

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
TONGUE RIVER BELOW HANGING WOMAN CREEK - BASIN 42C  
INTERLOCUTORY DECREE

\* \* \* \* \*

CLAIMANT: Cynthia Gratwohl; Harold G. Gratwohl

**CASE 42C-0024-I-2024**  
42C 30145043

**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 to 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**

Cynthia Gratwohl and Harold G. Gratwohl claim 42C 30145043 appeared in the Interlocutory Decree with the following issue remark:

CLAIM NOS. 178767-00 AND 30145043 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The October 15, 2024 Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA [“October 15, 2025 Order”] set filing deadlines for the Montana Department of Natural Resources and Conservation [“DNRC”] and the claimants. On January 29, 2025 the DNRC Memorandum was filed making recommendations based on meeting with claimant Cynthia Gratwohl. The Memorandum recommends dismissing claim 42C 30145043 as redundant with Gratwohl claim 42C 178767-00. The October 15, 2024 Order states:

ORDERED that the deadline is **February 28, 2025** for the claimant to file a written response to the memorandum *if it disagrees with any recommendation in the memorandum*. If no written response is filed by this deadline, the Court will conclude that the claimant agrees with the memorandum recommendations.

Nothing was filed by the claimants; therefore, the Court concludes claimants Cynthia Gratwohl and Harold G. Gratwohl agree with the recommendation to dismiss claim 42C 30145043. These documents are viewable in the Court’s FullCourt Enterprise case management system.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. Cynthia Gratwohl and Harold G. Gratwohl claims 42C 30145043 and 42C 178767-00 each claim an August 31, 1868 use right for stockwater from Otter Creek.

2. The DNRC Memorandum states that the place of use and point of diversion on claim 42C 30145043 are contained in claim 42C 178767-00 and recommends claim 42C 30145043 be dismissed as redundant with Gratwohl claim 42C 178767-00.

Gratwohl claim 42C 30145043 should be dismissed as the claimed right is already decreed on Gratwohl claim 42C 178767-00.

#### CONCLUSION OF LAW

The information provided by the DNRC Memorandum is sufficient to resolve the issue remark without evidentiary hearing and sufficient to dismiss the claim. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claim 42C 30145043. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the claim is dismissed in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### **Service via USPS Mail:**

Cynthia Gratwohl  
Harold G. Gratwohl  
1 Needle Rock Rd  
Ashland, MT 59003

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**TONGUE RIVER, BELOW HANGING WOMAN CREEK**  
**BASIN 42C**

**Water Right Number:**      **42C 30145043**    STATEMENT OF CLAIM

**Version:**      2 -- POST DECREE

**Status:**      **DISMISSED**

**Owners:**                      CYNTHIA GRATWOHL  
   1 NEEDLE ROCK RD  
   ASHLAND, MT 59003-9416  
  
   HAROLD G GRATWOHL  
   1 NEEDLE ROCK RD  
   ASHLAND, MT 59003-9416

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):**                      STOCK

**Flow Rate:**

**Volume:**

**Source Name:**                      OTTER CREEK

**Source Type:**                      SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.