

Montana Water Court
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ELECTRONICALLY FILED

39E-0160-P-2022

November 28, 2022

Montana Water Court

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

CLAIMANT: Allen Elmore

CASE 39E-0160-P-2022
39E 30139040

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. Allen Elmore claim 39E 30139040 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.
NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

2. All DNRC issue remarks must be resolved.

3. The first issue remark decreed on claim 39E 30139040 explains that the claim was not part of the first decree issued in Basin 39E. It is a notice-type issue remark and does not require further attention.

4. The second issue remark points to the 2019 Statement of Claim form filed for claim 39E 30139040. The portion of the claim where flow rate was to be indicated was left blank:

9. FLOW RATE USED: _____ gallons per minute miner's inches cubic feet per second

A Declaration of Vested Groundwater Rights was attached to the Statement of Claim, and it described the historical water right, including the flow rate of the claim:

4. The amount of groundwater claimed (in miner's inches or gallons per minute) 20 gallons per minute.

Based on the record, it appears the flow rate for claim 39E 30139040 should be 20.00 gallons per minute.

5. An Order was issued setting a deadline for Claimant Allen Elmore to file a statement agreeing or disagreeing that a 20.00 gallon per minute flow rate be added to claim 39E 30139040. The Order indicated that if nothing were filed by the November 4, 2022 deadline, this Master would conclude Allen Elmore agrees the flow rate for claim 39E 30139040 is 20.00 gallons per minute. 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.

6. On October 24, 2022, the following statement was filed:

From: [Linda Davis](#)
To: [Watercourt \(Bozeman\)](#)
Subject: [EXTERNAL] 39E-0160-P-2022
Date: Monday, October 24, 2022 10:44:42 AM

Allen Elmore agrees with the 20 gallon a minute flow rate on this well.

Allen Elmore
By
Linda Davis

Nothing else was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. 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.

2. 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.

3. The remark indicating claim 39E 30139040 was not included in the first decree in this Basin is a notice-type issue remark. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. The flow rate for claim 39E 30139040 should be 20.00 gallons per minute.
2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Allen Elmore
P.O. Box 260
Ekalaka, MT 59324

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

Water Right Number: 39E 30139040 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ALLEN ELMORE
PO BOX 260
EKALAKA, MT 59324

Priority Date: DECEMBER 31, 1940

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 20.00 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		NENENW	3	2S	57E	CARTER

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: WELL

Period of Use: MAY 1 TO OCTOBER 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			NENENW	3	2S	57E	CARTER