

Montana Water Court  
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**FILED**  
09/06/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41E-0251-R-2024  
Lambert, Kathryn  
10.00

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-0251-R-2024**  
41E 93993-00

**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, conclusion 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**

This claim appeared in the Preliminary Decree with the following issue remark:

IT APPEARS THAT THE SOURCE, POINT OF DIVERSION AND MEANS OF DIVERSION SHOULD BE CHANGED TO MORE ACCURATELY REFLECT THE USE OF THIS CLAIM. SEE FINDING OF FACT 12 OF THE MASTER'S REPORT FOR THIS CLAIM FOR MORE INFORMATION.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On June 20, 2024 John Carey Ranch Co. filed an Unopposed Motion To Amend Water Right Claim 41E 93993-00 To Resolve DNRC Issue Remark [“Motion”]. On July 29, 2024 the claimant filed its Response To Resolve Ditch Name Issue. These settlement documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), 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 for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree includes two source names: SUBIRRIGATION, UNNAMED TRIBUTARY OF BOULDER RIVER and UNNAMED TRIBUTARY OF BOULDER RIVER. Both should be removed. The source should be BOULDER RIVER.

2. The Preliminary Decree includes two points of diversion correlating with the two sources. Both should be removed. The point of diversion and means of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SENE	24	4N	3W	JEFFERSON

Diversion Means: HEADGATE

Ditch Name: CAREY-TWOHY DITCH

DITCH ALSO KNOWN AS SMITH-DUNN DITCH

3. The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION 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 provides notice of changes made prior to issuance of the Preliminary Decree proceedings and does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

**CONCLUSION OF LAW**

The information provided by the claimant is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

**RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court grant the Motion 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:**

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

**Water Right Number:** 41E 93993-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** JULY 1, 1877

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** CONTROLLED SUBIRRIGATION

**\*Flow Rate:**

THE WATER COURT HAS DETERMINED THAT NO FLOW RATE IS REQUIRED FOR THIS CONTROLLED SUBIRRIGATION CLAIM.

**\*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:** 45.00

**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		SENE	24	4N	3W	JEFFERSON

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

**Diversion Means:** HEADGATE

**Ditch Name:** CAREY-TWOHY DITCH  
DITCH ALSO KNOWN AS SMITH-DUNN 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	29.00		W2	19	4N	2W	JEFFERSON
2	16.00		NESE	24	4N	3W	JEFFERSON
<b>Total:</b>	<u>45.00</u>						