

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

ELECTRONICALLY FILED

39E-0014-R-2021

November 14, 2022

Montana Water Court

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

CLAIMANTS: Barbara H. Peabody; Shane Peabody; Six-Ess
Ranch LLC

CASE 39E-0014-R-2021

39E 35449-00
39E 174707-00
39E 174708-00
39E 174709-00
39E 174710-00
39E 30145158
39E 30145161
39E 30145166
39E 30145168
39E 30145170

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, conclusions 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

The above-captioned claims appeared in the Preliminary Decree for the Box Elder Creek (Basin 39E) dated February 5, 2020. The claims received issue remarks resulting from the Department of Natural Resources and Conservation's (DNRC) review in preparation of the Preliminary Decree. These issue remarks identify potential legal or factual issues with the water right. The Water Court consolidated the claims into Water Court Case 39E-0014-R-2021 to address the objections and issue remarks.

FINDINGS OF FACT

1. The Claimants filed several responses with the Court providing information and evidence to address the remarks. Shane Peabody filed an affidavit on December 24, 2021, providing additional evidence. Mr. Peabody signed the 2019 statements of claim for claims 39E 30145161, 39E 30145166, 39E 30145168, and 39E 30145170, and has lived on the property on which these claims are used for over sixty years.

Claim 39E 35449-00:

2. Claim 39E 35449-00 is claim to stock drinking from a reservoir in the NESWNE of Section 30, T1S, R58E. Its means of diversion is listed as "dam." The claim received the following issue remarks raising legal or factual issues with the claim:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE
DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.
30145161 35449-00

3. The Claimants' October 4, 2021 Response clarifies that claims 39E 30145161 and 39E 35449-00 are not duplicate filings because 39E 35449-00, which is diverted by a dam, represents the reservoir in the NESWNE of Section 30, while 39E 30145161 claims livestock drinking directly from the source. The Claimants submitted a Verified Motion to Amend signed by Shane and Barbara Peabody, correcting the points of diversion and places of use of claim 39E 30145161 to reflect the portions of the source above and below the reservoir where livestock drink.

4. The Claimants request the following modification to reflect that water for this onstream reservoir is impounded whenever water is flowing in the source:

Period of Diversion: ~~April 1-December 31~~ January 1-December 31

5. The claim also received following issue remark that serves only to provide notice of DNRC modifications to the claim (Notice Only Remark)

MEANS OF DIVERSION 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.

Claim 39E 174707-00

6. Claim 39E 174707-00 is a claim for stock drinking from Fresh Water Draw. It appeared in the Preliminary Decree with the following Notice Only Remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD AND MEANS OF DIVERSION WERE 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.

Claim 39E 174708-00:

7. Claim 39E 174708-00 is a claim for stock drinking from two onstream reservoirs on an unnamed tributary of Buffalo Creek in the SWNESW of Section 28, T1S and the SE of Section 28, respectively. It appeared in the Preliminary Decree with the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.
174708-00 30145166

8. The Claimants' October 4, 2021 Response clarifies that claims 39E 174708-00 and 39E 30145166 are not duplicate filings because 39E 174708-00, which is diverted with a dam, represents the reservoirs on the source, while 39E 30145166 claimed livestock drinking directly from the source above and below the reservoirs. These claims have different places of use and are not duplicate claims. The Claimants submitted a Verified Motion to Amend claim 39E 30145166 to more accurately reflect where livestock drink along the source.

9. Claim 39E 174708-00 also received the following Notice Only Remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD AND MEANS OF DIVERSION WERE 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.

Claim 39E 174709-00:

10. Claim 39E 174709-00 appeared in the Preliminary Decree with the following issue remarks raising legal or factual issues with the claim:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 174709-00 30145168

ON NOVEMBER 29, 1989 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE SOURCE NAME IS ERRONEOUS. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 8.28 TIMES THE CAPACITY OF THE RESERVOIR.

11. A January 4, 2022 Verified Motion to Amend signed by the Peabodys, requests the following modifications to this claim to address the issue remarks:

Flow Rate: ~~A specific flow rate has not been decreed for this use from this onstream reservoir.~~

20 CFS

Primarily a direct flow rate system; flow rate retained.

Volume: ~~1,183.00 AC-FT~~

The total volume of this right shall not exceed the amount put to historical and beneficial use.

Source Name: ~~Unnamed Tributary of Fresh Water Draw~~

Unnamed Tributary of Buffalo Creek

Period of Diversion: ~~March 1 to December 1~~ **January 1 to December 31**

Reservoir Record POD#2: ~~Offstream~~ **Onstream**

12. The source name modification is supported by a November 24, 1989 memorandum from Walter Rolf, Field Manager at the Miles City Field Office of the DNRC. The modifications to the flow rate, volume, and points of diversion reflect that this is primarily a direct flow irrigation right. The claim relies primarily on water that flows through these two onstream reservoirs, rather than water stored in the reservoirs. This explanation is consistent with the April 23, 1982 Statement of Claim for this right, which does not mention the reservoirs, but instead indicates flood and dike irrigation from an unnamed tributary of Buffalo Creek with a maximum flow rate of 20 CFS. The reservoir record modification is supported by aerial photos, and the Period of diversion modification reflects that water for these onstream reservoirs is impounded whenever water is flowing in the source.

13. The duplicate claim issue remark appears to have been placed on this claim in error because the listed claims are for different purposes. 39E 174709-00 is for irrigation while claim 39E 30145168 is for stock. It appears these claims are multiple uses of the same water right filed on separate claim forms, as was common practice.

14. The claim also received the following Notice Only Remarks.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

Claim 39E 174710-00:

15. Claim 39E 174710-00 is a water spreading irrigation claim to water from Fresh Water Draw. It appeared in the Preliminary Decree with the following issue remark raising legal or factual issues:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 7.13 TIMES THE CAPACITY OF THE RESERVOIR.

16. The volume issue remark was placed on this claim because the size of the reservoir appears inadequate to store and release the claimed volume. However, this is a

water spreading claim, not a typical storage claim. Water spreading claims divert water based on availability instead of demand. Available water is diverted regardless of the amount of water stored in the reservoir, and therefore, the reservoir size does not indicate the volume of the claim is excessive.

17. The Claimants request the following modifications to the claim:

Period of Diversion: ~~March 1 to December 1~~ January 1 to December 31

Add Informational Remark:

The source is also known as Unnamed Tributary, Buffalo Creek.

18. The period of diversion modification reflects that this water spreading claim with an onstream reservoir diverts water whenever water is flowing in the source.

19. The claim also received the following Notice Only Remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD 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.

Claim 39E 30145158:

20. Claim 30145158 is a claim for livestock drinking from an unnamed tributary of Buffalo Creek. It appeared in the Preliminary Decree with the following issue remarks:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$780

21. On April 11, 2022, the Claimants informed the Court that they agreed with the following modification proposed by the issue remark:

Type of Historical Right: ~~Filed~~ Use

22. On February 15, 2022, the Claimants provided evidence to the Court that they had paid off the \$780.00 filing fee owed for the claims in this case.

Claim 30145158 also received the following Notice Only remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

Claim 39E 30145161:

23. Claim 39E 30145161 is a claim for livestock drinking directly from an unnamed tributary of Buffalo Creek. It appeared in the Preliminary Decree with the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 30145161 35449-00

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A DAM.

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$780

24. A January 4, 2022 Verified Motion to Amend signed by the Peabodys, requests the following modifications to this claim to address the issue remarks:

Point of Diversion and Place of Use

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twtp</u>	<u>Rge</u>	<u>County</u>
<u>1</u>	3	<u>SW</u>	<u>19</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>2</u>		<u>NWSESW</u>	<u>19</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>3</u>		<u>SWSESW</u>	<u>19</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>4</u>		<u>NWNENW</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>5</u>		<u>SWNENW</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>6</u>		<u>SENENW</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>7</u>		<u>NESENW</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>8</u>		<u>NWSWNE</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
9		NESWNE	30	1S	58E	Carter
<u>10</u>		<u>NWSENE</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>11</u>		<u>SWSENE</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>12</u>		<u>SESENE</u>	<u>30</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>13</u>		<u>SWSWNW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>14</u>		<u>SESWNW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>15</u>		<u>NWNWSW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>16</u>		<u>NENWSW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>17</u>		<u>NWNESW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>

25. These modifications, which are supported by a December 24, 2021 Affidavit of Shane Peabody, aerial photos, and Montana Cadastral records, reflect that that this claim for livestock drinking direct from the source was intended to cover

livestock drinking above and below the reservoir covered by claim 39E 35449-00. Its means of diversion is therefore correct, and it is not a duplicate of 39E 35449-00, which represents the reservoir. The filing fee has been paid.

26. Claim 39E 30141561 also received the following Notice Only remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

Claim 39E 30145166:

27. Claim 39E 30145166 is a claim to livestock drinking directly from an unnamed tributary of Buffalo Creek. It appeared in the Preliminary Decree with the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

174708-00 30145166

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$780

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

28. A January 4, 2022 Verified Motion to Amend signed by the Peabodys, and the Claimants' October 4, 2021 Response request the following modifications to this claim to address the issue remarks:

Point of Diversion and 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>
<u>1</u>			<u>SESESE</u>	<u>19</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>2</u>			<u>SWSWSW</u>	<u>20</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>3</u>			<u>NWNWNW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>4</u>			<u>NENWNW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>5</u>			<u>NWSENW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>6</u>			<u>SESENW</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>7</u>			<u>SWSWNE</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>8</u>			<u>SESWNE</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>9</u>			<u>SWSENE</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>10</u>			<u>NENESE</u>	<u>29</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>11</u>			<u>NWNWSW</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>12</u>			<u>SENWSW</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>13</u>			<u>SWNESW</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>14</u>			<u>SENESE</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>15</u>			<u>SWNWSE</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>16</u>			<u>SENWSE</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>

<u>17</u>	<u>SWNESE</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>18</u>	<u>NWSESE</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>19</u>	<u>SESESE</u>	<u>28</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>20</u>	<u>NENENE</u>	<u>33</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>21</u>	<u>SWNWNW</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>22</u>	<u>SENWNW</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>23</u>	<u>NESWNW</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>24</u>	<u>NWSENE</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>25</u>	<u>NESENE</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>26</u>	<u>NWSWNE</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>27</u>	<u>NESWNE</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>28</u>	<u>SWSENE</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>
<u>29</u>	<u>SESENE</u>	<u>34</u>	<u>1S</u>	<u>58E</u>	<u>Carter</u>

Type of Historical Right: Filed Use

29. The point of diversion and place of use modifications, which are supported by Mr. Peabody's Affidavit, aerial photographs, and Montana Cadastral records, reflect that this claim for livestock drinking direct from the source was intended to cover livestock drinking above and below the reservoirs covered by claim 39E 174708-00. It is therefore not a duplicate of 39E 174708-00, which represents the reservoir.

30. Claim 39E 3014166 also received the following Notice Only issue remark
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED
02/01/1985.

Claim 39E 30145168

31. Claim 39E 30145168 is a claim to livestock drinking from reservoir on an unnamed tributary of Buffalo Creek, which appeared in the Preliminary Decree with the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE
DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.
174709-00 30145168

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$780

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED
FROM INFORMATION IN THE CLAIM FILE.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION
SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

32. The Claimants request the following modification to resolve the issue remarks and reflect that water for this onstream reservoir is diverted by its dam whenever water is flowing in the source:

Type of Historical Right: ~~Filed~~ Use

Period of Diversion: ~~March 1 to December 4~~ January 1 to December 31

33. The duplicate claim remark was placed on the claim in error and should be removed because this claim is a multiple use of the water right covered by this claim and claim 39E 174709-00. The DNRC did not provide support for its point of diversion issue remark, and the Claimants state that they do not request a change to the points of diversion. The filing fee has been paid.

34. Claim 39E 30145168 also received the following Notice Only issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED
02/01/1985.

Claim 39E 30145170:

35. Claim 39E 30145170 is a claim to stock drinking from a reservoir on Fresh Water Draw, which appeared in the Preliminary Decree with the following issue remarks:

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$780

THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM
INFORMATION IN THE CLAIM FILE.

36. The filing fee has been paid. The DNRC did not provide support for the place of use issue remark, and the Claimants state that they do not request a change to the place of use.

37. Claim 39E 30145170 also received the following Notice Only issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED
02/01/1985

APPLICABLE LAW

1. 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.

2. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

3. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015

4. In addition to the specific water right elements that must be included in a final decree, the Water Court also may include "any other information necessary to fully define the nature and extent of the right." § 85-2-234(6)(i), MCA. This information typically takes the form of an "information remark." The purpose of an information remark is to "provide facts regarding prior use of a right that are critical to its administration in accord with historical use." *In re Clark Fork Coal.*, Case 76G-A8, 2014 Mont. Water LEXIS 15, *10 (Oct. 29, 2014).

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The above-described modifications to periods of diversion to reflect that the onstream reservoirs divert water year-round are unlikely to adversely affect other water users and do not require additional notice under Section 85-2-248(2), MCA. The claims should be modified as described in Findings of Fact 4, 11, 17, 21, 24, 28, and 32, above.

2. The duplicate claim issue remarks on claims 39E 174709-00 and 39E 30145168, means of diversion remark on 39E 30145161, point of diversion issue remark on claim 39E 30145168, place of use issue remark on claim 39E 30145170, and volume issue remark on claim 39E 174710-00 fail to overcome the prima facie status of the claims. These remarks should be removed from the claims.

3. The modifications described above resolve the duplicate claim issue remarks on claims 39E 35449-00, 39E 174708-00, 39E 30145161, 39E 30145166, the

source name and volume issue remarks on claim 39E 174709-00, and the type of historical right remarks on claim 39E 30145158, 39E 30145166 and 39E 30145168.

These remarks should be removed from the claims.

4. The filing fee issue remarks on claims 39E 30145158, 39E 30145161, 39E 30145166, 39E 30145168, 39E 30145170 are resolved and should be removed from the claims.

5. The Notice Only Remarks do not raise legal or factual issues for the Water Court to resolve. They have served their notice purpose and should be removed from the claims.

6. The informational remarks described in the Finding of Fact 11 and 17 above provides information to assist in the administration of the rights and should be added to claims 39R 174709 and 39E 174710-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A Post-Decree Abstract of each water right claim is attached to this Master's Report for review.

Eyvind Ostrem
Senior Water Master

Service via Electronic Mail

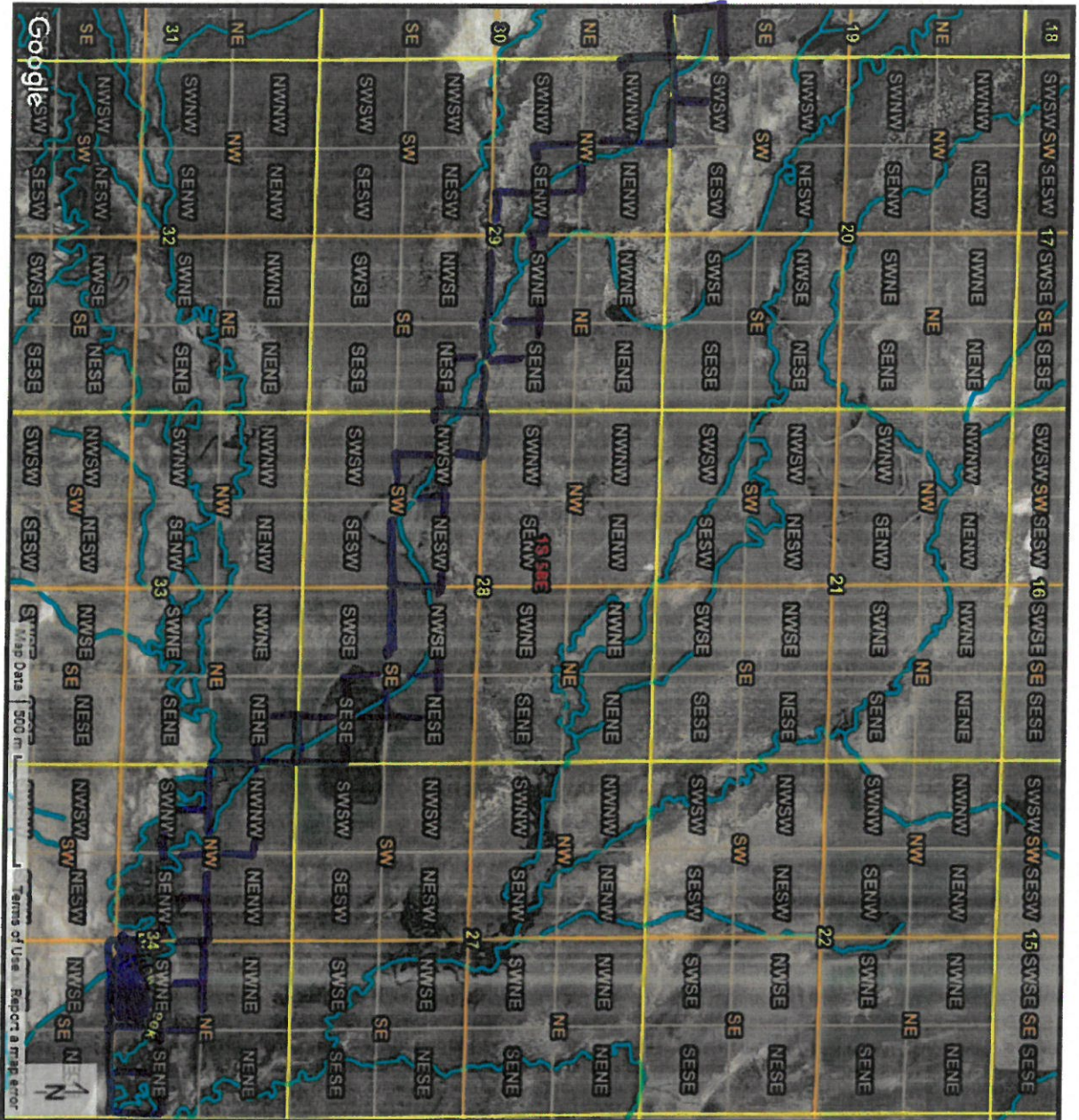
Hertha L Lund
Christopher T Scoones
Lund Law PLLC
662 S Ferguson Ave Unit 2
Bozeman, MT 59718
406-586-6254
lund@lund-law.com
scoones@lund-law.com



□ Point of Diverging /
Place of use



39E 30145166



Map Layers

Hydrography

- Stream Network
- Streams
- Canals/Ditches
- Pipelines

Survey

- PLSS
- Township Ranges
- Sections
- Quarters
- Second Divisions

☐ Point of Diversion/
Place of use

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 35449-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARBARA H PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SHANE PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: SEPTEMBER 19, 1968

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 BUFFALO 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		NESWNE	30	1S	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWNE	30	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 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			NESWNE	30	1S	58E	CARTER

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 174707-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARBARA H PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SHANE PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: SEPTEMBER 12, 1957

Type of Historical Right: FILED

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: FRESH WATER DRAW

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		SWNWSE	27	1S	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWSE	27	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 16.00 ACRES

Capacity: 51.20 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			W2NWSE	27	1S	58E	CARTER
2			W2SWNE	27	1S	58E	CARTER

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 174708-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARBARA H PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SHANE PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: MARCH 28, 1950

Type of Historical Right: FILED

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 BUFFALO 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	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 1

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SE	28	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 6.00 FEET

Depth: 3.00 FEET

Surface Area: 86.90 ACRES

Capacity: 104.26 ACRE-FEET

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	28	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 19.33 ACRES

Capacity: 38.66 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 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			SW	28	1S	58E	CARTER
2			SE	28	1S	58E	CARTER
3			SWSW	27	1S	58E	CARTER

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 174709-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BARBARA H PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SHANE PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: MARCH 28, 1950

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 20.00 CFS

PRIMARILY A DIRECT FLOW RATE SYSTEM; FLOW RATE RETAINED.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 338.00

Source Name: UNNAMED TRIBUTARY OF BUFFALO 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	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SE	28	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 6.00 FEET

Depth: 3.00 FEET

Surface Area: 86.90 ACRES

Capacity: 104.26 ACRE-FEET

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	28	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 19.33 ACRES

Capacity: 38.66 ACRE-FEET

Period of Use: MARCH 1 TO DECEMBER 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	192.00		E2	28	1S	58E	CARTER
2	14.00		SWNW	27	1S	58E	CARTER
3	59.00		SW	27	1S	58E	CARTER
4	33.00		N2NW	34	1S	58E	CARTER
5	40.00		N2NE	33	1S	58E	CARTER
Total:	338.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

174709-00 30145168

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 174710-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

BARBARA H PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

SHANE PEABODY
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: SEPTEMBER 12, 1957

Type of Historical Right: FILED

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: 114.00 AC-FT

THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE 2.0 ACRE-FEET PER ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 57.00

Source Name: FRESH WATER DRAW

Source Type: SURFACE WATER

THE SOURCE IS ALSO KNOWN AS UNNAMED TRIBUTARY, BUFFALO CREEK

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		SWNWSE	27	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					

Reservoir: ONSTREAM **Reservoir Name:** FRESH WATER CREEK

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWSE	27	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 51.20 ACRES

Capacity: 16.00 ACRE-FEET

Period of Use: MARCH 1 TO DECEMBER 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	47.00		NE	34	1S	58E	CARTER
2	10.00		S2SE	27	1S	58E	CARTER
Total:	57.00						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 30145158 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: SEPTEMBER 12, 1957

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 BUFFALO 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		SWNWSE	27	1S	58E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SWNWSE	27	1S	58E	CARTER

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 30145161 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: SEPTEMBER 19, 1968

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 BUFFALO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3	SW	19	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSESW	19	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWSESW	19	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NWNENW	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SWNENW	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		SENENW	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	NESENW	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	NWSWNE	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	NESWNE	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	NWSENE	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11	SWSENE	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	SESENE	30	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
13	SWSWNW	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
14	SESWNW	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
15	NWNWSW	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
16	NENWSW	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
17	NWNESW	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
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		3	SW	19	1S	58E	CARTER
2			NWSESW	19	1S	58E	CARTER
3			SWSESW	19	1S	58E	CARTER
4			NWNENW	30	1S	58E	CARTER
5			SWNENW	30	1S	58E	CARTER
6			SENENW	30	1S	58E	CARTER
7			NESENW	30	1S	58E	CARTER

8	NWSWNE	30	1S	58E	CARTER
9	NESWNE	30	1S	58E	CARTER
10	NWSENE	30	1S	58E	CARTER
11	SWSENE	30	1S	58E	CARTER
12	SESENE	30	1S	58E	CARTER
13	SWSWNW	29	1S	58E	CARTER
14	SESWNW	29	1S	58E	CARTER
15	NWNWSW	29	1S	58E	CARTER
16	NENWSW	29	1S	58E	CARTER
17	NWNESW	29	1S	58E	CARTER

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 30145166 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: MARCH 28, 1950

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 BUFFALO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	SE	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S	SW	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		N	WN	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N	EN	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		N	W	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		S	E	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	SWSWNE	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	SESWNE	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	SWSENE	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	NENESE	29	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11	NWNWSW	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	SENWSW	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
13	SWNESW	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
14	SENESE	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
15	SWNWSE	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
16	SENWSE	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
17	SWNESE	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
18	NWSESE	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
19	SESESE	28	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
20	NENENE	33	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				

21	SWNWNW	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
22	SENWNW	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
23	NESWNW	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
24	NWSENW	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
25	NESENW	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
26	NWSWNE	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
27	NESWNE	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
28	SWSENE	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
29	SESENE	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
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			SESESE	19	1S	58E	CARTER
2			SWSWSW	20	1S	58E	CARTER
3			NWNWNW	29	1S	58E	CARTER
4			NENWNW	29	1S	58E	CARTER
5			NWSENW	29	1S	58E	CARTER
6			SESENE	29	1S	58E	CARTER
7			SWSWNE	29	1S	58E	CARTER
8			SESWNE	29	1S	58E	CARTER
9			SWSENE	29	1S	58E	CARTER
10			NENESE	29	1S	58E	CARTER
11			NWNWSW	28	1S	58E	CARTER
12			SENWSW	28	1S	58E	CARTER
13			SWNESW	28	1S	58E	CARTER
14			SENESE	28	1S	58E	CARTER

15	SWNWSE	28	1S	58E	CARTER
16	SENWSE	28	1S	58E	CARTER
17	SWNESE	28	1S	58E	CARTER
18	NWSESE	28	1S	58E	CARTER
19	SESESE	28	1S	58E	CARTER
20	NENENE	33	1S	58E	CARTER
21	SWNWNW	34	1S	58E	CARTER
22	SENWNW	34	1S	58E	CARTER
23	NESWNW	34	1S	58E	CARTER
24	NWSENW	34	1S	58E	CARTER
25	NESENW	34	1S	58E	CARTER
26	NWSWNE	34	1S	58E	CARTER
27	NESWNE	34	1S	58E	CARTER
28	SWSENE	34	1S	58E	CARTER
29	SESENE	34	1S	58E	CARTER

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 30145168 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: MARCH 28, 1950

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 BUFFALO 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	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
2		N2NW	34	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
3		N2NE	33	1S	58E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
Reservoir:	ONSTREAM					

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	28	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 19.33 ACRES

Capacity: 38.66 ACRE-FEET

Period of Use: MARCH 1 TO DECEMBER 4

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			E2	28	1S	58E	CARTER
2			SWNW	27	1S	58E	CARTER
3			SW	27	1S	58E	CARTER

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

174709-00 30145168

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 30145170 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SIX-ESS RANCH LLC
883 PERSHING CUTOFF RD
EKALAKA, MT 59324 8501

Priority Date: SEPTEMBER 12, 1957

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: FRESH WATER DRAW

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		SWNWSE	27	1S	58E	CARTER

Period of Diversion: MARCH 1 TO DECEMBER 4

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWSE	27	1S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 51.20 ACRES

Capacity: 16.00 ACRE-FEET

Period of Use: MARCH 1 TO DECEMBER 4

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			NE	34	1S	58E	CARTER
2			SESE	27	1S	58E	CARTER