

Montana Water Court  
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FILED

JUN 11 2020

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: Celeste M. Schwend

**43D-R369**  
43D 19152-00  
43D 19169-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this report carefully. You may file a written objection to the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

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**

### **Statement of the case**

Irrigation claims 43D 19152-00 and 43D 19169-00 appeared in the preliminary decree with issue remarks. Issue remarks result from DNRC claims examination. DNRC confirms the historical use of water right claims and identifies issues with claims. If DNRC cannot confirm some aspect of a claim, DNRC adds an issue remark to the claim.

The issue remarks on claim 43D 19152-00 concern maximum acres irrigated and priority date. The issue remarks on claim 43D 19169-00 concern maximum acres irrigated.

No objections were filed to the claims. Montana law requires the Water Court to resolve issue remarks.

### **Issues**

1. Is the priority date issue remark on claim 43D 19152-00 resolved?
2. Are the maximum acres irrigated issue remarks on both claims resolved?

### **Findings of Fact**

1. The preliminary decree abstract of claim 43D 19152-00 identifies the historically accurate priority date, December 31, 1900.

A preponderance of evidence establishes the following facts:

2. Claims 43D 19152-00 and 43D 19169-00 were the subject of previous Water Court proceedings. A June 3, 1996 Stipulation reduced the maximum acres irrigated by claim 43D 19169-00 from 183.00 acres to 143.10 acres. A May 26, 1998 Stipulation reduced the maximum acres irrigated by claim 43D 19152-00 from 183.00 acres to 143.10 acres.

3. The Court adopted the 143.10 maximum acres irrigated as historically accurate for each claim. (*See* Jan. 5, 1999 Master's Report, Finding of Fact 1, Case 43D-295

(claim 43D 19152-00) and Feb. 23, 1999 Order Adopting Master's Report; Jun. 13, 1996 Master's Report, Finding of Fact 5, Case 43D-45 (claim 43D 19169-00) and Jul. 16, 1996 Order Adopting Master's Report)

### **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**

#### **Issue 1 – priority date issue remark resolution**

An issue remark notes claim 43D 19152-00 is a filed right with a priority date predating a district court decree for Rock Creek. The record does not indicate why the claim was not included in Case No. 275, Carbon County. The issue remark is not supported by evidence sufficient to overcome the prima facie proof afforded the priority

date for the claim.

**Conclusion of law**

The priority date issue remark is resolved.

**Issue 2 – maximum acres irrigated issue remark resolution**

The maximum acres irrigated issue remarks do not outweigh the record or previous decision made by the Court.

**Conclusion of law**

The maximum acres irrigated issue remarks are resolved.

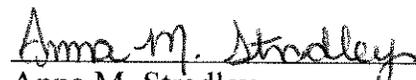
**Recommendations**

The elements of irrigation claims 43D 19152-00 and 43D 19169-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim confirming the removal of the issue remarks in the state’s centralized record system accompany this Report.

DATED this 11 day of JUNE, 2020.

  
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Anna M. Stradley  
Senior Water Master

**Service via USPS Mail**

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