

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

76D-0033-R-2022

November 1, 2022

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: Quirk Cattle Co.

OBJECTOR: Quirk Cattle Co.

**CASE 76D-0033-R-2022**

76D 118103-00

76D 118106-00

76D 118115-00

76D 118127-00

**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**

Water Right Claims 76D 118103-00, 76D 118106-00, 76D 118115-00, and 76D 118127-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D). Each of these claims received one or more issue remarks placed by the Department of Natural Resources and Conservation. These claims also received objections filed by Claimant Quirk Cattle Co. during the Objection Period for the basin.

Additional evidence is unnecessary to resolve the objections and issue remarks on these claims. For organizational purposes, these claims are consolidated into Water Court Case 76D-0033-R-2022.

## **FINDINGS OF FACT**

1. Claim 76D 118103-00 appeared with the following issue remarks:

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 1198 ACRE-FEET PER YEAR.

2. Claim 76D 118106-00 appeared with the following issue remark:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 742.76 ACRE-FEET PER YEAR.

3. Claim 76D 118115-00 appeared with the following issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT WILL BE ADDRESSED AT THE PRELIMINARY DECREE OBJECTION STAGE. IT APPEARS THAT POINTS OF DIVERSION 04 & 05 SHOULD BE IN RANGE 26W.

POINT OF DIVERSION, PLACE OF USE, AND SOURCE NAME WERE 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.

4. Claim 76D 118127-00 appeared with the following issue remark:

THE SOURCE NAME, POINT OF DIVERSION AND PLACE OF USE WERE 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.

5. Claimant Quirk Cattle Co. objected to the flow rate and volume of Claims 76D 118103-00 and 76D 118106-00, objected to the point of diversion and means of diversion of Claim 76D 118115-00, and objected to the period of diversion and period of use of Claim 76D 118127-00.

Claims 76D 118103-00 and 76D 118106-00

6. Claimant asserts the maximum volume of Claim 76D 118103-00 is 1,205.60 acre feet per year (ac-ft). This figure is based on a flow rate of 4.00 cubic feet per second (cfs) over a 152-day period of diversion. The claimed volume is currently 1,431.00 ac-ft. Claimant's calculations appear to affirm the period of diversion of this claim.

7. Claimant asserts the maximum volume of Claim 76D 118106-00 is 746.10 ac-ft. This figure is based on a flow rate of 1.75 cfs over a 215-day period of diversion. The claimed volume is currently 756.51 ac-ft.

8. Claimant's requested volume quantifications for Claims 76D 118103-00 and 76D 118106-00 are reductions to each claimed volume. The mathematical calculations supporting the requested volumes appear to be accurate.

9. The volume of Claim 76D 118103-00 should be quantified as 1,205.60 ac-ft. The volume of Claim 76D 118106-00 should be quantified as 746.10 ac-ft.

Claim 76D 118115-00

10. Claimant states in its objection to Claim 76D 118115-00 that it agrees with the issue remark indicating Point of Diversion Nos. 4 and 5 should be described with

Range as 26 West. Upon review of the Preliminary Decree abstract, the legal land descriptions are accurately reflected as being in Range 26 West.

Claim 76D 118127-00

11. Claimant states in its objection to Claim 76D 118127-00 that the period of diversion should be January 1 to December 31. This claim is for stock watering directly from the source. The period of use guideline for livestock direct from source claims is year-round. Rule 25(a)(1), W.R.C.E.R.

12. The period of diversion and period of use for Claim 76D 118127-00 should be described as January 1 to December 31.

13. The issue remarks should be removed from each above-captioned claim.

**APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

**CONCLUSIONS OF LAW**

1. Each claim should be modified as described in the Findings of Fact because the information in the record supports the requested changes by a preponderance of the evidence.

2. The information in the record and the requested changes provide the Court with a sufficient basis to resolve and remove each issue remark on each above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions 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. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

---

Colton J. Lauer  
Water Master

#### **Service via USPS Mail:**

Scott D. Hagel  
Crowley Fleck PLLP  
PO Box 759  
Kalispell, MT 59903  
(406) 752-6644

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

**Water Right Number:** 76D 118103-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** QUIRK CATTLE CO  
1151 BURMA RD  
EUREKA, MT 59917

**Priority Date:** NOVEMBER 12, 1904

**Type of Historical Right:** USE

**\*Purpose (use):** IRRIGATION  
IRRIGATION STORAGE

**Flow Rate:** 4.00 CFS

**Volume:** 1,205.60 AC-FT

**Source Name:** DEROZIER 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		SWSSEW	19	37N	26W	LINCOLN

**Period of Diversion:** NOVEMBER 1 TO APRIL 1

**Diversion Means:** HEADGATE

**Ditch Name:** QUIRK DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** BERGER LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2SWSE	24	37N	27W	LINCOLN

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** NOVEMBER 1 TO APRIL 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			W2SWSE	24	37N	27W	LINCOLN
2			W2SWSE	24	37N	27W	LINCOLN
3			W2NWNE	25	37N	27W	LINCOLN
4			W2NWNE	25	37N	27W	LINCOLN

---

**Remarks:**

ADMINISTRATION OF THIS WATER RIGHT IS SUBJECT TO A 1987 WATER USE AGREEMENT, AS MODIFIED BY A 2018 SETTLEMENT AGREEMENT AND MUTUAL RELEASE. THE 1987 WATER USE AGREEMENT IS ON FILE IN WATER COURT CASE 76D-57. THE 2018 SETTLEMENT AGREEMENT AND MUTUAL RELEASE IS ON FILE IN WATER COURT CASE WC-2017-04. A COPY OF EACH AGREEMENT HAS BEEN PLACED IN THIS CLAIM FILE.

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

**Water Right Number:** 76D 118106-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** QUIRK CATTLE CO  
1151 BURMA RD  
EUREKA, MT 59917

**Priority Date:** SEPTEMBER 8, 1893

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.75 CFS

**Volume:** 746.10 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 236.00

**Source Name:** DEROZIER 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		SESWSE	18	37N	26W	LINCOLN

**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** SECTION 18 DITCH NO. 1

**Period of Use:** APRIL 1 TO NOVEMBER 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	59.00		S2	18	37N	26W	LINCOLN
2	90.00		W2	18	37N	26W	LINCOLN
3	87.00		N2	19	37N	26W	LINCOLN

**Total:** 236.00

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

40711-00	118105-00	118106-00	118107-00	118111-00	118112-00
118113-00	118114-00	134521-00			

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.

118105-00

118106-00

THE PLACE OF USE WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

ADMINISTRATION OF THIS WATER RIGHT IS SUBJECT TO A 1987 WATER USE AGREEMENT, AS MODIFIED BY A 2018 SETTLEMENT AGREEMENT AND MUTUAL RELEASE. THE 1987 WATER USE AGREEMENT IS ON FILE IN WATER COURT CASE 76D-57. THE 2018 SETTLEMENT AGREEMENT AND MUTUAL RELEASE IS ON FILE IN WATER COURT CASE WC-2017-04. A COPY OF EACH AGREEMENT HAS BEEN PLACED IN THIS CLAIM FILE.



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

**Water Right Number:** 76D 118115-00 STATEMENT OF CLAIM  
**Version:** 5 -- POST DECREE  
**Status:** ACTIVE

**\*Owners:** QUIRK CATTLE CO  
1151 BURMA RD  
EUREKA, MT 59917

**Priority Date:** DECEMBER 31, 1887  
**Type of Historical Right:** DECREED  
**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:** DEROZIER CREEK  
**Source Type:** SURFACE WATER  
**Source Name:** UNNAMED TRIBUTARY OF DEROZIER CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2E2	18	37N	26W	LINCOLN	
<b>Source Name:</b> DEROZIER CREEK							
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31							
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE							
2		NE	19	37N	26W	LINCOLN	
<b>Source Name:</b> DEROZIER CREEK							
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31							
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE							
3		N2NWSE	19	37N	26W	LINCOLN	
<b>Source Name:</b> DEROZIER CREEK							
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31							
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE							
4		E2SW	19	37N	26W	LINCOLN	
<b>Source Name:</b> DEROZIER CREEK							
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31							
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE							

5 N2NE 30 37N 26W LINCOLN

**Source Name:** UNNAMED TRIBUTARY OF DEROZIER CREEK

**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			W2E2	18	37N	26W	LINCOLN
2			NE	19	37N	26W	LINCOLN
3			N2NE	30	37N	26W	LINCOLN
4			N2NWSE	19	37N	26W	LINCOLN
5			E2SW	19	37N	26W	LINCOLN

---

**Remarks:**

ADMINISTRATION OF THIS WATER RIGHT IS SUBJECT TO A 1987 WATER USE AGREEMENT, AS MODIFIED BY A 2018 SETTLEMENT AGREEMENT AND MUTUAL RELEASE. THE 1987 WATER USE AGREEMENT IS ON FILE IN WATER COURT CASE 76D-57. THE 2018 SETTLEMENT AGREEMENT AND MUTUAL RELEASE IS ON FILE IN WATER COURT CASE WC-2017-04. A COPY OF EACH AGREEMENT HAS BEEN PLACED IN THIS CLAIM FILE.

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

**Water Right Number:** 76D 118127-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** QUIRK CATTLE CO  
1151 BURMA RD  
EUREKA, MT 59917

**Priority Date:** OCTOBER 15, 1884

**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:** BERGER LAKE

**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		NWNWNE	25	37N	27W	LINCOLN
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		W2SWSE	24	37N	27W	LINCOLN
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
<b>Period of Use:</b> 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			W2SWSE	24	37N	27W	LINCOLN
2			NWNWNE	25	37N	27W	LINCOLN

---

**Remarks:**

THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT BETWEEN ALTA STODDARD, JAY STODDARD AND QUIRK CATTLE CO. A COPY OF THIS AGREEMENT CAN BE FOUND IN CASE FILE 76D-57.