

Montana Water Court  
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ELECTRONICALLY FILED

43D-0617-R-2021

December 10, 2021

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: Walter H. Wallace

**CASE 43D-0617-R-2021**  
43D 208906-00

**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**

### **Statement of the case**

Walter H. Wallace domestic well claim 43D 208906-00 appeared in the Preliminary Decree with an issue remark noting a volume was not claimed. 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 Water Court is required to resolve issue remarks.

On January 27, 1995, claimant, Walter H. Wallace, filed an Affidavit with the DNRC stating the volume for claim 43D 208906-00 should be 2.00 AF. Mr. Wallace's Affidavit appeared to resolve the volume issue remark. However, pursuant to § 85-2-248(11), MCA, the court may not resolve an issue remark by modifying an element of a claim without written agreement from current claimants. According to information in the claim file, Edward J. Webb and Kitty I. Mundt appeared to be the current owners of the claim. The court notified Edward J. Webb and Kitty I. Mundt of their potential ownership interest in the claim and provided an opportunity for Edward J. Webb and Kitty I. Mundt to update the ownership of the claim. The order notifying Edward J. Webb and Kitty I. Mundt of their potential ownership interest in the claim included language that if an ownership update was not completed with the DNRC, the court would conclude the current ownership was correct and would determine the correct volume for domestic claim 43D 208906-00 should be 2.00 AF.

### **Issues**

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

### **Finding of fact**

The historically accurate volume for domestic well claim 43D 208906-00 is 2.00

AF.

### **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. Prima facie proof may be 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.

### **Analysis**

#### **Issues 1 and 2 – volume; issue remark resolution**

Mr. Wallace filed statement of claim 43D 208906-00. Mr. Wallace attested the volume for domestic claim 43D 208906-00 was 2.00 AF. As the individual that filed statement of claim 43D 208906-00, Mr. Wallace’s January 27, 1995 Affidavit supported the historical accuracy of the 2.00 AF volume.

### **Conclusions of law**

Mr. Wallace’s proposed modification to claim 43D 208906-00 is historically

accurate and overcomes by a preponderance of evidence the prima facie proof afforded the statement of claim, justifies the modification to the claim, and resolves the issue remark on the claim.

## **Recommendations**

Domestic claim 43D 208906-00 should be modified as follows to accurately reflect historical use.

**VOLUME:** ~~BLANK~~ **2.00 AF**

The volume issue remark should be removed from the claim abstract.

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

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Anna M. Stradley  
Senior Water Master

## **Service via USPS Mail**

Walter H. Wallace  
808 Miles Ave.  
Billings, MT 59101-2903  
(*Deceased – mail undeliverable*)

## **Potential Owners:**

Edward J. Webb  
Diana L. Webb  
PO Box 6  
Belfry, MT 59008-0006

Kitty I. Mundt  
205 Carbon Ave  
Belfry, MT 59008

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

**Water Right Number:** 43D 208906-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WALTER H WALLACE  
808 MILES AVE  
BILLINGS, MT 59101 2903

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 10.00 GPM

**Volume:** 2.00 AC-FT

**Households:** 2

**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		NE	15	8S	22E	CARBON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**Subdivision:** BELFRY ORIGINAL TOWNSITE TRACT/LOT: 11 BLOCK: 7

**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			NE	15	8S	22E	CARBON

**Subdivision:** BELFRY ORIGINAL TOWNSITE TRACT/LOT: 11 BLOCK: 7