505:**

No issue remark to be resolved.

**42M 30133508:**

Volume: ~~7.00 AC-FT~~  8.50 AC-FT   
Maximum Acres: ~~4.00~~  2.00

5. To determine if Claimants David G. Winchell and Thomas J. Winchell agreed with the recommended changes, an Order was issued, setting a deadline for the

Claimants to agree or disagree with the changes recommended by Mr. Hartwell. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimant agreed with the recommended changes. The following language was included in the Order:

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.

#### 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. The issue remark indicating claims 42M 30133498, 42M 30133505, and 42M 30133508 were not included in the 2014 decree are notice-type remarks. No objections were filed, and no further proceedings are required.

#### RECOMMENDATIONS

1. Claims 42M 30133498 and 42M 30133508 should be modified as shown in Finding of Fact No. 4.
2. The issue remarks should be removed from claims 42M 30133498, 42M 30133505, and 42M 30133508.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

David G. Winchell  
119 Glenwood Ave  
Glendive, MT 59330-2809

Thomas J. Winchell  
114 Hillcrest Ave.  
Glendive, MT 59330-2815

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

**Water Right Number:** 42M 30133498 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID G WINCHELL  
119 GLENWOOD AVE  
GLEN DIVE, MT 59330-2809

**\*Priority Date:** DECEMBER 31, 1930

**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:** LOWER SEVENMILE 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		SWSWSE	31	18N	55E	DAWSON
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
2		SESW	31	18N	55E	DAWSON
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
3		W2SW	31	18N	55E	DAWSON
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		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	31	18N	55E	DAWSON
2			SESW	31	18N	55E	DAWSON
3			W2SW	31	18N	55E	DAWSON

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

**Water Right Number:** 42M 30133505 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID G WINCHELL  
119 GLENWOOD AVE  
GLEN DIVE, MT 59330-2809

THOMAS J WINCHELL  
114 HILLCREST AVE  
GLEN DIVE, MT 59330-2815

**\*Priority Date:** DECEMBER 31, 1930

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** 8.00 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		SENWSW	31	18N	55E	DAWSON

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

**Diversion Means:** WELL

**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			SENWSW	31	18N	55E	DAWSON

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

**Water Right Number:** 42M 30133508 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID G WINCHELL  
119 GLENWOOD AVE  
GLEN DIVE, MT 59330-2809

THOMAS J WINCHELL  
114 HILLCREST AVE  
GLEN DIVE, MT 59330-2815

**\*Priority Date:** DECEMBER 31, 1930

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 8.00 GPM

**Volume:** 6.50 AC-FT

**Households:** 1

**Maximum Acres:** 2.00

**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		NENWSW	31	18N	55E	DAWSON

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

**Diversion Means:** WELL

**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	2.00		NENWSW	31	18N	55E	DAWSON

**Total:** 2.00