

Montana Water Court  
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43D-0258-R-2020

September 24, 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: Rocking Double R Properties, LLC

**43D-0258-R-2020**  
43D 195949-00

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

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report.

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 claim 43D 195949-00 appeared in the Preliminary Decree with issue remarks. 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 issue remarks on claim 43D 195949-00 included zero acres irrigated issue remarks.

On August 2, 2021, the DNRC filed a Memorandum recommending the withdrawal of claim 43D 195949-00. Enclosed with the DNRC Memorandum, in agreement with DNRC, was a Request to Withdraw Statement of Claim 43D 195949-00 signed by claimant's attorney, Raymond G. Kuntz.

### **Issues**

Should irrigation claim 43D 195949-00 be dismissed?

### **Finding of fact**

Irrigation claim 43D 195949-00 should be dismissed.

### **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. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

### **Analysis**

The DNRC Database identifies Rocking Double R Properties, LLC as the current claimant of water right claim 43D 195949-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies Rocking Double R Properties, LLC as the current property owner of the place of use identified by claim 43D 195949-00. Rocking Double R Properties, LLC's Request to Withdraw includes the following statement: "Mr. Donald Johnson [the former property owner] stated that no acreage was irrigated pursuant to this claim from the time his family acquired the property in the 1930's. The diversion works and ditch structures were 'not fixable' when the property was acquired."

### **Conclusion of law**

The Request to Withdraw Statement of Claim 43D 195949-00 is properly filed.

### **Recommendation**

Irrigation claim 43D 195949-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

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Anna M. Stradley  
Senior Water Master

**Service via Electronic Mail**

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

**Water Right Number:**       **43D 195949-00**   STATEMENT OF CLAIM

**Version:**       3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**               ROCKING DOUBLE R PROPERTIES LLC  
                              8217 TRULLIUM LN  
                              VICTORIA, MN 55386 9787

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):**               IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:**               WILLOW 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.