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Teton Coop. Canal Co. v. Teton Coop. Reservoir Co., 412 P.3d 1 (Mont. 2018)

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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

amount of 12,000 acre-feet for any combination of the water right claims.

Teton Canal argued that the removal of the Eureka Reservoir as storage under the 1890 Notice was contrary to Montana law. Teton Canal argued that the Eureka Reservoir may remain as storage according to precedent set by *Farmers.* However, the Court decided that storage cannot combine with a direct flow water right if the stored water reflects a separate right with its own priority date. Therefore, the water court properly concluded that the 1936 priority date was assigned to implied water right claims for the Eureka Reservoir, which is junior to the 1890 Notice direct flow rights.

The Court held that the water court did not err in allowing Teton Canal to store its 1890 direct flow water in the Eureka River during irrigation season. Teton Reservoir argued that temporary storage of direct flow cannot constitute beneficial use. However, Montana law allows a direct flow water user to add storage as long as the flow and volume of water used does not increase and the period of diversion does not expand. Teton Canal does not inferfere with other rights because it is still limited to 8,000 acre-feet of direct flow under the 1890 Notice. Therefore, Teton Canal could store portions of its direct flow right in the Eureka Reservoir for use later in the irrigation season.

Lastly, the water court did not err by allowing Teton Canal a year-round period of diversion for the 1890 Notice. The Court concluded that there was ample evidence to support year-round diversion prior to development of the Eureka Reservoir. The water court noted that the 1890 Notice included 8,000 acre-feet of direct flow water that Teton Canal diverts between April 20 and October 14, as well as the 95 acre-feet of water that it diverts between January 1 and December 3. Thus, the water court legitimately concluded that only the diversion attributed to the former Glendora Reservoir is year-round, which Teton Canal's shareholder meetings supports.

Accordingly, the Court affirmed the water court's ruling.

Haley McCullough

NEVADA

Eureka Cty. v. Seventh Judicial Dist. Court, 407 P.3d 755 (Nev. 2017) (holding: (i) that hearing a petition for writ mandamus was proper because addressing a due process issue promptly would favor judicial economy by clarifying notice requirements in a water rights curtailment action; (ii) that Nevada's Constitution requires procedural due process for a show cause hearing that could determine curtailment of an individual's junior water rights; and (iii) that others cannot adequately represent junior water rights holders because water rights are unique real property interests).

In September of 2011, Sadler Ranch purchased real property and water rights in Diamond Valley—an over appropriated area of Nevada. Sadler Ranch claimed that because the ranch was established in the middle of the 19th century, its Diamond Valley water rights are pre-statutory, vested, and senior. However, of the two springs on the ranch, one's flow had diminished substantially, and the other's flow had disappeared completely. In 2014, Sadler Ranch petitioned for replacement water to compensate for the loss from its springs, but the State Engineer only awarded a small portion of the amount requested. In