

43D-0065-R-2019

September 15, 2021

Montana Water Court

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

CLAIMANTS: Jenneta Conover; Johnny L. Conover; Ronald R. King; Susan E. King; Bobbi Blankenship; Arik J. Petersen; Jean E. Petersen; Kelly A. Reynolds; Wade K. Reynolds; Lyla S. Morrell; Kelly Roberts; Shawn Roberts; Ila Erickson; Heather T. Shoup Revocable Trust 2005; Mark Pierson; Deborah Pierson; David Crocket; Brianna Crocket; Jewel Karina; Kenneth M. Karina; MacKenzie Alexander; Stephen B. Alexander

OBJECTORS: Bobbi Blankenship; Ronald R. King; Susan E. King

NOTICE OF INTENT TO APPEAR: Bobbi Blankenship;
Ronald R. King; Susan E. King

CASE 43D-0065-R-2019

43D 36640-00

43D 36641-00

43D 36642-00

43D 36643-00

43D 36644-00

43D 36645-00

**Split Claim
43D 30151579**

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 this Master's 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 this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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. Claims 43D 36640-00, 43D 36641-00, 43D 36642-00, 43D 36643-00, 43D 36644-00, and 43D 36645-00 appeared in the 43D Preliminary Decree issued April 7, 2017. Bobbi Blankenship filed objections or notices of intent to appear (NOIAs) to all claims in the case. Ronald King and Susan King filed an objection to claim 43D 36642-00 and an NOIA for claim 43D 36644-00. The United States Bureau of Reclamation (BOR) filed an NOIA for claim 43D 36442-00. The BOR withdrew its NOIA on June 5, 2020 and is no longer a party to this case.

2. The parties worked with Settlement Master Melissa Lockman to determine whether the issues in this case could be resolved through settlement.

3. On March 2, 2021, a stipulation was filed in this case, but it was only signed by some of the parties. On March 11, 2021, Settlement Master Melissa Lockman filed a report stating that because not all parties had signed the stipulation, the case should be reassigned to this Master for further proceedings.

4. On April 15, 2021, a show cause filing deadline was set for the parties who had not signed the stipulation to show cause why it should not be accepted by the Court. Attached to the show cause order was a table showing changes to water right ownership for the claims in this case.¹ Ronald King contacted the Court by telephone on April 19, 2021, to point out that Bobbi Blankenship should not be listed as an owner of claim 43D 36642-00. According to the stipulation, King is correct. The table attached to the show cause order identified Blankenship as an owner of claim 43D 36642-00, which is

¹ The table contained a clerical error - the claims were listed as being 41G claims rather than 43D claims. This was in error. All the claims addressed in this case are 43D claims diverted and used in Basin 43D.

incorrect; Blankenship will not be identified as an owner of claim 43D 36642-00. No other responses to the show cause order were received.

5. The terms of the stipulation are uncontested and resolve the objections and issue remarks in this case. A copy of the stipulation will be added to the claim file for claim 43D 36640-00 for future reference.

For several of the claims, the parties indicate corrections that should be made to the geocodes associated with the place of use. The water court decrees places of use and maximum acres; it does not update or correct geocodes. Any corrections to geocodes should be sought from the DNRC.

The parties also request changes to the supplemental rights information remarks attached to the claims in this case. Supplemental rights remarks are not required to adequately describe or administer a water right. *See* cases 41A-144 and 41A-145, 12/07/2015, at 4. It is more efficient to remove the supplemental remarks than correct them. The supplemental rights information remarks will be removed from the claims.

Some of the legal land descriptions provided in the stipulation for the places of use were very broad. A deadline was set for the parties to clarify the legal land descriptions and provide maps of the place of use. Bobbi Blankenship, the Kings, and Heather T. Shoup Revocable Trust 2005 filed responses and the legal land descriptions will be refined where possible. For some claims, not enough information was provided to further refine the legal land descriptions. In those situations, the legal land descriptions will remain as provided in the stipulation. The maps filed by Blankenship, Kings, and Shoup are attached to this report and will be placed in the claim files.

The terms of the stipulation are further discussed, claim by claim, below.

6. Claim 43D 36640-00:

Claim 43D 36640-00 is a filed right for flood irrigation for waste and seepage from an Unnamed Tributary of Clear Creek. It was claimed with a flow rate of 250 Miners Inches (6.25 cfs). During claims examination, the DNRC reduced the flow rate to 2.46 cfs based on the 17 gpm per acre guideline.

Claim 43D 36640-00 received the following issue remark:

NO FLOW RATE IS IDENTIFIED IN THE APPROPRIATION FILING DOCUMENT

In the stipulation, the parties explain that because it is a waste and seepage water right, it is difficult to identify a precise flow rate for claim 43D 36640-00. The DNRC reduced the flow rate based on its guideline, which the parties accept as an appropriate quantification for claim 43D 36640-00.

While the appropriation filing document does not identify a flow rate, the statement of claim asserted a 6.25 cfs flow rate. A claim of an existing water right is entitled to prima facie status. The parties have voluntarily accepted a reduced flow rate based on DNRC guidelines. The flow rate issue remark is resolved.

7. Claim 43D 36641-00 and Split Claim 43D 30151579

Claim 43D 36641-00 is an irrigation right from Clear Creek. The stipulation indicates that based on the points of diversion and ditches claimed, water cannot be conveyed to the properties of several of the listed owners of the claim. The stipulation provides that Conover, Crocket, Karina, Erickson, Morrell, Petersen, Pierson, and Roberts should all be removed as owners of claim 43D 36641-00.

Conover, Erickson, Peterson, Pierson, and Roberts agreed to the terms of the stipulation.² Crocket, Karina, Morrell, and Petersen did not respond to the show cause filing deadline, requiring them to show cause why the stipulation should not be accepted by the court.

Conover, Crocket, Karina, Erickson, Morrell, Petersen, Pierson, and Roberts will be removed as owners of claim 43D 36641-00, and the place of use of the claim will be reduced accordingly.

The stipulation explains that the Crockett Ditch points of diversion are no longer used. It further explains that DeVries Ditch has been piped in, and no turnout was placed to accommodate the Blankenship property. The Blankenship property receives Clear Creek water under claim 43D 36641-00 through the Weber (DeVries) Ditch located in the NENE of Section 5.³

² Mark and Deborah Pierson did not sign the stipulation, but on March 18, 2021, they filed a document indicating they agree with the terms of the stipulation.

³ The Stipulation referred to this ditch as the Weber-DeVries Ditch, but the DNRC has standardized this point of diversion as the Weber (DeVries) Ditch.

Accordingly, the stipulation requests that a split claim be generated to represent Blankenship's portion of claim 43D 36641-00, which is diverted through a different point of diversion.

The original claim number 43D 36641-00 will represent the portion of the claim owned by Susan King, Ronald King, and Heather T Shoup Revocable Trust 2005. Claim 43D 30151579 will be generated to represent Blankenship's portion of the claim.

The flow rate will be split between the two claims with the parent claim retaining 2.00 cfs and the split claim receiving the remaining 0.88 cfs.

The Crockett Ditch points of diversion should be removed from claim 43D 36641-00. The primary point of diversion should remain as claimed from the DeVries Ditch in Government Lot 8, NENENE of Section 5, T6S, R21E. The place of use should be 80 acres in the NE of Section 32.

The point of diversion for claim 43D 30151579 should be the NENE of Section 5, T6S, R21E. ⁴ The place of use should be 28 acres in Section 32, T5S, R21E:

1	9.50	NESE	32	5S	21E
2	6.25	N2SESE	32	5S	21E
3	9.50	S2SESE	32	5S	21E
4	2.75	E2E2SWSE	32	5S	21E
Total: 28.00					

The only issue remark received by claim 43D 36641-00 is a notice issue remark concerning modification of the ditch name and point of diversion. The issue remark has served its purpose and may be removed.

8. Claim 43D 36642-00

Claim 43D 36642-00 is a flood irrigation right from Rock Creek conveyed through the Bailey Ditch. The stipulation requests that the place of use be reduced from 250 acres

⁴ The redmarked abstract attached to the Stipulation for this claim lists a primary point of diversion in the SESE of Section 32, T5S, R21E, but this point of diversion is not listed in the body of the Stipulation and there does not seem to be any support for this point of diversion. This point of diversion has not been included on the corrected post-decree abstract.

to 165 acres. The following parties should be removed as owners of the claim:
Blankenship, Erickson, Morrell, Pierson, and Reynolds.

Claim 43D 36642-00 also received a notice issue remark concerning modifications to the ditch name. The issue remark has served its purpose and should be removed.

9. Claim 43D 36643-00

Claim 43D 36643-00 is a flood irrigation right from an Unnamed Tributary of Clear Creek, using the Weber-Devries Ditch as the means of conveyance. The stipulation provides that the place of use should only include the Blankenship and Reynolds properties and that the place of use should be reduced from 47 acres to 38 acres:

1	10.00	SWSW	28	5S	21E
2	9.50	NESE	32	5S	21E
3	6.25	N2SESE	32	5S	21E
4	9.50	S2SESE	32	5S	21E
5	2.75	E2E2SWSE	32	5S	21E
Total: 38.00					

Additionally, the stipulation notes that the point of diversion for the Weber (Devries) Ditch is in the NENE of Section 5, T6S, R31E, rather than the NW of Section 4 T6S, R31E.

Claim 43D 36643-00 received an ownership issue remark noting that Wade and Kelly Reynolds may own a portion of the place of use. The remark has been resolved by the terms of the stipulation and should be removed.

Claim 43D 36643-00 also received a notice issue remark concerning modifications to the ditch name. The issue remark has served its purpose and should be removed.

10. Claim 43D 36644-00

Claim 43D 36644-00 is a flood irrigation claim for mine seepage water. The stipulation provides that the conveyance system did not historically reach the Morrell or Pierson properties, and they should be removed as owners. Additionally, the Alexanders

do not have any ownership interest in the underlying place of use and should be removed as owners.

Shoup, King, Crocket, Roberts, and Karina should be added as owners of the claim based on property ownership of the underlying place of use.

The Stipulation requests that the total place of use be reduced from 250 acres to 193 acres in Section 32, T5S, R21E; and the flow rate be reduced from 3.75 cfs to 1.25 cfs.

The Stipulation indicates that the primary point of diversion for claim 43D 36644-00 is the location of the mine in the SESE of Section 27, T7S, R20E. Rock Creek is used as a natural carrier and the Bailey Ditch is a secondary carrier. This is consistent with information in the point of diversion issue remark appearing on the claim. The issue remark is resolved and should be removed. The primary point of diversion should be identified as the SESE of Section 27, T7S, R20E and the Bailey Ditch point of diversion in the SWSWSW of Section 11, T7S, R20E will be identified as the secondary point of diversion.

An additional information remark will be added to the claim to further clarify how water is conveyed:

THE BAILEY DITCH IS A SECONDARY DIVERSION THAT CONVEYS THE CLAIM FROM ROCK CREEK TO THE PLACE OF USE

Claim 43D 36644-00 was also decreed with the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON ROCK CREEK WITH A PRIORITY DATE POSTDATING CASE NO. 275, CARBON COUNTY.

The stipulation points out that this water right does not claim Rock Creek as its source and would not have been subject to the Rock Creek Decree. There is no evidence that the priority date is inaccurate. The issue remark does not overcome the prima facie status of the claim. The issue remark should be removed from the claim.

11. Claim 43D 36645-00

Claim 43D 36645-00 is a filed right for flood irrigation from Clear Creek. The stipulation provides that there is no diversion infrastructure related to this claim that reaches the Petersen, Morrell, or Pierson properties, and they should be removed as owners. Additionally, the Alexanders do not have any ownership interest in the underlying place of use and should be removed as owners.

The stipulation requests that the place of use be reduced from 117 acres to 38 acres:

1	10.00	SWSW	28	5S	21E
2	9.50	NESE	32	5S	21E
3	6.25	N2SESE	32	5S	21E
4	9.50	S2SESE	32	5S	21E
5	2.75	E2E2SWSE	32	5S	21E

Total: 38.00

The stipulation explains that the Crockett Ditch and Devries Ditch points of diversion are no longer used. The place of use for claim 43D 36645-00 receives Clear Creek water through the Rothwell-Mcintosh Ditch and the Weber (DeVries) Ditch. Accordingly, point of diversion no. 2 should be corrected to reflect the Weber (DeVries) Ditch, and point of diversion no. 3 should be removed.

Claim 43D 36645-00 received two issue remarks. One regarding changes made to the ditch name and point of diversion during claims examination and another about the priority date postdating Case no. 646, Carbon County. Both issue remarks are considered notice issue remarks that do not require further proceedings to resolve. The issue remarks should be removed.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015. The issue remarks appearing on the claims in this case either correspond with the requested modifications by the parties or they did not overcome the prima facie status of the claims. The issue remarks are resolved and should be removed.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA must be applied. Rule 17(c), W.R.Adj.R. Many of the requested modifications result in reductions to the place of use and/or the flow rate. Some of the requested modifications are corrections or clarifications to the points of diversions and the ditches used to convey water. These modifications are supported by the evidence presented in the stipulation. The settlement documentation in this case should be accepted by the Court.

4. If a claimant fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Rule 22, W.R.Adj.R. Several of the claimants in this case failed to respond to court deadlines. The claims should be modified as provided in the findings of facts, based on the best information before the court.

RECOMMENDATIONS

1. The claims in this case should be modified as provided above.
2. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail
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Mark and Deborah Pierson
108 Obert Rd
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David and Brianna Crocket
594 Clear Creek Rd.
Roberts, MT 59070

Heather T. Shoup Revocable Trust 2005
9060 Seavey Lane
Looms, CA 95650

Kenneth & Jewel Karina
546 Clear Creek Rd
Roberts, MT 59070-9431

MacKenzie Alexander
Stephen B. Alexander
PO Box 1922
Red Lodge, MT 59068

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

Water Right Number: 43D 36640-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JENNETA CONOVER
600 CLEAR CREEK RD
ROBERTS, MT 59070

JOHNNY L CONOVER
600 CLEAR CREEK RD
ROBERTS, MT 59070

RONALD R KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

SUSAN E KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

SHOUP, HEATHER T REVOCABLE TRUST 2005
9060 SEAVEY LANE
LOOMIS, CA 95650

Priority Date: FEBRUARY 23, 1907

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.46 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 65.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF CLEAR CREEK

Source Type: SURFACE WATER

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		NESESW	32	5S	21E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 1

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>
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1	65.00
Total:	65.00

32 5S 21E CARBON

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

Water Right Number: 43D 36641-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

RONALD R KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

SUSAN E KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

SHOUP, HEATHER T REVOCABLE TRUST 2005
9060 SEAVEY LANE
LOOMIS, CA 95650

Priority Date: NOVEMBER 30, 1894

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 80.00

Source Name: CLEAR CREEK

Source Type: SURFACE WATER

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	8	NENENE	5	6S	21E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DEVRIES DITCH

Period of Use: MARCH 1 TO NOVEMBER 1

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	80.00		NE	32	5S	21E	CARBON

Total: 80.00

Remarks:

SPLIT CLAIM NO. 43D 30151579 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: **43D 36642-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JENNETA CONOVER
600 CLEAR CREEK RD
ROBERTS, MT 59070

JOHNNY L CONOVER
600 CLEAR CREEK RD
ROBERTS, MT 59070

BRIANNA M CROCKET
594 CLEAR CREEK RD
ROBERTS, MT 59070 9418

DAVID S CROCKET V
594 CLEAR CREEK RD
ROBERTS, MT 59070 9418

JEWEL KARINA
546 CLEAR CREEK RD
ROBERTS, MT 59070 9418

KENNETH M KARINA
546 CLEAR CREEK RD
ROBERTS, MT 59070 9418

RONALD R KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

SUSAN E KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

KELLY ROBERTS
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MILFORD, IA 51351 0206

SHAWN ROBERTS
PO BOX 206
MILFORD, IA 51351 0206

SHOUP, HEATHER T REVOCABLE TRUST 2005
9060 SEAVEY LANE
LOOMIS, CA 95650

Priority Date: JULY 10, 1895

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.65 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 165.00

Source Name: ROCK CREEK

Source Type: SURFACE WATER

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		SWSWSW	11	7S	20E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: BAILEY DITCH

Period of Use: MARCH 1 TO NOVEMBER 1

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	165.00			32	5S	21E	CARBON

Total: 165.00

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

Water Right Number: 43D 36643-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BOBBI BLANKENSHIP
47 TAYLOR LANE
ROBERTS, MT 59070

KELLY A REYNOLDS
PO BOX 1473
RED LODGE, MT 59068 1473

WADE K REYNOLDS
PO BOX 1473
RED LODGE, MT 59068 1473

Priority Date: MAY 1, 1967

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 38.00

Source Name: UNNAMED TRIBUTARY OF CLEAR CREEK

Source Type: SURFACE WATER

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		NENE	5	6S	21E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: WEBER (DEVRIES) DITCH

Period of Use: MARCH 1 TO NOVEMBER 1

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	10.00		SWSW	28	5S	21E	CARBON
2	9.50		NESE	32	5S	21E	CARBON
3	6.25		N2SESE	32	5S	21E	CARBON
4	9.50		S2SESE	32	5S	21E	CARBON
5	2.75		E2E2SWSE	32	5S	21E	CARBON

Total: 38.00

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

Water Right Number: **43D 36644-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

BOBBI BLANKENSHIP
47 TAYLOR LANE
ROBERTS, MT 59070

JENNETA CONOVER
600 CLEAR CREEK RD
ROBERTS, MT 59070

JOHNNY L CONOVER
600 CLEAR CREEK RD
ROBERTS, MT 59070

BRIANNA M CROCKET
594 CLEAR CREEK RD
ROBERTS, MT 59070 9418

DAVID S CROCKET V
594 CLEAR CREEK RD
ROBERTS, MT 59070 9418

JEWEL KARINA
546 CLEAR CREEK RD
ROBERTS, MT 59070 9418

KENNETH M KARINA
546 CLEAR CREEK RD
ROBERTS, MT 59070 9418

RONALD R KING
604 CLEAR CREEK RD
ROBERTS, MT 59070

SUSAN E KING
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KELLY ROBERTS
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SHAWN ROBERTS
PO BOX 206
MILFORD, IA 51351 0206

SHOUP, HEATHER T REVOCABLE TRUST 2005
9060 SEAVEY LANE
LOOMIS, CA 95650

Priority Date: SEPTEMBER 14, 1940

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD
Flow Rate: 1.25 CFS
Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 3 - MODERATE
Maximum Acres: 193.00
Source Name: UNNAMED TRIBUTARY OF ROCK CREEK
Source Type: SURFACE WATER

THE SOURCE FOR THIS CLAIM IS MINE SEEPAGE. THE MINE IS LOCATED IN THE SESE, SEC 27, T7S, R20E, CARBON COUNTY. ROCK CREEK IS USED AS A NATURAL CARRIER.

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		SESE	27	7S	20E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: PIPELINE

2 - SECONDARY	SWSWSW	11	7S	20E	CARBON
---------------	--------	----	----	-----	--------

Period of Diversion: JANUARY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: BAILEY DITCH

THE BAILEY DITCH IS A SECONDARY DIVERSION THAT CONVEYS THE CLAIM FROM ROCK CREEK TO THE PLACE OF USE.

Period of Use: MARCH 1 TO NOVEMBER 1

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	193.00			32	5S	21E	CARBON

Total: 193.00

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

Water Right Number: 43D 36645-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BOBBI BLANKENSHIP
47 TAYLOR LANE
ROBERTS, MT 59070

KELLY A REYNOLDS
PO BOX 1473
RED LODGE, MT 59068 1473

WADE K REYNOLDS
PO BOX 1473
RED LODGE, MT 59068 1473

Priority Date: OCTOBER 18, 1966

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.43 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 38.00

Source Name: CLEAR CREEK

Source Type: SURFACE WATER

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		SESENE	32	5S	21E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: ROTHWELL-MCINTOSH DITCH

2		NENE	5	6S	21E	CARBON
---	--	------	---	----	-----	--------

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: WEBER (DEVRIES) DITCH

Period of Use: MARCH 1 TO NOVEMBER 1

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	10.00		SWSW	28	5S	21E	CARBON
2	9.50		NESE	32	5S	21E	CARBON

3	6.25	N2SESE	32	5S	21E	CARBON
4	9.50	S2SESE	32	5S	21E	CARBON
5	2.75	E2E2SWSE	32	5S	21E	CARBON
Total:	<hr/> 38.00					

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

Water Right Number: 43D 30151579 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: BOBBI BLANKENSHIP
47 TAYLOR LANE
ROBERTS, MT 59070

Priority Date: NOVEMBER 30, 1894

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 0.88 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Maximum Acres: 28.00

Source Name: CLEAR CREEK

Source Type: SURFACE WATER

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		NENE	5	6S	21E	CARBON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: WEBER (DEVRIES) DITCH

Period of Use: MARCH 1 TO NOVEMBER 1

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	9.50		NESE	32	5S	21E	CARBON
2	6.25		N2SESE	32	5S	21E	CARBON
3	9.50		S2SESE	32	5S	21E	CARBON
4	2.75		E2E2SWSE	32	5S	21E	CARBON
Total:	28.00						

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43D 36641-00.

From: [Heather Shoup](#)
To: [Watercourt \(Bozeman\)](#)
Subject: [EXTERNAL] Fwd: Case 43D-065-R-2019
Date: Friday, July 30, 2021 9:35:29 PM

ELECTRONICALLY FILED

43D-0065-R-2019

July 30, 2021

----- Forwarded message -----

From: **Heather Shoup** <heather91901@gmail.com>
Date: Fri, Jul 30, 2021, 5:32 PM
Subject: Case 43D-065-R-2019
To: Me at work <Heather@raytheon.com>, <watercourt@mt.gov>

Montana Water Court

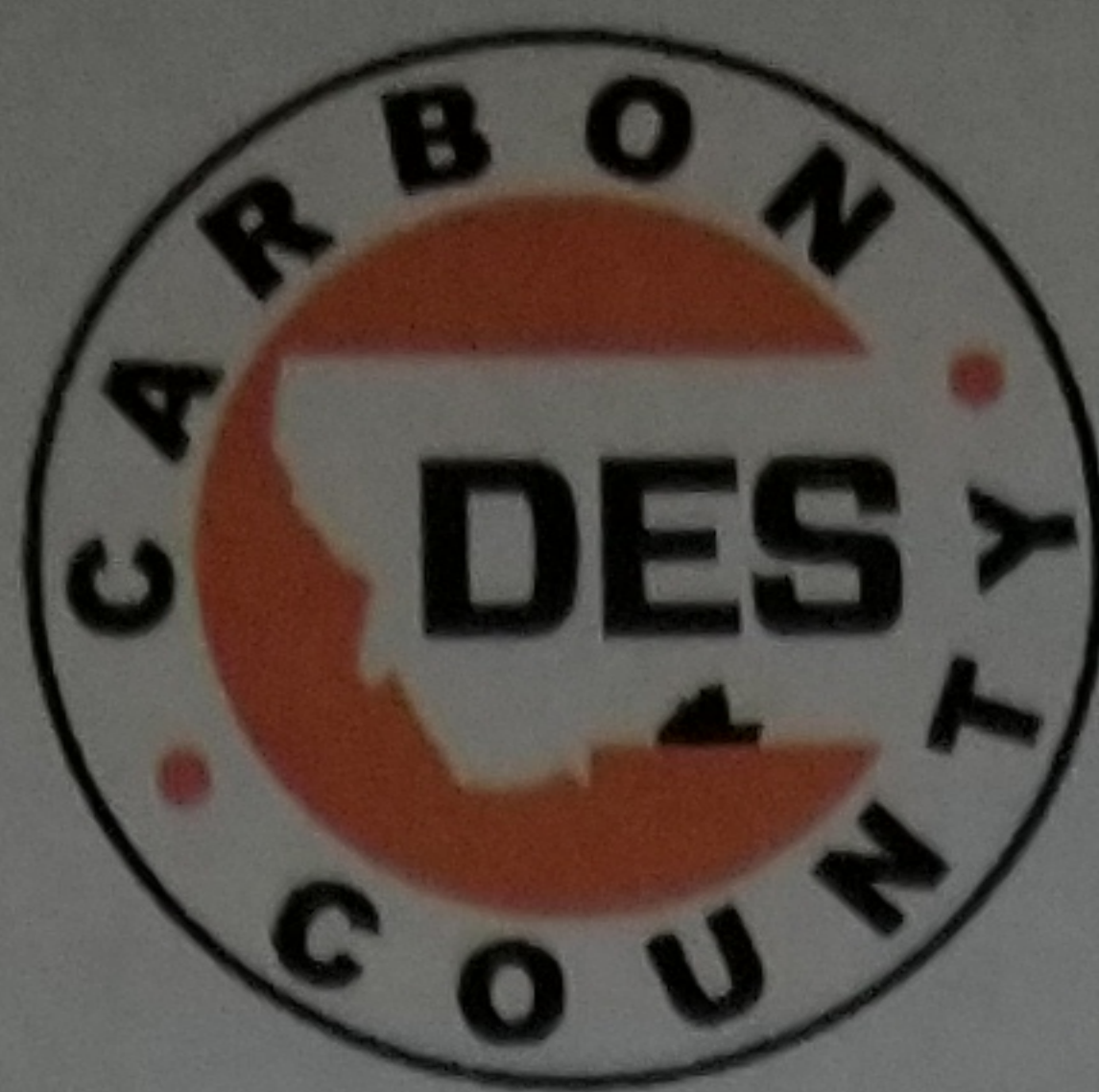
Water Court Master

I recieved a letter requesting maps reflecting place of use . Please see attached

Heather Shoup

CARBON COUNTY MONTANA

PO Box 887
17 11th St West
Red Lodge MT 59068



DISASTER & EMERGENCY SERVICES

PH: 406.446.1038
FAX: 406.446.2640
DES@co.carbon.mt.us

July 13, 2021

Heather Shoup
9060 Seavey Ln
Loomis, CA 95650

Heather-

This is an official notification of your new physical address at **2 CHERRY SPRINGS ROAD, ROBERTS, MT, 59070** for the property legally defined as **S32, T5S, R21E, TR 1A COS 1780 AM**. This address has been entered into Carbon County's 9-1-1 database and will be used by law enforcement, ambulance and fire rescue to locate your residence in the event of an emergency. Enclosed with this letter is a map showing your address and neighboring properties. Please contact us immediately if this map contains any errors.
59068

Also Included is an official address placard. It should be posted at the entrance of your approach (commonly attached to a fence or gate post) at least four feet from the ground. If your approach is shared by neighbors and is not visible from the road you should consider an additional address sign on the house.

It is urgent that you install your address sign as soon as possible. Emergency response teams rely on these signs to locate your residence.

Also, please notify any city/county/private services (utilities, TV, Internet, garbage, etc.) of your new physical address. This is needed to ensure consistency in address information and avoid any interruption in services. We recommend that you provide them with a copy of this letter and map as proof of your new address.

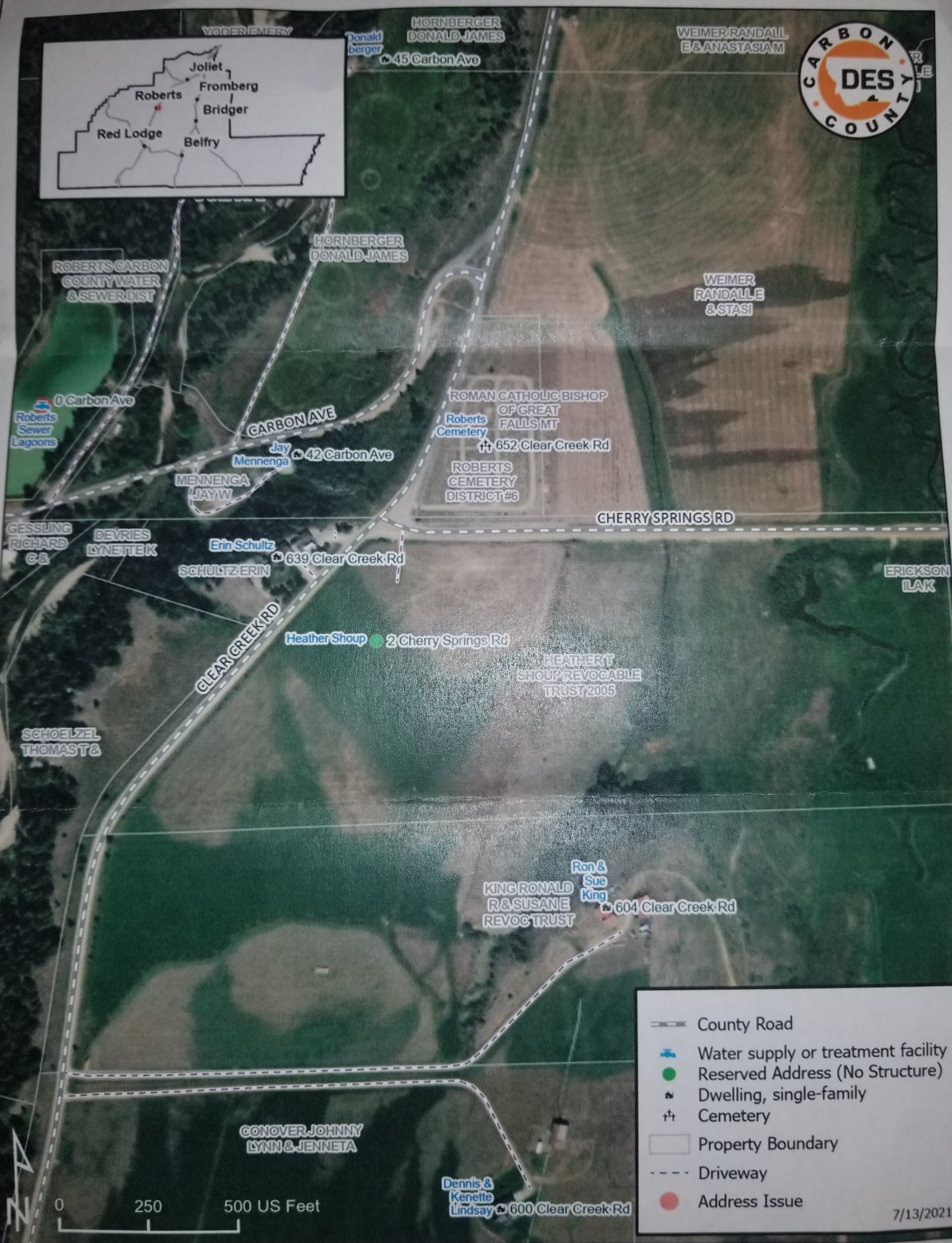
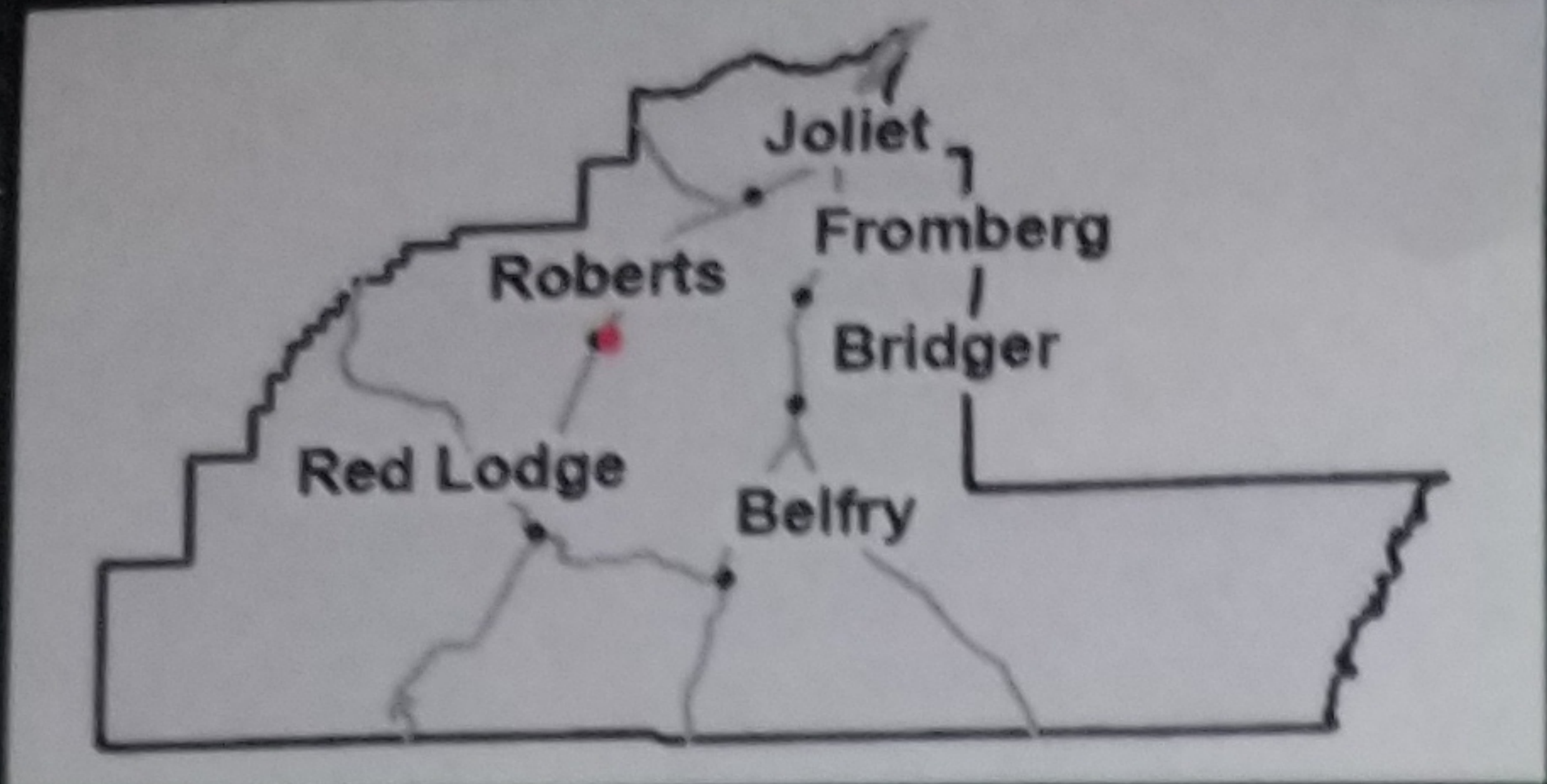
Please call or email me if you need more information or have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kohley". The signature is stylized with a long horizontal line extending from the top of the first letter.

Tom Kohley

Carbon County GIS Coordinator



County Road

Water supply or treatment facility

Reserved Address (No Structure)

Dwelling, single-family

Cemetery

Property Boundary

Driveway

Address Issue

7/13/2021

Breeann M. Johnson, Esq.
 Alison P. Garab, Esq.
 Western Roots Law PLLC
 PO Box 7004
 Bozeman, Montana 59771
 BMJ: 406.600.9389
Johnson@WestRootsLaw.com
 APG: 406.579.9584
Garab@WestRootsLaw.com

43D-0065-R-2019

August 4, 2021

Montana Water Court

Attorneys for Blankenship

**MONTANA WATER COURT, YELLOWSTONE DIVISION
 CLARKS FORK YELLOWSTONE RIVER
 BASIN 43D – PRELIMINARY DECREE**

CLAIMANTS: Jenneta Conover; Johnny L. Conover; Ronald R. King; Susan E. King; Bobbi Blankenship; Arik J. Petersen; Jean E. Petersen; Kelly A. Reynolds; Wade K. Reynolds; Lyla S. Morrell; Kelly Roberts; Shawn Roberts; Ila Erickson; Heather T. Shoup Revocable Trust 2005; Mark Pierson; Deborah Pierson; David Crocket; Brianna Crocket; Kenneth Karina; Jewel Karina; MacKenzie Alexander; Stephen B. Alexander	CASE NO. 43D-R65 43D 36640-00 43D 36641-00 43D 36642-00 43D 36643-00 43D 36644-00 43D 36645-00
OBJECTORS: Bobbi Blankenship; Ronald R. King; Susan E. King	
NOTICE OF INTENT TO APPEAR: Bobbi Blankenship; United States of America (Bureau of Reclamation); Ronald R. King; Susan E. King	

FILING OF SUPPLEMENTAL INFORMATION

COMES NOW Claimant, Bobbi Blankenship ("Blankenship"), by and through undersigned counsel, and hereby files supplemental information regarding her Place of Use ("POU") for her portion of Claims 43D 00000000 (*Child Claim 43D 36641-00*), 43D 36643-00, 43D 36644-00, and 43D 36645-00, as per the Court's Order dated June 28, 2021.

The Settlement Stipulation filed by the parties on March 2, 2021 included a map depicting Blankenship's POU. For the Court's reference, this map is attached hereto as **Exhibit A**. While the map shows the total 28.00 acres comprising the Blankenship POU, it failed to provide a more refined legal description of the location of those acres. For the purpose of providing more accurate legal descriptions for the Revised Abstracts, the Blankenship POU should be detailed as follows:

Place of Use:

ID	Acres	QtrSec	Sec	Twp	Rge	County
1	9.50	NESE	32	5S	21E	CARBON
2	6.25	N2SESE	32	5S	21E	CARBON
3	9.50	S2SESE	32	5S	21E	CARBON
4	2.75	E2E2SWSE	32	5S	21E	CARBON
Total: 28.00						

WHEREFORE Blankenship respectfully submits the above supplemental information and requests that the Court describe Blankenship's POU has detailed herein.

DATED this 4th day of August, 2021.

WESTERN ROOTS LAW PLLC

/s/ Breeann M. Johnson
Breeann M. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2021, a true and correct copy of the foregoing document was served upon the following parties in the manner set forth below:

Montana Water Court PO Box 1389 Bozeman, MT 59771-1389 406.586.4364	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: watercourt@mt.gov ; melissa.lockman@mt.gov <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Michael F. McGuinness Patten, Peterman, Bekkedahl & Green PLLC 2817 2 nd Ave. N., Ste. 300 Billings, MT 59101	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: MMcGuinness@ppbglaw.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Ronald R. & Susan E. King 604 Clear Creek Rd. Roberts, MT 59070	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: rskkking@aol.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Jenneta & Johnny L. Conover 600 Clear Creek Rd. Roberts, MT 59070	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: johnnylconover@gmail.com ; jennetarconover@gmail.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Kenneth & Jewel Karina 546 Clear Creek Road Roberts, MT 59070	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: montanafireflymeadows@gmail.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Lyla S. Morrell 12 Obert Road Roberts, MT 59070	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: lylamorrell@yahoo.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Mark P. and Deborah K. Pierson 108 Obert Road Roberts, MT 59070	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: rockyforkoutfitters@msn.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:

David & Brianna Crocket 594 Clear Creek Rd. Roberts, MT 59070	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: brianna6459@gmail.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Heather T. Shoup Revocable Trust 2005 9060 Seavey Lane Loomis, CA 95650	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: heather91901@gmail.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Shawn and Kelly Roberts 576 Clear Creek Road Roberts, MT 59070	X U.S. First-Class Mail, Postage Prepaid <input type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Kelly A. & Wade K. Reynolds PO Box 1473 Red Lodge, MT 59068	X U.S. First-Class Mail, Postage Prepaid <input type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Ila K. Erickson 54 Cherry Springs Road Roberts, MT 59070	X U.S. First-Class Mail, Postage Prepaid <input type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Arik J. & Jean E. Petersen 106 Obert Rd. Roberts, MT 59070	X U.S. First-Class Mail, Postage Prepaid <input type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
MacKenzie & Stephen Alexander PO Box 1922 Red Lodge, MT 59068	X U.S. First-Class Mail, Postage Prepaid <input type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:

/s/ Breeann M. Johnson
Breeann M. Johnson

Exhibit A

Revised Place of Use in SE, Section 32, Twp 5S, Rge 21E, Carbon County



ELECTRONICALLY FILED

Michael F. McGuinness
PATTEN PETERMAN, BEKKEDAHL & GREEN
2817 Second Avenue North, Suite 300
Billings, MT 59101
Telephone: (406) 252-8500
Facsimile: (406) 294-9500
E-mail: mmcguinness@ppbglaw.com
Attorney for Claimants/Objectors
Ronald R. King and Susan E. King

43D-0065-R-2019

August 4, 2021

Montana Water Court

MONTANA WATER COURT, YELLOWSTONE DIVISION

CLARKS FORK YELLOWSTONE RIVER - BASIN 43D

<p>CLAIMANTS: Jenneta Conover; Johnny L. Conover; Ronald R. King; Susan E. King; Bobbi Blankenship; Arik J. Petersen; Jean E. Petersen; Kelly A. Reynolds; Wade K. Reynolds; Lyla S. Morrell; Kelly Roberts; Shawn Roberts; Heather T. Shoup Revocable Trust 2005; Mark Pierson; Deborah Pierson; David Crocket; Brianna Crocket; Ila K. Erickson; Kenneth Karina; Jewel Karina</p> <p>OBJECTORS: Bobbi Blankenship; Ronald R. King, Susan E. King</p> <p>NOTICE OF INTENT TO APPEAR: Bobbi Blankenship; United States of America (Bureau of Reclamation); Ronald R. King; Susan E. King</p>	<p>CASE 43D-R65 43D-36640-00 43D-36641-00 43D-36642-00 43D-36643-00 43D-36644-00 43D-36645-00</p>
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CLAIMANTS RONALD AND SUSAN KING'S
NOTICE OF SUPPLEMENTAL LEGAL LAND DESCRIPTIONS AND REQUEST FOR
EXTENTION


Claimants, Ronald S. King and Susan E. King, by and through counsel, provides the following legal descriptions and associated exhibits for the modified places of use pursuant to this Court's Order dated June 28, 2012.

1. A POU for Water Right Claim No. 36641-00 (Parent Claim) should be corrected to identify a location within the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32, Township 5 South, Range 21 East, PMM. See attached aerial photograph, identified as Ex. 1.
2. A POU (POU 2) for Water Right Claim No. 36642-00 should be corrected to identify a location within the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32, Township 5 South, Range 21 East, PMM. *Id.*
3. A POU for Water Right Claim No. 36644-00 (POU 1) should be corrected to identify a location within the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32, Township 5 South, Range 21 East, PMM. *Id.*

Claimants Ronald and Susan King request that the Court grant a thirty (30) day extension or deadline to show cause for any unrepresented party (specifically, the Heather T. Shoup Revocable Trust of 2005; Jennetta and Johnny Conover, Kelly and Shawn Roberts, David and Brianna Crocket, and Kennneth and Jewel Karina) to provide additional information concerning refining the legal descriptions of their places of use located upon their properties should they deem necessary should they believe it to be necessary.

DATED this 4th day of August, 2021.

PATTEN, PETERMAN, BEKKEDAHN & GREEN, PLLC

By: 
Michael F. McGuinness
Attorneys for Claimants/Objectors,
Ronald R. King and Susan E. King

CERTIFICATE OF SERVICE:

I hereby certify that on the 4th day of August, 2021, a true and correct copy of the foregoing was served by ☐ First Class Mail, postage prepaid; ☐ Hand-Delivery; ☐ Email; or ☐ Facsimile, upon the following:

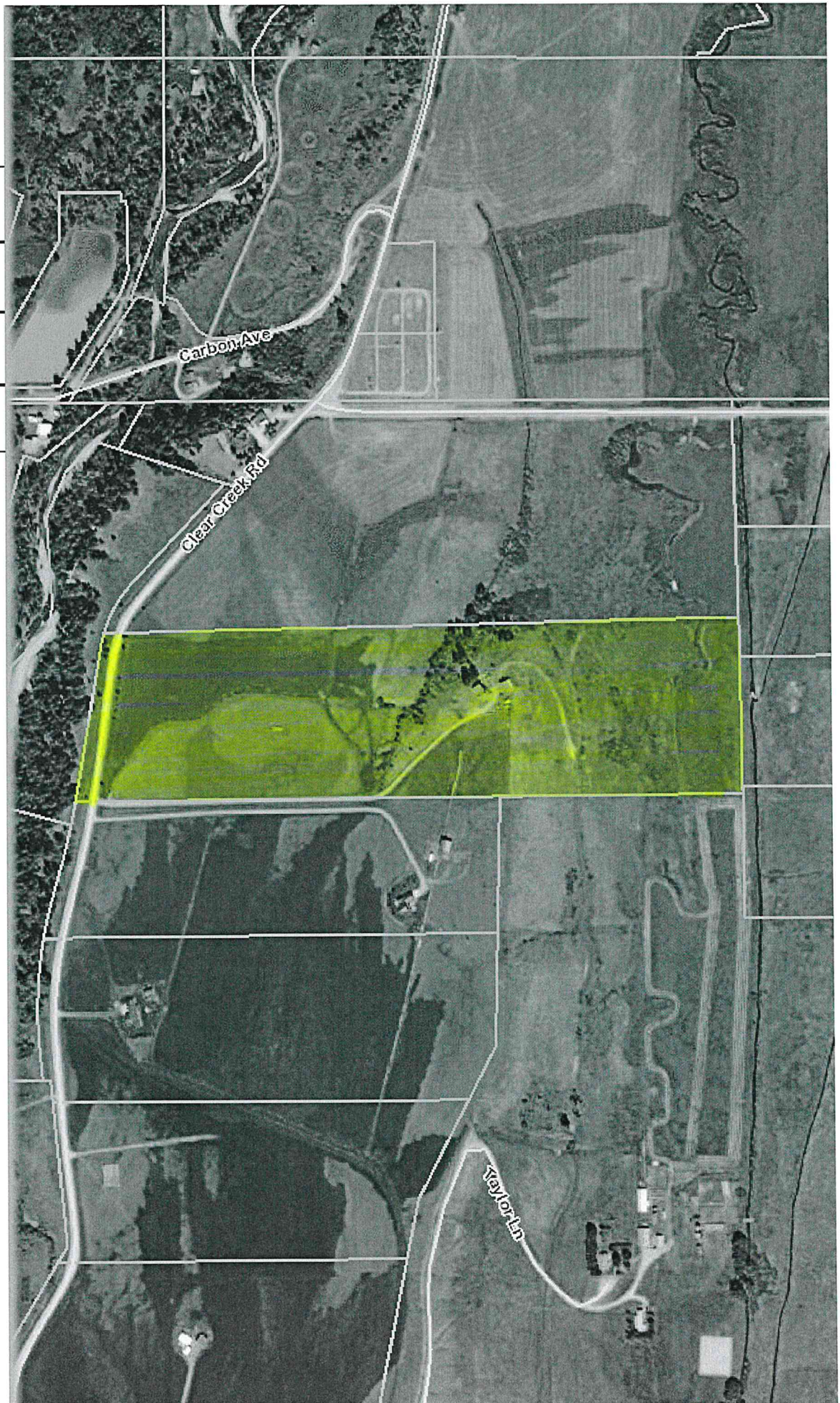
Montana Water Court (filed with Water Court electronically/email)
P.O. Box 1389
Bozeman, MT 59711-1389
Email: watercourt@mt.gov

Susan E. King Ronald R. King 604 Clear Creek Road Roberts, MT 59070 (406) 445-9159 rskkking@aol.com	Jenneta Conover Johnny L. Conover 600 Clear Creek Rd Roberts, MT 59070 (406) 702-3246 johnnylconover@gmail.com
David and Brianna Crocket 594 Clear Creek Rd. Roberts, MT 59070	Arik J. Petersen Jean E. Petersen 24 Obert Rd. Roberts, MT 59070
Breeann M. Johnson, Esq. Western Roots Law, PLLC P.O. Box 1432 Belgrade, MT 59714 (406) 600-9389 Johnson@westrootslaw.com	Kelly A. Reynolds Wade K. Reynolds P.O. Box 1473 Red Lodge, MT 59068-1473 (406) 962-3179
Heather T. Shoup Revocable Trust 2005 9060 Seavey Lane Loomis, CA 95650	Ila K. Erickson 54 Cherry Springs Road Roberts, MT 59070
Lyla S. Morrell 12 Obert Rd. Roberts, MT 59070	Kenneth and Jewel Karina 546 Clear Creek Road Roberts, MT 59070
Mark and Deborah Pierson 108 Obert Rd. Roberts, MT 59070	Kelly Roberts Shawn Roberts PO Box 206 Milford, IA 51351

Angela Dike

For Patten, Peterman, Bekkedahl & Green, PLLC

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EXHIBIT

1

tabbles