

Montana Water Court  
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MONTANA WATER COURT  
YELLOWSTONE DIVISION  
CLARKS FORK YELLOWSTONE RIVER  
BASIN 43D  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Roque Properties LLC

**CASE 43D-6012-A-2025**  
43D 13723-00

**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, conclusions 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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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**

On July 1, 2025 Roque Properties, LLC filed a Motion To Amend Statement Of Claim And Brief In Support ["Motion To Amend"] pursuant to section 85-2-233(6), MCA.

### APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments “may adversely affect other water rights.” Section 85-2-233(6)(a)(i), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to 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 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 including claimants amending their own claims. Rule 19, W.R.Adj.R.

### FINDINGS OF FACT

1. The changes requested in the Motion To Amend arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are based on the same operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

2. The Preliminary Decree states that the maximum acres irrigated is 80.00 and the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
40.00	NWSE	5	5S	20E	CARBON
20.00	NESW	5	5S	20E	CARBON
<u>20.00</u>	SESW	5	5S	20E	CARBON
80.00					

The place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
37.77	NWSE	5	5S	20E	CARBON
28.50	NESW	5	5S	20E	CARBON
12.73	SESW	5	5S	20E	CARBON
0.78	N2SWSE	5	5S	20E	CARBON
<u>0.22</u>	SENWSW	5	5S	20E	CARBON
80.00					

3. The following remark should be added to the abstract of this claim noting the amendment:

THE PLACE OF USE LEGAL DESCRIPTION WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

#### CONCLUSIONS OF LAW

1. The requested amendment does not adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The Motion To Amend is sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree.

#### RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the Motion To Amend this claim and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via Electronic Mail:**

Julia J. Nordlund  
Jardine, Stephenson, Blewett & Weaver, P.C.  
jnordlund@jardinelaw.com  
(atty for Roque Properties LLC)

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

**Water Right Number:** 43D 13723-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROQUE PROPERTIES LLC  
1747 RED LODGE CREEK RD  
ROBERTS, MT 59070-9650

**Priority Date:** MARCH 4, 1902

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 3.00 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:** 80.00

**Source Name:** RED LODGE 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		SWSESW	5	5S	20E	CARBON

**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** LOYNING DITCH

**Period of Use:** APRIL 15 TO OCTOBER 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	37.77		NWSE	5	5S	20E	CARBON
2	28.50		NESW	5	5S	20E	CARBON
3	12.73		SESW	5	5S	20E	CARBON
4	0.78		N2SWSE	5	5S	20E	CARBON
5	0.22		SENWSW	5	5S	20E	CARBON

**Total:** 80.00

**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.

13723-00

13724-00

THE PLACE OF USE LEGAL DESCRIPTION WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.