

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

CLAIMANT: B Bar Ranch, LLC

CASE 43BV-0357-R-2024
43BV 136309-00

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. B Bar Ranch LLC stock claim 43BV 136309-00 was decreed with DNRC issue remarks:

THE FLOW RATE IS MISSING.

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

AS OF 09/30/1996 , THIS WATER RIGHT APPEARS TO BE OWNED BY WES HENTHORNE , 1273 OTTER CREEK RD , BIG TIMBER, MT , 59011-7759.

POINT OF DIVERSION, DITCH NAME, MEANS OF DIVERSION, AND RESERVOIR RECORD 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SWEET GRASS CREEK WITH A PRIORITY DATE PREDATING CASE NO. 342 , SWEET GRASS COUNTY.

All issue remarks must be resolved. Many of the issue remarks decreed on claim 43BV 136309-00 are notice-type remarks and do not require further analysis.

2. Claim 43BV 136309-00 appeared in the Preliminary Decree for Basin 43BV without a flow rate. The April 29, 1982 Statement of Claim for claim 43BV 136309-00 indicated the flow rate is 10.00 miner's inches (112.20 gallons per minute):

9. Flow rate claimed: 10 cubic feet per second
 gallons per minute
 miner's inches

3. An ownership remark indicated that as of September 30, 1996, claim 43BV 136309-00 was owned by another owner. Montana Cadastral indicates that the places of use to which claim 43BV 136309-00 is appurtenant are owned by the record owner and the ownership issue remark is outdated.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

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. The existence of an issue remark alone does not overcome the prima facie

statement of claim. The issue remark decreed on claim 43BV 136309-00 is not supported by evidence sufficient to overcome the prima facie status afforded the flow rate of the claim.

3. The priority date issue remark decreed on claim 43BV 136309-00 indicated that the claim was not included in Case No. 342, Sweet Grass County. The record does not indicate why claim 43BV 136309-00 was not included in the Case. The lack of objections or notices of intent to appear indicates no other water users take issue with the priority date. The priority date issue remark is not supported by evidence sufficient to overcome the prima facie proof afforded the priority date for claim 43BV 136309-00. The issue remark has provided notice to claimants and other water users, and the remark can be removed from claim 43BV 136309-00.

4. The interbasin transfer and point of diversion, ditch name, means of diversion, and reservoir record issue remarks decreed on claim 43BV 136309-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The 112.20 gallons per minute flow rate (10.00 miner's inches) should be restored for claim 43BV 136309-00.

2. The issue remarks should be removed from the claim.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

B Bar Ranch, LLC
818 Tom Miner Creek Rd
Emigrant, MT 59027-6013

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

Water Right Number: 43BV 136309-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: B BAR RANCH LLC
818 TOM MINER CREEK RD
EMIGRANT, MT 59027-6013

Priority Date: DECEMBER 5, 1906

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 112.20 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: 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		SWNWNE	34	4N	15E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: ADAM INTAKE CANAL

Reservoir: OFFSTREAM **Reservoir Name:** LAKE ADAM (UPPER GLASSTON RESERVOIR)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSENW	2	3N	15E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

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			N2N2NE	24	3N	14E	SWEET GRASS
2			E2E2NE	24	3N	14E	SWEET GRASS
3			W2W2NW	19	3N	15E	SWEET GRASS