

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SWEET GRASS - BASIN (43BV)

\* \* \* \* \*

CLAIMANTS: Linda M. McMullen; Jason Smith

**CASE 43BV-0348-R-2023**

43BV 30138672  
43BV 30138030  
43BV 30138031  
43BV 30138091

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

**FINDINGS OF FACT**

1. Linda M. McMullen is the record owner for claim 43BV 30138672. Linda McMullen and Jason Smith (McMullen and Smith) are the record owners of claims 43BV 30138030, 43BV 30138031, and 43BV 30138091.

2. An Order was issued requiring McMullen and Smith to meet with a DNRC employee to address unresolved issue remarks.

**43BV 30138030, 43BV 30138091, 43BV 30138672:**

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

**43BV 30138031:**

THIS CLAIM APPEARS TO BE CLAIMING THREE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

(Doc.<sup>1</sup>1.00). The claims were also decreed with notice-type remarks stating that they were not included in the 1984 decree for this Basin.

3. On May 10, 2023, DNRC Water Resource Specialist Brandy Gray filed a Memorandum. (Doc. 2.00). Ms. Gray reported that McMullen and Smith failed to contact her. Ms. Gray reviewed the claim files, the DNRC Claims Examination Manual, aerial photos, and a USGS Topographic map. Ms. Gray recommended that implied claims be created for each represented source.

4. An Order was issued explaining:

Although claims 43BV 30138672, 43BV 30138030, 43BV 30138031, and 43BV 30138091 may identify multiple sources, it appears each claim represents a single system used for the same herd of cattle. A claim can identify multiple sources. It is not necessary for McMullen and Smith to request the generation of implied claims, however, they may do so.

(Doc. 3.00). The Order set a deadline for McMullen and Smith to request the generation of implied claims.

4. On September 12, 2023, McMullen and Smith filed a statement indicating agreement with “all recommendations on the received memos.” (Doc. 6.00).

5. On September 19, 2023, this Water Master called Jason Smith and confirmed that the claims should be left as claimed.

**PRINCIPLES AND CONCLUSIONS OF LAW**

1. The Water Court must address all issue remarks decreed on a claim. Sections 85-2-247 and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Section 85-2-227, MCA. This *prima facie* validity may be

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

overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The remarks indicating claims were not included in the 1984 decree have served their notice purpose. As no objections were filed, no further proceedings are required because of the remarks.

#### RECOMMENDATION

1. The issue remarks should be removed from claims 43BV 30138030, 43BV 30138031, 43BV 30138091, and 43BV 30138672 with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

#### **ELECTRONICALLY SIGNED AND DATED BELOW.**

##### **Service via USPS Mail:**

Linda M. McMullen  
P.O. Box 1650  
Big Timber, MT 59011

Jason Smith  
1412 Rappleje Rd.  
Big Timber, MT 59011

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SWEET GRASS CREEK**  
**BASIN 43BV**

**Water Right Number:** **43BV 30138030** STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
LINDA M MCMULLEN  
PO BOX 1650  
BIG TIMBER, MT 59011

JASON SMITH  
1412 RAPELJE RD  
BIG TIMBER, MT 59011

**Priority Date:** JUNE 7, 1926

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 35.00 GPM

**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:** SPRING, UNNAMED TRIBUTARY OF ROUGH CREEK

**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		NWNWSW	6	4N	13E	SWEET GRASS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

2		SWSENW	6	4N	13E	SWEET GRASS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**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			NWNWSW	6	4N	13E	SWEET GRASS
2			SWSENW	6	4N	13E	SWEET GRASS

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SWEET GRASS CREEK**  
**BASIN 43BV**

**Water Right Number:** **43BV 30138031** STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
LINDA M MCMULLEN  
PO BOX 1650  
BIG TIMBER, MT 59011

JASON SMITH  
1412 RAPELJE RD  
BIG TIMBER, MT 59011

**Priority Date:** APRIL 29, 1916

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 35.00 GPM

**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:** SPRING, UNNAMED TRIBUTARY OF BASIN CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NENESE	6	4N	13E	SWEET GRASS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

2		NENESE	6	4N	13E	SWEET GRASS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

3		SWNESE	6	4N	13E	SWEET GRASS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			NENESE	6	4N	13E	SWEET GRASS
2			NENESE	6	4N	13E	SWEET GRASS
3			SWNESE	6	4N	13E	SWEET GRASS

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SWEET GRASS CREEK**  
**BASIN 43BV**

**Water Right Number:** **43BV 30138091** STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
LINDA M MCMULLEN  
PO BOX 1650  
BIG TIMBER, MT 59011

JASON SMITH  
1412 RAPELJE RD  
BIG TIMBER, MT 59011

**Priority Date:** JANUARY 8, 1925

**Type of Historical Right:** USE

**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:** SPRING, UNNAMED TRIBUTARY OF BASIN CREEK

**Source Type:** SURFACE WATER

SOURCE IS COMPOSED OF TWO SPRING FED STREAMS WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

**Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		N2N2NW	5	4N	13E	SWEET GRASS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NESE	5	4N	13E	SWEET GRASS
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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:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			N2N2NW	5	4N	13E	SWEET GRASS
2			NESE	5	4N	13E	SWEET GRASS

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SWEET GRASS CREEK**  
**BASIN 43BV**

**Water Right Number:** **43BV 30138672** STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
LINDA M MCMULLEN  
PO BOX 1650  
BIG TIMBER, MT 59011

**Priority Date:** SEPTEMBER 30, 1924

**Type of Historical Right:** USE

**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:** UNNAMED TRIBUTARY OF SOURDOUGH CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF SWEET GRASS CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2NE	3	3N	16E	SWEET GRASS

**Source Name:** UNNAMED TRIBUTARY OF SOURDOUGH CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NESE	3	3N	16E	SWEET GRASS
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**Source Name:** UNNAMED TRIBUTARY OF SOURDOUGH CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		SWSE	3	3N	16E	SWEET GRASS
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**Source Name:** UNNAMED TRIBUTARY OF SWEET GRASS CREEK

**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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2NE	3	3N	16E	SWEET GRASS

2	NESE	3	3N	16E	SWEET GRASS
3	SWSE	3	3N	16E	SWEET GRASS