

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
watercourt@mt.gov

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

CLAIMANT: J Bar L Ranches, LLC

OBJECTOR: J Bar L Ranches, LLC

NOTICE OF INTENT TO APPEAR: United States of
America (Bureau of Reclamation)

CASE 43BV-0354-R-2023

43BV 127348-00

43BV 127359-00

43BV 127360-00

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. J Bar L Ranches, LLC (J Bar L) is the record owner of claims 43BV 127348-00, 43BV 127359-00, and 43BV 127360-00.

2. Claim 43BV 127348-00 was decreed with a DNRC issue remark:

POINT OF DIVERSION AND DITCH NAME WERE 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.

3. J Bar L objected to claims 43BV 127348-00, 43BV 127359-00, and 43BV 127360-00. The United States of America (Bureau of Reclamation) filed Notices of Intent to Appear for each of claims 43BV 127348-00, 43BV 127359-00, and 43BV 127360-00.

4. Claim 43BV 127348-00 was decreed with the following points of diversion

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		NWSWSW	27	4N	15E	SWEET GRASS
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		HEADGATE				
Ditch Name:		LOWERY DITCH				
2		SWNWNE	34	4N	15E	SWEET GRASS
Period of Diversion:		APRIL 15 TO OCTOBER 15				
Diversion Means:		HEADGATE				
Ditch Name:		ADAM INTAKE CANAL				

and places of use:

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	17.00		S2SE	27	4N	15E	SWEET GRASS
2	22.00		N2NE	34	4N	15E	SWEET GRASS
3	142.00		N2	35	4N	15E	SWEET GRASS
4	44.00		SE	35	4N	15E	SWEET GRASS
5	31.00		SW	36	4N	15E	SWEET GRASS
6	4.00		E2SWSE	36	4N	15E	SWEET GRASS
7	24.00		NW	1	3N	15E	SWEET GRASS
8	70.00		NE	1	3N	15E	SWEET GRASS
9	17.00		SW	1	3N	15E	SWEET GRASS
Total:		371.00					

The November 19, 2021 Objection states:

DNRC issue remarks indicate the points of diversion may be incorrect. The place of use may need to be corrected based on changes in points of diversion. There is an additional point of diversion for this claim in the NWSESW of Section 36, T4N, R15E.

No evidence or map supporting the historical beneficial use of the claim as described by the issue remark was included with the Objection.

5. Claims 43BV 127359-00 and 43BV 127360-00 were decreed with a point of diversion in the following legal land description:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNWSE	23	4N	14E	SWEET GRASS
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	DRIVDAHL DITCH					

The November 19, 2021 Objections to both claims state:

The point of diversion should be decreed consistent with all other water rights on the Drivdahl Ditch, namely 43BV 127359-00, 43BV 127360-00, 438V 116573-00, 438V 116576-00, 43BV 30122576, and 43BV 30122577.

No evidence or map supporting the historical beneficial use of the claims as described was included with the Objections.

6. On January 10, 2024, J Bar L filed its Motion to Modify Point of Diversion in Preliminary Decree of Water Right 43B 127348-00. (Doc. ¹2.00). The Motion requested an Order modifying claim 43BV 127348-00 by adding an additional point of diversion, reflecting the Crum Ditch in the NWSESW of Section 36, Township 4 North, Range 15 East, consistent with historical use. J Bar L explains that the 4.00 acre parcel described by place of use ID no. 6 can *only* be irrigated by the Crum Ditch. Additionally, Crum Ditch is accurately reflected on the rights supplemental to claim 43BV 127348-00.

7. On January 10, 2024, J Bar L withdrew its Objections to claims 43BV 127359-00 and 43BV 127360-00. (Doc. 3.00).

8. On February 21, 2024, the Bureau of Reclamation filed a Statement in response to the January 10, 2024 filings. (Doc. 4.00). The Bureau of Reclamation indicated it “has reviewed Claimant’s Motion and Notice, and if they are implemented, the United States’ NOIA concerns are resolved.”

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections and notices of intent the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

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

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 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.

Statement of Claim 43BV 127348-00 reflected Crum Ditch in the NWSESW of Section 36, Township 4 North, Range 15 East. During reexamination of claim 43BV 127348-00, the DNRC added an issue remark indicating modifications were made to the point of diversion and ditch name, the DNRC removed Crum Ditch and added Lowery Ditch and Adam Intake Canal. The addition of the Lowery Ditch and Adam Intake Canal were substantiated on the DNRC’s reexamination worksheet; removal of the Crum Ditch was not substantiated on the DNRC’s reexamination worksheet and the DNRC did not overcome the prima facie validity of the Statement of Claim as to the Crum Ditch.

RECOMMENDATIONS

1. Claim 43BV 127348-00 should be modified by adding a third point of diversion, for Crum Ditch:

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3         NWSESW   36   4N   15E   SWEET GRASS
  Period of Diversion: APRIL 15 TO OCTOBER 15
  Diversion Means:    HEADGATE
  Ditch Name:        CRUM DITCH
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Additionally, the issue remark should be removed from claim 43BV 127348-00.

2. The Notices of Intent to Appear should be dismissed, as the modifications proposed for claim 43BV 127348-00 have been implemented and the Objections to claims 43BV 127359-00 and 43BV 127360-00 have been withdrawn.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Michael J.L. Cusick, Esq.
Cusick, Farve, Mattick & Refling, P.C.
P.O. Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
(406) 587-9079 fax
office@cmrlawmt.com

Mark J. Widerschein
United States Department of Justice
ENRD NRS
PO Box 7611
Washington, DC 20044-7611
202-532-5803
Mark.Widerschein@Usdoj.Gov
Montanabasins.ENRD@USDOJ.GOV

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

Water Right Number: 43BV 127348-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: J BAR L RANCHES LLC
PO BOX 11925
BOZEMAN, MT 59719-1925

Priority Date: APRIL 1, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

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: 371.00

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		NWSWSW	27	4N	15E	SWEET GRASS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: LOWERY DITCH

2		SWNWNE	34	4N	15E	SWEET GRASS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: ADAM INTAKE CANAL

3		NWSESW	36	4N	15E	SWEET GRASS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: CRUM DITCH

Period of Use: APRIL 15 TO OCTOBER 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	17.00		S2SE	27	4N	15E	SWEET GRASS
2	22.00		N2NE	34	4N	15E	SWEET GRASS
3	142.00		N2	35	4N	15E	SWEET GRASS

4	44.00	SE	35	4N	15E	SWEET GRASS
5	31.00	SW	36	4N	15E	SWEET GRASS
6	4.00	E2SWSE	36	4N	15E	SWEET GRASS
7	24.00	NW	1	3N	15E	SWEET GRASS
8	70.00	NE	1	3N	15E	SWEET GRASS
9	17.00	SW	1	3N	15E	SWEET GRASS
Total:	<u>371.00</u>					

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.

127346-00	127347-00	127348-00	127349-00	127350-00	127351-00
127352-00	127362-00				

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

Water Right Number: 43BV 127359-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: J BAR L RANCHES LLC
PO BOX 11925
BOZEMAN, MT 59719-1925

Priority Date: JULY 1, 1912

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

THE FLOW RATE OF THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT CANNOT EXCEED THE HISTORICAL FLOW RATE OF 5.00 CFS 127359-00 30122576

THE FOLLOWING CLAIMS ARE SUBJECT TO A FLOW RATE AGREEMENT ON FILE WITH THE MONTANA WATER COURT 127359-00
127360-00 30122576 30122577

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: 294.00

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		NWNWSE	23	4N	14E	SWEET GRASS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: DRIVDAHL DITCH

Period of Use: APRIL 15 TO OCTOBER 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	29.00		NW	34	4N	15E	SWEET GRASS
2	44.00		NE	34	4N	15E	SWEET GRASS
3	36.00		SE	34	4N	15E	SWEET GRASS
4	6.00		NW	35	4N	15E	SWEET GRASS
5	150.00		SW	35	4N	15E	SWEET GRASS
6	29.00		SE	35	4N	15E	SWEET GRASS

Total: 294.00

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.

127359-00

127360-00

SPLIT CLAIM NO. 43BV 30122576 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 43BV 127360-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: J BAR L RANCHES LLC
PO BOX 11925
BOZEMAN, MT 59719-1925

Priority Date: JUNE 29, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 7.19 CFS

THE FLOW RATE OF THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT CANNOT EXCEED THE HISTORICAL FLOW RATE OF 7.19 CFS 127360-00 30122576

THE FOLLOWING CLAIMS ARE SUBJECT TO A FLOW RATE AGREEMENT ON FILE WITH THE MONTANA WATER COURT 127359-00
127360-00 30122576 30122577

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: 294.00

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		NWNWSE	23	4N	14E	SWEET GRASS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: DRIVDAHL DITCH

Period of Use: APRIL 15 TO OCTOBER 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	29.00		NW	34	4N	15E	SWEET GRASS
2	44.00		NE	34	4N	15E	SWEET GRASS
3	36.00		SE	34	4N	15E	SWEET GRASS
4	6.00		NW	35	4N	15E	SWEET GRASS
5	150.00		SW	35	4N	15E	SWEET GRASS
6	29.00		SE	35	4N	15E	SWEET GRASS

Total: 294.00

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.

127359-00 127360-00

SPLIT CLAIM NO. 43BV 30122577 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.