

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270 (In-state only)  
Fax: (406) 522-4131  
watercourt@mt.gov

FILED

JUN 11 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
CLARKS FORK YELLOWSTONE RIVER BASIN (43D)  
PRELIMINARY DECREE

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CLAIMANT: Last Chance Ditch Co.

CASE 43D-R288  
43D 19111-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this report carefully. You may file a written objection to the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail 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

### Statement of the case

The above captioned irrigation claim appeared in the Preliminary Decree with an issue remark. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

The issue remark questions the priority date.

No objection was filed to the claim. The Water Court is required to resolve issue remarks.

### Issues

The Preliminary Decree abstract identifies a June 1, 1901 priority date.

1. What is the historically accurate priority date?
2. Is the priority date issue remark resolved?

### Finding of fact

The historically accurate priority date is May 30, 1901.

### Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a "modest standard" and is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the

Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

## **Analysis**

### **Issues 1 and 2 – priority date and priority date issue remark resolution**

The priority date issue remark could not be resolved based upon information in the claim file. Accordingly, as provided for in § 85-2-248(3), MCA, claimant was ordered to file a statement with the Court agreeing or disagreeing with the modified priority date suggested by the issue remark. Claimant failed to file a statement by the deadline.

A second order was issued setting a deadline for claimant to show cause why claim 43D 19111-00 should not be amended as suggested by the issue remark to resolve the priority date issue remark. Claimant also failed to comply with this filing deadline.

Claimant's failure to provide any evidence to address or resolve the priority date issue remark leaves the claims examination and resulting issue remark as strong evidence of actual historical use.

Based on information in the claim file and the claimant's failure to comply with orders issued by the Water Master, claim 43D 19111-00 should be amended as recommended by the priority date issue remark.

**Conclusions of law**

The historically accurate priority date for irrigation claim 43D 19111-00 is May 30, 1901. The priority date issue remark is resolved.

**Recommendations**

Based upon the foregoing, claim 43D 19111-00 should be amended as follows to accurately reflect historical use.

**PRIORITY DATE:**                      ~~JUNE 1, 1901~~                      **MAY 30, 1901**

The priority date issue remark appearing on the claim should be removed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm the recommendations have been implemented in the state's centralized water right record system.

DATED this 11 day of June, 2020.

  
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Anna M. Stradley  
Senior Water Master

**Service via USPS Mail**

Last Chance Ditch Co  
PO Box 133  
Fromberg, MT 59029  
406-855-0334 W