

Montana Water Court
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ELECTRONICALLY FILED

39E-0144-P-2022

November 3, 2022

Montana Water Court

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

CLAIMANTS: Clayton L. Jardee; Norma Jardee

CASE 39E-0144-P-2022
39E 115431-00
39E 115434-00
39E 120698-00

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. Clayton L. Jardee and Norma Jardee are the record owners of claims 39E 115431-00, 39E 115434-00, and 39E 120698-00.
2. Claims 39E 115431-00, 39E 115434-00, and 39E 120698-00 were decreed with DNRC issue remarks; all issue remarks must be addressed.

3. The following issue remarks were decreed on claim 39E 115431-00:

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.

RESERVOIR RECORD, POINT OF DIVERSION, 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.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWNESW SEC 15 TWP 1N 60E CARTER COUNTY.

4. The first two issue remarks decreed on claim 39E 115431-00 are notice-type remarks and do not require further attention.
5. The third remark suggests it is appropriate to correct the place of use, as follows:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNESW	N2NWSW	15	1N	60E	CARTER

6. Claim 39E 115434-00 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.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 6.52 TIMES THE CAPACITY OF THE RESERVOIR.

7. The first issue remark decreed on claim 39E 115434-00 a notice-type remark and does not require further attention..
8. Claim 39E 115434-00 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 115434-00 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 105.00 acre feet volume is not excessive

9. Claim 39E 120698-00 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 27.53 TIMES THE CAPACITY OF THE RESERVOIR.

10. The first two issue remarks decreed on claim 39E 120698-00 are notice-type remarks and do not require further attention.

11. Like claim 39E 115434-00, claim 39E 120698-00 is a water-spreading claim and the decreed volume is not excessive.

12. An Order was issued setting a deadline for Claimants Clayton L. Jardee and Norma Jardee to agree or disagree that the place of use for claim 39E 115431-00 should be modified to:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNESW	N2NWSW	15	1N	60E	CARTER

The Order stated that nothing were filed by the deadline, this Master would conclude Claimants Clayton L. Jardee and Norma Jardee agree the place of use for 39E 115431-00 should be modified. 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 115431-00, 39E 115434-00, and 39E 120698-00 have served their notice purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39E 120698-00 should be modified as shown in Finding of Fact No. 12.
2. The issue remarks should be removed from the claim in this Case.
Post Decree Abstracts of Water Right Claims are served with the Report for review.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Clayton L. Jardee
Norma Jardee
1145 Prairiedale Rd
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 115431-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CLAYTON L JARDEE
1145 PRAIRIE DALE RD
E KALAKA, MT 59324

NORMA JARDEE
1143 PRAIRIE DALE RD
E KALAKA, MT 59324

Priority Date: JUNE 30, 1944

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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNESWSW	15	1N	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>
	SWNESW	15	1N	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.75 ACRES

Capacity: 2.40 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			SWNESW	15	1N	60E	CARTER

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

Water Right Number: 39E 115434-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CLAYTON L JARDEE
1145 PRAIRIE DALE RD
E KALAKA, MT 59324

NORMA JARDEE
1143 PRAIRIE DALE RD
E KALAKA, MT 59324

Priority Date: JUNE 30, 1948

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: 105.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 70.00

Source Name: UNNAMED TRIBUTARY OF CORRAL 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		NWSWSW	16	1N	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>
	NWSWSW	16	1N	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 7.00 FEET

Surface Area: 5.75 ACRES

Capacity: 16.10 ACRE-Feet

THE DAM EXTENDS INTO THE E2NESE SEC 17 TWP 1N RGE 60E CARTER COUNTY.

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	43.00		E2NW	21	1N	60E	CARTER
2	14.00		NESW	21	1N	60E	CARTER
3	13.00		NESW	21	1N	60E	CARTER
Total:	<u>70.00</u>						

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

Water Right Number: 39E 120698-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CLAYTON L JARDEE
1145 PRAIRIE DALE RD
E KALAKA, MT 59324

NORMA JARDEE
1143 PRAIRIE DALE RD
E KALAKA, MT 59324

Priority Date: JANUARY 7, 1905

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: 80.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 40.00

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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	23	1N	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>
	NWSWNE	23	1N	60E	CARTER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 7.00 FEET

Depth: 4.00 FEET

Surface Area: 2.27 ACRES

Capacity: 3.63 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	5.00		NWSWSE	23	1N	60E	CARTER

2	25.00	S2SW	23	1N	60E	CARTER
3	10.00	N2NW	26	1N	60E	CARTER
Total:	<u>40.00</u>					