

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

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CLAIMANT: John Carey Ranch Co.

**CASE 41E-0119-R-2024**  
41E 30146806

**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 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**

John Carey Ranch Co. claim 41E 30148606 appeared in the Preliminary Decree with the following notice remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41E DECREE ISSUED 06/20/1985.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 01/25/2022 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY GOLDEN SUNLIGHT MINES.

The January 10, 2024 Order Consolidating Case And Setting Filing Deadline included Golden Sunlight Mines on the Service List and set a February 15, 2024 deadline for filing an ownership update if it determined it had an ownership interest in this claim. On February 15, 2024 Golden Sunlight Mines, Inc. filed a Statement Regarding Ownership Of 41E 30146806 stating that Golden Sunlight Mines., Inc. property is included in the point of diversion and place of use, and perhaps it should be removed. On April 26, 2024 John Carey Ranch Co. filed an Unopposed Motion To Amend Water Right Claim 41E 30146806 To Resolve Issue Remarks which requests removal of the Golden Sunlight Mines property from the claimed point of diversion and place of use. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

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 claimants amending their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The changes requested in the Motion to Amend arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are based on the same

operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

2. The Preliminary Decree states that the legal descriptions for the point of diversion are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2S2NE	33	3N	3W	JEFFERSON
N2SWNW	34	3N	3W	JEFFERSON

and the legal descriptions for the place of use are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2SENE	33	3N	3W	JEFFERSON
S2S2NE	33	3N	3W	JEFFERSON

The point of diversion and place of use legal descriptions should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
W2NE	34	3N	3W	JEFFERSON
NW	34	3N	3W	JEFFERSON

#### CONCLUSIONS OF LAW

1. The requested amendments do not adversely affect other water rights as they are corrections to the abstract which do not make any changes to the actual historical use of the claimed right on the ground. Notice by publication of these amendments is not required.

Section 85-2-233(6), MCA.

2. Each of the requested amendments “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The Motion To Amend is sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree.

#### RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the Motion to Amend this claim and 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:**

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

**Water Right Number:** 41E 30146806 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** CAREY, JOHN RANCH CO  
2050 MT HIGHWAY 69  
BOULDER, MT 59632-9729

**Priority Date:** FEBRUARY 13, 1918

**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:** COTTONWOOD CREEK, SOUTH FORK

**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		W2NE	34	3N	3W	JEFFERSON

**Period of Diversion:** APRIL 1 TO FEBRUARY 1

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NW	34	3N	3W	JEFFERSON
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**Period of Diversion:** APRIL 1 TO FEBRUARY 1

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** APRIL 1 TO FEBRUARY 1

**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			W2NE	34	3N	3W	JEFFERSON
2			NW	34	3N	3W	JEFFERSON