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IN THE WATER COURT OF THE STATE OF MONTANA

ALBERT D. YOUNG,)
)
 Plaintiff,)
)
 v.)
)
 MATTIE Z. FARRINGTON)
)
 Defendants.)
)
 _____)

CASE NO. WC-2005-02

Certified From:
Fifth Judicial District Court
Cause No. 576
(Red Rock River)

FILED
APR 04 2006

Montana Water Court

FINDINGS OF FACT, CONCLUSIONS OF LAW AND MEMORANDUM

On Thursday, October 20, 2005, the Water Court held an evidentiary hearing to resolve a water right distribution controversy involving the ownership of an existing water right claimed by two parties. Plaintiff and claimant River Valley Ranch, LP (hereinafter "River Valley") was represented by attorney Katherine Baker. Defendant and claimant Bear Creek Ranches, LLC (hereinafter "Bear Creek") was represented by attorneys John Bloomquist, Max Hansen, and Patti Rowland. Ted Schmidt was present for River Valley. Don and Sheila White were present for Bear Creek.

PROCEDURAL HISTORY AND BACKGROUND

River Valley and Bear Creek both claim ownership of a Red Rock River water right with a June 1, 1888 priority date and a decreed flow rate of 320 miner's inches. This water right was originally decreed to Henry Fitter in the Decree and Special Findings and Conclusions of Law, dated August 21, 1899, of the Fifth Judicial District Court, in Cause No. 576, *Albert D. Young v. Mattie Z. Farrington, et al.* (hereinafter "1899 Decree"). Pl. Ex. 2 and Def. Ex. 3.

River Valley filed a Verified Petition for Dissatisfied Water User and Alternate Complaint in Cause No. 576, Fifth Judicial District Court, Beaverhead County, on June 4, 2004. On December 16, 2004, the District Court issued its Order. In its Order, the District Court maintained the status quo and granted Bear Creek's Motion to Certify Determination of Existing Water Right to the Chief Water Judge, all as authorized by § 85-2-406(2)(b), MCA.

River Valley is the owner of water right claim 41A 94608-00. Bear Creek is the owner of water right claim 41A 94627-00.

River Valley is the successor-in-interest to Henry Warnecke and Henry Fitter, as owner of approximately 320 acres of land in Section 31, Township 13 South, Range 7 West, Beaverhead County, Montana (hereinafter "Warnecke lands"). Pl. Ex. 1 and 1-C.

Bear Creek is the successor-in-interest to William Dengler, Daniel Collins and Henry Fitter of 160 acres in the NE of Section 22, T13S, R9W, Beaverhead County, Montana (hereinafter "Collins land"). Def. Ex. 1, 1-D, and 1-E. In addition to the

Collins land, Fitter was the owner of other lands, including the S2NW and SW of Section 23, T13S, R9W. Def. Ex.1, 1-F, 2, and 2-B. Bear Creek is a successor in ownership to this Section 23 land. Def. Ex. 1 and 1-Y.

The lands of River Valley and Bear Creek are separated from one another by several miles. The River Valley land is upstream from the Bear Creek land. Pl. Ex. 5-A.

Both River Valley and Bear Creek assert ownership of the Henry Fitter 320 miner's inch decreed right, based on the language of the 1899 Decree and their succession in ownership of a portion of the Henry Fitter lands. The Decree and Special Findings and Conclusions of Law issued by the Court in Cause No. 576 state:

Finding of Fact, ¶ 2:

That the defendant Henry Fitter, and his grantors and predecessors in interest, did on the 23rd day of October, 1886, appropriate 400 inches of the waters of Red Rock River, by means of his certain ditch or ditches, known as the Dengler ditch, for the purpose of irrigating their lands, and for other useful and beneficial purposes; and has ever since, and at all times and seasons, so much of the same has been used as was required to irrigate their lands known as the "Dengler land"; and that 160 inches is a sufficient quantity of water with which to irrigate said defendant's land known as the "Dengler land"; and thereafter, to-wit, the said defendant, and his grantors and predecessors in interest, on the 1st day of June, 1888, did appropriate 400 inches of the waters of Red Rock River, **by means of a certain ditch**, and thereafter, to-wit, on the 14th day of August, 1888, did appropriate 400 inches of the waters of Red Rock River, by means of enlarging the Dengler ditch, in all 800 inches, for the purpose of irrigating their lands, and for other useful and beneficial purposes, and have ever since, and at all proper times and seasons, used so much of the same as was necessary to irrigate their lands known as the **Collins and Warnecke lands**; and that 320 inches as of date, and of the appropriation made the 1st day of June, 1888, is a sufficient

quantity of water with which to irrigate said defendant's **lands last aforesaid**. (Bolding added).

Conclusion of Law, ¶ 2:

That the defendant Henry Fitter, is now, and he and his grantors and predecessor in interest, have been since the 23rd day of October, 1886, the owner and owners of, and entitled to the use of, 160 statutory inches of the waters of said Red Rock River, taken thereout and appropriated by means of that certain ditch known as the "Dengler ditch", for the purpose of irrigating what is known as the Dengler land; and in addition to the aforesaid appropriation, the said defendant is now, and he and his grantors and predecessors in interest, have been since the first day of June, 1888, the owner and owners of, and entitled to the use of 320 statutory inches of the waters of said Red Rock River, **taken thereout and appropriated by means of the said "Dengler ditch"**, for the purpose of irrigating what is known as the "**Collins & Warnecke land**" in said Beaverhead County.¹ (Bolding added).

The District Court's December 16, 2004 Decision and Order states:

The Court ruled to maintain the *status quo* based upon evidence and unrefuted assertion that the disputed water rights has been utilized by Bear Creek and its predecessors for several decades. The evidence also establishes that there is no usable ditch to transport water for use on River Valley property in Section 31.

This Court concludes that the fundamental dispute involves ownership of the water right. This is not a distribution issue which can be resolved by interpreting the existing decree by reference to the priority dates or otherwise.

Def. Ex. 3-H, Page 2, Lines 8 - 14.

¹ The October 23, 1886, water right decreed to Henry Fitter and referenced in the Decree excerpts is not at issue in this Water Court case.

ARGUMENT AND EVIDENCE

During the October 20, 2005 hearing, River Valley presented several reasons supporting its contention that River Valley was the successor in interest to Henry Fitter's June 1, 1888 320 inch decree water right. It supported its contentions through the introduction of a series of historical documents and the testimony of Ted Schmidt, Managing General Partner for River Valley. Although Mr. Schmidt has no personal knowledge of any irrigation practices on the River Valley lands prior to the year 2000, attorney Baker's presentation of evidence through him provided a logical and well presented roadmap of River Valley's contentions.

At the risk of summarizing River Valley's roadmap too briefly, River Valley cited:

1) Henry Fitter's Notice of Appropriation filed November 3, 1897 for 400 inches of Red Rock River water and Fitter's assertion that Henry Warnecke first appropriated the water on June 1, 1888 for use on the SW and SE of Section 31, T13S, R7W Warnecke land. Pl. Ex. 1-D.

2) Henry Fitter's assertion in his November 24, 1897 Separate Answer, at paragraph 5, that Henry Warnecke appropriated 400 inches of Red Rock River water on June 1, 1888 (with an 1887 interlineation) for use on 312 acres in the E2SW and SE of Section 31, T13S, R7W. Pl. Ex. 3.

3) The August 21, 1899 Decree and the finding in paragraph 2, page 4, that Fitter and his grantors appropriated 400 inches of Red Rock River water on June 1, 1888, and

that “so much of the same as was necessary” was used to irrigate the “Collins and Warnecke lands;” and that 320 inches is sufficient to irrigate Fitter’s “lands last aforesaid.” Pl. Ex. 2; and

4) Henry Fitter’s 1906 grant of an option to Otto C. Gosman and G. H. Macdougall to purchase 720 acres in Sections 14, 22, and 23 T13S, R9W together with “the ‘Dengler’ water ditch and water right of Henry Fitter, and 120 inches of the Collins & Warnecke water right of Henry Fitter, and a proportionate interest of the said Collins & Warnecke water ditch sufficient to carry the said 120 inches of water.”² Def. Ex. 1-F.

River Valley argues that the reference in Finding of Fact 2 of the 1899 Decree to the “Collins and Warnecke” lands and the language found in a subsequent paragraph that the “appropriation made the 1st day of June, 1888, is a sufficient quantity of water with which to irrigate said defendant’s **lands last aforesaid,**” demonstrates that the June 1, 1888 right is appurtenant to the Warnecke lands (as the “lands last aforesaid”) and not to the Collins land. (Bolding added)

River Valley unrolled and presented a very large canvas map at the hearing.³ Although the original map was not introduced, it was examined and discussed and digital copies of portions of the large map were introduced. Included on one of these copies was

² The land and water rights contained in this option were reconveyed to Henry Fitter in 1911. Def. Ex. 1-H and 1-I.

³ The parties appear to agree this large map was associated with the Decree in Cause No. 576. Therefore, the Court assumes this large map is the map referenced by the District Court in paragraph 41, page 31 of the 1899 Decree as the “map made by the civil engineer” and in paragraph 44, page 45 of the Decree as the “survey and the map and plat thereof . . . marked as Plaintiff’s Exhibit 1.” Richard Gosman, a former water commissioner, was not aware of the large map until sometime in the 1990s.

a depiction of a ditch in the S2 of Section 31, T13S, R07W. The depicted ditch, referenced as “Fitters Ditch” runs in a south and southwest direction and into an area referenced as “Henry Fitter 320 acres.” Pl. Ex. 6. The precise point of diversion of “Fitters Ditch” is not identified in Plaintiff’s Exhibit 6, although it appears to be within Section 32.

River Valley next presented an April 6, 1951 Bureau of Reclamation Red Rock River Water Rights Map (“1951 map”), depicting a point of diversion from the south side of the Red Rock River in the SWNW of Section 32, T13S, R07W and thence running in a south and southwest direction through the S2 of Section 31, T13S, R07W and into the N2 of Section 6, T14S, R07W. Pl. Ex 7. This ditch is identified on the 1951 map as the “Warneke Ditch.”

Plaintiff’s witness Ted Schmidt examined the large map and testified that the headgate of the Fitters Ditch on Plaintiff’s Exhibit 6 was “pretty close” to the point of diversion of the Warnecke Ditch on Plaintiff’s Exhibit 7. After reviewing the same two exhibits, Richard Gosman testified similarly that the Fitters Ditch and the Warneke Ditch “are obviously the same ditch.” The Warneke Ditch point of diversion also closely matches the legal description of point of diversion 1 and 2 in the Stipulation and Agreement introduced as Defendant’s Exhibit 11-A at page 2, paragraph 3, lines 9-10. Photos of an old headgate and ditch in the general location of the Fitters/Warneke Ditch diversion point were introduced (Pl. Ex. 9-A through 9-C), together with photos of an old

flume (Pl. Ex. 9-F through 9-G) that is located at the location of the “flume” depicted in Plaintiff’s Exhibit 6.

Finally, River Valley presented evidence that crops requiring irrigation were historically raised on the Section 31 Warnecke, now River Valley land. Pl. Ex. 10-A through 10-D.

From this evidence, River Valley argues that the Fitter June 1, 1888 decreed right was originally appropriated by Henry Warnecke for use on the S2 of Section 31, was historically diverted through the ditch depicted on the large map in Section 31 as Fitters Ditch and on the 1951 map as the Warneke Ditch, and the water so diverted was historically used on and is currently appurtenant to the River Valley Section 31 lands.

Bear Creek argues that if any ambiguity exists in Finding of Fact ¶ 2 set out above, the ambiguity can be clarified through the proper interpretation of Conclusion of Law ¶ 2 since Conclusion of Law ¶ 2 makes it clear that the 320 inch June 1, 1888 right was decreed for diversion and delivery through the “Dengler” ditch.

Bear Creek asserts that the proper location of the Dengler ditch is in Section 23, T13S, R09W and serves the Bear Creek property. In support of its position, Bear Creek also presented a portion of the large map from the Decree in Cause No. 576. That map depicts “Fitters Channel” and “Fitters Ditch” in Sections 22, 23, and 24, T13S, R09W, and “Henry Fitter 320 acres” in the S2 of Section 23, T13S, R09W. Def. Ex. 4-A through 4-H.

Bear Creek argues that the Dengler ditch referred to in the Decree is in fact the Fitters Ditch identified on the large map (Def. Ex. 4-A) in Cause No. 576. Plaintiff's witness Ted Schmidt agreed that the Dengler ditch is located adjacent to the Bear Creek Ranch and that one "can't use water on Warnecke land through the Dengler ditch" because the Warnecke lands are miles away.

On July 10, 1926, Henry Fitter, along with other "users and holders of the waters decreed" in Cause No. 576, filed an Agreement with the District Court and agreed that "each water user may have his water transferred from one ditch to another owned by him and may use his water upon lands now owned and irrigated by him." Def. Ex. 3-D.

Richard Gosman, a retired Red Rock River rancher and water user (approximately 1960-1994), former water commissioner (mid-1950s), and former director and vice-president of a Red Rock River water users irrigation association (approximately 1985-1993) testified. When he was first appointed water commissioner by (he believes) Judge Duncan,⁴ he was handed a combined "List of Decreed Water Rights from Beaverhead and Red Rock Rivers As of Date August 1, 1926." Pl. Ex. 20, pp. 2-4; Def. Ex. 10. Judge Duncan asked him "What are you going to do about those outlaw ditches up there [referring to the ditches upstream of the Glead Ditch]." Gosman replied that he didn't know what he was going to do. Judge Duncan then stated that Gosman was to do "Nothing." Mr. Gosman eventually concluded, through his years of experience on the Red

⁴ Phillip C. Duncan served as Fifth Judicial District Judge from approximately 1952 through 1969. See Montana Reports: Volume 126, page vii, through Volume 153, page vii.

Rock River, that no Red Rock River decreed water rights were diverted upstream of the Glead Ditch. He said that this was the common knowledge of the decreed water users. All of the River Valley ditches are upstream of the Glead Ditch. Pl. Ex. 22. Mr. Gosman's conclusion is consistent with Judge Duncan's earlier admonition to him that as a newly appointed water commissioner he was to do "nothing" about the "outlaw" ditches.

Mr. Gosman also testified that "after the Jennings family bought the ranch [Warnecke land purchased on October 6, 1950 (Pl. Ex. 1-L)], they changed the land use, they no longer hayed, they pastured the whole thing. And it is my belief that there was no irrigation practiced on the property after 1950." He believes that any water used on the Warnecke land was from high spring flows that might have flooded the land or from stored water. Mr. Gosman testified that he never heard of the June 1, 1888 decree right being diverted onto the Warnecke land and that the actual use of the June 1, 1888 decree right was on the Bear Creek land.

Throughout the years, various lists were developed updating the ownership of the decreed rights on the Red Rock River. These various lists generally identify Bear Creek, or its predecessors, as the owner of the Henry Fitter June 1, 1888 decreed right. Pl. Ex. 18, 19, and 20. River Valley and its predecessors were never identified on these lists to be an owner of the 1888 decreed right except when Henry Fitter, a common predecessor to both claimants, was named.

The Court heard the testimony and received exhibits. Based upon the record and evidence, the Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In the 1899 Decree, Henry Fitter was decreed a 320 miner's inch water right out of the Red Rock River with a June 1, 1888 priority date ("1888 decreed right").

2. At the time of the 1899 Decree, this 1888 decreed right was used to irrigate the lands of Henry Fitter. The Fitter lands included the Collins and Warnecke lands. For an unknown period of time after the 1899 Decree, this decreed right was likely used to irrigate both the Collins and Warnecke lands.

3. The 1888 decreed right was likely diverted onto the Fitter lands through the two ditches identified as "Fitters" Ditch on Plaintiff's Exhibit 6 and on Defendant's Exhibits 4-A and 4-B, depicting, respectively, Section 31, T13S, R7W (River Valley land) and Sections 22 and 23, T13S, R9W (Bear Creek land).

4. The ditch identified as the "Dengler" ditch in the 1899 Decree is the same ditch as the one identified on Defendant's Exhibit 4-A as "Fitters" Ditch. The ditch identified as "Fitters Ditch" on the Warnecke lands in Plaintiff's Exhibit 6 is the same ditch as the one identified on Plaintiff's Exhibit 7 as the "Warnecke" Ditch.

5. By Warranty Deed dated July 26, 1944, Henry Fitter conveyed the Warnecke lands, but not the Collins lands, to George R. Myers and Phillip R. Myers. Pl. Ex. 1-E. Unlike Henry Fitter's grant of an option to Otto C. Gosman and G. H. Macdougall in 1906 and the subsequent 1911 reconveyance (Def. Ex. 1-F through 1-I), the 1944 Warranty Deed did not reference any specific water rights.

6. At some unknown date before the 1944 conveyance to Myers occurred, the 1888 decreed right ceased to be used to irrigate the Fitter (Warnecke) lands now owned by River Valley. Instead, it was used exclusively to irrigate the Fitter lands now owned by Bear Creek.

7. Although there is some evidence that River Valley's claimed place of use of the 1888 decreed right was occasionally cropped over the last 50 plus years, which the testimony demonstrated would not be likely unless it were also irrigated, it appears from the evidence that the irrigation, at least since 1951, was from subirrigation, flood water, delivery of stored water from Lima Reservoir, or sources and water rights other than the 1888 decreed right at issue.

8. Until the June 2004 dissatisfied water user's action was filed, the record does not indicate that River Valley or any of its predecessors ever called for delivery of the 1888 decreed right for use on the S2 of Section 31, T13S, R07W or ever objected to its non-delivery.

9. As of July 1, 1973, the 1888 decree right was appurtenant to certain lands now owned by Bear Creek and, between the two claimants, Bear Creek is the owner of the June 1, 1888 decreed right.

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CONCLUSIONS OF LAW

I

The Montana Water Court has exclusive jurisdiction to interpret and determine existing water rights. Sections 3-7-224, 3-7-501, MCA, and *Mildenberger v. Galbraith* (1991), 249 Mont. 161, 166, 815 P.2d 130.

II

These matters were properly certified to the Chief Water Judge of the Montana Water Court. Section 85-2-406(2)(b), MCA.

III

“Existing right” means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973. Section 85-2-102(9), MCA. The clear purpose of the statewide adjudication is to adjudicate water rights as they existed on July 1, 1973. *Adjud. of Water Rights of Clark Fork River* (1992), 254 Mont. 11, 833 P.2d 1120.

IV

Prior to July 1, 1973, a person entitled to a water right could change the point of diversion, place of use, and the purpose of the right if others were not injured. Section 89-803, R.C.M. 1947 (repealed July 1, 1973) The burden of showing any injury was on those claiming to be adversely affected. *Thompson v. Harvey* (1974), 164 Mont. 133, 136, 519 P.2d 963, and cases cited therein.

V

The Agreement among the decreed water users filed on July 10, 1926 (Def. Ex. 3-D) that “each water user may have his water transferred from one ditch to another owned by him and may use his water upon any lands now owned and irrigated by him” represents a recognition by the decreed water users of the principle of law set forth in paragraph IV above. It also represents an apparent understanding among the decreed water users that the benefits of moving water rights from ditch to ditch and place to place outweighed any potential adverse affects of such moves.

VI

On or before 1944, Henry Fitter changed the point of diversion and place of use of his 1888 decreed right for the exclusive use on his lands now owned by Bear Creek. If any predecessors in interest of River Valley believed themselves to be adversely affected by Fitter’s change, they were obligated to take some affirmative action within a reasonable time of the change, and they did not.

VII

Since July 1, 1973, and for many years before, the Henry Fitter decreed water right for 320 miner’s inches with a June 1, 1888 priority date was exclusively diverted and used for irrigation purposes on lands now owned by Bear Creek.

VIII

Bear Creek is the owner of the 320 miner’s inches of June 1, 1888 Red Rock River water previously decreed to Henry Fitter in Cause No. 576. Other than the removal of the

decree exceeded remark from the Review Abstract of Bear Creek water right claim 41A 94627-00 (which the Bear Creek claim was sharing with River Valley claim 41A 94608-00), this Bear Creek claim does not require any change at this time.

IX

A properly filed Statement of Claim for existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by other evidence that proves that one or more elements of the prima facie statement of claim are incorrect. This is the applicable standard of proof regardless of whether the objectors are adverse parties or are claimants objecting to their own water right claims. *See* analysis in Memorandum Opinion, Water Court Case 40G-2, (March 11, 1997).

X

The evidence in this case is sufficient to contradict and overcome the content of River Valley's prima facie claim and justifies the termination of River Valley's water right claim 41A 94608-00.

XI

River Valley water right claim 41A 94608-00 is **TERMINATED** and the abstract of the claim that appears in any subsequent decree issued in Basin 41A shall contain a reference that the claim was dismissed from the adjudication as a result of this certification proceeding.

.....

MEMORANDUM

On or before 1899, the June 1, 1888 Fitter right was beneficially used on the Collins and Warnecke lands. For a period of time after 1899, the right was likely used on the Collins and Warnecke lands, although the record is not sufficient to identify the flow rate beneficially used on the respective lands.

In 1908, Henry Fitter entered into an option to purchase which, if fully executed, would have separated the Collins lands from the Warnecke lands. The option ambiguously called for a conveyance of “the ‘Dengler’ water ditch and water right of Henry Fitter, and 120 inches of the Collins & Warnecke water right of Henry Fitter, and a proportionate interest of the said Collins & Warnecke water ditch sufficient to carry the said 120 inches of water;” Def. Ex. 1-F. When Henry Fitter conveyed the Warnecke lands in 1944 and finally separated his combined ownership of the Collins and Warnecke lands, he did not specify any water right to be conveyed with the Warnecke land. Pl. Ex. 1-E.

In a conveyance of a water right or any other property, it is the intent of the parties, so far as the same has been lawfully expressed, which must control the courts in the construction of the instrument by which the property is conveyed. *Lensing v. Day & Hansen Security Co.* (1923), 67 Mont. 382, 384-385, 215 P. 999 and *Yellowstone Valley Co. v. Asso. Mtg. Investors* (1930), 88 Mont. 73, 84, 290 P. 255. When the deed does not specify the particular appurtenant right intended to be conveyed, extrinsic evidence must be used to establish it. *Bullerdick v. Hermsmeyer* (1905), 32 Mont. 541, 550, 81 P. 334 and *Hays v. Buzard* (1904), 31 Mont. 74, 82, 77 P. 423. The question becomes: “What

rights ... does the [claimant] appear to have acquired in the water under that deed, in light of the facts as they then existed, and the behavior of the parties with reference to it down to the commencement of this action?" *Hays*, 31 Mont. at 82.

The evidence presented in this case and the behavior of the parties and their predecessors in interest, taken as a whole, is consistent with the Water Court's conclusion that the June 1, 1888 Fitter right was not conveyed with the Warnecke land in 1944, but remained with the Collins lands, now owned by Bear Creek. Although the evidence is not perfect, courts must do the best they can with what they have to work with. *Allen v. Petrick* (1924), 69 Mont. 373, 375, 222 Pac. 451.

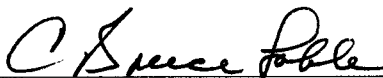
The Water Court's conclusion is also consistent with the admonition of Judge Duncan that the water commissioner was to do "nothing" about the "outlaw" ditches upstream of the Gleed Ditch. That admonition was most likely the result of the Montana Supreme Court's decision in *State ex Rel. Reeder v. District Court* (1935), 100 Mont. 376, 47 P. 2d 653, a contempt proceeding involving a non-decreed Red Rock River water right diverted above the Gleed Ditch. Water commissioners do not have authority over the distribution of non-decreed water. 100 Mont. at 381-383.

The Water Court's conclusion is also consistent with the belief of water commissioner Richard Gosman that no Red Rock River decreed water rights were diverted upstream of the Gleed Ditch, consistent with the common knowledge of the decreed water users of this fact, and consistent with the list of decreed rights prepared by water commissioners over the last 50 years. Finally, it is also consistent with the behavior of

River Valley's predecessors which apparently never complained to the district court about the water commissioner's failure to distribute the June 1, 1888 decreed right for use on the Warnecke land.

The evidence and behavior of the parties, and their predecessors, convinces this Court that the June 1, 1888 Henry Fitter decreed right for 320 inches of Red Rock River is not owned by River Valley. River Valley water right claim 41A 94608-00 should therefore be **TERMINATED**.

DATED this 4 day of April, 2006.



C. Bruce Loble
Chief Water Judge

CERTIFICATE OF SERVICE

I, Anna M. Burton, Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **FINDINGS OF FACT, CONCLUSIONS OF LAW AND MEMORANDUM** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

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DATED this 4th day of April, 2006.


Anna M. Burton, Clerk of Court