

Montana Water Court
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MONTANA WATER COURT
UPPER MISSOURI DIVISION
BOULDER RIVER, TRIBUTARY OF THE JEFFERSON RIVER
BASIN 41E
PRELIMINARY DECREE

* * * * *

CLAIMANT: Mulvey Gulch Ranch LLC

CASE 41E-0194-R-2024

41E 93886-00

41E 94221-00

41E 94222-00

OBJECTOR: Edward K. McCauley

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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

Edward K. McCauley objected to each of Mulvey Gulch Ranch LLC claims 41E 93886-00, 41E 94221-00, and 41E 94222-00. On November 19, 2025 the Mediator's Report was filed, which includes a Settlement Agreement and marked abstracts [Doc. 28]. The Mediator's Report is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is *prima facie* proof of its content pursuant to section 85-2-227, MCA. This *prima facie* proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.ADJ.R.

FINDINGS OF FACT

1. For all three claims, the Mediator's Report includes the text of a remark concerning the Settlement Agreement. The word "claim" should be replaced with the word "right". The following remark should be added to the abstract of each claim: THIS RIGHT IS SUBJECT TO A SETTLEMENT AGREEMENT FILED IN WATER COURT CASE 41E-0194-R-2024. A COPY OF THE SETTLEMENT AGREEMENT CAN BE FOUND IN THE CASE FILE AND CLAIM FILE.
2. Claim 41E 93886-00 appeared in the Preliminary Decree with the following notice remark:

MEANS OF DIVERSION AND PLACE OF USE 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.

This remark should be removed as having served its notice purpose.

3. For claim 41E 94221-00, the Preliminary Decree states that the priority date is APRIL 18, 1887. The priority date should be OCTOBER 5, 1902. The multiple use remark should be added referencing this claim and claim 41E 94211-00.

The Preliminary Decree states that the period of diversion and period of use are both JANUARY 1 TO DECEMBER 1. The period of diversion and period of use should both be MAY 1 TO SEPTEMBER 30.

The Preliminary Decree states that the means of diversion is LIVESTOCK DIRECT FROM SOURCE. The means of diversion should be HEADGATE with Ditch Name: MURPHY-QUAINTANCE DITCH.

4. For claim 41E 94222-00, the Preliminary Decree includes the following notice remark:

DITCH NAME AND MEANS OF DIVERSION 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.

This remark should be removed as having served its notice purpose.

The Preliminary Decree states that the priority date is OCTOBER 5, 1902. The priority date should be MARCH 11, 1968. The multiple use remark should be added referencing this claim and claim 41E 94218-00.

The Preliminary Decree states that the period of diversion and period of use are both JANUARY 1 TO DECEMBER 31. The period of diversion and period of use should both be MAY 1 TO SEPTEMBER 30.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims.

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 for each claim in this Case plus claims 41E 94211-00 and 41E 94218-00 are 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.
office@cmrlawmt.com

Oliver J. Urick
Urick Law Firm PLLC
ourick@uricklawfirm.com

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

Water Right Number: **41E 93886-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MULVEY GULCH RANCH LLC
5101 VERNON AVE S
EDINA, MN 55436-2172

Priority Date: JUNE 30, 1866

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: BOULDER RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1			W2SE	2	4N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
2			S2SW	2	4N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
3			NE	3	4N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
4			NW	3	4N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
5			N2SE	3	4N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						
6			N2NE	11	4N	3W	JEFFERSON
Period of Diversion:	JANUARY 1 TO DECEMBER 31						
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE						

7 N2NW 11 4N 3W JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SE	2	4N	3W	JEFFERSON
2			S2SW	2	4N	3W	JEFFERSON
3			NE	3	4N	3W	JEFFERSON
4			NW	3	4N	3W	JEFFERSON
5			N2SE	3	4N	3W	JEFFERSON
6			N2NE	11	4N	3W	JEFFERSON
7			N2NW	11	4N	3W	JEFFERSON

Remarks:

THIS RIGHT IS SUBJECT TO A SETTLEMENT AGREEMENT FILED IN WATER COURT CASE 41E-0194-R-2024. A COPY OF THE SETTLEMENT AGREEMENT CAN BE FOUND IN THE CASE FILE AND CLAIM FILE.

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

Water Right Number: **41E 94221-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MULVEY GULCH RANCH LLC
5101 VERNON AVE S
EDINA, MN 55436-2172

Priority Date: OCTOBER 5, 1902

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: BOULDER RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1		SENESE		3	4N	3W	JEFFERSON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: MURPHY-QUAINTANCE DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SE	11	4N	3W	JEFFERSON
2			NE	14	4N	3W	JEFFERSON
3			NESE	14	4N	3W	JEFFERSON
4			SWSW	13	4N	3W	JEFFERSON

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.

94211-00

94221-00

THIS RIGHT IS SUBJECT TO A SETTLEMENT AGREEMENT FILED IN WATER COURT CASE 41E-0194-R-2024. A COPY OF THE SETTLEMENT AGREEMENT CAN BE FOUND IN THE CASE FILE AND CLAIM FILE.

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

Water Right Number: **41E 94222-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MULVEY GULCH RANCH LLC
5101 VERNON AVE S
EDINA, MN 55436-2172

Priority Date: MARCH 11, 1968

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: BOULDER RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1		NWSWNW	12	4N	3W	JEFFERSON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: QUAINTANCE DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

Place of Use:

ID	Acres	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1			W2	12	4N	3W	JEFFERSON
2			N2	13	4N	3W	JEFFERSON

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.

94218-00 94222-00

THIS RIGHT IS SUBJECT TO A SETTLEMENT AGREEMENT FILED IN WATER COURT CASE 41E-0194-R-2024. A COPY OF THE SETTLEMENT AGREEMENT CAN BE FOUND IN THE CASE FILE AND CLAIM FILE.

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

Water Right Number: **41E 94211-00 STATEMENT OF CLAIM**

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MULVEY GULCH RANCH LLC
5101 VERNON AVE S
EDINA, MN 55436-2172

***Priority Date:** OCTOBER 5, 1902

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 5.00 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:** 356.40

***Source Name:** BOULDER RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1		SENESE	3	4N	3W	JEFFERSON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: MURPHY-QUAINTANCE DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

***Place of Use:**

ID	Acres	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1	5.00		S2S2NE	11	4N	3W	JEFFERSON
2	129.50		SE	11	4N	3W	JEFFERSON
3	14.80		SWSW	12	4N	3W	JEFFERSON
4	107.50		NW	13	4N	3W	JEFFERSON
5	25.50		NWSW	13	4N	3W	JEFFERSON
6	74.10		NE	14	4N	3W	JEFFERSON
Total:	356.40						

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.

94211-00 216334-00

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.

94211-00 94221-00

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

Water Right Number: **41E 94218-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MULVEY GULCH RANCH LLC
5101 VERNON AVE S
EDINA, MN 55436-2172

***Priority Date:** MARCH 11, 1968

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.25 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: 144.10

Source Name: BOULDER RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNW	12	4N	3W	JEFFERSON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DITCH

Ditch Name: QUAINSTANCE DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	84.60		W2	12	4N	3W	JEFFERSON
2	59.50		W2NE	13	4N	3W	JEFFERSON
Total:	144.10						

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.

94218-00 94222-00

APPLICATION FOR CHANGE RECEIVED 09/29/1986 IS TERMINATED SEE 41E 65118-00 FOR FURTHER INFORMATION.