

Montana Water Court
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ELECTRONICALLY FILED

39E-0170-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

* * * * *

CLAIMANTS: Madlon V. Brence Trust;
William M. Brence Trust

CASE 39E-0170-P-2022

39E 173859-00

39E 30139038

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. The William M. Brence Trust and the Madlon V. Brence Trust are the record owners of claim 39E 173859-00. The Madlon V. Brence Trust is the record owner of claim 39E 30139038.

2. Both Claims were decreed with DNRC issue remarks:

39E 173859-00:

POINT OF DIVERSION, RESERVOIR RECORD 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 CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO ALSO INCLUDE THE NWNWSE SEC 23 TWP 1S RGE 61E CARTER COUNTY.

39E 30139038:

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

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 6.5 ACRE-FEET PER YEAR.

All issue remarks must be addressed.

3. The first issue remark decreed on claim 39E 173859-00 is a notice-type remark and does not require further attention.

4. The second issue remark decreed on claim 39E 173859-00 suggests the place of use should be modified to be consistent with the point of diversion, 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			NWNWSE	NENESE 23	22	1S	61E CARTER

5. The first issue remark is a notice-type remark and does not require further attention.

6. The second issue remark indicates the Statement of Claim for volume was left partly blank:

10. VOLUME: _____ acre-feet per year

The volume guideline for this claim is 6.50 acre-feet per year.

7. To determine if the Madlon V. Brence Trust and William M. Brence Trust agree that the place of use for claim 39E 173859-00 should be modified as shown in

Finding of Fact No. 4, and if the Madlon V. Brence Trust agrees the volume for claim 39E 30139038 is 6.50 acre-feet, an Order was issued setting a deadline. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Claimants agree with the proposed changes. The Order included the following language:

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.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed 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 both claims in this Case have served their purpose. No objections were filed, and no further proceedings are required because of the remarks.

RECOMMENDATIONS

1. Claim 39E 173859-00 should be modified as shown in Finding of Fact No. 4.
2. A 6.50 acre feet volume should be added to claim 39E 30139038.

3. The issue remarks should be removed from claims 39E 173859-00 and 39E 30139038.

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

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Madlon V. Brence Trust
P.O. Box 366
Ekalaka, MT 59324

Madlon V. Brence Trust
HC 51 Box 935
Mill Iron, MT 59324

William M. Brence Trust
HC 51 Box 935
Mill Iron, MT 59324

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

Water Right Number: 39E 173859-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRENCE, MADLON V TRUST
HC 51 BOX 935
MILL IRON, MT 59324

BRENCE, WILLIAM M TRUST
HC 51 BOX 935
MILL IRON, MT 59324

Priority Date: AUGUST 15, 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 SPRING 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	23	1S	61E	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	23	1S	61E	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>
1			NWNWSE	23	1S	61E	CARTER

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

Water Right Number: 39E 30139038 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MADLON, TRUST V BRENCÉ
PO BOX 366
EKALAKA, MT 59324

Priority Date: NOVEMBER 15, 1957

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 6.50 AC-FT

Households: 1

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		NWSWSE	6	1S	62E	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	2.00		NWSWSE	6	1S	62E	CARTER

Total: 2.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139037 30139038