

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Cache Creek Ranch, LLC; Robert Richard  
Waddell; ~~Sharon L. Waddell~~

OBJECTOR: David K. Mabie; Virgil Wesley Isbell;  
Family Trust; Garth A. Isbell; Woosley  
Land and Livestock LLC; Red Dog Ranch  
LLC

NOTICE OF INTENT TO APPEAR: Behnam-Gamble  
Trust

**CASE 43A-0323-R-2021**

43A 167035-00  
43A 167036-00  
43A 167042-00  
43A 191814-00

**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 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. Cache Creek Ranch LLC is the record owner of claims 43A 167035-00, 43A 167036-00, and 43A 167042-00. R. Richard Waddell and Sharon L. Waddell are the record owners of claim 43A 191814-00.

2. Claims 43A 167036-00 and 43A 191814-00 appear to be based on the same July 1, 1898 FJ Maddox decreed right for 60.00 miner's inches (1.50 cubic feet per second) decreed in Case No. 2717. Both claims claimed the entirety of the right, resulting in a decree exceeded issue remark being placed on the claims:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 60 MINER'S INCHES DECREED IN CASE NO. 2717, PARK COUNTY. 43A 167036-00, 43A 191814-00.

Additionally, claims 43A 167035-00, 43A 167036-00, and 43A 167042-00 were decreed with another issue remark that must be addressed:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 0.0 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

3. David K. Mabie objected to claims 43A 167035-00, 43A 167036-00, and 43A 167042-00.

4. The Behnam-Gamble Trust filed Notices of Intent to Appear for claims 43A 167035-00, 43A 167036-00, 43A 167042-00, and 43A 191814-00.

5. A Scheduling Order was issued in Case 43A-0323-R-2021 on January 5, 2022. (Doc.<sup>1</sup>2.00).

6. On March 2, 2022, the Behnam-Gamble Trust filed its Settlement and Withdrawal of Notices of Intent to Appear. (Doc. 3.00). Behnam-Gamble Trust's withdrawal of the Notices of Intent to Appear for claims 43A 167035-00, 43A 167036-00, and 43A 167042-00 (Cache Creek) was contingent on "acceptance of the settlement

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

agreement by the Water Court.” Behnam-Gamble Trust’s Notice of Intent to Appear to claim 43A 191814-00 (Waddell) was withdrawn without condition.

7. The Settlement Agreement filed on March 2, 2022 does not require modification of claims or action by the Court, but rather action by the parties at some future time. This Master alerted the parties that she will not recommend acceptance of the Settlement Agreement pursuant to Rule 17, W.R.Adj.R; however, she is amenable to adding an information remark to claims 43A 167035-00, 43A 167036-00, and 43A 167042-00, noting the parties entered into a private settlement agreement and a copy of the agreement was placed into the claim files. A deadline was set for Behnam-Gamble Trust and Cache Creek Ranch, LLC to file a statement indicating whether the Notice of Intent to Appear concerns for claims 43A 167035-00, 43A 167036-00, and 43A 167042-00 would be resolved if an information remark is added to the claims noting the existence of the March 2, 2022 Settlement Agreement and if a copy of the Settlement Agreement is placed into each claim file. (Doc. 22.00).

On June 9, 2022, Cache Creek Ranch, LLC, David K. Mabie and the Behnam-Gamble Trust filed a statement indicating agreement with the proposed resolution of the Notice of Intent to Appear concerns. (Doc. 23.00). To ensure a copy of the Settlement Agreement is added to each claim file, a copy of the March 2, 2022 Settlement Agreement is attached to this Report. The following remark should be added to claims 43A 167035-00, 43A 167036-00, and 43A 167042-00:

A PRIVATE SETTLEMENT AGREEMENT WAS ENTERED INTO BETWEEN THE OWNERS OF CLAIMS 43A 167035-00, 43A 167036-00, AND 43A 1467042-00. PURSUANT TO AGREEMENT, THIS REMARK IS BEING PLACED ON THE CLAIMS, AND A COPY OF THE AGREEMENT IS BEING PLACED INTO EACH CLAIM FILE.

8. On May 12, 2022, a Notice of Settlement was filed indicating Cache Creek Ranch LLC, David K. Mabie, R. Richard Waddell, and Sharon Waddell entered into a Settlement Agreement. (Doc. 20.00). Sharon Waddell did not sign the May 12, 2022 Settlement Agreement, however, on May 13, 2022, a Request to Withdraw Interest in Statement of Claim 43A 191814-00 was filed by Sharon Waddell. (Doc. 21.00).

9. The May 12, 2022 Settlement Agreement addresses the issue remarks decreed on the claims in Case 43A-0323-R-2021 and resolves the Objections to the claims. The following changes were proposed:

**43A 167036-00:**

Flow Rate: ~~1.50 CFS~~ **336.60 GPM**

**43A 191814-00:**

Flow Rate: ~~1.50 CFS~~ **336.60 GPM**

Maximum Acres: ~~45.00~~ **70.00**

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		NWNESW	16	2N	7E	GALLATIN
Period of Diversion:		MAY 1 TO OCTOBER 15				
Diversion Means:		HEADGATE				
Ditch Name:		ARMSTRONG DITCH				

Please add second point of diversion:  
 NENESE 9 2N 7E GALLATIN  
 Period of Diversion: MAY 1 TO OCTOBER 15  
 Diversion Means: HEADGATE  
 Ditch Name: ROBINSON-ARMSTRONG DITCH  
 Period of Use: MAY 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	<del>45.00</del> <b>70.00</b>		<b>NW</b> SWNE	10	2N	7E	GALLATIN
Total:		<del>45.00</del>					

No evidence was provided substantiating the changes to the maximum acres/place of use and the point of diversion for claim 43A 191814-00. A deadline was set for the parties to the May 12, 2022 Settlement Agreement to file evidence substantiating the proposed point of diversion, maximum acres, and place of use changes to claim 43A 191814-00. (Doc. 22.00). On June 10, 2022, counsel for R. Richard Waddell filed Evidence in Support of Settlement Agreement; Affidavits of R. Richard Waddell and Kyle Mace were attached. (Doc. 24.00). A copy of the May 12, 2022 Settlement Agreement and the June 10, 2022 Notice of Filing of Evidence are attached to this Master's Report.

10. An Order Requiring Publication of Motion to Amend Water Right Claim was issued on August 17, 2022. The Order explained that the proposed changes for claim 43A 191814-00 are considered a Motion to Amend the Claim and publication of the

changes is required. The Order stated that if other water users do object, the Water Court will hear those objections as part of the review process. (Doc. 30.00).

11. On October 11, 2022, R. Richard Waddell filed Notice of Proof of Publication of the Motion to Amend claim 43A 191814-00. (Doc. 31.00).

12. On October 28, 2022, the Virgil Wesley Isbell Family Trust and Garth A. Isbell objected to the Motion to Amend claim 43A 191814-00. (Doc. 32.00). On October 28, 2022, Woosley Land and Livestock LLC objected to the Motion to Amend claim 43A 191814-00. (Doc. 34.00). On October 31, 2022 Red Dog Ranch LLC objected to the Motion to Amend Claim 43A 191814-00. (Doc. 35.00). An Order was issued adding Virgil Wesley Isbell Family Trust, Garth A. Isbell, Woosley Land and Livestock LLC, and Red Dog Ranch LLC to the Case as Objectors on November 9, 2023. (Doc. 38.00).

13. On November 2, 2022, a Settlement Agreement was filed between R. Richard Waddell, Robinson Ranch, Inc., and the Behnam-Gamble Trust in three Basin 43A Cases: 43A-0319-R-2021, 43A-0323-R-2021 (this Case), and 43A-0325-R-2021. (Doc. 36.00). Regarding Case 43A-0323-R-2021, the November 2, 2022 Settlement Agreement states:

**3. The Trust and Robinson agree to not object to Waddell's amendment of water right 43A 191814-00 as agreed to in the Settlement Agreement between Cache Creek Ranch, David Mabie and Richards R. Waddell.**

*Settlement Agreement, p.2.*

14. On November 2, 2022, R. Richard Waddell filed a Motion to Amend various claims. (Doc. 37.00). Among the claims listed in the Motion to Amend is claim 43A 191814-00 in Case 43A-0323-R-2021. The Motion to Amend proposes the following incidental rights commissioner remarks be added to claim 43A 191814-00:

**THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCK WATER.**

**THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO WHEN WATER IS DIVERTED FROM THE POINT OF DIVERSION AND CONVEYED TO THE PLACE OF USE FOR IRRIGATION USE AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR A CALL ON OTHER WATER RIGHTS.**

15. On August 25, 2023, Objector Garth A. Isbell filed the following statement:

ELECTRONICALLY FILED

From: [Marissa Isbell](#)  
To: [Watercourt \(Rosenman\)](#)  
Cc: [Garth Isbell](#)  
Subject: [EXTERNAL] Case 43A-0323-R-2021  
Date: Friday, August 25, 2023 5:39:26 PM

43A-0323-R-2021

August 25, 2023

Hello,

Montana Water Court

I, Garth Isbell also the representative for the Virgil Wesley Isbell Family Trust, would like to be excluded as an objector in case 43A-0323-R-2021. Please feel free to email or call with any questions.

Garth Isbell  
406-224-1158

The August 25, 2023 filing appeared to state that the Virgil Isbell Family Trust and Garth A. Isbell want to be dismissed as parties from this Case. To verify this Master's understanding was correct, an Order was issued setting a deadline for Garth A. Isbell and an authorized representative of the Virgil Isbell Family Trust to file a statement confirming that their Objection to the Motion to Amend claim 43A 191814-00 should be dismissed. (Doc. 57.00). The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

16. On September 27, 2023, R. Richard Waddell filed a Notice of Filing of Settlement Agreement and Settlement Agreement executed by R. Richard Waddell, Woosley Land and Livestock, and Red Dog Ranch, LLC. (Docs. 58.00 and 59.00). Pursuant to the Settlement Agreement, Woosley Land and Livestock and Red Dog Ranch, LLC withdraw their Objections to the Motion to Amend Claim 43A 191814-00.

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on claims as well as objections received. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect.

This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

*Id.*

4. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

### RECOMMENDATIONS

1. The following remark should be added to claims 43A 167035-00, 43A 167036-00, and 43A 167042-00:

A PRIVATE SETTLEMENT AGREEMENT WAS ENTERED INTO BETWEEN THE OWNERS OF CLAIMS 43A 167035-00, 43A 167036-00, AND 43A 167042-00. PURSUANT TO AGREEMENT, THIS REMARK IS BEING PLACED ON THE CLAIMS, AND A COPY OF THE AGREEMENT IS BEING PLACED INTO EACH CLAIM FILE.

2. The flow rate for claim 43A 167036-00 should be reduced as follows:

Flow Rate: ~~1.50 CFS~~ 338.60 GPM

3. Sharon Waddell should be removed as a co-owner of claim 43A 191814-00. And the following additional modifications should be made to claim 43A 191814-00:

Purpose (use): IRRIGATION

THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCK WATER.

Flow Rate: ~~1.50 CFS~~ 338.80 GPM

Maximum Acres: ~~45.00~~ 70.00

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNE	16	2N	7E	GALLATIN
Period of Diversion: MAY 1 TO OCTOBER 15						
Diversion Means: HEADGATE						
Ditch Name: ARMSTRONG DITCH						

Please add second point of diversion:

NENESE 9 2N 7E GALLATIN  
Period of Diversion: MAY 1 TO OCTOBER 15  
Diversion Means: HEADGATE  
Ditch Name: ROBINSON-ARMSTRONG DITCH  
Period of Use: MAY 1 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	<del>45.00</del> 70.00		NW	SWNE	10	2N	7E	GALLATIN
Total:		<del>45.00</del>						

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO WHEN WATER IS DIVERTED FROM THE POINT OF DIVERSION AND CONVEYED TO THE PLACE OF USE FOR IRRIGATION USE AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR A CALL ON OTHER WATER RIGHTS.

4. The issue remarks should be removed from all claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**



**Service Method: First Class Mail**

Garth Isbell  
647 Flathead Creek Rd.  
Wilsall, MT 59086

Sharon L Waddell  
600 Seitz Rd East  
Wilsall, MT 59086-  
9527

Virgil Isbell Wesley Family Trust  
P.O. Box 2  
Wilsall, MT 59086

**Service Method: eService**

John Bloomquist  
Betsy R. Story  
Parsons Behle & Latimer  
3355 Colton Drive, Suite A  
Helena, MT 59602  
406-410-5050  
ecf@parsonsbehle.com  
bstory@parsonsbehle.com  
jbloomquist@parsonsbehle.com  
*Representing: Cache Creek Ranch,  
LLC.,  
David K Mabie*

Dana E. Pepper  
Bina R Peters  
River and Range Law, PLLC  
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Bozeman, MT 59771  
(406) 599-7424  
bina@riverandrangelaw.com  
dana@riverandrangelaw.com  
office@riverandrangelaw.com  
*Representing: Robert Richard Waddell*

**Service Method: eService**

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john@bkbh.com  
kathys@bkbh.com  
*Representing: Benham-Gamble Trust*

Jeremy A. Michael  
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office@cmrlawmt.com  
*Representing: Woosley Land and  
Livestock, LLC*

Benjamin Sudduth  
Sudduth Law PLLC  
P.O. Box 507  
Bozeman, MT 59771-0507  
(406) 272-2390  
Benjamin@Sudduthlaw.com  
*Representing: Red Dog Ranch, LLC*

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 167035-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CACHE CREEK RANCH LLC  
710 HILL RD  
WINNETKA, IL 60093 3917

**Priority Date:** MAY 15, 1887

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**\*Flow Rate:** 5.00 CFS

**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:** 60.00

**Source Name:** UNNAMED TRIBUTARY OF GREEN CANYON 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		SESENW	14	2N	7E	GALLATIN

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 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	25.00		NENW	14	2N	7E	GALLATIN
2	35.00		NWNE	14	2N	7E	GALLATIN

**Total:** 60.00

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**Remarks:**

A PRIVATE SETTLEMENT AGREEMENT WAS ENTERED INTO BETWEEN THE OWNERS OF CLAIMS 43A 167035-00, 43A 167036-00, AND 43A 1467042-00. PURSUANT TO AGREEMENT, THIS REMARK IS BEING PLACED ON THE CLAIMS, AND A COPY OF THE AGREEMENT IS BEING PLACED INTO EACH CLAIM FILE.

A FIELD INVESTIGATION REPORT CAN BE FOUND IN WATER COURT CASE 43A-26.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 167036-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CACHE CREEK RANCH LLC  
710 HILL RD  
WINNETKA, IL 60093 3917

**Priority Date:** JULY 1, 1898

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**Flow Rate:** 336.60 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:** 21.50

**Source Name:** CACHE 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		NWNESW	16	2N	7E	GALLATIN

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** ARMSTRONG DITCH

2		NENESE	9	2N	7E	GALLATIN
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**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** ROBINSON-ARMSTRONG DITCH

**Period of Use:** MAY 15 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	21.50		NWNE	10	2N	7E	GALLATIN

**Total:** 21.50

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**Remarks:**

A PRIVATE SETTLEMENT AGREEMENT WAS ENTERED INTO BETWEEN THE OWNERS OF CLAIMS 43A 167035-00, 43A 167036-00, AND 43A 1467042-00. PURSUANT TO AGREEMENT, THIS REMARK IS BEING PLACED ON THE CLAIMS, AND A COPY OF THE AGREEMENT IS BEING PLACED INTO EACH CLAIM FILE.

A FIELD INVESTIGATION REPORT CAN BE FOUND IN WATER COURT CASE 43A-26.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 167042-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CACHE CREEK RANCH LLC  
710 HILL RD  
WINNETKA, IL 60093 3917

**Priority Date:** JUNE 1, 1891

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.25 CFS

**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:** 60.00

**Source Name:** UNNAMED TRIBUTARY OF GREEN CANYON 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		SWNWSW	14	2N	7E	GALLATIN

**Period of Diversion:** JUNE 1 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 1 TO SEPTEMBER 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	60.00		NW	14	2N	7E	GALLATIN
<b>Total:</b>	60.00						

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**Remarks:**

A PRIVATE SETTLEMENT AGREEMENT WAS ENTERED INTO BETWEEN THE OWNERS OF CLAIMS 43A 167035-00, 43A 167036-00, AND 43A 1467042-00. PURSUANT TO AGREEMENT, THIS REMARK IS BEING PLACED ON THE CLAIMS, AND A COPY OF THE AGREEMENT IS BEING PLACED INTO EACH CLAIM FILE

A FIELD INVESTIGATION REPORT CAN BE FOUND IN WATER COURT CASE 43A-26.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SHIELDS RIVER**  
**BASIN 43A**

**Water Right Number:** 43A 191814-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** R RICHARD WADDELL  
600 SEITZ ROAD EAST  
WILLSALL, MT 59086

**Priority Date:** JULY 1, 1898

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCK WATER.

**Flow Rate:** 336.60 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:** 70.00

**Source Name:** CACHE 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		NWNESW	16	2N	7E	GALLATIN

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

**Diversion Means:** HEADGATE

**Ditch Name:** ARMSTRONG DITCH

2		NENESE	9	2N	7E	GALLATIN
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**Period of Diversion:** MAY 1 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** ROBINSON-ARMSTRONG DITCH

**Period of Use:** MAY 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	70.00		NW	10	2N	7E	GALLATIN

**Total:** 70.00

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**Remarks:**

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO WHEN WATER IS DIVERTED FROM THE POINT OF DIVERSION AND CONVEYED TO THE PLACE OF USE FOR IRRIGATION USE AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR A CALL ON OTHER WATER RIGHTS.

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*Attorneys for Behnam-Gamble Trust*

ELECTRONICALLY FILED

43A-0323-R-2021

March 2, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

CLAIMANT: Cache Creek Ranch, LLC; Richard R. Waddell; Sharon L. Waddell	<b>CASE 43A-0323-R-2021</b>
OBJECTOR: David K. Mabie	43A 167035-00
NOTICE OF INTENT TO APPEAR: Behnam-Gamble Trust	43A 167036-00
	43A 167042-00
	43A 191814-00

**NOTICE OF INTENT TO APPEAR BEHNAME-GAMBLE TRUST'S NOTICE OF  
SETTLEMENT AND WITHDRAWAL OF NOTICES OF INTENT TO APPEAR**

Notice of Intent to Appear Behnam-Gamble Trust (the "Behnam-Gamble Trust"), through its counsel of record, Browning, Kaleczyc, Berry & Hoven, P.C., hereby files this Notice of Settlement and Withdrawal of Notices of Intent to Appearance.

The Behnam-Gamble Trust filed Notices of Intent to Appear ("NOIA") on Cache Creek Ranch LLC's water right claims 43A 167035-00, 43A 167036-00, and 43A 167042-00. Behnam-Gamble Trust also filed an NOIA on claim 43A 191814-00 owned by Richard R. Waddell and Sharon L. Waddell (the "Waddells"). The Behnam-Gamble Trust and Cache Creek Ranch have entered into a settlement agreement, which resolves all Behnam-Gamble Trust's NOIAs on the Cache Creek Ranch claims. A copy of the Settlement Agreement is attached herewith as Exhibit A. Upon acceptance of the settlement agreement by the Water Court

pursuant to Rule 17, W.R.Adj.R., Behnam-Gamble Trust withdraws its NOIAs on Cache Creek Ranch's water right claims 43A 167035-00, 43A 167036-00, and 43A 167042-00.

Behnam-Gamble Trust also hereby unconditionally withdraws its NOIA on Waddell's claim 43A 191814-00.

DATED this 23<sup>rd</sup> day of March 2022.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By 

John Bloomquist  
Attorney at Law

Attorneys for Behnam-Gamble Trust

### CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of March 2022, a true and correct copy of the foregoing was this day served as follows:

#### ***Service via Electronic Mail***

Dana Pepper  
Bina Peters  
River and Range Law, PLLC  
P.O. Box 477  
Bozeman, MT 59771  
(406) 599-7424  
[bina@riverandrangelaw.com](mailto:bina@riverandrangelaw.com)  
[dana@riverandrangelaw.com](mailto:dana@riverandrangelaw.com)  
[office@riverandrangelaw.com](mailto:office@riverandrangelaw.com)

John Bloomquist  
Betsy R. Story  
Bloomquist Law Firm, P.C.  
3355 Colton Drive, Suite A  
Helena, MT 59602  
(406) 502-1244  
[blf@dhelcnalaw.com](mailto:blf@dhelcnalaw.com)

#### ***Service via USPS Mail***

Sharon L. Waddell  
600 Seitz Road, East  
Wilsall, MT 59806-9527

  
BROWNING, KALECZYC, BERRY & HOVEN, P.C.

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 2<sup>nd</sup> day of February, 2022, between the Behnam-Gamble Trust ("Behnam Trust") and Cache Creek Ranch, LLC ("Cache Creek Ranch"). The Behnam Trust and Cache Creek are sometimes referred to in this Agreement individually as "fm:ly" and collectively as "Parties."

### RECITALS

WHEREAS, the Behnam Trust owns water right 43A 191348-00, which diverts water from Green Canyon Creek with a priority date of May 1, 1883;

WHEREAS, Cache Creek Ranch owns water right 43A 167035-00, which diverts water from an Unnamed Tributary of Green Canyon Creek with a priority date of May 15, 1887;

WHEREAS, Behnam Trust filed Notices of Intent to Appear on Cache Creek Ranch water right claims 43A 167035-00, 43A 167036-00, and 43A 167042-00; and

WHEREAS, because water right claims 43A 191348-00 and 43A 191933-split claim are senior in priority over claim 43A 167035-00, the Behnam Trust has the right to call claim 43A 167035-00.

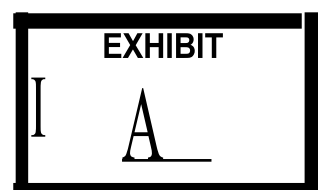
NOW THEREFORE, the Parties agree as follows:

1. Prior to diverting water pursuant to water right claim 43A 167035-00, Cache Creek Ranch shall notify the Behnam Trust via phone, text, or email that Cache Creek Ranch intends to commence diverting water. Such notice shall be provided no less than 48-hours prior to the commencement of the diversion.
2. If at any time after Cache Creek Ranch has commenced diversion of water pursuant to Paragraph 1, Behnam Trust is unable to divert its full measure of water from either of its Green Canyon Creek water rights, Behnam Trust shall so notify Cache Creek Ranch. Upon notification to Cache Creek Ranch, Cache Creek Ranch may pursue either of the following two (2) options:
  - a. Cache Creek Ranch will curtail its diversions under Water Right Claim No. 43A 167035-00; or,
  - b. Cache Creek Ranch may petition the appropriate court for appointment of a water commissioner to administer water rights for Green Canyon Creek and its tributaries.

The exercise of either of the two options shall be at Cache Creek Ranch's sole discretion.

3. Should Cache Creek Ranch exercise option 2.b. above, Cache Creek Ranch will comply with the terms of option 2.a. pending the appointment of a water commissioner pursuant

2710188/6435.00].0004





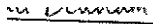
to option 2.b. Behnam Trust agrees to join in any petition filed with the court for appointment of a water commissioner to administer water rights for Green Canyon Creek and its tributaries.

4. In consideration of the terms above, the Behnam Trust shall withdraw its Notices of Intent to Appear on claims 43A 167035-00, 43A 167036-00, and 43A 167042-00.

5. This Agreement is entered into in compromise and settlement of the Parties' differences with respect to the adjudication of water right claims. Nothing stated in this Agreement shall be construed or interpreted as any admission against interest by any of the Parties to any other matters not specifically contained herein, including any allegations or defenses involving water distribution matters as may be presented to a court of competent jurisdiction.

6. This Agreement is binding upon each of the Parties and all of the Parties' respective heirs, assigns, representatives, agents, and successors in interest. Nothing stated in this Agreement shall create any rights in any third party with respect to the subject matter of this Agreement.

BY OUR SIGNATURES BELOW WE CERTIFY *THAT* WE HAVE READ THE AGREEMENT AND AGREE *TO* ITS CONTENTS.

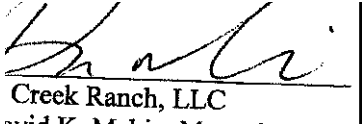
  
~~Behnam-Gamble~~

By: Ali Behnam, Trustee

By: Ali Behnam, Trustee

2/28/2022 | 4:18 PM PST

Date

  
Creek Ranch, LLC

Cache Creek Ranch, LLC

By: David K. Mabie, Managing Member

2/28/22

Date /

John E. Bloomquist  
Betsy R. Story  
BLOOMQUIST LAW FIRM, P.C.  
3355 Colton Drive, Suite A  
Helena, MT 59602  
Telephone: (406) 502-1244  
Email: [blf@helenalaw.com](mailto:blf@helenalaw.com)

43A-0323-R-2021

May 12, 2022

*Attorneys for Cache Creek Ranch, LLC and David Mabie*

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVIER BASIN 43A  
PRELIMINARY DECREE

CLAIMANTS: Cache Creek Ranch, LLC; Richard R.  
Waddell; Sharon L. Waddell

OBJECTOR: David K. Mabie

NOTICE OF INTENT TO APPEAR: Behnam-Gamble  
Trust

**Case No. 43A-0323-R-2021**

43A 167035-00

43A 167036-00

43A 167042-00

43A 191814-00

**NOTICE OF SETTLEMENT**

Claimant Cache Creek Ranch, LLC, and Objector David K. Mabie (collectively  
“Claimant/Objector”), by and through their undersigned counsel, hereby provides notice to this  
Court that Claimant/Objector and Claimants Richard R. and Sharon L. Waddell have reached  
settlement. The signed Settlement Agreement is attached.

As a result of the attached Settlement Agreement, and the March 2, 2022, Settlement  
Agreement between Claimant/Objector and Notice of Intent to Appear Behnam-Gamble Trust,  
all claims in this case have been resolved and the matter is ready for review and disposition.

DATED this 12<sup>th</sup> day of May 2022.

BLOOMQUIST LAW FIRM, P.C.

/s/ John E. Bloomquist

John E. Bloomquist

*Attorneys for Cache Creek Ranch, LLC and  
David Mabie*

### **CERTIFICATE OF SERVICE**

I certify that on May 12, 2022, a true and correct copy of the foregoing Notice of Settlement, filed in the above-identified Court, was served on the following:

Dana Pepper  
Bina Peters  
River and Range Law, PLLC  
P.O. Box 477  
Bozeman, MT 59771  
[bina@riverandrangelaw.com](mailto:bina@riverandrangelaw.com)  
[dana@riverandrangelaw.com](mailto:dana@riverandrangelaw.com)  
[office@riverandrangelaw.com](mailto:office@riverandrangelaw.com)  
*Via Email*

Sharon Waddell  
600 Seitz Rd East  
Wilsall, MT 59806-9527  
*Via USPS Mail*

John W. Tietz  
Browning, Kaleczyc, Berry & Hoven, PC  
P.O. Box 1697  
Helena, MT 59624-16976  
[john@bkbh.com](mailto:john@bkbh.com)  
[bethany@bkbh.com](mailto:bethany@bkbh.com)  
[cindy@bkbh.com](mailto:cindy@bkbh.com)  
*Via Email*

/s/ Marlana M. Reichert

Marlana M. Reichert  
Advanced Certified Paralegal

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVIER BASIN 43A  
PRELIMINARY DECREE

CLAIMANTS: Cache Creek Ranch, LLC; R. Richard Waddell; Sharon L. Waddell

OBJECTOR: David K. Mabie

NOTICE OF INTENT TO APPEAR: Behnam-Gamble Trust

**Case No. 43A-0323-R-2021**

43A 167035-00

43A 167036-00

43A 167042-00

43A 191814-00

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered between R. Richard Waddell ("Waddell"), Cache Creek Ranch, LLC ("Cache Creek") and David K. Mabie ("Mabie") (collectively the "Parties"), for the purposes described herein.

**RECITALS**

WHEREAS, Waddell is the Claimant and owner of Water Right No. 43A 191814-00 as the claim appears in the Basin 43A (Shields River) Preliminary Decree issued by the Montana Water Court;

WHEREAS, Cache Creek is the Claimant and owner of Water Right No. 43A 167036-00 as the claim appears in the Basin 43A Preliminary Decree;

WHEREAS, Mabie is a member of Cache Creek and filed an objection to Water Right No. 43A 167036-00 concerning certain issue remarks appearing on the abstract of the claim under the Basin 43A Preliminary Decree;

WHEREAS, each claim and the objection of Mabie have been consolidated into the above-captioned Water Court case for resolution;

THEREFORE, in consideration of the mutual promises and covenants contained herein the Parties hereby stipulate and agree as follows:

### **AGREEMENT**

**Recitals Incorporated** - The Parties agree the Recitals set forth above are hereby incorporated as terms of this Agreement.

2. **Flow Rate Modification-The** Parties agree the flow rate of Water Right No. 43A 191814-00 (Waddells) and Water Right No. 43A 167036-00 (Cache Creek) shall be modified to 0.75 cfs (30 miner's inches) for each water right. In other words, Waddells' water right, and Cache Creek's water right, are each entitled to a flow rate of 0.75 cfs (30 miner's inches).

3. **Decree Exceeded Issue Remark Resolution** - The Parties agree Water Right No. 43A 199814-00 (Waddells) and Water Right No. 43A 167036-00 (Cache Creek) are properly based on the water right previously decreed to F.J. Maddox in Case No. 2717, Park County ("*Henwood* Decree") for a flow rate of 1.50 cfs, or 60 miner's inches. As each claim filed on the entire 1.50 cfs of the Maddox decreed water right a "decree exceeded" issue remark accompanied each claim under the Basin 43A Preliminary Decree. The Parties, by this Agreement, agree Waddells are entitled to one-half of the flow rate of the Maddox decreed right, and Cache Creek is entitled to one-half of the same decreed right. Based upon the modifications provided under paragraph 2 above, the decree exceeded issue is resolved. Accordingly, the decree exceeded issue remark should be removed from each claim by the Water Court upon adoption of this Agreement.

4. **Acres Irrigated Issue Remark-43A 167036-00/Resolution of Mabie Objection-** Water Right No. 43A 167036-00 includes an acres irrigated issue remark placed on the claim by DNRC as the claim appears under the Basin 43A Preliminary Decree. The DNRC acres irrigated

issue remark also provided the basis of the Mabie objection to the claim. On July 14, 2021, the DNRC Bozeman Regional Office issued a Memorandum to the Senior Water Master wherein DNRC determined that information contained in the claim file resolved the DNRC acres irrigated issue remark. Accordingly, under the Memorandum, the DNRC recommended the remark be removed. Based on this recommendation, the issue remark should be removed from the claim by the Water Court. Upon such an action the objection filed by Mabie may be considered resolved.

5. Flow Rate Issue Remark - 43A 191814-00/Agreed Upon Modifications to Claim:

Water Right No. 43A 191814-00 includes a flow rate issue remark placed on the claim by DNRC as the claim appears under the Basin 43A Preliminary Decree. The remark is related to the DNRC 17 gpm per acre guideline.

In addition to the flow rate modification provided under paragraph 2 above, the Parties further agree to the following modifications to 43A 191814-00:

- a. Add a second point of diversion described as NENESE Section 9, Twp. 2N, Rge. 7E, Gallatin County; Diversion Means: Headgate; Ditch Name: Robinson-Armstrong Ditch;
- b. Modify maximum acres to 70.00 acres; Place of Use as 70 acres in the NW Section 10, Twp. 2N, Rge. 7E, Gallatin County.

Under these modifications, the DNRC flow rate issue remark should be resolved.

The Parties further agree the modifications to point of diversion and place of use proposed under this paragraph are agreed upon changes to Water Right No. 43A 191814-00. The modification to flow rate of Water Right Nos. 43A 191814-00 and 43A 167036-00 as agreed between the Parties is not contingent on the Water Court's adoption of the modifications to the point of diversion, maximum acres, and place of use for claim Water Right No. 43A 191814-00 or the resolution of the acres irrigated issue remark appearing on Water Right No. 43A 167036-00.

The Parties agree if the Water Court does not adopt the modifications provided for 43A 191814-00 or the removal of the acre irrigated issue remark on Water Right No. 43A 167036-00, the modification to flow rate for the water rights in this case as provided under paragraph 2 shall remain binding.

6. Proposed Abstracts - The Parties agree the proposed abstracts attached to this Agreement as Exhibits A and B reflect the modifications to Water Right No. 43A 191814-00 (Waddells) and Water Right No. 43A 167036-00 (Cache Creek) and are hereby incorporated herein as terms of this Agreement.

7. Authority: The Parties hereto represent that the undersigned have authority to enter into this Agreement and to bind the respective parties to the terms set forth herein.

8. Binding Effect: The Parties hereto agree that this Agreement is binding on all Parties hereto and the heirs, successors, and assigns of the same, whether such may be individuals or other legal entities.

9. Voluntary Execution of Agreement: The Parties hereto represent that they have executed this Agreement knowingly, willingly, and voluntarily; not as the result of undue or improper influence by any party; and have had the same reviewed by counsel or have had the opportunity to consult with counsel prior to execution.

10. Governing Law: This Agreement shall be governed by and accordance with Montana law.

11. Attorney Fees and Cost: Each party hereto agrees to pay its own costs and attorney's fees arising from the litigation of the above-captioned case.

12. Effective Date: The effective date of this Agreement shall be the date of the last signature below.

13. Counterparts: This Agreement may be executed in counterparts, each of which shall constitute the original Agreement for all purposes.

if & 1/  
R. Richard ad Claimant

DATED May 1 & 2022.

David K. Mabie  
David K. Mabie, Objector

DATED May 1, 2022.

Cache Creek Ranch, LLC  
Claimant

By: David Mabie  
Print name: David Mabie  
Its: Manager

DATED May 11, 2022.



<p>EXHIBIT A PROPOSED ABSTRACT</p>
--

**POST-DECREE  
SHIELDS RIVER  
BASIN 41M  
ABSTRACT OF WATER RIGHT**

Water Right Number:	41M 191814-00 STATEMENT OF CLAIM
Owners:	R RICHARD WADDELL 600 SEITZ ROAD EAST WILSALL, MT 59086
Priority Date:	JULY 1, 1898
Type of Historical Right:	DECREED
Purpose (Use):	IRRIGATION
Irrigation Type:	FLOOD
*Flow Rate:	0.75 CFS
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:	70.00
Source Name:	CACHE CREEK
Source Type:	SURFACE WATER

\*Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>ill</u>	<u>County</u>
1		<b>NWNESW</b>	16	2N 7E	GALLATIN
Period of Diversion: MAY 1 TO OCTOBER 15					
Diversion Means: HEADGATE					
Ditch Name: ARMSTRONG DITCH					
Period of Use: MAY 1 TO OCTOBER 15					
2		NENESE	9	2N 7E	GALLATIN
Period of Diversion: MAY 1 TO OCTOBER 15					
Diversion Means: HEADGATE					
*Ditch Name: ROBINSON-ARMSTRONG DITCH					
Period of Use: MAY 1 TO OCTOBER 15					

\*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>ill</u>	<u>County</u>
1	70.00		<b>NW</b>	10	2N 7E	GALLATIN
<b>Total:</b>	70.00					

**Remarks:**

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

<p><b>EXHIBIT B</b> <b>PROPOSED ABSTRACT</b></p>
--

**POST-DECREE  
SHIELDS RIVER  
BASIN 41M  
ABSTRACT OF WATER RIGHT**

Water Right Nwnber:	41M 167036-00 STATEMENT OF CLAIM
Owners:	CACHE CREEK RANCH LLC 710 HILL RD WINNETKA, IL 60093 3917
Priority Date:	JULY1, 1898
Type of Historical Right:	DECREEED
Purpose (Use):	IRRIGATION
Irrigation Type:	FLOOD
*Flow Rate:	0.75 CFS
Volwne:	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:	21.50
Source Name:	CACHE 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>m</u>		<u>County</u>
1		<b>NWNESW</b>	16	2N	7E	GALLATIN
Period of Diversion: MAY 15 TO OCTOBER 15						
Diversion Means: HEADGATE						
*Ditch Name: ARMSTRONG DITCH						
2		NENESE	9	2N	7E	GALLATIN
Period of Diversion: MAY 15 TO OCTOBER 15						
Diversion Means: HEADGATE						
Ditch Name: ROBINSON-ARMSTRONG DITCH						
Period of Use: MAY 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>m</u>		<u>County</u>
1	21.50		NWNE	10	2N	7E	GALLATIN
<b>Total:</b>	21.50						

**Remarks:**

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

**Bina R. Peters**  
**Dana Elias Pepper**  
**River and Range Law, PLLC**  
**PO Box 477**  
**Bozeman, MT 59771**  
**(406) 451-3418**  
**bina@riverandrangelaw.com**  
**dana@riverandrangelaw.com**  
**Office@riverandrangelaw.com**

43A-0323-R-2021

June 10, 2022

Montana Water Court

*Attorneys for Richard R. Waddell*

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Cache Creek Ranch, LLC; Richard R. Waddell;  
Sharon L. Waddell

OBJECTOR: David K. Mabie

NOTICE OF INTENT TO APPEAR: Behnam-Gamble Trust

**43A-0323-R-2021**

43A 167035-00

43A 167036-00

43A 167042-00

43A 191814-00

**NOTICE OF FILING OF EVIDENCE IN SUPPPORT OF  
SETTLEMENT AGREEMENT**

On May 12, 2022, a Settlement Agreement was filed in this matter. In addition to agreeing to resolve the Decree Exceeded issue remark by dividing the flow rate of water rights involved, the parties agreed to the following modification to water right 43A 191814-00:

Add Point of Diversion:

QTR SEC    SEC    TWP   RGE  
NENESE    9       2N    7E  
Maximum Acres: 70 acres

Place of Use:

<u>ACRES</u>	<u>QTR</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>
70.00	<del>SW</del> NE	NW 10	2N	7E

On May 20, 2022, the Water Court issued an Order on Status of Case and Order Setting Filing Deadline. This Order required the parties to the May 12, 2022 Settlement Agreement to file evidence substantiating the proposed point of diversion, maximum acres, and place of use corrections to water right 43A 191814-00.

The modifications set forth in the Settlement Agreement as listed above are supported by the affidavit of Robert Richard Waddell and the affidavit of Kyle Mace attached hereto.

RESPECTFULLY submitted this 10th day of June, 2022.

River and Range Law, PLLC  
By: /s/Dana Elias Pepper

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was duly served via email or U.S. first class mail, postage prepaid, on this 10th day of June, 2022, upon the following:

John W. Tietz  
Browning, Kaleczyc, Berry & Hoven  
PC PO Box 1697  
Helena, MT 59624-16976  
[john@bkbh.com](mailto:john@bkbh.com)  
[bethany@bkbh.com](mailto:bethany@bkbh.com)  
[cindy@bkbh.com](mailto:cindy@bkbh.com)

Sharon L Waddell  
600 Seitz Rd East  
Wilsall, MT 59806-9527

John E. Bloomquist  
Betsy R. Story  
BLOOMQUIST LAW FIRM, P.C. 3355  
Colton Drive, Suite A  
Helena, MT 59602  
Telephone: (406) 502-1244  
[blf@helenalaw.com](mailto:blf@helenalaw.com)

River and Range Law, PLLC  
By: /s/ Kate A. Jaworski

## **Affidavit of Kyle Mace**

Kyle Mace, being first duly sworn, deposes and states as follows:

### **Background Information**

I am of legal age and reside in Missoula, Montana. I am a Water Resource Specialist for WGM Group, Inc. I have worked in the water rights field for twelve years, both as an employee in the Montana Department of Natural Resources and Conservation (DNRC) Water Resources Division for over three years and more recently as a consultant. A major emphasis of my work throughout this period has been identifying and evaluating historic water use.

### **Introduction**

The discussion of facts provided in this affidavit is focused on historical irrigation practices in the NW of Section 10, T2N R7E, property currently owned by Robert Richard Waddell in Gallatin County, Montana. The historical information that was reviewed for this location is from publicly available resources, including but not limited to: DNRC water right database and claim files, DNRC GIS spatial data, the State Engineer's Office 1953 Gallatin County Water Resources Survey (WRS) and field notes, and aerial imagery from USGS Earth Explorer. Pre-1973 historical aerial images dating from 1948 and 1954 will be presented, with my comments accompanying each photo. These historical aerial photos show that irrigation on the Waddell property was actively taking place during 1948 and 1954 in the NW of Section 10, T2N R7E. A 1976 image is also included to depict continued use and the ditch delivery system. Together, these aerial photos show that the land in the NW of Section 10 T2N R7E has been historically irrigated.

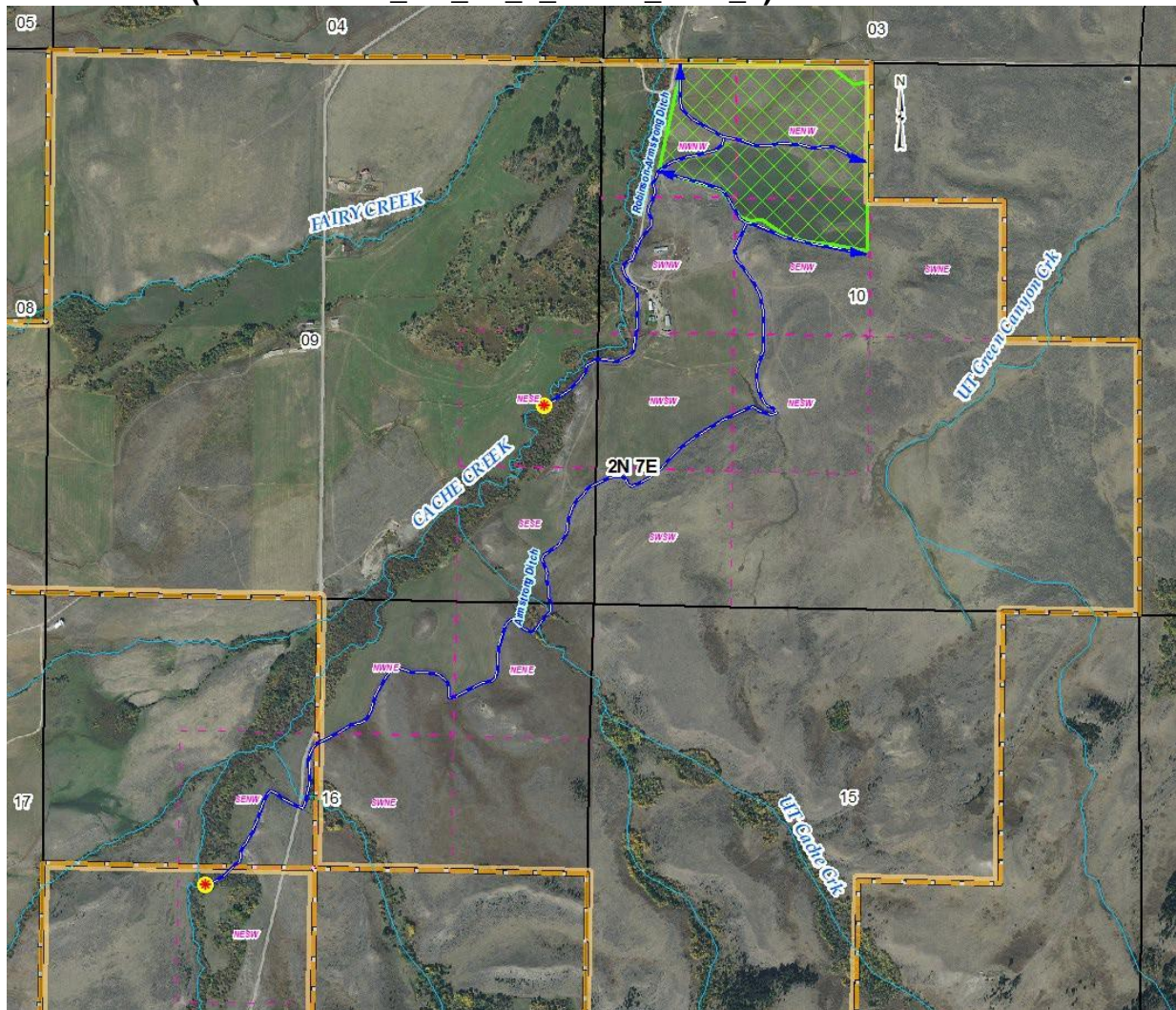
### **Historical Aerial Photo Series**

The following aerial photo series and commentary focuses on the historical irrigation taking place in the NW of Section 10, T2N R7E. In these photo insets, the Waddell property appears with an orange boundary. Each photo year starts with a view of orienting features including some of the nearby points of diversion (red asterisk/yellow halo), the Armstrong Ditch and Robinson-Armstrong Ditch (blue line with arrows), and the approximately 70-acres irrigated in the NW of Section 10 shown as a green-hatch. Subsequent images are zoomed in to the NW of Section 10; the final image for each year has all GIS irrigation features removed to show photo evidence of the existing ditches and historically irrigated acres.

**Photo Inset #1** below is provided for orientation, showing the present-day Waddell property (orange boundary) over a 2021 aerial image. Stream names, ditches and points of diversions are shown; the historically irrigated place of use in the NW of Section 10 is shown in the green-hatch.



Photo 1: Present-day 2021 aerial image for orientation, showing Waddell property  
(Aerial - ortho\_1-1\_hn\_s\_mt031\_2021\_1)

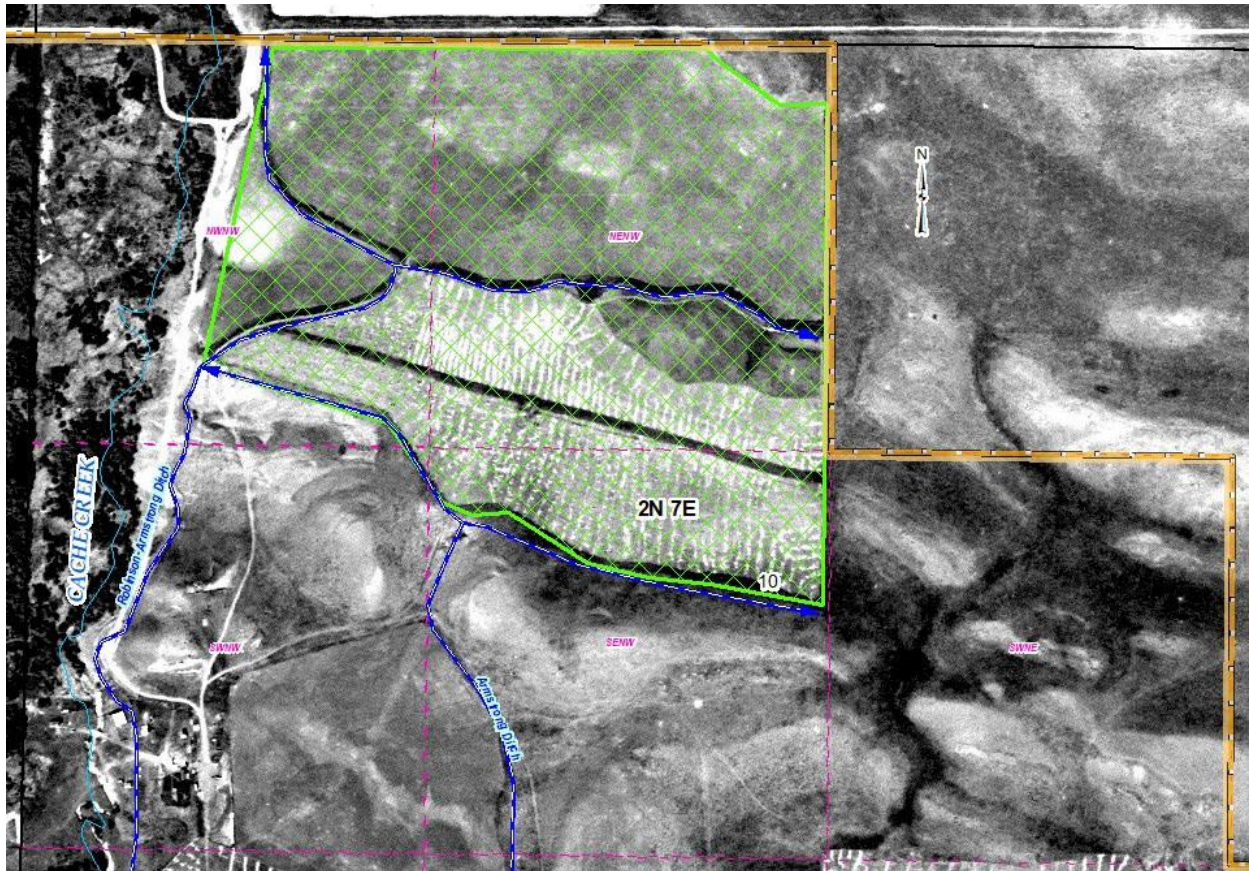




[illegible]

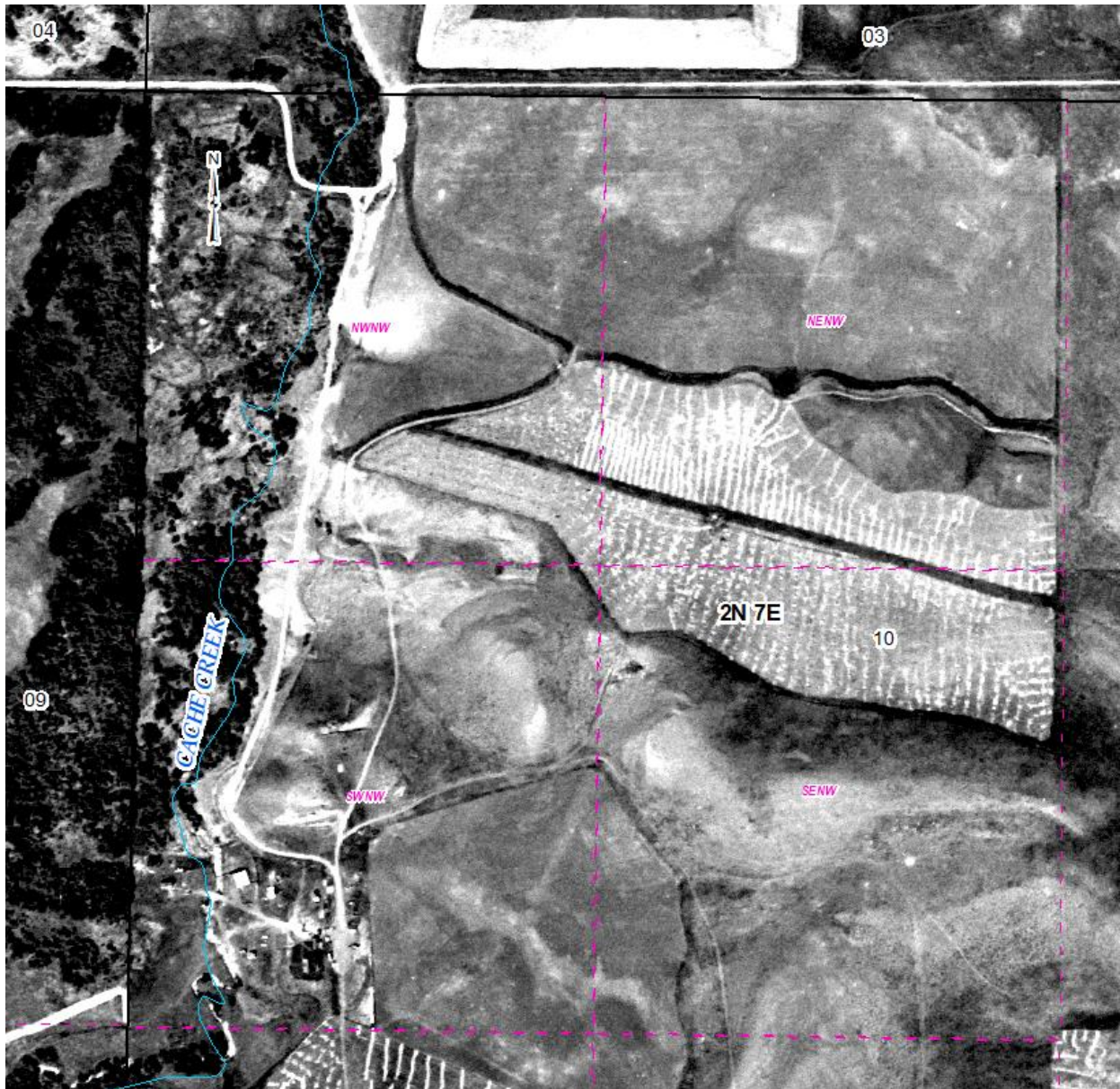


**Photo 2b: Image dated 8-8-1948, zoomed in to the Waddell property in the north half of Section 10.** This closer view of the NW quarter of Section 10 shows the fields in August, having received water from the Armstrong Ditch and the Robinson-Armstrong Ditch. The south field shows a distinct pattern of crop harvest lines. The subject field is well-demarcated and under active irrigation with the ditches appearing as dark lines, indicative of the presence of irrigation water.



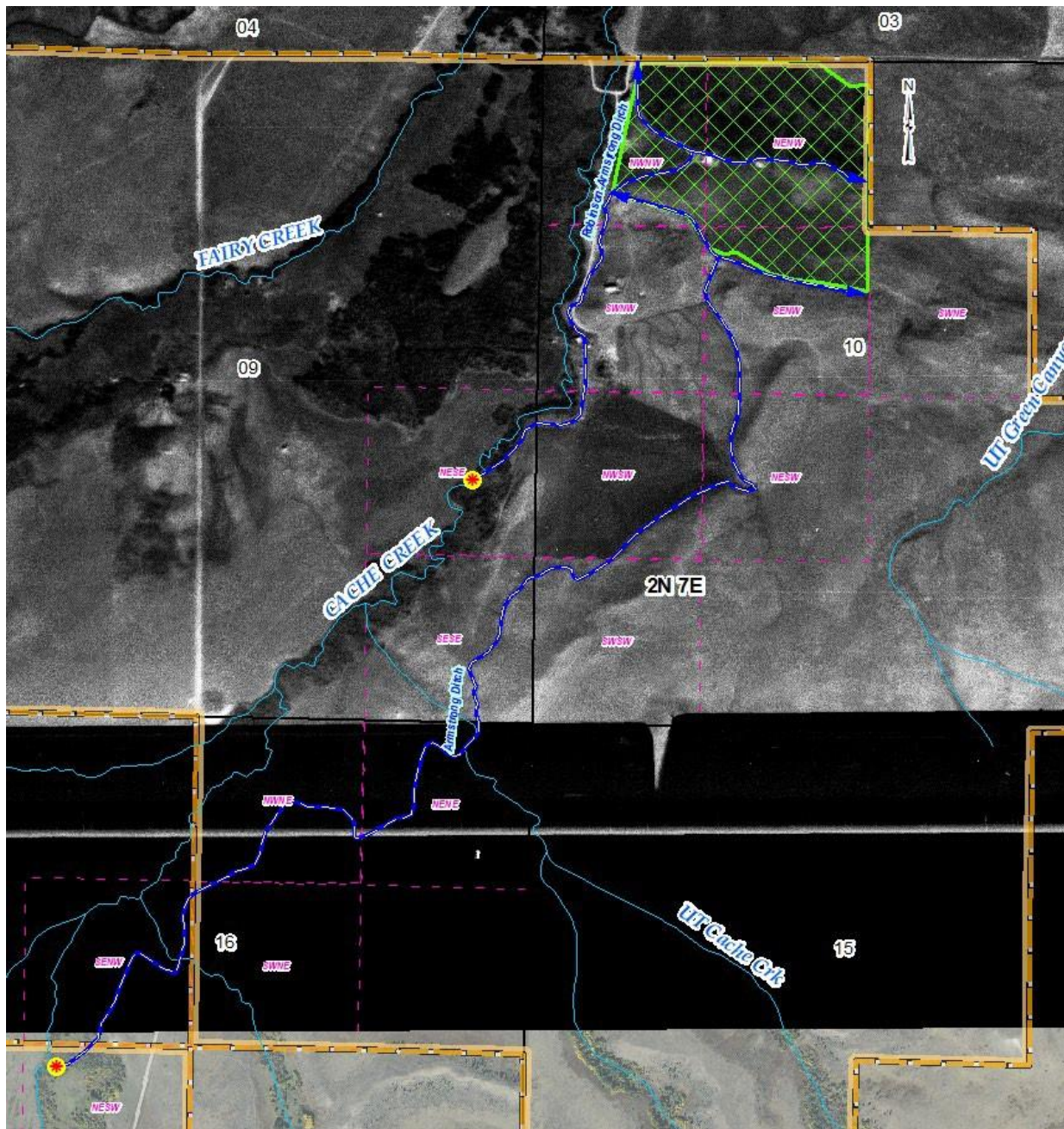


**Photo 2c: Image dated 8-8-1948, zoomed in to the northwest of Section 10.** With the previously presented GIS irrigation layers removed, the approximately 70 acres of historic irrigation in the NW of Section 10 is very easy to see. The ditch system is clearly visible, appearing as a dark line indicating the presence of water during the irrigation season.





**Photo 3a: Image dated 9-10-1954 (Aerial – USGS, A001460010014).** The resolution of this 1954 image is not quite as clear as the 1948 photo, but it still shows evidence of ditches and fields under irrigation in the NW of Section 10.





**Photo 3b: Image dated 9-10-1954, zoomed in to the Waddell property in the north half of Section 10.** This closer view of the NW quarter shows the fields in September, having received water from the Armstrong Ditch and the Robinson-Armstrong Ditch. With this lower level of resolution, the north and south fields are evident, but no harvest patterns are visible.

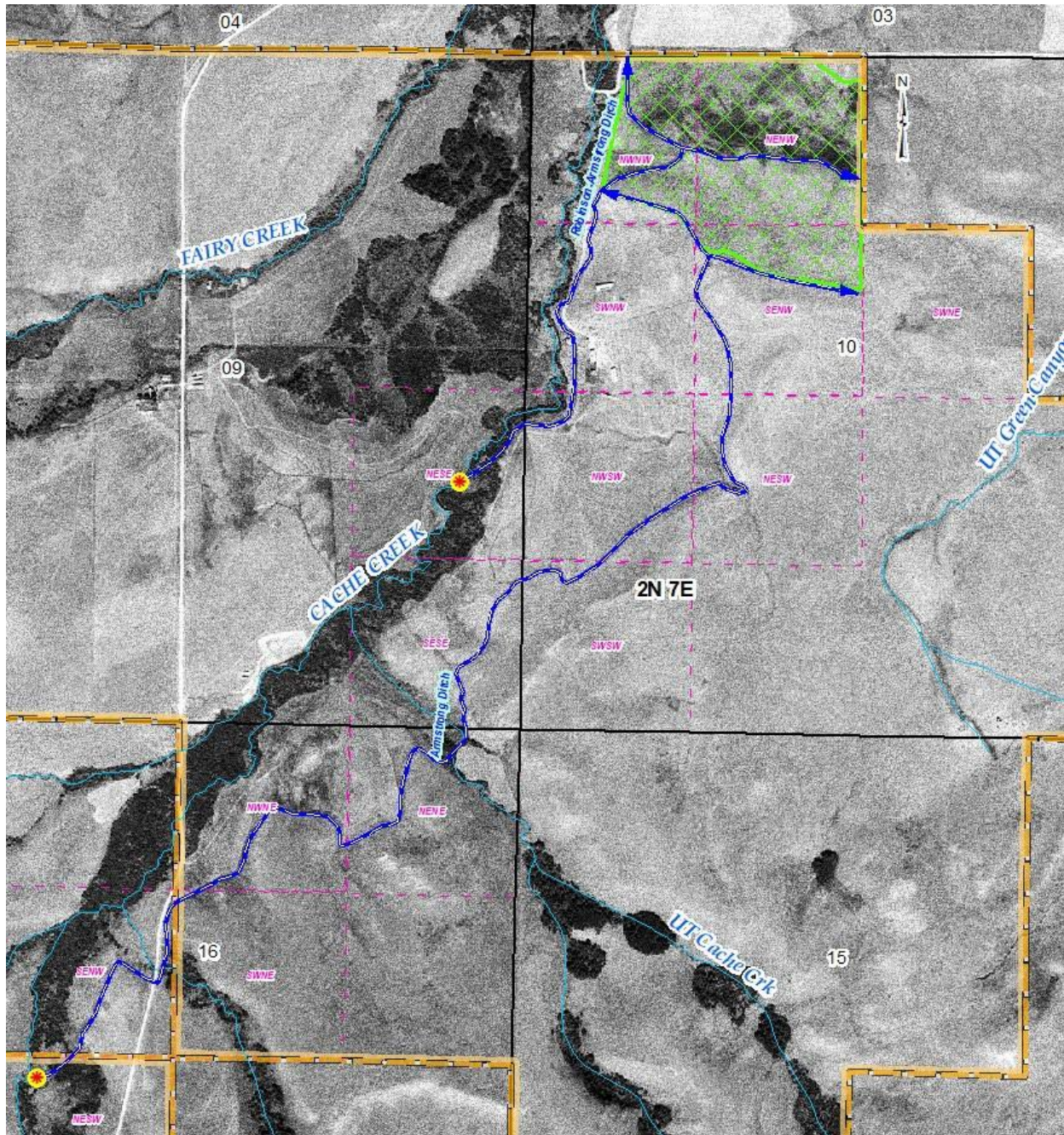


**Photo 3c: Image dated 9-10-1954, zoomed in to the northwest of Section 10.** With the GIS irrigation features removed and in spite of the lower resolution of the photo, the view of the northwest fields show they have received water via the ditch system. These fields appear with darker shading when compared to unirrigated areas that appear with lighter colored shading.



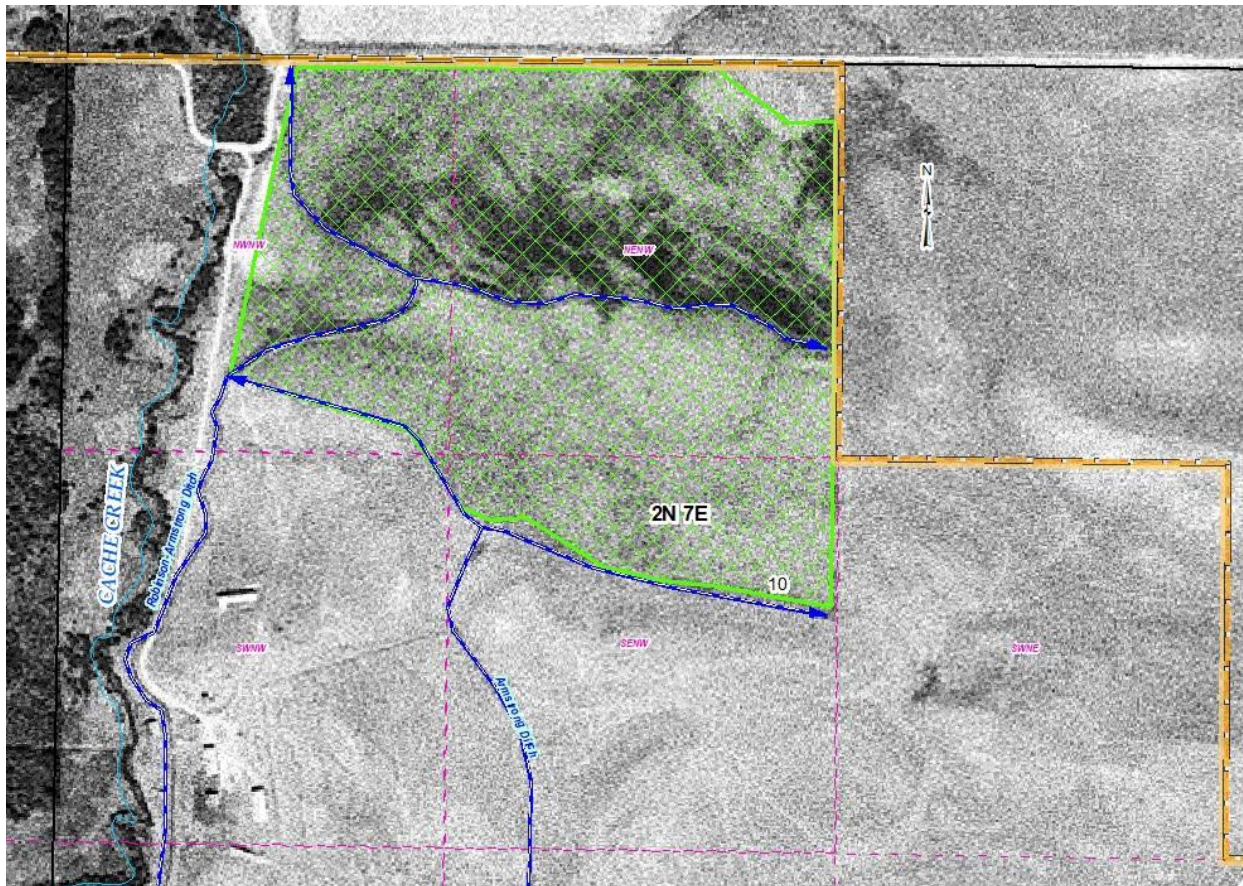


**Photo 4a: Image dated 9-5-1976 (Aerial – USGS, 1VEGB00010066).** This 1976 aerial, while taken post-1973, still provides good evidence of historical use. The resolution is of medium quality but offers the best view of the Robinson-Armstrong ditch that originates from Cache Creek in Section 9.



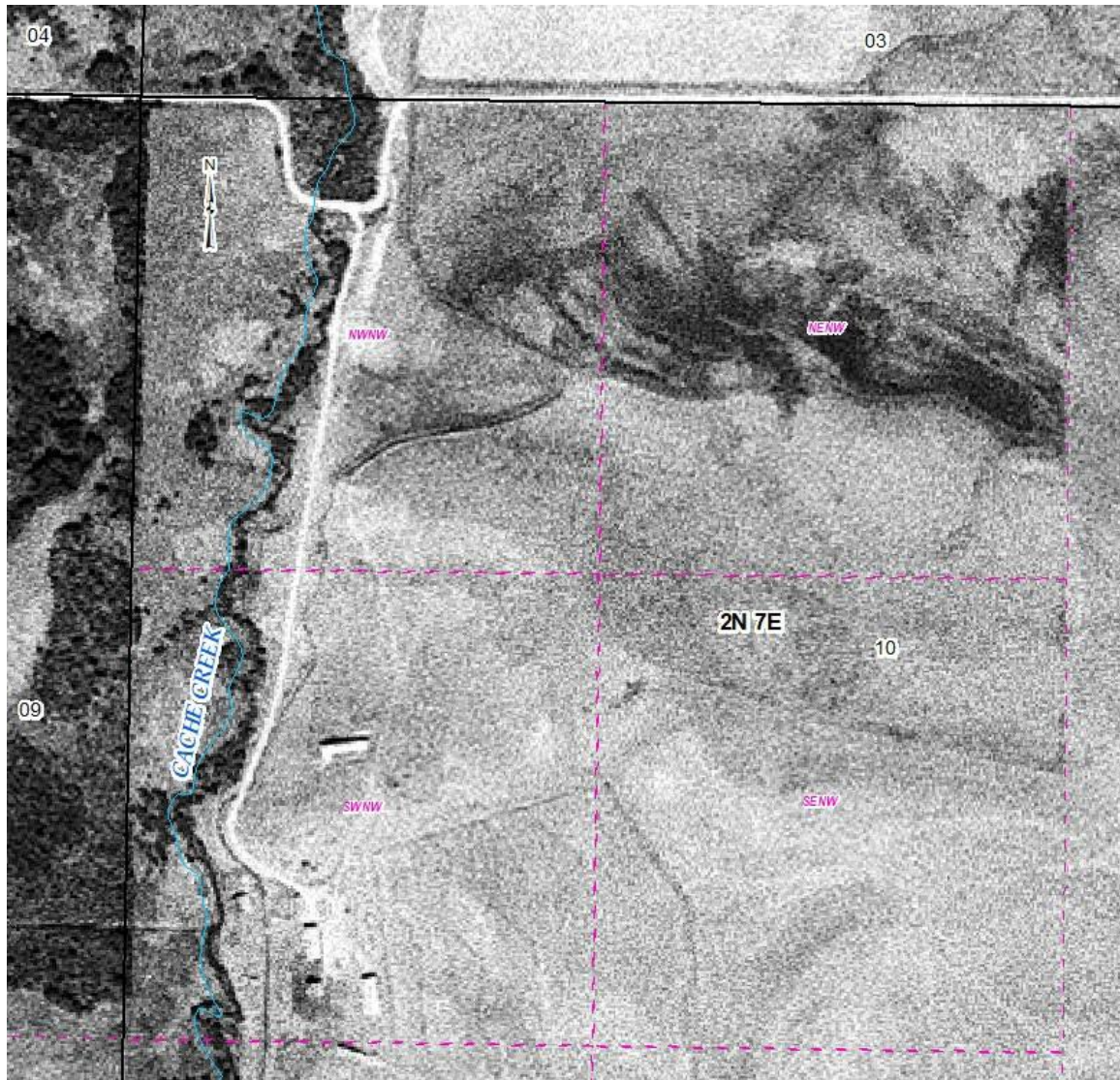


**Photo 4b: Image dated 9-5-1976, zoomed in to the Waddell property in the north half of Section 10.** This closer view of the NW quarter shows the fields in September, having received water from the Armstrong Ditch and the Robinson-Armstrong Ditch. With this lower level of resolution, the north and south fields are evident, but no harvest patterns are visible.





**Photo 4c: Image dated 9-5-1976, zoomed in to the northwest of Section 10.** With the GIS irrigation features removed, the irrigated fields in Section 10 are evident. The ditches are also visible. The ditches are prominent in this photo and there are obvious shading patterns consistent with flood irrigation on the subject field.



### Summary

As evidenced by the preceding series of historical aerial imagery, approximately 70 acres of land in the NW of Section 10 in T2N R7E has been irrigated since at least 1948 through today.

*I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.*

Kyle Mace  
6/9/2022, Missoula MT

## AFFIDAVIT OF ROBERT RICHARD WADDELL

STATE OF MONTANA    )  
                                      )ss  
County of Gallatin        )

I, Robert Richard Waddell, the undersigned, hereby states that I am of legal age and competent to make this Affidavit. I was born in the Northern Bridgers in 1943 and have lived in the area my entire life. In 1970, shortly after marrying my wife, I purchased my ranch including the property in the NW of Section 10 Twp. 2N, Rge. 7E, Gallatin County. Prior to July 1, 1973, I personally irrigated the 70 acres in the NW of Section 10, Twp 2N, Rge 7E indicated on the map attached as Exhibit A. I irrigated this ground from points of diversion in the NWNESW of Section 16 and NENESE of Section 9 using the Armstrong Ditch and what is now called the Robinson-Armstrong Ditch.

DATED this 6th day of May, 2022.

J--U.,J: ,j I/  
Robert Richard Waddell

# Historical Place of Use of Water Right

## 41H 191814-00

