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Quigley, 405 P.3d 627 (Mont. 2017)

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Quigley, 405 P.3d 627 (Mont. 2017)

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).

In 1909, John W. Blair, owner of the Finn Ranch, received four water rights for irrigation from the Nevada Creek under a decree ("*Geary* decree") from the case *Geary v. Raymond*. In 1912 Blair sold the ranch, splitting it into two separate parcels. No deed transfer for the separate properties reserved specific water rights as appurtenances to the land. James Quigley and Linda Quigley ("Quigley") now own one of these parcels of land and Richard Beck owns the other.

Quigley's and Beck's predecessors each filed water right claims for Blair's four water rights. The Montana Department of Natural Resources and Conservation noted that the eight claims, four from each party, were for the same four water rights and, therefore, the parties had exceeded the decreed water rights.

Quigley filed objections against Beck's claims. The Water Master reported that Quigley and Beck both were successors to a portion of Blair's water rights. The Water Master determined that the *Geary* decree did not attach decreed water rights to specific parcels of Blair's land and it did not incorporate Blair's pleadings with claim dates and flow rates. The Water Master then split the rights using a formula out of *Spaeth v. Emmett*. Applying the formula, Quigley received thirty percent of the water rights and Beck received seventy percent of the water rights. Quigley objected to the water court. Upon review of the Water Master's findings, the water court adopted the Water Master's report. Quigley appealed the water court's findings to the Montana Supreme Court ("Court") and asked the Court to determine whether the water court erred in its interpretation of the *Geary* decree and in applying the clear error start to the Master's findings of facts.

The Court first addressed whether the water court erred in its interpretation of the *Geary* decree. Quigley argues that Blair's appropriations were "for the purpose of irrigating the lands belonging to them and described in the answer of" Blair. The *Geary* decree specified only one point of diversion and ditch for one of the four rights—the rest of the rights ran appurtenant to the land. The Court agreed with the Water Master, stating that the *Geary* decree properly divided appropriations between the ranches to account for where the users put the appropriations to beneficial use. The Court also determined that since the *Geary* decree did not specify parcels within Finn Ranch, the rights were in fact appurtenant to all of the irrigated land within the parcel as a whole. Therefore, the water court did not err.

Next, the Court considered whether the water court erred in applying the clear error start to the Water Master's findings of facts. The water court may only replace a Water Master's finding if: (1) the finding is not supported by substantial evidence; (2) the Water Master misapprehended the effect of the evidence; and (3) upon review of evidence the water court is "left with definite and firm conviction that a mistake has been committed."

The Court determined that due to the proper interpretation of the *Geary* decree and due to Beck's witness testimony and evidence, substantial evidence supported the water court's findings. The Court then determined that a conflict of evidence did not mean there was misapprehension. Since the water court looked at all the evidence—the *Geary* decree, various reports and affidavits, and the witness testimony supplied by Beck—the water court correctly analyzed the Water Master's findings and found there was no misapprehension. The Court

also determined that, since someone had to receive less water in the matter and that the Water Master correctly applied the *Spaeth* formula, the water court had no conviction that the Water Master committed a mistake in making the determination. Therefore, the water court did not err.

Accordingly, the Court affirmed the order of the water court.

Kristina Ellis

Teton Coop. Canal Co. v. Teton Coop. Reservoir Co., 412 P.3d 1 (Mont. 2018) (holding that the water court did not err by: (i) apportioning volume limits for Teton Canal's water right claims; (ii) removing the Eureka Reservoir as storage while allowing the Glendora Reservoir's storage capacity to be added to the volume limit; (iii) permitting Teton Canal to store its direct flow water in the Eureka Reservoir during irrigation season; and (iv) allowing Teton Canal a year-round period of diversion).

In *Teton Co-op. Reservoir Co. v. Farmers Co-op. Canal Co.* ("Farmers"), the Montana Supreme Court held that the defendant Farmers could divert and store water under its 1895 and 1897 decreed direct flow water right to two reservoirs: Harvey Lake and Farmers Reservoir. In this 2016 decision, the Court allowed the two reservoirs to relate back to the previous decreed water rights because storage may be added to a direct flow water right (as long as it is not stored at a rate exceeding the volumetric flow rate or at times outside the diversion period). The Court stated there was no evidence that the additions of the reservoirs expanded the Farmers' 1895 or 1897 decreed water rights. However, storage may not be added to a direct flow water right if the stored water reflects a separate right with its own priority date—this reflects the Court's decision in *Teton Coop. Canal Co. v. Teton Coop. Reservoir Co.* ("*Teton Canal I*").

This case arose out of second appeal concerning the adjudication of Teton Canal's water right claims on the Teton river. The first appeal emerged in *Teton Canal I*, in which the Court held that Teton Cooperative Canal's ("Teton Canal") claims for the Eureka Reservoir were not properly administered under its 1890 Notice of Appropriation ("1890 Notice"). The Court remanded to the Montana Water Court, which assigned a December 7, 1936 priority date to the water rights of Teton Canal for the Eureka Reservoir. The water court assigned 8,095 acre-feet under the 1890 Notice—8,000 acre-feet of direct flow and 95 acre-feet of storage—and 3,095 acre-feet of storage in the Eureka Reservoir. Teton Canal appealed the January 31, 2017 order of the water court.

In this case, Teton Canal did not dispute the December 7, 1936 priority date but challenged that the water court exceeded its scope by addressing other elements of the water right claims, including assigning volumes. The Court held that, because the administration of a water right must include elements that are specific to that water right (under the Montana's Water Use Act), the water court may consider whether other elements of the right are affected when the priority date is reviewed on appeal. Therefore, the Court held that the water court did not exceed its scope upon remand.

Teton Canal argued that the volume assignments of 8,000 acre-feet for direct flow under the 1890 Notice and 4,000 acre-feet under the 1936 Declaration were erroneous. The Court concluded that because there was sufficient circumstantial and direct evidence, the water court justifiably limited the volume