

Montana Water Court
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FILED
03/18/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41E-0230-R-2024
Lambert, Kathryn
5.00

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

CLAIMANTS: Franklin C. Carey; Michael J. Carey; Patrick E. Carey;
Vincent J. Carey

CASE 41E-0230-R-2024
41E 93904-00

OBJECTORS: Harold Shervin; Claudette Shervin

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 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 and February 2, 1994 Harold Shervin and Claudette Shervin filed objections to this claim. These are late filed

objections which were docketed and held to address after issuance of the Preliminary Decree.

The following notice remarks were added to the abstract of claim:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

A LATE OBJECTION HAS BEEN FILED TO THE VOLUME, FLOW RATE, MAXIMUM ACRES, PLACE OF USE, AND POINT OF DIVERSION 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. No other objection, counterobjection, or notice of intent to appear was filed on this claim. The Order Consolidating Case And Setting Scheduling Conference was issued on January 24, 2024 to begin addressing the 1989 and 1994 Harold Shervin and Claudette Shervin late objections. This Order was sent to the Harold Shervin and Claudette Shervin address currently appearing in the state's centralized record system.

The scheduling conference was held before Senior Water Master Kathryn L. W. Lambert on February 14, 2024. Attorney Jeremy A. Michael appeared for Franklin C. Carey, Michael J. Carey, Patrick E. Carey, and Vincent J. Carey, with Patrick E. Carey attending. Harold Shervin and Claudette Shervin did not appear. The February 14, 2024 Court Minutes, Order Entering Defaults, Order Setting Show Cause Filing Deadline, and Order Updating Service List [“Court Minutes and Orders”] states:

As Harold Shervin and Claudette Shervin did not appear as directed in the January 24, 2024 Order Consolidating Case And Setting Scheduling Conference, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the defaults of Harold Shervin and Claudette Shervin are ENTERED.

Mr. Michael made a motion to dismiss the Shervins’ late objections filed in 1989 and 1994 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 objections filed in 1989 and 1994 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 was returned as undeliverable. On February 26, 2024 the Court Minutes and Orders was returned as undeliverable. Judicial Assistant Julie Cristiani was unable to find a new address for Harold Shervin and Claudette Shervin. Consequently, nothing was filed by Harold Shervin and

Claudette Shervin. These 2024 documents are viewable in the Court's FullCourt Enterprise case management system.

FINDINGS OF FACT

1. Objectors Harold Shervin and Claudette Shervin cannot be located. Possible successor(s) have not appeared and requested substitution to prosecute the objections.

2. This claim appeared in the Preliminary Decree with a third notice remark:

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.

3. The late objection notice remarks and the ditch name notice remark should be removed as having served their notice purposes.

RECOMMENDATIONS

Based upon the above Findings of Fact, this Master recommends that the Court grant the motion to dismiss the 1989 and 1994 Harold Shervin and Claudette Shervin objections as no one has appeared for the purpose of prosecuting the objections, and recommends removal of the notice remarks as stated 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 USPS Mail:

Harold Shervin
Claudette Shervin
(Return mail received)

Service Via Electronic Mail:

Jeremy A. Michael
Cusick, Farve, Mattick & Refling, P.C.
PO Box 1288
Bozeman, MT 59771-1288
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 93904-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FRANKLIN C CAREY
2050 MT HWY 69
BOULDER, MT 59632-9729

MICHAEL J CAREY
2050 MT HWY 69
BOULDER, MT 59632-9729

PATRICK E CAREY
2050 MT HWY 69
BOULDER, MT 59632-9729

VINCENT J CAREY
2050 MT HWY 69
BOULDER, MT 59632-9729

***Priority Date:** APRIL 30, 1956

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 9.75 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: 104.00

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		SENWSE	33	5N	3W	JEFFERSON

Period of Diversion: APRIL 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: CAREY DITCH

Period of Use: APRIL 15 TO SEPTEMBER 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	20.00		NWSW	5	3N	2W	JEFFERSON
2	21.00		NESW	5	3N	2W	JEFFERSON
3	17.00		SESW	5	3N	2W	JEFFERSON

4	39.00	NW	8	3N	2W	JEFFERSON
5	<u>7.00</u>	E2SWSW	5	3N	2W	JEFFERSON
Total:	104.00					