

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
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

CLAIMANTS: Windy Rose Boltz; Stormy Lightning Boltz;
Hy McNoon Boltz

CASE 76D-0576-R-2024
76D 129052-00
76D 129053-00
76D 129054-00

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 to 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

Each of the above captioned claims appeared in the Basin 76D Preliminary Decree with an issue remark questioning the location of the point of diversion. 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. Claimants completed the issue remark resolution process.

Issue

Is the point of diversion issue remark resolved?

Findings of fact

1. On May 13, 2024, DNRC filed a Memorandum concerning claimants’ attempt at resolution of the point of diversion issue remark. DNRC reported the issue remark was resolved.

2. The historically accurate point of diversion for the claims is the NWNENW of Section 32, Township 32 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. Prima facie proof may be 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. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. 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.

6. 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.

Analysis

Issue remark resolution

DNRC reviewed the claim files, Orion Data Portal ownership records, Bureau of Land Management General Land Office (GLO) records for historic Homestead Entry Surveys (“HES”), and visited with claimants’ parent, Gerald Boltz. Gerald Boltz sent an email to DNRC providing the latitude and longitude coordinates for the point of diversion identified by all three claims. Four members of the Boltz family filed an affidavit agreeing with the latitude and longitude coordinates for the point of diversion. The DNRC recommends that the point of diversion legal land description be refined based upon the latitude and longitude coordinates provide by Gerald Boltz and that the point of

diversion information remark be updated to reflect the proper HES number based upon the refined point of diversion legal land description. DNRC recommends removal of the point of diversion issue remark.

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

If any claimants disagree with the refined point of diversion legal land description they should file an objection to this Master's Report.

Conclusions of law

The proposed modification to the point of diversion is a refinement within the parameters of the above captioned statements of claim and resolves the point of diversion issue remark on the claims.

Recommendations

Each of the above captioned claims should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWNENW	W2 NENW	32	32N	33W	LINCOLN

POINT OF DIVERSION IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 416.

~~POINT OF DIVERSION AND PLACE OF USE ARE~~ **IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 1057.**

The point of diversion issue remark should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany 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

Windy Rose Boltz
207 Glacier Ave Unit B
Fairbanks AK 99701
~~**3110 Chinook Dr**~~
~~**Fairbanks AK 99709**~~
(Returned Mail Received 2/20/2024)

Stormy Lightning Boltz
3065 Rabbit Creek Rd
Troy MT 59935

Hy McNoon Boltz
PO Box 1166
Troy MT 59935

Service List Updated 5/24/2024

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\76D PD\76D Cases\76D-0576-R-2024\MR--76D-576R_sjs.docx 5/29/24

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

Water Right Number: 76D 129052-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HY MCNOON BOLTZ
PO BOX 1166
TROY, MT 59935

STORMY LIGHTNING BOLTZ
2331 RABBIT CREEK RD
TROY, MT 59935

WINDY ROSE BOLTZ
207 GLACIER AVE UNIT B
FAIRBANKS, AK 99701

Priority Date: AUGUST 28, 1946

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 15.00 GPM

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: RABBIT 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		NWNENW	32	32N	33W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

POINT OF DIVERSION IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 416.

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			SWSW	29	32N	33W	LINCOLN

PLACE OF USE IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 1057.

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.

129052-00

129053-00

129054-00

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

Water Right Number: 76D 129053-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HY MCNOON BOLTZ
PO BOX 1166
TROY, MT 59935

STORMY LIGHTNING BOLTZ
2331 RABBIT CREEK RD
TROY, MT 59935

WINDY ROSE BOLTZ
207 GLACIER AVE UNIT B
FAIRBANKS, AK 99701

Priority Date: AUGUST 28, 1946

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 11.00 AC-FT

Households: 3

Maximum Acres: 4.00

Source Name: RABBIT 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		NWNENW	32	32N	33W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

POINT OF DIVERSION IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 416.

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	4.00		SWSW	29	32N	33W	LINCOLN

Total: 4.00

PLACE OF USE IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 1057.

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.

129052-00

129053-00

129054-00

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

Water Right Number: 76D 129054-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HY MCNOON BOLTZ
PO BOX 1166
TROY, MT 59935

STORMY LIGHTNING BOLTZ
2331 RABBIT CREEK RD
TROY, MT 59935

WINDY ROSE BOLTZ
207 GLACIER AVE UNIT B
FAIRBANKS, AK 99701

Priority Date: AUGUST 28, 1946

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 170.54 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 15.00

Source Name: RABBIT 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		NWNENW	32	32N	33W	LINCOLN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

POINT OF DIVERSION IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 416.

Period of Use: MAY 1 TO OCTOBER 1

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	12.00		SESE	30	32N	33W	LINCOLN
2	3.00		SWSWSW	29	32N	33W	LINCOLN

Total: 15.00

PLACE OF USE IS LOCATED IN LINCOLN COUNTY HOMESTEAD ENTRY SURVEY 1057.

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.

129052-00

129053-00

129054-00