

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: Delbert D. Hoffer; Lavonne Hoffer

**CASE 42M-0046-I-2023**

42M 30145119  
42M 30145125  
42M 30145127  
42M 30145128  
42M 30145875  
42M 30145876

**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. Lavonne Hoffer and Delbert D. Hoffer are the record owners of claims 42M 30145119, 42M 30145125, 42M 30145127, 42M 30145128, 42M 30145875, and 42M 30145876.

2. Claims 42M 30145119, 42M 30145125, 42M 30145127, 42M 30145128, 42M 30145875, and 42M 30145876 were decreed with DNRC issue remarks:

**42M 30145119:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 42M 177000-00, 42M 30145119.

**42M 30145125:**

NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 42M 30145125, 42M 30145875.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

**42M 30145127:**

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

**42M 30145128:**

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.

NO PRIORITY DATE WAS CLAIMED.

**42M 30145875:**

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 42M 30145125, 42M 30145875.

**42M 30145876:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 42M 178999-00, 42M 30145876.

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

3. Claimants Lavonne Hoffer and Delbert D. Hoffer were ordered to meet with the DNRC to address the unresolved issue remarks.

4. On December 4, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum stating he discussed the issue remarks with Claimant Delbert D.

Hoffer and reviewed the claim files. (Doc.12.00). Based on his discussion with Mr. Hoffer, Mr. Hartwell recommended the following changes be made to claims 42M 30145119, 42M 30145125, 42M 30145127, 42M 30145128, 42M 30145875, and 42M 30145876, addressing the issue remarks:

**42M 30145119:**

Claim should be dismissed.

**42M 30145125:**

**Flow Rate:** 14.00 GPM

Point of diversion and place of use should be modified to:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	20	12N	55E	PRAIRIE

A multiple use remark should be added, indicating the claim is a multiple use of 42M 30145875.

**42M 30145127:**

**Type of Historical Right:** USE

**42M 30145128:**

**Priority Date:** DECEMBER 31, 1925

**42M 30145875:**

A multiple use remark should be added, indicating the claim is a multiple use of 42M 30145825.

**42M 30145876:**

No changes.

5. To determine if Claimants Lavonne Hoffer and Delbert D. Hoffer 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 recommended modifications should be made to the claims in this Case. The following language was included in the Order:

---

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

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 30145119, 42M 30145125, 42M 30145127, 42M 30145128, 42M 30145875, and 42M 30145876 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 30145119 should be dismissed.
2. Claim 42M 30145125 should be modified as follows:

Flow Rate: 14.00 GPM

Point of diversion and place of use should be modified to:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSE	20	12N	55E	PRAIRIE

A multiple use remark should be added, indicating the claim is a multiple use of 42M 30145875.

Claim 42M 30145127 should be modified as follows:

Type of Historical Right: USE

Claim 42M 30145128 should be modified as follows:

Priority Date: DECEMBER 31, 1925

A multiple use remark should be added to claim 42M 30145875, indicating the claim is a multiple use of claim 30145125.

3. The issue remarks should be removed from the claims in the Case.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Delbert D. Hoffer  
Lavonne Hoffer  
31 Hatchet Circle Loop  
Glendive, MT 59330-7001

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

**Water Right Number:** 42M 30145119 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** DELBERT D HOFFER  
31 HATCHET CREEK LOOP RD  
GLENDDIVE, MT 59330-7001  
  
LAVONNE HOFFER  
31 HATCHET CREEK LOOP RD  
GLENDDIVE, MT 59330-7001

**\*Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** DOMESTIC

**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 30145125 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DELBERT D HOFFER  
31 HATCHET CREEK LOOP RD  
GLEN DIVE, MT 59330-7001

LAVONNE HOFFER  
31 HATCHET CREEK LOOP RD  
GLEN DIVE, MT 59330-7001

**\*Priority Date:** DECEMBER 31, 1910

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 14.00 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		SWSE	20	12N	55E	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			SWSE	20	12N	55E	PRAIRIE

**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.

30145125      30145875

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

**Water Right Number:** 42M 30145127 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DELBERT D HOFFER  
31 HATCHET CREEK LOOP RD  
GLENDDIVE, MT 59330-7001

LAVONNE HOFFER  
31 HATCHET CREEK LOOP RD  
GLENDDIVE, MT 59330-7001

**\*Priority Date:** DECEMBER 31, 1903

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 15.00 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		SWSWNW	8	12N	54E	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			SWNW	8	12N	54E	PRAIRIE



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

**Water Right Number:** 42M 30145128 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DELBERT D HOFFER  
31 HATCHET CREEK LOOP RD  
GLENDDIVE, MT 59330-7001

LAVONNE HOFFER  
31 HATCHET CREEK LOOP RD  
GLENDDIVE, MT 59330-7001

**Priority Date:** DECEMBER 31, 1925

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 6.00 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		NENWNE	32	12N	55E	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			NENWNE	32	12N	55E	PRAIRIE

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

**Water Right Number:** 42M 30145875 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DELBERT D HOFFER  
31 HATCHET CREEK LOOP RD  
GLEN DIVE, MT 59330-7001

LAVONNE HOFFER  
31 HATCHET CREEK LOOP RD  
GLEN DIVE, MT 59330-7001

**\*Priority Date:** DECEMBER 31, 1910

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 14.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 5.00

**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		SWSWSE	20	12N	55E	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	5.00		SWSE	20	12N	55E	PRAIRIE

**Total:** 5.00

**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.

30145125      30145875

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

**Water Right Number:** 42M 30145876 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DELBERT D HOFFER  
31 HATCHET CREEK LOOP RD  
GLEN DIVE, MT 59330-7001

LAVONNE HOFFER  
31 HATCHET CREEK LOOP RD  
GLEN DIVE, MT 59330-7001

**\*Priority Date:** DECEMBER 31, 1943

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 14.00 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	1	NWNWNW	30	13N	53E	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		1	NWNW	30	13N	53E	PRAIRIE

**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.

30145119      30145876

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 42M 30007869 . THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT.