FILE D 09/06/2024 Sara Calkins CLERK Montana Water Court STATE OF MONTANA By: D'Ann CIGLER 41E-0207-R-2024 Lambert, Kathryn 5.00

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

CLAIMANTS: Donald R. Schroeder; Jane Schroeder

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

OBJECTOR: United States of America (USDA Forest Service)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. <u>Please review this report carefully</u>.

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

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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.

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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

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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 MATILIJA AVE SHERMAN OAKS, CA 91423 JANE SCHROEDER 4540 MATILIJA AVE SHERMAN OAKS, CA 91423-2919 JANE SCHROEDER Priority Date: AUGUST 31, 1923 Purpose (Use): STOCK * Flow Rate: ASPECIFIC 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 * Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING DURPOSE. * Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNITS SHALL BE BASED ON REASCONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE. Source Name: SURFACE WATER: Source Type: SURFACE WATER: Point of Diversion and Mexicon SURFACE WATER:			212021					
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Remarks:

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