

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

CLAIMANTS: Eight Mile II LLC; Paradise Valley Ranch LLC

OBJECTOR: Paradise Valley Ranch LLC

CASE 43B-1003-R-2021

43B 211375-00

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 claim appeared in the Preliminary Decree for the Yellowstone River Above and Including Bridger Creek (Basin 43B). Paradise Valley Ranch, LLC’s (“PVR”) predecessor in interest filed an objection to the claim.

2. On January 28, 2021 the above captioned claim was consolidated into Case 39E-1003-R-2021.

3. On September 9, 2021, a Stipulation and Resolution of Objection was filed with the Court. The Stipulation is attached to this Master’s Report. The Stipulation indicated that the parties had agreed to add Eight Mile II, LLC (“Eight Mile”) as a co-owner of the claim.

4. Pursuant to the Stipulation, the parties propose that ownership of the claims be modified as follows:

Owners: Paradise Valley Ranch LLC
PO Box 318
Emigrant, MT 59027-0318

Eight Mile II, LLC
146 South Beach Road
Hobe Sound, FL 33455

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

3. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

CONCLUSION OF LAW

1. The Stipulation conforms to applicable law. Ownership should be updated as discussed above.

RECOMMENDATION

1. Upon review of the record in this case, Eight Mile should be added as a co-owner of the claim as discussed above. PVR’s objection should be resolved.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

Nathan Block
Water Master

Service via Electronic Mail:

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

Water Right Number: **43B 211375-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: EIGHT MILE II LLC
146 SOUTH BEACH ROAD
HOBE SOUND, FL 33455 2435

PARADISE VALLEY RANCH LLC
PO BOX 318
EMIGRANT, MT 59027 0318

Priority Date: APRIL 15, 1872

Enforceable Priority Date: JUNE 30, 1973

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A
DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT
HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR
STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER
ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING
CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER
SOURCE.

Source Name: EIGHTMILE 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		SESESE	33	4S	8E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: DARROCH DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

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			N2NE	1	5S	8E	PARK
2			E2NE	35	4S	8E	PARK
3			SE	25	4S	8E	PARK
4			N2	30	4S	9E	PARK
5			S2SE	19	4S	9E	PARK

6	W2	20	4S	9E	PARK
7	NWNE	20	4S	9E	PARK
8	S2SE	17	4S	9E	PARK

43B-1003-R-2021

September 9, 2021

Montana Water Court

Reneé L. Coppock
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rcoppock@crowleyfleck.com

Attorneys for Eight Mile II, LLC

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

CLAIMANT: Eight Mile II LLC; Paradise Valley Ranch, LLC	CASE 43B-1003-R-2021
OBJECTORS: Paradise Valley Ranch, LLC	43B 211375-00

STIPULATION AND RESOLUTION OF OBJECTION

Eight Mile II, LLC (“Eight Mile”), by and through its counsel of record, and Paradise Valley Ranch, LLC (“PVR”), by and through its counsel of record, hereby stipulate and agree as follows:

1. Case 43B-1003-R-2021 involves one water right, 43B 211375-00. The right is for stock water diverted from Eight Mile Creek via the Darroch Ditch. See map provided as Exhibit A.
2. Royal Teton, Ltd. filed a Statement of Claim for the water right on July 17, 1985. Accordingly, the water right is a “late filed claim.”

3. On May 19, 1993, Church Universal and Triumphant, Inc. (successor to Royal Teton, Ltd.) sold the entire place of use for the water right in the N2NE of Section 1, Township 5 South, Range 8 East, and a portion of the place of use in the SE of Section 25 and E2NE of Section 35, Township 4 South, Range 8 East, to Montana Land and Cattle Co., but did not sell all places of use for 43B 211375 00. The water right was not specifically conveyed to Montana Land and Cattle Co. in the deed. Instead, Church Universal and Triumphant, Inc. reserved all water rights (except portions of 43B 190488 00, 43B 190434 00 and 43B 85046 00 that were specifically conveyed) back to their remaining property.

Despite the reservation of 43B 211375 00, Montana Land and Cattle Co. continued to water its livestock from Darroch Ditch at the historic places of use it purchased. After the sale, the places of use for the water right were never amended to exclude those places of use purchased by Montana Land and Cattle Co. Church Universal and Triumphant, Inc.'s remaining property included part of the SE of Section 25, T4S R8E, the N2 of Section 30, S2SE of Section 19, W2 and NWNE of Section 20, and the S2SE of Section 17, all in Township 4 South, Range 9 East. Church Universal and Triumphant, Inc.'s remaining property was then sold to Element Land Co., LLC, which was successor in interest was PVR. Eight Mile is a successor to Montana Land and Cattle Co.

4. Element Land Co., LLC filed an objection to the ownership of the water right to reflect their sole ownership of the right, based upon the reservation made by their predecessor in the 1993 deed. When PVR purchased its property from Element Land Co., PVR was substituted as the objector.

5. Eight Mile, PVR and their respective predecessors watered their livestock from the Darroch Ditch continually since April 15, 1872 at the places of use set forth on the General Abstract and as shown in the DNRC file for this water right.

6. In the effort of settlement, PVR has agreed to convey the portion of 43B 211375 00 that its predecessor reserved in 1993, back to Eight Mile. PVR will execute a quitclaim deed of any interest it may have in the water right as it pertains to the places of use owned by Eight Mile. A copy of the quitclaim deed to be executed and recorded upon approval by the Water Court of this Stipulation is attached as Exhibit B. The parties have agreed to remain as co-owners of the claim.

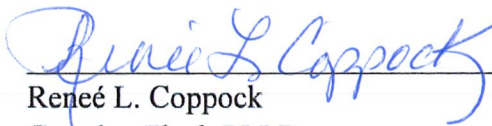
7. The ownership of each place of use is as follows:

- a. Eight Mile is the owner of places of use 1, 2, and a portion of 3.
- b. PVR is the owner of places of use 4, 5, 6, 7, 8 and a portion of 3.

8. A proposed revised abstract is attached as Exhibit C.

9. The approval of this Stipulation by the Water Court will resolve all objections made to this claim.

DATED this 9th day of September, 2021.



Renee L. Coppock
Crowley Fleck PLLP
P.O. Box 2529
Billings, MT 59103-2529
Attorneys for Eight Mile II, LLC

DATED this 9th day of September, 2021.



Peter G. Scott
Peter G. Scott Law Offices, PLLC
682 South Ferguson Ave., Suite 4
Bozeman, MT 59718-6491
Attorney for Paradise Valley Ranch, LLC

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of September, 2021, a true and correct copy of the foregoing document was served to the following persons via U.S. Mail and email where available:

Peter G. Scott
Peter G. Scott Law Offices, PLLC
682 South Ferguson Ave., Suite 4
Bozeman, MT 59718-6491

_____





Case 43B-1003-R-2021

Park County, MT








43B 211375 00

Property Ownership

-  Paradise Valley Ranch, LLC
-  Eight Mile II a Montana LLC Property
-  US Bureau of Land Management
-  Montana State Trust Lands

Water Right Features

-  POD*
-  POU*
-  Darroch Ditches
-  Abandoned Darroch Ditch
-  Park Branch Water User's Association Ditch

*POD mapped based on claim file maps and refined based on current aerial imagery. POU mapped based on stretch of Darroch Ditches within the claimed legal land descriptions and shown on maps included in the claim file.



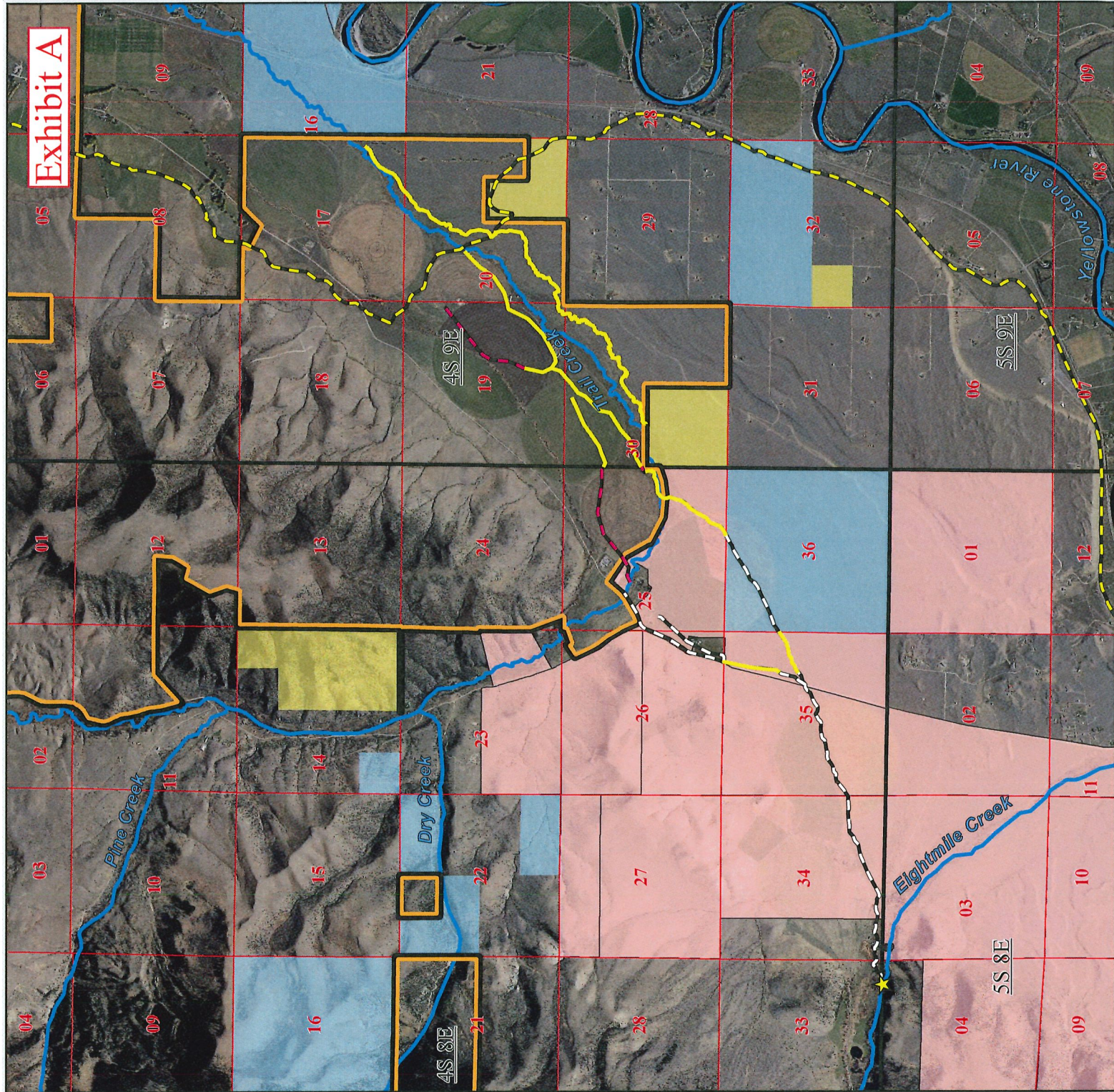
Created 2/22/2021
Aerial Imagery: 10/25/2017 NAIP



Miles

Geographic features displayed on the map have not been surveyed by DMS and should not be construed as surveyed. This map includes publicly available data obtained from third-party sources. DMS makes no warranties as to the accuracy of data obtained from third-party sources.

Exhibit A



Return to:
Renee L. Coppock
Crowley Fleck, PLLP
P.O. Box 2529
Billings, MT 59103-2529

EXHIBIT B

WATER RIGHT QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned,

PARADISE VALLEY RANCH, LLC, a Georgia limited liability company, with a mailing address of 3223 Howell Mill Road NW, Atlanta, GA 30327 ("Grantor"),

hereby conveys, remises, releases and forever quitclaims unto

EIGHT MILE II, LLC, a Montana limited liability company, with a mailing address of 146 South Beach Road, Hobe Sound, FL 33455 ("Grantee"),

all of Grantor's right, title and interest, if any, in and to Water Right Claim No. 43B 211375, as used on the following properties, all located in Park County, Montana:

Township 5 South, Ranch 8 East, M.P.M.
Section 1: N $\frac{1}{2}$ NE $\frac{1}{4}$

Township 4 South, Ranch 8 East, M.P.M.
Section 35: E $\frac{1}{2}$ NE $\frac{1}{4}$
Section 25: That portion in the SE $\frac{1}{4}$ within COS 1221, Parcel C-1, and Tract HV-2 of COS 599, LESS COS 1389

RESERVING UNTO GRANTOR and its successors and assigns all use of Water Right Claim No. 43B 211375 on the remaining places of use.

TO HAVE AND TO HOLD unto Grantee and its successors and assigns, forever.

[Signature of following page.]

DATED this _____ day of September, 2021.

PARADISE VALLEY RANCH, LLC,
a Georgia limited liability company

By _____
Its _____

STATE OF _____)
:SS
County of _____)

This instrument was acknowledged before me on the _____ day of September, 2021, by
_____, in his/her capacity as _____ of
PARADISE VALLEY RANCH, LLC, a Georgia limited liability company.

(SEAL)

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 43B 211375-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Version Status: ACTIVE

Late Claim: B

Owners: PARADISE VALLEY RANCH LLC
PO BOX 318
EMIGRANT, MT 59027-0318

EIGHT MILE II, LLC
146 SOUTH BEACH ROAD
HOBE SOUND, FL 355

Priority Date: APRIL 15, 1872

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 07/17/1985 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): STOCK

Maximum Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Maximum Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: EIGHTMILE 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		SESESE	33	4S	8E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: DARROCH DITCH

Period of Use: JANUARY 1 to DECEMBER 31

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>
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6			W2	20	4S	9E	PARK
7			NWNE	20	4S	9E	PARK
8			S2SE	17	4S	9E	PARK

Geocodes/Valid: 49-0519-01-1-01-01-0000 - Y 49-0606-25-1-01-01-0000 - Y
49-0606-25-3-01-01-0000 - Y 49-0606-35-4-05-01-0000 - Y
49-0607-17-1-01-01-0000 - Y 49-0607-19-1-01-01-0000 - Y
49-0607-20-1-01-01-0000 - Y 49-0607-20-3-01-01-0000 - Y
49-0607-30-1-01-01-0000 - Y

Remarks:

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

EXHIBIT C

Remarks:

NOTICE OF WATER RIGHT TRANSFER RECEIVED 01/08/87.

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE DOR # 181789 RECEIVED 01/01/2014.

OWNERSHIP UPDATE TYPE 608 # 199908 RECEIVED 11/21/2019.

CLAIM WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

CLAIM FILED LATE 07/17/1985 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

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.