

Montana Water Court
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ELECTRONICALLY FILED

39E-0179-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: Barton J. Burdick; Maralee Burdick

CASE 39E-0179-P-2022
39E 23900-00

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. The current record owners of irrigation claim 39E 23900-00 are Barton J. Burdick and Maralee Burdick.

2. Claim 39E 23900-00 was adjudicated during the Temporary Preliminary Decree in Basin 39E. A Settlement Agreement was filed on June 19, 1986 between then-owners Alice R. Straub and Carl H. Logan and Objector Aetna Life Insurance Company; a copy is in the claim file. The Stipulation indicated the following remark should be added to claim 39E 23900-00:

REMARKS: No diversions of the natural flow of the South Fork of Coal Bank Creek shall take place hereunder unless and until stockwater is available for use out of Coal Bank Creek in and across Section 19, T2S, R62E.

3. Claim 39E 23900-00 was decreed with the following DNRC issue remark, referencing the remark placed on the claim pursuant to the Stipulation:

IT APPEARS THAT THE LEGAL DESCRIPTION IN THE REMARK DESCRIBING THE PARTIES' STIPULATION SHOULD REFERENCE TWP 02N RATHER THAN TWP 02S.

All DNRC issue remarks must be resolved.

4. Based on this Water Master's review of the record, it appears appropriate to modify the commissioner's remark on claim 39E 23900-00 to reference Township 2 **North**, instead of Township 2 South.

5. To verify that current Claimants Barton J. Burdick and Maralee Burdick agree that the commissioner remark should be modified, an Order was issued setting a deadline for the Claimants to agree or disagree with the proposed change. The Order indicated that if nothing were filed by the deadline, this Master would conclude the Claimants agree the change should be made to claim 39E 23900-00. 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.

RECOMMENDATIONS

1. The commissioner remark decreed on claim 39E 23900-00 should be modified to:

THE PARTIES' JUNE 17, 1986 STIPULATION STATES NO DIVERSION OF THE
NATURAL FLOW OF THE SOUTH FORK OF COAL BANK CREEK SHALL TAKE PLACE
HEREUNDER UNLESS AND UNTIL STOCKWATER IS AVAILABLE FOR USE OUT OF
COAL BANK CREEK IN AND ACROSS SEC 19 TWP 2N RGE 62E.

2. 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:

Barton J. Burdick
Maralee Burdick
2667 Webster Rd.
Baker, MT 59313-9726

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

Water Right Number: 39E 23900-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

Priority Date: SEPTEMBER 14, 1936

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: 138.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 138.00

Source Name: SOUTH FORK COAL BANK 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		SESESE	10	2N	61E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

2		NENENE	15	2N	61E	FALLON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

THE PARTIES' JUNE 17, 1986 STIPULATION STATES NO DIVERSION OF THE NATURAL FLOW OF THE SOUTH FORK OF COAL BANK CREEK SHALL TAKE PLACE HEREUNDER UNLESS AND UNTIL STOCKWATER IS AVAILABLE FOR USE OUT OF COAL BANK CREEK IN AND ACROSS SEC 19 TWP 2N RGE 62E.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESESE	10	2N	61E	FALLON

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	22.00		NENE	15	2N	61E	FALLON
2	54.00		NW	14	2N	61E	FALLON
3	21.00		S2SW	11	2N	61E	FALLON
4	19.00		NESW	14	2N	61E	FALLON
5	22.00		NWSE	14	2N	61E	FALLON
Total:							
	138.00						