

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

CLAIMANT: Joseph Kurzynski

CASE 43D-0616-R-2021

43D 197658-00

43D 197659-00

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 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. Domestic well claim 43D 197658-00 and stock well claim 43D 197659-00 appeared in the Preliminary Decree with a May 18, 1968 priority date and with the following issue remark concerning the priority date:

THE PRIORITY DATE IS IN QUESTION. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

2. The claims received no objections. The issue remark was 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.

3. 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. Neither a Notice of Appropriation nor a Notice of Completion was filed in support of the priority date claimed by Statements of Claim 43D 197658-00 and 43D 197659-00. Therefore, it appeared that the priority date should be the date the Statements of Claim were filed, April 29, 1982.

4. Pursuant to § 85-2-248(3), MCA an order set a deadline for claimant, Joseph Kurzynski, to file a copy of a duly filed Notice of Appropriation and/or Notice of Completion to support the earlier claimed priority date of May 18, 1968.

5. No further documentation was submitted by Joseph Kurzynski.

6. Based upon the current record, the priority date for the claims should be the date the Statements of Claim were filed, April 29, 1982. The type of historical right should be changed from "use" to "filed," and the following general clarification remark should be added to the claim abstract:

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

7. The issue remark regarding priority date should be removed as it has 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. Montana law required an appropriator of groundwater by means of a well between January 1, 1962 and July 1, 1973 to timely file a Notice of Completion of Groundwater Appropriation with the county clerk of the county in which the appropriation was located. Section 89-2913(d), RCM (1963). Until an appropriator filed a Notice of Completion no right to use the water was recognized. Section 89-2913(e), RCM (1963). These provisions were repealed in 1973 with the enactment of § 85-2-306, MCA. The statute provides:

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962 and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221[a Statement of Claim] is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (3), or the date of the filing of the claim of existing water right.

6. As a Notice of Completion was not filed, the priority date of the claimed appropriation for claims 43D 197658-00 and 43D 197659-00 is the date of the filing of the Statements of Claim. Section 85-2-306(4), MCA.

7. There is sufficient information to resolve the issue remark.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claim

accompany this Report to confirm that the recommended changes have been made in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Joseph Kurzynski
PO Box 922
White Sulphur Springs, MT 59645

Courtesy Copy:
Joseph Kurzynski
502 Bridger Fromberg Rd
Fromberg, MT 59029-9509

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

Water Right Number: 43D 197658-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOSEPH KURZYNSKI
PO BOX 922
WHITE SULPHUR SPRINGS, MT 59645

Priority Date: APRIL 29, 1982

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED
PURSUANT TO SECTION 85-2-306(4) MCA.

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 12.00 GPM

Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

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		SENWNW	27	5S	23E	CARBON

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	1.00		NWNW	27	5S	23E	CARBON

Total: 1.00

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.

197658-00 197659-00

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

Water Right Number: 43D 197659-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOSEPH KURZYNSKI
PO BOX 922
WHITE SULPHUR SPRINGS, MT 59645

Priority Date: APRIL 29, 1982

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED
PURSUANT TO SECTION 85-2-306(4) MCA.

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 12.00 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		SENWNW	27	5S	23E	CARBON

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			SENWNW	27	5S	23E	CARBON

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THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER
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WATER IN ACCORD WITH HISTORICAL PRACTICES.

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