

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

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APPLICATION TO CHANGE WATER RIGHT NO. 76D 30162783 BY QUIRK CATTLE COMPANY)))	PRELIMINARY DETERMINATION TO GRANT CHANGE
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Quirk Cattle Company (Applicant) submitted Application to Change an Existing Irrigation Water Right No. 76D 30162783 to change Statement of Claim No. 76D 118111-00 (version 2)¹ to the Kalispell Regional Office of the Department of Natural Resources and Conservation (Department or DNRC) on December 29, 2023. The Department published receipt of the application on its website on January 16, 2024. The Department sent the Applicant a deficiency letter under § 85-2-302, MCA, dated June 25, 2024. The Applicant responded with information dated October 3, 2024. The Application was determined to be correct and complete as of December 31, 2024. An Environmental Assessment for this application was completed on April 23, 2025.

INFORMATION

The Department considered the following information submitted by the Applicant, which is contained in the administrative record.

Application as filed:

- Application to Change an Existing Irrigation Water Right, Form 606-IR
- Attachments:
 - Appendix A. Water Right Abstract 76D 118111-00
 - Appendix B. Change Authorization 76D 30029246
 - Appendix C. Photographic Journal of Existing Facilities
 - Appendix D. Draft Easement for Pipeline
 - Appendix E. Memorandum of Understanding – Shared Irrigation Pipeline
 - Appendix F. Water Right Abstracts for Associated Water Rights

¹ Hereafter, any reference to 76D 118111-00 refers to its Change Authorization Version 2, unless otherwise indicated.

- Appendix G. Capacity of Existing Conveyance Facilities
- Appendix H. Capacity of Proposed Pipeline
- Appendix I. Specifications for Proposed Infrastructure
- Appendix J. Water Rights Utilizing the Proposed Point of Diversion
- Maps/Figures:
 - Figure 1. Site Vicinity Map
 - Figure 2. Site Map
 - Figure 3. Diversion Measurement Location Map

Information Received after Application Filed

- Deficiency letter response from the Applicant to the Department dated September 25, 2024 and received October 3, 2024.

Information within the Department's Possession/Knowledge

- Administrative file for Statement of Claim No. 76D 118111-00.
- Administrative files for Statements of Claim Nos. 76D 40711-00, 76D 118107-00, 76D 118112-00, 76D 118113-00, 76D 118114-00, and 76D 134521-00. These water rights are supplemental to the subject water right Statement of Claim No. 76D 118111-00.
- Administrative file for Change Authorization No. 76D 30029246. This authorization is for a previous (perfected) change to Statement of Claim No. 76D 118111-00.
- A list of water rights between the proposed new point of diversion and the existing upper point of diversion (being permanently removed) on Indian Creek.

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, part 4, MCA).

For the purposes of this document:

Department or DNRC means the Department of Natural Resources and Conservation	
AF means acre-feet	ARM means Administrative Rules of Montana
CFS means cubic feet per second	FOF means finding(s) of fact
GPM means gallons per minute	MCA means Montana Code Annotated
POD means point of diversion	PVC mean polyvinyl chloride

WATER RIGHT TO BE CHANGED

FINDINGS OF FACT

1. The Applicant proposes to change Statement of Claim No. 76D 118111-00. Statement of Claim No. 76D 118111-00 is for irrigation of 506.0 acres from April 1 through November 4, annually, at a flow rate of 7.5 CFS up to 2,530.0 AF/year from Indian Creek. Table 1 summarizes the details of Statement of Claim No. 76D 118111-00.

Table 1: Summary of Existing Water Right										
Water Right Number	Priority Date	Purpose	Flow Rate (CFS)	Volume (AF)	Maximum Acres	Period of Diversion & Use	Source Name	Point of Diversion	Means of Diversion	Place of Use
Statement of Claim 76D 118111-00	April 8, 1894	Irrigation	7.5	2,530.0	506.0	04/01 – 11/04	Indian Creek	Upper POD: SESENW Sec 29, T37N, R26W	Headgate (Boyle Ditch No. 1)	E2 Sec 24, T37N, R27W (131.0 acres)
								Lower POD: NWNESW Sec 29, T37N, R26W	Headgate	E2 Sec 25, T37N, R27W (66.0 acres) Sec 30, T37N, R26W (212.0 acres) S2 Sec 19, T37N, R26W (97.0 acres)

2. Statement of Claim No. 76D 118111-00 has two existing PODs on Indian Creek: the upstream/upper POD (displayed on the General Abstract as POD ID 1) located in the SESENW of Section 29, Township 37 N, Range 26 W, Lincoln County, and the downstream/lower POD (displayed on the General Abstract as POD ID 2) located in the NWNESW of Section 29, Township 37 N, Range 26 W, Lincoln County (Figure 1). Statement of Claim No. 76D 118111-00 was previously changed by Change Authorization No. 76D 30029246, which was issued May 12, 2010. The purpose of that change was to add a second POD (the lower POD) since a severe flooding event in 2006 had rendered the original diversion (the upper POD) inoperable. No changes to the place or purpose of use were proposed as a part of that change and there is no storage component of this water right.

3. The historical place of use irrigated by Statement of Claim No. 76D 118111-00 has partially overlapping places of use with Statements of Claim Nos. 76D 40711-00, 76D 118107-00, 76D 118112-00, 76D 118113-00, 76D 118114-00, and 76D 134521-00 (see FOF 13 for further discussion of supplemental water rights).

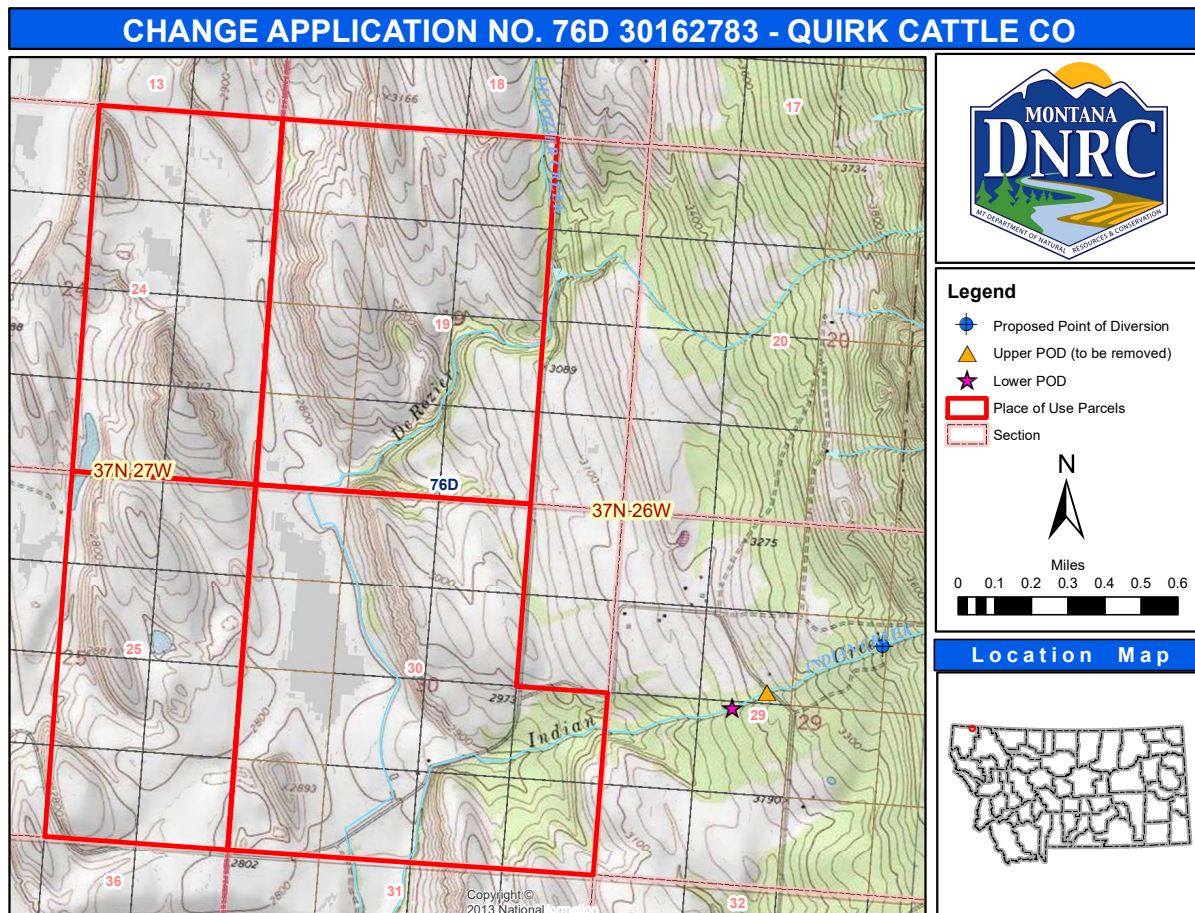


Figure 1: Map of place of use parcels, existing points of diversion, and the proposed point of diversion.

CHANGE PROPOSAL

FINDINGS OF FACT

4. The Applicant proposes to change one of the two existing PODs associated with Statement of Claim No. 76D 118111-00 by moving the upper POD (POD ID 1; associated with Boyle Ditch No. 1, also known as "Hark's Ditch") approximately 1,850 feet upstream from its current location in the SESENE of Section 29, Township 37N, Range 26W to a new shared diversion in the NESWNE of Section 29, Township 37N, Range 26W, Lincoln County, Montana. The existing

lower POD will remain unchanged and can be used when needed if the proposed shared POD becomes inoperable. Table 2 summarizes the details of the proposed changes.

5. The proposed POD will serve as the primary POD for Statements of Claim 76D 118111-00 (this application), 76D 118113-00, 76D 140170-00, and 76D 140172-00. Separate change applications have been submitted concurrently for 76D 118113-00 (Change Authorization No. 76D 30162782, granted January 21, 2025) and 76D 140170-00 (pending Change Application No. 76D 30162784) and the proposed change application for 76D 140172-00 had a pre-application meeting with the Department on April 9, 2024.

6. The project is in the Kootenai River Basin (76D) in an area that is not subject to water right basin closures or controlled groundwater area restrictions.

Table 2: Summary of Proposed Changes

Water Right Number	Priority Date	Purpose	Flow Rate (CFS)	Volume (AF)	Maximum Acres	Period of Diversion & Use	Source Name	Point of Diversion	Means of Diversion	Place of Use
Statement of Claim 76D 118111-00	April 8, 1894	Irrigation	7.5	2,530.0	506.0	04/01 – 11/04	Indian Creek	<u>New Upstream POD: NESWNE Sec 29, T37N, R26W</u>	<u>Pipeline w/ Screened Intake Structure</u>	E2 Sec 24, T37N, R27W (131.0 acres)
								Downstream POD (POD ID 2) (unchanged): NWNESW Sec 29, T37N, R26W	Headgate	E2 Sec 25, T37N, R27W (66.0 acres) Sec 30, T37N, R26W (212.0 acres) S2 Sec 19, T37N, R26W (97.0 acres)

**Bold underlined text identifies the changed water right elements.*

7. The proposed change will be subject to the following condition to satisfy the adverse effect criterion:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON

REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

CHANGE CRITERIA

8. The Department is authorized to approve a change if the Applicant meets its burden to prove the applicable § 85-2-402, MCA, criteria by a preponderance of the evidence. *Matter of Royston*, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); *Hohenlohe v. DNRC*, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an Applicant's burden to prove change criteria by a preponderance of evidence is "more probable than not."); *Town of Manhattan v. DNRC*, 2012 MT 81, ¶ 8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in § 85-2-402(2), MCA, are:

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The Applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the Applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

9. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department's change process only addresses the water right holder's ability to make a different use of that existing right. *E.g.*, *Hohenlohe*, ¶¶ 29-31; *Town of Manhattan*, ¶ 8; *In the Matter of Application to Change Appropriation Water Right No.41F-31227 by T-L Irrigation Company* (DNRC Final Order 1991).

HISTORICAL USE

FINDINGS OF FACT

10. The Applicant proposes moving the upper POD associated with Statement of Claim No. 76D 118111-00 to a new shared POD in the NESWNE of Section 29, Township 37N, Range 26W. The historical use of this water right was proven by the applicant and quantified by the DNRC with perfected Change Authorization No. 76D 30029246 (issued May 12, 2010).

Adjudication status:

11. Statement of Claim 76D 118111-00 was included in the Kootenai River Basin 76D Preliminary Decree issued May 6, 2021. The enforceable priority date of Statement of Claim 76D 118111-00 is April 8, 1894.

Historical place of use and historically irrigated acres:

12. In perfected Change Authorization No. 76D 30029246, the DNRC found 506.0 acres of historical flood irrigation. Table 3 summarizes the historical place of use legal land descriptions, and the irrigated acres found within those descriptions.

Table 3: Historical Place of Use			
Place of Use Legal Land Descriptions and Irrigated Acres			
E2 of Sec 24, T37N, R27W, Lincoln County (131.0 acres)	E2 of Sec 25, T37N, R27W, Lincoln County (66.0 acres)	Sec 30, T37N, R26W, Lincoln County (212.0 acres)	S2 of Sec 19, T37N, R26W, Lincoln County (97.0 acres)

13. Statement of Claim No. 76D 118111-00 is supplemental to Statements of Claim Nos. 76D 40711-00, 76D 118107-00, 76D 118112-00, 76D 118113-00, 76D 118114-00, and 76D 134521-00 because these water rights have partially overlapping places of use. Statements of Claim Nos. 76D 118105-00 and 76D 118106-00 are listed as supplemental in the supplemental water rights remark on the General Abstract for Statement of Claim No. 76D 118111-00, but these water rights do not actually have any overlapping place of use with Statement of Claim No. 76D 118111-00. Therefore, Statements of Claim Nos. 76D 118105-00 and 76D 118106-00 were not included in the historical use analysis as supplemental water rights.

14. The Department will rely on its previous findings for the historical place of use for Statement of Claim 76D 118111-00 for this change application.

Historical period of use & period of diversion:

15. In Change Authorization No. 76D 30029246, the DNRC found the historical period of use and period of diversion for Statement of Claim 76D 118111-00 to be April 1 – November 4,

totaling 218 days. The Department will rely on its previous findings for the historical periods of use and diversion for Statement of Claim 76D 118111-00 for this change application.

Total historical consumptive volume for all water rights that contribute to the place of use and historical consumptive volume of the water right being changed:

16. In previous Change Authorization No. 76D 30029246, the DNRC found the total historical consumptive volume for the 506.0-acre place of use to be 410.0 AF/year (0.81 AF/acre). While the Department did quantify the historically diverted volume and the total volume consumed on the place of use in that change, neither the Department nor the Applicant apportioned the total consumed volume between all of the water rights supplementally contributing to the place of use, as is currently required. In another previous change (Change Authorization No. 76D 30050838, which changed Statement of Claim No. 76D 118113-00), the Department found that Statements of Claim Nos. 76D 40711-00, 76D 118107-00, 76D 118111-00, 76D 118112-00, 76D 118113-00, 76D 118114-00, and 76D 134521-00 are supplemental on 391.0 acres of commonly irrigated ground. The Department requested that the Applicant apportion the total volume consumed on the overlapping place of use by all of the supplemental water rights in a deficiency letter.

17. In previous Change Authorization No. 76D 30050838 and in their deficiency response, the Applicant asserted that Statements of Claim Nos. 76D 40711-00, 76D 118107-00, and 76D 134521-00, whose source is DeRoziert Creek, have at times been used on the common 391.0 acres, but that these rights have historically been primarily used to irrigate their other acres not overlapping the 391.0 acres. Therefore, the Applicant opted to exclude these water rights from the apportionment of the consumed volume for the 391.0 commonly irrigated acres.

18. Of the previously found consumptive volume for the 506.0 acres of 410.0 AF/year, the 391.0 commonly irrigated acres consumes 317.0 AF/year ($410.0 \text{ AF/year} \div 506.0 \text{ acres} \times 391.0 \text{ acres} = 317.0 \text{ AF/year}$). In Change Authorization No. 76D 30050838, the Applicant apportioned that volume equally between the four Indian Creek water rights (Statements of Claim Nos. 76D 118111-00, 76D 118112-00, 76D 118113-00, 76D 118114-00), so each water right consumes 79.25 AF/year on the 391.0 commonly irrigated acres ($317.0 \text{ AF/year} \div 4 \text{ water rights} = 79.25 \text{ AF/year}$). Since the 391.0 acres consumes 317.0 AF/year of the total consumed volume of 410.0 AF/year for the entire 506.0 acres, the 115.0 acres solely irrigated by Statement of Claim No. 76D 118111-00 must consume the remaining 93.0 AF/year ($410.0 \text{ AF/year} - 317.0 \text{ AF/year} = 93.0 \text{ AF/year}$). This means that Statement of Claim No. 76D 118111-00 consumes a total of 172.25

AF/year of the total 410.0 AF/year (79.25 AF/year on the commonly irrigated 391.0 acres and 93.0 AF/year on the 115.0 acres solely irrigated by Statement of Claim No. 76D 118111-00).

19. The DNRC used the findings from the previous historical use analyses in Change Authorization Nos. 76D 30029246 and 76D 30050383 along with the Applicant-provided consumed volume apportionment information to determine that the historically consumed volume for Statement of Claim No. 76D 118111-00 is 172.25 AF/year of the total consumed volume of 410.0 AF/year.

Historically diverted volume:

20. In Change Authorization No. 76D 30029246, the DNRC found the historical diverted volume for Statement of Claim 76D 118111-00 to be 2,530.0 AF/year. The Department will rely on its previous findings for the historically diverted volume for Statement of Claim 76D 118111-00 for this change application.

ADVERSE EFFECT

FINDINGS OF FACT

21. The Applicant proposes moving the upper POD associated with Statement of Claim No. 76D 118111-00 to a new shared POD in the NESWNE of Section 29, Township 37N, Range 26W to Statement of Claim No. 76D 118111-00. The existing lower POD will be retained for continued use when needed for operational flexibility. Based on the DNRC's previous historical use findings in Change Authorization No. 76D 30029246 and information provided by the Applicant for this application, historical diverted and consumed volumes of 2,530.0 AF/year and 172.25 AF/year, respectively, were found for flood irrigation of the 506.0-acre historical place of use by Statement of Claim No 76D 118111-00.

22. This change proposes adding a new POD upstream of the existing PODs with no changes in operation occurring below the existing upper POD, which is being removed. Therefore, only water rights between the existing upper POD (being removed) and the proposed POD were considered for adverse effect. The Department queried all water rights between the existing upper POD and the proposed POD (Table 4).

Table 4: Water rights considered for adverse effect (water rights between the proposed POD and the existing upper POD)		
Water Right Number	Purpose	Flow Rate (CFS)
76D 30106279	STOCK	0.08*
76D 140170 00^	IRRIGATION	2.39

**To account for livestock direct from source rights, Department practice is to assign one combined total flow rate of 35 GPM (0.08 CFS) for all stock rights without a designated flow rate.*

^This water right is proposed to share the proposed POD with Statement of Claim 76D 118111-00 via pending Change Application No. 76D 30162784.

23. Both of the water rights that exist on Indian Creek between the existing upper POD and the proposed POD are owned by Indian Creek Farms LLC who is a party to a memorandum of understanding “to outline the operating agreement for the shared pipeline utilized to convey irrigation water for Quirk Cattle Company, Indian Creek Farms LLC, and Richard & Robert Butts. The parties have agreed to install and operate the pipeline to the benefit of all involved,” (Appendix E). Additionally, Statement of Claim No. 76D 140170-00 is not only junior in priority to Statement of Claim No. 76D 118111-00, but it is also proposed to share the proposed POD with Statement of Claim No. 76D 118111-00 (pending Change Application No. 76D 30162784).

24. The Department determines that the timing and location of return flows to any hydraulically connected surface water source will not change because there will be no changes to the amount of water diverted or consumed, the irrigated acres, or the place of use.

25. The proposed change will be subject to the following condition to ensure no increase in diversion and water use occurs:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR

SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

26. The Department finds that moving the point of diversion will not cause adverse effect to existing water users within the area of potential adverse effect.

BENEFICIAL USE

FINDINGS OF FACT

27. The Applicant proposes moving the upper POD associated with Statement of Claim No. 76D 118111-00 to a new shared POD in the NESWNE of Section 29, Township 37N, Range 26W to Statement of Claim No. 76D 118111-00. The proposed change of adding a new POD to the existing system will continue the historical beneficial irrigation purpose. The historical diverted and consumed irrigation volumes were previously quantified per ARM 36.12.1902 by the DNRC in Change Authorization No. 76D 30029246 in 2010. The proposed beneficial use is to continue to irrigate the historical place of use in the same manner and amounts as historically proven. This change will not change the amount of flow or volume diverted or consumed, nor will it change the place of use. There is no historical or proposed storage associated with the subject water right.

28. The new POD will aid in the collective management of water in the upper portions of Indian Creek. Quirk Cattle Company shall continue to operate their cattle ranching operation and associated irrigation as they have historically. The total diverted volume for all water rights sharing the proposed POD (see FOF 4) will be measured at multiple locations within the shared system.

29. The Department finds the proposed change of adding a new POD and the continuation of the historically proven irrigation purpose to be a beneficial use of water.

ADEQUATE DIVERSION

FINDINGS OF FACT

30. The Applicant proposes moving the upper POD associated with Statement of Claim No. 76D 118111-00 to a new shared POD in the NESWNE of Section 29, Township 37N, Range 26W to Statement of Claim No. 76D 118111-00. The existing lower POD will be retained for continued use when needed for operational flexibility. The new POD will be a screened intake structure with a gate valve at the head of a 14-inch PVC pipeline that will be shared between Statements of Claim 76D 118111-00 (7.5 CFS), 76D 118113-00 (5.0 CFS), 76D 140170-00 (2.0 CFS), and 76D

140172-00 (1.25 CFS). In total, the diversion and pipeline will divert and convey up to the 15.75 CFS associated with the four aforementioned water rights set to share the proposed diversion ($7.5 \text{ CFS} + 5.0 \text{ CFS} + 2.0 \text{ CFS} + 1.25 \text{ CFS} = 15.75 \text{ CFS}$).

31. During times when the flow of Indian Creek is sufficient to divert water, up to 7.5 CFS associated with Statement of Claim 76D 118111-00 will be diverted into the proposed pipeline at the screened intake. The intake gate valve will regulate the rate at which water flows into the pipeline. Water will then gravity-flow through the 14-inch PVC pipeline (which approximately parallels Indian Creek) approximately 2,530 feet down to a valved turn-out. At this turn-out, water will be directed into the existing 12-inch pipeline associated with the existing lower POD of Statement of Claim 76D 118111-00. This tie-in of the proposed 14-inch pipeline to the existing 12-inch pipeline occurs at the location of the existing lower POD. An in-line flow meter with totalizer will be placed near the connection of the proposed 14-inch pipeline and existing 12-inch pipeline to regulate the diversion of water into the 12-inch pipeline. Since the existing lower POD and 12-inch pipeline is shared between Statements of Claim 76D 118111-00 and 76D 118113-00, the meter at this turn-out will measure the water diverted from the proposed point of diversion for both Statements of Claim.

32. From this point in the system, water will be conveyed to and distributed within the place of use in the same manner as approved by perfected Change Authorization No. 76D 30029246 and as historically proven. Water will flow west through the 12-inch pipeline to a splitter. At the splitter, up to 7.5 CFS of water for Statement of Claim 76D 118111-00 will be directed north to that water right's historical place of use, while up to 5.0 CFS can be directed to the south to serve Statement of Claim No. 76D 118113-00.

33. The existing lower POD will still remain operational and can be used in place of the proposed POD if needed to supply water for Statements of Claim 76D 118111-00 and 76D 118113-00. The proposed POD will not be operated in combination with the existing POD being retained.

34. The Applicant provided pipe flow capacities calculated using the Manning Formula for uniform pipe flow for the 14-inch and 12-inch pipelines. The maximum capacity of the new shared screened intake and pipeline is calculated to be 24.0 CFS, meaning it is adequate to divert and convey the proposed 7.5 CFS associated with Statement of Claim No. 76D 118111-00, as well as the full 15.75 CFS required for all of the water rights that will use the proposed diversion. The maximum capacity of the existing 12-inch pipeline is calculated to be 9.0 CFS, meaning that the

water for Statements of Claim 76D 118111-00 and 76D 118113-00 (7.5 CFS and 5.0 CFS, respectively) cannot be conveyed simultaneously at their maximum flows, but can be conveyed individually or in various combinations less than their maximum flows.

35. The Department finds the system capable of diverting, conveying, and distributing the proposed flow rate of 7.5 CFS and annual volume of 2,530.0 AF.

POSSESSORY INTEREST

FINDINGS OF FACT

36. The Applicant signed the affidavit on the application form affirming they have possessory interest in the property where the water is to be put to beneficial use.

CONCLUSIONS OF LAW

HISTORICAL USE AND ADVERSE EFFECT

37. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. *McDonald v. State*, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986) (beneficial use constitutes the basis, measure, and limit of a water right); *Featherman v. Hennessy*, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911) (increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940) (appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924) (“quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use. . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does

not own the water. He has a right of ownership in its use only”); *Town of Manhattan*, ¶ 10 (an appropriator’s right only attaches to the amount of water actually taken and beneficially applied).²

38. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. *Spokane Ranch & Water Co. v. Beatty*, 37 Mont. 342, 96 P. 727, 731 (1908); *Quigley*, 110 Mont. at 505-11, 103 P.2d at 1072-74; *Matter of Royston*, 249 Mont. at 429, 816 P.2d at 1057; *Hohenlohe*, ¶¶ 43-45.³

39. The cornerstone of evaluating potential adverse effect to other appropriators is the determination of the “historic use” of the water right being changed. *Town of Manhattan*, ¶10 (recognizing that the Department’s obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change Applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.⁴ A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. *Quigley*, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use expands the

² DNRC decisions are available at: <https://dnrc.mt.gov/Directors-Office/HearingOrders>

³ See also *Holmstrom Land Co., Inc., v. Newlan Creek Water District*, 185 Mont. 409, 605 P.2d 1060 (1979); *Lokowich v. Helena*, 46 Mont. 575, 129 P. 1063 (1913); *Thompson v. Harvey*, 164 Mont. 133, 519 P.2d 963 (1974) (plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); *McIntosh v. Graveley*, 159 Mont. 72, 495 P.2d 186 (1972) (appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909) (successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, *Gassert v. Noyes*, 18 Mont. 216, 44 P. 959 (1896) (change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff’s subsequent right).

⁴ A claim only constitutes *prima facie* evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute *prima facie* evidence of historical use in a change proceeding under § 85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. Section 85-2-234, MCA

underlying right to the detriment of other water user because a decree only provides a limited description of the right); *Royston*, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the Applicant failed to provide the Department with evidence of the historic diverted volume, consumption, and return flow); *Hohenlohe*, ¶ 44-45; Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pgs. 11-12 (proof of historic use is required even when the right has been decreed because the decreed flow rate or volume establishes the maximum appropriation that may be diverted, and may exceed the historical pattern of use, amount diverted or amount consumed through actual use); Matter of Application For Beneficial Water Use Permit By City of Bozeman, *Memorandum*, Pgs. 8-22 (Adopted by DNRC *Final Order* January 9, 1985)(evidence of historic use must be compared to the proposed change in use to give effect to the implied limitations read into every decreed right that an appropriator has no right to expand his appropriation or change his use to the detriment of juniors).⁵

40. An Applicant must also analyze the extent to which a proposed change may alter historic return flows for purposes of establishing that the proposed change will not result in adverse effect. The requisite return flow analysis reflects the fundamental tenant of Montana water law that once water leaves the control of the original appropriator, the original appropriator has no right to its use and the water is subject to appropriation by others. *E.g.*, *Hohenlohe*, ¶ 44; *Rock Creek Ditch & Flume Co. v. Miller*, 93 Mont. 248, 17 P.2d 1074, 1077 (1933); *Newton v. Weiler*, 87 Mont. 164, 286 P. 133 (1930); *Popham v. Holloron*, 84 Mont. 442, 275 P. 1099, 1102 (1929); *Galiger v.*

⁵ Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955, 959 (Colo. 1986)(“Once an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right.”); Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 55 -57 (Colo., 1999); Farmers Reservoir and Irr. Co. v. City of Golden, 44 P.3d 241, 245 (Colo. 2002)(“We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation); Application for Water Rights in Rio Grande County, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.); Basin Elec. Power Co-op. v. State Bd. of Control, 578 P.2d 557, 564 -566 (Wyo, 1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)

McNulty, 80 Mont. 339, 260 P. 401 (1927); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909); *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731; *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185; ARM 36.12.101(56) (Return flow - that part of a diverted flow which is not consumed by the appropriator and returns underground to its original source or another source of water - is not part of a water right and is subject to appropriation by subsequent water users).⁶

41. Although the level of analysis may vary, analysis of the extent to which a proposed change may alter the amount, location, or timing return flows is critical in order to prove that the proposed change will not adversely affect other appropriators who rely on those return flows as part of the source of supply for their water rights. *Royston*, 249 Mont. at 431, 816 P.2d at 1059-60; *Hohenlohe*, at ¶¶ 45-46 and 55-6; *Spokane Ranch & Water Co.*, 37 Mont. at 351-52, 96 P. at 731.

42. In *Royston*, the Montana Supreme Court confirmed that an Applicant is required to prove lack of adverse effect through comparison of the proposed change to the historic use, historic consumption, and historic return flows of the original right. 249 Mont. at 431, 816 P.2d at 1059-60. More recently, the Montana Supreme Court explained the relationship between the fundamental principles of historic beneficial use, return flow, and the rights of subsequent appropriators as they relate to the adverse effect analysis in a change proceeding in the following manner:

The question of adverse effect under §§ 85-2-402(2) and -408(3), MCA, implicates return flows. A change in the amount of return flow, or to the hydrogeologic pattern of return flow, has the potential to affect adversely downstream water rights. There consequently exists an inextricable link between the “amount historically consumed” and the water that re-enters the stream as return flow. . . .

An appropriator historically has been entitled to the greatest quantity of water he can put to use. The requirement that the use be both beneficial and reasonable, however, proscribes this tenet. This limitation springs from a fundamental tenet of western water law-that an appropriator has a right only to that amount of water historically put to beneficial use-developed in concert with the rationale that each subsequent appropriator “is entitled to have the water flow in the same manner as when he located,” and the appropriator may insist that prior appropriators do not affect adversely his rights.

This fundamental rule of Montana water law has dictated the Department’s determinations in numerous prior change proceedings. The Department claims that

⁶ The Montana Supreme Court recently recognized the fundamental nature of return flows to Montana’s water sources in addressing whether the Mitchell Slough was a perennial flowing stream, given the large amount of irrigation return flow which feeds the stream. The Court acknowledged that the Mitchell’s flows are fed by irrigation return flows available for appropriation. *Bitterroot River Protective Ass’n, Inc. v. Bitterroot Conservation Dist.*, 2008 MT 377, ¶¶ 22, 31, 43, 346 Mont. 508, 198 P.3d 219,(citing *Hidden Hollow Ranch v. Fields*, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185).

historic consumptive use, as quantified in part by return flow analysis, represents a key element of proving historic beneficial use.

We do not dispute this interrelationship between historic consumptive use, return flow, and the amount of water to which an appropriator is entitled as limited by his past beneficial use.

Hohenlohe, at ¶¶ 42-45 (internal citations omitted).

43. The Department's rules reflect the above fundamental principles of Montana water law and are designed to itemize the type of evidence and analysis required for an Applicant to meet its burden of proof. ARM 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. ARM 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by changes in the amount, timing, or location of historic diversions and return flows. ARM 36.12.1901 and 1903.

44. Applicant seeks to change existing water rights represented by its Water Right Claims. The "existing water rights" in this case are those as they existed prior to July 1, 1973, because with limited exception, no changes could have been made to those rights after that date without the Department's approval. Analysis of adverse effect in a change to an "existing water right" requires evaluation of what the water right looked like and how it was exercised prior to July 1, 1973. In *McDonald v. State*, the Montana Supreme Court explained:

The foregoing cases and many others serve to illustrate that what is preserved to owners of appropriated or decreed water rights by the provision of the 1972 Constitution is what the law has always contemplated in this state as the extent of a water right: such amount of water as, by pattern of use and means of use, the owners or their predecessors put to beneficial use. . . . the Water Use Act contemplates that all water rights, regardless of prior statements or claims as to amount, must nevertheless, to be recognized, pass the test of historical, unabandoned beneficial use. . . . To that extent only the 1972 constitutional recognition of water rights is effective and will be sustained.

220 Mont. at 529, 722 P.2d at 604; *see also Matter of Clark Fork River Drainage Area*, 254 Mont. 11, 17, 833 P.2d 1120 (1992).

45. Water Resources Surveys were authorized by the 1939 legislature. 1939 Mont. Laws Ch. 185, § 5. Since their completion, Water Resources Surveys have been invaluable evidence in water right disputes and have long been relied on by Montana courts. *In re Adjudication of Existing*

Rights to Use of All Water in North End Subbasin of Bitterroot River Drainage Area in Ravalli and Missoula Counties, 295 Mont. 447, 453, 984 P.2d 151, 155 (1999) (Water Resources Survey used as evidence in adjudicating of water rights); *Wareing v. Schreckendgust*, 280 Mont. 196, 213, 930 P.2d 37, 47 (1996) (Water Resources Survey used as evidence in a prescriptive ditch easement case); *Olsen v. McQueary*, 212 Mont. 173, 180, 687 P.2d 712, 716 (1984) (judicial notice taken of Water Resources Survey in water right dispute concerning branches of a creek).

46. While evidence may be provided that a particular parcel was irrigated, the actual amount of water historically diverted and consumed is critical. *E.g.*, *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, DNRC Proposal for Decision adopted by Final Order (2005). The Department cannot assume that a parcel received the full duty of water or that it received sufficient water to constitute full-service irrigation for optimum plant growth. Even when it seems clear that no other rights could be affected solely by a particular change in the location of diversion, it is essential that the change also not enlarge an existing right. *See MacDonald*, 220 Mont. at 529, 722 P.2d at 604; *Featherman*, 43 Mont. at 316-17, 115 P. at 986; *Trail's End Ranch, L.L.C. v. Colorado Div. of Water Resources*, 91 P.3d 1058, 1063 (Colo., 2004).

47. The Department has adopted a rule providing for the calculation of historic consumptive use where the Applicant proves by a preponderance of the evidence that the acreage was historically irrigated. ARM 36.12.1902(16). In the alternative an Applicant may present its own evidence of historic beneficial use. In this case Applicant has elected to proceed under ARM 36.12.1902. (FOF Nos. 16-20).

48. If an Applicant seeks more than the historic consumptive use as calculated by ARM 36.12.1902(16), the Applicant bears the burden of proof to demonstrate the amount of historic consumptive use by a preponderance of the evidence. The actual historic use of water could be less than the optimum utilization represented by the calculated duty of water in any particular case. *E.g.*, *Application for Water Rights in Rio Grande County*, 53 P.3d 1165 (Colo., 2002) (historical use must be quantified to ensure no enlargement); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*; *Orr v. Arapahoe Water and Sanitation Dist.*, 753 P.2d 1217, 1223-1224 (Colo., 1988) (historical use of a water right could very well be less than the duty of water); *Weibert v. Rothe Bros., Inc.*, 200 Colo. 310, 317, 618 P.2d 1367, 1371 - 1372 (Colo. 1980) (historical use could be less than the optimum utilization “duty of water”).

49. Based upon the Applicant's evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Statement of Claim No. 76D 118111-00 to be a diverted volume of 2,530.0 AF, a historically consumed volume of 172.25 AF, and flow rate of 7.5 CFS. (FOF Nos. 10-20)

50. Based upon the Applicant's comparative analysis of historical water use and return flows to water use and return flows under the proposed change, the Applicant has proven that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued. Section 85-2-402(2)(b), MCA. (FOF Nos. 21-26)

BENEFICIAL USE

51. A change Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. Sections 85-2-102(4) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: "[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . ." McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under §85-2-402, MCA, and new beneficial permits under §85-2-311, MCA. ARM 36.12.1801. The amount of water that may be authorized for change is limited to the amount of water necessary to sustain the beneficial use. *E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review*, Cause No. BDV-2002-519 (Mont. 1st Jud. Dist. Ct.) (2003) (*affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518); *Worden v. Alexander*, 108 Mont. 208, 90 P.2d 160 (1939); *Allen v. Petrick*, 69 Mont. 373, 222 P. 451(1924); *Sitz Ranch v. DNRC*, DV-10-13390, *Order Affirming DNRC Decision*, Pg. 3 (Mont. 5th Jud. Dist. Ct.) (2011) (citing *BRPA v. Siebel*, 2005 MT 60, and rejecting Applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet); *Toohey v. Campbell*, 24 Mont. 13, 60 P. 396 (1900) ("The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the amount that he can appropriate to the quantity

needed for such beneficial purposes.”); § 85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

52. Applicant proposes to use water for irrigation which is a recognized beneficial use. Section 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence that irrigation is a beneficial use and that 2,530.0 AF of diverted volume and 7.5 CFS flow rate of water requested is the amount needed to sustain the beneficial use and is within the standards set by DNRC Rule. Section 85-2-402(2)(c), MCA (FOF Nos. 27-29)

ADEQUATE MEANS OF DIVERSION

53. Pursuant to § 85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion must be reasonably effective for the contemplated use and may not result in a waste of the resource. *Crowley v. 6th Judicial District Court*, 108 Mont. 89, 88 P.2d 23 (1939); *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002) (information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies based upon project complexity; design by licensed engineer adequate).

54. Pursuant to § 85-2-402 (2)(b), MCA, Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. (FOF Nos. 30-35)

POSSESSORY INTEREST

55. Pursuant to § 85-2-402(2)(d), MCA, the Applicant must prove by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. See also ARM 36.12.1802.

56. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (FOF No. 36).

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application to Change an Existing Irrigation Water Right No. 76D 30162783 should be GRANTED.

The Department determines the Applicant may move the point of diversion on Statement of Claim No. 76D 118111-00 located in the SESENW of Section 29, Township 37N, Range 26W to a new location in the NESWNE of Section 29, Township 37 N, Range 26 W, Lincoln County. The table below summarizes the details of the granted change.

Summary of the Granted Change (bold underlined text identifies the changed water right elements)										
Water Right Number	Priority Date	Purpose	Flow Rate (CFS)	Volume (AF)	Maximum Acres	Period of Diversion & Use	Source Name	Point of Diversion	Means of Diversion	Place of Use
Statement of Claim 76D 118111-00	April 8, 1894	Irrigation	7.5	2,530.0	506.0	04/01 – 11/04	Indian Creek	<u>NESWNE Sec 29, T37N, R26W</u>	<u>Pipeline w/ Screened Intake Structure</u>	E2 Sec 24, T37N, R27W (131.0 acres)
								NWNESW Sec 29, T37N, R26W	Headgate	E2 Sec 25, T37N, R27W (66.0 acres) Sec 30, T37N, R26W (212.0 acres) S2 Sec 19, T37N, R26W (97.0 acres)

This change is subject to the following condition:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST

BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

NOTICE

The Department will provide public notice of this application and the Department's Preliminary Determination to Grant pursuant to § 85-2-307, MCA. The Department will set a deadline for objections to this application pursuant to §§ 85-2-307, and -308, MCA. If this application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If this application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this application as herein approved. If this application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the application with such conditions as the Department decides necessary to satisfy the applicable criteria. §§ 85-2-310, -312, MCA.

DATED this 30th day of April 2025.

/Original signed by James Ferch/
James Ferch, Regional Manager
Kalispell Regional Water Resources Office
Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 30th day of April 2025, by first class United States mail.

QUIRK CATTLE CO
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