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

CLAIMANT: James R. Melin

OBJECTOR: Trout Unlimited

CASE 43B-0148-R-2020

43B 194537-00

43B 194539-00

43B 194540-00

43B 194541-00

43B 194542-00

43B 194543-00

43B 30160105

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION

James Melin (“Melin”) owns water right claims 43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, 43B 194542-00, and 43B 194543-00. Melin’s claims describe rights to use water from Mill Creek in Park County for irrigation use. Trout Unlimited (“TU”) objected to Melin’s claims after the Water Court issued a preliminary decree for Basin 43B. The Court partially addressed TU’s objections in two prior summary judgment orders. The Court then conducted an evidentiary hearing to address the remaining issues and Melin’s request for two implied claims. The Court now enters these findings of fact, conclusions of law, and an order addressing the various objections, modifying the claims, and closing the case.

FINDINGS OF FACT

General setting and summary of Melin claims

1. Mill Creek flows generally north and northwest from its headwaters in the Absaroka Mountains to its confluence with the Yellowstone River near Pray, Montana. The Mill Creek drainage lies entirely within hydrologic Basin 43B. Basin 43B is the descriptive basin number used to delineate the Montana portion of the Yellowstone River basin above and including Bridger Creek.

2. Mill Creek follows an annual hydrologic cycle typical of streams in Montana fed primarily by runoff from mountain snowpack. Flows in Mill Creek increase during the spring and early summer in response to snowmelt. Natural streamflow generally declines as summer wears on, though flows sometimes increase after episodic precipitation events.

3. Melin owns property in Section 21 and in portions of Sections 20 and 17 of Township 5 South, Range 9 East in Park County. As the sections are oriented, Section 21 is east of Section 20, and Section 17 is north of Section 20. Mill Creek flows from south to north, generally parallel to the western boundaries of Melin's property.

4. The six Melin claims at issue describe rights to divert and use water from Mill Creek for irrigation use on legally described places of use on Melin's property.

5. Melin's claims describe two points of diversion to convey water through two different ditches. The first five claims (43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, and 43B 194542-00) all identify the "Melin Ditch" as the means of diversion. The Melin Ditch is a private ditch with a headgate located in Section 29. Section 29 is directly south of Section 20 in Township 5 South, Range 9 East. The abstracts for these claims all identify the same 46.40-acre place of use in portions of Sections 20 and 17. The place of use for these claims generally is oriented parallel to the Melin Ditch which runs from south to north, as depicted on the following illustration¹:

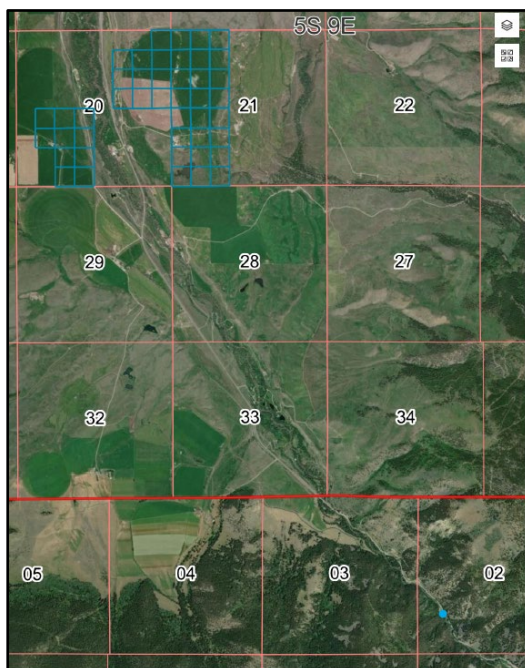
¹ This diagram is an excerpt from Exhibit 8 and illustrates the relative aliquot parts of the described places of use (squares outlined in blue), the point of diversion (depicted as a blue dot), the course of Mill Creek, and the legal land description section boundaries.



6. Claim 43B 194543-00 identifies the Northside Ditch as its means of diversion. The Northside Ditch headgate is described as located in Section 2 of Township 6 South, Range 9 East, which is several miles south of and further upstream on Mill Creek from the Melin Ditch headgate.

7. The abstract for claim 43B 194543-00 describes a 216.90-acre place of use located in various aliquot parts of Sections 20 and 21. The described place of use for claim 43B 194543-00 does not overlap with the place of use for the other five claims. The relative locations of the pertinent claim 43B 194543-00 elements are depicted on the following illustration²:

² This illustration is an excerpt from Exhibit 12. Although the diagram shows the point of diversion for the Northside Ditch, the course of the ditch is not depicted on the exhibit used for this illustration.



8. In addition to water rights from Mill Creek, Melin also has rights to use water from Elbow Creek.³ Elbow Creek is a smaller tributary of the Yellowstone River that flows generally parallel to Mill Creek further north, crossing Melin’s land in the eastern portion of Section 21. Melin’s Elbow Creek water right claims are not at issue in this case, but are mentioned because they are used to irrigate some of the same land as Melin’s Mill Creek claim 43B 194543-00.

District Court Decrees

9. Prior to the enactment of the Water Use Act in 1973, the District Court in Park County conducted proceedings and entered decrees in two cases involving Mill Creek water rights. The first was in the 1938 case, *Sallie A. Allen, et al. v. N.F. Wampler, et al.*, Cause No. 7583 (Mont. Sixth Jud. Dist., June 1, 1938) (“*Allen Decree*”). The *Allen Decree* adjudicated rights of parties to the case to divert water from Mill Creek. The decree made findings and conclusions of law to tabulate the rights of water users with

³ Melin’s Elbow Creek claims include claims 43B 194538-00, 43B 194544-00, 43B 194545-00, and 43B 194546-00. The Court addressed a notice-only issue remark on claim 43B 194546-00 in case 43B-0517-R-2023. The other Elbow Creek claims were not decreed with issue remarks, nor did they receive objections, but they all have supplemental rights remarks that reference claim 43B 194543-00, Melin’s Northside Ditch claim.

relative priority dates and numerically precise flow rates expressed in units of miner’s inches⁴ for each of the various decreed water rights. (Ex. A).

10. The *Allen Decree* required that decreed water users install and maintain headgates and measurement devices at the points of diversion of all ditches that tapped Mill Creek. (Ex. A, Findings of Fact ¶ 129). The *Allen Decree* also required “that measuring boxes be installed and maintained in all openings in any such ditch from which water is taken by any of the parties.” (Ex. A, Conclusions of Law, ¶ VIII).

11. Three of the Melin claims are based on the *Allen Decree*, including claims 43B 194539-00, 43B 194540-00, and 43B 194541-00. Mark and Margaret Edick were Melin’s predecessors-in-interest in the *Allen Decree*. The basic elements of the three Edick rights now owned by Melin, with their corresponding current claim numbers, are as follows:

Priority	Decreed flow rate	Current claim no.
June 1, 1893	15 miner’s inches	43B 194539-00
June 1, 1898	30 miner’s inches	43B 194540-00
August 6, 1911	25 miner’s inches	43B 194541-00

(Ex. A, Conclusion of Law ¶ II).

12. The Northside Ditch did not exist at the time of the *Allen Decree*, so rights to divert Mill Creek water through the Northside Ditch were not included in the *Allen Decree*.

13. On June 3, 1963, Gerald F. Petrich, Alexander A. and Elizabeth Malcolm, and Robert L. Melin and Wanda Melin, filed a Complaint and Petition (“Complaint”) in state district court. (Ex. C). The Complaint sought an order from the District Court authorizing use of water from Mill Creek in a new ditch the plaintiffs intended to

⁴ By statute, 100 miner’s inches is equivalent to 2.5 cubic feet per second (“cfs”). Cubic feet per second is the legal standard for measurement of water in Montana and applied to all court decrees after July 1, 1899. Section 85-2-103(3), MCA. For ease of administration, water rights with flows less than one cfs (40 miner’s inches) generally are expressed in units of gallons per minute (“gpm”). Rule 4(b)(1), W.R.C.E.R.

construct on the north bank of Mill Creek. The Complaint acknowledged the prior *Allen Decree* and the rights it decreed.

14. Numerous parties holding rights under the *Allen Decree* answered the Complaint contesting its allegations. These answers included counterclaims seeking additional decreed rights based on the alleged available water in Mill Creek beyond what already had been decreed.

15. The District Court conducted a trial on March 4, 1964. Several months later the District Court issued a supplemental water rights decree in the case *Gerald F. Petrich, et al. v. Archibald and Margret E Allen, et al.*, Cause No. 11616 (Mont. Sixth Jud. Dist., Park County, July 22, 1964 (“*Petrich Decree*”). The *Petrich Decree* was based on a finding by the District Court that Mill Creek had an amount of non-decreed water available between May 1 and July 15 each season. The Court decreed this water to various water users on various ditches. (Ex. B).

16. Based on the evidence, the District Court decreed several Mill Creek rights to the Melins and other plaintiffs in the case, including a June 4, 1964 right for 61 miner’s inches (1.53 cfs) to the Melins. This decreed right is the basis for Melin claim 43B 194542-00.

17. The District Court also decreed a right to the Melins for the proposed new ditch with a priority date of June 3, 1964, one day senior to the rights decreed to the other parties. The new ditch approved by the Court was the Northside Ditch. The June 3, 1964, decreed right is the basis for Melin claim 43B 194543-00.

Water Use Act Claim Filings and Decrees

18. On April 22, 1982, Robert L. Melin and Wanda Melin filed statements of claim for the six irrigation claims as required by the Water Use Act. These six claims included the three rights decreed to the Edicks in the *Allen Decree* (now claims 194539-00, 43B 194540-00, 43B 194541-00), the two rights decreed to Melin in the *Petrich Decree* (now claims 43B 194542-00, and 43B 194543-00), and a use right not included in any prior decree with an April 1, 1912 claimed priority date (now claim 43B 194537-00).

19. On January 16, 1985, the Water Court issued a temporary preliminary decree (“TPD”) for Basin 43B. The Water Court included claims 43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, 43B 194542-00, and 43B 194543-00 in the TPD. Robert and Wanda Melin self-objected to all six claims. Claim 43 194537-00 also received objections from numerous other parties. The Montana Department of Fish, Wildlife & Parks (“FWP”) objected to claim 43B 194543-00. The Water Court also called in on motion claim 43B 194543-00 to address acres irrigated.

20. After the close of the TPD objection period, the Water Court consolidated the objections and issued orders in cases 43B-402 (Master’s Report, Apr. 22, 1994, adopted May 25, 1994, addressing claims 43B 194539-00, 43B 194540-00, 43B 194541-00, and 43B 194542-00); 43B-476 (Master’s Report, June 7, 1994, adopted June 30, 1994, addressing claim 43B 194537-00); and 43B-514 (Master’s Report, Oct. 9, 1992, adopted Nov. 2, 1992, addressing claim 43B 194543-00).

21. The Master’s Report adopted by the Court in case 43B-476 modified the claim 43B 194537-00 priority date to May 1, 1965, reduced the flow rate from 1.76 cfs to 1.175 cfs, and shifted the period of use from April 1 to August 1, to April 20 to September 24. (Ex. 1, at 62). The basis for the modifications was a stipulation filed by the Melins and various objectors. The original stipulation included a period of use from April 1 to July 15. The parties later filed an amended stipulation further modifying the period of use to April 20 to September 24, with the following proviso: “However this period of use shall not be used adversely against any flood water claims based on the 1964 Mill Creek flood water decree.” (Ex. 1, at 72).

22. On May 9, 2019, the Water Court issued the Basin 43B Preliminary Decree. The Preliminary Decree included abstracts of claims 43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, 43B 194542-00, and 43B 194543-00. Each of these abstracts described the elements of the claims as decreed by the Water Court, and as addressed in the prior TPD cases. The basic elements of the claims as set forth in the Preliminary Decree are as follows:

Claim	Priority	Type	Purpose	Flow	Acres	Ditch	Period of use ⁵
194537	5/1/1965	Use	Irrigation	1.18 cfs	46.40	Melin	April 20 to Sept. 20 ⁶
194539	6/1/1893	Decreed (Allen)	Irrigation	170.60 gpm	46.40	Melin	April 1 to November 1
194540	6/1/1898	Decreed (Allen)	Irrigation	336.60 gpm	46.40	Melin	April 1 to November 1
194541	8/6/1911	Decreed (Allen)	Irrigation	282.80 gpm	46.40	Melin	April 1 to November 1
194542	6/4/1963	Decreed (Petrich)	Irrigation	1.53 cfs	46.40	Melin	April 1 to November 1
194543	6/3/1963	Decreed (Petrich)	Irrigation	9.73 cfs	216.90	Northside	April 1 to October 1

23. The preliminary decree abstract for claim 43B 194539-00 includes the following issue remarks:

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. 43B 101015-00, 43B 194539-00.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

24. The abstract for claim 43B 194543-00 contains the following issue remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Post-Preliminary Decree Proceedings

25. After the Water Court issued the Basin 43B Preliminary Decree, TU filed timely objections to the Melin claims.

⁵ The period of use and the period of diversion is the same for all claims.

⁶ The claim file is not clear why the end of the period of use was modified from September 24 in the adopted Master's Report to September 20 in the Preliminary Decree.

26. TU's objection to claim 43B 194537-00 contends:

According to the 1964 decree (Case no. 7583), period of use for high water ends on June 15. Maximum acres claimed exceeds decreed place of use. Flow rate seems to exceed decree.

(Ex. 1, at 96).

27. TU's objection to claim 43B 194539-00 contends:

This water right exceeds decree as it claims the same flow rate of 15 miner's inches as 43B 101015 00.

(Ex. 2, at 57).

28. TU's objections to claims 43B 194540-00 and 43B 194541-00 both contend:

Maximum acres claimed exceeds decreed place of use. Flow rate seems to exceed decree.

(Ex. 3, at 55; Ex. 4, at 59).

29. TU's objections to claims 43B 194542-00 and 43B 194543-00 both contend:

Period of use should end on July 15 according to 1964 decree. Place of use expands beyond decree. Flow rate appears to exceed decreed amount.

(Ex. 5, at 56; Ex. 6, at 84).

30. Other than TU, no one else objected, counterobjected, or filed notices of intent to appear on the six Melin claims.

31. Initially, the Water Court consolidated claim 43B 194539-00 in case 43B-0042-R-2020. The Court adopted a Master's Report in that case which concluded the *Allen Decree* included two separate 15 miner's inch water rights. The Master's Report adopted by the Court indicates the converted flow rate should be 168.30 gpm. The use right remark also is resolved based on the explanation in the Master's Report in case 43B-0042-R-2020, which TU does not challenge in this case.

32. After the objection and appearance periods closed, the Water Court consolidated the claims into this case to address the issue remarks and TU's objections. On November 13, 2020, the Court added claim 43B 194539-00 to this case.

33. The Court issued two orders on summary judgment based on motions filed by TU. On January 11, 2023, the Court issued its order on partial summary judgment, ruling that "the period of use and period of diversion elements of claims 43B 194542-00 and 43B 194543-00 are modified to May 1 to July 15." (Doc. 25.00)⁷. On August 21, 2023, the Court granted in part and denied in part TU's summary judgment motion regarding claim 43B 194537-00. The order concluded TU overcame the prima facie status of the period of use by showing the claimed period of use exceeds the flood water description contained in the statement of claim. The Court declined TU's request to dismiss the claim. (Doc. 33.00).⁸

34. On December 18, 2023, the Court conducted the evidentiary hearing at the Water Court in Bozeman. Prior to the hearing, the parties set out their contentions in a prehearing order. As part of the prehearing order, the parties filed proposed water rights abstracts, which were incorporated by reference into their prehearing contentions.

35. In the prehearing order, the parties stipulated that claim 43B 194543-00 contains a clerical error as to place of use identification numbers 11 through 20 in the preliminary decree abstracts. The parties agree these portions of the place of use should be in the SE quarter of Section 20, not the SW quarter.

36. At the hearing TU called Rankin Holmes and James Melin as witnesses. Melin called James Melin, Art Burns, Keith Neal, Gordon Rigler, Gerald Petrich, and Randy Petrich as witnesses. A record of witnesses who testified and exhibits offered and admitted or refused is contained in court minutes filed by the Court at the end of the hearing. (Doc. 46.00).

⁷ See *Melin v. Trout Unlimited*, 2023 Mont. Water LEXIS 37, 2023 WL 358617

⁸ See *Melin v. Trout Unlimited*, 2023 Mont. Water LEXIS 722, 2023 WL 5502440.

37. Following the hearing, each party filed proposed findings of fact and conclusions of law and responses. The parties also filed responses to each other's proposed findings and conclusions.

Historical Periods of Diversion and Use

38. Several witnesses testified about the periods each year when the Melins historically diverted and used water. Keith Neal, a long-time resident of the Mill Creek area testified that the Melin Ditch was opened by mid-April. (Tr. at 2:52:13-2:52:56 (Neal)). James Melin testified that the Melin Ditch usually is opened by around May 1, and possibly a little earlier if conditions allow. (Tr., at 1:00:45-1:02:45 (Melin)).

39. The testimony about the Northside Ditch period of diversion was more extensive. The water diverted in the Northside Ditch was measured collectively and not measured by each individual right. (Tr. at 3:08:05-3:08:50 (Neal)).

40. The witnesses who testified at the hearing generally describe diversions as not constrained by the specific May 1 to July 15 dates decreed by the District Court in the *Petrich Decree*. Melin testified as to his personal knowledge of irrigation practices on his property. He has lived there all his life and his personal knowledge dates back to before 1973. He described constraints on diversion from either calls by senior water users or when insufficient flows existed in Mill Creek.

41. The general historical use described by James Melin was confirmed by other witnesses with knowledge of water use practices on Mill Creek. Much of this witness testimony was based on observations that took place after July 1, 1973, but the witnesses generally described consistent diversions from year to year, that varied only by available flows and calls for water by appropriators with senior water rights or as administered by a water commissioner.

42. The only exception to this diversion pattern occurred when a water commissioner shut down the Northside Ditch as part of a dispute over period of use. The year this occurred is not clear from the record. Evidently District Court Judge Swandal became involved and ordered the Northside Ditch be reopened. (Tr. at 4:26 (R. Petrich)).

43. Although these witnesses all generally testified as to their personal recollections of water use, their testimony about water availability is somewhat unclear because at some point a pipeline was installed to more efficiently deliver water to other water users on Mill Creek.

44. Melin did not offer any records or other evidence to show the specific dates water was diverted or the historical flow rates of the diversions to either ditch.

Place of Use

45. TU called Rankin Holmes as an expert witness to testify about historical irrigation of the claimed places of use. Holmes prepared a technical memorandum summarizing his analysis of historical water use.⁹ (Ex. R). Holmes based the conclusions in his report on analysis of aerial photographs from the 1940s to 2017. Holmes conceded at the hearing that he had not conducted an on-site visit to the Melin property. Holmes also noted in his report that each of the photographs he used in his analysis was taken in the August to September time frame, which is in the latter half of the summer irrigation season.

46. Based on photographs he found representative Holmes estimates the following number of acres irrigated within the claimed places of use for the period between 1949 and 2017:

Photograph date	Acres
1949	179.4
1954	109.2
1976	222.2
1979	240.1
1984	255.6
2017	412.3

⁹ Holmes' technical memorandum covers a number of water right claims, including several claims not involved in this case.

47. Holmes also noted that the acreage irrigated could have used water sourced from either or both Elbow Creek and Mill Creek.

48. Melin testified about the historical use of water in Section 17. He testified that his family irrigated Section 17 prior to 1973. He was not able to explain why irrigation of Section 17 did not appear on aerial photographs. Melin did testify as to the historical practices of using a series of temporary dams on the Melin Ditch to spread water, with the excess being picked up by the ditch and rediverted again further down the ditch. He also testified that at some point the ditch was abandoned below their property, but that did not affect their irrigation practices, only responsibility for ditch maintenance.

49. None of the witnesses identified any sort of natural or artificial structure that would control the flow of water in the Melin Ditch from Section 20 downstream into Section 17.

ISSUES

The following issues are before the Court:

1. Did Melin prove the period of use and diversion for claim 43B 194537-00 should extend beyond May 1 to July 15?
2. Did Melin prove the Court should recognize implied claims based on claims 43B 194542-00, and 43B 194543-00, and if so, what are the elements of those implied claims?
3. Did TU prove the place of use and maximum acreage should be modified for any of the claims in this case?
4. Are the issue remarks and objections to the claims resolved?

CONCLUSIONS OF LAW

General

1. Each of the findings of fact is supported by a preponderance of evidence. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1(a), W.R.Adj.R. An

“existing water right” is the right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

3. The Water Use Act requires the Water Court to describe several specific elements of each state-based existing water right included in a final decree. Section 85-2-234(6), MCA. The combined elements define the scope of a water right. Any water use outside or beyond the scope of the elements the Court adjudicates is not part of an existing water right.

4. The Water Use Act requires the Water Court to adjudicate “the inclusive dates during which the water is used each year.” Section 85-2-234(6)(h), MCA. These dates are the period of diversion and period of use of a water right.

5. Robert L. Melin and Wanda M. Melin, Melin’s parents, properly filed their statements of claim. The claims, as modified by the Preliminary Decree, are prima facie proof of their content. Section 85-2-227, MCA.

6. Melin is the successor in interest to Robert L. Melin and Wanda M. Melin as to these claims.

7. Unless TU overcomes the presumption of claim validity, the Water Court must adjudicate the elements of the claims as filed and decreed, subject only to resolution of issue remarks. W.R.Adj.R. 19; *Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.*, 2022 MT 19, ¶ 17, 407 Mont. 278, 502 P.3d 1080.

8. If TU proves its objections overcome the prima facie status of any of the elements of the claims, the burden of proof shifts to Melin to prove the validity of the elements of the claims. If Melin fails to meet this burden, the Court may modify the claims consistent with TU’s objections and to resolve any issue remarks.

9. Pursuant to § 85-2-227(2), MCA, the Court “may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.”

10. Even though TU did not object to Melin's claims after the Court issued the TPD, TU did not waive its right to object to the claims in the Preliminary Decree because the Basin 43B TPD was issued prior to March 28, 1997. Section 85-2-233(1)(c), MCA.¹⁰

TU Standing

11. Melin argues in its proposed findings and conclusions that TU's objections should be dismissed because TU lacks standing. (Melin Proposed Findings of Fact, ¶¶ 81-84; Proposed Conclusions of Law ¶¶ 12-15). Melin did not preserve this argument in its contentions set forth in the Prehearing Order so Melin waived the right to raise it. *Ganoung v. Stiles*, 2017 MT 176, ¶ 28, 388 Mont. 152, 398 P.3d 282 ("Failure to raise an issue in the pretrial order may result in a waiver").

12. Even if Melin preserved a standing argument, Melin did not cite or apply the correct test. Melin contends TU lacks standing to object to Mill Creek water rights because TU does not have water rights of its own on Mill Creek. The Montana Supreme Court rejected this argument in *Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, 361 Mont. 77, 255 P.3d 179. The Supreme Court concluded that participation as an objector turns on whether an objector has "good cause" to object to a claim. *Montana Trout Unlimited*, ¶ 34. Because Melin incorrectly assumes "good cause" requires TU to hold a right to water on Mill Creek, Melin fails to prove TU lacks standing to participate in this case as an objector.

Place of Use

(All claims)

13. According to the prehearing order, TU contends the historical place of use for Melin's Melin Ditch claims (claims 43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, and 43B 194542-00) does not include land within Section 17. TU also contends the maximum historical acreage for these five claims is 46.6¹¹ acres.

¹⁰ This statute states in relevant part: "A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997."

¹¹ This appears to be a typographical error because the preliminary decree abstracts describe the acreage as covering 46.40 acres.

14. TU's prehearing contentions do not question the 216.00 acres described in the preliminary decree abstract for Melin's Northside Ditch claim (claim 43B 194543-00). However, TU contends the sum of the acreage for the six claims does not exceed 222.00 acres.

15. TU contends Melin did not historically irrigate Section 17. As described in the preliminary decree abstracts, 8.40 acres of the 46.40-acre decreed place of use is within Section 17. Other than the 8.40 acre reduction to the place of use for the five Melin Ditch claims by eliminating Section 17, TU did not specify in its proposed abstracts what other portions of the places of use for any claims should be eliminated. (Doc. 38.00).

16. The evidence and testimony offered by TU does not overcome the prima facie status of the place of use elements of the claims and they should be decreed as specified in the Preliminary Decree, with the correction noted in the following paragraph.

17. Based on the stipulation of the parties, the legal land description of place of use identification numbers 11 through 20 for claim 43B 194543-00 should be modified from the SW quarter to the SE quarter of Section 20 on the basis that the preliminary decree contains a clerical error. Rule 60(a), M.R.Civ.P.

Period of Use

18. Melin contends the periods of diversion and use set out in the preliminary decree abstracts accurately describe historical use of the claims. TU disagrees. Based on the Court's prior orders, Melin bears the burden of proof as to the period of use for claim 43B 194537-00 and the burden to prove the existence of implied claims based on the two rights decreed in the *Petrich Decree*.

Claim 43B 194537-00 Period of Use

19. The point of diversion for claim 43B 194537-00 is the same as the Melin Ditch point of diversion for claims 43B 194539-00, 43B 194540-00, and 43B 194541-00. The cumulative flow rate for these three more senior claims is 790.00 gpm or 1.76 cfs. To meet its burden as to whether the period of use for claim 43B 194537-00 extends before May 1 or after July 15, Melin must prove flow in the ditch historically exceeded 1.76 cfs

during the time period. Melin did not offer any evidence of flow rates. Because the *Petrich Decree* required measuring devices, this evidence should have been available. Melin also failed to prove 1.76 cfs is an insufficient flow rate early or late in the season. The Court assumes it is because this was the cumulative flow rate for the Melin Ditch rights for many decades prior to the *Petrich Decree* and the May 1, 1965 priority date for claim 43B 194537-00. Moreover, as the Court previously ruled, the Court is not bound by the stipulation filed in case 43B-476, nor did the Court's order adopting the Master's Report in that case bar TU from objecting at the Preliminary Decree stage. The periods of use and diversion for claim 43B 194537-00 are May 1 to July 15.

Implied Claims

20. As set forth in the Court's first order on summary judgment, TU overcame the prima facie status as to the periods of use and diversion elements for claims 43B 194542-00, and 43B 194543-00 as to those periods before May 1 and after July 15. This means the burden shifted to Melin to prove existing rights to use water from Mill Creek with periods of use and diversion outside of the May 1 to July 15 dates. Melin seeks to do so by asking the Water Court to authorize two implied claims, one based on claim 43B 194542-00 for the Melin Ditch, and the second based on claim 43B 194543-00 for the Northside Ditch. For each proposed implied claim, Melin accepts a June 30, 1973 priority date. (Melin Proposed Order, at 31-32).

21. Montana recognizes "implied claims" for water use. *Hoon v. Murphy*, 2020 MT 50, ¶ 54, 399 Mont. 110, 134, 460 P.3d 849, 864; Rule 35, W.R.C.E.R. The definitions incorporated into the Water Court's adjudication rules define an "implied claim" as "a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights." Rule 2(a)(33), W.R.C.E.R. The Water Court does not recognize implied claims that expand a water right or that circumvent the Water Use Act claim filing requirements. *In re Climbing Arrow Ranch Inc.*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Order Adopting Master's Report).

22. The Water Court uses a three-part test to evaluate whether to authorize an implied claim: (a) the implied claim must be supported by evidence in the claim form or

the documents attached to the claim form; (b) substantial credible evidence must exist of actual historical use corroborating the implied claim; and (c) creating the implied claim should not result in a change to historical water use or increase the historical burden on other water users. *In re Lee E. Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *32 (Order Amending and Partially Adopting Master’s Report as Amended); *Hoon v. Murphy*, ¶ 54 (upholding implied claim based on “substantial credible evidence” of historical use).

23. Melin meets the first part of the implied claims test because the statements of claim for claims 43B 194542-00 and 43B 194543-00 identify water rights with periods of use and diversion that extend from April 1 to November 1 for claim 43B 194542-00, and April 1 to October 1 for claim 43B 194543-00. Under the terms of the first summary judgment order, each statement of claim identifies two sets of water rights: (1) a “decreed” right with a priority date of June 4, 1963 (claim 43B 194542-00) or June 3, 1963 (claim 43B 194543-00) for the period of May 1 to July 15, and (2) a “use” right with a different priority date and different periods of use and diversion.¹² By describing both decreed rights and use rights with potentially different priority dates on the same statement of claim, the claim forms each identify at least two claims.

24. Melin bears the burden of proving the second part of the implied claim test, which is proof by substantial credible evidence of actual historical use corroborating the implied claim. To meet this burden, Melin must prove that water was historically diverted to each ditch and put to beneficial use for the periods outside what the District Court decreed. This proof differs for each proposed claim because they claim diversions to two different ditches.

25. Melin did not provide substantial credible evidence of actual historical use corroborating an implied claim to divert water through the Melin Ditch based on claim 43B 194542-00. As already noted in the discussion of claim 43B 194537-00, Melin owns

¹² A “use” right is defined as “a claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree.” Rule 2(a)(71), W.R.C.E.R., incorporated by reference by Rule 2(a), W.R.Adj.R.

three separate water right claims to the Melin Ditch with senior priority dates. These claims and their respective priority dates include 43B 194539-00 (June 1, 1893), 43B 194540-00 (June 1, 1898), and 43B 194541-00 (August 6, 1911). All three of these senior claims have periods of use and diversion that extend from April 1 to November 1. The cumulative flow rate of the three senior claims is 790.00 gpm or 1.76 cfs. Although Melin provided evidence of diversions to the Melin Ditch for periods before May 1 and after July 15, Melin did not provide any evidence of diversions at flow rate in excess of 1.76 cfs. Absent any proof of diversions in excess of the senior Melin Ditch rights for the periods in question, Melin does not provide the necessary proof for the Court to recognize an implied claim based on claim 43B 194542-00.

26. As for diversions to the Northside Ditch, Melin did provide sufficient evidence to meet the second element of the implied claim test. Unlike the Melin Ditch, Melin has no senior water rights for the Northside Ditch that cover the periods before May 1 or after July 15. Melin did, however, provide evidence of diversions to the Northside Ditch during these periods. Melin did so through the consistent and unrebutted testimony of its witnesses with personal knowledge of the Northside Ditch.

27. Finally, for the Northside Ditch, Melin proves it meets the third element which requires Melin to prove an implied claim with periods of use prior to May 1 or after July 15 does not increase the historical burden on the source. The Court recognizes the implied claim because of the testimony about how water was historically used and administered on Mill Creek. Using the most junior priority dates available for pre-1973 existing rights avoids conflicts with other Mill Creek water users holding existing rights with periods of use and diversion outside the May 1 to July 15 period litigated and decreed in the *Petrich Decree*.

28. Melin did not offer proof of the date water use began after the Northside Ditch was built, other than it was done historically. Accordingly, rather than adjust the periods of use for claim 43B 194543-00 with its June 3, 1963 priority date, the evidence only supports a claim with a priority date of June 30, 1973, the day before the effective date of the Water Use Act. Because Melin did not ask for further supplementation of a

District Court decree, June 30, 1973 is consistent with the penalty provisions of the now-repealed 1921 adjudication statute. Section 89-837, RMC (1947).¹³ It also is the priority date Melin stated in his proposed conclusions of law (Proposed Conclusion of Law ¶ 9); *see also, Twin Creeks Farm & Ranch, LLC v. Petrolia Irrigation Dist.*, at ¶ 34. (“the Water Court was correct to establish an implied claim dating to the [date the] new appropriation begun”). The Court recognizes implied claim 43B 30160105 with a June 30, 1973 priority date.

Issue Remark Resolution

29. The decree exceeded remark was resolved in case 43B-0042-R-2020, which concluded the *Allen Decree* included two separate 15 miner’s inch water rights. The Master’s Report adopted by the Court in that case indicates the converted flow rate for claim 43B 194539-00 should be 168.30 gpm. The use right remark also is resolved based on the explanation in the Master’s Report in case 43B-0042-R-2020, which TU does not challenge in this case.

30. All other issue remarks are resolved by this Order.

ORDER

Based upon the foregoing, it hereby is ORDERED that:

1. The periods of use and diversion for claims 43B 194537-00, 43B 194542-00, and 43B 194543-00 are modified to May 1 to July 15, as provided in this Order and the prior summary judgment orders.
2. The flow rate for claim 43B 194539-00 is modified to 168.30 gpm.
3. The issue remarks are removed from claims 43B 194539-00 and 43B 194543-00.
4. The legal land description for the claim 43B 194543-00 place of use is corrected as provided in this Order.

¹³ This statute stated: “Failure to comply with the provisions of this act deprives the appropriator of the right to use any water of such stream, or any other source of supply, as against any subsequent appropriator mentioned in or bound by a decree of the court.”

5. Implied claim 43B 30160105 is authorized based on claim 43B 194543-00, but with a June 30, 1973 priority date, and periods of use and diversion from April 1 to April 30, and from July 16 to October 1.

6. All objections to claims 43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, 43B 194542-00, and 43B 194543-00 are DISMISSED as resolved.

7. This case is CLOSED.

A modified version of the abstract for each claim and an abstract for implied claim 43B 30160105 are included with this Order to confirm that the modifications have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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

Water Right Number: 43B 194537-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

***Priority Date:** MAY 1, 1965

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 1.18 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: 46.40

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		SWNE	29	5S	9E	PARK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: MELIN DITCH

Period of Use: MAY 1 TO JULY 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	2.00		NWSWSE	17	5S	9E	PARK
2	6.40		SWSWSE	17	5S	9E	PARK
3	6.50		NWNWNE	20	5S	9E	PARK
4	6.50		SWNWNE	20	5S	9E	PARK
5	4.00		NWSWNE	20	5S	9E	PARK
6	1.00		SWSWNE	20	5S	9E	PARK
7	0.50		NENWSE	20	5S	9E	PARK
8	3.20		NWNWSE	20	5S	9E	PARK
9	3.80		SENWSE	20	5S	9E	PARK
10	3.30		SWNWSE	20	5S	9E	PARK
11	2.20		NWSESE	20	5S	9E	PARK
12	5.00		NESWSE	20	5S	9E	PARK

13	<u>2.00</u>	SESWSE	20	5S	9E	PARK
Total:	46.40					

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.

194537-00 194539-00 194540-00 194541-00 194542-00

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

Water Right Number: 43B 194539-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

Priority Date: JUNE 1, 1893

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 168.30 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: 46.40

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		SWNE	29	5S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: MELIN DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

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	6.50		NWNWNE	20	5S	9E	PARK
2	6.50		SWNWNE	20	5S	9E	PARK
3	4.00		NWSWNE	20	5S	9E	PARK
4	1.00		SWSWNE	20	5S	9E	PARK
5	3.20		NWNWSE	20	5S	9E	PARK
6	3.30		SWNWSE	20	5S	9E	PARK
7	0.50		NENWSE	20	5S	9E	PARK
8	3.80		SENWSE	20	5S	9E	PARK
9	5.00		NESWSE	20	5S	9E	PARK
10	2.00		SESWSE	20	5S	9E	PARK
11	2.20		NWSESE	20	5S	9E	PARK
12	6.40		SWSWSE	17	5S	9E	PARK

13	<u>2.00</u>	NWSWSE	17	5S	9E	PARK
Total:	46.40					

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.

194537-00 194539-00 194540-00 194541-00 194542-00

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

Water Right Number: 43B 194540-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

Priority Date: JUNE 1, 1898

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 336.60 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: 46.40

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		SWNE	29	5S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: MELIN DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

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	2.00		NWSWSE	17	5S	9E	PARK
2	6.40		SWSWSE	17	5S	9E	PARK
3	6.50		NWNWNE	20	5S	9E	PARK
4	6.50		SWNWNE	20	5S	9E	PARK
5	4.00		NWSWNE	20	5S	9E	PARK
6	1.00		SWSWNE	20	5S	9E	PARK
7	0.50		NENWSE	20	5S	9E	PARK
8	3.20		NWNWSE	20	5S	9E	PARK
9	3.80		SENWSE	20	5S	9E	PARK
10	3.30		SWNWSE	20	5S	9E	PARK
11	2.20		NWSESE	20	5S	9E	PARK
12	5.00		NESWSE	20	5S	9E	PARK

13	<u>2.00</u>	SESWSE	20	5S	9E	PARK
Total:	46.40					

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.

194537-00 194539-00 194540-00 194541-00 194542-00

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

Water Right Number: 43B 194541-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

Priority Date: AUGUST 6, 1911

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 282.80 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: 46.40

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		SWNE	29	5S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: MELIN DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

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	2.00		NWSWSE	17	5S	9E	PARK
2	6.40		SWSWSE	17	5S	9E	PARK
3	6.50		NWNWNE	20	5S	9E	PARK
4	6.50		SWNWNE	20	5S	9E	PARK
5	4.00		NWSWNE	20	5S	9E	PARK
6	1.00		SWSWNE	20	5S	9E	PARK
7	0.50		NENWSE	20	5S	9E	PARK
8	3.20		NWNWSE	20	5S	9E	PARK
9	3.80		SENWSE	20	5S	9E	PARK
10	3.30		SWNWSE	20	5S	9E	PARK
11	2.20		NWSESE	20	5S	9E	PARK
12	5.00		NESWSE	20	5S	9E	PARK

13	<u>2.00</u>	SESWSE	20	5S	9E	PARK
Total:	46.40					

Remarks:

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194537-00 194539-00 194540-00 194541-00 194542-00

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

Water Right Number: 43B 194542-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

Priority Date: JUNE 4, 1963

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.53 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: 46.40

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		SWNE	29	5S	9E	PARK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: MELIN DITCH

Period of Use: MAY 1 TO JULY 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	2.00		NWSWSE	17	5S	9E	PARK
2	6.40		SWSWSE	17	5S	9E	PARK
3	6.50		NWNWNE	20	5S	9E	PARK
4	6.50		SWNWNE	20	5S	9E	PARK
5	4.00		NWSWNE	20	5S	9E	PARK
6	1.00		SWSWNE	20	5S	9E	PARK
7	0.50		NENWSE	20	5S	9E	PARK
8	3.20		NWNWSE	20	5S	9E	PARK
9	3.80		SENWSE	20	5S	9E	PARK
10	3.30		SWNWSE	20	5S	9E	PARK
11	2.20		NWSESE	20	5S	9E	PARK
12	5.00		NESWSE	20	5S	9E	PARK

13	<u>2.00</u>	SESWSE	20	5S	9E	PARK
Total:	46.40					

Remarks:

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194537-00 194539-00 194540-00 194541-00 194542-00

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

Water Right Number: 43B 194543-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

Priority Date: JUNE 3, 1963

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 9.73 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:** 216.90

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		SENWSW	2	6S	9E	PARK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: NORTH SIDE DITCH

Period of Use: MAY 1 TO JULY 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	1.50		NENENE	20	5S	9E	PARK
2	1.50		SENENE	20	5S	9E	PARK
3	9.50		SWNENE	20	5S	9E	PARK
4	4.00		SENWNE	20	5S	9E	PARK
5	8.00		NESWNE	20	5S	9E	PARK
6	4.50		SESWNE	20	5S	9E	PARK
7	6.50		NESENE	20	5S	9E	PARK
8	6.50		NWSENE	20	5S	9E	PARK
9	3.60		SWSENE	20	5S	9E	PARK
10	5.00		SESENE	20	5S	9E	PARK
11	7.40		NENESE	20	5S	9E	PARK
12	5.70		NWNESE	20	5S	9E	PARK
13	6.10		SWNESE	20	5S	9E	PARK

14	0.60	SENESE	20	5S	9E	PARK
15	4.30	NENWSE	20	5S	9E	PARK
16	1.80	SENWSE	20	5S	9E	PARK
17	2.80	NESESE	20	5S	9E	PARK
18	5.60	NWSESE	20	5S	9E	PARK
19	1.00	SWSESE	20	5S	9E	PARK
20	6.80	SESESE	20	5S	9E	PARK
21	1.60	NWNENW	21	5S	9E	PARK
22	2.00	SWNENW	21	5S	9E	PARK
23	9.00	NENWNW	21	5S	9E	PARK
24	7.60	NWNWNW	21	5S	9E	PARK
25	7.50	SWNWNW	21	5S	9E	PARK
26	9.70	SENWNW	21	5S	9E	PARK
27	10.00	NESWNW	21	5S	9E	PARK
28	8.20	NWSWNW	21	5S	9E	PARK
29	8.10	SWSWNW	21	5S	9E	PARK
30	6.10	SESWNW	21	5S	9E	PARK
31	5.00	NWSENW	21	5S	9E	PARK
32	1.00	SWSENW	21	5S	9E	PARK
33	0.50	NWNESW	21	5S	9E	PARK
34	1.10	SWNESW	21	5S	9E	PARK
35	5.00	NENWSW	21	5S	9E	PARK
36	8.00	NWNWSW	21	5S	9E	PARK
37	5.50	SWNWSW	21	5S	9E	PARK
38	5.00	SENWSW	21	5S	9E	PARK
39	1.30	NWSWSW	21	5S	9E	PARK
40	7.00	NESWSW	21	5S	9E	PARK
41	4.00	SWSWSW	21	5S	9E	PARK
42	4.50	SESWSW	21	5S	9E	PARK
43	1.50	NWSESW	21	5S	9E	PARK
44	5.00	SWSESW	21	5S	9E	PARK

Total: 216.90

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.

194538-00 194543-00 194544-00 194545-00 194546-00 30160105

IMPLIED CLAIM NO. 43B 30160105 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 30160105 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: JAMES R MELIN
305 MILL CREEK RD
LIVINGSTON, MT 59047

Priority Date: JUNE 30, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 9.73 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: 216.90

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		SENWSW	2	6S	9E	PARK

Period of Diversion: APRIL 1 TO APRIL 30
JULY 16 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: NORTH SIDE DITCH

Period of Use: APRIL 1 TO APRIL 30
JULY 16 TO OCTOBER 1

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	1.50		NENENE	20	5S	9E	PARK
2	1.50		SENENE	20	5S	9E	PARK
3	9.50		SWNENE	20	5S	9E	PARK
4	4.00		SEWNNE	20	5S	9E	PARK
5	8.00		NESWNE	20	5S	9E	PARK
6	4.50		SESWNE	20	5S	9E	PARK
7	6.50		NESENE	20	5S	9E	PARK
8	6.50		NWSENE	20	5S	9E	PARK
9	3.60		SWSENE	20	5S	9E	PARK
10	5.00		SESENE	20	5S	9E	PARK

11	7.40	NENESE	20	5S	9E	PARK
12	5.70	NWNESE	20	5S	9E	PARK
13	6.10	SWNESE	20	5S	9E	PARK
14	0.60	SENESE	20	5S	9E	PARK
15	4.30	NENWSE	20	5S	9E	PARK
16	1.80	SENWSE	20	5S	9E	PARK
17	2.80	NESESE	20	5S	9E	PARK
18	5.60	NWSESE	20	5S	9E	PARK
19	1.00	SWSESE	20	5S	9E	PARK
20	6.80	SESESE	20	5S	9E	PARK
21	1.60	NWNENW	21	5S	9E	PARK
22	2.00	SWNENW	21	5S	9E	PARK
23	9.00	NENWNW	21	5S	9E	PARK
24	7.60	NWNWNW	21	5S	9E	PARK
25	7.50	SWNWNW	21	5S	9E	PARK
26	9.70	SENWNW	21	5S	9E	PARK
27	10.00	NESWNW	21	5S	9E	PARK
28	8.20	NWSWNW	21	5S	9E	PARK
29	8.10	SWSWNW	21	5S	9E	PARK
30	6.10	SESWNW	21	5S	9E	PARK
31	5.00	NWSENW	21	5S	9E	PARK
32	1.00	SWSENW	21	5S	9E	PARK
33	0.50	NWNESW	21	5S	9E	PARK
34	1.10	SWNESW	21	5S	9E	PARK
35	5.00	NENWSW	21	5S	9E	PARK
36	8.00	NWNWSW	21	5S	9E	PARK
37	5.50	SWNWSW	21	5S	9E	PARK
38	5.00	SENWSW	21	5S	9E	PARK
39	1.30	NWSWSW	21	5S	9E	PARK
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194538-00 194543-00 194544-00 194545-00 194546-00 30160105

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43B 194543-00.