

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

CLAIMANT: Osman Family Trust

CASE 43D-0611-R-2021
43D 206853-00

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, conclusion 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 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

FINDINGS OF FACT

1. Commercial well claim 43D 206853-00 appeared in the Preliminary Decree with a priority date of August 9, 1966, and with the following issue remark concerning the priority date:

THE PRIORITY DATE IS IN QUESTION. THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (FORM GW2) IS 08/24/1966.

2. The claim also received the following issue remarks concerning the volume:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 40.44 ACRE-FEET PER YEAR.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

3. The claim received no objections. Therefore, the issue remarks were not addressed and resolved during the objection process. The Montana Legislature directs the Water Court to resolve issue remarks using the procedures set forth in § 85-2-248, MCA.

4. The 1961 Ground Water Code required the filing of certain documents with the county clerk and recorder's office to establish priority date for groundwater appropriated between January 1, 1962, and July 1, 1973. A Notice of Completion was filed in support of the priority date claimed by Statement of Claim 43D 206853-00. Based upon the filing date of the Notice of Completion, it appeared that the priority date should be August 24, 1966.

5. Pursuant to § 85-2-248(3), MCA an order set a deadline for claimant, the Osman Family Trust, to file a copy of a duly filed Notice of Appropriation to support the earlier claimed priority date of August 9, 1966, and to file a statement concerning whether it agreed with the reduced 40.44 AF volume identified by an issue remark on the claim. The order included language that if no response was received, the priority date would be reduced to August 24, 1966, and the volume would be reduced to 40.44 AF.

6. The Osman Family Trust did not file any documentation or response by the

deadline.

7. Based upon the current record, the priority date for claim 43D 206853-00 should be the date the Notice of Completion was filed, August 24, 1966, and the volume should be 40.44 AF.

8. The issue remarks regarding priority date and volume should be removed from the claim abstract as they have been resolved.

CONCLUSIONS 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.

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. For groundwater appropriations between January 1, 1962 and July 1, 1973 a Notice of Appropriation and a Notice of Completion both had to be filed in order to have the priority date relate back to when the water was first diverted and used. If the appropriator only filed a Notice of Completion, the priority date is the date the Notice of Completion was filed. Section 89-2913(e), RCM (1965).

6. There is sufficient information to resolve the issue remarks on the claim.

RECOMMENDATIONS

Commercial well claim 43D 206853-00 should be modified as follows to accurately reflect historical use.

<u>PRIORITY DATE:</u>	AUGUST 9, 1966	AUGUST 24, 1966
<u>VOLUME:</u>	41.00 AF	40.44 AF

The issue remarks should be removed from the claim abstract.

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

Anna M. Stradley
Water Master

Service via USPS Mail

Osman Family Trust
c/o Kevin & Rebecca Osman Co-Trustees
2656 Silverado Dr.
Pinole, CA 94564

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
CLARKS FORK YELLOWSTONE RIVER
BASIN 43D**

Water Right Number: 43D 206853-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: OSMAN FAMILY TRUST
% KEVIN & REBECCA OSMAN CO TRUSTEES
2656 SILVERADO DR
PINOLE, CA 94564

Priority Date: AUGUST 24, 1966

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL
CAMPGROUND

Flow Rate: 25.00 GPM

Volume: 40.44 AC-FT

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	NENW	9	8S	20E	CARBON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

THE POINT OF DIVERSION IS LOCATED IN TRACT NO.1 OF CERTIFICATE OF SURVEY NO. 291, CARBON COUNTY.

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		9	8S	20E	CARBON
2		2		9	8S	20E	CARBON
3		3		9	8S	20E	CARBON

PLACE OF USE IS IN TRACT NOS. 1, 2 AND 3 OF CERTIFICATE OF SURVEY NO. 291, CARBON COUNTY.