

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

FILED
10/10/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0354-R-2021
Brown, Stephen R
38.00

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

CLAIMANT: Petrich Family Limited Partnership

OBJECTOR: Trout Unlimited

CASE 43B-0354-R-2021
43B 101013-00
43B 101014-00
43B 30160099
43B 30160100

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION

This case involves two water rights claims on Mill Creek in Park County owned by the Petrich Family Limited Partnership (“Petrich”). Trout Unlimited (“TU”) objected to the claims after the Water Court issued a preliminary decree for Basin 43B. The Court addressed TU’s objections in part in a summary judgment order. The Court then conducted an evidentiary hearing to address the remaining issues and Petrich’s request for two implied claims. The Court now enters these findings of fact, conclusions of law, and an order addressing the various objections, and closing the case.

PROCEDURAL BACKGROUND

The State's centralized water rights record system identifies Petrich's two irrigation claims as water right numbers 43B 101013-00 and 43B 101014-00. The Water Court decreed each claim in the Preliminary Decree for Basin 43B.

Following the issuance of the Preliminary Decree, TU was the only objector to the Petrich claims. The claims were included on the Basin 43B objection list. No one filed notices of intent to appear. After the objection and appearance periods closed, the Water Court consolidated the claims into this case to address the issue remarks and TU's objections. On February 27, 2023, the Court issued its order on partial summary judgment, ruling that "the period of use and period of diversion elements of claims 43B 101013-00 and 43B 101014-00 are modified to May 1 to July 15." (Doc. 18.00). Based on the summary judgment order, the only remaining issue is whether Petrich is entitled to periods of use extending beyond these dates.

On December 20, 2023, the Court conducted the evidentiary hearing at the Water Court in Bozeman, Montana. TU called Gerald Petrich and Rankin Holmes as witnesses. Petrich called Gerald Petrich, James Melin, Art Burns, Randy Petrich, Gordon Rigler, and Keith Neal. A record of witnesses who testified and exhibits offered and admitted or refused is contained in court minutes filed by the Court at the end of the hearing. (Doc. 32.00).

ISSUES

1. Does the period of use and diversion for claims 43B 101013-00 and 43B 101014-00 extend beyond May 1 to July 15?
2. Are the issue remarks and objections to the claims resolved?

FINDINGS OF FACT

1. Petrich claims 43B 101013-00 and 43B 101014-00 describe rights to use water from Mill Creek for irrigation use on Petrich's property in Park County.
2. Mill Creek flows generally west from its headwaters in the Absaroka Mountains to its confluence with the Yellowstone River near Pray, Montana. The Mill Creek drainage lies entirely within hydrologic Basin 43B. Basin 43B is the descriptive

basin number used for the portion of the Yellowstone River Basin in Montana above and including Bridger Creek.

3. As described by the various witnesses, Mill Creek follows an annual hydrologic cycle typical of streams in Montana fed by snowpack that accumulates in the mountains during the winter. Flows in Mill Creek increase during the spring and early summer in response to snowmelt. Natural streamflow generally declines as summer wears on, though flows sometimes increase after precipitation events.

4. Petrich conveys water diverted from Mill Creek through a ditch called the Northside Ditch. The point of diversion for the Northside Ditch is located in the SENWSW of Section 2, Township 6 South, Range 9 East. The point of diversion is upstream from the points of diversion of several other Mill Creek ditches that convey water to other water users.

District Court Decrees

5. Prior to the enactment of the Water Use Act in 1973, the state district court in Park County conducted proceedings and entered decrees in two cases involving Mill Creek water rights. The first case was in the District Court 1938 case, *Sallie A. Allen, et al. v. N.F. Wampler, et al.*, Cause No. 7583 (Mont. Sixth Jud. Dist., June 1, 1938) (“*Allen Decree*”). The *Allen Decree* involved the adjudication of numerous rights to divert water from Mill Creek through several ditches. The Northside Ditch did not exist at the time of the *Allen Decree*, so rights to divert Mill Creek water through the Northside Ditch were not included in the decree.

6. On June 3, 1963, Gerald F. Petrich, Alexander A. and Elizabeth Malcolm, and Robert L. Melin and Wanda Melin, filed a Complaint and Petition (“Complaint”) in state district court. (Ex. C). Gerald Petrich is a predecessor in interest to Petrich. The Complaint sought an order from the District Court authorizing use of water from Mill Creek in a new ditch the plaintiffs intended to construct on the north bank of Mill Creek. The Complaint acknowledged the prior *Allen Decree* and the rights it decreed.

7. Numerous parties holding rights under the *Allen Decree* answered the Complaint contesting its allegations. These answers included counterclaims seeking

additional decreed rights based on the alleged presence of available water in Mill Creek beyond what already had been decreed. (Ex. E).

8. The District Court conducted a trial on the issues raised in the Complaint and the various answers and counterclaims. Before the trial, the District Court conducted a pretrial conference with the attorneys for the parties. At the conference, the Court accepted a stipulation of the attorneys of record, including the Petrich's attorney, stating in part:

[T]hat the Court is to take as a matter of proof that Mill Creek has surplus water in excess of decreed water which is at least 10,000 inches which exists during the spring run-off, but no later than July 15th.¹

(Ex. D).

9. Following a trial conducted on March 4, 1964, the District Court issued a supplemental water rights decree in the case *Gerald F. Petrich, et al. v. Archibald and Margret E Allen, et al.*, Cause No. 11616 (Mont. Sixth Jud. Dist., Park County, July 22, 1964 (“*Petrich Decree*”). The *Petrich Decree* was based on a finding by the District Court that Mill Creek had an amount of un-decreed water available between May 1 and July 15 each season. The Court decreed this “excess” water to various water users on various ditches. (Ex. B).

10. Based on the evidence, the District Court decreed several Mill Creek rights to the plaintiffs – including Gerald Petrich – for the proposed new ditch with a priority date of June 3, 1964, one day senior to the rights decreed to the other parties. The new ditch approved by the Court was the Northside Ditch. The June 3, 1964, decreed right formed the basis for Petrich claim 43B 101013-00.

11. The District Court also decreed a June 4, 1964 right to Gerald Petrich, which is the basis for Petrich claim 43B 101014-00.

12. The Northside Ditch was constructed and put into service sometime after June 4, 1964.

¹ The stipulation goes on to state the ditch capacities of two other Mill Creek ditches that were included in the *Allen Decree* and evidently later expanded. (Ex. D).

Water Use Act Claim Filings and Decrees

13. On October 14, 1981, Gerald and Eunice Petrich filed statements of claim for the two irrigation claims as required by the Water Use Act. The two statements of claim identify the period of use as “April 15 to Sept. 15 (153 days).” (Ex. 1 and Ex. 2).

14. On January 16, 1985, the Water Court issued a temporary preliminary decree (“TPD”) for Basin 43B. The Water Court included claims 43B 101013-00 and 43B 101014-00 in the TPD. The claims were not included on the TPD objection list and do not appear to have been addressed in a Water Court case after issuance of the TPD.

15. On May 9, 2019, the Water Court issued the Basin 43B Preliminary Decree. The Preliminary Decree included abstracts of claims 43B 101013-00 and 43B 101014-00. Each of these abstracts described the elements of the claims as decreed by the Water Court, including periods of use and diversion of April 15 to September 15, the same as what was claimed. The Preliminary Decree abstracts describe the place of use for both of the claims as covering 210.00 acres within a legally defined area.

16. The preliminary decree abstracts for claims each include the following issue remark:

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

17. After the Water Court issued the Basin 43B Preliminary Decree, TU filed timely objections to the Petrich claims.

Historical Water Use

18. The witnesses who testified at the hearing generally describe diversions to the Northside Ditch as not constrained by the specific May 1 to July 15 dates decreed by the District Court in the *Petrich Decree*. Gerald Petrich testified as to his personal knowledge of irrigation practices on the Petrich property. His personal knowledge dates back to 1962 when he acquired his property. He described constraints on diversion from

either calls by senior water users or when insufficient flows existed in Mill Creek at the Northside Ditch point of diversion. Other than one instance, neither Gerald Petrich nor any other witness described any instances of curtailment of diversions to the Northside Ditch when available water was in priority.

19. The only exception to this diversion pattern occurred when a water commissioner named Jim Patterson shut down the Northside Ditch sometime around July 15 when water was available. The year this occurred is not clear from the record. Evidently District Court Judge Swandal became involved and ordered the Northside Ditch be reopened.

20. The general historical use described by Gerald Petrich was confirmed by other witnesses with knowledge of water use practices on Mill Creek. The witnesses included Gerald's son Randy Petrich, Jim Melin, Keith Neal, Gordon Rigler, and Art Burns. Much of this witness testimony was based on observations that took place after July 1, 1973, but the witnesses generally described consistent diversions from year to year, that varied only by available flows and calls for water by appropriators with senior water rights or as administered by a water commissioner.

21. Although these witnesses all generally testified as to their personal recollections of water use, their testimony about water availability is somewhat unclear because at some point a pipeline was installed to more efficiently deliver water to other water users on Mill Creek. The Northside Ditch headgate is immediately above the pipeline inlet on Mill Creek.

22. Petrich did not offer any records or other evidence to show the specific dates water was diverted to the Northside Ditch, the historical flow rates of the diversions, or when after the construction of Northside Ditch water was diverted after July 1 during any year prior to installation of the pipeline.

23. TU presented evidence as to the size of the place of use for the two claims. According to this evidence, TU contends no more than 210 acres were irrigated by these two claims as of July 1, 1973. Petrich does not dispute this contention, which is consistent with how the Court decreed the claims.

CONCLUSIONS OF LAW

General

1. Each of the findings of fact is supported by a preponderance of evidence. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1(a), W.R.Adj.R. An “existing water right” is the right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

3. The Water Use Act requires the Water Court to describe several specific elements of each state-based existing water right included in a final decree. Section 85-2-234(6), MCA. The combined elements define the scope of a water right. Any water use outside or beyond the scope of the elements the Court adjudicates is not part of an existing water right.

4. Gerald and Eunice Petrich properly filed their statements of claim. The claims, as modified by the Preliminary Decree, are prima facie proof of their content. Section 85-2-227, MCA.

5. Petrich is the successor in interest to Gerald and Eunice Petrich as to these claims.

6. Unless TU overcomes the presumption of claim validity, the Water Court must adjudicate the elements of the claims as filed and decreed, subject only to resolution of issue remarks. W.R.Adj.R. 19; *Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.*, 2022 MT 19, ¶ 17, 407 Mont. 278, 502 P.3d 1080.

7. If TU proves its objections overcome the prima facie status of any of the elements of the claims, the burden of proof shifts to Petrich to prove the validity of the elements of the claims. If Petrich fails to meet this burden, the Court may modify the claims consistent with TU’s objections and resolution of any issue remarks.

8. Pursuant to § 85-2-227(2), MCA, the Court “may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.”

TU Standing

9. Even though TU did not object to Petrich's claims after the Court issued the TPD, TU did not waive its right to object to the claims in the Preliminary Decree because the Basin 43B TPD was issued prior to March 28, 1997. Section 85-2-233(1)(c), MCA.²

10. Petrich argues in its proposed findings and conclusions that TU’s objections should be dismissed because TU lacks standing. (Petrich Proposed Findings of Fact, ¶¶ 10-11; Proposed Conclusions of Law ¶¶ 8-11). Petrich did not preserve this argument in its contentions set forth in the Prehearing Order. Petrich does not have a basis to raise standing as an issue because it was not raised as a prehearing contention. *Ganoung v. Stiles*, 2017 MT 176, ¶ 28, 388 Mont. 152, 398 P.3d 282 (“Failure to raise an issue in the pretrial order may result in a waiver”).

11. Even if Petrich preserved a standing argument, Petrich fails to cite or apply the correct test. Petrich contends TU lacks standing to object to Mill Creek water rights because TU does not have water rights of its own on Mill Creek. The Montana Supreme Court rejected this argument in *Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, 361 Mont. 77, 255 P.3d 179. The Supreme Court concluded that participation as an objector turns on whether an objector has “good cause” to object to a claim. *Montana Trout Unlimited*, ¶ 34. Because Petrich incorrectly assumes “good cause” requires TU to hold a right to water on Mill Creek, Petrich fails to prove TU lacks standing to participate in this case as an objector.

² This statute states in relevant part: “A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997.”

Period of Use

12. The Water Use Act also requires the Water Court to adjudicate “the inclusive dates during which the water is used each year.” Section 85-2-234(6)(h), MCA. These dates are the period of diversion and period of use of a water right.

13. As set forth in the Court’s ruling on TU’s motion for summary judgment, TU proved the “decreed” type of rights for claims 43B 101013-00 and 43B 101014-00 only provides evidentiary support for periods of use and diversion from May 1 to July 15. TU overcame the prima facie status of the claims as to these elements.

14. Based on the summary judgment ruling, the burden of proof shifted to Petrich to prove existing rights to use water from Mill Creek via the Northside Ditch with periods of use and diversion outside of the May 1 to July 15 dates. Petrich seeks to do so by asking the Water Court to authorize implied claims.

Implied Claims

15. Montana recognizes “implied claims” for water use. *Hoon v. Murphy*, 2020 MT 50, ¶ 54, 399 Mont. 110, 134, 460 P.3d 849, 864; Rule 35, W.R.C.E.R. The definitions incorporated into the Water Court’s adjudication rules define an “implied claim” as “a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” W.R.C.E.R. 2(a)(33). The Water Court does not recognize implied claims that expand a water right or that circumvent the Water Use Act claim filing requirements. *In re Climbing Arrow Ranch Inc.*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Order Adopting Master’s Report).

16. The Water Court applies a three-part test to evaluate whether to authorize an implied claim: (a) the implied claim must be supported by evidence in the claim form or the documents attached to the claim form; (b) substantial credible evidence must exist of actual historical use corroborating the implied claim; and (c) creating the implied claim should not result in a change to historical water use or increase the historical burden on other water users. *In re Lee E. Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *32 (Order Amending and Partially Adopting Master’s Report as Amended);

Hoon v. Murphy, ¶ 54 (upholding implied claim based on “substantial credible evidence” of historical use).

17. Petrich meets the first part of the implied claims test because the statements of claim for claims 43B 101013-00 and 43B 101014-00 both identify water rights with periods of use and diversion that extend from April 15 to September 15. While TU proved on summary judgment that the *Petrich Decree* only provides evidentiary support for a period of use and diversion from May 1 to July 15, the summary judgment order does not mean Petrich did not claim a longer period of use on the claim form. Under the terms of the summary judgment order, to the extent the claim forms identify claimed water use before May 1 and after July 1, they describe “use” rights for this period.³ By describing both decreed rights and use rights on the same statement of claim, the claim forms each identify at least two claims, because as described below, the claims have different priority dates.

18. Petrich bears the burden of proving the second part of the implied claim test, which is proof by substantial credible evidence of actual historical use corroborating the implied claim. To meet their burden, Petrich must prove that water was historically used for the dates in their claim form outside what the District Court decreed. Petrich did so through the testimony of its witnesses, most importantly Gerald Petrich. Gerald Petrich is one of the increasingly rare witnesses before the Water Court who has first-hand knowledge of water use as of July 1, 1973. He credibly testified that once the Northside Ditch was complete, it was operated beyond the periods covered by the *Petrich Decree*. However, Petrich did not offer proof of the date water use began after the ditch was constructed, other than it was done historically. Accordingly, rather than adjust the periods of use for claims 43B 101013-00 and 43B 101014-00 with their June 1963 priority dates, the evidence only supports claims with a priority date of June 30, 1973, the day before the effective date of the Water Use Act. Because Petrich did not ask for

³ A “use” right is defined as “a claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree.” Rule 2(a)(71), W.R.C.E.R., incorporated by reference by Rule 2(a), W.R.Adj.R.

further supplementation of a District Court decree, June 30, 1973, is consistent with the penalty provisions of the now-repealed 1921 adjudication statute. Section 89-837, RMC (1947).⁴ Significantly, it also is the priority date Petrich proposes in its proposed conclusions of law (Proposed Conclusion of Law ¶ 6). *See also, Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.* at ¶ 34. (“the Water Court was correct to establish an implied claim dating to the new appropriation begun”).

19. Finally, Petrich proves it meets the third element which requires Petrich to prove implied claims with periods of use prior to May 1 or after July 15 does not increase the historical burden on the source. The Court recognizes the implied claims because of the testimony about how water was historically used and administered on Mill Creek. Using the most junior priority dates available for pre-1973 existing rights avoids conflicts with other Mill Creek water users holding existing rights with periods of use and diversion outside the May 1 to July 15 period litigated and decreed in the *Petrich Decree*.

Issue Remark Resolution

20. No objections were received based on the issue remark on each claim. Nothing further is required to resolve and remove the issue remarks.

ORDER

Based upon the foregoing, it hereby is ORDERED that:

1. The periods of use and diversion for claims 43B 101013-00 and 43B 101014-00 are modified to May 1 to July 15, as provided in this Order and the prior summary judgment order. The issue remarks are removed from each claim.

2. Implied claims 43B 30160099 and 43B 30160100 are authorized based on claims 43B 101013-00 and 43B 101014-00, but with June 30, 1973 priority dates, and periods of use and diversion from April 15 to April 30, and from July 16 to September 15.

⁴ This statute stated: “Failure to comply with the provisions of this act deprives the appropriator of the right to use any water of such stream, or any other source of supply, as against any subsequent appropriator mentioned in or bound by a decree of the court.”

3. All objections to claims 43B 101013-00 and 43B 101014-00 are DISMISSED as resolved.

4. This case is CLOSED.

A modified version of the abstract for each claim, and abstracts for implied claims 43B 30160099 and 43B 30160100 are included with this Order to confirm that the modifications have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Meg Casey, Attorney
Patrick Byorth
321 E Main St Ste 411
Bozeman, MT 59715
(406) 599-8666
mcasey@tu.org
pbyorth@tu.org

Benjamin Sudduth
Sudduth Law, PLLC
1050 East Main St Ste 3B
PO Box 507
Bozeman, MT 59771-0507
(406) 272-2390
benjamin@sudduthlaw.com

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

Water Right Number: 43B 101013-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PETRICH FAMILY LIMITED PARTNERSHIP
345 MILL CREEK RD
LIVINGSTON, MT 59047-8711

Priority Date: JUNE 4, 1963

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.18 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: 210.00

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		SENWSW	2	6S	9E	PARK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: NORTH SIDE DITCH

Period of Use: MAY 1 TO JULY 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	100.00		N2	28	5S	9E	PARK
2	75.00		E2SW	28	5S	9E	PARK
3	20.00		W2	27	5S	9E	PARK
4	15.00		NENE	29	5S	9E	PARK

Total: 210.00

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.

101012-00 101013-00 101014-00 101018-00

IMPLIED CLAIM NO. 43B 30160099 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 43B 101014-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PETRICH FAMILY LIMITED PARTNERSHIP
345 MILL CREEK RD
LIVINGSTON, MT 59047-8711

Priority Date: JUNE 3, 1963

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.33 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: 210.00

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		SENWSW	2	6S	9E	PARK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: NORTH SIDE DITCH

Period of Use: MAY 1 TO JULY 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	100.00		N2	28	5S	9E	PARK
2	75.00		E2SW	28	5S	9E	PARK
3	15.00		NENE	29	5S	9E	PARK
4	20.00		W2	27	5S	9E	PARK

Total: 210.00

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.

101012-00 101013-00 101014-00 101018-00

IMPLIED CLAIM NO. 43B 30160100 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 43B 30160099 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: PETRICH FAMILY LIMITED PARTNERSHIP
345 MILL CREEK RD
LIVINGSTON, MT 59047-8711

Priority Date: JUNE 30, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.18 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: 210.00

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		SENWSW	2	6S	9E	PARK

Period of Diversion: APRIL 15 TO APRIL 30
JULY 16 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: NORTH SIDE DITCH

Period of Use: APRIL 15 TO APRIL 30
JULY 16 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	100.00		N2	28	5S	9E	PARK
2	75.00		E2SW	28	5S	9E	PARK
3	20.00		W2	27	5S	9E	PARK
4	15.00		NENE	29	5S	9E	PARK

Total: 210.00

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.

101012-00

101018-00

30160099

30160100

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43B 101013-00.

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

Water Right Number: 43B 30160100 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: PETRICH FAMILY LIMITED PARTNERSHIP
345 MILL CREEK RD
LIVINGSTON, MT 59047-8711

Priority Date: JUNE 30, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.33 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: 210.00

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		SENWSW	2	6S	9E	PARK

Period of Diversion: APRIL 15 TO APRIL 30
JULY 16 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: NORTH SIDE DITCH

Period of Use: APRIL 15 TO APRIL 30
JULY 16 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	100.00		N2	28	5S	9E	PARK
2	75.00		E2SW	28	5S	9E	PARK
3	15.00		NENE	29	5S	9E	PARK
4	20.00		W2	27	5S	9E	PARK

Total: 210.00

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.

101012-00

101018-00

30160099

30160100

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43B 101014-00.