

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

* * * * *

CLAIMANTS: 133 Pray Rd LLC; Lea A. Fairchild; Shane Fairchild

CASE 43B-0188-R-2020

43B 35215-00

43B 35216-00

NOTICE OF INTENT TO APPEAR: Alan E. Fairchild

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The ditch identified on the abstract for each of these claims in the Preliminary Decree is Upland Ditch. During preparation of the Preliminary Decree, the point of diversion legal

description was changed to the legal description for Mill Creek Flat Ditch, not for Upland Ditch. The Statements of Claim each state that the ditch used is Upland Ditch. In 2021, the Montana Department of Natural Resources and Conservation [“DNRC”] prepared a new marked aerial photograph for the Mill Creek claimants and the Court to use to determine the correct ditch name and point of diversion legal description. On April 5, 2023 the Order Re-Opening Case And Setting Filing Deadline was issued to address these errors with the claimants. A copy of the new marked aerial photograph was included. On April 20, 2023 Lea A. Fairchild and Shane Fairchild filed their response stating that the ditch historically used for these water rights is the Upland Ditch. On September 15, 2023 133 Pray Rd LLC filed its response stating that the ditch historically used for these water rights is the Upland Ditch. These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is *prima facie* proof of its content pursuant to section 85-2-227, MCA. This *prima facie* proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect.

Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For both of these claims, the Preliminary Decree states that the point of diversion legal description is the NESWNE section 3, T6S, R9E, PARK. The legal description should be the NENENW section 3, T6S, R9E, PARK. The ditch name is already correctly appearing on these abstracts as Upland Ditch.

2. The settlement documents request a notation concerning the change authorization which allowed the addition of a second point of diversion. The notation is already on the abstract of each claim in the Remarks section.

CONCLUSION OF LAW

The responses filed by the claimants and the new DNRC marked aerial photograph are sufficient to contradict and overcome the *prima facie* claims as incorrectly modified prior to

issuance of the Preliminary Decree.

RECOMMENDATIONS

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

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

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

Water Right Number: **43B 35215-00 STATEMENT OF CLAIM**

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
SHANE FAIRCHILD
41 WIGGINS LN
LIVINGSTON, MT 59047 8772

LEA A FAIRCHILD
41 WIGGINS LN
LIVINGSTON, MT 59047 8772

133 PRAY RD LLC
14861 LIMESTONE SCHOOL RD
LEESBURG, VA 20176 5657

Priority Date: JUNE 1, 1903

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.20 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: 42.00

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENENW	3	6S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: UPLAND DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	42.00		SE	19	5S	9E	PARK
Total:	42.00						

Remarks:

AUTHORIZATION TO ADD A NEW POINT OF DIVERSION ISSUED 10/01/1990. NOTICE OF COMPLETION DUE 11/30/1993. SEE 43B 35215-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION ISSUED 07/27/1994. NOTICE OF COMPLETION DUE 12/31/1996. 43B 35215-01

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.

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

Water Right Number: **43B 35216-00 STATEMENT OF CLAIM**

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
SHANE FAIRCHILD
41 WIGGINS LN
LIVINGSTON, MT 59047 8772

LEA A FAIRCHILD
41 WIGGINS LN
LIVINGSTON, MT 59047 8772

133 PRAY RD LLC
14861 LIMESTONE SCHOOL RD
LEESBURG, VA 20176 5657

Priority Date: JUNE 4, 1963

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.13 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: 42.16

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		NENENW		3	6S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: UPLAND DITCH

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	42.16			SE	19	5S	9E	PARK
Total:	42.16							

THE PLACE OF USE IS IDENTIFIED AS TRACT B.

Remarks:

AUTHORIZATION TO ADD A NEW POINT OF DIVERSION ISSUED 10/01/1990. NOTICE OF COMPLETION DUE 11/30/1993. SEE 43B 35215-00.

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION ISSUED 07/27/1994. NOTICE OF COMPLETION DUE 12/31/1996. 43B 35215-01

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.