

1-27-2018

## Danreuther Ranches v. Farmers Coop. Canal Co., 403 P.3d 332 (Mont. 2017)

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Ryan Hull, Case Note, Danreuther Ranches v. Farmers Coop. Canal Co., 403 P.3d 332 (Mont. 2017), 21 U. Denv. Water L. Rev. 321 (2018).

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Accordingly, the Supreme Court reversed the water court's judgment denying Scott Ranch's petition and remanded the case with instructions to dismiss without prejudice so that Scott Ranch may file exempted water rights claims with the Department using the proper filing procedures under the revised statute.

*Gianni Puglielli*

**Danreuther Ranches v. Farmers Coop. Canal Co., 403 P.3d 332 (Mont. 2017)** (holding that: (i) Danreuther's statement of claims is presumed valid because proof of precise facts as to persons' activities over one hundred years ago is often not possible, even where written records are kept; and (ii) the trial court erred in finding an implied second water right based on filings by Danreuther's predecessor in interest in 1880 and 1887 for water rights because the second filing related back to the date of the first filing).

Danreuther Ranch ("Danreuther") filed claims for irrigation and stockwater rights from the Teton River. Farmers Cooperative Canal Company ("Canal Company") objected to the claims. The water court upheld Danreuther's claims based on a presumption of validity regarding historical filings. However, the water court found that Danreuther's predecessor in interest had increased farming acreage from nine to fifty acres, as stated in their 1880 and 1887 filings, which gave rise to the implication of a second separate water right. The Canal Company appealed and Danreuther cross-appealed. The Montana Supreme Court reviewed the appeal for clear error.

The Court first considered whether the water court had committed clear error in finding Danreuther had inherited various claims. The first claim the court reviewed stemmed from an 1874 filing by Nelson Vieux ("Vieux"), Danreuther's predecessor in interest. The court found Vieux's 1874 claim was sufficient to establish a water right because the contents of a statement of claims are presumptively true unless overcome by a preponderance of the evidence. The Court reasoned that proof of precise facts as to specific activities that occurred over 100 years ago is difficult to obtain, even when written records exist. Courts will presume facts in the record to be true, unless the objector can provide sufficient evidence to rebut the presumption of validity. Otherwise, the Court reasoned, claimants would be subject to an unjustifiably heavy burden to prove the existence of their claim.

The Court upheld the presumption of validity of Vieux's 1874 filing. The Court found that Vieux's various filings, along with the fact that Vieux's irrigated acreage increased from nine to fifty acres in an area unsuitable for non-irrigated farming, were sufficient evidence that Vieux was in fact irrigating acreage and working on perfecting his 1880 claim. Furthermore, the Court found the lack of actual evidence that Vieux started any ditch construction in 1874 as insufficient to overcome the presumption of validity. The Court affirmed the water court's ruling and held that the lower court had not committed clear error in finding Danreuther had a valid claim as an inheritor of Vieux's 1874 filing.

In addition to valid water claims by Vieux, the lower court found that Danreuther had inherited a second valid claim through a 1914 notice of appropriation filed by his predecessor in interest Helen Hibbard ("Hibbard"). Ap-

plying the same analysis as the Vieux claim, the Court found that sufficient evidence existed to presume Hibbard had perfected her claim. Again, the Canal Company failed to overcome the presumption of validity when it argued that the land where Hibbard had claimed her appropriation now belonged to the state. In addition, the Court stated that this issue was not properly before this Court as it was not raised during the water court's adjudication of this case. Further, although no factual basis for Danreuther's claimed flow rate of 6.9 cfs existed in the record, the Court awarded the claim with a revised 1 cfs flow rate to match the appropriation claimed by Danreuther's predecessor in interest. The Court found no clear error was committed by the water court in validating Danreuther's claim or reducing the flow rate based on the 1914 filing, and thus affirmed.

Next, the Court addressed the issue of whether Danreuther's claim based on Vieux's appropriations should be split into an implied second water right. The court upheld the water court's reduction of the Vieux claim from 6.9 cfs to 1 cfs but found that the water court had committed error by altering the Vieux claim's original 1874 priority date to two separate priority dates, 1880 and 1887. The Court upheld the water court's finding that the flow rate should be calculated from the amount appropriated when Vieux first started irrigating in 1880, and that 1 cfs was a justifiable amount based on Vieux's irrigated acreage at that time.

However, the Court found no evidence that Vieux had changed the total volume of water appropriated from the 1880 record to increase his irrigated area. Further, the Court held that claims are governed by the law in effect at the time of appropriation. In 1880, when Vieux started his appropriation, the primary way to lawfully appropriate water in Montana was to put the water to beneficial use. The law further allowed a perfected claim to relate back to the start of construction for the water claim. Therefore, the Court held that the increase from nine to fifty acres in an area unsuitable for irrigation indicated Vieux continued work from the 1880 filing to the 1887 filing date. If the construction for both filings was continuous, the 1887 claim represented a continuation of the 1880 claim. Because Montana law at the time of the 1880 filing allowed a perfected claim to relate back to the start of construction, the two claims found by the lower court were in fact one claim dating to 1880. Therefore, the Water Court committed error in distinguishing a second claim—the 1887 claim. The Montana Supreme Court reversed the water court's holding as to the second implied right and held that the priority date for the Vieux claim should be 1880 and should encompass enough water for fifty acres.

Accordingly, the Court affirmed the lower court's validation of Danreuther's claims, but reversed the lower court's finding of a second implied water right because the second claim is merely a continuation or addition on the original claim.

*Ryan Hull*

**Quigley, 405 P.3d 627 (Mont. 2017)** (holding that: (i) under a prior decree water rights applied evenly to an entire piece of land, rather than on specific areas within the land where the user put water to beneficial use; and (ii) the Water Master appropriately used substantial evidence in the determination).