

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

CLAIMANTS: Langford, Greg H.; Langford, Vickie L.

COUNTEROBJECTOR: Cremer Rodeo Land & Livestock Co.

CASE 43BV-0225-R-2024
43BV 17041-00
43BV 136255-00
43BV 136256-00

ORDER ON MOTION FOR SUMMARY JUDGMENT

The Water Court included claims 43BV 17041-00, 43BV 136255-00, and 43BV 136256-00 in the Preliminary Decree for Basin 43BV, the Sweet Grass Creek Basin. Greg and Vickie Langford (collectively, “Langford”) own all three claims. After the Water Court issued the Preliminary Decree, Cremer Rodeo Land & Livestock Co. (“Cremer”) filed counterobjections to the claims.

Following case consolidation and a hearing track order, Langford moved for summary judgment. Langford’s motion seeks to resolve all issues regarding the claims and to dismiss Cremer’s counterobjections. Cremer opposes the motion. The motion now is fully briefed.

UNDISPUTED FACTS

1. Claims 43BV 17041-00, 43BV 136255-00, and 43BV 136256-00 all describe rights to use water from Sweet Grass Creek for irrigation use. The preliminary

decree abstracts for the claims all describe the Harrison Ditch as the point of and means of diversion. The land described in the abstracts covers the same 135.00 acre place of use.

2. Claim 43BV 17041-00 was decreed with a September 1, 1878 priority date and a 3.70 cfs flow rate. The claim did not receive any issue remarks based upon the Department of Natural Resources and Conservation (“DNRC”) reexamination of Basin 43BV.

3. Claim 43BV 136255-00 was decreed with a September 12, 1881 priority date and a 305.18 gpm flow rate. Claim 43BV 136255-00 was not decreed with any issue remarks.

4. Claim 43BV 136256-00 is based on a water right decreed by the District Court in the case *W.A. Harrison v. Paul L. Van Cleve*, Case No. 342 (Mont. Sixth Jud. Dist., Sweet Grass County, July 1, 1981). The District Court decreed 602 miner’s inches to Louise M. Forsythe with a June 29, 1973 priority date. The 602 miner’s inch flow rate in the District Court decree is equivalent to the 15.05 cubic feet per second flow rate in the Preliminary Decree. The preliminary decree abstract also retains the June 29, 1973 priority date.

5. Langford is the successors in interest to Forsythe as to this claim.

6. The DNRC included the following issue remark on claim 43BV 136256-00:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 50.00 GPM PER ACRE.

7. Cremer’s counterobjections state they are based on issue remarks for each claim, but only claim 43BV 136256-00 has an issue remark.

ISSUES

1. Should the Court grant Langford’s motion for summary judgment?
2. Does Langford’s motion for summary judgment resolve all issues with the claims?

DISCUSSION

A. Summary Judgment Standard.

Summary judgment is proper when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” M. R. Civ. P. 56(c)(3). A material fact is one that involves the elements of the cause of action or defense at issue to such an extent that it requires resolution of the issue by a trier of fact. *Williams v. Plum Creek Timber Co.*, 2011 MT 271, ¶ 14, 362 Mont. 368, 264 P.3d 1090. In determining whether a material fact exists, the court must view the evidence in the light most favorable to the non-moving party. *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 38, 345 Mont. 12, 192 P.3d 186. All reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment. *Id.*

Where the moving party demonstrates no genuine issue as to any material fact exists, the burden shifts to the party opposing the motion to establish an issue of material fact. *Lee*, ¶ 26. Ultimately the question of whether the moving party is entitled to summary judgment under the undisputed facts is a question of law. *Thornton v. Flathead County*, 2009 MT 367, ¶ 14, 353 Mont. 252, 255, 220 P.3d 395, 399.

B. Application.

1. *Claims 43BV 17041-00 and 43BV 136255-00.*

Langford’s motion asks the Court to dismiss Cremer’s objections and decree these two claims as they were described in the Preliminary Decree. Langford argues Cremer’s counterobjections do not identify any issues with the claims because the objections are based on non-existent issue remarks. Cremer provides no meaningful response to this argument and never has sought to amend its counterobjections as to these claims. *See* Rule 10, W.R.Adj.R. (authorizing motions to amend objections). Langford provides the necessary basis to dismiss Cremer’s counterobjections for these two claims.

2. *Claim 43BV 136256-00.*

Langford argues Cremer’s objection to claim 43BV 136256-00 should be dismissed because Cremer raised new issues in its responses to discovery, and failed to

support the new issues with any admissible evidence. The first new issue Langford identifies is Cremer's argument in discovery responses that claim 43BV 136256-00 "may not have been perfected, and evidence reviewed to date shows a long and continuous period of nonuse consistent with abandonment of this claim." (Langford motion, at 2 (quoting discovery responses)). Langford argues Cremer produced no evidence to support its non-perfection or abandonment argument.

Cremer did not file any affidavit or other evidence in its response to raise any issue of material fact as to non-perfection or abandonment. Given that these contentions were not even included in Cremer's counterobjection or any motion to amend the counterobjection, Langford proves abandonment and non-perfection are not viable objections.

As to the flow rate issue, which arguably is incorporated into Cremer's counterobjection, Langford argues Cremer failed to provide any evidence to support a different flow rate. Additionally, as Langford correctly explains, the flow rate is based on a district court decree.

In its response, Cremer argues the Harrison Ditch lacks the capacity to support the decreed flow rate. Cremer evidently referenced various documents in the claim file, and a change application file to support its argument. However, as Langford notes, Cremer's discovery responses do not identify any specific document or other evidence that support its ditch capacity argument. In its response, Cremer argues what Langford essentially has done is use summary judgment as a disguised motion to compel additional evidence.

Cremer's argument is not persuasive. If Cremer filed any evidence documenting insufficient ditch capacity, there might be grounds to find an issue of fact. But Cremer failed to do so. It is not the Court's obligation to scour the claim files to see if such evidence exists. Moreover, Cremer failed to file a M.R.Civ.P. Rule 56(f) affidavit demonstrating why it cannot present sufficient disputed facts at this time. Cremer bears the burden to prove its objections, and its failure to raise specific issues of material fact means Langford has proved its motion should be granted.

3. *Remark resolution.*

Langford's summary judgment motion resolves the issue remark for claim 43BV 136256-00. The District Court's decree of the flow rate provides sufficient evidence to remove the remark.

The Court also removes the period of diversion and interbasin transfer remarks as they are not necessary to administer the rights. For now, the Court retains the supplemental rights remarks, although they may be removed at the final decree stage.

ORDER

Therefore it is ORDERED that Langford's motion for summary judgment is GRANTED and Cremer's counterobjections to the claims in this case are DISMISSED. The remarks are removed from the claims as provided in this order and the claims and this case are CLOSED.

Post decree abstracts 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 17041-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: GREG H LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011-7773

VICKIE L LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011-7773

Priority Date: SEPTEMBER 1, 1878

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.70 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:** 135.00

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		SWNESE	30	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HARRISON DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

***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	63.00		NE	5	1S	16E	SWEET GRASS
2	30.00		NW	5	1S	16E	SWEET GRASS
3	30.00		SE	5	1S	16E	SWEET GRASS
4	12.00		SW	5	1S	16E	SWEET GRASS

Total: 135.00

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

Water Right Number: 43BV 136255-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: GREG H LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011-7773

VICKIE L LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011-7773

Priority Date: SEPTEMBER 12, 1881

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 305.18 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: 135.00

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		SWNESE	30	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HARRISON DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

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	63.00		NE	5	1S	16E	SWEET GRASS
2	30.00		NW	5	1S	16E	SWEET GRASS
3	30.00		SE	5	1S	16E	SWEET GRASS
4	12.00		SW	5	1S	16E	SWEET GRASS

Total: 135.00

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.

17041-00

136255-00

136256-00

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

Water Right Number: 43BV 136256-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: GREG H LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011-7773

VICKIE L LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011-7773

Priority Date: JUNE 29, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 15.05 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: 135.00

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		SWNESE	30	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HARRISON DITCH

Period of Use: APRIL 1 TO NOVEMBER 1

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	63.00		NE	5	1S	16E	SWEET GRASS
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Total: 135.00

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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.

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