

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

CLAIMANTS: Hammel Ranch Inc.; Leroy E. Schallenberger;
Jennifer K. Schallenberger

CASE 39E-0181-P-2022
39E 173320-00
39E 173321-00

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. Hammel Ranch Inc., Leroy E. Schallenberger, and Jennifer K. Schallenberger are the record owners of claims 39E 173320-00 and 39E 173321-00
2. The following issue remarks were decreed on claim 39E 173320-00:

POINT OF DIVERSION, MEANS OF DIVERSION, AND RESERVOIR RECORD 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 PLACE OF USE APPEARS TO EXTEND INTO THE SESENE SEC 21 TWP 2S 59E CARTER COUNTY.

3. The first issue remark decreed on claim 39E 173320-00 is a notice-type remark and does not require further attention.

4. Claim 39E 173320-00 was decreed with the following place of use:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWSENE	21	2S	59E	CARTER

The second remark decreed on claim 39E 173320-00 indicates the following change may be appropriate:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESENE	SWSENE	21	2S	59E	CARTER

5. The following issue remarks were decreed on claim 39E 173321-00:

MEANS OF DIVERSION, POINT OF DIVERSION, AND RESERVOIR RECORD 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 PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN THE SESWNE SEC 22 TWP 2S RGE 59E CARTER COUNTY.

6. The first issue remark decreed on claim 39E 173321-00 is a notice-type remark and does not require further attention.

7. Claim 39E 173321-00 was decreed with the following place of use:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NENWSE	22	2S	59E	CARTER

The second remark indicates the following change may be appropriate:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESWNE	NENWSE	22	2S	59E	CARTER

8. An Order was issued setting a deadline to determine if Claimants Hammel Ranch Inc., Leroy E. Schallenberger, and Jennifer K. Schallenberger agreed the proposed changes are appropriate to address the issue remarks.

9. On October 17, 2022, Claimants Hammel Ranch Inc., Leroy E. Schallenberger, and Jennifer K. Schallenberger filed a statement indicating the places of use for claims 39E 173320-00 and 39E 173321-00 should be modified as proposed in Findings of Fact Nos. 4 and 7.

PRINCIPLES AND 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. The record overcomes the prima facie Statements of Claim, and the places of use of both claims should be modified.

3. The first issue remarks decreed on both claims are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The places of use of claims 39E 173320-00 and 39E 173321-00 should be modified as shown in Findings of Fact Nos. 4 and 7.

2. The issue remarks should be removed from claims 39E 173320-00 and 39E 173321-00.

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

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Hammel Ranch Inc.
PO Box 213
Ekalaka, MT 59324-0213

Leroy E. Schallenberger
Jennifer K. Schallenberger
850 Mill Iron Camp Crook Rd.
Ekalaka, MT 59324

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

Water Right Number: 39E 173320-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

HAMMEL RANCH INC
PO BOX 213
EKALAKA, MT 59324 0213

LEROY E SCHALLENBERGER
850 MILL IRON CAMP CROOK RD
EKALAKA, MT 59324

JENNIFER K SCHALLENBERGER
850 MILL IRON CAMP CROOK RD
EKALAKA, MT 59324

Priority Date: JULY 31, 1953

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 KELTNER DRAW

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		SESENE	21	2S	59E	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>
	SESENE	21	2S	59E	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			SESENE	21	2S	59E	CARTER

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

Water Right Number: 39E 173321-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HAMMEL RANCH INC
PO BOX 213
EKALAKA, MT 59324 0213

LEROY E SCHALLENBERGER
850 MILL IRON CAMP CROOK RD
EKALAKA, MT 59324

JENNIFER K SCHALLENBERGER
850 MILL IRON CAMP CROOK RD
EKALAKA, MT 59324

Priority Date: OCTOBER 31, 1952

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 CARR DRAW

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		SESWNE	22	2S	59E	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>
	SESWNE	22	2S	59E	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			SESWNE	22	2S	59E	CARTER