

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

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CLAIMANTS: Jean S. Calkins; William S. Calkins; MARRISA  
Minelli

CASE 76D-0578-R-2024  
76D 141355-00

**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 141355-00 appeared in the Preliminary Decree for this Basin with the following issue remark:

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.

On July 11, 2024, the DNRC filed a Memorandum recommending the dismissal of claim 76D 141355-00. The DNRC Memorandum included an email from co-claimant Willaim S. Calkins, agreeing that claim 76D 141355-00 should be dismissed. **If any co-claimant disagrees that claim 76D 141355-00 should be dismissed, they should object to this Master’s Report.**

### Issue

Should irrigation claim 76D 141355-00 be dismissed?

### Finding of fact

Irrigation claim 76D 141355-00 should be dismissed.

### 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. 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. 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**

The DNRC reported that:

- The claimed ditch and headgate could not be identified on any aerial photographs or a topographic map of the area.
- Two of the claimants and their immediate neighbor to the north had no knowledge of the ditch. The third claimant, Jean S. Calkins, did not contact DNRC.
- “There is no evidence of a ditch or the remains of a ditch along the path described in the original claimant’s map and notice, nor does any such structure enter or leave the properties in question.”
- Co-claimant William S. Calkins agrees by email that irrigation claim 76D 141355-00 should be dismissed.

DNRC’s Memorandum and attachments may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 4.00.

## **Conclusion of law**

The evidence filed with the court supports the dismissal of irrigation claim 76D 141355-00.

## **Recommendation**

Irrigation claim 76D 141355-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

## **Service via USPS Mail**

Jean S Calkins  
William S Calkins  
5040 Rabbit O'Brien Creek Rd # R  
Troy MT 59935

Marrisa Minelli  
5040 Rabbit Creek Rd  
Troy MT 59935

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

**Water Right Number:** 76D 141355-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** JEAN S CALKINS  
209 SPRING COURT  
NORTH AURORA, IL 60542

WILLIAM S CALKINS  
209 SPRING COURT  
NORTH AURORA, IL 60542

MARRISA MINELLI  
5040 RABBIT CREEK RD  
TROY, MT 59935

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** RABBIT CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.