

Montana Water Court  
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ELECTRONICALLY FILED

39E-0129-P-2022

November 2, 2022

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: Jardee Ranch

**CASE 39E-0129-P-2022**

39E 127972-00

39E 127973-00

39E 127974-00

**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, 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

### FINDINGS OF FACT

1. Jardee Ranch is the record owner of claims 39E 127972-00, 39E 127973-00, and 39E 127974-00.

2. Claims 39E 127972-00, 39E 127973-00, and 39E 127974-00 were decreed with DNRC issue remarks; all issue remarks must be addressed.

3. The following issue remarks were decreed on claim 39E 127972-00:

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.

POINT OF DIVERSION AND RESERVOIR RECORD 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.

ACCORDING TO INFORMATION IN THE CLAIM FILE, THE DAM WASHED OUT IN 2011.

4. The first two issue remarks decreed on claim 39E 127972-00 are notice-type remarks and do not require further attention.

5. Information in the claim file indicates the dam described by claim 39E 127972-00 washed out in 2011 and there was no plan for repair. It appears claim 39E 127972-00 may have been abandoned.

6. Claim 39E 127973-00 was decreed with the following DNRC issue 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 POINT 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.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 8.8 TIMES THE CAPACITY OF THE RESERVOIR.

7. The first two issue remarks decreed on claim 39E 127973-00 are notice-type remarks and do not require further attention.

8. Claim 39E 127973-00 is a water-spreading irrigation claim. Water-spreading systems divert and use water based on the natural availability of water, not the availability of water controlled or stored by a structure. Claim 39E 127973-00 was decreed with an excessive volume issue remark based upon the inadequate capacity of the

reservoir to store and release the claimed volume. The excessive volume issue remark ignores the fact that such a system does not use the water stored in the reservoir but the water that *exceeds* the storage capacity of the reservoir. The storage capacity of the reservoir is not the correct guideline or limitation for determining the reasonableness of the claimed volume. Based on the guideline and the maximum acres irrigated, the 382.00 acre feet volume is not excessive

9. Claim 39E 127974-00 was decreed with the following DNRC issue 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.  
THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 25 TIMES THE CAPACITY OF THE RESERVOIR.

10. The first two issue remarks decreed on claim 39E 127974-00 are notice-type remarks and do not require further attention.

11. Like claim 39E 127973-00, claim 39E 127974-00 is a water-spreading claim and the decreed volume is not excessive.

12. An Order was issued setting a deadline for Claimant Jardee Ranch to file evidence showing that claim 39E 127972-00 was not abandoned. The Order stated that if nothing were filed by the deadline, this Master would conclude claim 39E 127972-00 has been abandoned and a Master's Report would be issued recommending dismissal of the claim. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

13. Nothing was filed in response to the Order.

#### CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., 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 may issue such orders of sanction with regard thereto as are just.

4. The notice-type issue remarks decreed on claims 39E 127973-00 and 39E 127974-00 have served their notice purpose. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. Claim 39E 127972-00 should be dismissed.
2. The issue remarks should be removed from claims 39E 127973-00 and 39E 127974-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

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Anika M. Stern  
Senior Water Master

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

Jardee Ranch  
1443 Mill Iron Rd  
Ekalaka, MT 59324

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

**Water Right Number:** 39E 127972-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** DISMISSED

**Owners:** JARDEE RANCH  
1443 MILL IRON RD  
EKALAKA, MT 59324

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** HORSE CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 39E 127973-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JARDEE RANCH  
1443 MILL IRON RD  
EKALAKA, MT 59324

**Priority Date:** MAY 6, 1906

**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:** 382.00 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:** 191.00

**Source Name:** UNNAMED TRIBUTARY OF COAL 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		NESWSE	4	1N	60E	CARTER

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

**Diversion Means:** DAM

2		NESWSE	4	1N	60E	CARTER
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**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>
	E2SWSE	4	1N	60E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 9.00 FEET

**Depth:** 6.00 FEET

**Surface Area:** 17.90 ACRES

**Capacity:** 42.96 ACRE-FEET

THE DAM EXTENDS INTO THE SENESW , SESWSE SEC 04 TWP 1N RGE 60E CARTER COUNTY.

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL  
RESERVOIR DATA.

**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	82.00		SE	4	1N	60E	CARTER
2	75.00		SW	3	1N	60E	CARTER
3	24.00		N2N2NW	10	1N	60E	CARTER
4	10.00		NENE	9	1N	60E	CARTER
<b>Total:</b>	191.00						

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**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.

127973-00

127974-00

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

**Water Right Number:** 39E 127974-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JARDEE RANCH  
1443 MILL IRON RD  
EKALAKA, MT 59324

**Priority Date:** AUGUST 11, 1967

**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:** 20.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 191.00

**Source Name:** UNNAMED TRIBUTARY OF COAL 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		SWNENW	32	2N	60E	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>
	SWNENW	32	2N	60E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 7.00 FEET

**Depth:** 4.00 FEET

**Surface Area:** 0.50 ACRES

**Capacity:** 0.80 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

**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	82.00		SE	4	1N	60E	CARTER
2	75.00		SW	3	1N	60E	CARTER
3	24.00		N2N2NW	10	1N	60E	CARTER



4	10.00	NENE	9	1N	60E	CARTER
<b>Total:</b>	191.00					

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**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.

127973-00      127974-00