

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

CLAIMANTS: Pitchfork Limited Partnership; Cremer Rodeo
Land & Livestock Co.

OBJECTORS: Pitchfork Limited Partnership; United States
DOI, Bureau of Reclamation

NOTICE OF INTENT TO APPEAR: Crazy Not To, LLC; Sweet
Grass Canal & Reservoir Co.

CASE 43BV-0206-R-2022

43BV 106311-00

43BV 150283-00

43BV 150310-00

CLOSING ORDER

This Order addresses three claims the Court consolidated to address a decree exceeded issue remark, along with objections and other issue remarks. All three claims describe rights to use water from Sweet Grass Creek with a common June 1, 1892 priority date. The filings and information contained in the claim files and prior orders of the Court provide a basis to address all pending issues and close the case.

BACKGROUND

1. This case addresses objections and issue remarks for three water right claims in Basin 43BV, the Sweet Grass Creek Basin. Pitchfork Limited Partnership (“Pitchfork”) owns one of the claims; Cremer Rodeo Land & Livestock Co. (“Cremer”) owns the other two. Sweet Grass Creek is the source of all three claims. As described in

the Basin 43BV Preliminary Decree, the pertinent elements and claim types are as follows:

Claim	Owner	Flow	Use	Type¹
43BV 106311-00	Pitchfork	6.25 cfs	Irrigation	Decreed
43BV 150283-00	Cremer	Narrative ²	Stock	Decreed
43BV 150310-00	Cremer	5.00 cfs	Irrigation	Decreed

2. On April 6, 1906, the State District Court for Sweet Grass County entered a water rights decree 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*”). The *Sweet Grass Creek Decree* decreed and tabulated rights to use water from Sweet Grass Creek and several tributaries. One of the rights was a 250 miner’s inch (6.25 cfs) right decreed to Andrew Berg with a June 1, 1892 priority date.

3. On January 15, 1982, Charlotte V.C. Anderson filed a statement of claim claiming the right to divert 250 cfs from Sweet Grass Creek at a point of diversion located in the SENESE of Section 34, Township 5 North, Range 13 East. The point of diversion is the headgate for the Hart-Parker Ditch. As evidentiary support, Charlotte Anderson identified the claim as a decreed right based on the June 1, 1892 right decreed to Andrew Berg in the *Sweet Grass Creek Decree*. She also supported the claim with several maps, including copies of Water Resource Survey maps depicting an area hand-shaded to identify the claimed 498 acre place of use. Charlotte Anderson was the predecessor in interest to Pitchfork.

4. On April 30, 1982, various members of the Cremer family filed statements of claim also claiming rights to use water from Sweet Grass Creek for irrigation use and stock use with the same June 1, 1892 priority date as the Charlotte Anderson filing. The Cremer statements of claim also based their claims on the 250 miner’s inch right decreed

¹ For purposes of adjudicating claims, the term “type” describes “the historical basis of an existing water right.” Rule 2(a)(70), W.R.C.E.R., incorporated by Rule 2(b), W.R.Adj.R.

² For purposes of this Order, the term “narrative” means the flow rate for the stock claims is not expressed numerically, but rather is described: “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.” See Rule 24(b), W.R.C.E.R.

to Andrew Berg in the *Sweet Grass Creek Decree*. These statements of claim are the basis for Cremer's claims 43BV 150283-00 and 43BV 150310-00.

5. The Cremer statements of claim were part of many Cremer claims with points of diversion and places of use marshaled together. On July 11, 2019, Cremer filed a motion to amend many of its claims by undoing the marshaled points of diversion and places of use. Cremer's claims 43BV 150283-00 and 43BV 150310-00 were part of that motion. On October 1, 2019, the Court granted the motion in part in a Final Order on Motion to Amend in Case 43BV-6014-A-2019. The Order reduced the number of points of diversion for the claims so they are specific to each claim rather than marshaled across all claims. The preliminary decree abstracts for Cremer's amended claims in this case include the following information remark that references the Order:

THIS WATER RIGHT WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-22-(6), MCA. THE ORDER ADDRESSING THE MOTION TO AMEND WAS FILED IN WATER COURT CASE 43BV-6014-A-2019 PRIOR TO THE ISSUANCE OF THE PRELIMINARY DECREE.

6. On May 27, 2021, the Water Court issued the Basin 43BV Preliminary Decree. The Preliminary Decree included abstracts for the claims in this case. The abstracts for each of the claims include issue remarks. All three abstracts include the following decree exceeded issue remark:

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 250 MINER'S INCHES DECREED IN CASE NO. 342, SWEET GRASS COUNTY. 43BV 106311-00, 43BV 150283-00, 43BV 150310-00.

7. The abstract for Pitchfork's claim 43BV 106311-00 includes the following remark, based on the decreed place of use:

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

8. Pitchfork self-objected to claim 43BV 106311-00. Pitchfork’s objection contends a number of elements of the claim are not accurate, including the acres irrigated and place of use.

9. The abstracts for the two Cremer claims include the following two issue remarks:

THE POINTS OF DIVERSION APPEAR TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

RESERVOIR RECORD 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.

10. The points of diversion on the Cremer abstracts reflect what the Court ordered in the motion to amend in Case 43BV-6014-A-2019. The stock claim abstract (43BV 150283-00) was described in the Preliminary Decree without ditch names even though the point of diversion legal descriptions match those of the companion irrigation claim (43BV 150310-00).

11. The United States objected to Cremer’s irrigation claim 43BV 150310-00 based on its year-round periods of use and diversion, and generally based on the issue remarks. In addition to the objections, notices of intent to appear (“NOIA”) were filed by J Bar L Ranches LLC, Crazy Not To, LLC, and Sweet Grass Canal & Reservoir Co. J Bar L later withdrew its NOIA.

Case Proceedings and Filings

12. On October 30, 2023, the Court put this case on a hearing track and issued a Scheduling Order. The Order called for motions by April 19, 2024, and set a May 3, 2024 mediation deadline.

13. On July 8, 2024, the United States filed a stipulation (“Stipulation”) also executed by claimant and interested parties Cremer, Coulee Creek Land & Cattle, Inc., JC Cattle Inc., and Cargill Land Company. The Stipulation resolves the United States’

objections to claim 43BV 150310-00 by requesting that the period of use and period of diversion be reduced to April 15 to October 15. The Stipulation references the period use standards applicable to Climactic Area III.

14. On October 24, 2023, Pitchfork filed a motion to amend. Among other things, Pitchfork’s motion asked the Court to increase the place of use for claim 43BV 106311-00 from 426 acres to 780 acres. Pitchfork filed several historical documents and deeds to support the increase in acreage.

15. On June 28, 2024, the Court issued an Order on Pitchfork’s Motion to Amend. The order granted Pitchfork’s motion to amend the flow rate and the period of use and diversion but denied without prejudice the motion to amend the place of use. The Court found “Pitchfork’s evidence does not meet its burden to prove the place of use should be expanded” because the claim file map used to support the expansion was the same map Charlotte Anderson used to support the originally claimed place of use, which the DNRC reduced during verification. The Court determined that without evidence “showing why the original claim or the DNRC adjustment fails to accurately represent historical use, the motion does not support amending the place of use.”

16. On July 18, 2024, Pitchfork filed a motion under Rule 60(b), M.R.Civ.P. asking the Court to reconsider aspects of its June 28, 2024 ruling on Pitchfork’s motion to amend claim 43BV 106311-00. None of the other parties oppose the motion.

17. Pitchfork filed new evidence to support its motion. The evidence includes a memorandum from Professional Engineer and Hydrologist Dr. Kyle Flynn of KF2 Consulting. The 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, the acreage has varied from 599 acres to 720 acres. Thus, Dr. Flynn approximates the historical acreage of the place of use as 677 acres as follows:

<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	86.00		S2NE	18	4N	14E	SWEET GRASS
2	210.00		S2	18	4N	14E	SWEET GRASS

3	381.00			19	4N	14E	SWEET GRASS
Total	677.00						

18. Pitchfork also filed an affidavit of Craig Anderson, Pitchfork’s general partner. Craig Anderson is Charlotte Anderson’s grandson, and Paul and Helen Van Cleve’s great-grandson. He grew up on the property and has lived there his entire life. Based on his family history and personal observations, Craig Anderson’s affidavit states his understanding and belief that his family has used Sweet Grass Creek water to irrigate as much of the land in Sections 18 and 19, which could be flood irrigated from the Hart-Parker Ditch. The affidavit is consistent with what Dr. Flynn stated in his report.

ISSUES

1. Should the Court accept the Stipulation?
2. Should the Court grant Pitchfork’s motion and amend Pitchfork’s claims?
3. Are the issue remarks and objections resolved?

DISCUSSION

1. Stipulation.

Settlement stipulations are contracts setting the terms that parties agree to resolve objections. A settlement stipulation may include a claimant’s legally binding commitment to modify claims to resolve objections and issue remarks, and an objector’s agreement to withdraw objections conditioned upon the Court’s acceptance of the claim modifications. In determining whether to accept claim modifications proposed in the stipulation, the Court applies Rule 17, W.R.Adj.R. Under Rule 17(a), settlement stipulations are subject to Water Court review and approval when they resolve issues within the Court’s jurisdiction. *See also*, § 85-2-233(5)(b), MCA. The evidentiary standard is relaxed as to terms when a settlement stipulation proposes to reduce an element of a water right claim. Rule 17(c), W.R.Adj.R.

The Stipulation meets this standard because it proposes to reduce the periods of use and diversion for the irrigation claims. Nothing further is required to resolve the United States’ objections to the irrigation claims.

2. *Motion to Amend and Reconsideration.*

Pitchfork's October 24, 2023, motion to amend asked the Court to modify three elements of claim 43BV 106311-00: (1) to reduce the flow rate from 6.25 cfs to 1.25 cfs; (2) to increase the place of use from 426 acres to 780 acres.; and (3) to expand the periods of use and diversion from May 15 to September 14, to April 15 to October 15. The Court applied the motion to amend standard and approved the request to reduce the flow rate and adjust the periods of use and diversion. The Court denied the request to increase the place of use based on the lack of sufficient supporting evidence.

Pitchfork's current motion revises its earlier motion by reducing the proposed place of use modification from 780 acres to 677 acres based on the additional evidence from Dr. Flynn's report and Craig Anderson's affidavit.

Pitchfork moves for relief under Rule 60(b), M.R.Civ.P. Under Rule 60(b), a party may seek relief from a final judgment or order for one of the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

By filing new evidence, Pitchfork gives sufficient reason for the Court to reconsider its prior order. Pitchfork filed its motion for reconsideration 20 days after the issuance of the Court's order denying the motion to amend the place of use. Pitchfork says it did not provide additional evidence to support the prior motion to amend the place of use "[b]ecause the place of use map submitted with the statement of claim in 1982 was generally correct and Pitchfork was not seeking a different place of use, only a clarification of the acres depicted, Pitchfork mistakenly believed no further evidence would be necessary and neglected to provide new documentation, relying instead on the prima facie status of the map in the claim file." Pitchfork's new evidence provides a more

accurate quantification of what originally accompanied the original statement of claim. The new evidence received no objection from the other parties, and is further supported by Craig Anderson's affidavit, as a person with personal knowledge of irrigation practices. Although it would have been preferable to have this evidence at the time of the original motion, Pitchfork's evidence is sufficient to decrease the place of use to 677 acres, as described in Pitchfork's filings.

3. *Issue Remark Resolution.*

The Order granting Pitchfork's motion to amend reduced the flow rate of the two irrigation claims to 6.25 cfs, which is the amount the District Court decreed in the *Sweet Grass Creek Decree*. The two Cremer claims include multiple use remarks, so the combined total of the flow rates does not exceed what the District Court decreed. This resolves the decree exceeded issue remark. The interbasin transfer remark was a notice-only remark which requires no further proceedings.

The remaining issue remarks on the two Cremer claims regarding the points of diversion and reservoir records are relics from when the claims were marshaled together with common points of diversion across all claims. The Cremer motion to amend information remark provided notice to potentially interested parties that the claims had been modified to specific points of diversion. No one objected. To avoid confusion in the future as to the effect of the multiple use remarks, the Court modifies the stock claims so they include the same ditch names as the irrigation claims, and makes the additional modifications noted to align the descriptions with the motion to amend.

As to the information remarks, the Court also removes the motion to amend information remark from the Cremer claims as it has served its notice purpose. The Cremer irrigation claim includes an information remark referencing a change authorization issued by the DNRC. This remark should remain because it puts parties on notice of the change. However, the remark is modified to delete the due date for a notice of completion because it references a date from more than twenty years ago. The Court also removes the period of diversion information remark.

ORDER

Therefore, it is ORDERED that the Stipulation is approved and Pitchfork's Motion to Amend and Motion for Reconsideration and Response to Court Order is GRANTED. The claims are modified in accordance with this Order with all issue remarks removed and the information remarks revised. All objections 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 106311-00 STATEMENT OF CLAIM

Version: 4 -- 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: 1.25 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: 677.00

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: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: HART-PARKER DITCH

Period of Use: MAY 15 TO SEPTEMBER 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	86.00		S2NE	18	4N	14E	SWEET GRASS
2	210.00		S2	18	4N	14E	SWEET GRASS
3	381.00			19	4N	14E	SWEET GRASS

Total: 677.00

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.

106311-00 106312-00 106313-00

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

Water Right Number: 43BV 150283-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CREMER RODEO LAND & LIVESTOCK CO
PO BOX 276
MELVILLE, MT 59055-0276

Priority Date: JUNE 1, 1892

Type of Historical Right: DECREED

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 WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: 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		SWNESW	14	4N	14E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: SOUTH FRANKLIN DITCH

2		NENWSW	14	4N	14E	SWEET GRASS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: NORTH FRANKLIN DITCH

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			SE	14	4N	14E	SWEET GRASS
2			E2SW	14	4N	14E	SWEET GRASS
3			N2N2	23	4N	14E	SWEET GRASS
4			S2NE	23	4N	14E	SWEET GRASS
5			N2	24	4N	14E	SWEET GRASS
6			N2S2	24	4N	14E	SWEET GRASS
7			NW	19	4N	15E	SWEET GRASS

8 N2NWSW 19 4N 15E SWEET GRASS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

150283-00

150310-00

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

Water Right Number: 43BV 150310-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: CREMER RODEO LAND & LIVESTOCK CO
PO BOX 276
MELVILLE, MT 59055-0276

Priority Date: JUNE 1, 1892

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: 3 - MODERATE

***Maximum Acres:** 575.00

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		SWNESW	14	4N	14E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: SOUTH FRANKLIN DITCH

2		NENWSW	14	4N	14E	SWEET GRASS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: NORTH FRANKLIN DITCH

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	29.00		SE	14	4N	14E	SWEET GRASS
2	14.00		E2SW	14	4N	14E	SWEET GRASS
3	80.00		N2N2	23	4N	14E	SWEET GRASS
4	26.00		S2NE	23	4N	14E	SWEET GRASS
5	293.00		N2	24	4N	14E	SWEET GRASS
6	44.00		N2S2	24	4N	14E	SWEET GRASS
7	81.00		NW	19	4N	15E	SWEET GRASS

8	<u>8.00</u>	N2NWSW	30	4N	15E	SWEET GRASS
Total:	575.00					

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

150283-00 150310-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE ISSUED 03/10/00. SEE 43BV-G (W)150309-00 .