

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: Donald R. Schroeder; Jane Schroeder

OBJECTOR: United States of America (USDA Forest Service)

CASE 41E-0207-R-2024
41E 90262-00

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 finding 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

The United States of America (USDA Forest Service) objected to this claim. The claimants did not appear at the April 3, 2024 scheduling conference and their defaults were entered in the April 3, 2024 Court Minutes, Order Entering Defaults, and Order Setting Filing Deadlines. On June 4, 2024 the United States’ Response To Court Order And Motion For Show

Cause Order was filed stating the point of diversion and place of use legal descriptions should be changed pursuant to the defaults. The June 24, 2024 Order Setting Show Cause Filing Deadline states:

On June 4, 2024 the United States' Response To Court Order And Motion For Show Cause Order was filed stating that Donald R. Schroeder and Jane Schroeder contacted the United States by the May 3, 2024 deadline set in the Court Minutes, Order Entering Defaults, and Order Setting Deadlines. The Motion For Show Cause Order specifies the requested changes to claim 41E 90262-00. Fourteen days have passed with no response filed by the claimants. Therefore, it is

ORDERED that the Motion For Show Cause Order is GRANTED and
ORDERED that the deadline is July 24, 2024 for Donald R. Schroeder and Jane Schroeder to show cause in writing why the Court should not change claim 41E 90262-00 as stated in the Motion For Show Cause Order. If nothing is filed by Donald R. Schroeder and Jane Schroeder, the Court will conclude they agree with the changes stated in the Motion For Show Cause Order.

Nothing was filed by the claimants. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

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.

FINDING OF FACT

The Preliminary Decree states the legal description for the point of diversion and place of use is the NWSW section 3, T6N, R6W, JEFFERSON. The point of diversion and place of use should be the NWSWSW section 3, T6N, R6W, JEFFERSON. As requested the following general remark should be added: THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY WITHIN M.S. 10425.

CONCLUSION OF LAW

The United States' Response To Court Order And Motion For Show Cause Order is sufficient to contradict and overcome the prima facie claim.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding 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:

Donald R. Schroeder
Jane Schroeder
4540 Matilija Ave
Sherman Oaks, CA 91423

Service Via Electronic Mail:

Maggie Woodward
US Dept of Justice
PO Box 7611
Washington, DC 20044-7611
(202) 305-4224
Maggie.Woodward@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 41E 90262-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DONALD R SCHROEDER
4540 MATILJA AVE
SHERMAN OAKS, CA 91423

JANE SCHROEDER
4540 MATILJA AVE
SHERMAN OAKS, CA 91423-2919

Priority Date: AUGUST 31, 1923

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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: 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		NWSWSW	3	6N	6W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 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			NWSWSW	3	6N	6W	JEFFERSON

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY WITHIN M.S. 10425.