

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

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANT: Mulvey Gulch Ranch LLC

OBJECTORS: Harold Shervin; Claudette Shervin

CASE 41E-0277-R-2024
41E 40038-00

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, conclusion 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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail 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

The Temporary Preliminary Decree for Basin 41E was issued on June 20, 1985. The objection filing deadline was December 17, 1985. On December 12, 1989 Harold Shervin and

Claudette Shervin filed an objection to this claim. This is a late filed objection which was docketed and held to address after issuance of the Preliminary Decree. The following notice remark was added to the abstract of claim:

A LATE OBJECTION HAS BEEN FILED TO THE MAXIMUM ACRES, PLACE OF USE AND VOLUME OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The Preliminary Decree was issued on October 19, 2022. The Preliminary Decree included the late objection remark plus the following remarks:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSWNW SEC 13 TWP 5N RGE 4W JEFFERSON COUNTY.

DITCH NAME 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.

The Order Consolidating Case And Setting Scheduling Conference was issued on January 24, 2024 to address the 1989 Harold Shervin and Claudette Shervin late objection and the point of diversion issue remark. This Order was sent to the Harold Shervin and Claudette Shervin address currently appearing in the state's centralized record system.

The February 14, 2024 Court Minutes, Order Entering Defaults, Order Setting Filing Deadlines, and Order Updating Service List ["Court Minutes and Orders"] states:

Mr. Michael made a motion to dismiss the Shervins' late objection filed in 1989 for their failures to appear. Therefore, it is

ORDERED that the deadline is **March 14, 2024** for Harold Shervin and Claudette Shervin to show cause in writing why their late objection filed in 1989 should not be dismissed for their failures to appear at the February 14, 2024 scheduling conference.

On February 20, 2024 the Order Consolidating Case And Setting Scheduling Conference mailed to the Shervins was returned as undeliverable. On February 26, 2024 the Court Minutes and Orders mailed to the Shervins was returned as undeliverable. Judicial Assistant Julie Cristiani was unable to find a new address for the Shervins. Consequently, nothing was filed by the Shervins as directed in the February 26, 2024 Court Minutes and Orders. On March 21, 2024 the Order Granting Motion To Dismiss Harold Shervin And Claudette Shervin Late Objection was entered.

On April 19, 2024 Mulvey Gulch Ranch LLC filed its Response To Order Setting Show Cause Deadline And Motion To Resolve DNRC Issue Remarks [“Motion”]. The 2024 documents are viewable in the Court’s FullCourt Enterprise case management system.

FINDINGS OF FACT

1. The late objection remark should be removed as the late objection was dismissed.
2. The Preliminary Decree states that the point of diversion is in the NWNWSW section 13, T5N, R4W, JEFFERSON. The Motion states that this legal description is correct and recounts that it was previously litigated and adjudicated in Case 41E-11 during the Temporary Preliminary Decree proceedings. The point of diversion legal description should not be changed. The point of diversion issue remark should be removed as addressed and resolved.
3. The third remark concerning the ditch name should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the claimant is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via Electronic Mail:

Jeremy A. Michael
Cusick, Farve, Mattick & Refling, P.C.
PO Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
office@cmrlawmt.com

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41E PD\41E CASES\277R\277R mr 6-6-24 jbc.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E**

Water Right Number: 41E 40038-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MULVEY GULCH RANCH LLC
2360 MT HIGHWAY 69
BOULDER, MT 59632-9732

Priority Date: SEPTEMBER 27, 1926

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 13.83 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 145.00

Source Name: BOULDER RIVER

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	13	5N	4W	JEFFERSON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MCCAULEY-MURPHY DITCH

Period of Use: APRIL 15 TO OCTOBER 15

***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	145.00		NW	14	4N	3W	JEFFERSON

Total: 145.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

40038-00 133565-00