

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

ELECTRONICALLY FILED

39E-0187-P-2022

November 2, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Joe T. Breeding

CASE 39E-0187-P-2022
39E 30115397

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. Joe T. Breeding is the record owner of domestic claim 39E 30115397.
2. Claim 39E 30115397 was decreed with DNRC issue remarks that are unresolved:

ONLY 3.21 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 12.10 ACRE-FEET PER YEAR.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 27.97 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

Additionally, claim 39E 30115397 was decreed with a remark noting that the claim was not included in the 1985 Temporary Preliminary Decree.

3. Joe T. Breeding was ordered to meet with the DNRC to address the unresolved issue remarks.

3. On October 25, 2022, DNRC Water Resources Specialist Brandy Gray filed a Memorandum regarding her review of claim 39E 30115397; a copy is attached to this Report along with a Motion to Amend that was attached to the Memorandum.

Ms. Gray's Memorandum indicated that consultant Wayne Yost contacted her on behalf of Joe T. Breeding. Ms. Gray stated that the DNRC received a Motion to Amend claim 39E 30115397, modifying the claim as follows:

Volume:	14.10 AC-FT	2.53 AC-FT					
Households:	1						
Maximum Acres:	5.00	.61					
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	5.00	.61	SESWSW	34	1N	59E	CARTER
Total:	5.00	.61					

Ms. Gray indicated that the proposed amendments resolve the place of use issue remark and the volume issue remarks decreed on claim 39E 30115397.

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. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. The remark noting that claim 39E 30115397 was not included in the Temporary Preliminary Decree is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39E 30115397 should be modified as proposed by the Motion to Amend and shown in Finding of Fact No. 3.

2. The issue remarks should be removed from claim 39E 3015397.

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:

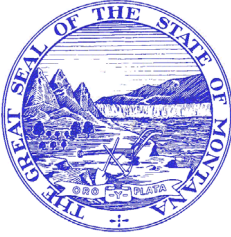
Joe T. Breeding
191 Breeding Rd.
Ekalaka, MT 59324-8723

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

39E-0187-P-2022

October 25, 2022

Billings Water Resources Office



GREG GIANFORTE, GOVERNOR

Montana Water Court

PHONE: (406)247-4415

FAX: (406)247-4416

Airport Business Park

1371 Rimtop Dr, Billings, MT 59105-1978

MEMORANDUM

DATE: October 25, 2022

CASE HEADING: **39E-0187-P-2022**
CLAIMS: 39E 30115397

TO: Anika M. Stern
Senior Water Master

FROM: Brandy Gray
Billings Water Resource Specialist

CLAIMANT: Joe T. Breeding

INTRODUCTION:

The October 4, 2022, Order from the Montana Water Court required Joe T. Breeding, to contact DNRC no later than October 21, 2022, to resolve issue remarks and submit any documents needed to support resolution no later than November 4, 2022. It was further ordered that the DNRC provide a Memorandum, by November 16, 2022, of recommendations on the results or file a notice with the Water Court informing the Water Court that the issue remarks were 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 remarks.

MATERIALS REVIEWED:

Information in the claim file, calls with Wayne Yost, Joe T. Breeding's Consultant, and the Claimant's Verified Motion to Amend Water Right Claim and maps, served as the primary data sources for this Memorandum.

DISCUSSION:

On October 18, 2022, Wayne Yost, Joe T. Breeding's Consultant, contacted DNRC to go over the issue remarks on the above water right.

On October 20, 2022, DNRC received a Verified Motion to Amend Water Right Claim and maps, amending the volume to 2.53 ac-ft and the irrigated acres to 0.61 ac.

CLAIM 39E 30115397: 1969 DOMESTIC, in Sections 34, T1N, R59E, from a well.

Issue Remarks:

P330 – ONLY 3.21 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

V55 - VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

V85 – VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 27.97 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

V24 - THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 12.10 ACRE-FEET PER YEAR.

DNRC reviewed the above materials, and it appears that the amended acres and volume fall within the Departments guidelines.

RECOMMENDATION:

Based on the above information and the Claimant's Verified Motion to Amend Water Right Claim and maps, it is recommended that the acres be amended to 0.61 acres in the SESWSW of Sec. 34, T1N, R59E and that the volume be amended to 2.53 ac-ft. It is further recommended that the place of use issue remark (P330) and volume issue remarks (V55, V85 & V24) be removed, as they appear resolved.

DATE: October 25, 2022, by: /s/ Brandy Gray
Brandy Gray, Water Resource Specialist
Billings Water Resources Regional Office
(406) 247-4426

DATE: October 25, 2022, by: /s/ Mark Elison
Mark Elison, Regional Manager
Billings Water Resources Regional Office

Enclosures:

- Blue marked General Abstract.
- Verified Motion to Amend water Right Claim, calculation sheet and 2 maps

Service via email:

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

Service via USPS Mail:

Joe T. Breeding
191 Breeding Rd
Ekalaka, MT 59324-8723

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 30115397 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: JOE T BREDDING
191 BREDDING RD
EKALAKA, MT 59324-8723

Priority Date: JULY 1, 1969

Enforceable Priority Date: JULY 1, 1969

THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (FORM GW2). THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Maximum Flow Rate: 7.50 GPM

Maximum Volume: 2.53 14.10 AC-FT

Households: 1

Maximum Acres: 0.61 5.00

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		SESWSW	34	1N	59E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Well Depth: 75.00 FEET

Static Water Level: 43.00 FEET

Casing Diameter: 12.00 INCHES

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	0.61 5.00		SESWSW	34	1N	59E	CARTER

Total: 0.61 5.00

Geocodes/Valid: 42-1067-34-3-01-01-A400 - Y

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.

30115391

30115396

30115397

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

ONLY 3.21 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 27.97 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 12.10 ACRE FEET PER YEAR.

STATE OF MONTANA)
) ss.
COUNTY OF CARTER)

RECEIVED
OCT 30 2022
DNRC - WRD - BILLINGS

VERIFIED MOTION TO AMEND WATER RIGHT CLAIM

(Describe the proposed amendment, and the historical use of the water right as it relates to the proposed amendment. The following changes should be made to correct the abstract of this claim, so it reflects this right as it existed prior to July 1, 1973. If the proposed amendment involves the place of use, acres irrigated, point of diversion, or source of the water right, attach a map showing the proposed amendment.)

WATER RIGHT NO: CASE: 39E-0187-P-2022 WR# - 39E 30115397

OWNER: Joe T Breeding

The maximum Volume, Maximum Acres and Place of Use acres need to be corrected to reflect the historic use. The shelterbelts where never watered, only the lawn and garden area around the house was watered. Therefore, it is requested that the below be amended to:

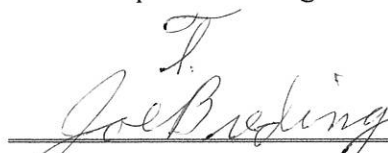
MAXIMUM VOLUME: Maximum Volume should be 2.53 AC-FT

MAXIMUM ACRES (lawn and garden): Maximum acres should be 0.61 acres


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	0.61		SESWW	34	1N	59E	CARTER

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct. (Please include signatures of all owners. Additional proceedings will be required if all signatures are not included.)



Joe T Breeding



(Date)

WATER RIGHT NO: 39E 30115397; CASE: 39E-0187-P-2022
OWNER: Joe T Breeding

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DNRC - WRD - BUREAU

MAXIMUM VOLUME CALCULATIONS

Household - 1	$(1 \times 1 \text{ ac-ft/yr} = 1 \text{ ac-ft/yr})$
Lawn and garden	$(0.61 \times 2.5 \text{ ac-ft/yr} = 1.53 \text{ ac-ft/yr})$
TOTAL 2.53 AC-FT/YR	

MAXIMUM ACRES (lawn and garden):

Map attached

PLACE OF USE:

Maps attached

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OCT 20 2022

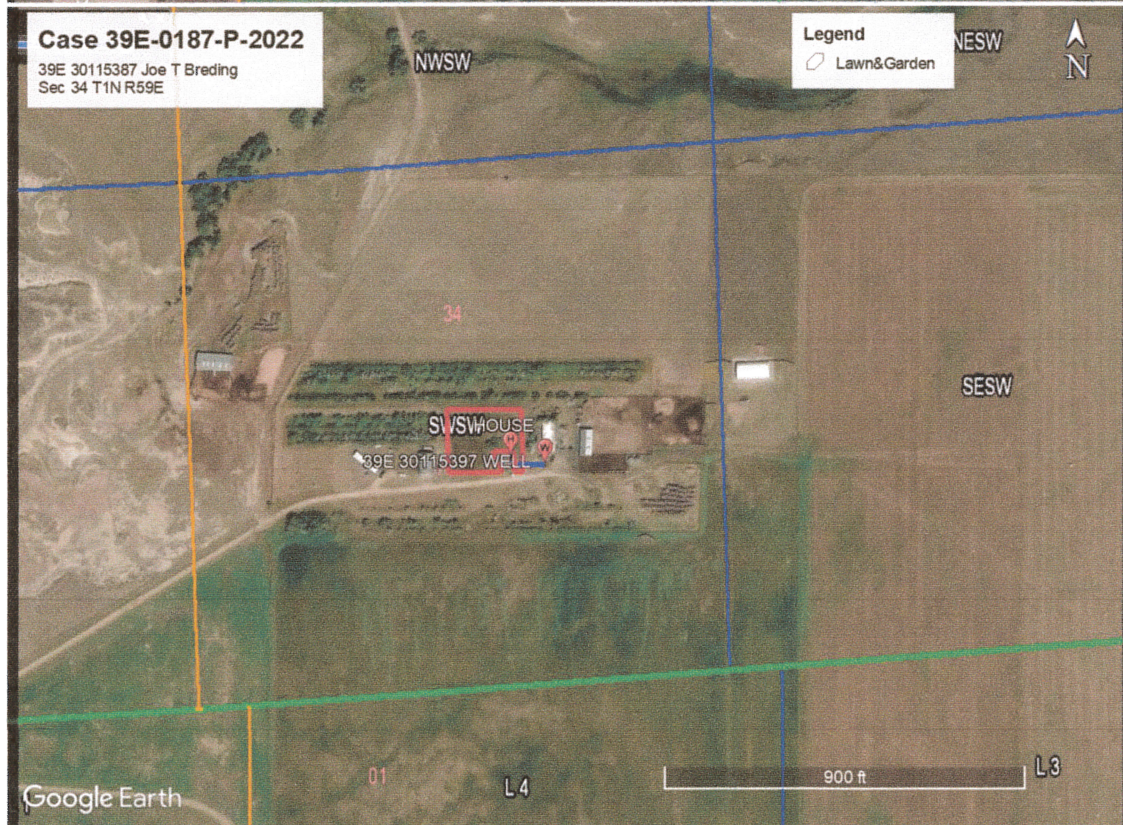
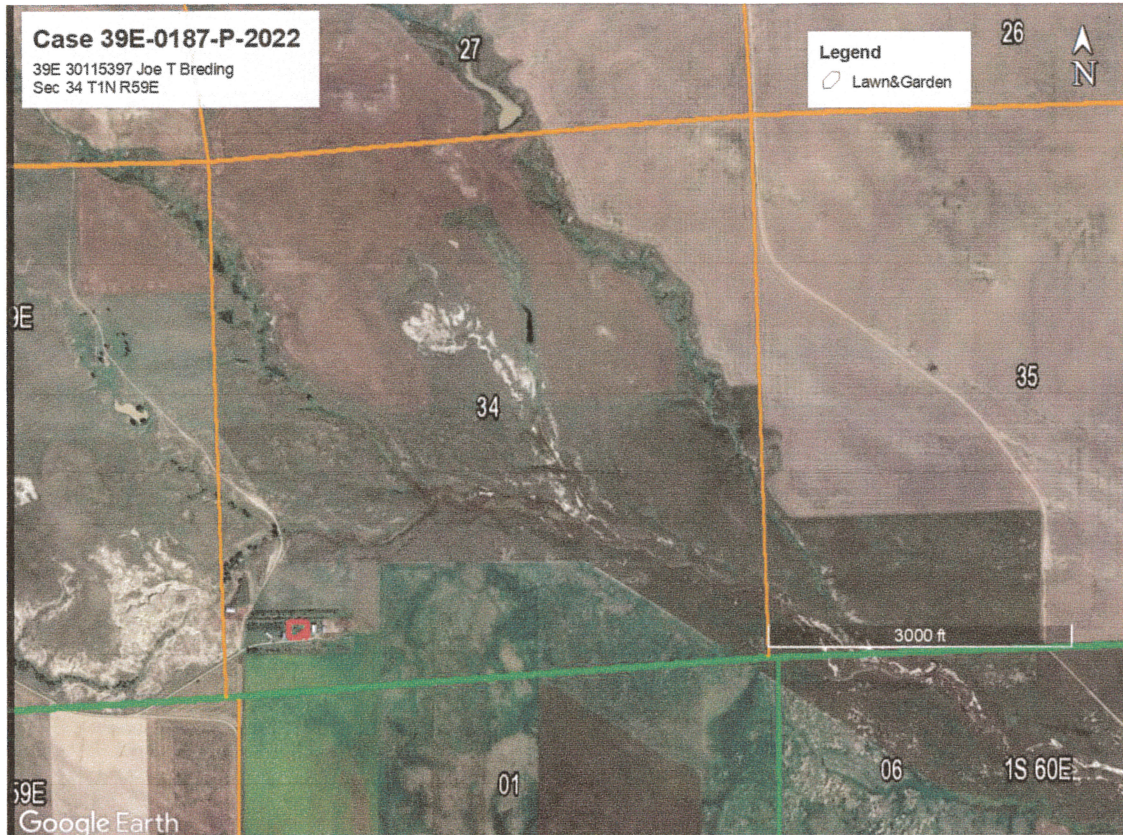
DNRC - WRD - BUREAU



RECEIVED

OCT 20 2022

DNRC - WRD - BILLING



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

Water Right Number: 39E 30115397 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOE T BREDDING
191 BREDDING RD
EKAŁAKA, MT 59324 8723

Priority Date: JULY 1, 1969

THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (FORM GW2). THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 7.50 GPM

Volume: 2.53 AC-FT

Households: 1

Maximum Acres: 0.61

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		SESWSW	34	1N	59E	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	0.61		SESWSW	34	1N	59E	CARTER
Total:	0.61						

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.

30115391 30115396 30115397

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

Water Right Number: 39E 30115397 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOE T BREDDING
191 BREDDING RD
EKAŁAKA, MT 59324 8723

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<u>ID</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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