

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

CLAIMANT: Jerry D. Cline; Leonard Cline; Ronald Cline;
Kenneth Ehly; George H. Kerr; Linda Kerr

CASE 39E-0034-R-2021
39E 41404-00

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

NOTICE OF FILING OF MASTER'S REPORT

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires that written objections to a Master's Report must be filed within 10 days of the date of the Master's Report. If the 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. This means your objection must be received no later than 13 days from the above stamped date.

If you file an objection, you must mail 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) with an issue remarks. The United States filed an objection to the claim.
2. On March 17, 2021, the above-captioned claim was consolidated into Water Court Case 39E-0034-R-2021.
3. On June 10, 2021, this Court issued an Order Setting Filing Deadline, detailing potential modifications to the above-captioned claim that would resolve the objection. The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the modifications discussed above should be made to the claim”.
4. Pursuant to the Order and the Objection, the following modification should be made to claim 39E 41404-00:

Place of Use:

| <u>ID</u> | <u>GOV LOT</u> | <u>QTR SEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|-----------|----------------|----------------|------------|------------|------------|---------------|
| 4 | | <u>SESE</u> | 28 | 2S | 60E | Carter |
| 5 | | <u>NESE</u> | 28 | 2S | 60E | Carter |

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. 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. 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.

4. 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.

CONCLUSIONS 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 Status Conference*, March 17, 2021; *Order Setting Filing Deadline*, June 10, 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 objection to the claim. The remaining issue remark was a notice type remark that has fulfilled its’ purpose and should be removed.

RECOMMENDATIONS

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

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

Nathan Block
Water Master

Service via USPS Mail:

Jerry D. Cline
PO Box 466
Ekalaka, MT 59324

Leonard Cline
PO Box 3
Ekalaka, MT 59324

Ronald Cline
PO Box 291
Ekalaka, MT 59324

Kenneth Ehly
PO Box 466
Ekalaka, MT 59324

George H. Kerr
8 Woolston Road
Ekalaka, MT 59324-8530

Linda Kerr
227 Munro Ave.
Ekalaka, MT 59324

Service via Electronic Mail:

Eve McDonald, Attorney
US Dept of Justice-ENRD
999 18th Street, South Terrace Suite 370
Denver, CO 80202
(303) 844-1381
evelyn.mcdonald@usdoj.gov
Carla.Valentino@usdoj.gov
Amber.Engelkes@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV
efile_nrs.enrd@usdoj.gov
william.bridges@usdoj.gov

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

Water Right Number: 39E 41404-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JERRY D CLINE
PO BOX 466
EKALAKA, MT 59324

LEONARD CLINE
PO BOX 3
EKALAKA, MT 59324

RONALD CLINE
PO BOX 291
EKALAKA, MT 59324

KENNETH EHLI
5245 E ENROSE ST
MESA, AZ 85205 5487

GEORGE H KERR
20 NEUHARDT DR
MILES CITY, MT 59301 4144

LINDA KERR
20 NEUHARDT DR
MILES CITY, MT 59301 4144

Priority Date: DECEMBER 31, 1961

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: 397.50 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 214.00

Source Name: BIG RAMME 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 | | SWNESW | 28 | 1S | 59E | CARTER |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIKE

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 | 28.00 | | SWSE | 27 | 1S | 59E | CARTER |
| 2 | 78.00 | | S2SW | 27 | 1S | 59E | CARTER |
| 3 | 11.00 | | N2SW | 27 | 1S | 59E | CARTER |
| 4 | 23.00 | | SESE | 28 | 1S | 59E | CARTER |
| 5 | 23.00 | | NESE | 28 | 1S | 59E | CARTER |
| 6 | 21.00 | | E2NE | 34 | 1S | 59E | CARTER |
| 7 | 30.00 | | N2NW | 34 | 1S | 59E | CARTER |
| Total: | <hr/> 214.00 | | | | | | |