

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANT: Little Bear Mining and Exploration, Inc.

OBJECTOR: Little Bear Mining and Exploration, Inc.

CASE 41G-0625-R-2023

41G 124991-00

41G 124992-00

41G 124993-00

41G 124994-00

41G 124995-00

41G 124996-00

41G 124997-00

ORDER REINSTATING CLAIMS AND CLOSING CASE

BACKGROUND

This case addresses six water right claims to use water from Bear Gulch or an unnamed tributary of Bear Gulch for mining use. Bear Gulch is in the Tobacco Root Mountains, generally east of Twin Bridges in Madison County. Little Bear Mining and Exploration, Inc. (“Little Bear”) owns the claims.

The Water Court included claims 41G 124991-00, 41G 124992-00, 41G 124993-00, 41G 124994-00, 41G 124995-00, 41G 124996-00, and 41G 124997-00 in the Preliminary Decree for Basin 41G, the Jefferson River Basin. The Preliminary Decree described the status of the claims as “Dismissed” based on prior Water Court proceedings in case 41G-120 that took place in 1996. The Preliminary Decree identified Gold Ranch Mining Corp. (“Gold Ranch”) as the owner of the claims.

Gold Ranch filed objections to the six claims during the decree objection period. Each objection asked the Court to reinstate the claims to active status. Specifically, the objections for each claim stated:

Claimant was unable to participate in temporary preliminary decree proceedings and [the] claim was dismissed. The claim and its elements should be reinstated for full adjudication. Claimant reserves the right to address any issue remarks or objections raised during either temporary preliminary or preliminary decree proceedings. Claimant also reserves the right to address any and all claim elements upon reinstatement.

After the Basin 41G counterobjection period closed, the Court published an objection list. No one else sought to participate in the resolution of the objections.

On May 15, 2023, Little Bear Mining and Exploration, Inc. (“Little Bear”) filed a Motion for Substitution of Party and Notice of Substitution of Counsel. The Court consolidated the claims into this case and granted Little Bear’s motion to substitute as both owner and objector to the claims.

On August 30, 2023, Little Bear filed a Motion to Reinstate Claims. On October 20, 2023, the Court issued an Order on Motion to Reinstate Claims. (“Reinstatement Order”; Doc.¹ 8.00). The Order concluded that because claims were dismissed before the issuance of the Court’s 2012 statewide Order Addressing Reexamination, they must be examined by the Department of Natural Resources and Conservation (“DNRC”). The Court ordered Little Bear to file a proposed abstract for each claim. The Reinstatement Order also indicated the Court would determine whether further notice is required after DNRC reexamined the claims.

On December 15, 2023, Little Bear filed the proposed abstracts. The Court then ordered DNRC to reexamine the claims. DNRC did so and on March 12, 2024, DNRC filed a memorandum with recommendations for the claim abstracts of each claim. (*See* Doc. 11.00).

¹ “Doc” numerical references correlate to case file docket numbers in the Water Court’s Full Court Enterprise case management system.

Little Bear promptly responded to DNRC’s memorandum, stating it agreed with DNRC’s largely technical suggestions. (Doc. 12.00). However, that did not end the matter. As the Court indicated in the Reinstatement Order, the Court reserved the issue as to whether additional notice might be necessary. On April 2, 2024, the Court issued an Order Requiring Notice. (“Notice Order”; Doc. 13.00). The Notice Order required Little Bear to consult with the United States Forest Service as to the legal descriptions for the claims because they are on patented mining claims interspersed with lands owned and managed by the Forest Service in the Beaverhead-Deerlodge National Forest. Little Bear complied with terms of the Notice Order. On September 24, 2024, Little Bear filed a Notice of Stipulation and Agreement, and Notice of Matter at Issue. (Doc. 19.00). The filing includes an executed Stipulation between Little Bear and the United States.

DISCUSSION

As the Court indicated in the Reinstatement Order, and also has concluded in other cases involving objections that seek to reinstate dismissed claims, the reinstatement process is one the Court reviews carefully because once a claim is dismissed in the adjudication, parties have the right to assume the claim no longer exists for purposes of administering water rights and determining availability for future appropriations. As such the Court applies a process that may seem procedurally cumbersome, but is designed to protect the adjudication’s procedural integrity and facilitate progress toward final decrees. That said, the Court recognizes that in certain circumstances, reinstatement is appropriate. Those circumstances exist here.

Little Bear and its predecessor have met all the obligations required by the Court. As set forth in the Reinstatement Order, Little Bear provided significant detail about the background to the prior dismissal of the claims, and the substantive reasons justifying reinstatement. The reinstatement issue was raised in decree objections, which provided basinwide notice. Significantly, no one filed counterobjections or notices of intent to appear. DNRC performed a reexamination of the claims, which put them on the same examination footing as other claims in the basin. Little Bear addressed all the issues

raised by DNRC. Little Bear also complied with the terms of the Notice Order by notifying the Forest Service and working with it to craft the Stipulation.

The Stipulation addresses the Court's concerns about the legal descriptions and suggests some minor clarifications to the text of information remarks. As the water rights are diverted and used on private property within the National Forest, the Forest Service has an interest in ensuring legal descriptions are sufficiently precise to avoid unauthorized water use on federal land. The revisions the parties propose accomplish this to the Forest Service's satisfaction. As the terms of the Stipulation are legal description and remark clarifications, they raise no new issues and appropriately bring this matter to resolution.

ORDER

Therefore, it is ORDERED that claims 41G 124991-00, 41G 124992-00, 41G 124993-00, 41G 124994-00, 41G 124995-00, 41G 124996-00, and 41G 124997-00 are REINSTATED with the elements as set forth in the filings in this case. The Stipulation is APPROVED, and the claims are decreed with remarks consistent with the terms of the Stipulation. This case is CLOSED.

Post-decree abstracts of the claims are filed with this Order to confirm the modifications have been made in the State's centralized water rights record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124991-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: FEBRUARY 27, 1920

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 5.00 GPM

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: SURFACE WATER

ALSO KNOWN AS CRYSTAL SPRING LAKE

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		NESENW	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

Period of Use: JANUARY 1 TO DECEMBER 31

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			NESENW	7	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124992-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: APRIL 17, 1939

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 1.00 CFS

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: BEAR GULCH

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		NENWSE	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

HEADGATE USED AS AN ADDITIONAL MEANS OF DIVERSION.

Period of Use: JANUARY 1 TO DECEMBER 31

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			SESENE	7	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124993-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: DECEMBER 20, 1915

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 1.00 CFS

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: BEAR GULCH

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		SWNWNE	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

Period of Use: JANUARY 1 TO DECEMBER 31

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			SENENW	7	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124994-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: MARCH 18, 1915

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 1.00 CFS

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER

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		NWNWNE	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWNWNE	7	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124995-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: SEPTEMBER 15, 1917

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 0.55 CFS

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: BEAR GULCH

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		SWSWSW	6	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

Period of Use: JANUARY 1 TO DECEMBER 31

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			SWSWSW	6	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124996-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: MARCH 18, 1915

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 1.00 CFS

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: UNNAMED TRIBUTARY OF BEAR GULCH

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		NWNENE	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWNWNE	7	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124997-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751-0683

Priority Date: MARCH 18, 1915

Type of Historical Right: USE

Purpose (Use): MINING

Flow Rate: 1.13 CFS

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER

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		NESWNE	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWNWNE	7	3S	4W	MADISON

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.