

**IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI - BASIN 76D**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE
PRELIMINARY DECREE OF THE KOOTENAI RIVER**

The Water Court issued the Temporary Preliminary Decree for the Kootenai River- Basin 76D on March 22, 1984. Timely objections to claims in the Temporary Preliminary Decree were addressed and resolved through the adjudication process.

Since issuance of the Temporary Preliminary Decree in 1984, there have been state-wide changes to several classes or elements of water rights. These changes include modifications of examination and decree of Fish and wildlife, wildlife, and recreation purposes. There have also been changes to claim elements such as standardization of source names and point of diversion legal land descriptions.

In some instances, additional information has been added to the abstracts of claims in this Preliminary Decree. This additional information includes ditch names, reservoir data, and period of diversion. These changes have been authorized by Montana Water Court Orders. *See* Amended Order on Period of Diversion - Statewide entered December 11, 2008; Second Amended Order on Period of Diversion - Statewide entered November 10, 2014; Order Addressing Reexamination entered December 14, 2012; and Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims - Statewide 2013 entered April 17, 2013.

These Findings of Fact and Conclusions of Law are issued for inclusion in the Preliminary Decree for the Kootenai River - Basin 76D as authorized by §§ 3-7-224(2) and 85-2-231, MCA.

These Findings of Fact and Conclusions of Law supersede and replace the Findings of Fact and Conclusions of Law for the Temporary Preliminary Decree filed and adopted on February 28, 1984.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 76D encompasses the Kootenai River and its tributaries as well as groundwater located within Basin 76D. The boundaries of Basin 76D are outlined on the attached map.

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for each individual existing water right claim decreed in this basin. Accompanying the Decree are six Indexes designed to facilitate research on water rights included in the Decree. The six Indexes are as follows:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index
- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. CD copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Kalispell Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the DNRC's Water Rights Adjudication webpage.

UNRESOLVED FACTUAL AND LEGAL ISSUES

4. The objection period allows interested parties to raise issues regarding their own water rights or other water rights in this decree. Issues may also be raised by the Water Court on its own initiative ("on its own motion"). See Rule 8, W.R.Adj.R.

Many unresolved factual and legal issues have been noted by issue remarks on the individual claim abstracts. The Issue Remark Index combines the issue remarks into a list arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify issue remarks on individual

claim abstracts. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved as directed by § 85-2-248, MCA.

Water users within this Basin and other interested persons will be mailed a Notice of Entry of Preliminary Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.

5. The Confederated Salish and Kootenai Tribes of the Flathead Reservation filed a basin-wide objection to the Temporary Preliminary Decree on August 2, 1984. Various parties filed Notices of Intent to Appear to this objection.

6. Claims for water rights reserved under the laws of the United States of America are included in the Montana general adjudication of water rights. The State of Montana, through the Reserved Water Rights Compact Commission, engaged in the negotiation of reserved water right compacts with the federal government and Indian Tribes. §§ 85-2-701 through 85-2-708, MCA.

7. In 2015, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the United States of America, and the State of Montana entered into the Confederated Salish and Kootenai -Montana Compact settling any and all existing water right claims of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana. Section 85-20-1901, MCA. The Compact has not been filed with the Water Court for approval.

8. There may be Tribal reserved rights in this basin that are not reflected in this decree. Those rights will be issued in a separate decree.

CONCLUSIONS OF LAW

1. This is a general adjudication of existing water rights. An existing water right is a right to the use of water which is protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. Section 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana

Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. Section 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter a Preliminary Decree for the Kootenai River - Basin 76D pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983); *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

4. These Findings of Fact, Conclusions of Law, and abstracts define existing water rights under Montana law in Basin 76D and comprise a Preliminary Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.



Digitally
signed by
Russ McElyea

Russ McElyea
Chief Water Judge

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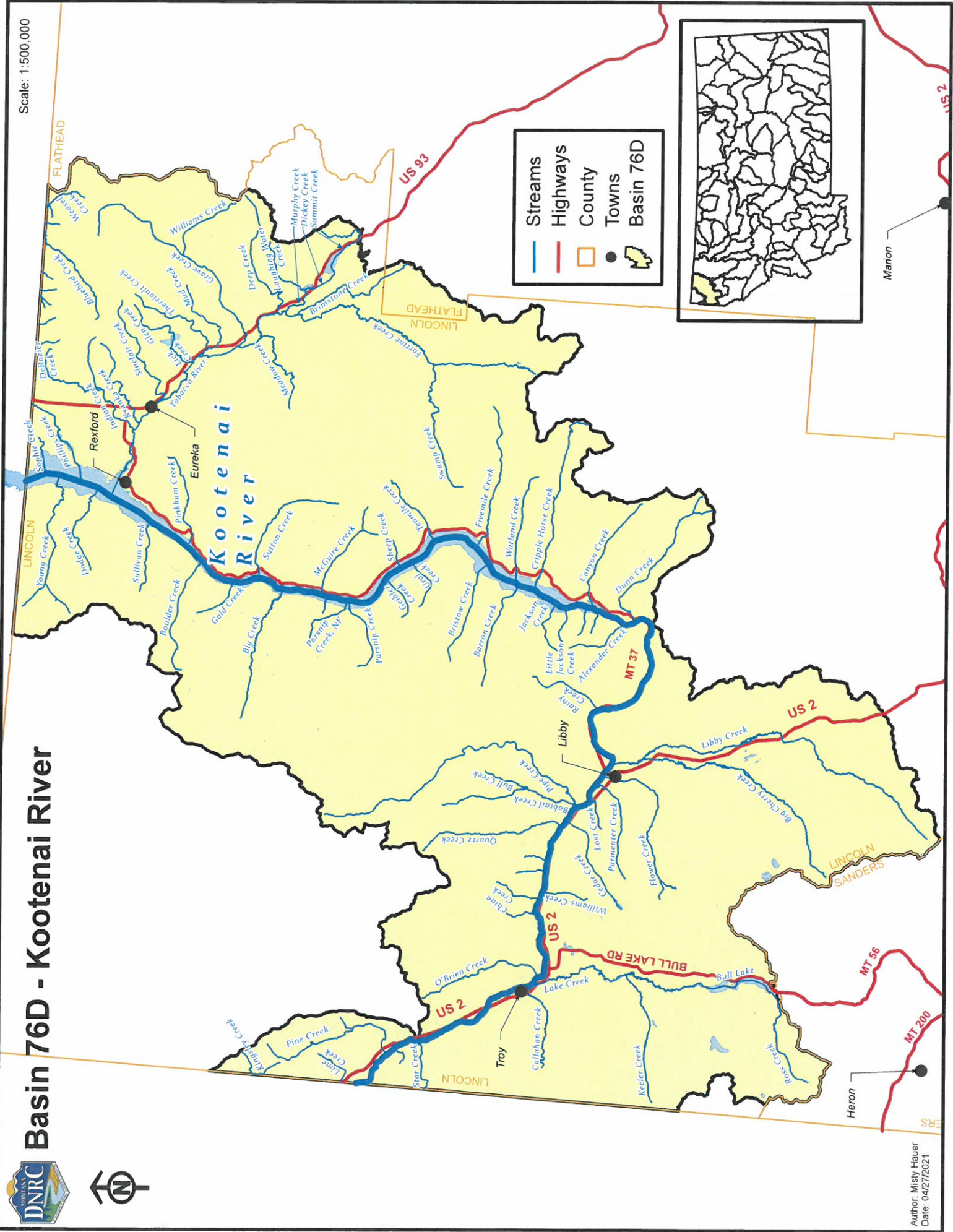
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Basin 76D - Kootenai River



Scale: 1:500,000



	Streams
	Highways
	County
	Towns
	Basin 76D