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**FILED**

09/06/2024

Sara Calkins  
CLERK

Montana Water Court  
STATE OF MONTANA

By: D'Ann CIGLER

43BV-0084-R-2023

Brown, Stephen R

12.00

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

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CLAIMANT: Pitchfork Limited Partnership

OBJECTOR: Pitchfork Limited Partnership

NOTICE OF INTENT TO APPEAR: J Bar L Ranches LLC;  
United States of America, Department of  
Interior Bureau of Reclamation

**CASE 43BV-0084-R-2023**

43BV 106312-00

43BV 106313-00

43BV 106314-00

**CLOSING ORDER**

Pitchfork Limited Partnership (“Pitchfork”) seeks to amend water right claims 43BV 106312-00, 43BV 106313-00, and 43BV 106314-00. For the reasons stated in this Order, the Court grants Pitchfork’s motion, which resolves all issues in this case.

**BACKGROUND**

The Water Court included claims 43BV 106312-00, 43BV 106313-00, and 43BV 106314-00 in the Preliminary Decree for the Sweet Grass Creek Basin (Basin 43BV). The claims describe rights to divert water from Sweet Grass Creek and conveys it through the Hart-Parker Ditch to irrigate land Pitchfork owns. Pitchfork owns the claims.

The preliminary decree abstracts include issue remarks resulting from the reexamination of the claims conducted by the Department of Natural Resources and Conservation (“DNRC”). Pitchfork self-objected to the flow rate, period of diversion, and place of use elements of the claims. The claims did not receive any other objections. J Bar L Ranches, LLC (“J Bar L”) filed notices of intent to appear (“NOIA”) as to claims

43BV 106313-00 and 43BV 106314-00. The United States of America, Department of Interior, Bureau of Reclamation (“United States”) filed an NOIA as to claim 43BV 106313-00.

The Court consolidated this case on October 30, 2023. On December 6, 2023, the Court added claim 43BV 106314-00 to the case at Pitchfork’s request. The three claims in this case are related to claim 43BV 106311-00, which Pitchfork also owns, and which also describes a right to divert water from Sweet Grass Creek at the headgate to the Hart-Parker Ditch. The Court put claim 43BV 106311-00 in case 43BV-0206-R-2022 because it received a decree exceeded remark connected to a claim owned by Cremer Rodeo & Livestock Co., an unrelated third party. On August 29, 2024, the Court issued a Closing Order in case 43BV-0206-R-2022 in part based on supplemental evidence Pitchfork filed in support of proposed place of use modifications. The Court refers to proceedings and evidence in case 43BV-0206-R-2022 as necessary to resolve the issues in this case.

On March 21, 2024, Pitchfork filed a verified motion to amend elements of its three claims in this case. (Doc. 10.00). The NOIA parties did not oppose Pitchfork’s motion. On August 30, 2024, Pitchfork filed supplemental evidence in support of its motion to amend. The supplemental evidence consists of (a) a report dated July 17, 2024, prepared by Dr. Kyle Flynn of the firm KF2 Consulting, PLCC (“KF2”); and (b) the Affidavit of Craig Anderson dated July 18, 2024. Pitchfork had previously filed both these documents in support of its motion in case 43BV-0206-R-2022 and they were accepted by the Court.

The KF2 memorandum details Dr. Flynn’s analysis of aerial imagery from United States Geological Survey archives and photography from the Farm Service Agency ranging from 1951 to 1972. During that time, Pitchfork and its predecessors irrigated acreage has varied from 599 acres to 720 acres. Dr. Flynn opines Pitchfork’s historical place of use was at least 677 acres.

## **DISCUSSION**

Section 85-2-233(6), MCA and Rule 10, W.R.Adj.R. authorize motions to amend. When a party seeks to amend elements of their water right claim, the party must prove by

a preponderance of evidence that the proposed modification overcomes the prima facie status of the claim. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. The following sections describe each of the claims, the issue remarks and objections, and the application of the motion to amend standard to Pitchfork’s claims.

1. *43BV 106312-00.*

The Preliminary Decree describes claim 43BV 106312-00 as a decreed right with a June 1, 1892 priority date to divert up to 2.50 cubic feet per second (“cfs”) to irrigate up to 426.00 acres. The claim is based on a June 1, 1892, water right decreed to Pitchfork’s predecessors Harry and Jack Hart in the case *W.A. Harrison et al. v. Paul L. Van Cleve et al.* (Case 342, Mont. Sixth Jud. Dist., Sweet Grass County) (“*Sweet Grass Creek Decree*”).<sup>1</sup>

The preliminary decree abstract for claim 43BV 106312-00 includes the following interbasin transfer remark:

THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 43B BASIN TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

DNRC included this interbasin remark because the described place of use includes land in both Basin 43BV and Basin 43B, the Yellowstone River Basin above and including Bridger Creek. As a result, claim 43BV 106312-00 was also included in the Basin 43B Preliminary Decree, which the Water Court issued in May 2019, two years before the Basin 43BV Preliminary Decree. The Court consolidated claim 43BV 106312-00 into case 43B-1148-R-2022 to address the interbasin transfer remark. The Court issued a closing order stating the remark and objections would be resolved in the Basin 43BV Preliminary Decree proceedings. Nothing further is necessary to resolve this remark and remove the corresponding interbasin transfer information remark.

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<sup>1</sup> Pitchfork’s claim 43BV 106311-00 has the same June 1, 1892 priority date, but is based on a different water right decreed to Andrew Berg in the Sweet Grass Creek Decree.

Pitchfork's motion asks the Court to modify the claim from what appeared in the Preliminary Decree by (a) increasing the flow rate from 2.50 cfs to 4.37 cfs, (b) increasing the maximum acres from 426.00 acres to 548.00 acres, with corresponding modifications to the place of use, and (c) expanding the period of use from May 15 to September 15 to April 15 to October 15.

Pitchfork provides sufficient evidence to document the 4.37 cfs modified flow rate is consistent with the 7.5 cfs decreed for the Harts' water right in the *Sweet Grass Creek Decree*, minus 3.13 cfs now decreed to CNJ Distributing Corporation.<sup>2</sup> Craig Anderson's affidavit documents historic use and the NOIA parties did not object. The KF2 memorandum and Anderson's affidavit also provide sufficient evidence for the place of use modification and is consistent with what the Court previously approved in case 43BV-0206-R-2022.

Concerning the period of diversion and use, as Pitchfork notes, the guideline period of use for this climactic area is April 15 to October 15. Rule 16(a), W.R.C.E.R. Although the claim examination rules are not conclusive evidence binding on the Water Court, Pitchfork's motion also verifies that it historically irrigated "as early and as late as water is available." Motion at 4. Pitchfork's verification, the climactic standard, and the lack of any objector to the period of use element on the objection list meets the preponderance of evidence standard for period of diversion and use.

2. *43BV 106313-00.*

The Preliminary Decree describes claim 43BV 106313-00 as a decreed right with a July 1, 1886 priority date to divert up to 5.00 cubic feet per second ("cfs") to irrigate up to 176.00 acres. The claim is based on a 500 miner's inch (12.5 cfs) right decreed to Hickox & Hickox Co. in the *Sweet Grass Creek Decree*. The periods of diversion and use in the preliminary decree abstract are May 15 to September 15. Pitchfork's motion asks the Court to modify the claim by (a) increasing the flow rate to 6.25 cfs, (b) increasing

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<sup>2</sup> The CNJ Distributing Corporation portion of the right is reflected in claim 43BV 7819-00, which was addressed by the Court in case 43BV-0062-R-2022.

the maximum acres to 548.00 acres, with corresponding modifications to the place of use, and (c) expanding the period of use to April 15 to October 15.

As explained in Pitchfork's motion and its filings in case 43BV-0206-R-2022, claim 43BV 106313-00 was part of an exchange of water rights between Pitchfork's predecessors. Pitchfork explains that in the claim filing process, Charlotte Anderson, its predecessor, overclaimed claim 43BV 106311-00 and underclaimed claim 43BV 106313-00. The overclaimed flow rate for 43BV 106311-00 was corrected in case 43BV-0206-R-2022. The motion asks the Court to correct the underclaimed flow rate for claim 43BV 106313-00 in this case. Pitchfork provides a sufficient basis to make this correction, which received no objection from the NOIA parties.<sup>3</sup> The acreage and periods of use and diversion modifications are approved for the same reasons as stated for claim 43BV 106312-00.

3. *43BV 106314-00.*

The Preliminary Decree describes claim 43BV 106314-00 as a decreed right with a June 14, 1900 priority date to divert up to 10.00 cubic feet per second ("cfs") to irrigate up to 426.00 acres with periods of diversion and use from May 15 to September 15. The claim is based on a 400 miner's inch (10 cfs) claim decreed to Andrew Johnson in the *Sweet Grass Creek Decree*. Pitchfork's motion asks the Court to modify the claim by (a) increasing the maximum acres to 611.00 acres, with corresponding modifications to the place of use, and (b) expanding the period of use to April 15 to October 15. The motion does not request a modification to the flow rate. The acreage and periods of use and diversion modifications are approved for the same reasons as stated for claim 43BV 106312-00.

The claim 43BV 106314-00 preliminary decree abstract has the same interbasin transfer remarks as claim 43BV 106312-00. It also was included in case 43B-1148-R-2022 and addressed the same way.

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<sup>3</sup> The remaining 6.25 cfs of the July 1, 1886, Hickox and Hickox right is claimed by Cremer Rodeo & Livestock Co. ("Cremer") under claims 43BV 150329-00 and 43BV 150304-00, which are being addressed in case 43BV-0230-R-2024.

## ORDER

Therefore, it is ORDERED Pitchfork's Motion to Amend is GRANTED. The claims are modified by this Order with all issue remarks removed and the information remarks revised. Pitchfork's objections and the NOIAs also are resolved.

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.

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

**Water Right Number:** 43BV 106312-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** PITCHFORK LIMITED PARTNERSHIP  
 682 WHEELER CREEK ROAD  
 BIG TIMBER, MT 59011

**Priority Date:** JUNE 1, 1892

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.37 CFS

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 548.00

**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		SENESE	34	5N	13E	SWEET GRASS

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** HART-PARKER 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	268.00		S2	19	4N	14E	SWEET GRASS
2	80.00		S2NE	18	4N	14E	SWEET GRASS
3	200.00		S2	18	4N	14E	SWEET GRASS
<b>Total:</b>	<b>548.00</b>						

**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.

106311-00                      106312-00                      106313-00

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

**Water Right Number:** 43BV 106313-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** PITCHFORK LIMITED PARTNERSHIP  
682 WHEELER CREEK ROAD  
BIG TIMBER, MT 59011

**Priority Date:** JULY 1, 1886

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 6.25 CFS

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 548.00

**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		SENESE	34	5N	13E	SWEET GRASS

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** HART-PARKER 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	80.00		S2NE	18	4N	14E	SWEET GRASS
2	200.00		S2	18	4N	14E	SWEET GRASS
3	268.00			19	4N	14E	SWEET GRASS
<b>Total:</b>	<b>548.00</b>						

**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.

106311-00      106312-00      106313-00

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

**Water Right Number:** 43BV 106314-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** PITCHFORK LIMITED PARTNERSHIP  
682 WHEELER CREEK ROAD  
BIG TIMBER, MT 59011

**Priority Date:** JUNE 14, 1900

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 10.00 CFS

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 611.00

**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		SENESE	34	5N	13E	SWEET GRASS

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** HART-PARKER 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	331.00		S2	19	4N	14E	SWEET GRASS
2	80.00		S2NE	18	4N	14E	SWEET GRASS
3	200.00		S2	18	4N	14E	SWEET GRASS
<b>Total:</b>	<u>611.00</u>						