

Montana Water Court
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Bozeman, MT 59771-1389
(406) 586-4364
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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: Karin Anne Hierholzer Revocable Living Trust; Eric C. Oatman; Jonathan C. Oatman; 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; Lisa Overholt Dillon; Claire Overholt Nagy; William L. Overholt; Stephen C. Overholt Special Needs Trust; Cynthia Overholt Woodland

CASE 41E-0246-R-2024
41E 44362-00

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. 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

The United States of America (USDA Forest Service) objected to this claim. On July 25, 2024 the United States' Notice Of Stipulation And Motion For Show Cause Order was filed. The Stipulation As To Point Of Diversion is signed by the United States of America (USDA Forest Service) and claimants Karin Anne Hierholzer Revocable Living Trust; Eric C. Oatman; Jonathan C. Oatman; Gina Pearce; Daniel Perlin; James J. Perlin; John Perlin; Charles D. Schroeder; Donald R. Schroeder, and Douglas P. Schroeder. No one filed a response to the Motion.

On August 13, 2024, while this Master was on leave, another Master issued an Order Setting Show Cause Filing Deadline which states:

ORDERED that the Motion For Show Cause Order is GRANTED and
ORDERED that the deadline is **September 12, 2024** for Joseph Perlin; Daniel R. Schroeder; John W. Schroeder; Susan L. Schroeder; Herbert Schroeder Trust; Catherine Sutton; Lisa Overholt Dillon; Claire Overholt Nagy; William L. Overholt; Stephen C. Overholt Special Needs Trust; and Cynthia Overholt Woodland to show cause in writing why the Court should not change claim 41E 44362-00 as stated in the Stipulation as to Point of Diversion. If nothing is filed by Joseph Perlin; Daniel R. Schroeder; John W. Schroeder; Susan L. Schroeder; Herbert Schroeder Trust; Catherine Sutton; Lisa Overholt Dillon; Claire Overholt Nagy; William L. Overholt; Stephen C. Overholt Special Needs Trust; and Cynthia Overholt Woodland, the Court will conclude they agree with the change stated in the Stipulation as to Point of Diversion.

Nothing was filed. 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.

FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion legal description is the SWNENW of section 10, T6N, R6W, JEFFERSON. The legal description should be the NWSENW

of section 10, T6N, R6W, JEFFERSON

2. The Preliminary Decree includes the following notice remark:

POINT OF DIVERSION WAS 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.

The remark does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed is sufficient to contradict and overcome the prima facie claim.

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
c/o 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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Daniel Perlin
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Lompoc, CA 93436

John Perlin
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Unit C
Carpinteria, CA 93013

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Service via USPS Mail:

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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

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

~~John W. Schroeder~~
~~(Return mail received)~~

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

Service Via Electronic Mail:

Maggie Woodward
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Note: Caption and Service List Updated 9-24-24

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

Water Right Number: 41E 44362-00 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
12622 STANFORD DR
AUSTIN, TX 78748-4409

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

SUSAN L SCHROEDER
208 S L ST
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: JULY 15, 1906

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.52 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 40.00

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 15 TO SEPTEMBER 15					
Diversion Means:	HEADGATE					
Period of Use:	MAY 15 TO SEPTEMBER 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	30.00		SEW	10	6N	6W	JEFFERSON
2	10.00		NENSW	10	6N	6W	JEFFERSON
Total:	<u>40.00</u>						