

Montana Water Court
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ELECTRONICALLY FILED

39E-0150-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: Michael J. Hansen

CASE 39E-0150-P-2022
39E 30129339
39E 30129341
39E 30129342

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. Michael J. Hansen is the record owner of claims 39E 30129339, 39E 30129341, and 39E 30129342.

2. The claims were decreed with DNRC issue remarks:

Claim 39E 30129339:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.
THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE
NESWSE SEC 19 TWP 4S RGE 59E CARTER COUNTY.

Claim 39E 30129341 and claim 39E 30129342:

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

All issue remarks must be addressed.

3. The remark indicating that the claims were not included in the Basin 39E decree issued on February 1, 1985 and explains that the claims are exempt claims, not previously decreed. The remark is a notice-type remark and does not require further process.

4. Claim 39E 30129339 was decreed with the point of diversion and place of use listed as:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2SE	19	4S	59E	CARTER

According to the DNRC issue remark, the point of diversion should be modified to:

<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	E2SE	19	4S	59E CARTER

The Statement of Claim indicated that the place of use for stock use is identical to the point of diversion, and although the issue remark did not address the place of use, it is likely the place of use should be modified to match the point of diversion.

5. An Order was issued setting a deadline for Claimant Michael J. Hansen to file a statement agreeing or disagreeing that the point of diversion and place of use for claim 39E 30129339-00 be modified to:

<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	E2SE	19	4S	59E CARTER

The Order stated that nothing were filed by the deadline, this Master would conclude the Claimant agreed with the proposed modification and a Master's Report would be issued. 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.

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.

RECOMMENDATIONS

1. Claim 39E 30129339 should be modified as shown in Finding of Fact No. 5.
2. The issue remarks should be removed from claims 39E 30129339, 39E 30129341, and 39E 30129342.

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

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Michael J. Hansen
201 Larson Loop Rd.
Ekalaka, MT 59324

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

Water Right Number: 39E 30129339 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MICHAEL J HANSEN
201 LARSON LOOP RD
EKALAKA, MT 59324

Priority Date: MAY 20, 2019

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 10.00 GPM

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: GROUNDWATER

Source Type: GROUNDWATER

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	19	4S	59E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NESWSE	19	4S	59E	CARTER

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

Water Right Number: 39E 30129341 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MICHAEL J HANSEN
201 LARSON LOOP RD
EKALAKA, MT 59324

Priority Date: MAY 20, 2019

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1		SWNWSW	17	4S	59E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			SWNWSW	17	4S	59E	CARTER

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

Water Right Number: 39E 30129342 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MICHAEL J HANSEN
201 LARSON LOOP RD
EKALAKA, MT 59324

Priority Date: MAY 20, 2019

THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

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Flow Rate: 10.00 GPM

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