

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

CLAIMANTS: Lisa Overholt Dillon; Karin Anne Hierholzer Revocable Living Trust; Claire Overholt Nagy; Eric C. Oatman; Jonathan C. Oatman; William L. Overholt; Stephen C. Overholt Special Needs Trust; Gina Pearce; Daniel Perlin; James J. Perlin; John Perlin; Joseph Perlin; Charles D. Schroeder; Daniel R. Schroeder; Donald R. Schroeder; Douglas P. Schroeder; John W. Schroeder; Susan L. Schroeder; Herbert Schroeder Trust; Catherine Sutton; Cynthia Overholt Woodland

CASE 41E-0247-R-2024
41E 44363-00

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

Claim 41E 44363-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED FLOW RATE APPEARS TO BE HIGH FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

IT APPEARS THE VOLUME FOR THIS DOMESTIC CLAIM MAY NOT BE CORRECTLY DESCRIBED BY THE VOLUME REMARK

The issue remarks were 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 claimants an opportunity to file additional information or evidence.

On April 19, 2024 Jonathan C. Oatman filed a response providing information which addresses and resolves the issue remarks. Nothing was filed by the other claimants. The June 6, 2024 Order Updating Caption And Service List and Reissued Order Distributing Copy Of Filing and Order Setting Filing Deadline states:

Mr. Oatman's Response is supported by the attachments to his Response: the flow rate and volume were already determined in the 1990 proceedings for this claim and the issue remarks should be removed. The Court needs to be sure all of the co-claimants agree with Mr. Oatman's Response. If any co-claimant does not agree with Mr. Oatman's Response, a written statement explaining that disagreement must be filed by the deadline stated below. If any co-claimant agrees with Mr. Oatman's Response, nothing needs to be filed. Therefore, it is ORDERED that the deadline is **June 28, 2024** for any co-claimant to file a written statement explaining their disagreement with the Response. If nothing is filed by a co-claimant, the Court will conclude that co-claimant agrees with Mr. Oatman's Response.

Nothing was filed. These 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.

Judicial notice is taken of the Temporary Preliminary Decree proceedings for this claim in Case 41E-12. Rule 202, M.R.Evid.

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 flow rate and volume of this domestic claim were litigated and determined during the Temporary Preliminary Decree proceedings in Case 41E-12. The claim appeared in the Temporary Preliminary Decree as a mining claim, flow rate 6.25 CFS, and volume 20.00 AC-FT. The Montana Department of Fish, Wildlife and Parks objected to the claim. The parties' Stipulation states that the purpose should be changed to domestic, the flow rate reduced to 100.00 GPM and the volume should be limited to the amount historically used for mining purposes. Instead of a quantification, they agreed to removing the 20.00 AC-FT and adding the following remark: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

2. The Preliminary Decree states the flow rate is 100.00 GPM as adjudicated during the Temporary Preliminary Decree proceedings. The flow rate issue remark should be removed as moot.

3. The Preliminary Decree states for the volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES. The volume issue remark should be removed as moot.

CONCLUSION OF LAW

The information already in the claim file contradicts the issue remarks. The issue remarks should be removed 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 USPS Mail:

Karin Anne Hierholzer
Revocable Living Trust
% Karin Hierholzer
208 Woodland Trace Dr
Knoxville, TN 37934

Eric C. Oatman
5756 Johnston Pl
Rancho Cucamonga, CA
91739

Jonathan C. Oatman
701 Redwood Blvd Apt 72
Redding, CA 96003
Gina Pearce
385 Via El Encantador
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~~1621 Villa Ave~~
~~Unit B~~
(Return mail received)
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~~Boulder, MT 59632~~
(Return mail received)

Herbert Schroeder Trust
% Aileen Federizo
Unit #16744 Elderwell LLC
5805 White Oak Ave
Encino, CA 91416

Lisa Overholt Dillon
Stephen C. Overholt Special
Needs Trust
Lisa O. Dillon, Trustee
517 Cedar Pl
Philomath, OR 97370

Claire Overholt Nagy
321 19th St
Santa Monica, CA 90402

William L. Overholt
1046 Potenza Ct
Livermore, CA 94550

Cynthia Overholt Woodland
204 Ruby Ave
Newport Beach, CA 92662

Note: Service List Updated 7-2-24

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

Water Right Number: 41E 44363-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

LISA OVERHOLT DILLON
517 CEDAR PL
PHILOMATH, OR 97370-9524

CLAIRE OVERHOLT NAGY
321 19TH ST
SANTA MONICA, CA 90402-2409

ERIC C OATMAN
5756 JOHNSTON PL
RANCHO CUCAMONGA, CA 91739

JONATHAN C OATMAN
701 REDWOOD BLVD APT 72
REDDING, CA 96003-1930

WILLIAM L OVERHOLT
1046 POTENZA CT
LIVERMORE, CA 94550-7063

GINA PEARCE
385 VIA EL ENCANTADOR
SANTA BARBARA, CA 93111

DANIEL PERLIN
1621 VILLA AVE
UNIT B
SANTA BARBARA, CA 93101

JAMES J PERLIN
129 PRINCETON PL
LOMPOC, CA 93436-7126

JOHN PERLIN
4405 CATLIN CIR
UNIT C
CARPINTERIA, CA 93013

JOSEPH PERLIN
168 SHAMROCK
VENTURA, CA 93003

CHARLES D SCHROEDER
208 S L ST
LOMPOC, CA 93436-7231

DANIEL R SCHROEDER
150 DUBLIN HILL RD
HIGGANUM, CT 06441-4131

DONALD R SCHROEDER
4540 MATILIJA AVE
SHERMAN OAKS, CA 91423

DOUGLAS P SCHROEDER
1725 SEQUOIA AVE
SIMI VALLEY, CA 93063

JOHN W SCHROEDER
PO BOX 883
BOULDER, MT 59632-0883

SUSAN L SCHROEDER
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LOMPOC, CA 93436-7231

CATHERINE SUTTON
4540 MATILIJA AVE
SHERMAN OAKS, CA 91423

CYNTHIA OVERHOLT WOODLAND
204 RUBY AVE
NEWPORT BEACH, CA 92662-1128

HIERHOLZER, KARIN ANNE REVOCABLE LIVING TRUST
% KARIN HIERHOLZER
208 WOODLAND TRACE DR
KNOXVILLE, TN 37934

OVERHOLT, STEPHEN C SPECIAL NEEDS TRUST
LISA O DILLON TRUSTEE
517 CEDAR PL
PHILOMATH, OR 97370-9524

SCHROEDER, HERBERT TRUST
% AILEEN FEDERIZO
UNIT #16744 ELDERWELL LLC
5805 WHITE OAK AV
ENCINO, CA 91316

Priority Date: MAY 12, 1899

Type of Historical Right: FILED

***Purpose (Use):** DOMESTIC

***Flow Rate:** 100.00 GPM

***Volume:** THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: RED ROCK CREEK

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		NWSEW	10	6N	6W	JEFFERSON

Period of Diversion: MAY 10 TO OCTOBER 31

Diversion Means: INSTREAM

Period of Use: MAY 10 TO OCTOBER 31

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			SEW	10	6N	6W	JEFFERSON
2			NEW	10	6N	6W	JEFFERSON