

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

CLAIMANT: Gary & Coralie Carter Revocable Living
Trust

CASE 43BV-0363-R-2024
43BV 30108459

OBJECTORS: Coralie Carter; Gary Carter

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. The Gary & Coralie Carter Revocable Living Trust is the record owner of irrigation claim 43BV 30108459.

2. Claim 43BV 30108459 was decreed with a flow rate issue remark indicating the flow rate on this historically decreed right exceeds the 17.00 gallon per minute guideline for this type of claim. Another issue remark provides notice of an opportunity to object to the ditch name after the DNRC modified the ditch name during reexamination.

3. On February 21, 2022, Gary and Coralie Carter (the Carters) objected to claim 43BV 30108459, indicating:

Boggs Ditch No. 2 is incorrect. The correct point of diversion is in Section 9 T1N R16E not section 33 T2N R16 E

4. A Motion to Resolve Issue Remarks and Self Objection was filed. (Doc.¹ 3.00). The Motion explains the modification proposed by the Carters standardizes the legal land description for the point of diversion on Boggs Ditch No. 2 with other claims using Boggs Ditch No. 2. *See* Cases 43BV-0205-R-2022 and 43BV-0362-R-2024.

5. No counterobjections or notices of intent to appear were filed in response to the Objection to claim 43BV 30108459.

6. An Order was issued to verify the Objection to claim 43BV 30108459 would be resolved if the following modifications are made:

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	NESEW	NWNWNE	4	33	1N	2N 16E SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Ditch Name:	BOGGS DITCH NO. 2					

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 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.

3. Under Montana Rule of Evidence 202(6), a district court may take judicial notice of [r]ecords of any court of this state. This rule allows for judicial notice of both facts and law, including prior proceedings in other cases and prior proceedings in the same case.

4. The ditch name issue remark decreed on claim 43BV 30108459 has served its purpose. As the objection to claim 43BV 30108459 has been resolved, no further proceedings are required.

RECOMMENDATIONS

1. Claim 43BV 30108459 should be modified as follows:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>		
1	NESESW	NWNWNE	4	33	1N	2N	16E	SWEET GRASS
Period of Diversion:	APRIL 1 TO NOVEMBER 1							
Diversion Means:	HEADGATE							
Ditch Name:	BOGGS DITCH NO. 2							

2. The issue remarks should be removed from claim 43BV 30108459.
3. The Objection to claim 43BV 30108459 should be dismissed as resolved. An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: 43BV 30108459 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CARTER, GARY & CORALIE REVOCABLE LIVING TRUST
CARTER, GARY & CORALIE TRUSTEES
PO BOX 591
BIG TIMBER, MT 59011

Priority Date: JUNE 29, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.99 CFS

Volume: 117.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 26.00

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		NESESW	4	1N	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: BOGGS DITCH NO. 2

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	26.00		NE	17	1N	16E	SWEET GRASS

Total: 26.00

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.

30108459 30108463 30108467

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43BV 121104-00.