

39E-0103-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

\* \* \* \* \*

CLAIMANTS: Britt C. Williams; Kaila C. Williams

**CASE 39E-0103-R-2021**

39E 173798-00  
39E 173799-00  
39E 173800-00  
39E 173804-00  
39E 173806-00

**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 claims appeared in the Preliminary Decree for Box Elder Creek (Basin 39E) with issue remarks.
2. On September 20, 2021, the above-captioned claims were consolidated into Water Court Case 39E-0103-R-2021 and this Court issued an Order Setting Filing Deadline, detailing a potential modification to claim 39E 173799-00 that would resolve the issue remark on the claim. The order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the modification discussed above should be implemented”. Nothing was filed in response to the Order.
3. Pursuant to the Order, the following modification should be made to claim 39E 173799-00:

Place of Use:						
ID	<u>GOV LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1		NESE	30	6S	56E	Carter
<u>2</u>		<u>SWNWSW</u>	<u>29</u>	<u>6S</u>	<u>56E</u>	<u>Carter</u>

### 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.
2. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.
3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, \*6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v.*

*Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, \*6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22. W.R.Adj.R.

## **CONCLUSION OF LAW**

1. The claimants have failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Consolidating Case and Order Setting Filing Deadline*, September 20, 2021. Accordingly, the record supports the adoption of the modifications discussed above as a sanction for failing to comply with this Court's previous Order and to resolve the issue remark appearing on claim 39E 173799-00. The remaining remarks were notice type remarks that have fulfilled their purpose and should be removed.

## **RECOMMENDATION**

1. Upon review the record in this case, the claims should be modified as discussed above. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

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Nathan Block  
Water Master

### **Service via USPS Mail:**

Britt C. Williams  
Kaila C. Williams  
PO Box 294  
Hammond, MT 59332

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

**Water Right Number:** **39E 173798-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
BRITT C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

KAILA C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

**Priority Date:** NOVEMBER 1, 1960

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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:** UNNAMED TRIBUTARY OF BOXELDER CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NENESE	30	6S	56E	CARTER

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
	NENESE	30	6S	56E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

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

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			NENESE	30	6S	56E	CARTER

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

**Water Right Number:** **39E 173799-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
BRITT C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

KAILA C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

**Priority Date:** NOVEMBER 1, 1941

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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:** UNNAMED TRIBUTARY OF BOXELDER CREEK

**Source Type:** SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	29	6S	56E	CARTER

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWSW	29	6S	56E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

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

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESE	30	6S	56E	CARTER
2			SWNWSW	29	6S	56E	CARTER

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

**Water Right Number:** **39E 173800-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
BRITT C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

KAILA C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

**Priority Date:** DECEMBER 2, 1964

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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:** UNNAMED TRIBUTARY OF BOXELDER CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		SWNESW	30	6S	56E	CARTER

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
	SWNESW	30	6S	56E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

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

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			SWNESW	30	6S	56E	CARTER

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

**Water Right Number:** **39E 173804-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
BRITT C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

KAILA C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

**Priority Date:** NOVEMBER 15, 1960

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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:** UNNAMED TRIBUTARY OF BOXELDER CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NWSESW	29	6S	56E	CARTER

**Period of Diversion:** JULY 31 TO OCTOBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
	NWSESW	29	6S	56E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JULY 31 TO OCTOBER 31

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			NWSESW	29	6S	56E	CARTER

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

**Water Right Number:** **39E 173806-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
BRITT C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

KAILA C WILLIAMS  
PO BOX 294  
HAMMOND, MT 59332

**Priority Date:** OCTOBER 1, 1957

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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:** UNNAMED TRIBUTARY OF BOXELDER CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	SESWSE		30	6S	56E	CARTER

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

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
SWSWSE		30	6S	56E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

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

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		SWSWSE		30	6S	56E	CARTER