

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

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE  
PRELIMINARY DECREE OF BOX ELDER CREEK (BASIN 39E)**

The Temporary Preliminary Decree for Box Elder Creek (Basin 39E) was issued on February 1, 1985. Objections filed to claims in the Temporary Preliminary Decree have been addressed and resolved.

Since issuance of the Temporary Preliminary Decree in 1985, there have been statewide changes to several classes or elements of water rights. These changes include changes regarding examination and decrees of claims for fish and wildlife, wildlife, and recreation purposes. There have also been changes to claim elements such as standardization of source names and point of diversion legal descriptions. In some instances additional information has been added to the abstracts of claims in this Preliminary Decree. This additional information includes ditch names, reservoir data, and period of diversion. These changes have been authorized by Montana Water Court Orders. *See* Amended Order on Period of Diversion - Statewide entered December 11, 2008; Second Amended Order on Period of Diversion - Statewide entered November 10, 2014; Order Addressing Reexamination entered December 14, 2012; and Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims - Statewide 2013 entered April 17, 2013.

These Findings of Fact and Conclusions of Law are issued for inclusion in the Preliminary Decree for Box Elder Creek (Basin 39E) as authorized by §§ 3-7-224(2) and

85-2-231, MCA. These Findings of Fact and Conclusions of Law supersede and replace the Findings of Fact and Conclusions of Law for the Temporary Preliminary Decree filed on February 1, 1985.

## **FINDINGS OF FACT**

### **DESCRIPTION OF BASIN**

1. Basin 39E encompasses Box Elder Creek and its tributaries as well as groundwater located within Basin 39E. The boundaries of Basin 39E are outlined on the attached map.

### **DECREE ABSTRACTS AND INDEX**

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for each individual water right claim decreed in this basin. Accompanying the Decree are six Indexes designed to facilitate research on water rights included in the Decree. The six Indexes are as follows:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index
- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. CD copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Billings Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the DNRC's Water Rights Adjudication webpage.

### **UNRESOLVED FACTUAL AND LEGAL ISSUES**

4. The objection period allows interested parties to raise issues regarding their own water rights or other water rights in this decree. Issues may also be raised by the Water Court on its own initiative ("on its own motion"). See Rule 8, W.R.Adj.R.

Many unresolved factual and legal issues have been noted by issue remarks on the individual claim abstracts. The Issue Remark Index combines the issue remarks into a list arranged numerically by water right claim number. Searching the Issue Remark

Index by water right claim number will identify issue remarks on individual claim abstracts. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved as directed by § 85-2-248, MCA.

Water users within this Basin and other interested persons will be mailed a Notice of Entry of Preliminary Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.

### CONCLUSIONS OF LAW

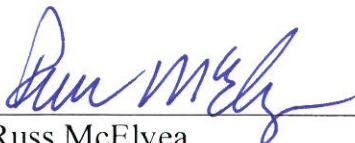
1. This is a general adjudication of existing water rights. An existing water right is a right to the use of water which is protected under the law as it existed prior to July 1, 1973. Section 85-2-102(12), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. Section 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. Section 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter a Preliminary Decree for the Box Elder Creek (Basin 39E) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983); *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

4. These Findings of Fact, Conclusions of Law, and abstracts define existing water rights under Montana law in Basin 39E and comprise a Preliminary Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

DATED this 4<sup>th</sup> day of February, 2020.

  
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Russ McElyea  
Chief Water Judge

**Service via USPS Mail:**

Matt Murphy  
Helena DNRC Adjudication Office  
PO Box 201602  
Helena, MT 59620-1602

DNRC Billings Regional Office  
Airport Industrial Park  
1371 Rintop Drive  
Billings, MT 59105-1978

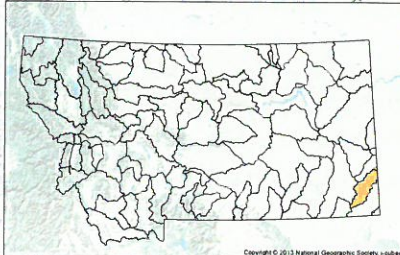
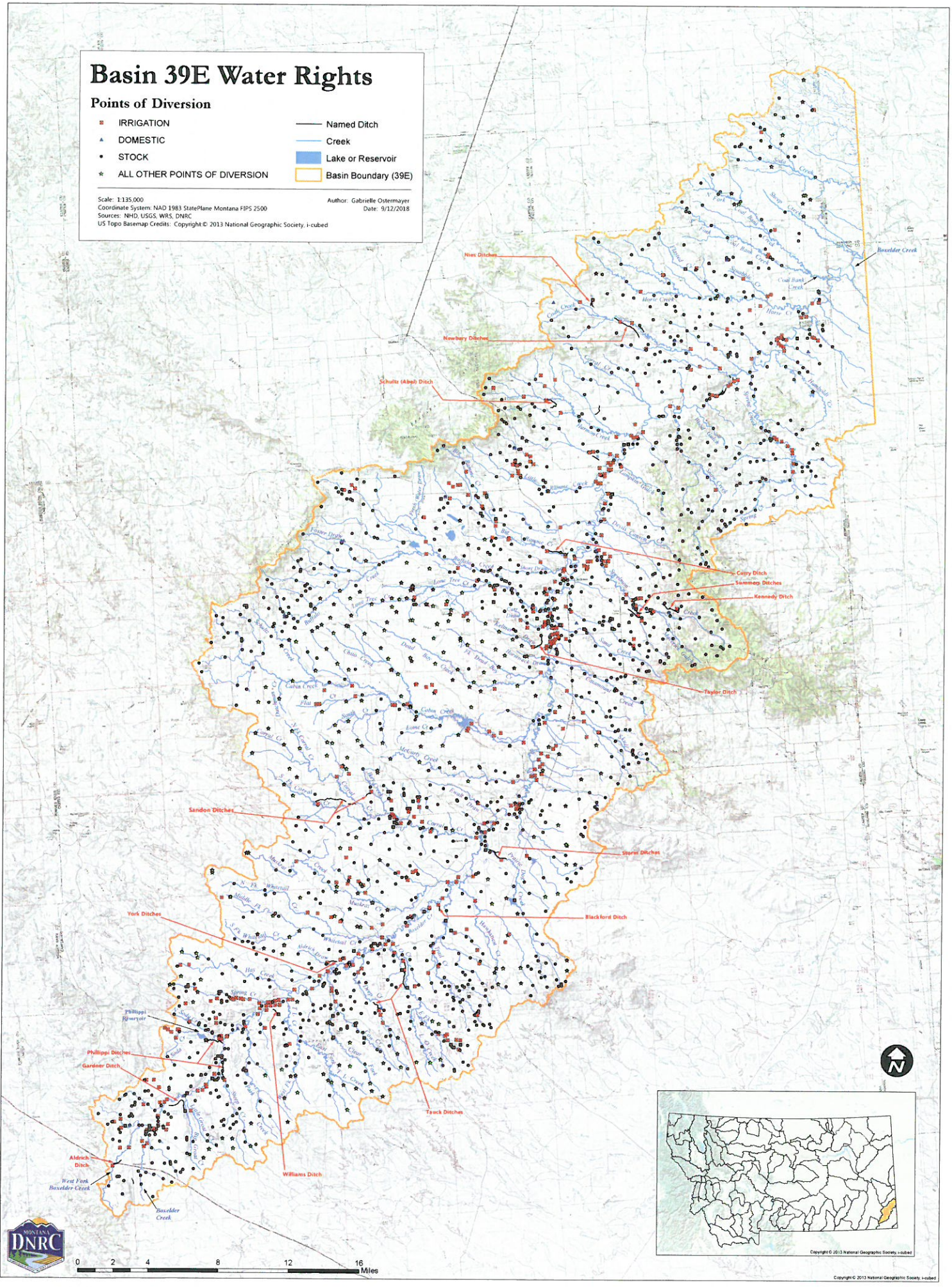
# Basin 39E Water Rights

## Points of Diversion

- IRRIGATION
  - ▲ DOMESTIC
  - STOCK
  - ★ ALL OTHER POINTS OF DIVERSION
- Named Ditch
  - Creek
  - Lake or Reservoir
  - Basin Boundary (39E)

Scale: 1:135,000  
Coordinate System: NAD 1983 StatePlane Montana FIPS 2500  
Sources: NHD, USGS, WRS, DNRC  
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Author: Gabrielle Ostermayer  
Date: 9/12/2018



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