

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 RIVER BELOW POWDER RIVER - BASIN (42M)  
INTERLOCUTORY DECREE

\*\*\*\*\*

CLAIMANTS: Jo Anne Roos; John P. Roos

**CASE 42M-0042-I-2023**

42M 30134867

42M 30134868

**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. Jo Anne Roos and John P. Roos are the record owners of claims 42M 30134867 and 42M 30134868.
2. Claims 42M 30134867 and 42M 30134868 were decreed with an issue remark indicating they were not included in the 2014 decree in Basin 42M.

3. Claimants Jo Anne Roos and John P. Roos were ordered to meet with the DNRC to address the unresolved issue remarks.

4. Claim 42M 30134868 was claimed as a December 11, 1961 “filed” right, however, the Claimants did not attach documentation supporting the priority date or type of historical right to the Statement of Claim. During the examination of claim 42M 30134868, it appears the DNRC claims examiner identified a well log to support the priority date for claim 42M 30134868; however, the type of historical right was still in question.

5. The Claimants were ordered to meet with a DNRC employee to address the following unresolved issue remark decreed on claim 42M 30134868:

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

On December 4, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum stating the Claimants did not contact him. (Doc. 2.00). Mr. Hartwell recounted the history of claim 42M 30134868 and ultimately concluded the well log supported the claimed December 11, 1961 priority date along with the claimed type of historical right – “filed.”

6. As described by the DNRC Examination Manual, a filed right is generally a Notice of Appropriation or a GW form:

Filed Right: A filed right is a water right filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973. The following documents are those generally encountered which constitute a filed right. [Rule 2 \(a\)\(25\), W.R.C.E.R.](#)

- Notice of Appropriation. Various formats of this form were filed with the county clerk and recorder. See Exhibit VI-9.
- GW Form. See Exhibits VI-10 through VI-13. A GW form used as a filed notice of appropriation for surface water will be accepted if the document was filed at the courthouse.
- Ersatz Notice of Appropriation. Other types of documents filed at the courthouse will be accepted if the source and priority date are stated. If a document is questionable, consult the bureau chief.

Based on the record, it appears the priority date for claim 42M 30134868 should be December 11, 1961, as claimed; and the type of historical right should be changed to “use.”

7. To determine if Claimants Jo Anne Roos and John P. Roos agreed that the type of historical right for claim 42M 30134868 be changed from “filed” to “use” a deadline was set for the Claimants to agree or disagree with the proposed change. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agreed the type of historical right should be changed to “use”. 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 30134867 and 42M 30134868 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 30134868 should be modified to a “use” right.
2. The issue remarks should be removed from claims 42M 30134867 and 42M 30134868.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Jo Anne Roos  
John P. Roos  
1353 Bad Route Rd.  
Terry, MT 59349-7314

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

**Water Right Number:** 42M 30134867 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JO ANNE ROOS  
1353 BAD ROUTE RD  
TERRY, MT 59349-7314

JOHN P ROOS  
1353 BAD ROUTE RD  
TERRY, MT 59349-7314

**\*Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 8.00 GPM

**Volume:** 6.00 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		NWNESW	14	15N	50E	PRAIRIE

**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		NWNESW	14	15N	50E	PRAIRIE

**Total:** 2.00

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

**Water Right Number:** 42M 30134868 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JO ANNE ROOS  
1353 BAD ROUTE RD  
TERRY, MT 59349-7314

JOHN P ROOS  
1353 BAD ROUTE RD  
TERRY, MT 59349-7314

**Priority Date:** DECEMBER 11, 1961

**Type of Historical Right:** USE

**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		NWNESW	14	15N	50E	PRAIRIE

**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			NWNESW	14	15N	50E	PRAIRIE