

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

ELECTRONICALLY FILED

39E-0184-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: Drake L. Burch

**CASE 39E-0184-P-2022**  
39E 129496-00

**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. Claim 39E 129496-00 was decreed with DNRC issue remarks:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

POINT 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.

2. The Claimant was ordered to meet with the DNRC to address the point of diversion issue remark.

3. On November 14, 2022, DNRC Water Resources Specialist Brandy Gray filed a Memorandum. Ms. Gray indicated that Claimant Drake L. Burch contacted her. Ms. Burch identified the location of the reservoir on an aerial photograph and explained that it is small and swampy, and stock drink when water is available. Ms. Gray confirmed the location of the reservoir on a 1972 aerial photograph.

Based on information available to her, Ms. Gray confirmed the claimed reservoir is located with the claimed legal land description and recommended the point of diversion issue remark be removed from claim 39E 129496-00.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 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. In the present Case, the issue remarks decreed on claim 39E 129496-00 do not overcome the prima facie Statement of Claim.
3. The point of diversion issue remark decreed on claim 39E 129496-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

### RECOMMENDATION

1. The issue remarks should be removed from claim 39E 129496-00 with no changes to the elements of 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:**

Drake L. Burch  
813 Hwy 323  
Ekalaka, MT 59324-8701

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Billings Water Resources Office



GREG GIANFORTE, GOVERNOR

ELECTRONICALLY FILED

39E-0184-P-2022

November 14, 2022

Montana Water Court

PHONE: (406)247-4415

FAX: (406)247-4416

Airport Business Park

1371 Rimtop Dr, Billings, MT 59105-1978

**MEMORANDUM**

DATE: November 14, 2022

CASE HEADING: **39E-0184-P-2022**  
**CLAIM: 39E 129496-00**

TO: Anika M. Stern  
Senior Water Master

FROM: Brandy Gray  
Billings Water Resource Specialist

CLAIMANT: Drake L. Burch

INTRODUCTION:

The October 5, 2022, Order from the Montana Water Court required Drake L. Burch, to contact DNRC no later than November 21, 2022, to resolve issue remarks and submit any documents needed to support resolution no later than December 2, 2022. It was further ordered that the DNRC provide a Memorandum, by December 16, 2022, of recommendations on the results or file a notice with the Water Court informing the Water Court that the issue remark was not resolved by the deadline. Furthermore, if the Claimant doesn't contact the DNRC, it was requested that the DNRC make recommendations for the disposition of the issue remark.

MATERIALS REVIEWED:

- Information in the claim file.
- Earth Explorer USGS aerial photo no. 1VDAP00020259, dated August 5, 1972: <https://earthexplorer.usgs.gov/>
- MT State Library NAIP true color and false color aerial photos dated, 2009, 2011, 2013, 2015, 2017 & 2019.
- Conversations and marked map by the Claimant.

DISCUSSION:

On October 27, 2022, Drake L. Burch contacted DNRC to go over the issue remark.

On October 28, 2022, Ms. Burch did a field visit and identified the location of the reservoir on a 2017 NAIP false color aerial.

**CLAIM 39E 129496-00:** 1964 STOCK, in Section 31, T1N, R59E, from a reservoir on an unnamed tributary of Little Ramme Creek.

Issue Remarks:

P36 – THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

DNRC reviewed the above materials and the information supplied by the Claimant. The Claimant stated that the reservoir is small, filled with cattails and the stock drink there when water is available.

In the 1972, aerial you can see a dark spot that appears to be a small swampy area with cattails.

RECOMMENDATION:

Based on the above information, the reservoir is located within the legal land description on the water right and it is recommended that the point of diversion issue remark (P36) be removed as it appears resolved.

DATE: November 14, 2022, by: /s/ Brandy Gray  
Brandy Gray, Water Resource Specialist  
Billings Water Resources Regional Office  
(406) 247-4426

DATE: November 14, 2022, by: /s/ Mark Elison  
Mark Elison, Regional Manager  
Billings Water Resources Regional Office

Enclosures:

- Blue marked General Abstract.
- 1972 Earth Explorer USGS aerial photo.
- 2017 MT State Library NAIP false color aerial photo.

Service via Electronic Mail:

Anika M. Stern  
Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
watercourt@mt.gov

Service via USPS Mail:

Brenda L. Fazekas  
813 Hwy 323  
Ekalaka, MT 59324  
  
Drake L. Burch  
813 Hwy 323  
Ekalaka, MT 59324-8701

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

## GENERAL ABSTRACT

**Water Right Number:** 39E 129496-00 STATEMENT OF CLAIM

**Version:** 2 -- REEXAMINED

**Version Status:** ACTIVE

**Owners:** DRAKE L BURCH  
813 HWY 323  
EKALAKA, MT 59324-8701

**Priority Date:** DECEMBER 31, 1964

**Enforceable Priority Date:** DECEMBER 31, 1964

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Maximum 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.

**Maximum 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 LITTLE RAMME 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		NENWSE	31	1N	59E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

**Reservoir:** ON STREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWSE	31	1N	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			NENWSE	31	1N	59E	CARTER

**Geocodes/Valid:** 42-1067-31-1-02-01-0000 - Y

---

**Remarks:**

**OWNERSHIP UPDATE RECEIVED**

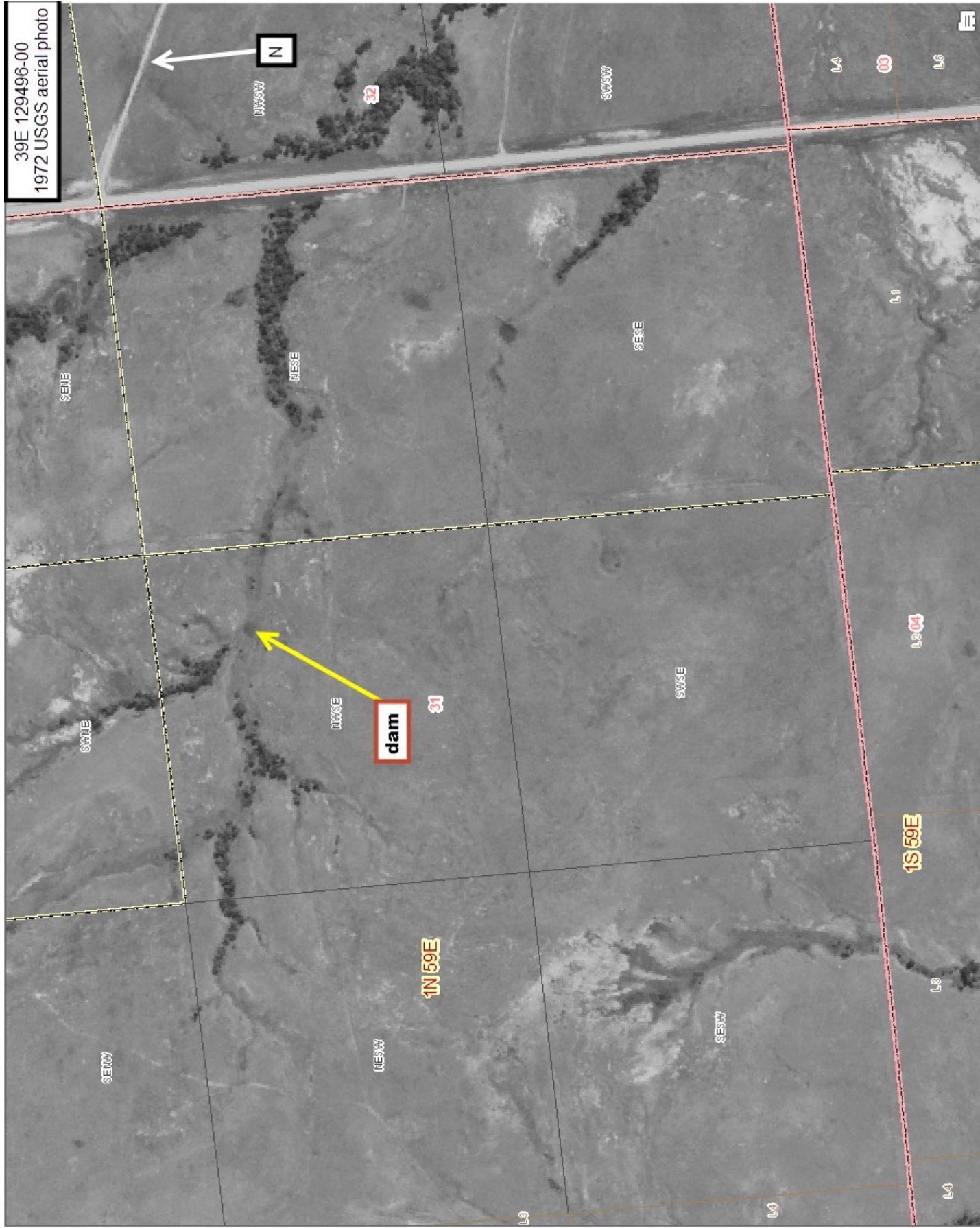
OWNERSHIP UPDATE TYPE DOR # 91252 RECEIVED 06/16/2011.

OWNERSHIP UPDATE TYPE DOR # 241362 RECEIVED 06/02/2022.

P36 - ~~THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.~~

POINT 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.

39E 129496-00  
1972 USGS aerial photo





39E 129496-00  
2017 NAIP aerial photo

N

32

SENE

NWSW

SESE

SWSE

SESW

NWSW

L1

L2 04

L3

L4

L5

L6

1N 59E

1S 59E

dam 31

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

**Water Right Number:** 39E 129496-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DRAKE L BURCH  
813 HWY 323  
EKALAKA, MT 59324 8701

**Priority Date:** DECEMBER 31, 1964

**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 LITTLE RAMME 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		NENWSE	31	1N	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>
	NENWSE	31	1N	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			NENWSE	31	1N	59E	CARTER