

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

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CLAIMANTS: Janice C. Ward; Hal MF Ward, Jr.

CASE 43D-0618-R-2021  
43D 197725-00

**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. Commercial well claim 43D 197725-00 appeared in the Preliminary Decree with a priority date of April 1, 1970, 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 claim 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 Statement of Claim 43D 197725-00. Therefore, it appeared that the priority date should be the date the Statement of Claim was filed, January 20, 1982.

4. Pursuant to § 85-2-248(3), MCA an order set a deadline for claimants, Janice C. Ward and Hal MF Ward, Jr., to file a copy of a duly filed Notice of Appropriation and/or Notice of Completion to support the earlier claimed priority date of April 1, 1970.

5. No further documentation was submitted by Janice C. Ward and Hal MF Ward, Jr.

6. Based upon the current record, the priority date for claim 43D 197725-00 should be the date the Statement of Claim was filed, January 20, 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.

8. Commercial well claim 43D 197725-00 appeared in the Preliminary Decree with an additional issue remark that states:

POINT OF DIVERSION MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections has expired. No objections were filed against the claim.

The point of diversion identified by the Preliminary Decree abstract is historically accurate. The notice issue remark concerning point of diversion served its purpose and should be removed from the claim abstract.

### 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 43D 197725-00 is the date of the filing of the Statement of Claim. Section 85-2-306(4), MCA.

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

### 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. A Post Decree Abstract of Water Right Claim accompanies this Report to confirm that the recommended changes have been made in the state's centralized water right record system.

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Anna M. Stradley  
Senior Water Master

### Service Via USPS Mail

Janice C. Ward  
Hal MF Ward, Jr.  
26 Freeman Lane  
Joliet, MT 59041

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

**Water Right Number:** 43D 197725-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** HAL MF WARD JR  
26 FREEMAN LANE  
JOLIET, MT 59041

JANICE C WARD  
26 FREEMAN LANE  
JOLIET, MT 59041

**Priority Date:** JANUARY 20, 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):** COMMERCIAL  
RESTAURANT

**Flow Rate:** 15.00 GPM

**Volume:** 2.00 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	SESWW	35	3S	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	SE	35	3S	23E	CARBON