

Montana Water Court  
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43D-0397-R-2021

September 3, 2021

Montana Water Court

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

\*\*\*\*\*

CLAIMANTS: James J. Yedlicka; Edward O. Yedlicka

**43D-0397-R-2021**  
43D 13755-00  
43D 13756-00

**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**

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 above captioned irrigation claims appeared in the Preliminary Decree with issue remarks concerning maximum acres irrigated.

Montana law requires the Water Court to resolve issue remarks. James J. Yedlicka and Edward O. Yedlicka ("Yedlickas") failed to complete the issue remark resolution process. The court set a show cause filing deadline for the Yedlickas.

### **Issues**

The Preliminary Decree abstracts identify a 206.00 acre place of use located in the NE, SE, and S2SW of Section 8, Township 5 South, Range 23 East, Carbon County.

1. What are the historically accurate maximum acres irrigated for the claims?
2. Are the maximum acres irrigated issue remarks resolved?

### **Findings of fact**

1. DNRC filed a Memorandum on May 14, 2021. DNRC reported the Yedlickas failed to complete the issue remark resolution process and recommended that the maximum acres irrigated be reduced, thereby resolving the issue remarks on the claims.

2. An order set a filing deadline for Yedlickas to show cause why the claims should not be amended as recommended by DNRC to resolve the maximum acres irrigated issue remarks. Yedlickas failed to comply with the show cause filing deadline.

A preponderance of evidence establishes the following facts:

3. For irrigation claims 43D 13755-00 and 43D 13756-00, the historically accurate maximum acres irrigated are 163.67 located in the E2E2 and the S2SW of Section 8, Township 5 South, Range 23 East, Carbon County.

### **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. 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. 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.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order

issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

## Analysis

### Issues 1 and 2 – maximum acres irrigated; issue remark resolution

DNRC mapped the irrigated acres on 1962 and 1980 aerial photos, and overlaid the mapping on a 2017 aerial photo to achieve a more accurate measurement of the maximum acres irrigated.

Yedlickas' failure to provide any evidence to address or resolve the maximum acres irrigated issue remarks left information in the claim file, and DNRC's review of aerial photos and recommendation as strong evidence of actual historical use.

DNRC's Memorandum included aerial photos depicting the amended place of use. Copies of the aerial photos are included with this report. Both the aerial photos and the report will be placed in the claim files for future reference.

### Conclusions of law

Based on information in the claim files, DNRC's recommendation, and the Yedlickas' failure to comply with orders issued by the Water Master, the claims should be amended as recommended by the DNRC. The maximum acres irrigated issue remarks are resolved.

### Recommendations

Irrigation claims 43D 13755-00 and 43D 13756-00 should be amended as follows to accurately reflect historical use.

<b><u>MAXIMUM ACRES:</u></b>		<del>206.00</del>					<b>163.67</b>
<b><u>PLACE OF USE:</u></b>							
	<b><u>ACRES</u></b>	<b><u>GOVT LOT</u></b>	<b><u>QTR SEC</u></b>	<b><u>SEC</u></b>	<b><u>TWP</u></b>	<b><u>RGE</u></b>	<b><u>COUNTY</u></b>
127.67	<del>40.00</del>	E2E2	NE	8	5S	23E	CARBON
	<del>120.00</del>		SE	8	5S	23E	CARBON
	<del>36.00</del>		S2SW	8	5S	23E	CARBON
<b>TOTAL:</b>	<b>163.67</b>						

The maximum acres irrigated issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.

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Anna M. Stradley  
Senior Water Master

**Service via USPS Mail**

James J. Yedlicka  
PO Box 116  
Fromberg, MT 59029-0116

Edward O. Yedlicka  
PO Box 94  
Fromberg, MT 59029

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

**Water Right Number:**      **43D 13755-00**      STATEMENT OF CLAIM

**Version:**      4 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      EDWARD O YEDLICKA  
                                        PO BOX 94  
                                        FROMBERG, MT 59029  
  
                                        JAMES J YEDLICKA  
                                        PO BOX 116  
                                        FROMBERG, MT 59029 0116

**Priority Date:**                JUNE 20, 1895

**Type of Historical Right:**    DECREED

**Purpose (Use):**                IRRIGATION

**Irrigation Type:**            FLOOD

**Flow Rate:**                 1.13 CFS

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

**Climatic Area:**              1 - HIGH

**Maximum Acres:**            163.67

**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		SESWSE	14	4S	22E	CARBON

**Period of Diversion:**        APRIL 1 TO NOVEMBER 1

**Diversion Means:**           HEADGATE

**Ditch Name:**                LAST CHANCE DITCH

**Period of Use:**                APRIL 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	127.67		E2E2	8	5S	23E	CARBON
2	36.00		S2SW	8	5S	23E	CARBON
<b>Total:</b>	<u>163.67</u>						

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

13755-00

27988-00

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

**Water Right Number:**      **43D 13756-00**      STATEMENT OF CLAIM

**Version:**      4 -- POST DECREE

**Status:** ACTIVE

**Owners:**      EDWARD O YEDLICKA  
                 PO BOX 94  
                 FROMBERG, MT 59029  
  
                 JAMES J YEDLICKA  
                 PO BOX 116  
                 FROMBERG, MT 59029 0116

**Priority Date:**      JUNE 20, 1895

**Type of Historical Right:**      DECREED

**Purpose (Use):**      IRRIGATION

**Irrigation Type:**      FLOOD

**Flow Rate:**      1.38 CFS

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

**Climatic Area:**      1 - HIGH

**Maximum Acres:**      163.67

**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		SESWSE	14	4S	22E	CARBON

**Period of Diversion:**      APRIL 1 TO NOVEMBER 1

**Diversion Means:**      HEADGATE

**Ditch Name:**      LAST CHANCE DITCH

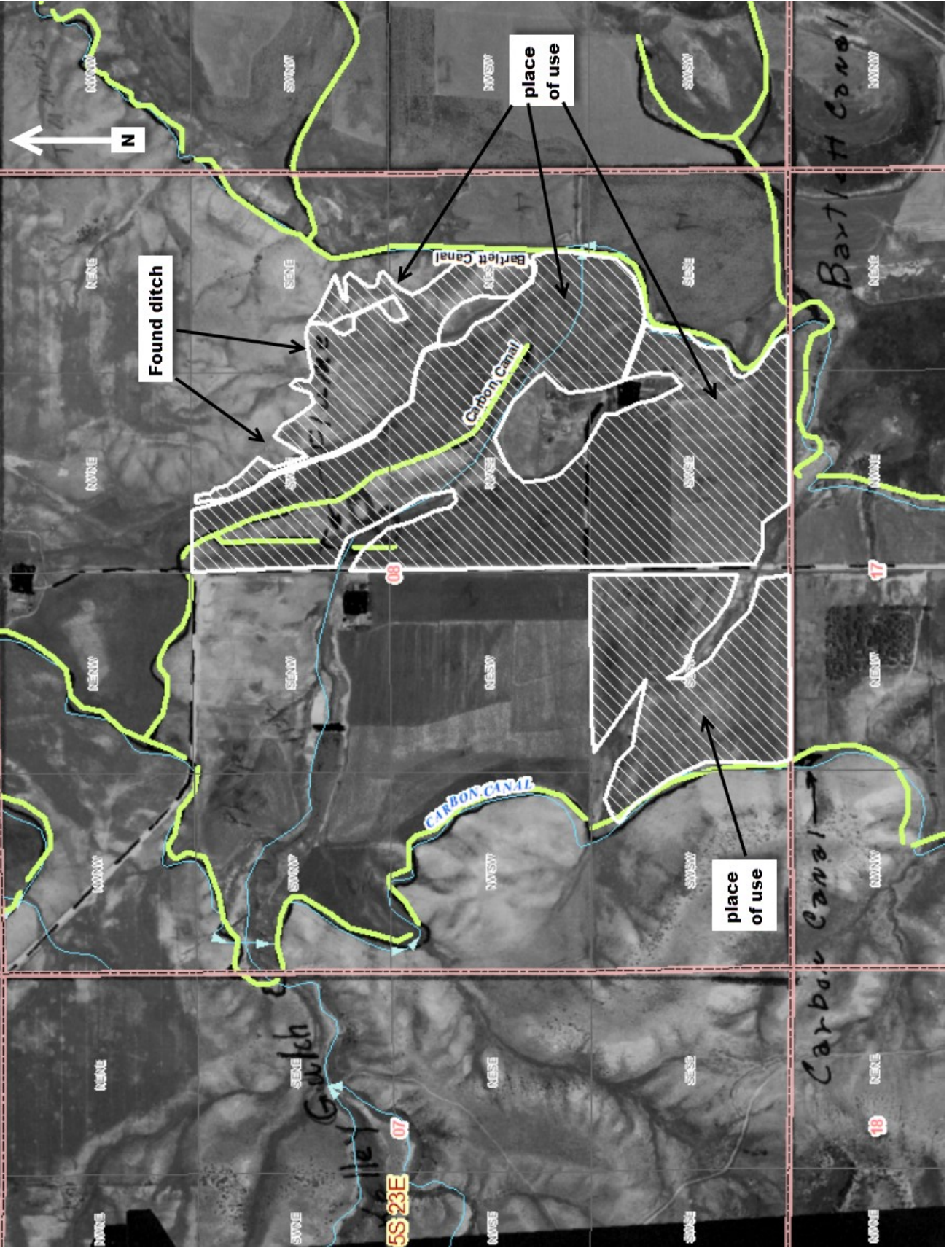
**Period of Use:**      APRIL 1 TO NOVEMBER 1

**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	127.67		E2E2	8	5S	23E	CARBON
2	36.00		S2SW	8	5S	23E	CARBON
<b>Total:</b>	<hr/> 163.67						



1962 WRS aerial  
43D 13755-00 &  
43D 13756-00





2011 NAIP aerial  
43D 13755-00 &  
43D 13756-00

