

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

CLAIMANT: Agnew Ranch LLC

CASE 43BV-0072-R-2024

- 43BV 126728-00
- 43BV 126732-00
- 43BV 126733-00
- 43BV 127311-00
- 43BV 127312-00
- 43BV 127313-00

CLOSING ORDER

BACKGROUND

This case addresses six water rights claims owned by Agnew Ranch LLC (“Agnew”) in Sweet Grass County. Claim 43BV 126728-00 is for stock use from a spring that is a tributary of Sweet Grass Creek. The remaining five claims are to use water from Sweet Grass Creek for irrigation use. The irrigation claims include claims 43BV 126732-00, 43BV 126733-00, 43BV 127311-00, 43BV 127312-00 and 43BV 127313-00. The place of use for Agnew’s claims is in the lower portion of the Sweet Grass Creek Basin. The Sweet Grass Creek Basin is designated as Basin 43BV.

The Water Court has issued two decrees for Basin 43BV. On December 19, 1984, the Court issued a temporary preliminary decree (“TPD”) for the basin. All six claims were included in the TPD. On May 27, 2021, the Court issued the Basin 43BV

Preliminary Decree. The Preliminary Decree included abstracts of all six Agnew claims after they had been reexamined by the Department of Natural Resources and Conservation (“DNRC”) under the Court’s Order Addressing Reexamination (Dec. 14, 2012).

The preliminary decree abstracts include issue remarks based on DNRC’s reexamination. The Water Court called claim 43BV 127312-00 in on motion.

The Court consolidated the claims into this case to address the issue remarks and the Court’s motion. The Court requested assistance from DNRC pursuant to § 85-2-248, MCA to resolve the issue remarks. DNRC filed a memorandum with recommendations on June 26, 2024. The Court allowed Agnew to respond to the recommendations, which it did on August 26, 2024.

The following paragraphs describe each claim, the issue remarks, and the Court’s resolution based on information in the claim files, the DNRC memorandum, and Agnew’s response.

DISCUSSION

1. Claim 43BV 126728-00.

The Preliminary Decree describes this claim as a use right to use groundwater from a flowing spring for stock water use with an August 22, 1907 priority date. The preliminary decree abstracts for claim 43BV 126728-00 include an issue remark stating: “THE FLOW RATE IS MISSING.” As the remark indicates, the flow rate is blank on the decree abstract. The standard flow rate protocol for this type of stock right from a spring is to describe the flow rate as 35 gallons per minute (“gpm”) absent other information. Rule 24(b), W.R.C.E.R. As no objection was received, the issue remark is resolved by adding the 35 gpm flow rate to the abstract.

2. Claim 43BV 126732-00.

The Preliminary Decree describes claim 43BV 126732-00 as a decreed right to use water from Sweet Grass Creek for irrigation use with an August 2, 1884 priority date. The abstract describes a 1.88 cubic feet per second (“cfs”) flow rate to irrigate 48.00 acres. The preliminary decree abstract includes the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 18.00 GPM PER ACRE.

DITCH NAME 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.

Based on information in the claim file, claim 43BV 126732-00 is based on a 75 miner's inch water rights decreed to Jacob Hoyem in the case *W.A. Harrison, et al. v. Paul L. Van Cleve, et al.*, Case No. 342 (Mont. Sixth Jud. Dist., Sweet Grass County, Dec. 21, 1908) ("*Sweet Grass Creek Decree*"). The *Sweet Grass Creek Decree* also converts this flow rate to 1 7/8 cubic feet per second ("cfs"). Both 75 miner's inches and 1 7/8 cfs convert to 1.88 cfs, the amount stated on the preliminary decree abstract.

DNRC's issue remark is based on its application of a guideline flow rate that assumes a standardized amount of water applied per acre. DNRC recommended that the flow rate be reduced to 1.81 cfs to conform to the guideline. In its response, Agnew supplied a map showing the place of use is 50.00 acres. When the decreed flow rate is applied to this adjusted acreage, with a minor adjustment to 1.89 cfs, it falls within the guideline and is consistent with what was decreed in the *Sweet Grass Creek Decree*.

3. *Claim 43BV 126733-00.*

The Preliminary Decree describes claim 43BV 126733-00 as a decreed right to use water from Sweet Grass Creek for irrigation use with a May 2, 1904 priority date. This claim is based on a water right decreed in the *Sweet Grass Creek Decree* as a 50 miner's inch (1¼ cfs) right to Jacob Hohem. The means of diversion is described as a headgate, with no ditch identified. The abstract includes the following issue remarks:

THE CLAIMED MEANS OF DIVERSION MAY BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF

DATA. THE FLOW RATE EQUALS 31.00 GPM PER ACRE.

The means of diversion remark questions whether a headgate is the correct description for how water is diverted. In its memorandum, DNRC recommended that the claim be dismissed based on a conversation with Thomas Agnew, a representative of the claimant.

In its response, Agnew does not request that the claim be dismissed. Rather, Agnew requests that the flow rate be reduced to 306 gallons per minute (“gpm”) and confirms the means of diversion is a headgate. Notes in the claim file indicate the point of diversion was corrected about the time the Court issued the TPD in 1984. As no objections were received based on the description of the historical means of diversion to irrigate this relatively small place of use on Agnew’s property close to Sweet Grass Creek, Agnew’s response resolves this remark. The Court accepts Agnew’s flow rate reduction request without additional evidence because it is a reduction in a claimed element. Rule 17(c), W.R.Adj.R. The flow rate reduction resolves the second remark.

4. *Claim 43BV 127311-00.*

The Preliminary Decree describes claim 43BV 127311-00 as a decreed right to use water from Sweet Grass Creek for irrigation use with a June 29, 1973 priority date. The decreed type of right is based on the supplemental decree for Sweet Grass Creek issued by the district court in the case *Sweet Grass Canal and Reservoir Co. v. Mr. and Mrs. Leo Cremer, Jr.*, Cause No. 3316 (Mont. Sixth Jud. Dist., Sweet Grass County, July 27, 1981) (“*Sweet Grass Creek Supplemental Decree*”). The preliminary decree abstract describes the means of diversion as a “pump/headgate w/ditch or pipeline.” The abstract includes the following issue remarks:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A HEADGATE.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNWNE SEC 9 TWP 1N RGE 16E SWEET GRASS COUNTY.

DNRC’s memorandum indicates Thomas Agnew confirmed the means of

diversion is a headgate, and the legal description in the remark is correct. Agnew's response does not indicate any disagreement with DNRC's recommendations. Modifying the claim consistent with the recommendations resolves the remarks.

5. *Claim 43BV 127312-00.*

The Preliminary Decree describes claim 43BV 127312-00 as a decreed right to use water from Sweet Grass Creek for irrigation use with a June 29, 1973 priority date, also based on the *Sweet Grass Creek Supplemental Decree*. The preliminary decree abstract includes the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 58.00 GPM PER ACRE.

ON APRIL 22, 1987 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE POINT OF DIVERSION IS ERRONEOUS. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

DITCH NAME 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.

The Water Court also called claim 43BV 127312-00 in on its own motion to address the point of diversion.

The DNRC memorandum indicates Agnew requests to withdraw the claim and includes an executed withdrawal statement as an attachment. Agnew's response does not dispute this request. The Court accepts the withdrawal, which resolves the issue remarks and the Court's motion.

6. *Claim 43BV 127313-00.*

The Preliminary Decree describes claim 43BV 127313-00 as a decreed right to use water from Sweet Grass Creek for irrigation use with a May 1, 1898 priority date, based on the *Sweet Grass Creek Decree*. This claim is based on a water right decreed in the

Sweet Grass Creek Decree as a 240 miner’s inch (6 cfs) right to Jacob Hohem. Like claim 43BV 127311-00, the preliminary decree abstract describes the means of diversion as a “pump/headgate w/ditch or pipeline.” The abstract includes the following issue remarks:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A HEADGATE.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNWNE SEC 9 TWP 1N RGE 16E SWEET GRASS COUNTY.

DNRC’s memorandum indicates Thomas Agnew confirmed the means of diversion is a headgate, and the legal description in the remark is correct. Agnew’s response does not indicate any disagreement with DNRC’s recommendations. Modifying the claim consistent with the recommendations resolves the remarks.

ORDER

Therefore, it is ORDERED that claim 43BV 127312-00 is DISMISSED. The remaining claims are modified as provided in this Order, with all issue remarks resolved and removed. This Order closes the case.

Post-decree abstracts of the claims 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:

Agnew Ranch LLC
% Thomas G Agnew
781 Lower Sweet Grass Rd
Big Timber, MT 59011

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

Water Right Number: 43BV 126728-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: AGNEW RANCH LLC
%THOMAS G AGNEW
781 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011

Priority Date: AUGUST 22, 1907

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 SWEET GRASS 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		SESEW	5	1N	16E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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			NWNWNE	8	1N	16E	SWEET GRASS

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

Water Right Number: 43BV 126732-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: AGNEW RANCH LLC
%THOMAS G AGNEW
781 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011

Priority Date: AUGUST 2, 1884

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.89 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: 50.00

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		NESES	4	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BOGGS DITCH NO. 1

Period of Use: APRIL 1 TO OCTOBER 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	50.00		NW	9	1N	16E	SWEET GRASS

Total: 50.00

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.

126732-00

127312-00

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

Water Right Number: 43BV 126733-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: AGNEW RANCH LLC
%THOMAS G AGNEW
781 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011

Priority Date: MAY 2, 1904

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 306.00 GPM

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: 18.00

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		NESENE	8	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	18.00		E2NE	8	1N	16E	SWEET GRASS

Total: 18.00

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

Water Right Number: 43BV 127311-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: AGNEW RANCH LLC
%THOMAS G AGNEW
781 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011

Priority Date: JUNE 29, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.00 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:** 192.00

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		NWNWNE	9	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: NORTH HARRISON DITCH

Period of Use: APRIL 1 TO OCTOBER 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	35.00		S2NW	9	1N	16E	SWEET GRASS
2	79.00		SW	9	1N	16E	SWEET GRASS
3	78.00		NW	16	1N	16E	SWEET GRASS

Total: 192.00

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.

127311-00

127313-00

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

Water Right Number: 43BV 127312-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: AGNEW RANCH LLC
%THOMAS G AGNEW
781 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SWEET GRASS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 43BV 127313-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: AGNEW RANCH LLC
 %THOMAS G AGNEW
 781 LOWER SWEET GRASS RD
 BIG TIMBER, MT 59011

Priority Date: MAY 1, 1898

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.00 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:** 192.00

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		NWNWNE	9	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: NORTH HARRISON DITCH

Period of Use: APRIL 1 TO OCTOBER 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	35.00		S2NW	9	1N	16E	SWEET GRASS
2	79.00		SW	9	1N	16E	SWEET GRASS
3	78.00		NW	16	1N	16E	SWEET GRASS

Total: 192.00

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.