

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

* * * * *

CLAIMANTS: Cynthia L. Bainter; Sage A. Bainter; Hobble Diamond Ranch of Montana LLC

CASE 43BV-0201-R-2024

43BV 4002-00

43BV 114060-00

ORDER GRANTING MOTION TO AMEND AND CLOSING CASE

The Water Court included water right claims 43BV 4002-00 and 43BV 114060-00 in the Preliminary Decree for the Sweet Grass Creek Basin (Basin 43BV). Cynthia L. Bainter and Sage A. Bainter own claim 43BV 4002-00. Hobble Diamond Ranch of Montana LLC (“Hobble Diamond”) owns claim 43BV 114060-00.

On March 2, 2020, prior to issuance of the Basin 43BV Preliminary Decree, a motion to amend water right claims 43BV 4002-00 and 43BV 114060-00 was submitted to the Department of Natural Resources and Conservation (DNRC”). The motion requested the two claims be subject to an alternating water use arrangement to keep the combined flow rate at a maximum of 3.5 cubic feet per second (“cfs”).

The preliminary decree abstract describes claim 43BV 4002-00 as a decreed right to divert a maximum of 1.13 cfs from Sweet Grass Creek at the Harrison Ditch for irrigation use with a September 1, 1878 priority date. The preliminary decree abstract describes claim 43BV 114060-00 as a decreed right to divert a maximum of 3.55 cfs from Sweet Grass Creek at either the Harrison Ditch or the “West Harrison (Hawks) Ditch” for irrigation use with a September 1, 1878 priority date. Both claims received the following issue remarks:

AN AMENDMENT WAS SUBMITTED ON 03/02/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

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 142 MINER'S INCHES DECREED IN CASE NO. 342, SWEET GRASS COUNTY.

43BV 4002-00, 43BV 114060-00.

The first issue remark references the pre-decree unprocessed motion to amend. The second issue remark is what is known as a “decree exceeded” issue remark. The remark was placed on the claims because both are based on the water right decreed to Herman Uttermehle by the District Court in *W.A. Harrison v. Paul L. Van Cleve* (Case 342, Mont. Sixth Jud. Dist., Sweet Grass County, Apr. 6, 1908) (“Sweet Grass Creek Decree”). The sum total claimed flow rate of the two claims is 4.68 cfs, which exceeds the amount decreed to Uttermehle in the *Sweet Grass Creek Decree*. The motion to amend proposed to address the decree exceeded issue through the alternate use arrangement. To implement the alternate use arrangement, the Court proposed the following informational remark be added to the claims:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE ALTERNATIVE USE ARRANGEMENT UNDER WHICH A MAXIMUM OF 3.5 CFS WILL BE DIVERTED AT ANY ONE TIME REGARDLESS OF WHICH POINT OF DIVERSION OR PARTY IS USING WATER. ANY DISPUTE SHALL BE RESOLVED BY THE COURT WITH JURISDICTION FOR WATER RIGHTS ADMINISTRATION IN THIS COUNTY.

The Court set a filing deadline of July 23, 2024, for the Bainters and Hobble Diamond to notify the Court whether they consent to the placement of the information remark to resolve the issue remarks. The Court stated that if nothing was filed by the deadline, the Court would assume they consent to the placement of the remark.

Hobble Diamond did not file a response. On July 9, 2024, the Bainters responded they agree with the arrangement except that the diversion for claim 43BV 114060-00

should be out of the East Harrison Ditch, not the West Harrison Ditch. The Bainters did not object to the ditch name, changing the ditch name was not a request made in the motion to amend, nor did the DNRC place an issue remark on the claim flagging the ditch name as an issue when it standardized the ditch names. Additionally, the DNRC's mapping shows the ditch in the NW NENW of Section 20, Township 1 North, Range 16 East as being the Hawkes Ditch or West Harrison Ditch on the west side of Sweet Grass Creek. The ditch name of West Harrison Ditch will remain.

Therefore, it is

ORDERED the motion to amend is GRANTED. Claims 43BV 4002-00 and 43BV 114060-00 are modified in accordance with this Order with the information remark.

ORDERED the proceedings on claims 43BV 4002-00 and 43BV 114060-00 are CLOSED.

Post-decree abstracts of claims 43BV 4002-00 and 43BV 114060-00 are included 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 USPS Mail:

Cynthia L. Bainter
Sage A. Bainter
245 Deadmans Canyon Rd
Big Timber, MT 59011

Hobble Diamond Ranch of Montana LLC
A Delaware Limited Liability Company
639 Shanks Basin West Rd
Big Timber, MT 59011-7771

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

Water Right Number: **43BV 4002-00 STATEMENT OF CLAIM**

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
CYNTHIA L BANTER
245 DEADMANS CANYON RD
BIG TIMBER, MT 59011

SAGE A BANTER
245 DEADMANS CANYON RD
BIG TIMBER, MT 59011-0000

Priority Date: SEPTEMBER 1, 1878

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.13 CFS

THIS WATER RIGHT IS SUBJECT TO A PRIVATE ALTERNATIVE USE ARRANGEMENT UNDER WHICH A MAXIMUM OF 3.5 CFS WILL BE DIVERTED AT ANY ONE TIME REGARDLESS OF WHICH POINT OF DIVERSION OR PARTY IS USING WATER. ANY DISPUTE SHALL BE RESOLVED BY THE COURT WITH JURISDICTION FOR WATER RIGHTS ADMINISTRATION IN THIS COUNTY.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 40.00

Source Name: SWEET GRASS CREEK

Source Type: SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNESE	30	1N	16E	SWEET GRASS

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: HARRISON DITCH

Period of Use: MAY 1 TO OCTOBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	40.00		NESE	5	1S	16E	SWEET GRASS
Total:	40.00						

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.

4002-00

33316-00

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

Water Right Number: **43BV 114060-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HOBBLE DIAMOND RANCH OF MONTANA LLC
A DELAWARE LIMITED LIABILITY COMPANY
639 SHANKS BASIN WEST RD
BIG TIMBER, MT 59011-7771

Priority Date: SEPTEMBER 1, 1878

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.55 CFS

THIS WATER RIGHT IS SUBJECT TO A PRIVATE ALTERNATIVE USE ARRANGEMENT UNDER WHICH A MAXIMUM OF 3.5 CFS WILL BE DIVERTED AT ANY ONE TIME REGARDLESS OF WHICH POINT OF DIVERSION OR PARTY IS USING WATER. ANY DISPUTE SHALL BE RESOLVED BY THE COURT WITH JURISDICTION FOR WATER RIGHTS ADMINISTRATION IN THIS COUNTY.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 108.50

Source Name: SWEET GRASS 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		SWNESE	30	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HARRISON DITCH

2		NWNENW	20	1N	16E	SWEET GRASS
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: WEST HARRISON (HAWKS) 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	40.00		SE	5	1S	16E	SWEET GRASS
2	63.50		SW	4	1S	16E	SWEET GRASS

3 5.00
Total: 108.50

NW 4 1S 16E SWEET GRASS