

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

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CLAIMANT: Hart Family Trust

CASE 42M-0039-I-2023  
42M 30133912

**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. The record owner of stock claim 42M 30133912 is the Hart Family Trust.

2. Claim 42M 30133912 was decreed with the following DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42M DECREE ISSUED 01/24/2014.  
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.

3. The first-listed issue remark is a notice-type remark and does not require further attention.

4. Claimant Hart Family Trust included the following on the July 1, 2019 Statement of Claim for claim 42M 30133912:

13. TYPE OF HISTORIC RIGHT:       Decreed    Filed Appropriation    Use      Date of first use: *Always part of Ranch*  
Attach copies of the decree, record of filing, or proof of use right.

As more information was required to address the unresolved issue remarks decreed on claim 42M 30133912, an Order was issued setting a deadline for the Hart Family Trust to file information supporting the priority date and types of historical right for claim 42M 30133912. The Order stated:

If nothing is filed by **November 6, 2023**, this Water Master will conclude Hart Family Trust cannot substantiate the historical basis for claim 42M 30133912. **If nothing is filed by November 6, 2023, a Master's Report will be issued recommending dismissal of claim 42M 30133912.**

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.(emphasis in original)

Nothing was filed by the deadline.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Sections 85-2-247 and 85-2-248, MCA.

3. 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. No type of historical right or priority date were claimed on the July 1, 2019 Statement of Claim for stock claim 42M 30133912.

3. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

Without additional information from the Claimant, the issue remarks cannot be resolved.

4. 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.

#### RECOMMENDATION

1. As no historical basis can be established for claim 42M 30133912, the claim should be dismissed.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Hart Family Trust  
755 Forest Green Dr.  
La Canada, CA 91011-4207

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

**Water Right Number:** 42M 30133912 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** HART FAMILY TRUST  
755 FOREST GREEN DR  
LA CANADA, CA 91011-4207

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

**Source Name:** SMITH CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.