

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

CLAIMANTS: 4 Decades LLC; Grey Bear Holdings LLC

OBJECTORS: Hunter Terry; 4 Decades LLC

CASE 43B-0017-R-2020

43B 14414-00

43B 14415-00

43B 14416-00

43B 39218-00

43B 30160089

CLOSING ORDER

BACKGROUND

This case involves the following four claims for water rights from the East Fork of Mill Creek in Park County:

- Claim 43B 14414-00 describes an irrigation right with a June 4, 1963 priority date, jointly owned by Grey Bear Holdings LLC (“Grey Bear”) and 4 Decades LLC (“4 Decades”).
- Claim 43B 14415-00 describes a 170.60 gallons per minute (“gpm”) irrigation right with a July 1, 1930 priority date. 4 Decades owns claim 43B 14415-00.
- Claim 43B 14416-00 also describes a 170.60 gallons per minute (“gpm”) irrigation right with a July 1, 1930 priority date. Grey Bear owns claim 43B 14416-00.
- Claim 43B 39218-00 describes stock water right with a July 1, 1930 priority date. Grey Bear and 4 Decades jointly own claims 43B 14414-00 and 43B 39218-00.

The Water Court included all four claims in the Preliminary Decree for the Yellowstone River Above and Including Bridger Creek Basin (Basin 43B).

The preliminary decree abstracts for claims 43B 14415-00, 43B 14416-00, and 43B 39218-00 all include the following decree exceeded issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 15 MINER'S INCHES DECREED IN CASE NO. 7583, PARK COUNTY. 39218-00, 14415-00, 14416-00.

The claims also included reexamination modification notice remarks (P88), and the following remark:

A LATE OBJECTION HAS BEEN FILED TO THE POINT OF DIVERSION AND PLACE OF USE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The senior water master previously assigned to this case consolidated claims 43B 14415-00, 43B 14416-00, and 43B 39218-00 into this case to address the decree exceeded issue remark, some other issue remarks on the claims, and an objection filed by Margaret W. Allen. On May 13, 2021, the senior water master issued an order dismissing the Allen objection. (Doc. 18.00), which resolved the late objection issue remark.

Since consolidation, the Court has issued several orders narrowing the issues. On August 15, 2024, the Court issued an Order Addressing Decree Exceeded Remark. (Doc. 57.00). The Order addressed the decree exceeded issue remarks on claims 43B 14415-00, 43B 14416-00, and 43B 39218-00 and concluded that the two irrigation claims (43B 14415-00 and 43B 14416-00) are based on separate historically decreed rights. The Order noted that so long as these claims include multiple-use remarks with the associated stock water claim, the decree exceeded remark would be resolved.

On September 3, 2024, counsel for 4 Decades and Grey Bear filed a “Stipulation to Resolve Remaining Issue Remarks.” (Doc. 58.00). The Stipulation confirms their agreement to include a multiple-use remark. The Stipulation also addresses the points of

diversion and places of use for each party's share of the instream stock water claim (claim 43B 39218-00). Although the certificate of service does not include Terry, Terry's counsel is part of the electronic service in this case and filed no objection to the Stipulation.

DISCUSSION

Settlement stipulations are contracts that set the terms by which parties agree to resolve objections. A settlement stipulation may include a claimant's legally binding commitment to modify claims to resolve objections and issue remarks, and an objector's agreement to withdraw objections conditioned upon the Court's acceptance of the claim modifications. In determining whether to accept claim modifications proposed in the stipulation, the Court applies Rule 17, W.R.Adj.R. Under Rule 17(a), settlement stipulations are subject to Water Court review and approval when they resolve issues within the Court's jurisdiction. See also, § 85-2-233(5)(b), MCA.

The Stipulation meets this standard. The Stipulation confirms that the irrigation claims and the stock claim are multiple uses of the same rights, which resolves the decree exceeded remark.

The point of diversion and place of use clarifications for claim 43B 39218-00 also are reasonable because they conform to the parties' understanding of the stream in relation to their respective properties. However, rather than dividing ownership on a single claim form, the Court concludes it will obviate future confusion and allow a clearer relationship between each party's irrigation and stock rights to split claim 43B 39218-00 into two separate claims. Pursuant to its authority under Rule 25, W.R.Adj.R. (authorizing the Court to split claims "upon request of the claimants, or on its own initiative"), the Court authorizes the creation of claim 43B 30160089 to include 4 Decades portion of claim 43B 39218-00, as set forth in the Stipulation. The remaining portion of claim 43B 39218-00 remains with Grey Bear.

Lastly, as Terry has not participated in these proceedings, the Court deems Terry's objection to be resolved. To the extent any ownership clarifications remain, they can be addressed directly with the Department of Natural Resources and Conservation.

ORDER

Therefore, it is ORDERED that the Stipulation is APPROVED. Consistent with the terms of the Stipulation, the Court authorizes split claim number 43B 30160089 as provided in this Order. All issue remarks are resolved, all objections are DISMISSED, all scheduled proceedings are VACATED, and this case is CLOSED.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

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****Caption Updated 10/2/2024****

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

Water Right Number: 43B 14414-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 4 DECADES LLC
3502 OAKWOOD MALL DR
EAU CLAIRE, WI 54701-2607

GREY BEAR HOLDINGS LLC
14300 FLAMING ARROW RD
BOZEMAN, MT 59715-7643

Priority Date: JUNE 4, 1963

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 224.00 GPM

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: 30.00

Source Name: MILL CREEK, EAST FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSWNE	13	6S	9E	PARK
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	ALLEN DITCH					
Period of Use:	APRIL 15 TO OCTOBER 15					

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	20.00		SW	12	6S	9E	PARK
2	10.00		NW	13	6S	9E	PARK
Total:	30.00						

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.

14414-00

14415-00

14416-00

14416-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

14415-00

30160089

14416-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

14416-00

39218-00

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

Water Right Number: 43B 39218-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GREY BEAR HOLDINGS LLC
14300 FLAMING ARROW RD
BOZEMAN, MT 59715-7643

Priority Date: JULY 1, 1930

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MILL CREEK, EAST FORK

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		SWSWNE	13	6S	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: A. ALLEN DITCH

2		E2SWSW	12	6S	9E	PARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		W2SESW	12	6S	9E	PARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		E2NW	13	6S	9E	PARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			E2SWSW	12	6S	9E	PARK
2			W2SESW	12	6S	9E	PARK
3			E2NW	13	6S	9E	PARK

THE PLACE OF USE DOES NOT INCLUDE LAND OWNED BY THE UNITED STATES
FOREST SERVICE.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

14416-00 39218-00

SPLIT CLAIM NO. 43B 30160089 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 30160089 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: 4 DECADES LLC
3502 OAKWOOD MALL DR
EAU CLAIRE, WI 54701-2607

Priority Date: JULY 1, 1930

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MILL CREEK, EAST FORK

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		SWSWNE	13	6S	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: A. ALLEN DITCH

2		SWSENE	13	6S	9E	PARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		S2SWNE	13	6S	9E	PARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SWSENE	13	6S	9E	PARK
2			S2SWNE	13	6S	9E	PARK

THE PLACE OF USE DOES NOT INCLUDE LAND OWNED BY THE UNITED STATES FOREST SERVICE.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

14415-00 30160089

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43B 39218-00.