

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Karen Riedlinger

**CASE 76D-0591-R-2024**  
76D 134884-00

**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, conclusions 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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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**

### **Statement of the case**

Irrigation claim 76D 134884-00 appeared in the Preliminary Decree for this Basin with the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. Claimant, Karen Riedlinger, was ordered to meet with the DNRC to attempt resolution of the issue remark. Karen Riedlinger failed to complete the issue remark resolution process. There were no filings by Karen Riedlinger explaining her failure to contact the DNRC. The court set a show cause filing deadline for Karen Riedlinger. Karen Riedlinger failed to comply with the show cause filing deadline.

### **Issues**

What amendment to claim 76D 134884-00 should be implemented to accurately reflect historical beneficial use and resolve the issue remark on the claim?

### **Findings of fact**

1. On May 28, 2024, DNRC filed a Memorandum recommending resolution of the issue remark.
2. The historically accurate point of diversion for irrigation claim 76D 134884-00 is the SWSWSWNW of Section 21, Township 30 North, Range 33 West, Lincoln County.

## **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

5. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

6. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order

issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

## **Analysis**

### **Issues - historical point of diversion for claim 76D 134884-00 and issue remark resolution**

DNRC reported it reviewed the claim file and 1961 and 1990 aerial photos. Based upon its review of aerial photographs, DNRC recommended a modified point of diversion legal land description for irrigation claim 76D 134884-00.

Karen Riedlinger failed to participate in the issue remark resolution process. An order provided Karen Riedlinger the opportunity to respond to DNRC's suggested amendment and suggested resolution of the issue remark appearing on claim 76D 134884-00. Karen Riedlinger failed to file a response, leaving DNRC's review and recommendation as strong evidence of actual historical use.

DNRC's Memorandum and attachments may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 2.00.

### **Conclusions of law**

Based upon the claim file, evidence included with DNRC's Memorandum, and DNRC's recommendation, the point of diversion identified by claim 76D 134884-00 should be amended as recommended to reflect historical use and resolve the point of diversion issue remark.

### **Recommendations**

Irrigation claim 76D 134884-00 should be amended as follows to accurately reflect historical use.

**76D 134884-00**

**POINT OF DIVERSION:**

| <u>GOVT LOT</u> | <u>QTR SEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|-----------------|----------------|------------|------------|------------|---------------|
|                 | SWSWSWNW       | 21         | 30N        | 33W        | LINCOLN       |

The issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state’s centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Karen Riedlinger  
27279 Bull Lake Rd  
Troy, MT 59935-8014

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 134884-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** KAREN RIEDLINGER  
27279 BULL LAKE RD  
TROY, MT 59935-8014

**Priority Date:** MARCH 5, 1943

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 85.27 GPM

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 5.00

**Source Name:** TWIN 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         |                 | SWSWSWNW       | 21         | 30N        | 33W        | LINCOLN       |

**Period of Diversion:** JUNE 1 TO SEPTEMBER 10

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 1 TO SEPTEMBER 10

**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             | 5.00         |                 | S2SENE         | 20         | 30N        | 33W        | LINCOLN       |
| <b>Total:</b> | 5.00         |                 |                |            |            |            |               |

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

134882-00      134883-00      134884-00