

43D-0583-R-2022

July 6, 2022

Montana Water Court  
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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: Marvin D. Mikkola

**43D-0583-R-2022**  
43D 195985-00

**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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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

### Findings of fact

1. The above captioned irrigation claim received several issue remarks including remarks stating zero acres appeared to be irrigated in 1946, 1966, and 1980.
2. The claim did not receive any objections.
3. As provided for in Section 85-2-248(5), MCA, claimant, Marvin D. Mikkola, was ordered to meet with personnel from the Billings Regional Office of the Montana Department of Natural Resources and Conservation (DNRC) to address the issue remarks. On May 16, 2022, DNRC Water Resource Specialist Brandy Gray filed a Memorandum stating Marvin D. Mikkola failed to contact the DNRC and that no recommendations concerning resolution of the issue remarks appearing on the claim could be made.
4. The Order Setting Issue Remark Resolution Deadlines states:

**FAILURE TO COMPLY WITH THIS ORDER MAY  
RESULT IN MODIFICATION OR TERMINATION OF  
YOUR WATER RIGHT.** [bold and capitalization in  
original]

5. The issue remarks are based on DNRC claims examination. This examination was developed to confirm the historical use of water right claims and to identify potential issues. When the examination cannot confirm some aspect of a claim, an issue remark is added to that claim. In the absence of other evidence, the remarks can be viewed as evidence showing that the claim should be dismissed. In this case, Marvin D. Mikkola failed to comply with filing deadlines and therefore failed to provide any evidence to address or resolve the issue remarks. This left the zero acres irrigated in 1946, 1966, and 1980 issue remarks and the DNRC claim examination worksheet as strong evidence that the claim may be abandoned.
6. A 30-day deadline was set for Marvin D. Mikkola to file evidence sufficient to show cause why the claim should not be dismissed. The Order setting the deadline stated

that the failure to comply with the filing deadline would be viewed as agreement that the claim should be dismissed.

7. Marvin D. Mikkola failed to comply with the filing deadline.

### **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.

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 terminate the claim to conform with information found in the claim file. Section 85-2-248(9)(d), MCA.

**Conclusion of law**

Based upon the zero acres irrigated in 1946, 1966, and 1980 issue remarks on the claim, the DNRC claim examination worksheets in the claim file, and Marvin D. Mikkola's failure to comply with Orders issued by the Water Master, the claim should be dismissed.

**Recommendation**

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss irrigation claim 43D 195985-00.

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 USPS Mail**

Marvin D. Mikkola  
540 Cooney Rd  
Roberts, MT 59070-9569

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

**Water Right Number:** 43D 195985-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** DISMISSED

**Owners:** MARVIN D MIKKOLA  
540 COONEY RD  
ROBERTS, MT 59070 9569

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF COTTONWOOD COULEE

**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.