

Montana Water Court  
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**FILED**  
03/04/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0319-R-2022  
Lambert, Kathryn  
42.00

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

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CLAIMANTS: Yellowstone Trails Ranch Homeowners Association

**CASE 43B-0319-R-2022**

43B 192651-00

**NOTICE OF FILING OF MASTER'S REPORT**

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

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days 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**

Trout Unlimited objected to this claim. 360 Holdings LLC, Arthur L. Jr. & Catherine L. Burns Trust, Christopher J. Jensen, Lydia A. Jensen, Martin C. Malone, James R. Melin, Petrich Family Limited Partnership, Gordon R. Rigler, Sitka Ranch LLC, and South Fork LLC filed a joint notice of intent to appear. This claim also has the following issue remark:

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 1 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

In addition, the Preliminary Decree states that the ditch name for point of diversion number 2 is Upland Ditch but the point of diversion legal description is for Mill Creek Flat Ditch.

On December 10, 2024 Yellowstone Trails Ranch Homeowners Association's Filing To Resolve DNRC Issue Remark was filed (Doc. 33 in FCE). On December 16, 2024 360 Holdings LLC, Arthur L. Jr. & Catherine L. Burns Trust, Christopher J. Jensen, Lydia A. Jensen, Martin C. Malone, James R. Melin, Petrich Family Limited Partnership, Gordon R. Rigler, Sitka Ranch LLC, and South Fork LLC filed an unconditional Withdrawal Of Notice Of Intent To Appear (Doc. 34 in FCE). On February 13, 2025 Trout Unlimited filed an unconditional Notice of Withdrawal Of Objection (Doc. 39 FCE). These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

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 including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the points of diversion and ditch names are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWNWSE	33	5S	9E	PARK
Ditch Name: UPLAND DITCH				
NESWNE	3	6S	9E	PARK
Ditch Name: UPLAND DITCH				

The points of diversion and ditch names should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NENENW	3	6S	9E	PARK

Ditch Name: UPLAND DITCH  
NESWNE 3 6S 9E PARK  
Ditch Name: MILL CREEK FLAT DITCH

The point of diversion issue remark should be removed as addressed and resolved.

#### CONCLUSION OF LAW

The settlement filed by the claimant is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### 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 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 Email:

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

**Water Right Number:** 43B 192651-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** YELLOWSTONE TRAILS RANCH HOMEOWNERS ASSN  
1 MORGAN TRL  
LIVINGSTON, MT 59047-8723

**Priority Date:** MAY 1, 1904

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.25 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:** 224.00

**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		NENENW	3	6S	9E	PARK

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

**Diversion Means:** HEADGATE

**Ditch Name:** UPLAND DITCH

2		NESWNE	3	6S	9E	PARK
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**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** MILL CREEK FLAT 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	5.00		SESESE	11	5S	8E	PARK
2	65.00		SW	12	5S	8E	PARK
3	95.00		NW	13	5S	8E	PARK
4	59.00		NE	14	5S	8E	PARK

**Total:** 224.00

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**Remarks:**

AUTHORIZATION TO CHANGE ISSUED 03/31/1988 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE.  
NOTICE OF COMPLETION DUE 11/30/1993

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE ISSUED 06/14/1993 SEE 43B  
192651-01 NOTICE OF COMPLETION DUE 12/31/1996

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.