

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

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CLAIMANTS: Myron Johnston; Valerie Johnston

OBJECTOR: USA (Dept. of Interior Bureau of Land Mgmt.)

CASE 39E-0169-P-2022
39E 120627-00

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. Myron Johnston and Valerie Johnston are the owners of claim 39E 120627-00

2. Claim 39E 120627-00 was decreed with a notice-type issue 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.

3. Claim 39E 120627-00 was decreed with the following point of diversion and place of use:

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		NWNWSW	34	3S	58E	CARTER

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			NWNWSW	34	4S	58E	CARTER

4. The United States of America (BLM) objected to claim 39E 120627-00 on July 30, 2020, stating:

Incorrect Place of Use Township claimed. Township puts Place of Use on federal lands which are managed and administered by the Bureau of Land Management ("BLM"). Place of Use Township needs to be corrected from 4S to 3S. Correction of Place of Use Township will resolve the United States' objection to this water right.

5. On August 19, 2020, Claimants Myron and Valerie Johnston filed a Motion to Amend claim 39E 120627-00. The Motion to Amend addressed the Objection, stating:

WATER RIGHT NO: 39E 120627-00

OWNER: MYRON JOHNSTON & VALERIE JOHNSTON

The place of use need to be corrected to reflect the historic use:
Therefore, it is requested that the below be amended to:

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			NWNWSW	34	3S	58E	CARTER

6. An Order was issued, explaining that it appears that making the changes proposed in the motion to amend will resolve the BLM Objection and the Motion to Amend concerns. A deadline was set for the parties to file a statement agreeing or disagreeing that the Objection and Motion to Amend concerns will be resolved if the place of use for claim 39E 120627-00 is changed to Township 3 South. The Order

indicated that if nothing were filed by the deadline, this Master would conclude the parties agree with the proposed change and a Master's Report would be issued recommending the change be made to claim 39E 120627-00 and recommending dismissal of the Objection. 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 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 point of means of diversion issue remark decreed on claim 39E 120627-00 is a notice-type issue remark. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39E 120627-00 should be modified as follows:

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			NWNWSW	34	35 4S	58E	CARTER

2. The Objection to claim 39E 120627-00 should be dismissed.

3. The issue remark 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:

Valerie Johnston
Myron Johnston
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Hammond, MT 59332-9721

Service Via Electronic Mail:

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

Water Right Number: 39E 120627-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: VALERIE JOHNSTON
372 HAMMOND RD
HAMMOND, MT 59332 9721

MYRON JOHNSTON
372 HAMMOND RD
HAMMOND, MT 59332 9721

Priority Date: DECEMBER 31, 1965

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 MCCARTY 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		NWNWSW	34	3S	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>
	NWNWSW	34	3S	58E	CARTER

Diversion to Reservoir: DIVERSION # 1

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>
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