

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

CLAIMANT: John Carey Ranch Co.

CASE 41E-0286-R-2024
41E 30146804

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:

A FORM GW4, DECLARATION OF VESTED GROUNDWATER RIGHTS, WAS FILED AND SUBMITTED WITH THIS CLAIM AS A GW2/GW3 , NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION.

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 30146804 To Resolve DNRC Issue Remarks ["Motion"]. This is a settlement document, not a motion to amend filed pursuant to section 85-2-233(6), MCA. On November 8, 2024 the claimant filed a Status Report And Notice Of Filing Additional Evidence including the Affidavit of John (Jack) W. Dawson confirming the existence of the well prior to December 31, 1961 and photographs of the windmill at the well site. 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.

"When the testimony of a witness is sufficient to prove an act or transaction within a certain period, but is so vague and uncertain as not to fix the time within that period, the best that can be done for the party producing such witness is to fix the date at the end of the period." *Vidal v. Kensler*, 100 Mont. 592, 598 (1935). *See also* Rule 13(c), W.R.C.E.R.

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 states that the priority date for this stockwater well is DECEMBER 31, 1963 and the type of historical right is FILED.

The Statement of Claim is for a use right with priority date December 31, 1963. Attached is a copy of the Declaration Of Vested Groundwater Rights (the Form GW4) filed on

December 31, 1963. Item 3 on the Declaration asks for the date of first use. No date is provided, with the following text added: "first used by man." Other required portions of the Declaration form are not completed.

2. The GW4 form – Declaration of Vested Groundwater Right – was for recording groundwater appropriations made prior to January 1, 1962, the date the 1961 Groundwater Code became effective. It was an optional filing. It did not have to be filed in order to validate the already appropriated water right. In this instance, the correct form was filed but it is incomplete and does not serve its intended purpose to record the groundwater appropriation.

3. This claimed well existed prior to January 1, 1962. As the exact date when water was first withdrawn by the well is unknown, the requested priority date of December 31, 1961, is appropriate.

4. The priority date should be DECEMBER 31, 1961 and the type of historical right should be USE. The issue remark should be removed as addressed and resolved.

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

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

This remark provides notice that the claim was not included in the Temporary Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. 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 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 30146804 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

Priority Date: DECEMBER 31, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 20.00 GPM

***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: GROUNDWATER

Source Type: GROUNDWATER

***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		NWSWNW	33	3N	2W	JEFFERSON

Period of Diversion: APRIL 1 TO FEBRUARY 1

Diversion Means: WELL

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			NWSWNW	33	3N	2W	JEFFERSON