



# Bard Creek Valley The First 46 years

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The historical information and facts within this document were gathered from limited available records and conversations with present members of Bard Creek Valley. Dates, names and facts are based on this information



**Bard Creek Valley  
The First 46 Years**



“Look at that” Bill Bolton exclaimed in early 1968 as he gazed upon this pristine lake property from the County Road, just 1 mile south of the town of Empire. Thrilled with excitement, Bill called Jim Ferguson to tell him about the beautiful property; and hence, the idea of purchasing Upper Bard Creek was born.

Enter Mary McDonald, the crusty old lady who owned Upper and Lower Bard Creek lakes, and always wore a six shooter on her hip. When Bill and Jim approached Mary to see if she would sell Upper Bard Creek to them, they discovered that they were in for a tough haul with that “tough old bird”, as described by Bill. After countless meetings, begging pleads, and helpful nudging from Glenn Henderson, who was Mary’s brother-in-law, Bill and Jim finally convinced Mary to sell Upper Bard Creek to them. Mary needed cash, and Bill and Jim were mesmerized by this property.

Because of the size and the anticipated cost of the land, Bill and Jim had several discussions about how they could afford to purchase the land. They arrived at the idea that if they were to have eight other friends join them, the cost for each would be reasonable and there was ample amount of land for ten families. With a plan in mind they invited friends to visit the site and explained to them the overall concept. Once prospective members visited the beautiful area they were ready to commit to joining the group. With ten people committed to the project, Bill and Jim now had to begin putting together all the legal documents.

Being young and inexperienced, and only equipped with a big dream, Bill and Jim embarked on this journey with the help of Jerry Walker, stockbroker and friend, not being aware of the amount of work ahead of them. Little did they know that this project would cost them eight months of hard labor!

Along the way the number of members had grown from one to ten. Bill Bolton, Jim Ferguson, Ted Jaeggi, Leo Gschwend, Henri Wallimann, Jerry Walker, Bill Gilmore, Gordon Friednash, George Yamasaki and Ken Nelson. Each member was required to deposit \$4,000 into the Trust account, which was held by the law firm of Ireland, Stapleton, Pryor and Holmes, where Monte Pascoe, the attorney that Bill and Jim retained, practiced. The deposit money was to be used for the down payments on the land purchase, closing costs, attorney fees, other expenses and the first developer costs.

Monte Pascoe’s first task was to draft an Option to Purchase Agreement with terms that Mary McDonald and the purchasing members would find acceptable. After reviewing the agreement with the other partners, Bill and Jim signed the Option on behalf of all the partners.

It was Monte Pascoe's suggestion that the land ownership and legal structure of the partners be in a "Trust". Prior to the Option to Purchase Agreement being signed, Monte Pascoe drew up the first Trust Agreement, which outlined the property being purchased by the members. It stated each member's interest and financial responsibility for the Promissory Note, payable to Mary McDonald. The Trust Agreement was signed by all the members who accepted this document as a viable and working agreement. This agreement was later replaced with the Final Trust Agreement.

On a balmy evening that summer, Mary's brother-in-law met Bill and Jim for dinner in Idaho Springs with the purpose of reviewing the Option to Purchase Agreement. With Glenn's approval, all three of the men headed for Mary's home to see if she would accept the terms of the offer. When approached, Mary immediately changed her mind and shouted, "No, I'm not selling". Shocked and disappointed, Bill and Jim returned to Denver with their unexpected response from Mary. Little did they behold, late that night Mary McDonald called Jim to say that she had changed her mind again. Jim called Bill with the good news, and the disappointing meeting with Mary had a happy ending.

Finally, in July 1968, the Option to Purchase Agreement was signed with Bill and Jim named as "Purchasers" on the Options contract and also as "Trustees" on the Trust Agreement, which the then members had already signed to give them power to move the project forward.

The terms of the Option Agreement were \$86,000 for the purchase of 110 acres of land with an earnest deposit of \$2,500 (non-refundable) and a down payment of \$22,500 at the time of closing, \$3,000 for fees and closing costs, along with a Promissory Note of \$57,000 payable to Seller in ten years with monthly payments. Upon the death of Mary McDonald the Note was passed on to her sister, Ruth Henderson, who lived in Alabama. The final payment of the Note was made in January 1979, and the Deed of Trust was released on June 7, 1979.

The Option Agreement required Bill and Jim to have a boundary survey done on the property. Jim hired Glenn Seiver of S&S Surveying Company to perform the work, which was completed on September 23, 1968.

When the closing on the land purchase was finally signed on December 31, 1968, New Year's Eve, Bill and Jim, along with their wives, celebrated their hard fought



acquisition with jubilation and drinks, which made that evening “a night to remember”. In the spring of 1969, Bill and Jim walked the property and selected twelve possible building sites from which each member chose their site. The order in which members chose their sites was based on the order in which each had made their \$4,000 deposit.

Then came the roads. Bill and Jim put forth a plan for the roads according to the various sites which the two had chosen, and they remain the same today. Bill contracted with Dwight Miller and Ray Heon to build the roads, while all the members set out to cut the trees that were in the way of progress. Things were beginning to happen. In 1970 Jim hired Wright McLaughlin Engineering Company to see if a central sewer and water system would be feasible. They recommended that it was financially impractical. So each member was responsible for his own water and sewer system.

And, let there be light! An agreement was made with the Public Service Company to install the necessary electrical lines to the general property and to each individual site. Timely for the group, the main electrical line was being installed along Bard Creek Road anyway. We wondered if a Higher Power was looking after our interest.

In 1970 the owners decided to build a gate at the entrance to the property. Bill took on the job, and he purchased the materials and constructed a magnificent gate made of steel and heavy wood bars. It was fitting for the grand property, and everyone rejoiced!

Together the members purchased an old one-room mobile home and placed it on what is now known as the Gschwend property. A temporary outhouse was built to provide for necessary functions. All were happy to have a place to get out of the weather and “privileges” available while building their dream homes, still knowing that they did not have title to their own site.

The final Trust Agreement drawn up by Monte Pascoe was signed by all ten members on July 2, 1971, at a member meeting held at George and Jane Yamasaki's. This document set out how the ownership of all the land was governed, used, and how the members would govern themselves. The Trust established how any property could be sold or the ownership transferred. The Trust provided each member with a site for the construction of their home, although the site was not deeded to any of the members since the land was held in the trust. Because of this unusual situation and no legal description for each site, none of the members could obtain a loan or mortgage to build. Each member had to find his own financial means to go forward with their plans.

The condition of each individual member not owning the land on which they had built a home on was troubling to some members, while other members were satisfied with "The Trust" as it was. As time passed this matter was on everyone's mind as what to do. Because of the above situation, Clear Creek County did not know how to issue building permits, water well permits, and tax assessments for each individual house. Finally, with Monte's expertise these problems were solved temporarily and building and water well permits became available.

Building permits were issued as follows ~ Ferguson – June 1969; Gschwend – July 1969; Bolton – August 1969; Walker – September 1969; Wallimann – December 1969; Jaeggi – April 1971; Zeigler – July 1974; Yamasaki – October 1976; Gilmore – July 1980. The first owner of the tenth site was Ken Nelson. He sold to Wells and Polly Lange, who then sold it to Elizabeth Hatcher, who finally sold it to Charles and Tory Basani. The Basani's acquired a building permit in August 2009, and built the home.

While all these exciting activities were taking place in the Upper Bard Creek Community, Mary McDonald in 1969 wanted to sell some of her remaining property (Lower Bard Creek, which included Mary's home and lake) to a trailer park company. Embroiled with the findings, the Bard Creek Trust members joined with other Bard Creek Road homeowners and filed a lawsuit against Mary McDonald and the trailer park company. The basis of the lawsuit expressed an opposition to a commercial trailer park surrounded by single dwelling homes. The legal action continued until early 1971 when the trailer park company withdrew its application for zoning with Clear Creek County. Later, Mary's property that was now owned by her sister was sold to Sam Newton, owner of the Country Dinner Playhouse in Denver.





As time rolled on, September 1973 arrived without a permanent name for the unique and beloved community. The owners were asked to submit suggestions on a written ballot. After the votes were tallied, “Bard Creek Valley” was the winner and up went the proud sign high above the gate.

Water, water, water! Between 1968 and 1982 the members of Bard Creek Valley had no concerns about their water rights based upon Monte Pascoe’s review of Mary’s

water rights in 1968. When 1982 rolled in, water rights became an important issue for many people in the state. Jim asked Monte to review Bard Creek's water rights. Since Mr. Pascoe no longer practiced with the same firm, Bard Creek's file was given to Kirk Holleyman, who practiced for Garfield and Hetch. Jim authorized Mr. Holleyman to do a complete study of the Trust's water rights. Titled "The Analysis of the Bard Creek Trust Water Rights", the report states that the Bard Creek Trust has the rights to the water from the ditch that feeds the lake and the water that was stored in the lake. It also stated that one acre of land could be irrigated. Since that time, no other action has been taken.

Over the 45 years between 1969 and 2014, the ownership of some of the properties has changed. During that period the following changes have happened.

- December 1970 – Gordon Friednash sold his interest to Bob and Ann Zeigler
- July 1973 – Ken Nelson sold his interest to Wells and Polly Lange
- July 1981 – Jerry and Shirley Walker sold their interest to Tony and Donna Piscopo
- August 1989 – Ted and Helen Jeiggi sold their interest to Eddy and Judy Feinburg
- June 1996 – Wells and Polly Lange sold their interest to their daughter Elizabeth Hatcher
- October 2004 – Ann Zeigler sold her interest to Phil and Tammy Wick
- 2009 – Elizabeth Hatcher sold her interest to Charles and Tory Basani
- 2014 – Judy Feinburg sold her interest to Seth and Rebecca Williams

Over a period of time between 1972 and 1988 there had been many discussions among the members regarding the issue of each member not owning the property that their home sat on. In August 1972, Aldo Notarianni, attorney for Leo and Trud Gschwend, sent a letter to the members of the Trust pointing out some of the problems related to the members not having title and ownership to the land on which their homes were being built. At that time the members voted not to change the form of the land ownership, and to leave all land in the Trust Agreement.

By the mid 1970's many members had constructed their homes, which represented sizable investments knowing they did not own the land in which their home was on. Without having a Deed to their property members were restricted as to how they could sell, who they could sell to, and how they could pass the property on to future family members. They also could not have any mortgage on the home.



In November 1975, again at the annual meeting of the members the questions about the Trust and individual ownership of home sites was discussed at length. The members again voted that the ownership and governing of the property would remain in the form of the Trust Agreement.

In November 1980, at the annual meeting the members expressed interest in finding out what the possible cost might be to sub-divide the land, and what the steps would be. Jim Ferguson, whose business was subdividing land and building homes, volunteered to look into getting the answers to these first basic questions.

In June 1981, it was reported to the member's information that was received from a meeting the Clear Creek County officials. The cost to the County to start the process would be \$1,000 to \$2,000, and would involve many other government agencies. It would also cost thousands of additional dollars for engineering and legal services. The group decided not to spend the money at this time, but to continue researching how and when to start the process.

Having discussed the idea of subdividing the land for over ten years without ever making a decision to go forward, the group was exploring other methods of allowing each member to own their own property.

Two new ideas to solving the problem were suggested in 1983, with the two ideas working jointly together. The first was to rewrite the Trust Agreement, which with the second part being that the Trust then could do "Long Term Leases" for each member building site. To research if this was possible two separate attorneys were contacted for their opinion on possibilities, cost and the down side of doing this. Upon receiving back information from the attorneys, the group reviewed the options they had. It was decided not to go any further in this direction.

In early 1987, after years of agonizing over the problems related to the Trust owning all of the land, the members finally made the difficult decision to go forward with terminating the Trust, setting up a new Home Owners Association, and sub-dividing the land. For over twenty years the Trust had served as the guide and glue that held the group together, but it was time to move forward. Everyone was excited and optimistic about the new form of governing and ownership of the land. It would be a long expensive and time consuming road they were embarking on.

Jim Ferguson was appointed and agreed to coordinate the process. A steering

committee consisting of Bob Zeigler, George Yamasaki and Tony Piscopo were appointed to assist Jim. The first task was to acquire the services of an attorney and an engineer. Aldo Notarianni agreed to do all the legal work, along with assistance from George Aucoin from Clear Creek County. D.R. Mertz and Assoc. was hired to do all surveying and engineering, which included all field work, including getting the final plat designed and approved by the County.

Separate committees were set up to research and provide information including; declaration and by-laws, home owner's association documents, covenants and liabilities. There were many meetings with attorneys, and also meetings on the property with the engineer to lay out and plan for the new subdivision.

The first informal meeting with the County Commissioner was held on July 17, 1988. Attending were Aldo Notarianni, George Aucoin, Tony Piscopo, Bob Zeigler and Jim Ferguson. The intent of this meeting was to find out what documentation would be needed, the preliminary cost, and if the County supported the proposal. The group left with a long list of requirements.

The members met in September 1988, at Ted and Helen Jaeiggi's home at Bard Creek, with Jim Ferguson and the steering committee giving a report on the meeting with the County. Discussed was the multitude of things needed for the County, the preliminary layout of the area to be subdivided, and how the new Home Owners Association would be set up and governed. The members approved the concept of a Home Owners Association and the replacement of the Trust Agreement. Also, the members approved the authority of the steering committee to act on behalf of the entire group, along with a budget of \$20,000.





*Bard Creek near head gate*

After a lot of work the application required by the County for Subdivision Approval was filed with the County on July 1, 1989. The Clear Creek County Planning Commission held two public meetings on July 18, 1989, and August 2, 1989. At th



Board of County Commissioners meeting on August 21, 1989, they approved the preliminary plan, and authorized proceeding with the necessary paper work.

The total acreage of the land owned by the Trust was 110 acres, which 45 acres was subdivided into what is now called Bard Creek Valley. Ten 2 acre sites were created encompassing the area around each members existing home. The area between these 2 acre sites, including the lake and roads, became "common land", consisting approximately 25 acres, which the Home Owners Association would own. The balance of the land outside of the Bard Creek Valley plat owned by the Trust, consisting of 65 acres, remained as a separate legal description and was not sub-divided. This remaining land still remains in the ownership of the association.

There were many difficulties in getting the plat designed and approved by the County. Water wells and septic systems were not within some of the 2 acre sites. This created some irregular shaped sites, with three having two separate parcels to accomplish the necessary 2 acres. The entry road off the County Road did not meet County specifications, and had to be rebuilt. All the roads had to be reshaped and graded to County specifications. The lake dam had to be inspected and approved by a geotechnical engineer.

There were nineteen separate county and state agencies that had to be contacted for their approval, along with dozens of separate documents that had to be filed. During the time that the land sub-dividing was moving forward, the then officers of the Trust along with legal counsel, was drafting the documents needed to terminate the original Trust Agreement and to establish the new Home Owners Association.

On August 31, 1992, Clear Creek County commissioners approved the platting of Bard Creek Valley. This was after four long years of hard work, frustration, and more than anything, determination by all the members! Even after the approval it took until June 11, 1993, for the final plat to be signed and recorded with the County.

Upon the plat being recorded, Aldo Notarianni was preparing the documents to terminate the Trust Agreement, along with documents to establish the new Home Owners Association. There was all the title work needed to deed the ten new property lots to each member. All of the documents were distributed to all the members for their review and comments. Mr. Notarianni, after addressing all members concerns and making revisions, completed all necessary paper work.

On August 8, 1993, at Leo and Trudy Gehwend's home in Bard Creek the final



“members” meeting of Bard Creek Valley Trust was called to order. Jim Ferguson explained to the members that the first part of the meeting was necessary to terminate the Bard Creek Valley Trust, so that the forming of the new non-profit Home Owners Association could take place.

After discussion it was moved by Bob Zeigler, and seconded by Leo Gschwend, to terminate the Bard Creek Valley Trust. All members voted to do so. The Trust was declared terminated. The final meeting of the Trust was adjourned.

With the Trust Agreement terminated, the first annual meeting of the Bard Creek Valley Home Owners Association was called to order. All members were present, except for Wells and Polly Lange. There were several items of business that needed be done. The first was the election of officers to manage the activities of the new Home Owners Association. The results of the election were as follows:

Jim Ferguson – President

George Yamsaki – Vice President

Tony Piscopo – Secretary / Treasurer

The members reviewed and discussed the by-laws and Declaration of Covenants, which had been recorded by the attorney. The Certificate of Incorporation had also been filed with the State of Colorado.

Tony Piscopo reported that the total cost covering all expenses related to the subdividing was \$39,220.00. It was noted that the Deeds to the individual member lots had been recorded on July 20, 1993. Tony further explained that the balance of funds in the old Trust checking account would be transferred to a new checking account for the Home Owners Association.

After more than 20 years of organizing, discussing, planning, and at great expense of time and money, to find a way for each member to have private ownership of their own home site was a great achievement. By completing the subdividing, it made it possible for each member to pass their property on to their family or control what they wanted to do with the property.

The lake and fishing has been a primary attraction of Bard Creek Valley and enjoyed by everyone. The first years the only type of fish in the lake were Brook Trout, also called “brookies”. They entered directly into the lake by way of the ditch from Bard Creek. They had over populated the lake for the limited food sources that were available. Therefore, the majority of the fish were very small.

In 1973 the owners hired Rocky Mountain Fishery Consultants to conduct a study of Bard Creek Lake to determine the health of the fish and what could be done to improve the fishing. They recommended that the lake be stocked with larger fish that would reduce the small Brook Trout. They also recommended that a "weir" (a fish screen) be placed across the ditch feeding the lake to keep the stocked fish from leaving the lake and entering Bard Creek.

In 1973 the first fish were stocked in the lake and over several years' different species of fish were tried to see which would survive and acclimate to the location the best. Rainbow Trout have been used for many years and continue to be what is stocked.

In 1975 the fish consultants recommended that an aerator be placed in the lake and run during the winter to provide the fish more oxygen when the lake was frozen. This was removed in 2013.

The heavy wooden gate that had been installed in 1970 was removed and replaced in 1993 with a new solar powered electric gate. No longer did anyone entering the property have to exit their vehicle and swing back the two gates, as the new gate could be activated with electronic controls. This new gate added new security to the property and not having to get out of your vehicle in inclement weather.

The members retained the services of attorney George Aucoin to file for a hearing before Clear Creek County Board of Equalization in regards to the high increase in property taxes for 1994. Mr. Aucoin, along with several members, met with the Board in August 1994 to protest the increase. The Board's decision was the County would not lower the property taxes, as the taxes were within the County's guidelines. The members voted not to pursue further legal action at the advice of Mr. Aucoin because of legal costs.

Until 1993 the members had governed themselves and the activities within the property, with some informal rules and agreements. When the property was subdivided in 1993 some of the agreements were included in the Home Owner's Association Declaration of Covenants. In 1996 the Board of Directors approved and published the first "Home Owner's and Guests Guidelines of Conduct". The guidelines were then modified in 2006 and 2014.

The Clear Creek County Emergency Services installed the large, white pipe on the east end of the lake dam. This would enable the fire department easy access to hook up their fire equipment and pump water directly from the lake. This greatly improved the availability for fire protection and at no cost to Bard Creek Valley. This lowered the fire rating for the property which lowered the cost of member's home owner's



insurance.

Bard Creek Valley has not been exempt from the pine beetle epidemic that has devastated the forests of Colorado and the west. In about 1999 the signs of beetle killed trees started appearing west of Bard Creek Valley, in the head of Bard Creek. At that time the Board of Directors had their first discussion regarding effects the pine beetle was starting to have on the properties trees and what they could do to prevent or mitigate the damages to the trees.



*Tree trimming*



In 2003 the Board of Directors approved spending money to start spraying trees on the associations property, with spraying continuing for several years. Because of the amount of trees and the cost, spraying was then discontinued. Over the years several individual home owners have elected to spray trees around their own homes.

In 2006 and continuing for several years the owners worked together to cut down,

chip and remove dead trees from the area. The association also contracted with professional tree cutters to cut down the very large trees, leaving them on the ground for the group to clean up.

Since purchasing of the property in 1969, and probably since the time the lake was developed, the creek had continued to deposit dirt and gravel at the inlet on the west side of the lake. These deposits had reduced the depth of the water along the west edge of the lake, which affected the fish habitat in the winter and the enjoyment of boating and fishing along this part of the lake in the summer. In 2004 Bard Creek Valley owners made the decision to dig out the inlet to the lake along with the entire west side. Ron Lane was contracted to do all the work and to haul off the dirt. The total cost of this improvement was \$15,000.00.



*Dredging of lake on west end*

Since the platting of Bard Creek Valley in 1993, names for the roads had never been required. In 2005 Clear Creek County notified Bard Creek Valley that the roads within the property had to have names assigned to them. Phil Wick worked with the county on the selection of the names. The names he selected and got approved were – West Bard Creek Road running from the gate, along the dam, and all the way up to the Basani property. The road running around the lake to the far south side was named Copper Fox Trail.

After several years of discussions, the members decided they would like to have a place near the lake with a fire pit that families and members could meet and enjoy. On a Saturday in the summer of 2009, several members and their children met and built the pit where it is today.





Tony Piscopo, Jim Ferguson & Ron Lane

Finished fire



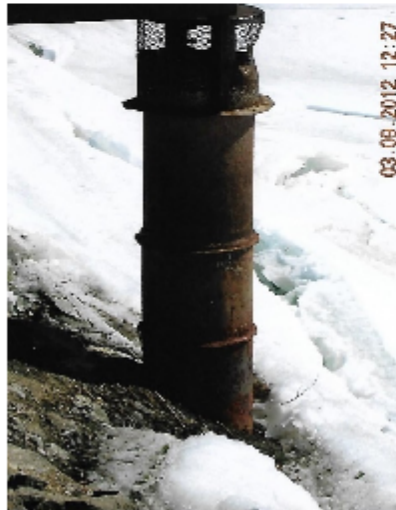
In the winter of 2012/2013 the lake water level was at a 40 year low due to Bard Creek freezing at the inlet of the ditch, which feeds the lake. Therefore, no water was going down the ditch into the lake. With no water under the ice to support it, the ice collapsed and ended up sitting on the bottom of the lake. It remained this way until the Spring of 2013, when the thawing of the ice in Bard Creek occurred allowing water to return to the ditch and refilling the lake.



Lake after it collapsed Winter 2013



Spring 20





Keeping the lake over flow pipe clear of leaves, debris and limbs has always been a problem in the spring and fall. Plugging up of the pipe could increase the risk of the lake over flowing and breaching the dam at some point. In 2013 a metal screen was designed by Jim and Mark Ferguson and fabricated by Bill Miller, a welder out of Idaho Springs. It was installed on the over flow pipe, allowing the over flow water to still be released even if the screen was plugged up.





*Work day crew*

In February 2013, Xcel Energy started trimming and cutting down trees along Bard Creek Road, above the lake on the east side. This was along and under Xcel's high voltage power lines. Phil Wick observed this occurring and was able to get this work stopped until it was clarified why this was happening. Xcel explained that they had "right of way easement" under their lines and that they had the right to remove all vegetation along this easement. This was to protect their poles and lines in case of fire. Phil had several meetings and many phone calls with Xcel officials. Thru his hard work and determination, he was able to negotiate an agreement with Xcel that



only a few trees would be cut down, with the remainder just being trimmed. This effort preserved the privacy and beauty along Bard Creek Road.

There have been many other events, improvements and changes that were made over the first 46 years. These challenges and decisions were made to protect and maintain the integrity and beauty of Bard Creek Valley.

Bard Creek Valley has brought much enjoyment to all the families over the last 46 years. Each family now has 3 or 4 generations that get to reminisce about and create their own unique memories in the beauty of this special oasis. It is a realization of a dream the ten original members had. Through foresight, commitment, and dedication they worked to develop a protected place they and their families can continually love.



*María Wallimann, Helen Jaeggi, George and Jane Yamasaki,  
Jim and Treece Ferguson*



# Bard Creek Valley

Founded 1969

*Through their foresight, wisdom and vision this beautiful place was created for the enjoyment of their families and future generations by the following ten charter members.*

*Bill and Suzanne Bolton  
Ted and Helen Jaeggi  
Henri and Maria Wallimann  
Bill and Mary Gilmore  
George and Jane Yamasaki*

*Jim and Treew Ferguson  
Leo and Trudy Gschwend  
Jerry and Shirley Walker  
Gordon and Zelda Friednash  
Ken and Sandy Nelson*