

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

CLAIMANT: JC Cattle Inc.

OBJECTOR: Cremer Rodeo Land & Livestock Co.

COUNTEROBJECTOR: Tatanka Land & Livestock Co.,
LLC

CASE 43BV-0356-R-2024

43BV 114045-00

43BV 211205-00

CLOSING ORDER

BACKGROUND

The Water Court decreed claims 43BV 114045-00 and 43BV 211205-00 in the Preliminary Decree for the Sweet Grass Creek Basin. The Preliminary Decree describes claim 43BV 114045-00 as a decreed right to use 2.50 cfs from Cayuse Creek with a June 1, 1889 priority date. JC Cattle Inc. ("JC Cattle") owns the claim. The decree abstract includes the following issue remark:

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.

Cremer Rodeo Land & Livestock Co. ("Cremer") objected to the claim, seeking to clarify the point of diversion. Tatanka Land & Livestock Co. ("Tatanka") filed a counterobjection based on the issue remark.

The Preliminary Decree describes claim 43BV 211205-00 as a decreed right to use 2.50 cfs from Cayuse Creek with a June 1, 1889 priority date. The decree abstract includes a remark indicating the claim was filed late, so its enforceable priority date is June 30, 1973. JC Cattle also owns this claim. The decree abstract includes the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43BV
TEMPORARY PRELIMINARY DECREE ISSUED 12/19/1984.

CLAIM FILED LATE 01/31/1985 . IN ADDITION TO BEING
SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED
WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED
ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO
CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE
SECTION 85-2-221 MCA.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE
LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM
AVAILABLE DATA.

The Court consolidated this case on September 18, 2024, to address the issue remarks on the two claims. After a settlement track that the Court extended at the request of the parties, the case was put on a hearing track. The parties did not file any motions or other resolution documents. The Court then issued an order asking the parties to show cause why the claims could not be resolved based on information in the claim file. Tatanka responded indicating no objection to the order. Neither JC nor Cremer responded by the deadline set in the show cause order.

DISCUSSION

Sufficient information exists in the claim files to resolve the objections, counterobjections, and issue remarks. Information in the claim files in this case indicate the following:

- The three points of diversion for claim 43BV 114045-00 are the same as what the Court adjudicated for claim 43BV 114058-00 in case 43BV-0046-R-2022.

- Other than updating ditch names, the three points of diversion for claim 43BV 211205-00 are the same as what the Court adjudicated for this claim in case 43BV-A1 (Master's Report dated November 27, 2007, adopted December 28, 2007) following issuance of the Basin 43BV Temporary Preliminary Decree.
- With respect to the first two issue remarks on claim 43BV 211205-00, the claim missed the Temporary Preliminary Decree because it was filed late. JC Cattle did not provide any objection to the late claim status subordination, so the subordination information remarks will remain on the priority date element.

The Water Use Act authorizes the Court to resolve issue remarks based on information in the claim file and the Court does so here based on this information. Section 85-2-248(3), MCA.

As to the objections, the parties were given the opportunity to address the merits of the objections to the extent they raise issues not addressed by resolution of the issue remarks. The Court takes the parties' lack of substantive filings as consent to dismiss the objections based on resolution of the issue remarks.

Finally, the Preliminary Decree abstracts contain various historical information remarks that no longer are necessary to administer the rights, so they will be removed.

ORDER

Therefore, it is ORDERED:

1. All issue remarks are RESOLVED, and the remarks are removed with the claims modified as provided in this Order;
2. All objections are DISMISSED;
3. The claims and this case are CLOSED.

Post decree abstracts of the claims are 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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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 114045-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JC CATTLE INC
90 FRANKLIN LANE
MELVILLE, MT 59055-8923

***Priority Date:** FEBRUARY 1, 1883

Type of Historical Right: DECREED

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: 135.00

Source Name: CAYUSE 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		NWSENE	3	4N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: CAYUSE HILLS DITCH

2		NWSWSE	19	5N	14E	SWEET GRASS
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: SCARLETT-VAN CLEVE DITCH (NELSON-GROSFIELD)

3		NWNWSW	29	5N	14E	SWEET GRASS
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: VOSE-GREEN 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	20.00		SW	2	4N	14E	SWEET GRASS
2	110.00		SE	2	4N	14E	SWEET GRASS

3	5.00	NENE	11	4N	14E	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.

114045-00 114058-00 211205-00

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

Water Right Number: 43BV 211205-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: JC CATTLE INC
90 FRANKLIN LANE
MELVILLE, MT 59055-8923

Priority Date: JUNE 1, 1889

Enforceable Priority Date: JUNE 30, 1973

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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: 135.00

Source Name: CAYUSE 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		NWSENE	3	4N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: CAYUSE HILLS DITCH

2		NWSWSE	30	5N	14E	SWEET GRASS
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: PORCUPINE BUTTE DITCH

3		NWNWSW	29	5N	14E	SWEET GRASS
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: VOSE-GREEN 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	20.00		SW	2	4N	14E	SWEET GRASS

2	110.00	SE	2	4N	14E	SWEET GRASS
3	5.00	NENE	11	4N	14E	SWEET GRASS
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114045-00 114058-00 211205-00