

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Chad R. Eichelberger

**CASE 43B-0147-R-2020**  
43B 7369-00

**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 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**

This claim appeared in the Preliminary Decree with the following remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING

THIS ONE.

IT APPEARS THAT THE LEGAL DESCRIPTIONS IN THE PLACE OF USE AND POINT OF DIVERSION NEED SOME REFINEMENT. THIS WILL BE HEARD AFTER PROPER NOTICE IN THE NEXT OBJECTION LIST.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The place of use and point of diversion legal descriptions issue remark was not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, the information in the claim file is sufficient to address and resolve the issue remark. In order to give the claimant an opportunity to review the remark and the Court's determination, and to file additional evidence if he so chose, an Order Consolidating Case and Setting Filing Deadline was issued on December 17, 2020, setting a January 29, 2021 filing deadline. Nothing was filed by the claimant.

The ditch identified on the abstract for this claim in the Preliminary Decree is Upland Ditch. During preparation of the Preliminary Decree, the point of diversion legal description was changed to the legal description for Mill Creek Flat Ditch, not for Upland Ditch. As there were multiple claims for Upland Ditch and Mill Creek Flat Ditch and apparent confusion over the correct legal description for the headgate for each ditch, the Court requested assistance from DNRC to determine the correct point of diversion legal descriptions and to prepare a marked aerial photograph for the Court and various claimants to use to determine the correct ditch and its point of diversion legal description. On February 26, 2021 the DNRC provided a new marked aerial photograph copy.

On June 18, 2021 the General Notice and Order Setting Filing Deadline with a copy of the new marked aerial photograph attached, was sent to the claimant. It set a July 30, 2021 deadline for the claimant to file a written statement confirming the ditch for this claimed right and its legal description. Nothing was filed by then claimant Austin McPherson.

The owner of this claim is now Chad R. Eichelberger. On October 27, 2021 the Order Updating Caption And Mailing List and Order Setting Filing Deadline. A copy of a DRAFT Master's Report and modified abstract were sent with the Orders for him to review. The Order states:

ORDERED that the deadline for the current claimant to file any comments on this Draft Master's Report and modified abstract is **November 29, 2021**. The claimant is welcome to include a request for a telephone conference call to discuss the issues if it would be helpful. If no comments are filed by November 29, 2021, the Court will conclude the current claimant concurs with the previous proceedings and will proceed with filing the Master's Report and modified abstract.

Nothing was filed by the current claimant.

Under Section 85-2-248(3), MCA, information in the claim file can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance the Statement of Claim and the new marked aerial photograph prepared by the DNRC address and resolve the place of use and point of diversion issue remark. All of the above-referenced documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), 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 for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the place of use is Government Lot 5, SENWNW section 14, T5S, R8E, PARK. The information in the claim file indicates that the place of use

legal description should reference Paradise Valley Estates Subdivision Lot 5 rather than Government Lot 5. "Government Lot 5" should be removed from the legal description and the following clarification remark should be added: Paradise Valley Estates Subdivision Lot 5.

2. The Statement of Claim states that Upland Ditch is the diversion for this claimed right. The Preliminary Decree states that the ditch name is Upland Ditch and the point of diversion legal description is NESWNE section 3, T6S, R9E, PARK. The ditch name should remain Upland Ditch but the legal description should be corrected to the Upland Ditch point of diversion legal description. The legal description should be NENENW section 3, T6S, R9E, PARK.

3. The place of use and point of diversion issue remark should be removed as addressed and resolved.

4. The other remarks provide notice of changes made prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The Statement of Claim and the new marked aerial photograph prepared by the DNRC are sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court 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.

---

Kathryn L. W. Lambert  
Senior Water Master

Service Via USPS Mail:

Chad R. Eichelberger

**234 Cherry St**

**Chattanooga, TN 37403**

~~**220 Shady Ridge Ln**~~

~~**Chattanooga, TN 37405-3966**~~

**Note: Service List Updated 12/9/2021**

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK  
BASIN 43B**

**Water Right Number:** 43B 7369-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CHAD R EICHELBERGER  
220 SHADY RIDGE LN  
CHATTANOOGA, TN 37405 3966

**Priority Date:** MAY 1, 1904

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 22.44 GPM

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

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 1.03

**Source Name:** MILL 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		NENENW	3	6S	9E	PARK

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

**Diversion Means:** HEADGATE

**Ditch Name:** UPLAND DITCH

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

**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	1.03		SENWNW	14	5S	8E	PARK

**Total:** 1.03

PARADISE VALLEY ESTATES SUBDIVISION LOT 5

**Remarks:**

AUTHORIZATION TO CHANGE ISSUED 10/23/1989 FOR CHANGE IN POINT OF DIVERSION COMPLETED 10/28/1991. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE SEE 43B 7354-00