

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

CLAIMANT: Sweet Grass Canal & Reservoir Co.

OBJECTORS: Sweet Grass Canal & Reservoir Co.; United
States of America, Bureau of Reclamation

COUNTEROBJECTOR: Cremer Rodeo Land & Livestock Co.

NOTICE OF INTENT TO APPEAR: Crazy Not To, LLC; J Bar
L Ranches LLC

CASE 43BV-0234-R-2024

43BV 125786-00

43BV 125787-00

**ORDER ON MOTION TO AMEND AND RESOLUTION OF ISSUE REMARKS
AND OBJECTIONS**

Claimant and objector Sweet Grass Canal & Reservoir Co. (“SGCRC”) seeks an order from the Court modifying stock water claim 43BV 125786-00 and irrigation claim 43BV 125787-00. Through amendments to the claims, SGCRC also seeks resolution of the issue remarks and objections in this case.

BACKGROUND

SGCRC’s claims 43BV 125786-00 and 43BV 125787-00 are based on a 1906 Notice of Appropriation filed by Alex J. Glass. (Doc. 6.00 at 2). The claims were transferred to SGCRC, which was incorporated in 1909. *Id.* The SGCRC system, the “Big Timber Project,” supplied water to settlers who acquired land under the Carey Land Act. *Id.* Ex. 1. The project provided water from Sweet Grass, Big Timber and Otter Creeks and included two reservoirs, Lake Adam and Lake Woolvard. *Id.* at 3–4. In 1945, the Big Timber Creek system was assumed by Big Timber Creek Canal Company and

SGCRC continued to supply water from Sweet Grass and Otter Creeks. *Id.* at 4. SGCRC still supplies irrigation and stock water to shareholders in Sweet Grass County.

The claims were included in the Preliminary Decree for Basin 43BV. SGCRC filed self-objections to flow rate/volume, place of use/maximum acres, and requested a “service area.” The United States of America, Bureau of Reclamation (“BOR”) filed objections to the claims, Cremer Rodeo Land & Livestock Co. (“Cremer”) filed counter objections, and J Bar L Ranches LLC (“J Bar L”) and Crazy Not To, LLC (“Crazy Not To”) filed Notices of Intent to Appear (“NOIA”). The claims received issue remarks resulting from examination by the Department of Natural Resources and Conservation.

The Court consolidated the case and ordered SGCRC to file settlement documents, status reports, or motions. (Doc. 1.00). On February 6, 2025, SGCRC filed a Verified Motion to Amend Statements of Claim and Brief in Support (“the Motion”). (Doc. 6.00). The Motion requests a number of modifications to the claims, including: (1) amending the place of use for both of the claims to a service area; (2) increasing the maximum acres of irrigation for claim 43BV 125787-00 to 4,400 acres; (3) correcting the reservoir record on the abstract of both claims; (4) removing the information remark on irrigation claim 43BV 125787-00 that limits the flow rate to the historical capacity of the diversion and conveyance system; and (5) reducing the period of use of irrigation claim 43BV 125787-00 to April 15 to November 15. (Doc. 6.00, at 6–7).

No responses were filed to the Motion. The BOR reported that the modifications resolve the BOR’s objections. NOIA parties J Bar L and Crazy Not To filed confirmation that they did not oppose the Motion. Counterobjector Cremer did not respond whether it had opposition to the Motion or otherwise in this case. (Doc. 6.00 at 2). The Court set a deadline for objector BOR and counterobjector Cremer to identify whether they intended to raise any other issues. (Doc. 11.00). No further issues were identified.

The Court requested SGCRC clarify aspects of the Motion. (Doc. 7.00). Specifically, the Court required SGCRC to explain whether the requested place of use included 4,400 acres, or a larger area. The Court requested more information on whether the 4,400 acres were historically irrigated and information regarding the maps provided with the Motion. *Id.* In response, SGCRC filed Supplemental Information in Support of

Verified Motion to Amend Statements of Claim (“Supplemental Information”). (Doc. 10.00). The Supplemental Information includes proposed abstracts, the supplemental affidavit of Roger Indreland, and the Expert Report of Kyle Mace from WGM Group with updated maps.

ISSUES

This Order addresses the following issues:

1. Should the place of use be a service area?
2. Should the maximum acres of claim 43BV 125787-00 be increased to 4,400 acres?
3. Should the capacity of Lake Adam and Lake Woolvard reflect DNRC Survey?
4. Should the information remark limiting the flow rate to the historical capacity of the diversion and conveyance system be removed from claim 43BV 125787-00?
5. Is the period of use of claim 43BV 125787-00 to April 15 to November 15?
6. Are the issue remarks and objections resolved?

DISCUSSION

A. Applicable Standards.

When an element of a claim is amended, there must be sufficient evidence to prove by a preponderance of the evidence that the 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. Like a motion to amend or any other request for a dispositive ruling on objections, SGCRC’s motion “is subject to the standards applied to motions for summary judgment.” *In re Open A Ranch Inc.*, 43B-72; 2018 Mont. Water LEXIS 7, *3–4. As such, even though SGCRC’s motion is unopposed, the Court must determine whether SGCRC meets the requisite burden of proof to modify the claims. *See, e.g., Nelson v. City of Billings*, 2018 MT 36, ¶ 11, 390 Mont. 290, 412 P.3d 1058, (“failure to respond [to summary judgment motion] did ‘not relieve the District Court of the duty to engage in a Rule 56 analysis when presented with a motion for summary judgment’” (citing *Chapman v. Maxwell*, 2014 MT 35, ¶ 11, 374 Mont. 12, 322 P.3d 1029)).

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.

B. Amendments Requested.

1. *Should the place of use be a service area?*

SGCRC requests the Court recognize the place of use for claims 43BV 125786-00 and 43BV 125787-00 as a service area. SGCRC asserts the service area should be as described in the Affidavit of Roger Indreland, current President of SGCRC, and as depicted on maps provided with the Motion and Supplemental Information. (Docs. 6.00 and 10.00). With its Supplemental Information, SGCRC provided the Expert Report of Kyle Mace from WGM Group who reported the proposed service area encompasses approximately 14,469 acres. (Doc. 10.00, Ex. D).

Analysis of a proposed service area is twofold. The threshold is whether there is entitlement to a service area. If the threshold is met, the next determination becomes what land falls within the boundaries of the service area. *See Bailey v. Tintinger*, 45 Mont. 154, 177–178, 122 P. 575, 583 (1912); *Curry v. Pondera Cty. Canal & Reservoir Co.*, 2014 Mont. Water LEXIS 20; *Parrot Ditch Co. v. Ashcraft*, 2023 Mont. Water LEXIS 909.

a. *SGCRC’s entitlement to a Service Area.*

Service area is a concept that has been used to describe the place of use element of a claim when water supply entities do not own the land where water is used. *Curry*, *21–22. The Water Use Act does not specifically mention the concept of a service area to define a place of use. However, because the Montana Constitution protects “existing rights,” the Court may recognize a service area if it is part of “the use of water that would be protected under the law as it existed prior to July 1, 1973.” Mont. Const., art IX, § 3(1); Mont. Code Ann. § 85-2-102(13) (2019).

The Montana Supreme Court has decided several cases affirming Water Court decisions recognizing service area places of use for existing water rights. *See Curry; Parrot Ditch Co.; In re E. Bench Irrigation Dist.*, 2021 MT 319, 406 Mont 502, 501 P.3d 380. The Water Court has also decreed service areas in several decisions. *See Alfalfa Valley Irrigation Dist. v. United States (Bureau of Reclamation)*, 2021 Mont. Water LEXIS 956 (Case 40J-0618-P-2019); *In re United States (Bureau of Reclamation)*, 2020 Mont. Water LEXIS 302 (Case 40J-619); *In re Paradise Valley Irrigation Dist.*, 2020 Mont. Water LEXIS 306 (Case 40J-617); *In re Farmers Canal Co.*, 2023 Mont. Water LEXIS 389 (Case 41H-0250-R-2020).

Court precedent fits the following pattern. An appropriator distributes water to third party water users within a defined area, under a contractual, corporate, transactional, or statutory structure. *Bailey* recognized that a water supply company does not necessarily control the specific place where water is ultimately used. *Bailey*, 45 Mont. at 175–176, 122 P. at 582. Thus, service area has been adopted as a corollary to beneficial use for sale, rental and distribution of water. *Farmers Canal Co.*, at *6.

SGCRC provided sufficient evidence to prove entitlement to a service area. SGCRC is a public service corporation created for the purpose of selling and distributing water for irrigation and stock. (Doc. 6.00 at 8). SGCRC uses claims 43BV 125786-00 and 43BV 124787-00 to supply water from Sweet Grass Creek through a system that includes canals and reservoirs. *Id.* at 3. SGCRC does not own the land where it supplies water, rather SGCRC issues shares to supply water to land owned by shareholders. *Id.* Therefore, SGCRC is entitled to a service area place of use for claims 43BV 125786-00 and 43BV 124787-00.

b. *Boundaries of SGCRC's Service Area.*

Since SGCRC meets the threshold entitlement to a service area, the next determination is what land falls within the service area. Water may be moved within a larger service area when the exterior boundaries of the service area are supported by the historical record. *Curry*, ¶¶ 21-35. To determine the boundaries of a service area for a canal and reservoir company, the Court reviews patterns of historical use, what land was contemplated as irrigated at the outset of the company, and land under “actual or

contemplated use”. *Parrot Ditch Co.*, at *12; *E. Bench*, ¶ 43–44. The service area cannot include land that was never intended to be irrigated as of July 1, 1973. *In re Brady Irrigation, Co.*, 2022 Mont. Water LEXIS 475, *18; Curry, ¶ 54; *Farmers Canal Co.*, at *7. The policy of providing flexibility to water supply companies through the concept of service area is balanced by a risk of water speculation. *See, e.g., Bailey*, 45 Mont. at 177–178, 122 P. at 583 (noting a water right is subject to partial or total abandonment if the capacity of the system is claimed but not actually used); *City of Helena v. Cmty. of Rimini*, 2017 MT 145, ¶ 32, 388 Mont. 1, 397 P.3d 1 (addressing abandonment in the context of a municipal water right).

As included in the Preliminary Decree, SGCRC’s irrigation claim identifies specific acres within a section, township, and range designation. SGCRC requests that the service area boundary encompasses a broader area covering approximately 14,469 acres. (Doc. 10.00, Ex. D). With some exception, the proposed boundary reflects general sections of the current place of use removing specific quarter section and acreage specifications within each legal description.

In support of the proposed service area, SGCRC explains that the canals and reservoirs were completed in 1911 and the Upper Canal was expanded in 1950. According to SGCRC, since the 1950s, the system has “not been meaningfully extended or expanded.” (Doc. 6.00, Ex. 5). The boundaries include what was “historically and actually served” and “the areas served by SGCRC have remained fairly consistent.” (Doc. 6.00 at 10). Moreover, SGCRC attests the service area reflects historical patterns of use and reflects intent as of July 1, 1973. *Id.*

SGCRC provided sufficient evidence to support the boundaries of its proposed service area pursuant to Court precedent. Notice of the amendment to modify the place of use to service area was provided through SGCRC’s objection and the objector, counterobjector and notice of intent to appear parties in this case have not opposed the service area proposed by SGCRC. Therefore, the Court approves the service area requested by SGCRC.

2. *Should the maximum acres of claim 43BV 125787-00 be increased to 4,400 acres?*

SGCRC requests that the maximum acres of irrigation claim 43BV 125787-00 be increased from 4,003.80 to 4,400 acres. (Doc. 6.00 at 7). The Statement of Claim form filed on December 22, 1981, states the maximum acres are 4,249. (*See* claim file for 43BV 125787-00). In DNRC's initial examination and review of the claim, the maximum acres were reduced to 3,800.30. *Id.* During Temporary Preliminary Decree proceedings, SGCRC filed an objection requesting an increase in the maximum acres from 3,800.30 to 4,053.30. *Id.* As a result of those proceedings, a 1987 Master's Report recommended the maximum acres be increased to 4,003.8 acres. Thus, the maximum acres appeared in the Preliminary Decree as 4,003.8. *Id.* SGCRC now requests to increase the acres from 4,003.8 to 4,400.00.

As the appropriator seeking to expand the place of use, SGCRC is required to prove by a preponderance of the evidence that 4,400 maximum acres irrigated within the larger service area reflects historical use and overcomes the prima facie statement of claim. Rule 19, W.R.Adj.R.; *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

The 1950 Water Resource Survey ("WRS") indicates the system was capable of irrigating a larger area and that additional land would be irrigated. "In 1950, 2,695 acres were irrigated under the system with 5,334 acres potentially irrigable under the existing facilities, making a maximum irrigable acreage of 8,029 under the existing works of the Sweet Grass Canal and Reservoir Company. It also contemplated that additional land will be irrigated from this system in the near future." (Doc. 6.00, Ex. 5).

In the Report provided with SGCRC's Supplemental Information, SGCRC's expert concluded "there are approximately 8,000 irrigable acres within the SGCRC conveyance system" and of those, "at least 4,400 acres have been historically irrigated within the proposed service area in a given year." (Doc. 10.00, Ex. D). According to Mace, photographs taken September 10, 1954 and August 11, 1977 show more irrigation than identified in the WRS. Mace also concluded "shares were moveable, that irrigation of certain fields was not consistent from year to year, and some ditches were temporarily

out of use” at the time of the 1950 Water Resource Survey. *Id.* In sum, rotation of irrigated acres within a larger system was the historical practice and the WRS may have underestimated the irrigation under the SGCRC system.

The evidence provided by SGCRC is sufficient to overcome the prima facie status of claim 43BV 125787-00 and prove by a preponderance of the evidence 4,400 acres, moveable within a larger place of use reflects historical use of the claim. In the Supplemental Information provided to the Court, SGCRC recognized that an information remark limiting the total number of acres irrigated each season to 4,400 acres may be appropriate. (Doc. 10.00 at 2). Based on the modification to a service area, an information remark should be included to explicitly limit the acres irrigated within the service area to 4,400 each irrigation season.

3. *Should the capacity of Lake Adam and Lake Woolvard reflect the DNRC Survey?*

SGCRC requests that the reservoir records listed on the abstracts of both claims be modified. The capacity of Lake Adam (“Upper Reservoir”) appeared in the Preliminary Decree as 11,000 Acre-Feet. The capacity of Lake Woolvard (“Lower Reservoir”) appeared in the Preliminary Decree as 14,000 Acre-Feet. The reservoir records were added to the abstracts of the claims by the DNRC in 2017. *See* Claim files for 43BV 125786-00 and 43BV 125787-00. The DNRC added issue remarks to the Preliminary Decree abstracts questioning the reservoir capacities based on data from the United States Army Corp’s National Inventory of Dams, which estimated the capacity of the Upper Reservoir as 1,085 Acre-Feet and the capacity of the Lower Reservoir as 7,317 Acre-Feet. *See* Preliminary Decree.

SGCRC requests that the capacity of Lake Adam (“Upper Reservoir”) be modified to 5,182 Acre-Feet and the capacity of Lake Woolvard (“Lower Reservoir”) be modified to 8,871 Acre-Feet. (Doc. 6.00 at 7). These modifications are a reduction from the capacities of the claims as they appeared in the Preliminary Decree. However, the modifications reflect capacities higher than the National Inventory of Dams data noticed in the issue remarks.

In support of its proposed modification, SGCRC asserts that the 2012 survey constitutes the best evidence of the capacity of the reservoirs. SGCRC explains that it is unclear how National Inventory of Dams calculated the reservoir capacities and unclear how the DNRC calculated the reservoir capacities added in 2017. *Id.* at 15–16. In contrast, the 2012 Survey Summary of Glaston Lakes Dams describes how the capacities requested by SGCRC were calculated, using elevations and slope pin locations. *Id.*, Ex. 16. The survey data combined with SGCRC’s assertion that “SGCRC’s system has not been meaningfully extended or expanded,” provides a sufficient basis to accept the modifications and resolve the issue remarks concerning the reservoir capacities. *Id.*, Ex. 5.

The Court may accept a “reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim.” W.R.Adj.R. 17(c). Issue remarks must be resolved pursuant to §§ 85-2-233(11), 85-2-248, MCA. Here, there is an unresolved issue remark concerning the capacity of the reservoirs. The issue remarks provided notice to other water users of a potential issue related to reservoir capacity.

SGCRC provided sufficient information to resolve the issue remark. The parties in this case did not oppose SGCRC’s modifications to the capacity of the reservoirs. Based on the information provided, the Court approves the proposed modifications to the capacity of the reservoirs and resolves the issue remarks concerning reservoir capacity.

4. *Should the information remark limiting the flow rate to the historical capacity of the diversion and conveyance system be removed from claim 43BV 125787-00?*

Claim 43BV 125787-00 is a decreed right with a 500 CFS flow rate.¹ An information remark below the flow rate element states, “Flow rate for this right is limited to the historic capacity of the diversion structure and conveyance system.” The remark was added by the DNRC sometime in the 1980s. *See* Claim file for 43BV 125787-00.

¹ The flow rate was decreed by W.W. Lessley in Sweet Grass County District Court, Cause No. 3316 on July 27, 1981.

The information remark was recommended to be removed in prior Water Court proceedings. In 1988, a Master's Report was issued removing the information remark based on correspondence from SGCRC. However, the Master's Report was voided based on an unrelated procedural issue.² As a result, claim 43BV 125787-00 appeared in the Preliminary Decree with the informational remark. SGCRC's objection in the Preliminary Decree included flow rate/volume and SGCRC again requests the information remark be removed from the abstract "as it appears to raise the question whether the limitation contained in the remark has been exceeded" and the information is not necessary to define a decreed right. (Doc. 6.00, Ex. 17).

Based on SGCRC's objection to flow rate, other water users had notice of potential modifications to flow rate. The parties in this case did not oppose the removal of the information remark. Additionally, in 1988 a Water Master previously recommended removing the remark. Therefore, the Court approves the removal of the information remark.

5. *Should the period of use of claim 43BV 125787-00 be corrected to April 15 to November 15?*

Irrigation claim 43BV 125787-00 appeared in the Preliminary Decree with a year-round period of use. SGCRC requests to reduce the period of use to reflect the typical irrigation season, April 15 to November 15. SGCRC explained that irrigation does not occur year-round and while a year-round period of diversion accurately reflects storage in reservoirs, the period of use should reflect the irrigation season.

The BOR objected to the period of use of BV 125787-00. SGCRC reports the correction to the period of use resolves BOR's concern with the claim. The objection is resolved and the modification reflects a reduction, which can be accepted by the Court without further presentation of evidence. W.R.Adj.R. 17(c). Therefore, the Court accepts the reduction to the period of use.

² Pursuant to a Water Court Order dated December 2, 1988, the Water Master did not have jurisdiction as the case had not been recommitted to the Water Master.

ORDER

THEREFORE, it is

ORDERED that SGCRC's motion is GRANTED.

ORDERED that the place of use for 43BV 125786-00 and 43BV 125787-00 is a service area, as described on the post-decree abstract filed with this Order.

ORDERED that the maximum acres of claim 43BV 125787-00 is 4,400.00 acres.

ORDERED that an information remark be added to the abstract of claim 43BV 125787-00 limiting the acres irrigated within the service area to 4,400 acres each irrigation season.

ORDERED that the reservoir records are updated to reflect the capacity of Lake Adam as 5,182.00 Acre-Feet and the capacity of Lake Woolvard as 8,871.00 Acre-Feet.

ORDERED that the information remark on claim 43BV 125787-00 limiting flow rate to the capacity of the diversion and conveyance structure is removed.

ORDERED that the period of use of 43BV 125787-00 is April 15 to November 15.

ORDERED that the issue remarks are removed from 43BV 125786-00 and 43BV 125787-00.

This Order includes post-decree abstracts of claims 43BV 125786-00 and 43BV 125787-00 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 125786-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SWEET GRASS CANAL & RESERVOIR CO
% ROGER INDERLAND
170 GLASSTON ROAD
BIG TIMBER, MT 59011

Priority Date: DECEMBER 5, 1906

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 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				
2 - SECONDARY		SWSNW	2	3N	15E	SWEET GRASS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		DAM				
Ditch Name:		SWEET GRASS CANAL & RES CO (UPPER CANAL)				
3 - SECONDARY		NESWSE	15	3N	15E	SWEET GRASS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		DAM				
Ditch Name:		SWEET GRASS CANAL & RES CO (LOWER CANAL)				

Reservoir: OFFSTREAM **Reservoir Name:** LAKE WOLVOORD (LOWER GLASSTON RESERVOIR)

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

Diversion to Reservoir: DIVERSION # 1

Dam Height: 30.00 FEET

Depth: 27.00 FEET

Surface Area: 1,087.00 ACRES

Capacity: 8,871.00 ACRE-FEET

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>
	SWSNW	2	3N	15E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 776.00 ACRES

Capacity: 5,182.00 ACRE-FEET

LAKE ADAM EXTENDS INTO THE SW OF SEC 1, T3N, R15E AND INTO THE SE OF SEC 35, T4N, R15E.

LAKE WOLVOORD EXTENDS INTO THE MAJORITY OF SEC 14, THE S2 OF SEC. 11, THE NE OF SEC 22, AND THE NW OF SEC 23 ALL IN T3N, R15E

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				3	3N	15E	SWEET GRASS
2			S2SE	4	3N	15E	SWEET GRASS
3			SW	4	3N	15E	SWEET GRASS
4			S2	5	3N	15E	SWEET GRASS
5			S2	6	3N	15E	SWEET GRASS
6				12	3N	15E	SWEET GRASS
7				7	3N	15E	SWEET GRASS
8				8	3N	15E	SWEET GRASS
9				9	3N	15E	SWEET GRASS
10			W2	10	3N	15E	SWEET GRASS
11				15	3N	15E	SWEET GRASS
12				16	3N	15E	SWEET GRASS
13				17	3N	15E	SWEET GRASS
14				18	3N	15E	SWEET GRASS
15				13	3N	14E	SWEET GRASS
16			S2NE	14	3N	14E	SWEET GRASS
17			SE	14	3N	14E	SWEET GRASS
18			E2SW	14	3N	14E	SWEET GRASS
19			E2NE	22	3N	14E	SWEET GRASS
20			N2	23	3N	14E	SWEET GRASS
21				24	3N	14E	SWEET GRASS
22				19	3N	15E	SWEET GRASS
23				20	3N	15E	SWEET GRASS

24		21	3N	15E	SWEET GRASS
25		22	3N	15E	SWEET GRASS
26	W2	23	3N	15E	SWEET GRASS
27	N2	28	3N	15E	SWEET GRASS
28		29	3N	15E	SWEET GRASS
29	N2	30	3N	15E	SWEET GRASS
30		25	3N	14E	SWEET GRASS
31		32	3N	15E	SWEET GRASS
32	NE	5	2N	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.

125786-00 125787-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV) AND USES IT IN THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV) AND THE YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK DRAINAGE (BASIN 43B). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

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

Water Right Number: 43BV 125787-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SWEET GRASS CANAL & RESERVOIR CO
% ROGER INDERLAND
170 GLASSTON ROAD
BIG TIMBER, MT 59011

Priority Date: DECEMBER 5, 1906

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 500.00 CFS

FLOW RATE FOR THIS RIGHT IS LIMITED TO THE HISTORIC CAPACITY OF THE
DIVERSION STRUCTURE AND CONVEYANCE SYSTEM.

Volume: 35,722.82 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 4,400.00

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		SWNWNE	34	4N	15E	SWEET GRASS

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: ADAM INTAKE CANAL

2 - SECONDARY		SWSNW	2	3N	15E	SWEET GRASS
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Ditch Name: SWEET GRASS CANAL & RES CO (UPPER CANAL)

3 - SECONDARY		NESWSE	15	3N	15E	SWEET GRASS
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Ditch Name: SWEET GRASS CANAL & RES CO (LOWER CANAL)

Reservoir: OFFSTREAM **Reservoir Name:** LAKE WOLVOORD (LOWER GLASSTON RESERVOIR)

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

Diversion to Reservoir: DIVERSION # 1

Dam Height: 30.00 FEET

Depth: 27.00 FEET

Surface Area: 1,087.00 ACRES

Capacity: 8,871.00 ACRE-FEET

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>
	SESESE	35	4N	15E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 17.00 FEET

Depth: 20.00 FEET

Surface Area: 776.00 ACRES

Capacity: 5,182.00 ACRE-FEET

LAKE ADAM EXTENDS INTO THE SW OF SEC 1, T3N, R15E AND INTO THE SE OF SEC 35, T4N, R15E.

LAKE WOLVOORD EXTENDS INTO THE MAJORITY OF SEC 14, THE S2 OF SEC. 11, THE NE OF SEC 22, AND THE NW OF SEC 23 ALL IN T3N, R15E.

Period of Use: APRIL 15 TO NOVEMBER 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				3	3N	15E	SWEET GRASS
2			S2SE	4	3N	15E	SWEET GRASS
3			SW	4	3N	15E	SWEET GRASS
4			S2	5	3N	15E	SWEET GRASS
5			S2	6	3N	15E	SWEET GRASS
6				12	3N	14E	SWEET GRASS
7				7	3N	15E	SWEET GRASS
8				8	3N	15E	SWEET GRASS
9				9	3N	15E	SWEET GRASS
10			W2	10	3N	15E	SWEET GRASS
11				15	3N	15E	SWEET GRASS
12				16	3N	15E	SWEET GRASS
13				17	3N	15E	SWEET GRASS
14				18	3N	15E	SWEET GRASS
15				13	3N	14E	SWEET GRASS
16			S2NE	14	3N	14E	SWEET GRASS
17			SE	14	3N	14E	SWEET GRASS
18			E2SW	14	3N	14E	SWEET GRASS
19			E2NE	22	3N	14E	SWEET GRASS
20			N2	23	3N	14E	SWEET GRASS
21				24	3N	14E	SWEET GRASS
22				19	3N	15E	SWEET GRASS
23				20	3N	15E	SWEET GRASS

24		21	3N	15E	SWEET GRASS
25		22	3N	15E	SWEET GRASS
26	W2	23	3N	15E	SWEET GRASS
27	N2	28	3N	15E	SWEET GRASS
28		29	3N	15E	SWEET GRASS
29	N2	30	3N	15E	SWEET GRASS
30		25	3N	14E	SWEET GRASS
31		32	3N	15E	SWEET GRASS
32	NE	5	2N	15E	SWEET GRASS

A TOTAL OF 4,400 ACRES MAY BE IRRIGATED DURING ANY GIVEN SEASON WITHIN THE HISTORIC SERVICE AREA.

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.

125786-00 125787-00

AS SPECIFIED IN THE STIPULATION FILED BY THE PARTIES ON FEBRUARY 14, 2005 IN MONTANA WATER COURT CASE 43BV-25:

A. FROM DECEMBER 1 THROUGH MARCH 31, CLAIMANT'S DIVERSION OF WATER FROM THE FLOW OF SWEET GRASS CREEK SHALL ENSURE THAT A MINIMUM FLOW OF NOT LESS THAN TWENTY-FIVE (25) CFS REMAINS IN SWEET GRASS CREEK IMMEDIATELY BELOW THE CLAIMANT'S POINT OF DIVERSION ON SWEET GRASS CREEK. CLAIMANT UNDERSTANDS AND AGREES THAT ITS DIVERSION FROM SWEET GRASS CREEK FROM DECEMBER 1 THROUGH MARCH 31 SHALL NOT EXCEED FIVE HUNDRED (500) CFS.

B. FROM DECEMBER 1 THROUGH MARCH 31, WHEN THE FLOW OF SWEET GRASS CREEK DOES NOT EXCEED TWENTY-FIVE (25) CFS AT THE CLAIMANT'S POINT OF DIVERSION ON SWEET GRASS CREEK, CLAIMANT MAY NOT DIVERT WATER FROM SWEET GRASS CREEK.

THIS APPROPRIATION OF WATER TAKES WATER FROM THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV) AND USES IT IN THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV) AND THE YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK DRAINAGE (BASIN 43B). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.