

Montana Water Court  
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39E-0062-R-2021

December 20, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BOX ELDER CREEK BASIN (39E)  
PRELIMINARY DECREE

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CLAIMANT: Lo Ranch Limited Partnership

OBJECTOR: United States of America (Bureau of Land  
Management)

**CASE 39E-0062-R-2021**  
39E 123236-00

**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, conclusion 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 above captioned claim appeared in the Preliminary Decree for Box Elder Creek (Basin 39E). The United States of America (Bureau of Land Management) (“BLM”) filed an Objection to the claim.

2. On May 14, 2021 the above captioned claim was consolidated into Case 39E-0062-R-2021.

3. On August 19, 2021, a Stipulation was filed with the Court. The Stipulation indicated that the claimants and the BLM had agreed to the modification of claim 39E 123236-00 and that the modification would resolve the Objection.

4. Pursuant to the Stipulation, the parties propose that ownership of the claims be modified as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1	1.50	2	<b><u>W2SWNW</u></b>	NWSWNW	18	6S	<b><u>59E</u></b> 58E	CARTER
2	2.50	2		NESENE	13	6S	58E	CARTER
3	10.00	2		S2NENE	13	6S	58E	CARTER
Total:	<u>14.00</u>							

5. Claim 39E 123236-00 is a water spreading claim that was decreed with a volume issue remark. The nature of water spreading and the prima facie status of the claim overcomes the issue remark.

6. The remaining remarks are notice type remarks. The issue remarks do not raise unresolved issues nor require additional information to be resolved.

**PRINCIPLES OF LAW**

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

### **CONCLUSION OF LAW**

1. The Stipulation conforms to applicable law. The claim should be modified as discussed above.

### **RECOMMENDATION**

1. Upon review of the record in this case, the claim should be modified as discussed above. BLM’s objection should be resolved.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

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Nathan Block  
Water Master

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**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
BOXELDER CREEK  
BASIN 39E**

**Water Right Number:** 39E 123236-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LO RANCH LIMITED PARTNERSHIP  
266 GOVERNMENT CANYON RD  
HULETT, WY 82720 9621

**Priority Date:** DECEMBER 31, 1927

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE  
CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 31.50 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**\*Maximum Acres:** 14.00

**Source Name:** EAST L O 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		SENE	13	6S	58E	CARTER

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

**Diversion Means:** DIKE

**Reservoir:** ONSTREAM **Reservoir Name:** NUMBER 8

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE	13	6S	58E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 7.00 FEET

**Depth:** 4.00 FEET

**Surface Area:** 2.70 ACRES

**Capacity:** 4.32 ACRE-FEET

**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	1.50	2	W2SWNW	18	6S	59E	CARTER
2	2.50	2	NESENE	13	6S	58E	CARTER

3	<u>10.00</u>	2	S2NENE	13	6S	58E	CARTER
<b>Total:</b>	14.00						