

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 24-0656

TROUT UNLIMITED,

Appellant and Objector,

v.

PETRICH FAMILY LIMITED PARTNERSHIP,

Appellee and Claimant.

**CLARK FORK COALITION'S MOTION
FOR LEAVE TO FILE
AN *AMICUS CURIAE* BRIEF**

Pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure, the Clark Fork Coalition (CFC) requests leave to file an *amicus curiae* brief in support of Appellant/Objector Trout Unlimited. CFC has contacted counsel for Petrich Family Limited Partnership, and the Partnership takes no position on the motion.

CFC is prepared to file its brief on the same date Appellant/Objector's brief is due: April 7, 2025. CFC understands that there is a pending motion before this Court to consolidate the current appeal with Case No. DA 25-0072 (*Melin v. Trout Unlimited*). The underlying legal issues of interest to CFC are identical in both cases. Therefore, if this Court consolidates both appeals, CFC requests leave to file

its *amicus* brief in the consolidated appeal by the deadline that Appellant's opening brief is due.

The Clark Fork Coalition's Interest in This Appeal

Founded in 1985, the Clark Fork Coalition (CFC) is dedicated to protecting and restoring the Clark Fork watershed, a 14-million-acre area supporting 350,000 people in western Montana and northern Idaho. On behalf of its roughly 2,700 members, CFC works to improve and protect water quality and to restore stream flow and function in the waterways of the Clark Fork River basin. The CFC employs scientists, restoration specialists, policy experts and educators to implement its science-based mission. As part of this mission, CFC has conducted extensive project work focused on restoring streamflow to the waterways of the Upper and Middle Clark Fork Basins, the Bitterroot Basin and the Blackfoot River Basin.

The CFC is also a water user. The CFC holds a portfolio of over 30, owned or leased water rights that have been converted to instream flow uses for the benefit of aquatic ecosystems and the fishery resource. CFC's mission is geographically limited in scope and does not extend to the waters of Mill Creek in the Yellowstone River Basin. However, an important aspect the Water Court's decision in this case has the potential to affect every watershed in this state.

The issue in this case that interests CFC is the legal standard related to “implied” water right claims. In short, CFC is troubled by the lack of a statutory basis, consistency or legal clarity governing the generation of implied water right claims. Specifically, CFC is concerned with the implications of allowing the Water Court to generate implied claims to sanction expansions of historical water use in the context of the adjudication, which could be disastrous for all existing water users, including CFC. Finally, CFC is concerned about how the Water Court’s ruling might bolster similar efforts to expand the period of use for irrigation water rights in light of increasingly severe drought and changing patterns of water availability related to climate change.

Why an *Amicus Curiae* Brief is Desirable

In the *Petrich* decision, the Water Court created new, “implied” water right claims on Mill Creek—an already over-appropriated and chronically dewatered stream. The Water Court’s decision to generate these implied claims will no doubt increase the burden on Mill Creek and its water users, but it has ramifications far beyond the Mill Creek watershed. In the Clark Fork Basin, for example, water right claims on the majority of tributary streams exceed available water supplies, and over 900 miles of streams and rivers have been categorized as chronically dewatered by the Montana Department of Fish, Wildlife & Parks. The impacts of climate change are already further stressing these finite resources as our

watersheds suffer from reductions in snowpack, an earlier peak in spring runoff and reduced late-summer water availability in snowmelt-dominated watersheds.

The Water Court recently issued Preliminary Decrees in two hydrologic basins (76G, Upper Clark Fork River Basins and 76M, Middle Clark Fork Basins) within the Clark Fork watershed. CFC is concerned that a lack of legal consistency and clarity with respect to the generation of “implied” claims could spill over into the adjudication in these basins and negatively impact CFC’s water rights and water use. Finally, CFC believes that its unique perspective – as a science-based, river conservation organization *and* a water rights holder – will assist the Court in its legal review of the Water Court’s decision.

Because the Water Court’s unchecked ability to recognize “implied” water rights that expand the period of use for historical water rights could have direct, negative impacts on rivers and streams within the Clark Fork Basin (including streams where the Coalition holds instream water rights), the Coalition requests the opportunity to provide the Court with additional context regarding the impacts of climate change on water availability, and the importance of preserving a clear and lawful process for generating implied claims in the statewide adjudication.

Respectfully submitted this 7th day of February, 2025.

By: /s/ Andrew Gorder _____
Andrew Gorder, Legal Director
Clark Fork Coalition
140 S. 4th St. W, Unit 1
Missoula, MT 59801
(406) 550-5502
andrew@clarkfork.org

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to File an *Amicus Curiae* brief was served upon the following by e-service or first-class mail, the 7th day of February, 2025, as follows:

Patrick A. Byorth
Meg K. Casey
Walker Conyngham
TROUT UNLIMITED
321 East Main Street, Suite 411
Bozeman, MT 59715
Attorneys for Appellant/Objector
Trout Unlimited

Benjamin Sudduth
SUDDUTH LAW, PLLC
682 S Ferguson Ave STE 4,
Bozeman, MT 59718
Attorney for Appellee/Claimant
Petrich Family Limited Partnership

By: /s/ Andrew Gorder _____
Andrew Gorder

CERTIFICATE OF SERVICE

I, Andrew Scott Gorder, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 02-07-2025:

Benjamin Sudduth (Attorney)
PO Box 507
Bozeman MT 59771
Representing: Petrich Family Limited Partnership
Service Method: eService

Patrick Arthur Byorth (Attorney)
321 E. Main Street, Suite 411
Bozeman MT 59715
Representing: Trout Unlimited
Service Method: eService

Walker Conyngham (Attorney)
1337 Sherwood St
Missoula MT 59802
Representing: Trout Unlimited
Service Method: eService

Megan Casey (Attorney)
321 E. Main St. No. 411
Bozeman MT 59715
Representing: Trout Unlimited
Service Method: eService

Electronically Signed By: Andrew Scott Gorder
Dated: 02-07-2025