

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
RUBY RIVER BASIN (41C)

* * * * *

CLAIMANTS: Dena R. Miller; Robert O. Miller; Alder Triple R LLC;
John Brendel; Judy Brendel; Miller Cattle Co.; Miller
U-O Ranch Inc.; Ruby River Retreat LLC

41C-6008-A-2020

41C 100938-00

41C 100939-00

41C 100941-00

Split Claim:

41C 30151556

Implied Claim:

41C 30151557

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 this Master's 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 this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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 October 20, 2020, Claimant Alder Triple R LLC filed a Verified Motion to Amend (Motion to Amend) concerning claims 41C 100938-00, 41C 100939-00, and 41C 100941-00. These claims were consolidated into Water Court Case 41C-6008-A-2020 to address the Motion to Amend.

FINDINGS OF FACT

1. The Court required Claimant Alder Triple R LLC (Claimant) to provide notice of the Motion to Amend pursuant to Section 85-2-233(6), MCA. On March 15, 2021, Alder Triple R LLC notified the Court that the required publication and personal service on the claimants had been made.

2. The period for objections or responses to the Motion to Amend expired on March 22, 2021. No objections or responses to the Motion to Amend were filed with the Court.

3. In its Motion to Amend, Claimant Alder Triple R LLC seeks ownership updates of each claim in this case. The Claimant submitted a Form 641 Divided Ownership Update for claim 41C 100941-00 and a DNRC Form 608 Water Right Ownership Update for claim 41C 100939-00.

4. The Court ordered that the Claimant file the appropriate ownership update forms and requisite filing fees for claim 41C 100938-00 with the DNRC, and on May 18, 2021, the Claimant informed the Court it had complied with the order.

41C 100938-00:

5. Claim 41C 100938-00 is a stockwater claim to water from the Ruby River. The Statement of Claim filed December 23, 1981, indicates this is a claim for stock drinking from the Ruby River and Phillips Ditch, and lists the means of diversion as “direct” and “ditch.”

6. However, the legal land description for the point of diversion and place of use in the Statement of Claim failed to include portions of the place of use and points of diversion where stock historically drank out of the Ruby and Phillips Ditch on the

property owned by Max Miller and Miller Cattle Company (and now owned by the claimants). August 14, 2020 Affidavit of Robert Miller.

7. The Motion to Amend therefore requests the following modifications to Claim 41C 100938-00 to reflect the historically accurate points of diversion and places of use:

Point 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	28	6S	4W	MADISON
<u>2</u>		<u>NW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>3</u>		<u>W2NESW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>

The means of diversion for the additional points of diversion should be **livestock direct from source.**

Place of use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2 NW	21	6S	4W	MADISON
<u>2</u>		<u>N2NESW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>3</u>		<u>SWNESW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>

8. The Motion to Amend and attached deeds indicate that ownership of 41C 100938-00 should be updated to reflect the following current owners within the claim's place of use (the former Max Miller/Miller Cattle Co. property):

Alder Triple R LLC
 Robert O. Miller
 Dena R. Miller
 Miller Cattle Co.
 John Brendel
 Judy Brendel
 Miller U-O Ranch Inc.
 Ruby River Retreat

41C 100939-00:

9. Claim 41C 100939-00 is a stockwater claim to water from the Ruby River. The Statement of Claim filed December 23, 1981, indicates this is a claim for stock

drinking from the Ruby River and Bob Peters Ditch, and lists the means of diversion as “direct” and “ditch.”

10. However, the legal land description for the point of diversion and place of use in the Statement of Claim failed to include portions of the place of use and points of diversion where stock historically drank out of the Ruby on the property owned by Max Miller and Miller Cattle Company (and now owned by the Claimants). August 14, 2020 Affidavit of Robert Miller.

11. The Motion to Amend therefore requests the following modifications to Claim 41C 100939-00 to reflect the historically accurate points of diversion and places of use:

Point 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	28	6S	4W	MADISON
<u>2</u>		<u>NW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>3</u>		<u>W2NESW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>

The means of diversion for the additional points of diversion should be **livestock direct from source.**

Place of use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2	20	6S	4W	MADISON
2		W2NW	21	6S	4W	MADISON
<u>3</u>		<u>W2E2NW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>4</u>		<u>W2NESW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>5</u>		<u>NWSW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>

12. The Motion to Amend and attached deeds indicate that ownership of 41C 100939-00 should be updated to reflect the following current owners within the claim’s place of use (the former Max Miller/Miller Cattle Co. property):¹

Alder Triple R LLC
Robert O. Miller

¹ Claimant Alder Triple R LLC filed a Form 608 DNRC Water Right Ownership Update on August 28, 2020. The Form 608 does not reference all current owners of this right, but the Claimant has attempted to comply with DNRC ownership procedures.

Dena R. Miller
Miller Cattle Co.
John Brendel
Judy Brendel
Ruby River Retreat

41C 100941-00:

13. On December 18, 2020, a DNRC Ownership Divided Interest form (641 form) was filed with the Court, requesting the split of claim 41C 100941-00. The claim is currently owned by Robert Miller, Dena Miller, Miller U-O Ranch Inc., Miller Cattle Co., Ruby River Retreat LLC, Judy Brendel, John Brendel, and Alder Triple R LLC.

14. Claim 41C 100941-00 is an irrigation claim for water from the Ruby River. The Claimant seeks to split the right to reflect the underlying ownership of part of its place of use. The parent claim will remain in the ownership of Robert Miller, Dena Miller, Miller U-O Ranch Inc., Miller Cattle Co., Ruby River Retreat LLC, Judy Brendel, John Brendel and the child claim will be assigned to Alder Triple R LLC.

15. Pursuant to the 641 form, the place of use for each claim will be divided as follows. Elements that are not addressed below will remain unchanged or be the same as the parent claim.

41C 100941-00 (parent claim):

Owners: ROBERT MILLER
DENA MILLER
MILLER U-O RANCH INC.
MILLER CATTLE CO.
RUBY RIVER RETREAT LLC
JUDY BRENDEL
JOHN BRENDEL
~~ALDER TRIPLE R LLC~~

Maximum Acres: ~~129.00~~ **93.5**

Point of Diversion

<u>ID</u>	<u>Govt</u> <u>Lot</u>	<u>Qtr</u> <u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
-----------	---------------------------	-----------------------	------------	------------	------------	---------------

1	NENENW	28	6S	4W	MADISON
2	SWNESW	21	6S	4W	MADISON
Total					

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	36.00		NENE	20	6S	4W	MADISON
2	93.00		W2	21	6S	4W	MADISON
	<u>93.50</u>						
Total	<u>129.00</u>						
	<u>93.50</u>						

41C 30151556 (child claim to 41C 100941-00):

Owners: ALDER TRIPLE R LLC

Maximum Acres: 35.50

Point 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>
<u>2</u>		<u>SWNESW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>

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>
<u>1</u>	<u>7.70</u>		<u>W2NWNW</u>	<u>21</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>2</u>	<u>27.00</u>		<u>NENE</u>	<u>20</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
<u>3</u>	<u>0.80</u>		<u>NENWNE</u>	<u>20</u>	<u>6S</u>	<u>4W</u>	<u>MADISON</u>
Total	<u>35.50</u>						

An information remark should be added to each claim stating that the flow rate of claims 41C 100941-00 and 41C 30151556 will be shared on a rotating basis.

16. The modifications to the place of use of the parent and child claims from the previously decreed place of use represent refinements of the legal land descriptions to more accurately describe the places of use as previously claimed. These modifications do not increase the acres irrigated; they do not change the use of water on the ground; and they do not have the potential to adversely affect other water users.

Implied Stock Claim 41C 30151557

17. The Claimant's Motion to Amend also requests that the Court imply a stock claim from Alder Triple R's split portion of the place of use of claim 41C 100941-00 described above (Claim 41C 30151556)

18. The original Statement of Claim for claim 41C 100941-00 (the basis for claim 41C 30151556) was filed on an irrigation form and did not explicitly mention stock use. However, the Claimant included excerpts from Case 3089, Madison County, which describes the water use as including "watering livestock." The August 14, 2020 Affidavit of Robert Miller supports that stock have historically drank from the Phillips Ditch No. 2 on the former Max Miller/ Miller Cattle Co. property. The implied stock claim will be limited to the historical use of stock on the place of use. Mr. Miller's affidavit supports 600 cattle and 10 horses on the entire property formerly owned by Max Miller and Miller Cattle Company.

19. Implied claim 41C 30151557 for stock drinking from Phillips Ditch No. 2 should have the same elements as claim 41C 30151556 except as follows:

Purpose: 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.

Place of Use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	20	6S	4W	MADISON

2	NENE	20	6S	4W	MADISON
3	NWNE	20	6S	4W	MADISON
4	W2W2	21	6S	4W	MADISON
5	W2E2W2	21	6S	4W	MADISON

Total

The maximum acres element should be removed.

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.

2. Pursuant to § 85-2-233(6), MCA, claimants may file motions to amend their own claims and objectors may file motions to amend their own objections. Rule 10, W.R.Adj.R.

3. A statement of claim for an existing water right or an amended claim of an existing right constitutes prima facie proof of its content until the issuance of a final decree. § 85-2-227(1), MCA. Anyone seeking to modify a claim or amended claim has the burden of showing by a preponderance of the evidence that the elements of the claim are incorrect. Preponderance of the evidence is a relatively modest standard that requires a party to prove the existence of a particular fact is more probable than not. *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 248 P.3d 628. This is the applicable burden of proof for every assertion that a claim is incorrect, regardless of whether the party seeking the modification is an adverse party or the claimant objecting to its own claim. Rule 19 W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

4. The Court may split claims into separate claims upon parties' request at any time prior to the issuance of the final decree. Rule 26, W.R.Adj.R.

5. The Water Court recognizes implied claims where a claimant can prove that: (1) the claimant's original statement of claim and attached documentation indicate the existence of two or more water rights; (2) historic use corroborates the implied claim;

and (3) the court's recognition of the implied claim will not alter historic water use or increase the historic burden to other water users. Claimants: Lee E. Foss, 2013 Mont. Water LEXIS 17, *32; In re Tucker, 2019 Mont. Water LEXIS 59, *2-3. The water court requires claimants to meet this three-pronged test to ensure that claimants are not circumventing Montana's forfeiture statutes or seeking to unlawfully enlarge the elements of their claim. Order Amending and Adopting Master's Report, Water Court Case 40A-115, at ¶¶ 4-7 (June 28, 2004).

6. In addition to the specific water right elements that must be included in a final decree, the Water Court also may include "any other information necessary to fully define the nature and extent of the right." § 85-2-234(6)(i), MCA. This information typically takes the form of an "information remark." The purpose of an information remark is to "provide facts regarding prior use of a right that are critical to its administration in accord with historical use." Order Adopting Master's Report in Part, Water Court Case 76G-A8, ¶ 10 (Oct. 29, 2014).

CONCLUSIONS OF LAW

1. Claimant Alder Triple R LLC's proposed modifications to the points of diversion, means of diversion, places of use, and ownership of claims 41C 100938-00 and 41C 100939-00 are supported by a preponderance of the evidence and overcome the prima facie status of the Statements of Claims.

2. Splitting claim 41C 100941-00 as requested by the Claimant Alder Triple R LLC does not constitute an increase to any claim element. The information provided by the 641 form is complete and sufficient to accurately split the claim.

3. Claimant Alder Triple R LLC has shown that the attachments to the Statement of Claim for claim 41C 100941-00 (parent right for 41C 30151556) support creation of an implied stock claim for the portion of Phillips Ditch No. 2 on the property historically owned by Max Miller and the Miller Cattle Co. Historical use corroborates the implied claim per the August 14, 2020 Affidavit of Max Miller, and recognition of the implied claim, limited to historical use, will not alter historical water use or increase burden on other water users.

4. The information remarks requested by Claimant Alder Triple R LLC and remarks denoting the creation of split and implied claims assist in administering the rights and should be added to the claims accordingly.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the that the claims 41C 100938-00 and 41C 100939-00 be modified as described above, that claim 41C 100941-00 be split as described above, and that implied claim 41C 30151557 be generated to reflect stock use from Alder Triple R LLC's split portion of 41C 100941-00 (41C 30151556).

A Post Decree Abstract of each water right claim is attached to this Master's Report for review. A copy of the Motion to Amend and maps of the proposed places of use are also attached.

Eyvind Ostrem
Water Master

Service via USPS Mail

John Brendel
Judy Brendel
PO Box 107
Alder, MT 59710-0107

Miller Cattle Co
Dena R Miller
Robert O Miller
PO Box 184
Alder, MT 59710-0184

Ruby River Retreat LLC
PO Box 31
Cuero, TX 77954-0031

Miller U-O Ranch Inc
% Christine Miller
~~PO Box 53~~
6924 W Arrowhead Ave
~~Alder, MT 59710-0053~~
Kennewick, WA 99336-1244

Service via Electronic Mail

Candace L Kimmet
Karell Dyre Haney PLLP
175 North 27th St Suite 1303
Billings, MT 59101
406-294-8484 Phone
406-294-8480 Fax
ckimmet@kdhlawfirm.com
mbennett@kdhlawfirm.com
(atty Alder Triple R LLC)

Note: Caption & Service List Updated 8.19.21

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
RUBY RIVER
BASIN 41C**

Water Right Number: **41C 100938-00** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

JOHN BRENDDEL
PO BOX 107
ALDER, MT 59710 0107

JUDY BRENDDEL
PO BOX 107
ALDER, MT 59710 0107

DENA R MILLER
PO BOX 184
ALDER, MT 59710 0184

ROBERT O MILLER
PO BOX 184
ALDER, MT 59710 0184

ALDER TRIPLE R LLC
386 PARK AVE S FL 20
NEW YORK, NY 10016 8814

MILLER CATTLE CO
PO BOX 184
ALDER, MT 59710 0184

MILLER U-O RANCH INC
% CHRISTINE MILLER
6924 W ARROWHEAD AVE
KENNEWICK, WA 99336 1244

RUBY RIVER RETREAT LLC
PO BOX 31
CUERO, TX 77954 0031

Priority Date: APRIL 30, 1866

Type of Historical Right: DECREED

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 WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: RUBY RIVER

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		NW	21	6S	4W	MADISON
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DIRECT FROM SOURCE						
2		W2NESW	21	6S	4W	MADISON
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: DIRECT FROM SOURCE						
3		NENENW	28	6S	4W	MADISON
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: 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			NW	21	6S	4W	MADISON
2			N2NESW	21	6S	4W	MADISON
3			SWNESW	21	6S	4W	MADISON

Remarks:

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
RUBY RIVER
BASIN 41C**

Water Right Number: **41C 100939-00** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

JOHN BRENDDEL
PO BOX 107
ALDER, MT 59710 0107

JUDY BRENDDEL
PO BOX 107
ALDER, MT 59710 0107

DENA R MILLER
PO BOX 184
ALDER, MT 59710 0184

ROBERT O MILLER
PO BOX 184
ALDER, MT 59710 0184

ALDER TRIPLE R LLC
386 PARK AVE S FL 20
NEW YORK, NY 10016 8814

MILLER CATTLE CO
PO BOX 184
ALDER, MT 59710 0184

RUBY RIVER RETREAT LLC
PO BOX 31
CUERO, TX 77954 0031

Priority Date: MAY 15, 1869

Type of Historical Right: DECREED

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 WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: RUBY RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID **Govt Lot** **Qtr Sec** **Sec** **Twp** **Rge** **County**

1	NW	21	6S	4W	MADISON
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		DIRECT FROM SOURCE			
2	W2NESW	21	6S	4W	MADISON
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		DIRECT FROM SOURCE			
3	SESWSE	28	6S	4W	MADISON
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		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			E2	20	6S	4W	MADISON
2			W2E2NW	21	6S	4W	MADISON
3			W2NESW	21	6S	4W	MADISON
4			NWSW	21	6S	4W	MADISON
5			W2NW	21	6S	4W	MADISON

Remarks:

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
RUBY RIVER
BASIN 41C**

Water Right Number: **41C 100941-00** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

JOHN BRENDDEL
PO BOX 107
ALDER, MT 59710 0107

JUDY BRENDDEL
PO BOX 107
ALDER, MT 59710 0107

DENA R MILLER
PO BOX 184
ALDER, MT 59710 0184

ROBERT O MILLER
PO BOX 184
ALDER, MT 59710 0184

MILLER CATTLE CO
PO BOX 184
ALDER, MT 59710 0184

MILLER U-O RANCH INC
% CHRISTINE MILLER
6924 W ARROWHEAD AVE
KENNEWICK, WA 99336 1244

RUBY RIVER RETREAT LLC
PO BOX 31
CUERO, TX 77954 0031

Priority Date: APRIL 30, 1865

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

FLOW RATE OF CLAIMS 41C 100941-00, 41C 30151556, AND 30151557 IS SHARED
ON A ROTATING BASIS.

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:** 93.50

***Source Name:** RUBY RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID **Govt Lot** **Qtr Sec** **Sec** **Twp** **Rge** **County**

1 NENENW 28 6S 4W MADISON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: PHILLIPS DITCH NO. 1

DITCH NAME FOR DIVERSION NO. 01 IS: PHILLIPS DITCH NO. 1

Period of Use: APRIL 1 TO NOVEMBER 4

***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>
2	93.50		W2	21	6S	4W	MADISON
Total:	93.50						

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.

100941-00 100944-00 30150055

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

SPLIT CLAIM NO. 41C 30151557 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
RUBY RIVER
BASIN 41C**

Water Right Number: 41C 30151556 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: ALDER TRIPLE R LLC
386 PARK AVE S FL 20
NEW YORK, NY 10016 8814

Priority Date: APRIL 30, 1865

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

FLOW RATE OF CLAIMS 41C 100941-00, 41C 30151556, AND 30151557 IS SHARED ON A ROTATING BASIS.

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: 35.50

Source Name: RUBY RIVER

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		SWNESW	21	6S	4W	MADISON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: PHILLIPS DITCH NO. 2

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	27.00		NENE	20	6S	4W	MADISON
2	0.80		NENWNE	20	6S	4W	MADISON
3	7.70		W2NWNW	21	6S	4W	MADISON
Total:	35.50						

Remarks:

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

IMPLIED CLAIM NO. 41C 30151557 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41C 100941-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
RUBY RIVER
BASIN 41C**

Water Right Number: **41C 30151557** STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: ALDER TRIPLE R LLC
386 PARK AVE S FL 20
NEW YORK, NY 10016 8814

Priority Date: APRIL 30, 1865

Type of Historical Right: DECREED

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.

FLOW RATE OF CLAIMS 41C 100941-00, 41C 30151556, AND 30151557 IS SHARED
ON A ROTATING BASIS.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED
FOR STOCKWATERING 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.

Climatic Area: 4 - MODERATELY LOW

Source Name: RUBY RIVER

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>Twtp</u>	<u>Rge</u>	<u>County</u>
1		SWNESW	21	6S	4W	MADISON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: PHILLIPS DITCH NO. 2

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>Twtp</u>	<u>Rge</u>	<u>County</u>
1			NENE	20	6S	4W	MADISON
2			NWNE	20	6S	4W	MADISON
3			SENE	20	6S	4W	MADISON
4			W2E2W2	21	6S	4W	MADISON

5

W2W2 21 6S 4W MADISON

Remarks:

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

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41C 30151556.

FILED

OCT 20 2020

Montana Water Court

1 Allan Karell
2 Candace L. Kimmet
3 KARELL DYRE HANEY PLLP
4 175 North 27th Street, Suite 1303
5 Billings, Montana 59101
6 Telephone: (406) 294-8484
7 Fax: (406) 294-8480
8 e-mail: akarell@kdhlawfirm.com
9 ckimmet@kdhlawfirm.com
10 *Attorneys for Claimant*

11 IN THE WATER COURT OF THE STATE OF MONTANA
12 UPPER MISSOURI DIVISION
13 RUBY RIVER BASIN (41C)

14 IN THE MATTER OF THE ADJUDICATION)
15 OF THE EXISTING RIGHTS TO THE USE) 41C 100938-00
16 OF ALL THE WATER, BOTH SURFACE) 41C 100939-00
17 AND UNDERGROUND, WITHIN BASIN) 41C 100941-00
18 41C, MADISON COUNTY, MONTANA)
19)
20)

21 VERIFIED MOTION TO AMEND WATER RIGHTS 41C 100938-00,
22 41C 100939-00 AND 41C 100941-00

23 I. INTRODUCTION

24 COMES NOW, Claimant Alder Triple R LLC, a Montana limited liability company
25 (hereinafter "Alder Triple R"), by and through their undersigned counsel of record, Karell Dyre
26 Haney PLLP, moves this Court pursuant to Rule 10, W.R.Adj.R., and Mont. Code Ann. § 85-
2-233(6), to amend water right claims 41C 100938-00 and 41C 100939-00 to reflect the actual
historical use of the claims and to correct the ownership of the claims. Alder Triple R also
moves the court to create an implied claim from Alder Triple R's split portion of 41C 100941-

00 to reflect the historical stock watering practices.

Pursuant to Rule 10 of the Montana Water Rights Adjudication Rules, a water rights claimant may file an amendment to their own water right claim:

Pursuant to § 85-2-233(6), MCA, claimants may file motions to amend their own claims and objectors may file motions to amend their own objections. A motion to amend must specify the requested amendment and the grounds for such amendment. Upon review, the water court will determine the notice required pursuant to § 85-2-233(6), MCA and issue an appropriate order.

After the issuance of a temporary preliminary decree, in order to amend any element of a water right claim, adequate notice must be provided to afford individuals the ability to reasonably consider whether the proposed amendment would affect their own water use and object to the amendment, if necessary, to protect their own water rights. Specifically, Mont. Code Ann. § 85-2-233(6) states:

- (a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be published once a week for 3 consecutive weeks in two newspapers of general circulation in the basin where the decree was issued for:
 - (i) a motion to amend a statement of claim that may adversely affect other water rights; or
 - (ii) a motion to amend a timely objection that may adversely affect other water rights.
- (b) The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.
- (c) The water judge may order any additional notice of the motion as the water judge considers necessary.
- (d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

Here, water right claims 41C 100938-00, 41C 100939-00, and 41C 100941-00 were

1 decreed in the Basin 41C Temporary Decree on November 14, 1990. This motion is to clarify
2 certain elements of each of the claims to reflect historic use, update the ownership of the claims,
3 and create an implied claim for stock use from Alder Triple R's split portion of 41C 100941-
4 00.

6 II. PROPOSED AMENDMENTS

7 A. Claim 41C 100938-00

8 1. Basis & Evidentiary Support for Amendments

9 Point of Diversion: The original Statement of Claim for 41C 100938-00 was filed for
10 stock drinking directly from the Ruby River and for diversion of water into the Phillips Ditch
11 for stock drinking from the Phillips Ditch. The location of the point of diversion for the Phillips
12 Ditch was described as the NENENW of Section 28 of Township 6 South Range 4 West on
13 the original Statement of Claim form and on the map included with the original filing
14 (Statement of Claim form and accompanying map provided as Appendix A). The claim form
15 and map also included livestock direct from source as a means of diversion, as shown on page
16 1 of the original claim form. However, the stretch of the Ruby River from which stock drank
17 directly was inadvertently not claimed as points of diversion and places of use, even though it
18 was a component of the claim designated on the claim form. Therefore, in the Temporary
19 Decree, and on the current abstract, the claim only shows as a diversionary claim into Phillips
20 Ditch and is missing the livestock direct from source component. An affidavit by former
21 owner, Robert O. Miller, confirms the historic practices of livestock drinking from both the
22 Phillips Ditch and directly from the Ruby River (Affidavit provided as Appendix B). The claim
23 should be corrected to include the stretch of Ruby River where stock historically drank directly
24 from the source as points of diversion and places of use.
25
26

1 The proposed points of diversion are listed below in Table 2 and shown on the map
2 provided as Appendix C. The proposed revised abstract is provided as Appendix D.

3 Place of Use: On the original Statement of Claim form the claimant claimed the place
4 of use as the N2NW of Section 21 of Township 6 South Range 4 West. As described above,
5 the Phillips Ditch originates in the NENENW of Section 28 of Township 6 South Range 4
6 West and flows generally north to and through the claimant's property. The entire stretch of
7 the Phillips Ditch on the claimant's property has been historically used for stock water
8 purposes. The place of use legal land descriptions should be corrected to include the entire
9 stretch of Phillips Ditch on the property owned by the claimant as of 1973. The stretch of the
10 Ruby River that ran through the claimant's property should also be added to the place of use
11 to reflect the locations where the livestock historically drank directly from the Ruby River.
12

13 The proposed place of use legal land descriptions are listed below in Table 4 and shown
14 on the map provided as Appendix C. The proposed revised abstract is provided as Appendix
15 D.
16

17 Ownership: Since the claim was filed in 1982, the former Max O. Miller / Miller Cattle
18 Co. property shown on Appendix C was split into multiple parcels and conveyed to different
19 owners. The chain of title is provided as Appendix E. None of the prior conveyances reserved
20 41C 100938-00 and thus the appurtenant portions of 41C 100938-00 conveyed to each owner
21 of the split parcels. 41C 100938-00 ownership was not correctly updated with each property
22 split and transfer. Therefore, in accordance with the proposed place of use amendments, the
23 ownership should be corrected to reflect each owner within the place of use. The proposed
24 ownership is listed below and shown on the map provided as Appendix C. The proposed
25 revised abstract is provided as Appendix D.
26

1 **2. Proposed Amendments**

2 **Point of Diversion:**

3 The point of diversion should be corrected from the current points of diversion on the
4 abstract set forth in the following Table 1:

5 *Table 1: 41C 100938-00 Current Point of Diversion on Abstract*

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County	Means of Diversion
1		NENENW	28	6S	4W	Madison	Ditch

8 To the proposed changes set forth in the following Table 2:

9 *Table 2: 41C 100938-00 Proposed Points of Diversion*

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County	Means of Diversion
1		NENENW	28	6S	4W	Madison	Ditch
2		NW	21	6S	4W	Madison	Direct from Source
3		W2NESW	21	6S	4W	Madison	Direct from Source

13 **Place of Use:**

14 The place of use should be corrected from the current place of use on the abstract set
15 forth in the following Table 3:

16 *Table 3: 41C 100938-00 Current Place of Use on Abstract*

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County
1		N2NW	21	6S	4W	Madison

19 To the proposed changes set forth in the following Table 4:

20 *Table 4: 41C 100938-00 Proposed Places of Use*

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County
1		NW	21	6S	4W	Madison
2		N2NESW	21	6S	4W	Madison
3		SWNESW	21	6S	4W	Madison

1 Ownership:

2 The ownership should be corrected from the current ownership on the abstract set
3 forth below:

4 Robert O. Miller & Dena R. Miller
5 PO Box 184
6 Alder, MT 59710-1866

7 To the proposed ownership set forth below:

8 Owners:
9 Alder Triple R LLC
10 386 Park Avenue South, 20th Floor
11 New York, NY 10016

12 Robert O. Miller & Dena R. Miller
13 PO Box 184
14 Alder, MT 59710-1866

15 Miller Cattle Co
16 PO Box 184
17 Alder, MT 59710-1866

18 John D. & W. Judy Brendel
19 PO Box 107
20 Alder, MT 59710-0107

21 Miller U-O Ranch Inc.
22 Kennewick, WA 59710-0053

23 Ruby River Retreat LLC
24 PO Box 31
25 Cuero, TX 77954-0031

26 **B. Claim 41C 100939-00**

1. Basis & Evidentiary Support for Amendments

Point of Diversion: The original Statement of Claim for 41C 100939-00 was filed for
stock drinking directly from Ruby River and for diversion of water into the Bob Peters Ditch

1 for stock purposes. The location of the point of diversion for the ditch was described as the
2 SESWSE of Section 28 of Township 6 South Range 4 West on the original Statement of
3 Claim form and on the map included with the original filing (Statement of Claim form and
4 accompanying map provided as Appendix F). The claim form and map also included
5 livestock direct from source as a means of diversion, as shown on page 1 of the original
6 claim form. However, the stretch of the Ruby River from which stock drank directly was not
7 claimed as points of diversion and places of use, even though it was a component of the
8 claim designated on the claim form. An affidavit by former owner, Robert O. Miller,
9 confirms the historic practices of livestock drinking from both the Bob Peters Ditch and
10 directly from the Ruby River (Affidavit provided as Appendix B). The claim should be
11 corrected to include the stretch of Ruby River where stock drank directly from the source as
12 points of diversion and places of use.
13

14 The points of diversion that should be on the abstract are listed below in Table 6 and
15 shown on the map provided as Appendix G. The proposed revised abstract is provided as
16 Appendix H.
17

18 Place of Use: On the original Statement of Claim form the claimant claimed the place
19 of use as the W2W2 of Section 21 and the E2 of Section 20 of Township 6 South Range 4
20 West. As described above, the Bob Peters Ditch, claimed for stock water purposes under the
21 original 41C 100939-00 Statement of Claim filing, originates in the SESWSE of Section 28 of
22 Township 6 South Range 4 West and flows generally north through the claimant's property.
23 The entire stretch of ditch on the claimant's property has been historically, and is currently,
24 used for stock water purposes. The stretch of the Ruby River that ran through the claimant's
25 property should be added to the place of use. The place of use legal land descriptions that
26

1 should be on the abstract are listed below in Table 8 and shown on the map provided as
2 Appendix G. The proposed revised abstract is provided as Appendix H.

3 Ownership: Since the claim was filed in 1982, the former Max O. Miller / Miller Cattle
4 Co. property shown on Appendix G was split into multiple parcels and conveyed to different
5 owners. The chain of title is provided as Appendix E. None of the prior conveyances reserved
6 41C 100939-00 and thus the appurtenant portions of 41C 100939-00 conveyed to each owner
7 of the split parcels. 41C 100939-00 ownership was not correctly updated with each property
8 split and transfer. Therefore, in accordance with the proposed place of use amendments, the
9 ownership should be corrected to reflect each owner within the place of use. The proposed
10 ownership is listed below and shown on the map provided as Appendix G. The proposed
11 revised abstract is provided as Appendix H.
12

13 2. Proposed Amendments

14 Point of Diversion:

15 The point of diversion should be corrected from the current points of diversion on the
16 abstract set forth in the following Table 5:
17

18 *Table 5: 41C 100939-00 Current Point of Diversion on Abstract*

19 ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County
20 1		SESWSE	28	6S	4W	Madison

21 To the proposed changes set forth in the following Table 6:

22 *Table 6: 41C 100939-00 Proposed Points of Diversion*

23 ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County	Means of Diversion
24 1		SESWSE	28	6S	4W	Madison	Ditch
25 2		NW	21	6S	4W	Madison	Direct from Source
26 3		W2NESW	21	6S	4W	Madison	Direct from Source

Place of Use:

The place of use should be corrected from the current place of use on the abstract set forth in the following Table 7:

Table 7: 41C 100939-00 Current Place of Use on Abstract

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County
1		E2	20	6S	4W	Madison
2		W2W2	21	6S	4W	Madison

To the proposed changes set forth in the following Table 8:

Table 8: 41C 100939-00 Proposed Places of Use

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County
1		E2	20	6S	4W	Madison
2		W2NW	21	6S	4W	Madison
3		W2E2NW	21	6S	4W	Madison
4		W2NESW	21	6S	4W	Madison
5		NWSW	21	6S	4W	Madison

Ownership:

The ownership should be corrected from the current ownership on the abstract set forth below:

Miller Cattle Co
PO Box 184
Alder, MT 59710-1866

To the proposed ownership set forth below:

Alder Triple R LLC
386 Park Avenue South, 20th Floor
New York, NY 10016

Robert O. Miller & Dena R. Miller
PO Box 184
Alder, MT 59710-1866

Miller Cattle Co
PO Box 184
Alder, MT 59710-1866

1 John D. & W. Judy Brendel
2 PO Box 107
3 Alder, MT 59710-0107

4 Ruby River Retreat LLC
5 PO Box 31
6 Cuero, TX 77954-0031

7 **C. Claim 41C 100941-00**

8 **1. Basis & Evidentiary Support for Amendments**

9 41C 100941-00 is for 1.25 cfs diverted from the Ruby River into Phillips Ditches
10 Number 1 & Number 2 for irrigation of 129 acres. On August 14, 2020 a portion of the former
11 Max O. Miller / Miller Cattle Co. property was sold from Miller Cattle Co. to Alder Triple R.
12 A 641 Form was submitted for irrigation claim 41C 100941-00 to reflect the split of the place
13 of use. See enclosed 641 Form provided as Appendix I. This split is still pending at the DNRC,
14 but once implemented through the court, Alder Triple R will own a split portion of 41C
15 100941-00 as shown on the "Buyer's" proposed revised abstract in Appendix I.
16

17 In addition to irrigation use out of Phillips Ditch Number 2, historically cattle also
18 drank from Phillips Ditch Number 2. The original Statement of Claim for 41C 100941-00
19 included excerpts from an Order of the Montana Fifth Judicial District Court in Dauterman v.
20 Gilbert Livestock Co., No. 3089 as an attachment. Within this attachment that was submitted
21 with the claim form in 1982, the Order describes the water use as "watering livestock". See
22 attached claim form and its attachments provided as Appendix J. In addition to this reference
23 in the original claim file, the affidavit of former property owner, Robert O. Miller, supports
24 the historic use of water in Phillips Ditch Number 2 for livestock purposes (Affidavit provided
25 as Appendix B).
26

1 The Water Court has allowed implied claims because “the purpose of the adjudication
2 is not to eradicate claims or to punish claimants confused by a complicated and often
3 intimidating claim filing process[.]” but “to decree rights in accordance with historic use.” Foss
4 v. U. S. Forest Serv., No. 76HF-580, at 22 (Mont. Water Court Order Amending and Partially
5 Adopting Master’s Report As Amended, Jan. 31, 2013). The court has recently applied a three-
6 part test to evaluate if the creation of an implied claim is warranted:

- 7 1. The implied claim must be justified by some evidence in the claim form
8 or the documents attached thereto.
- 9 2. Evidence must exist of actual historical use corroborating the implied
10 claim.
- 11 3. Creating the implied claim should not result in a change to historical
12 water use or increase the historical burden on other water users.

13 (quoting Foss, at 20). Based on the evidence in the claim file and specifically the language in
14 the decree regarding stock use, the former proper owner’s affidavit attesting to historic use,
15 and the fact that the creation of the implied claim will not result in a change to historical water
16 use nor increase burden on other water users, an implied claim should be generated from Alder
17 Triple R’s split portion of 41C 100941-00 to reflect historic stock use from Phillips Ditch
18 Number 2.

19 In the early 1990’s the former property owner changed its point of diversion for claim
20 41C 100941-00 on the west side of the Ruby River from Phillips Ditch Number 2 into the
21 Elser-Finley-Norton Ditch (see map provided as Appendix K). A change application to change
22 the point of diversion for 41C 100941-00 from the headgate of Phillips Ditch Number 2 to the
23 headgate of Elser-Finley-Norton Ditch has not yet been submitted to DNRC. Under the new
24 ownership of Alder Triple R, a change application will be submitted. The change application
25 will change both Alder Triple R’s split portion of 41C 100941-00 and the implied stock claim
26

generated from Alder Triple R's split portion of 41C 100941-00.

The place of use legal land descriptions that should be on the abstract for the implied stock claim from 41C 100941-00 are listed below in Table 9 and shown on the map provided as Appendix K. The proposed revised abstract is provided as Appendix L.

2. Proposed Amendments

Purpose:

An implied stock claim should be created from Alder Triple R's split portion of 41C 100941-00 to reflect the historic stock use.

Place of Use:

The current place of use should be corrected to include the implied stock claim place of use set forth below in Table 9:

Table 9: 41C 100941-00 Proposed Implied Stock Claim Place of Use

ID	Gov't Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENE	20	6S	4W	Madison
2		NENE	20	6S	4W	Madison
3		NWNE	20	6S	4W	Madison
3		W2W2	21	6S	4W	Madison
4		W2E2W2	21	6S	4W	Madison

III. CONCLUSION

For the foregoing reasons, the undersigned respectfully requests the Court to amend water right claims 41C 100938-00 and 41C 100939-00 to reflect the actual historical use of the claims and the correct owners and create an implied stock claim generated from Alder Triple R's split portion of 41C 100941-00.

Dated this 19th day of October 2020.

KARELL DYRE HANEY PLLP

By: Candace L. Kimmet
Candace L. Kimmet

Attorneys for Claimant

VERIFICATION

STATE OF New York)
County of Kings County) ss.

Jeffrey E. Kelter, being first duly sworn upon his oath, deposes and says:

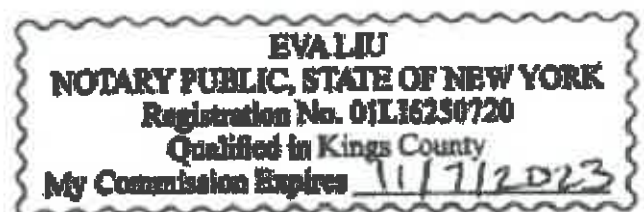
That he is the manager of Alder Triple R LLC, a Montana limited liability company, that he has read the foregoing, and that the same is true to the best of his knowledge information, and belief.

Jeffrey E. Kelter
JEFFREY E. KELTER

Subscribed and sworn to before me this 19 day of October, 2020.

Evalu
Notary Public

(Official Stamp)



Alder Triple R LLC

Madison County, MT



41C 100938 00

Motion to Amend

 Former Max Miller / Miller Cattle Co. Property

Current Property Ownership

 Alder Triple R LLC

 Robert O. & Dena R. Miller

 Miller Cattle Co.

 John D. & W. Judy Brendel

 Miller U-O Ranch Inc.

 Ruby River Retreat LLC

 Phillips Ditch No. 1

PODs & POU's

 Diversionary POD

 Diversionary POU

 Direct from Source POD & POU



Created 09/17/2020

Aerial Imagery:

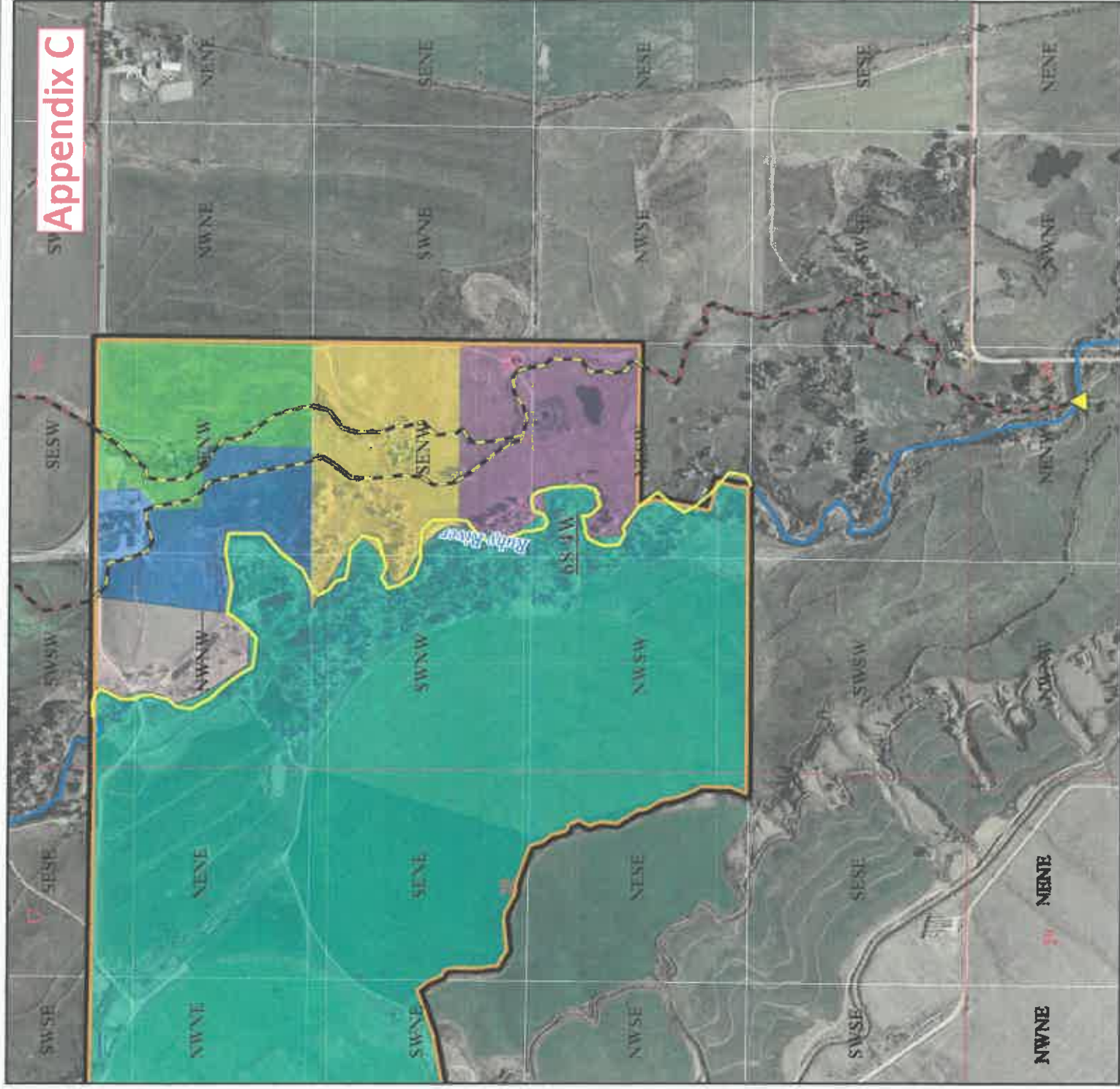
10/15/2017 NAIP

0 0.125 0.25

Miles

This map is for illustrative purposes only and does not guarantee the accuracy of delineated boundaries.

Appendix C



Alder Triple R LLC

Madison County, MT



41C 100939 00

Motion to Amend

 Former Max Miller / Miller Cattle Co. Property

Current Property Ownership

 Alder Triple R LLC

 Robert O. & Dena R. Miller

 Miller Cattle Co.

 John D. & W. Judy Brendel

 Ruby River Retreat LLC

 Bob Peters Ditch

PODs & POUs

 Diversionary POD

 Diversionary POU

 Direct from Source POD and POU



Created 09/14/2020

Aerial Imagery:

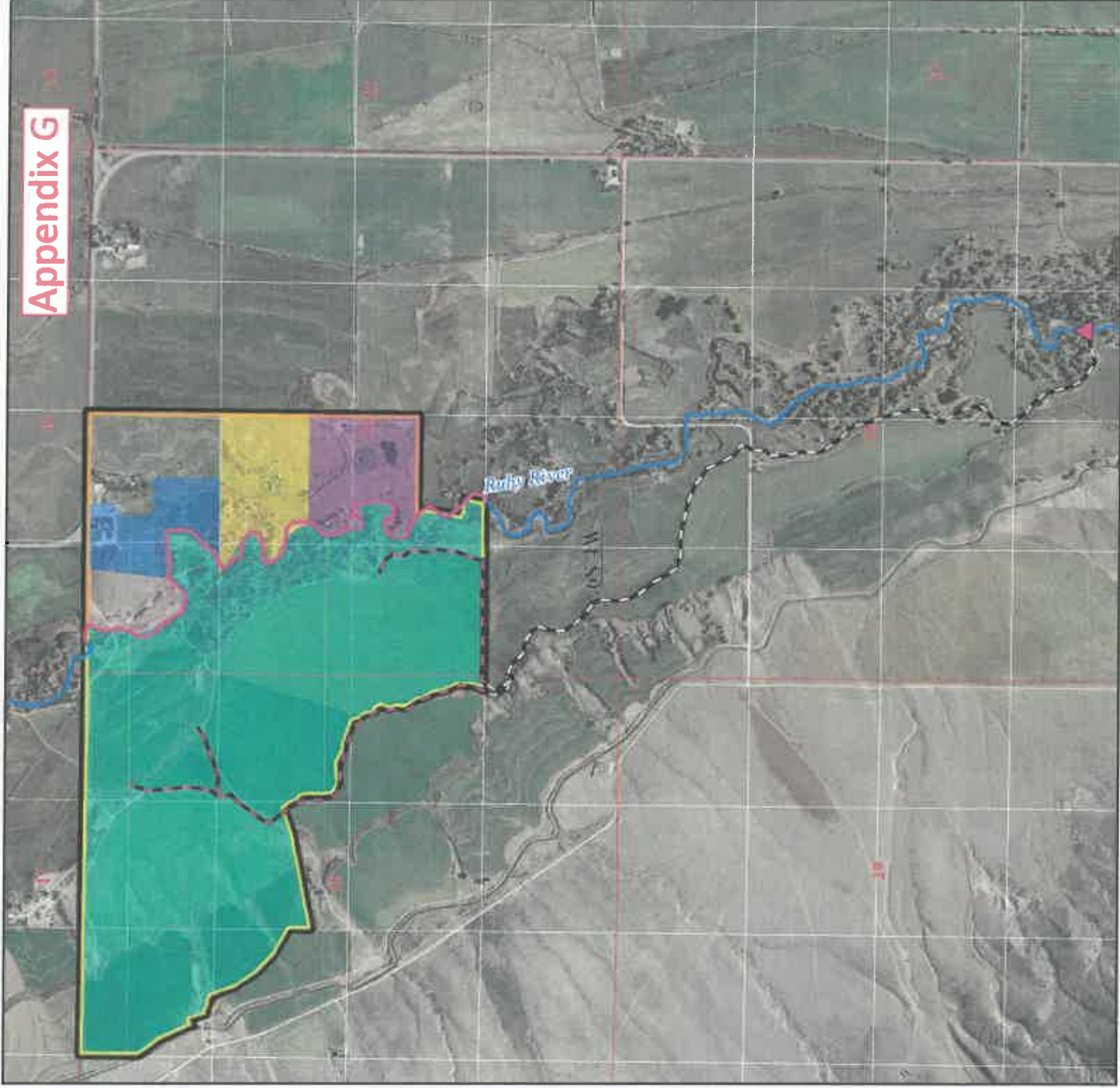
10/15/2017 NAIP

0 0.225 0.45

Miles

This map is for illustrative purposes only and does not guarantee the accuracy of delineated boundaries.

Appendix G









Ruby River Ranch

Madison County, MT



41C 100941 00 & 41C 100944 00
641

Property Ownership

-  Miller Cattle Co. sold to Alder Triple R, LLC
-  Robert O. & Dena R. Miller
-  Miller Cattle Co. Retained Property
-  John D. & W. Judy Brendel
-  Miller U-O Ranch Inc.
-  Ruby River Retreat LLC



 Phillips Ditch No. 1

 Elser-Finley-Norton Ditch

 Split Claim POU

 POU

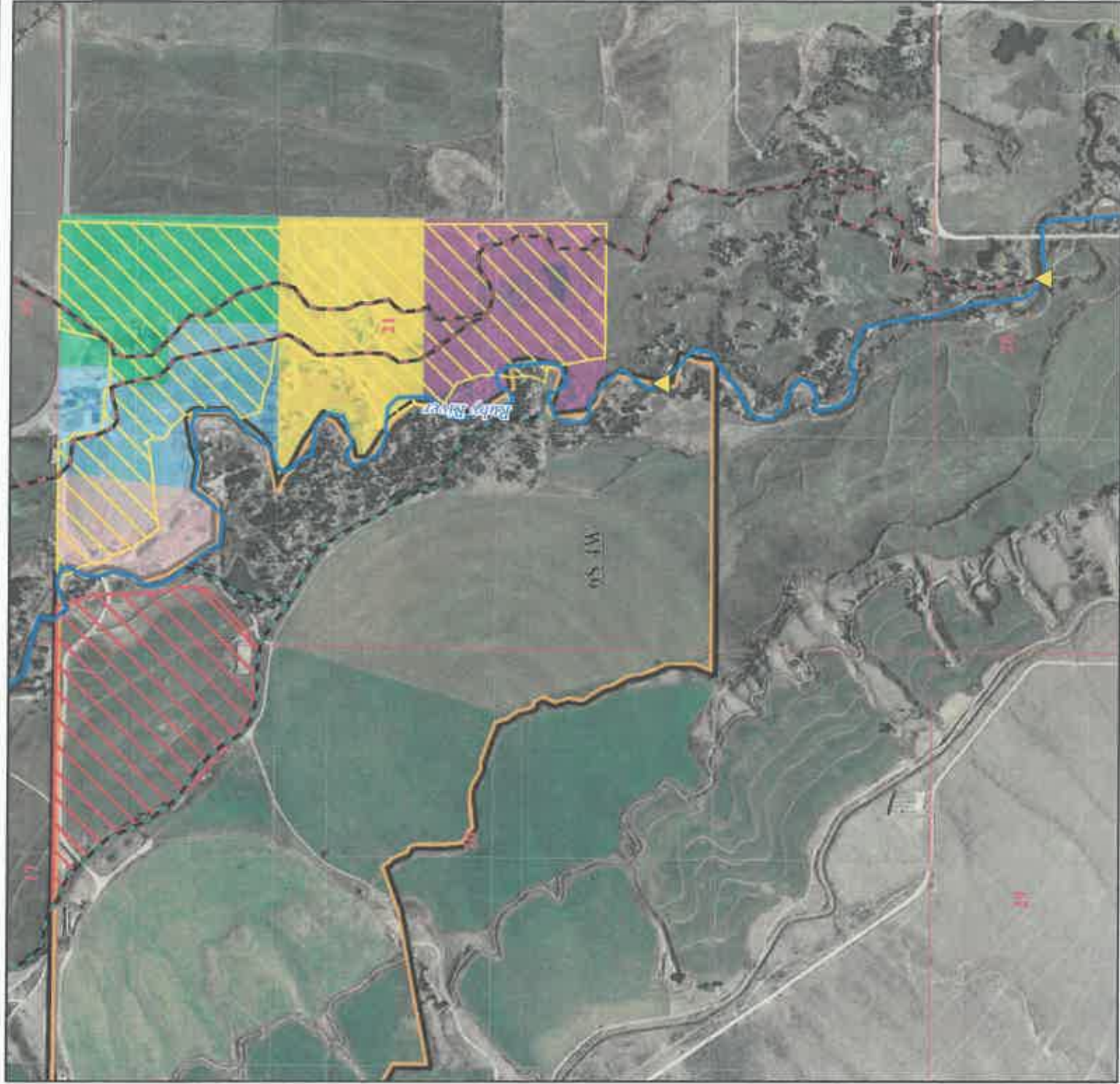


Created 07/31/2020
Aerial Imagery:
10/15/2017 NAIP

0 0.125 0.25
Miles

Miles

This map is for illustrative purposes only and does not guarantee the accuracy of delineated boundaries.



Madison County, MT



POD₃ Alder Triple R LLC Property

Δ Pre-73 Historic POD

Post-73 POD

Ditches

Elser-Finley-Norton Ditch

Phillips Ditch No. 2

POUs

Stock - 41C 100941 Implied stock
Irrigation - 41C 100941 - Alder Triple
R LLC Split Portion

* Represents Alder Triple R LLC split portion of 41C 100941 00 based on split submitted on 8/28/2020.



Created 09/18/2020
Aerial Imagery:
10/15/2017 NAIP



Miles

This map is for illustrative purposes only and does not guarantee the accuracy of delineated boundaries.

Appendix K

