

FILED
JUN 14 2016

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
RUBY RIVER BASIN (41C)

CLAIMANTS: ~~Bruce R Peterson; Julie M Peterson;~~
~~Peterson Ranch LLC~~

41C-260
41C 130162-00
41C 130163-00
41C 130170-00
41C 130176-00

**ORDER REGARDING ISSUE REMARKS
ORDER SETTING STATUS CONFERENCE, AND
ORDER UPDATING CAPTION AND SERVICE LIST**

I. STATEMENT OF THE CASE

This matter involves four water rights owned by Peterson Ranch LLC (Peterson).¹ All four rights were claimed based on a single original right from a decree entitled *Dauterman v. Federal Land Bank*, Cause No. 3089, Fifth Judicial District, Madison County, Montana. This decree, known as the Ruby River Decree, granted 240 miner's inches of water from California Creek to the Federal Land Bank with a priority of June 20, 1918.

As originally filed, the four Peterson rights had a combined flow rate of 482 miner's inches, which exceeded the flow rate of the original decreed right upon which they were based. This resulted in the placement of a decree exceeded issue remark on each right. Issue remarks must be resolved by the Water Court pursuant to statute. There were no objections to any of the four rights, and Peterson is the only party in this case.

¹ As of the date of the last order issued by the Water Court, Bruce R. Peterson and Julie M. Peterson were the owners of all four claims in this case. The ownership of the claims has since been updated to Peterson Ranch LLC. The caption and service list will be updated to reflect the change in ownership.

Peterson became the owner of these rights after the original claims were filed. Three of the claims are for water from California Creek, and one is for Harris Creek. Harris Creek originates north of California Creek and joins it in Section 27, T5S, R4W.

According to maps in the claim file, the Harris Creek right, 41C 130162-00, has a point of diversion about 1.5 miles upstream of the confluence of the two creeks. The diversion from Harris Creek drops water into California Creek at a point above the confluence. This enables Harris Creek water to be diverted from a secondary point of diversion on California Creek. This second point of diversion is just above the confluence, and is used to deliver water by gravity to the place of use.

Without the upper diversion from Harris Creek, water flowing down Harris Creek would be unavailable to Peterson because it would join California Creek at the confluence below Peterson's diversion. The effect of the upper diversion is to merge the waters of Harris Creek and California Creek earlier than would occur naturally. There are no other users of water on Harris Creek.

In an effort to address the decree exceeded problem, Peterson filed an amendment reducing the flow rate of claim 41C 130176-00 from 240 inches to 138 inches, or 3.45 cfs.² This brought the combined flow rate of all four Peterson rights to 9.5 cfs, or 380 inches, which is less than the amount first claimed, but still above the 240 inches decreed to Federal Land Bank in the Ruby River Decree.

II. ISSUES AND ANALYSIS

1. Did amendment of claim 41C 130176-00 adequately address the decree exceeded issue remarks for the four Peterson claims?

Decree exceeded problems arise when the combined flow rates of two or more water rights exceed the flow rate of the underlying decreed right upon which they are based. Peterson has addressed but not completely resolved this problem by reducing the flow rate of claim 41C 130176-00 to 138 inches. The combined amount of the four

² At the time the amendment was filed, Bruce R. and Julie M. Peterson owned the water rights in this case. Therefore, the amendment was signed and filed by Bruce and Julie Peterson.

Peterson rights still exceed the 240 inches granted to Federal Land Bank in the Ruby River Decree.

2. Should the point of diversion for claim 41C 130170-00 be modified?

Peterson filed an amendment to the point of diversion for claim 41C 130170-00. This amendment was filed to match the point of diversion for this right to its location on the ground. Peterson seeks to change the point of diversion to the SWSEW of Section 27, T5S, R4W. The abstract for this right will be changed to the amended point of diversion.

III. CONCLUSION AND ORDER

Based on the foregoing, it is ORDERED that a telephone status conference will be held on **July 26, 2016 at 10:00 AM** to discuss resolution of the decree exceeded issue.

The instructions for accessing the call are as follows:

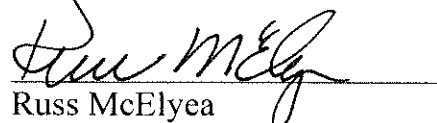
1. At the designated conference time dial the toll free telephone number:
1-877-526-1243
2. At the prompt, enter the participant pin code followed by the pound (#) key:
7685196#.
3. At the prompt state your name followed by the pound (#) key.

If you have any questions or if you experience problems placing this call you may contact the Water Court at 1-800-624-3270 (in state) or (406) 586-4364.

Modification of the point of diversion for claim 41C 130170-00 will occur when this Court issues an order resolving the decree exceeded issue.

ORDERED the caption and service list are updated to reflect Peterson Ranch LLC as the sole owner of all four claims in this case.

DATED this 14 day of June 2016.


Russ McElyea
Chief Water Judge

**Peterson Ranch LLC
23 Peterson Lane
Sheridan, MT 59749**

Last Order (Former Owners):

Bruce R. Peterson

Julie M. Peterson

~~PO Box 66~~

~~Alder MT 59710-0066~~

23 Peterson Lane

Sheridan, MT 59749

Note: Caption and Service List Updated 6/13/2016