FILED
10/29/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43BV-0216-R-2023
Brown, Stephen R
39.00

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MONTANA WATER COURT
YELLOWSTONE DIVISION
SWEET GRASS CREEK
BASIN 43BV
PRELIMINARY DECREE

* *

CLAIMANT: Stearns/Binckley Living Trust Dated 10-05-2017

OBJECTOR: Kay R. King

CASE 43BV-0216-R-2023
43BV 33348-00

CLOSING ORDER

The Water Court decreed water right claim 43BV 33348-00 in the Preliminary Decree for the Sweet Grass Creek Basin (Basin 43BV). Stearns/Binckley Living Trust Dated 10-05-2017 owns the claim. The Preliminary Decree describes the claim as a right to use water from Sweet Grass Creek and from Basin Creek for irrigation use.

Kay R. King objected to the claim asserting that Basin Creek was not historically used to irrigate any part of the claimed place of use and should be redacted from the claim abstract. In addition, the decree abstract for the claim included the following issue remarks:

> DITCH NAME 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.
>
> THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILE OF APPROPRIATION ON SWEET GRASS CREEK WITH A PRIORITY DATE PREDATING CASE NO. 342, SWEET GRASS COUNTY.

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

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

The Water Court consolidated the claim into this case to address the issue remarks and objections. On May 8, 2026, King withdrew her objection

This case generally has run in parallel to several other cases in this area of the Sweet Grass Creek basin. On July 30, 2026, the parties to these cases filed a Resolution of Objections ("Resolution") that addresses all the pending objections and issue remarks for the suite of claims consolidated in the cases, including this case. As to claim 43BV 33348-00, the Resolution clarifies the claim historically has had two points of diversion, which the Water Court previously recognized by adopting a Master's Report in Water Court case no. 43BV-16.

DISCUSSION

A sufficient basis exists to resolve all the issue remarks. There are no objections to the ditch name remark. The two priority date remarks relate to the District Court decree in case *W.A. Harrison et al. v. Paul L. Van Cleve et al*. (Case 342, Mont. Sixth Jud. Dist., Sweet Grass County). This remark appears to be in error because the court issued the decree in *Harrison v. Van Cleve* on April 6, 1906, which predates the May 29, 1909 priority date for claim 43BV 33348-00. Even if the claim did predate the *Harrison v. Van Cleve* decree, the remarks do not call into question the validity of the priority date because district court decrees often did not include all water rights on a source, nor was there a clear mechanism for doing so at that time. The Supreme Court has recognized the validity of non-decreed rights on a decreed source on several occasions. *See, e.g., State ex rel. McKnight v. Dist. Court*, 111 Mont. 520, 111 P.2d 292 (1941); *Tucker v. Jones*, 8 Mont. 225, 232, 19 P. 571, 574 (1888). The remarks put parties with decreed

rights from old district court cases on notice of a potential priority date issue. The remark on the claims in this case provided that notice and did not generate any objections. The priority date remarks on claim 43BV 33348-00 served their notice purpose and should be removed.

As the Resolution indicates, the Water Court previously addressed claim 43BV 33348-00 in case 43BV-16 after the Basin 43BV Temporary Preliminary Decree. In a Master's Report dated October 18, 2005, the Court made findings concerning relationship between the ditches from Sweet Grass Creek and Basin Creek. The Court adopted the Master's Report in an order dated November 16, 2005. Nothing was filed following the Preliminary Decree that causes the Court to reopen its prior decision, so the remark is resolved.

ORDER

Therefore, it is ORDERED that the King objection is DISMISSED and all issue remarks are removed as resolved and this case is CLOSED.

A post-decree version of claim 43BV 33348-00 is included with this Order to confirm the modifications have been made in the State's centralized water rights record system.

Service via Electronic Mail

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Electronically Signed By:
Hon. Judge Stephen R Brown
Thu, Oct 29 2026 09:59:15 AM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

SWEET GRASS CREEK

BASIN 43BV

Water Right Number: **43BV 33348-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: STEARNS/BINCKLEY LIVING TRUST DATED 10-05-2017
STEARNS, JOSEPH N & BINCKLEY, KATHRYN TRUSTEES
710 MELVILLE RD
BIG TIMBER, MT 59011

***Priority Date:** MAY 29, 1909

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 44.00

Source Name: SWEET GRASS CREEK

Source Type: SURFACE WATER

Source Name: BASIN CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNESE	34	5N	13E	SWEET GRASS

Source Name: BASIN CREEK

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: ANDERSON DITCH

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
2		SENESE	34	5N	13E	SWEET GRASS

Source Name: SWEET GRASS CREEK

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: HART-PARKER DITCH

Period of Use: MAY 1 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	34.00		NENE	2	4N	13E	SWEET GRASS
2	5.00		NWNW	2	4N	13E	SWEET GRASS

3	5.00		SENW	2	4N	13E	SWEET GRASS
Total:	44.00						