

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, YELLOWSTONE RIVER BELOW
POWDER RIVER
BASIN (42M) INTERLOCUTORY DECREE

CLAIMANT: Hot Bar Land & Cattle Co.

CASE 42M-0037-I-2023

42M 30133733

42M 30134074

42M 30134078

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. Hot Bar Land & Cattle Co. (Hot Bar) is the record owner of claims 42M 30133733, 42M 30134074, and 42M 30134078.

2. Claims 42M 30133733, 42M 30134074, and 42M 30134078 were decreed with DNRC issue remarks:

Claim 42M 30133733:

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

NO PERIOD OF USE WAS CLAIMED.

NO PRIORITY DATE WAS CLAIMED.

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

Claim 42M 30134074:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 25 GPM.

THE CLAIMED VOLUME EXCEEDS THE 6.50 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

Claim 42M 30134078:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 25 GPM.

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

3. Hot Bar was ordered to meet with the DNRC to address the unresolved issue remarks.

4. On November 16, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum stating he discussed the issue remarks with Shana Baisch, a representative of Claimant Hot Bar Land & Cattle Co. (Doc.¹2.00). Mr. Hartwell indicated that information in the claim files and his discussion with Shana Baisch served as the primary data sources for the Memorandum.

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

Based on his discussion with Ms. Baisch, Mr. Hartwell recommended the following changes be made to claims 42M 30133733, 42M 30134074, and 42M 30134078, addressing the unresolved issue remarks:

Claim 42M 30133733:

Priority Date: 12/31/1960
Type of Historical Right: FILED
Flow Rate: 18.00 GPM
Period of Use: JANUARY 1 TO DECEMBER 31

Claim 42M 30134074:

Flow Rate: ~~35.00 GPM~~ 25.00 GPM
Volume: ~~7.00 AC-FT~~ 6.50 AC-FT

Claim 42M 30134078:

Flow Rate: ~~35.00 GPM~~ 25.00 GPM

5. To determine if Claimant Hot Bar agreed with the recommended changes, an Order was issued, setting a deadline for Hot Bar 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.

6. On December 5, 2023, Shana Baisch filed an email with the following subject: **Subject:** [EXTERNAL] case # 42M-0037-I-2023 (#1 of 3 emails)
The content of the email addressed claims in Case 42M-0038-I-2023, also involving Hot Bar. It appears the subject line unintentionally referenced Case 42M-0037-I-2023. Shana Baisch did not address claims 42M 30133733, 42M 30134074, and 42M 30134078 in the December 5, 2023 response.

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 30133733, 42M 30134074, and 42M 30134078 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 30133733 should be modified as follows:

Priority Date: 12/31/1980
Type of Historical Right: FILED
Flow Rate: 18.00 GPM
Period of Use: JANUARY 1 TO DECEMBER 31

Claim 42M 30134074 should be modified as follows:

Flow Rate: 36.00 GPM 25.00 GPM
Volume: 7.00 AC-FT 6.50 AC-FT

And claim 42M 30134078 should be modified as follows:

Flow Rate: 36.00 GPM 25.00 GPM

2. The issue remarks should be removed from claims 42M 30133733, 42M 30134074, and 42M 30134078.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Hot Bar Land & Cattle Co.
323 Rd. 300
Glendive, MT 59330-9258

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

Water Right Number: 42M 30133733 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: HOT BAR LAND & CATTLE CO
323 RD 300
GLEN DIVE, MT 59330 9258

Priority Date: DECEMBER 31, 1960

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 18.00 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
ALSO KNOWN AS KRUG CREEK FLOWING WELL
FLOWING ARTESIAN WELL

***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	1	NENE	3	15N	56E	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		1	NENE	3	15N	56E	DAWSON

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

Water Right Number: 42M 30134074 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HOT BAR LAND & CATTLE CO
323 RD 300
GLENDDIVE, MT 59330 9258

Priority Date: JANUARY 1, 1958

***Type of Historical Right:** FILED

Purpose (use): DOMESTIC

Flow Rate: 25.00 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		SESESW	28	16N	56E	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		SESESW	28	16N	56E	DAWSON
Total:	2.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30134074

30134078

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

Water Right Number: 42M 30134078 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: HOT BAR LAND & CATTLE CO
323 RD 300
GLENDDIVE, MT 59330 9258

Priority Date: JANUARY 1, 1958

***Type of Historical Right:** FILED

Purpose (use): STOCK

Flow Rate: 25.00 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		SESESW	28	16N	56E	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			SESESW	28	16N	56E	DAWSON

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30134074

30134078