

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: John Carey Ranch Co.

**CASE 41E-0250-R-2024**

41E 93996-00

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 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 FLOW RATE, VOLUME, 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 10, 2024 to begin addressing the 1989 Harold Shervin and Claudette Shervin late objection. This Order was sent to the Harold Shervin and Claudette Shervin address currently appearing in the state's centralized record system. On January 22, 2024 it was returned as undeliverable. Judicial Assistant Julie Cristiani was unable to find a new address for Harold Shervin and Claudette Shervin.

The scheduling conference was held before Senior Water Master Kathryn L. W. Lambert on February 7, 2024. Attorney Jeremy A. Michael appeared on behalf of John Carey Ranch Co. with Patrick Carey attending. The February 8, 2024 Court Minutes, Order Setting Deadline For Harold Shervin And Claudette Shervin To File A Written Response To The Motion To Dismiss Their Objection, and Order Updating Service List ["Court Minutes and Orders"] states:

The Court stated that the Order Consolidating Case And Setting Scheduling Conference was returned to the Court as undeliverable, that Judicial Assistant Julie Crisitiani found no new address or a current phone number for the Shervins and, according to Lexis, both Harold Shervin and Claudette Shervin passed more than 10 years ago. The Court also noted that this claim appeared in the Basin 41E Preliminary Decree and no one – including whoever Harold Shervin's and Claudette Shervin's successor may be – objected to this claim.

Mr. Michael made a motion for dismissal of the objection. The Court stated it will set a 30 day deadline for a written response and mail it to their last known address one more time in case anyone responds. Therefore, pursuant to Rule 16, M.R.Civ.P. and Rules 16 and 18, W.R.Adj.R., it is

ORDERED that the deadline is **March 7, 2024** for Harold Shervin and Claudette Shervin to file a written response to the motion to dismiss their objection to this claim.

The Court Minutes and Orders sent to Harold Shervin and Claudette Shervin was returned to the Court as undeliverable. 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 are reported as deceased. Possible successor(s) have not appeared and requested substitution to prosecute the objection.

2. Claim 41E 93996-00 appeared in the Preliminary Decree with the following notice remarks:

A LATE OBJECTION HAS BEEN FILED TO THE FLOW RATE, VOLUME, 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 TIMELY FILED OBJECTION OF JOHN CAREY RANCH, INC. WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PLACE OF USE. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

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.

These remarks 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 Harold Shervin and Claudette Shervin objection as no one has appeared for the purpose of prosecuting the objection, and recommends removal of the notice remarks as 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 USPS Mail:**

Harold Shervin  
Claudette Shervin  
~~PO Box 3126~~  
~~Alpine, WY 83128~~  
(Return mail received)

**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

**Note: Service List Updated 3-8-24**

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

**Water Right Number:** 41E 93996-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** APRIL 2, 1949

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 8.28 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:** 99.20

**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		SE	33	5N	3W	JEFFERSON

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** CAREY 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	91.30		NW	5	4N	2W	JEFFERSON
2	7.90		NE	6	4N	2W	JEFFERSON
<b>Total:</b>	99.20						

**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.

93996-00                      214283-00                      215653-00