

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: Tim D. Larson; Brenda Larson

CASE 42M-0033-I-2023

42M 30133612

42M 30133614

42M 30133615

42M 30133616

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. Tim D. Larson and Brenda Larson are the record owners of claims 42M 30133612, 42M 30133614, 42M 30133615, and 42M 30133616.

2. Claims 42M 30133612, 42M 30133614, 42M 30133615, and 42M 30133616 were decreed with DNRC issue remarks:

42M 30133612:

NO PLACE OF USE HAS BEEN CLAIMED.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

42M 30133614:

THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222 (1), MCA.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

42M 30133615:

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

42M 30133616:

THE FLOW RATE HAS NOT BEEN EXAMINED AS NO UNIT OF MEASURE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

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

3. Claimants Tim D. Larson and Brenda Larson were ordered to meet with the DNRC to address the unresolved issue remarks.

4. On November 17, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum stating he was not contacted by the Claimants. (Doc. 2.00). Mr. Hartwell indicated he reviewed the claim files as the basis for his recommendations.

42M 30133612:

The Statement of Claim for 42M 30133612 indicated the point of diversion is in the SWNW of Section 24, T23N, R57E. The DNRC modified the point of diversion to the following:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNW	24	23N	57E	RICHLAND

Claimants Tim D. Larson and Brenda Larson did not claim a place of use on the Statement of Claim.

In the Memorandum, Mr. Hartwell states:

On June 24, 2019 a claim form was submitted by Tim D. Larson & Brenda Larson. The top left corner of page 1 of the claim form he provided is marked with a handwritten “#1”, which appears to comport with the location marked “#1” on the map submitted with the claim. See Exhibit 1 & 2. With this information, point of diversion can be determined. No place of use is marked on the original claim form and no other marking on the map coordinates with the number marked on the claim form. Since this is a groundwater well for watering stock, it’s likely that the Place of Use is the surrounding property, on which, the POD is specified. The place of use land description should read, “NWSWNW Section 24, T23N, R57E.”

Additionally, claimants Tim D. Larson and Brenda Larson did not claim a type of historical right on the Statement of Claim. Mr. Hartwell recommends the type of historical right be “use.”

42M 30133614:

Claimants Tim D. Larson and Brenda Larson claimed a “1980” priority date on the Statement of Claim for claim 42M 30133614. Mr. Hartwell recommends the dismissal of claim 42M 30133614 as it does not meet the definition of an exempt claim.

42M 30133615:

Claimants Tim D. Larson and Brenda Larson did not claim a type of historical right on the Statement of Claim. Mr. Hartwell recommends the type of historical right be “use.”

42M 30133616:

No unit of measure (gallon per minute/cubic feet per second) was provided on the claim form. Mr. Hartwell recommends the flow rate be reduced to the 35.00 gallon per minute (gpm) guideline.

Claimants Tim D. Larson and Brenda Larson did not claim a type of historical right on the Statement of Claim. Mr. Hartwell recommends the type of historical right be “use.”

5. To determine if Claimants Tim D. Larson and Brenda Larson agreed or disagreed with the recommended modifications, an Order was issued, setting a deadline for the Claimants to agree or disagree with the modifications recommended by Mr.

Hartwell. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agree the following modifications should be made to the claims in this Case:

42M 30133612:

Type of Historical Right: USE

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
			NWSWNW	24	23N	57E	RICHLAND

42M 30133614:

Claim should be dismissed.

42M 30133615:

Type of Historical Right: USE

42M 30133616:

Type of Historical Right: USE

Flow Rate: ~~40.00~~ 35.00 GPM

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 remarks indicating claims 42M 30133612, 42M 30133614, 42M 30133615, and 42M 30133616 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 30133612 should be modified as follows:

Type of Historical Right: USE

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
			NWSWNW	24	23N	57E	RICHLAND

Claim 42M 30133615 should be modified as follows:

Type of Historical Right: USE

And claim 42M 30133616 should be modified as follows:

Type of Historical Right: USE

Flow Rate: ~~40.00~~ 35.00 GPM

2. Claim 42M 30133614-00 should be dismissed.
3. The issue remarks should be removed from claims 42M 30133612, 42M 30133615, and 42M 30133616.

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

Service via USPS Mail:

Tim D. Larson
Brenda Larson
34128 County Road 127
Sidney, MT 59270-3559

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

Water Right Number: 42M 30133612 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BRENDA LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

TIM D LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

***Priority Date:** DECEMBER 31, 1932

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 10.00 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		NWSWNW	24	23N	57E	RICHLAND

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			NWSWNW	24	23N	57E	RICHLAND

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

Water Right Number: 42M 30133614 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: BRENDA LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

TIM D LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 42M 30133615 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BRENDA LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

TIM D LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

***Priority Date:** DECEMBER 31, 1935

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 10.00 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		NENENE	26	23N	57E	RICHLAND

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			NENENE	26	23N	57E	RICHLAND

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

Water Right Number: 42M 30133616 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BRENDA LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

TIM D LARSON
34128 COUNTY ROAD 127
SIDNEY, MT 59270-3559

***Priority Date:** DECEMBER 31, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 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		NWSESW	26	23N	57E	RICHLAND

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			NWSESW	26	23N	57E	RICHLAND