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**FILED**

**FEB 03 2015**

**Montana Water Court**

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
TETON RIVER BASIN (410)

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CLAIMANT: Teton Co-op Canal Co.

OBJECTORS: Lower Teton Joint Objectors; Teton Coop  
Reservoir Co.; Farmers Coop Canal Co

**410-132**

410 192867-00

410 192868-00

410 192869-00

410 192871-00

410 192872-00

410 192873-00

**ORDER REGARDING  
TETON CO-OP CANAL COMPANY  
WATER RIGHT CLAIMS**

This case was originally consolidated on August 1, 2008. Hearing in this case took place on October 1 and 2, 2012. At that time this author was presiding over cases in this Basin as a Senior Water Master. On September 16, 2013, this author was appointed as the Associate Water Judge for the Montana Water Court. The trier of fact who presided over hearing in this case must issue the decision. Since that trier of fact is now the Associate Water Judge, the parties are receiving this decision rather than a master's report.

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## PROCEDURAL HISTORY

Water Court Case 41O-132 includes six claims owned by the Teton Co-op Canal Company (TCCC). Two of the claims represent a Teton River water right decreed to TCCC in *Perry v. Beattie*, Case No. 371, Teton County (1908) (*Perry v. Beattie*). The remaining four claims are based on filed rights from the Teton River. In each case, TCCC filed a separate irrigation and stock claim for the same historical water right:

Claim	Priority Date	Source/Type	Flow Rate
41O 192867-00 St 41O 192871-00 Ir	4/18/1890	<u>Teton River</u> Decreed in <i>Perry v. Beattie</i>	75.00 cfs
41O 192868-00 St 41O 192872-00 Ir	4/18/1890	<u>Teton River</u> Filed Right	100.00 cfs
41O 192869-00 St 41O 192873-00 Ir	4/18/1890	<u>Teton River</u> Filed Right	None

All six claims appeared in the Temporary Preliminary Decree for this Basin with the same priority date, source, period of diversion, period of use, point of diversion, and place of use.

TCCC acknowledges it is entitled to a 75.00 cfs (3,000.00 miner's inch) total flow rate from the Teton River. Assuming its decreed rights, 41O 192867-00 and 41O 192871-00, are confirmed through this process, TCCC has indicated claims 41O 192868-00, 41O 192869-00, 41O 192872-00, and 41O 192873-00 are duplicate filings that can be dismissed.

All six claims received objections from the Teton Co-op Reservoir Company (TCRC) and the Lower Teton Joint Objectors (LTJO). The Farmers Co-op Canal Company (Farmers) filed and subsequently withdrew objections to all three irrigation claims. The C Hanging L Ranch filed and subsequently withdrew Notices of Intent to Appear on all three irrigation claims. This left TCRC and LTJO as the only objectors.

There are four irrigation companies located on the Teton River above Choteau, Montana. Cases addressing the water right claims held by each company have been on the same hearing track. The Court conducted a separate hearing for each case and did not issue any decisions until all four cases had been through a hearing. The final hearing

took place in December 2012. Decisions in these cases are being issued in the order the case was heard. The Court has issued decisions in cases 41O-129 (Eldorado Co-op Canal Company) and 41O-118 (Farmers).<sup>1</sup> Case 41O-132 is the third decision in this group of cases.

Cross motions for summary judgment filed by TCCC, TCRC, and LTJO, were denied by the Court on August 9, 2011. On December 28, 2011, the Chief Water Judge dismissed the objections to the Master's Summary Judgment ruling and recommitted the case to the Court for further proceedings.

All exhibits were exchanged prior to hearing. Following this exchange, the parties filed objections to exhibits. By agreement, all exhibits that did not receive objections are a part of the record, even if they were not used at hearing. Exhibits that received prehearing objections and were not offered into evidence at hearing are excluded from the record. Objections to specific exhibits were addressed at hearing as those exhibits were offered into evidence. Exhibits with prehearing objections that were used at hearing were deemed admitted if the objection was not renewed at hearing. At hearing, the Court took objections to TCRC Exhibit 23 Appendix III under advisement and allowed testimony based on this portion of the exhibit. These objections are addressed below.

The Court takes judicial notice of the 1962 Teton County Water Resource Survey text and maps (Water Resource Survey). The Court also takes judicial notice of proceedings in cases 41O-84 (TCRC), 41O-118 (Farmers), and 41O-129 (Eldorado).

On October 1, 2012, TCCC and LTJO filed a Stipulation that served to resolve all LTJO objections. The terms of the Stipulation are addressed as necessary in this Order.

Hearing in Case 41O-132 was held on October 1 and 2, 2012, in Choteau, Montana. TCRC was the single remaining objector. The hearing addressed the TCRC objections, the terms of the TCCC-LTJO Stipulation, and all issue remarks.

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<sup>1</sup> The decision in Case 41O-129 was issued as a Master's Report. The report received objections. On November 21, 2014 the Chief Water Judge issued his Order Amending and Adopting the Master's Report. The decision in Case 41O-118 was issued as an Order of the Associate Water Judge. Both decisions are currently on appeal to the Montana Supreme Court.

## ISSUES PRESENTED

The following issues were raised by TCRC objections, issue remarks, and the TCCC-LTJO Stipulation:

1. Priority Date:

Can TCCC claim offstream storage in Eureka Reservoir as part of the original 1890 appropriation represented by claims 41O 192867-00 and 41O 192871-00?

Do 1947 and 1957 additions to the storage capacity of Eureka Reservoir constitute expansions of the original appropriation, more appropriately represented by water right claims with junior priority dates?

2. Volume:

Do TCCC's claims require a quantified volume, and if so, what is the appropriate total volume and how should that volume be divided among TCCC's claims?

3. Period of Diversion/Period of Use:

What is the appropriate period of diversion and period of use for all TCCC's claims?

4. Place of Use/Acres Irrigated:

What is the appropriate place of use and acres irrigated for TCCC's claims?

5. Stockwater:

Are separate statements of claim for stockwater a valid reflection of TCCC's historical use?

6. Equitable Arguments:

Is TCRC estopped by Laches, Waiver, Judicial Estoppel, and Collateral Estoppel from asserting any right to take Teton River water ahead of TCCC?

## SUMMARY OF DECISION

The original 1937 Eureka Reservoir was contemplated as part of TCCC's April 18, 1890 appropriation and is therefore properly included on water right claims 41O 192867-00 and 41O 192871-00. Additions to the capacity of the Eureka Reservoir in 1947 and 1957 constitute expansions of the original appropriation that must be reflected

in more junior water right claims. Claims 41O 192868-00, 41O 192872-00, 41O 192869-00, and 41O 192873-00 will be amended to represent these junior water right claims.

A quantified volume is necessary for the future administration of TCCC's water right claims. TCCC is entitled to a 12,000.00 acre foot annual volume for its 1890 water right claims; 1947 priority date irrigation and stock water right claims with a combined 1,000.00 acre foot annual volume; and 1957 priority date irrigation and stock water right claims with a combined 1,000.00 acre foot annual volume. TCCC's total annual volume for all claims is 14,000.00 acre feet.

TCCC's has historically diverted water throughout the year. Its period of diversion, for all claims, shall remain as claimed, January 1 to December 31. TCCC failed to support an expansion to its period of use. Therefore the period of use shall remain as claimed, April 20 to October 14, for all claims. TCCC's historical place of use totals 17,322.00 acres with a 7,650.00 acre limit on annual irrigation.

TCCC's stockwater claims are valid reflections of historical use. The combined use for each corresponding irrigation and stock claim does not serve to expand the original appropriation. The stock claims can only be used when TCCC is diverting the corresponding irrigation claims.

TCCC raised several equitable arguments including; Laches, Waiver, Judicial Estoppel, and Collateral Estoppel. Based on these arguments, TCCC asserts TCRC cannot claim a right to Teton River water ahead of TCCC. These arguments are appropriately addressed in Case 41O-84.

### **ADMISSIBILITY OF TCRC EXHIBIT-23, APPENDIX III**

Exhibit TCRC-23 is the TCCC By-Laws as amended and adopted by the Board of Directors on February 21, 1990. There are four Appendices to the By Laws:

- a. Transcript of excerpts from the March 9, 1894 edition of Northwest Magazine.
- b. List of TCCC officers and board members from 1920 to 1990.
- c. Document entitled "A Little History and a Few Interesting Tidbits about the

Teton Coperative [sic] Canal Company” by Les Otness.

d. Water Conversion Table.

At the time Les Otness wrote his “History and Interesting Tidbits,” he was TCCC president. His stated purpose for this attachment to the By-Laws was to preserve important company history that was slipping away. He noted that all of the people that could have told him things about the early days were dead and gone. Otness himself has passed away. He identified several sources for his history including old records in the courthouse, several local abstracts, the local newspapers, TCCC minutes, and word of mouth.

TCRC introduced the exhibit at hearing through the testimony of Charles Crane who is the current Secretary/Treasurer of TCCC. Mr. Crane was a company director in 1990 when the By-Laws in TCRC-23 were adopted. Mr. Crane took issue with some of the information in Appendix III indicating it was mostly correct but not complete. (Crane 9:22, Day 1) Mr. Crane did not dismiss the Otness history as wrong, he simply had somewhat different recollections.

TCCC objected to Appendices I and III as hearsay. The Court allowed Appendix I (magazine excerpts) under the Rule 803(16), M.R.Ev., exception to hearsay for ancient documents. The Court took the hearsay objections to Appendix III under advisement and allowed TCRC to obtain testimony on the entire exhibit. TCCC renewed its objections to Appendix III in its post-hearing filings.

TCRC acquired this exhibit from TCCC through discovery. It appears TCCC has kept all three attachments with the By-Laws since they were adopted in 1990. Therefore, Appendix III is over twenty years old. TCCC does not question the authenticity of the document. Rather it takes issue with the accuracy of the document. As a result, it qualifies under the Rule 803(16), M.R.Ev., exception to hearsay for ancient documents. In addition, a history of the company drafted by the company president in an attempt to preserve that history has the circumstantial guarantees of trustworthiness that qualify under the Rule 803(24), M.R.Ev., exception to hearsay. Appendix III is admissible as part of Exhibit TCRC-23 and should receive the

appropriate weight and credibility.

## FINDINGS OF FACT

### I. Historical Background

1. The Teton River rises northwest of Choteau, Montana, on the Rocky Mountain Front. After leaving the mountains, the river travels generally east for several miles. About twenty miles from the mountains, the river reaches the junction of U.S. Highway 89 and the Teton Canyon Road. At this point, the river turns southeast for several miles passing just south of Choteau. It then turns northeast and travels in this direction until it passes under Interstate 15 near Collins, Montana. The river then turns generally east and travels nearly one hundred miles to its confluence with the Marias River at Loma, Montana. (Water Resource Survey)

2. North of the river and generally east of Highway 89 lies the Burton Bench. The bench is relatively flat, sloping to the northeast. Early settlers identified the Burton Bench as prime farming land that would greatly benefit from irrigation. However, due to its distance from the Teton River, it was clear irrigation development would be expensive. As a result, several private groups embarked on projects to develop ditch systems capable of servicing the Burton Bench and the surrounding area. The earliest of these projects was the Eldorado Ditch Company, followed in succession by the Teton Co-op Canal Company, Farmers Co-op Canal Company, and Teton Co-op Reservoir Company.<sup>2</sup> All four companies developed ditch systems capable of taking water from the Teton River and delivering it to the Burton Bench and surrounding area. The TCCC point of diversion is below the other three companies on the river. As a result, TCCC is able to service only the southern-most portion of the Burton Bench with its canal system.

3. Eldorado has historically been considered the most senior of the four companies, followed by TCCC, Farmers, and TCRC. The actual priority dates for each company's water rights and the terms for their water right claims under those priority dates are at issue in this adjudication. The Eldorado system has no storage capability. It

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<sup>2</sup> Teton Co-op Canal Company (TCCC) is commonly referred to as "Eureka" and occasionally as the "Burton Ditch." Teton Co-op Reservoir Company (TCRC) is commonly referred to as "Bynum." This decision uses TCCC and TCRC to refer to these companies.



is a direct flow system that is completely reliant on available flows from the Teton River during the irrigation season. Farmers and TCCC have limited offstream storage and are able to use a combination of direct flow water and stored water. TCRC has an offstream storage right for the Bynum Reservoir which is significantly larger than the other companies. TCRC relies almost completely on stored water for irrigation. In addition, Eldorado, Farmers, and TCCC all have agreements that allow private irrigators to receive their water rights through the various company canals. For example, Ottis Bryan (Case 41O-134) accesses his Teton River water rights through the TCCC Canal.

4. TCCC maintains a single headgate on the Teton River located in the NENWNE of Section 35, T25N, R6W, Teton County. From this point, the TCCC Canal travels a short distance east to Eureka Reservoir located in Sections 25 and 36, T25N, R6W and Section 31, T25N, R5W. The current capacity of the reservoir is 5,500 acre feet. From the reservoir, the Eureka Canal travels generally east along the north side of the TCCC project. Two main lateral canals split off from the Eureka Canal as it flows through the TCCC place of use. Lateral A leaves the main canal at the center point between Sections 25 and 36, T25N, R5W, and travels generally south and then east for several miles. This lateral and its branches service the western portion of TCCC's place of use. Lateral B leaves the main canal at the center point between Sections 29 and 32 T25N, R4W and travels generally southeast, terminating a short distance from the Teton River in Section 5, T24N, R3W. This lateral and its branches service the eastern portion of TCCC's place of use. (TCCC-32 and TCRC-9)

## **II. TCCC Early Development**

5. TCCC's Teton River water right claims 41O 192867-00 and 41O 192871-00 are based on a Notice of Appropriation filed by a group of Helena, Montana investors led by Zachery T. Burton.<sup>3</sup> The group claimed an April 18, 1890 priority date for 3,000 miner's inches for "...gathering said waters in a reservoir and using it to irrigate adjacent lands in Township number 25 North of Range 4 and 5 west." The

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<sup>3</sup> In addition to Burton, the group included Rettie Burton, Ulysses G. Allen, Millard F. Allen, Sarah E. McGanghey, and Clara S. Hannell.

contemplated point of diversion was located on the north bank of the Teton River "...six hundred sixty five feet from the S.E. corner of the S.W.4 of Section thirty one (31) Township Twenty five (25) North of Range five (5) West, thence running, or to run, to and upon said described land (and through said land, if we so desire, to any requisite point of final discharge)." (TCRC-1)

6. The actual point of diversion developed by the Burton group was located about two miles further up the Teton River in the NENWNE of Section 35, T25N, R6W. The change was necessary to develop the Eureka Reservoir site. (TCRC-9; Westenberg 4:10, Day 1) It does not appear TCCC ever developed the Section 31 diversion referenced by the Burton Notice of Appropriation.

7. Zachery T. Burton and others filed at least three additional notices of appropriation for Teton River water rights. Although Burton and his successors asserted some of these claims in subsequent litigation, they did not survive the *Perry v. Beattie* Decree and were not a factor in the development of the TCCC system.<sup>4</sup> None of the water rights identified in these notices of appropriation are at issue here.

8. The original appropriators of the April 18, 1890 right formed the Eureka Reservoir, Canal and Irrigation Company with Zachery T. Burton as company president. This company functioned for a few years before it became necessary to refinance the project. In about 1893, Zachery T. Burton formed the Montana Land and Water Company which assumed all debt and obligations of the previous company. (TCRC-23) Unfortunately, all records of both companies have been lost. As a result, the actual structure and purpose of the companies is unknown.

9. In 1898, the Montana Land and Water Company filed a complaint in district court to adjudicate certain water rights in this stretch of the Teton River. The

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<sup>4</sup> April 9, 1890 / 3,000.00 miner's inches (TCRC-4); August 27, 1890 / 20,000.00 miner's inches (TCRC-2); and April 29, 1891 / 10,000.00 miner's inches (TCRC-3) The August 27, 1890 appropriation never appears again in the evidence and is never asserted by TCCC or its predecessors. The April 9, 1890 and April 29, 1891 appropriations were asserted in the complaint in *Montana Land and Water Company v. Farmers Cooperative Canal Company* Case 219, Teton County. The district court decreed 3,000.00 miner's inches with an 1891 priority date to Montana Land and Water Company. (TCRC-5) The successor to Montana Land and Water Company, Russell E. Shepherd, again claimed the April 9, 1890 and April 29, 1891 appropriations in his amended answer in *Perry v. Beattie*. The *Perry v. Beattie* decree awarded TCCC 3,000.00 miner's inches with the April 18, 1890 priority date as Shepherds' successor.

company's Second Amended Complaint, filed on March 29, 1899, sheds some light on its business. The filing states the purpose of the organization is, "among other things," to construct canals, ditches, flumes and other works for conveying water and supplying that water to the public. Those "other things" apparently included acquiring land serviced by the project. The complaint states that the Montana Land and Water Company owned over 8,000.00 acres of land at that time. This is distinct from the other irrigation cooperatives which did not speculate in land. (TCRC-4) By the time the Montana Land and Water Company filed its complaint, it had developed an extensive ditch system and diverted water for several years. However, it had not issued any shares to water users.

10. By 1902, Zachery T. Burton had left the area under questionable circumstances. (TCRC-23) Burton apparently issued a series of Montana Land and Water Company bonds that were all purchased by L.F. Easton. Shortly thereafter, Burton absconded with the money. Easton's partner Russell E. Shepherd of Austin, Minnesota, took over management of the Montana Land and Water Company. (TCRC-23) In 1903, Shepherd incorporated the Teton Co-operative Canal Company with capital stock valued at \$30,000.00 divided into 60 shares with a par value of \$500.00 each. Shepherd was listed as the owner of 56 shares. The two other incorporators owned two shares each. The Articles of Incorporation did not identify or claim ownership of any water rights. (TCCC-4) While there were a number of parcels that were being irrigated by this point in time, it does not appear any stock had been transferred to land owners.

11. Shepherd was named as a defendant in the *Perry v. Beattie* litigation and filed a separate answer and cross complaint. (TCRC-6) In his April 17, 1905 Amended Answer and Cross Complaint, Shepherd claimed ownership of the same 8,000.00 acres identified in the prior Montana Land and Water Company litigation. He asserted ownership of the April 18, 1890 Teton River water right first appropriated by Burton and his partners. Shepherd referenced the Montana Land and Water Company litigation and stated that he was the successor to this company. Although he had formed the Teton Co-

op Canal Company two years prior to this filing, Shepherd made no mention of his new company. (TCRC-6) By the time the district court issued the *Perry v. Beattie* decree in 1908, Shepherd had transferred ownership of the April 18, 1890 Teton River water right to TCCC. The Decree awards the April 18, 1890, 3,000.00 miner's inch right to TCCC as Shepherd's successor. There is no further reference to Russell E. Shepherd in the record.

12. Since 1908, TCCC has owned the April 18, 1890 Teton River water right and all canals, ditches, and reservoirs associated with this project. There is no evidence indicating that TCCC ever acquired any real property from Russell E. Shepherd, or that TCCC ever engaged in any land speculation. Rather, it managed an irrigation system for the benefit of its shareholders. Company income was based on shareholder assessments for water delivery. System improvements could only take place with approval of the board of directors, and in some cases, shareholders. (TCRC-23) Aggressive development with borrowed money was a thing of the past. Burton, Easton, and Shepherd were gone. TCCC was now owned and operated by shareholders who depended on the company for their irrigation and stockwater. It is apparent from company minutes that there was now a cautious approach to development and financial risk.

### **III. Priority Date for TCCC Reservoir Development**

Issue #1: Can TCCC claim offstream storage in the Eureka Reservoir as part of the original 1890 appropriation as represented by claims 41O 192867-00 and 41O 192871-00?

13. The original appropriators of the April 18, 1890 water right intended to develop reservoirs. They aggressively pursued this development. An 1892 plat map of the entire Eureka Reservoir, Canal and Irrigation Company system shows an extensive system of canals and ditches, as well as three reservoirs: Eureka Reservoir, Glendora Reservoir, and Ivy Reservoir.<sup>5</sup> (TCCC-2, TCRC-9) The map is part of the company's application for Government Land Office (GLO) permits and includes sworn statements

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<sup>5</sup> This plat map and related documents regarding GLO approval of the reservoir sites were not filed with the Teton County Clerk and recorder until March 14, 1929. (TCRC-31, p. 110)

from company engineer Millard Allen and company president Zachery T. Burton. In his statement, Allen indicates the company constructed 42.87 miles of ditch by April 18, 1892 and surveyed three reservoir sites which it intended to develop. Comparing the 1892 plat map (TCRC-9) to TCCC's current system (TCRC-32) reveals that much of the original ditch system has not substantially changed. Subsequent exhibits show that TCCC received permission to develop the reservoirs and built reservoirs at the Glendora and Ivy sites within a few years. While TCCC controlled the Eureka site and ran its canal through a natural lake bed at this location, it is not clear if TCCC could actually store water at the Eureka site prior to 1936. (TCRC-10)

14. The parties were able to provide very little evidence showing TCCC's development between 1893 and 1908. All of the exhibits accepted into evidence relate to the district court cases that culminated in the *Perry v. Beattie* Decree. All of the corporate minutes and other related business documents from Eureka Reservoir, Canal and Irrigation Company and the Montana Land and Water Company are lost. TCCC's record of director and shareholder meeting minutes begins in 1920. As a result, there is a significant period of time with no evidence regarding TCCC's progress towards developing Eureka Reservoir. However, this should not be viewed as a lack of progress. We simply do not know what the company was doing in relation to the reservoir.

15. On August 4 and 5, 1909, GLO Special Agent R. M. Hattersley inspected all three TCCC reservoir sites. In his subsequent reports, Hattersley indicated the Eureka and Glendora Reservoir sites were sufficiently developed to qualify for final GLO approval. (TCRC-10 & -11) He was unable to find any development at the Ivy Reservoir site and recommended cancellation of this reservoir site permit. (TCRC-12) There is no record of any follow-up on Hattersley's reports for several years by either TCCC or the GLO. The GLO did not revoke the Ivy Reservoir permit.

16. On December 15, 1926, GLO inspector T.J. Garvey issued his report on TCCC. Garvey found the project had been constructed as contemplated with the exception of Eureka Reservoir. It is unclear why Hattersley and Garvey differed in their assessment of the Eureka site and the Ivy site. In any case, TCCC secretary H. E.

Passmore informed Garvey the company planned to develop the Eureka site. Garvey recommended the GLO call on TCCC "to file proof of ownership of the grant, and proof of construction, and inform this office relative to further proper procedure." (TCRC-13) TCCC responded with the joint affidavit of president Yelte Baker and secretary H.E. Passmore and several supporting documents. It appears TCCC was forced to obtain several documents relating to their permits, such as the 1892 plat map, from GLO archives in Washington D.C., and then submit the same documents to the GLO office in Great Falls, Montana. (TCCC-11) These documents provided sufficient information to satisfy the GLO. There is no evidence indicating any of the reservoir permits were ever revoked or questioned further by the GLO.

17. Director and stockholder minutes from the 1920's indicate TCCC maintained and improved the Glendora and Ivy reservoirs.<sup>6</sup> Director and stockholder minutes also indicate TCCC continued to explore ways to develop a reservoir at the Eureka site. In 1921 the TCCC board of directors pursued reservoir development with the State Engineer's office. This included additional surveys of the Eureka site, discussions with land owners at that site, and presentations to TCCC shareholders by the State Engineer. (TCRC-31, p. 20-24) During this period of time, TCCC filed a notice of appropriation for 100.00 cfs from the Teton River for this project. (TCRC-17) This appears to be an attempt to increase TCCC's available flow from the river in contemplation of reservoir development and was likely filed at the suggestion of the State Engineer.

18. TCCC pursued private financing of Eureka Reservoir from banks in Great Falls, Montana, but was unsuccessful. (TCRC-31, p. 25) The company considered forming an irrigation district and issuing bonds to finance the project. (TCRC-31, p. 31) While a majority of the stockholders voted to form the district (33), they were unable to obtain the required 2/3 majority of all stock (40) and the motion did not pass. (TCRC-31, p. 35) The board of directors then formed a committee to continue to explore options for developing the Eureka site. (TCRC-31, p. 37)

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<sup>6</sup> For Example, see TCCC-9, 3/11/1920, 8/18/1921, 4/15/1922, 1/23/1923/, 10/6/1923, 2/4/1928.

19. Through the 1920s, TCCC's annual budget ran about \$1,500.00 to \$2,500.00. (For example TCRC-31, p.70, 1924; p. 77, 1926; p. 87, 1927; p. 141, 1935) This was apparently sufficient to pay employees, maintain canals and turnouts, and allow for some improvements to the system. The cost of building Eureka Reservoir was estimated at \$25,000.00. (TCRC-31, p. 149) This represented a significant financial burden. Nonetheless, in 1936, shareholders voted to apply to the State Water Conservation Board for a loan. The project received state approval and Eureka Reservoir was built over the winter of 1936-37. (TCRC-23) The original capacity of the reservoir was approximately 4,000.00 acre feet. TCCC raised the height of the dam by two feet in 1947 and another two feet in 1957. Each of these additions added approximately 750.00 acre feet in storage capacity. Since 1957, reservoir capacity has been 5,500.00 acre feet. (Crane 9:22, Day 1)

20. Historical reservoir development by TCRC and Farmers offer useful comparisons for this area of Montana.<sup>7</sup> The TCRC project began with a July 3, 1902 Notice of Appropriation for 3,000.00 cfs from the Teton River. TCRC is a storage project. Without the Bynum Reservoir, TCRC shareholders would not receive any significant water from the Teton River. The TCRC developers conducted surveys and obtained the necessary rights of way from the GLO. The original appropriator formed the Land Redemption Company and the first Teton Co-op Reservoir Company. By 1906, the original developer, Donald Bradford, had become controversial. At this point, Bradford transferred the water right and rights of way to a new group of water users who incorporated the second Teton Co-op Reservoir Company and proceeded with development. The company made some progress but suffered inevitable setbacks as it attempted to construct a canal and reservoir. The company and potential water users explored various ways to facilitate financing the project, including proceeding under the Carey Land Act or forming an irrigation district. This spawned controversy among

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<sup>7</sup> See Cases 41O-84 (TCRC) and 41O-118 (Farmers). Case 41O-84 is submitted to the Water Court and is waiting for a decision. The historical recounting of development of TCRC reflects the proposed findings of fact filed in Case 41O-84 by TCRC. Case 41O-118 has a Water Court decision and is currently on appeal to the Montana Supreme Court.

shareholders which led to litigation. When the litigation was resolved, work on the dam and canal proceeded. TCRC may have stored some water in the reservoir by 1910. It did not complete the reservoir until 1927, 25 years after Bradford filed the original appropriation. (TCRC Proposed Findings of Fact, 41O-84)

21. Farmers reservoir development may be a better comparison. Both Farmers and TCCC are primarily direct flow systems. Offstream storage allows these companies to provide water further into the summer although they can both function without storage. While Farmers encountered some setbacks with reservoir development, they were not as significant as either TCCC or TCRC. Farmers appropriated its original water right in 1897 and completed Harvey Lake Reservoir by 1913, a period of 16 years. However, Farmers Reservoir was not completed until 1942, a period of 45 years. (Final Order Regarding Farmers Co-op Canal Company Water Right Claims, 41O-118)

22. All three companies had similar goals and issues. They were all developed during the same era in the same part of the state. Given this history, the inevitable conclusion is that reservoir development by small private irrigation companies during the first half of the 20<sup>th</sup> century took time.

23. A sizeable reservoir at the Eureka site was part of the original intent of the appropriators. TCCC established an 1890 water right that included offstream storage through the combination of early development of two small reservoirs and the eventual development of a larger reservoir. The preponderance of the evidence indicates that TCCC proceeded with reasonable diligence under the totality of the circumstances presented. The evidence supports offstream storage in Eureka Reservoir, as represented by the 1937 completion of the Eureka Reservoir, as part of TCCC's April 18, 1890 water right.

Issue #2: Do 1947 and 1957 additions to the storage capacity of Eureka Reservoir constitute expansions of the original appropriation, more appropriately represented by water right claims with junior priority dates?

24. The evidence before the Court shows that construction of Eureka Reservoir in 1936 and 1937 was the culmination of a process that began in 1890. That



process was long and arduous, but ultimately successful. First use of the reservoir in 1937 represents completion of that original intent. There is no evidence indicating that two subsequent expansions of the storage capacity of the reservoir were part of the original plan. Rather, these increases in storage capacity represent expansions of storage capacity beyond the original intent.

25. The 1947 and 1957 expansions resulted in the ability to store more water. This type of expansion has the effect of increasing the burden on the source. By decree, TCCC was limited to a 3,000.00 miner's inch flow rate. Since TCCC could not increase this flow rate, the increased burden on the source would manifest itself in an expansion of annual diverted volume. TCCC would need to take more of its available flow rate for longer periods of time to add to reservoir storage. While TCCC has shown that it historically diverted some water in every month of the year, the evidence prior to 1963 does not show the actual amount of those diversions or how those diversions changed after 1947 and 1957. Commissioner records begin in 1963 and therefore do not provide any comparison of annual volume before and after the reservoir expansions. Nonetheless, adding a total of 1,500.00 acre feet of storage capacity would serve little purpose if TCCC did not increase its total diverted volume.

26. Since the 1947 reservoir expansion and the 1957 reservoir expansion allowed TCCC to increase its total diverted volume, the expansions should be represented by junior irrigation and stockwater right claims. The significant element of these junior rights is the quantified volume. Volume is discussed in the next section of this decision. The actual terms for these junior rights are provided at the end of this decision.

#### **IV. Volume**

Issue: Do TCCC's claims require a quantified volume, and if so, what is the appropriate total volume, and how should that volume be divided among TCCC's claims?

27. TCCC's original claim filings used irrigation district statement of claim forms provided by the DNRC. Following DNRC policy, TCCC combined all of its

irrigation claims on one form and all of its stock claims on a separate form. TCCC claimed an annual volume of 41,233.05 acre feet per year (a/f) for all its irrigation claims (TCRC-28) and an additional 85.077 a/f for all of its stock claims. (TCRC-29) During claim examination, the DNRC determined all TCCC irrigation claims were primarily direct flow claims and removed the quantified volumes.<sup>8</sup> Pursuant to claim examination rules, the quantified volumes were also removed from the stock claims. As a result, all of the TCCC claims appeared in the TPD with volume remarks rather than quantified volumes.

28. The TCCC-LTJO Stipulation calls for a 14,000.00 a/f total volume for all TCCC Teton River water right claims. The first 12,000.00 a/f attach to “any combination of TCCC’s irrigation claims with a priority date of not earlier than April 18, 1890.” (Stip. ¶ 5) The Stipulation goes on to state that LTJO does not object to TCCC receiving “an additional high-water irrigation claim, whether one of the claims consolidated in this case, or an implied claim, with an additional volume of 2,000.00 acre feet per year.” (Stip. ¶ 6 emphasis added) The Stipulation states the water commissioner will determine if high water is available. It then provides two definitions for high water:

- a. The term “high water” means a year when water availability on the Teton River is sufficient to satisfy the water rights of Teton River users using water below TCCC’s point of diversion from May 1 to July 1.
- b. The term “high water year” also includes a year when water availability on the Teton River is sufficient to satisfy stockwater rights senior to TCCC’s April 18, 1890 priority date using water downstream from TCCC’s point of diversion from November 1 to January 1. (Stip. ¶ 6)

These definitions add restrictions to the “high water” right although it is not clear if they limit the period of diversion or give the right a year round period of diversion with restrictions from May 1 to July 1 and from November 1 to January 1.

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<sup>8</sup> Irrigation claims where the reservoir capacity is considerably less than the annual volume are considered direct flow claims and receive no quantified volume. Rule 51(f), W.R.C.E.R. In this case, the capacity of Eureka Reservoir, 5,500.00 AF, is considerably less than the original claimed volume, 41,233.05 AF. It is also significantly less than the volume TCCC is currently claiming.

29. The term high water typically refers to more junior water rights that only receive water during spring runoff. On decreed streams, all rights junior to the decree are often referred to as high water rights. The language in the TCCC-LTJO Stipulation gives TCCC a high water right for 2,000.00 a/f. This is clearly a junior right that should be administered under its own priority date. The stipulation does not identify a priority date for a junior right.

30. In its post-hearing filings, TCRC agrees with a 14,000.00 a/f total volume but advocates for a smaller volume for the 1890 direct flow decreed right and three junior implied claims for Eureka Reservoir:

1890	8,500.00 a/f (original direct flow right)
1936	4,000.00 a/f (original Eureka Reservoir)
1957	750.00 a/f (first increase to storage capacity)
<u>1947</u>	<u>750.00 a/f (second increase to storage capacity)</u>
Total	14,000.00 a/f

This gives TCCC a total volume of 14,000.00 a/f, but makes 5,500.00 a/f of that volume more junior.

31. Prior to 1963, there is virtually no record showing annual volumes. Starting in 1963, commissioner records provide this information.<sup>9</sup> Based on commissioner records, TCCC was able to divert over 12,000.00 a/f in four out of the ten years from 1963 to 1972. In three of those years, TCCC diverted over 14,000.00 a/f. (TCCC-21) This constitutes diversions of over 14,000.00 a/f thirty percent of the time. This amount of use supports a 14,000.00 a/f total volume as within historical use. The commissioner records include volume increases resulting from the 1947 and 1957 expansions to Eureka Reservoir.

32. The 1947 and 1957 expansions to the Eureka Reservoir should be represented by junior irrigation and stock water right claims. These expansions are the logical points where volume increased and are therefore the logical priority dates for

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<sup>9</sup> However, the commissioner only calculated a volume for the TCCC canal. By agreement, Ottis Bryan has used the TCCC canal for his private direct flow decreed rights since at least the 1960s. (See 410-134) Bryan's annual volume averaged about 1,400.00 a/f. (Westenberg 10:38, Day 2) After removing Bryan's volume, the commissioner records support a total volume of 14,000.00 a/f for TCCC.

junior water rights reflecting those increases.<sup>10</sup> The 2,000.00 a/f stipulated high water volume could all be placed under a more junior 1957 date. Or, the volume could be split between the two dates. Splitting the volume is the more historically accurate approach. Since either date is significantly junior on this source, splitting the high water volume has no practical effect. Therefore, two junior water rights with 1,000.00 a/f volumes, one with a 1947 priority date and one with a 1957 priority date, are a reasonably accurate reflection of TCCC's historical use.

33. Based on evidence of historical use and the terms of the TCCC-LTJO Stipulation, TCCC is entitled to a 12,000.00 a/f quantified volume for its April 18, 1890 decreed water right claims 41O 192867-00 and 41O 192871-00. The remaining 2,000.00 a/f will be split between a December 31, 1947 use right and a December 31, 1957 use right. Claims 41O 192868-00 and 41O 192872-00 will be amended to reflect the 1947 water right. 41O 192869-00 and 41O 192873-00 will be amended to reflect the 1957 water right.

#### **V. Period of Diversion and Period of Use**

34. Charles Crane has been the secretary-treasurer of TCCC since 1989. A life-long area resident, Mr. Crane was about 74 years old at the time of the hearing and has been involved with the TCCC system since the early 1960s. He provided the following overview of TCCC diversion and distribution of water: TCCC typically fills Eureka Reservoir to the level of the stand pipe in the fall, reaching that level by mid-November, although they occasionally go further into the fall. In the spring, typically starting between March 1 and March 15, the company tops off the reservoir. This usually takes until early or mid-April. They start delivering water to shareholders in late April or early May and usually stop delivering water between October 1 and October 15. TCCC's diversions from the Teton River are usually shutdown by the Commissioner between mid-June and mid-July. The company starts distributing stored water at that time. TCCC begins fall diversions for storage after Eldorado shuts down. (Crane 11:50

<sup>10</sup> The 1947 and 1957 expansions added 1,500.00 a/f of additional storage capacity. The Stipulations states 2,000.00 a/f of TCCC's total flow rate represents junior high water. The Court will use the stipulated volume rather than storage capacity increase.

& 3:11, Day 1)

Issue #1: What is the appropriate period of diversion for TCCC's claims?

35. All TCCC claims appeared in the Temporary Preliminary Decree with the same January 1 to December 31 period of diversion. TCRC asserts the period of diversion should reflect the irrigation season. TCCC's Teton River water right claims are primarily direct flow claims. Meaning, the majority of its diversions occur at a time when the water is being put to beneficial use. At the same time, TCCC's 1890 appropriation included offstream storage. Therefore, TCCC's diversions are not limited to times when it is putting water to beneficial use. TCCC can divert water for storage and later use. Storage diversions typically occur off-season when irrigation is not taking place.

36. TCCC director and shareholder minutes indicate the company made off-season diversions for storage well before Eureka Reservoir was added to the system. (TCRC-31, p. 55, 12/10/23) TCCC tended to limit off-season diversions to shareholders, preferring to use these diversions to fill its reservoirs. TCCC eventually set a start and end date on the irrigation season and only continued water deliveries outside of this irrigation season at the request of individual shareholders. The cost associated with these deliveries fell on the shareholder. By 1942, TCCC had amended its By-Laws to define the irrigation season as April 15 to October 15. (TCRC-31, p. 171, 1/10/42) The board of directors could alter these dates at their discretion and could deny a request for off-season water delivery. (TCRC-23) Diversions between October 15 and April 15 were initially used to fill the Glendora and Ivy (Gamble) Reservoirs and eventually used to fill Eureka Reservoir. TCCC has not maintained Glendora or Ivy since it developed Eureka in 1937. (Crane 1:44, Day 1)

37. TCCC minutes also address competition for off-season diversions with both Farmers and TCRC well before Eureka Reservoir was part of its system. For example:

a. On December 10, 1923, the Board initiated the process for obtaining a water

commissioner within the next several days. (TCRC-3,1 p. 55);

b. On March 19, 1924, the Board began exploring a potential injunction against TCRC to shutdown off-season diversions. (TCRC-31, p. 62)

c. On January 14, 1933, the Board decided to meet with the other ditch companies and Bynum (TCRC) to discuss "keeping conditions normal as to water running in the river in the winter season." (TCRC-31, p. 134)

Clearly, TCCC was exerting an interest in off-season diversions from the Teton River well before Eureka Reservoir became part of its system. However, it is not possible to determine the nature or extent of these diversions prior to 1963 due to the lack of water commissioner records.

38. Although there have been water commissioners appointed to administer the *Perry v. Beattie* Decree since 1908, records before 1963 are minimal and give little useful information. It does not appear the district court appointed a commissioner every year. Starting in 1963, a commissioner has been appointed every year and has administered the river year round.<sup>11</sup> These commissioner records provide a great deal of information. (TCCC-21) Although these records post-date Eureka Reservoir, including the 1947 and 1957 expansions, they offer significant information regarding TCCC's historical diversions.<sup>12</sup>

39. From 1963 to 1972 TCCC took water during every month of the year. Diversions after 1972 follow the same pattern. (TCCC-21) While these diversions did not take place every year they are sufficiently common to support a year round period of diversion.

40. The evidence supports a January 1 to December 31 period of diversion for all TCCC Teton River water right claims.

Issue #2: What is the appropriate period of use for TCCC's claims?

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<sup>11</sup> Although TCRC did not have a decreed right, its deliveries were administered by the commissioner and included in the annual records.

<sup>12</sup> In this adjudication, historical use is defined as use prior to the date the Water Use Act became law, July 1, 1973.

41. All TCCC claims appeared in the Temporary Preliminary Decree with the same April 20 to October 14 period of use. This period of use is the result of a pre-decree amendment TCCC submitted to the DNRC on August 29, 2003. TCCC now asserts an April 1 to November 1 period of use. This constitutes an increase to this claim element and therefore must be supported by evidence showing that this increase is an accurate reflection of historical use. TCCC presented no evidence to support this period of use increase.

42. Since 1942, TCCC By-Laws have set the irrigation season or period of use at April 15 to October 15. (TCRC-31, p. 171, 1/10/42) The 2005 By-Laws keep that same period of use. (TCRC-23) Shareholders can request an extension of this season and can receive water at their own expense. (TCRC-23) TCCC provided no evidence showing that shareholders ever take advantage of this option. In fact Charles Crane's testimony did not support any extensions of the irrigation season. In his memory of 50 years as a shareholder, he recalled spring irrigation starting in late April or early May, and fall irrigation typically ending in the first half of October, although fall irrigation was occasionally extended for a short period of time to irrigate shelter belts. (Crane 3:20, Day 1)

43. The company By-Laws and the testimony of Charles Crane do not support expanding the period of use. If anything, they support the current period of use. TCCC has provided no evidence supporting the requested increase. Therefore, the April 20 to October 14 period of use shall remain on all claims.

#### **VI. Place of Use/Acres Irrigated**

Issue: What is the appropriate place of use and acres irrigated for TCCC's claims?

44. TCCC began as a land development company. A small group of investors acquired a certain amount of land they hoped to sell to settlers. They acquired water rights and developed a water delivery system to increase the appeal and value of the land they hoped to sell. By design, their irrigation system was capable of servicing not only the land they were selling, but also a significant amount of adjacent land.

45. By 1908, large tracts of land were irrigated with TCCC shares. Save for the addition of Eureka Reservoir, the original appropriation had become a reality. For the next 70 years, the TCCC place of use changed somewhat as land and shares of company stock were bought and sold. However, the basic footprint of the TCCC development did not significantly change. (TCRC-9 & 32; Westenberg 3:50, Day 1). Throughout its history, TCCC fulfilled the function of delivering water to shareholders. Shareholders retained the ability to move water from place to place so long as TCCC's ditches could deliver the water. The shareholders determined the exact location where water was used. (Crane 2:50, Day 1)

46. TCCC's original irrigation statement of claim filings included a place of use consisting of 8,246.61 acres. (TCRC-28) During the DNRC claim examination process, TCCC retained the services of expert John Westenberg and began an extensive review of its place of use. Based on his review of various historical data sources, site work, and interviews with shareholders, Westenberg developed criteria for an expanded place of use or "service area" that included far more land than the 8,246.61 acres originally claimed. Westenberg used a "broad" outer boundary for the place of use that included property serviced by the TCCC ditch system. He used simple legal descriptions, following section and quarter section lines rather than field boundaries. (Westenberg 11:30, Day 2) He included not only property confirmed as historically irrigated on a historical data source, such as an aerial photograph, but also property with strong indicators of historical irrigation. Westenberg stated these strong indicators were location, topography, and access to ditches. This land was included even though he was not able to confirm irrigation on a historical data source. In his expert opinion, there is little doubt the property was historically irrigated for at least some period of time. In his review of the aerial photographs from 1937 and 1957 and the 1962 Teton County Water Resource Survey, Westenberg determined the TCCC place of use changed over the years with somewhat different property showing irrigation in each data source. The single highest acreage total showing irrigation was 7,682.00 acres in 1937. (Westenberg 9:56, Day 2)



47. Based on Westenberg's work, TCCC amended its place of use during DNRC claim examination. All TCCC irrigation claims appeared in the Temporary Preliminary Decree with a 17,202.00 acre place of use located within 43 parcels. At hearing, Westenberg testified that this place of use failed to include property in the SWSW of Section 28, T25N, R5W, and the S2SE of Section 29, T25N, R5W totaling 120.00 acres. Westenberg stated this property met his criteria and should be added to the place of use. (Westenberg 9:56, Day 2) With this addition, TCCC is claiming a place of use that includes 17,322.00 acres irrigated.

48. The LTJO-TCCC Stipulation is not completely clear on acres irrigated. The Stipulation states, "the number of acres irrigated for TCCC's irrigation claims 41O 192871-00, 41O 192872-00 and 41O 192873-00 is limited to a place of use of not more than 7,650.00 acres." The Stipulation does not specifically acknowledge the 17,322.00 acre place of use TCCC is claiming. However, the Stipulation states the place of use should include "the legal land descriptions as set forth in the claim abstracts referenced in the Temporary Preliminary Decree for the Teton River Basin." The Stipulation then calls for adding the two parcels noted in Westenberg's testimony. The Stipulation also includes a map which identifies the 17,322.00 acre place of use TCCC is currently claiming. It is apparent the party's agreement calls for a 17,322.00 place of use with a 7,650.00 annual acre limit on irrigation. (Stip. ¶ 4)

49. It is generally acknowledged that the annual limit on acres irrigated is far more significant than the size of the place of use. Given the nature of the TCCC project it would be extremely difficult to monitor the exact location of irrigation each year when the discretion concerning where to irrigate rests with each stockholder. The 7,650.00 acre annual limit reflects irrigation practices within the project for the last 50 years. There has been little change in the amount of irrigated land and the location of that land over this period of time. (Crane 3:05, Day 1) The 17,322.00 place of use is a composite picture of historical use. It reflects the flexibility given each shareholder to determine where irrigation will occur.

50. In Case 41O-118 (Farmers), this Court found the place of use must meet

two criteria: 1.) the property must have been historically irrigated with company water, and 2.) property must currently be owned or leased by a company shareholder.<sup>13</sup> These criteria were based on the legal requirement for historical use and language in Farmers Articles of Incorporation and By-Laws. In this case, TCCC's place of use must meet the first criteria. Specifically the place of use must have been historically irrigated. However, TCCC's Articles of Incorporation and By-Laws do not include the restrictions found in Farmers' documents. Under Article XII Section 10 of TCCC's By-laws, (TCRC-23) TCCC shareholders can lease shares to another shareholder or water user. The water represented by the leased shares must be used within TCCC's irrigation system "Unless otherwise permitted by a vote of the stockholders at any annual meeting of the stockholders or at any special meeting of the stockholders called for that purpose." (TCRC-23) In other words, unlike Farmers, TCCC places no restrictions on where its water can be used.

51. The evidence before the Court shows that TCCC's current place of use includes land that was historically irrigated by TCCC shareholders and can currently be serviced by its ditch system. While TCCC's By-Laws do not specifically limit water use to shareholder owned property (TCRC-23, By-Laws Article XII, Section 10), the evidence indicates TCCC's current place of use is all owned by shareholders. (TCRC-32) Therefore, the Court accepts the 17,322.00 acre place of use and the 7,650.00 acre annual limit on irrigation as within historical use.

## **VII. TCCC Stock Claims**

Issue: Are separate statements of claim for stockwater a valid reflection of TCCC's historical use?

52. TCRC asserts that TCCC is strictly an irrigation company that has never diverted water specifically for stock use. TCRC asserts all of TCCC's stock claims should therefore be terminated. However, TCRC offers no credible evidence to support this assertion. In fact the only evidence regarding stock use of TCCC's Teton River

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<sup>13</sup> Case 410-118 is currently on appeal to the Montana Supreme Court. Farmers place of use is likely a part of this appeal.

water rights was the testimony of Charles Crane.

53. TCCC concedes it does not divert water solely for stock. Any diversions that are used for stock come at a time when the company is diverting water to shareholders for irrigation. Nonetheless, it is common for shareholders to run stock on land within the TCCC place of use and allow that stock to access company ditches for water. (Crane 11:50 & 3:20, Day 1) This stock use is a multiple use of TCCC's irrigation water rights and is restricted to use during the same period of time. The combined diversions for irrigation and stock do not serve to increase TCCC's flow rate or annual volume.

54. TCCC agrees it has never diverted water for stock unless it was already diverting irrigation water. This indicates that only the irrigation claims can trigger the diversions. Some of the water can then be reallocated to stock. But, a stock claim cannot be diverted unless its corresponding irrigation right is being diverted. This restriction will be noted on TCCC's stock claims with an appropriate remark.

55. With this restriction, the evidence supports TCCC's stockwater claims as valid reflections of historical use.

56. In the process of reviewing all claim abstracts for this decision, it was discovered that the place of use legal descriptions for stock claim 41O 2867-00 differ slightly from all of the other TCCC claims. To be consistent, the Court will correct the legal descriptions for parcels 6 and 7 on this claim.

### **VIII. TCCC's Equitable Arguments**

Issue: Is TCRC estopped by Laches, Waiver, Judicial Estoppel, and Collateral Estoppel from asserting any right to take Teton River water ahead of TCCC?

57. TCRC claims a July 3, 1902 water right from the Teton River.<sup>14</sup> The Bynum Reservoir, which is the heart of TCRC's system, came into use after TCCC began development but before Eureka Reservoir was added to the TCCC system. There is no question that TCCC and TCRC were aware of each other and that they competed

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<sup>14</sup> Claim 41O 113433-00, Case 41O-84. (decision pending) The claim received objections from LTJO, Farmers, and TCCC.

for the same water resource. Although it was not a part of the *Perry v. Beattie* Decree, since at least the 1940s, TCRC voluntarily paid the Teton River water commissioner for water deliveries and submitted to the authority of the commissioner to control its diversions. (Testimony Day 2: William Johnson, TCRC ditchrider and shareholder; Tom Maltby, TCRC President and shareholder; and Jay Rice, TCRC Board of Director and shareholder)

58. Bud Olson controlled TCRC diversions throughout the time he was the water commissioner for the Teton River. He started as commissioner in 1963 and held that job for over 40 years. Throughout his tenure, TCRC was administered as junior to TCCC. (Olson, Day 2) Prior to filing objections in this adjudication, TCRC had never questioned use of Eureka Reservoir under TCCC's April 18, 1890 priority date.

59. TCCC argues TCRC is estopped by Laches, Waiver, Judicial Estoppel, and Collateral Estoppel from asserting any Teton River water right senior to any TCCC Teton River water right. TCRC bases these arguments on TCRC's voluntary submission to the authority of the Water Commissioner for over 40 years. During this period of time, TCRC's Teton River rights were regularly cutoff in order to provide water to senior downstream water rights held by TCCC. Prior to this adjudication, TCRC never questioned commissioner decisions.

60. At the commencement of proceedings involving the four irrigation companies on the Teton River, this Court determined that the equitable arguments raised by TCCC were more properly addressed in TCRC's Case 41O-84. This policy was followed when Farmers raised the same arguments in case 41O-118. The Court will continue to follow this policy in this case.

## CONCLUSIONS OF LAW

### I. Burden of Proof

1. A properly filed Statement of Claim or an Amended Statement of Claim (amended prior to issuance of a Water Court Decree) for an 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. A prima facie claim meets the minimum threshold of evidence necessary to establish the facts alleged, and shifts the burden of production to an objector to overcome that threshold. The burden of persuasion remains ultimately with the claimant to prove up a water right claim. Section 26-1-402, MCA. Without evidence to the contrary, the prima facie claim may satisfy a claimant's burden. However, the Court is not compelled to accept the prima facie Statement of Claim as true. *Burkhartsmeier v. Burkhartsmeier*, Case 40G-2 at p. 12-13 (Mont. Water Court Memorandum Opinion and Order Adopting Master's Report Mar. 11, 1997).

2. If a claim appears in a Water Court decree with issue remarks resulting from DNRC claim examination, the information resulting in the issue remarks and the issue remarks themselves must be weighed against the claimed water right. Section 85-2-247(2), MCA. The issues raised by the remarks must be resolved as part of the adjudication process. Section 85-2-248(2), MCA.

3. The degree or weight of evidence needed to contradict or overcome the prima facie presumption that a Statement of Claim is correct as filed is a preponderance of the evidence. *Burkhartsmeier v. Burkhartsmeier*, Case 40G-2 at p. 13 (Mont. Water Court Memorandum Opinion and Order Adopting Master's Report Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are more probable than not to have been met." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. Objector TCRC asserts TCCC's Teton River water right claims are not historically accurate as they appear in the Temporary Preliminary Decree for this Basin. Therefore, TCRC has the burden of proof to show how the claims are inaccurate. TCRC failed to carry that burden on the majority of its objections. TCRC did provide sufficient evidence to support junior priority dates for the 1947 and 1957 expansions of the Eureka Reservoir.

5. By seeking an expansion to its period of use, TCCC assumed the burden of proof to overcome the presumption that the period of use that appeared on all its claims

in the Temporary Preliminary Decree is correct. TCCC failed to carry that burden. TCCC assumed the same burden of proof by seeking to increase the size of its place of use. TCCC provided sufficient evidence to support the increase in the place of use it is seeking.

## **II. Priority Date for the Eureka Reservoir Claims**

### **A. Eureka Reservoir as part of the Original Appropriation**

6. TCCC's April 18, 1890, water right claims 41O 192867-00 and 41O 192871-00 are based on a Notice of Appropriation that was subsequently decreed by the district court. The statutes providing for Notice of Appropriation filings allowed an appropriator to first claim a water right and then develop that water right. So long as the appropriator complied with the statutory requirements, the date when water was first claimed applied to the subsequent development. Sections 89-810-814, RCM (1947) (repealed 1973).

7. TCRC asserts Eureka Reservoir was not a contemplated part of the original 1890 appropriation and that TCCC failed to proceed with reasonable diligence in adding the reservoir to the system.

8. A preponderance of the evidence shows that a sizeable reservoir at the Eureka site was part of the intent of the 1890 Notice of Appropriation filing. The Notice of Appropriation itself indicates the development will include reservoirs. TCCC began the process of obtaining a permit for the Eureka site shortly after posting the notice. Therefore, TCCC can relate this part of its development back to its original filing if it "prosecute[s] adding the same with reasonable diligence to completion." Section 89-811, RCM (1947) (repealed 1973).

9. Reasonable diligence in developing an irrigation system is a question of fact specific to each particular project. *Montana Dep't of Natural Resources & Conservation v. Intake Water Company*, 171 Mont. 416, 436, 558 P.2d 1110, 1121, (1976). In this case, the Court looked at the size and complexity of the project to determine if the Intake Water Company was proceeding with reasonable diligence. Projected to cost several million dollars and take a number of years to complete, the

project was in its early stages at the time of the litigation. The DNRC sought a declaratory judgment asserting the water company did not have a valid appropriation of water from the Yellowstone River. Citing favorably to Clark, Waters & Water Rights, Vol. 6, § 514.1, pp. 308, 309, the Court provided guidance for an ad hoc case-by-case review:

What constitutes due diligence is a question of fact to be determined by the court in each case. Diligence does not require unusual or extraordinary effort, but it does require a steady application of effort -- that effort that is usual, ordinary and reasonable under the circumstances. So long as the applicant prosecutes the construction of works in good faith with a steady effort, he should be held to have prosecuted with diligence. *Intake*, 171 Mont. at 434, 558 P.2d 1110 at 1120.

10. Intake Water Company was claiming a June 8, 1972 priority date based on a Notice of Appropriation. Intake's project was complicated and required time to complete. It was subject to layers of regulation, both state and federal. The Court provided a long list of the various permits, studies, preliminary engineering work, cost estimates, and water use assessments conducted by Intake as part of its development process. The Court found this work was sufficient to comply with the requirements of Montana's water appropriation statutes. Intake could proceed with development and finish its "uncompleted appropriation" so long as it continued to "prosecute its project with reasonable diligence." *Intake*, 171 Mont. at 440, 558 P.2d at 1123.

11. The size and scope of the TCCC project must be viewed in the context of the era in which it was first appropriated and prosecuted to completion, 1890 to 1936. The economic ability of the appropriator is a valid consideration in any review of reasonable diligence. *The Colorado River Water Conservation District v. Twin Lakes Reservoir and Canal Company*, 468 P.2d 853, 856 (1970). While the TCCC project, particularly Eureka Reservoir, was ambitious for its era, it was not well funded. Funding was the obvious reason for the delay in completion. The original investors overextended and lost their investment, or disappeared into the night. The second investors struggled to recoup their money and left the area. The shareholders who eventually acquired the company had no ability or desire to speculate in development. They took a conservative

approach and only proceeded when secure, affordable financing became available. TCCC maintained its permit for the Eureka Reservoir site. It responded to all GLO inquiries and asserted throughout this process that it intended to develop the reservoir. It pursued financing options and sought shareholder approval for an irrigation district. TCCC took advantage of a state financing program when it became available. It is apparent that both the GLO and state of Montana had no issue with TCCC's cautious approach. With financing secured, TCCC completed the reservoir.

12. TCCC's efforts were similar to both TCRC and Farmers. All three companies were faced with financing issues. All three companies took years to complete their projects. Under the circumstances found in this area of the state and the historical era in which these events took place, TCCC efforts were usual, ordinary, and reasonable.

13. Objector TCRC failed to provide sufficient evidence to show that Eureka Reservoir was not contemplated by the original appropriation or that TCCC failed to proceed with reasonable diligence. Based on a preponderance of the evidence and controlling law, Eureka Reservoir, as completed in 1937, is properly administered as part of TCCC's April 18, 1890 water right claims.

**B. 1947 and 1957 additions to the Eureka Reservoir**

14. Completion of the original Eureka Reservoir in 1937 was the culmination of a process that began in 1890. Expanding the reservoir in 1947 and 1957 presents a different situation. These expansions were not contemplated by the original Notice of Appropriation and are not covered by Section 89-803, RCM (1947) (repealed 1973), as a change to an existing water right. Adding to the size of the reservoir increased the ability for offstream storage. Increased storage capacity inevitably resulted in increased diversions. Increased diversions placed an additional burden on the source to the detriment of junior water users. Incremental development that serves to increase the burden on the source is properly placed in junior claims reflecting the date of that development. Rule 35, W.R.C.E.R.

15. In *Whitcomb v. Helena Water Works Co.*, 151 Mont. 443, 444 P.2d 301



(1968), the Court addressed the addition of storage to direct flow irrigation rights. The Court found the addition of storage was dependent upon the lack of adverse impact on other water rights. *Whitcomb*, 151 Mont. at 449, 444 P.2d at 304. In this case, the increase in storage capacity should be held to the same standard. The 1947 and 1957 additions to reservoir capacity clearly impacted other water users by increasing TCCC's total diverted volume.

16. The LTJO-TCCC Stipulation acknowledges TCCC has increased the burden it places on the Teton River through an overall increase in annual diverted volume. TCCC agrees it has only been able to divert this extra volume in high water years. The stipulation contemplates separate, junior water right claims, either implied or through amendments to existing claims, for the volume increase. The Court agrees, and finds the evidence supports two junior water rights reflecting the two increases in storage capacity.

17. Claims 41O 192868-00 and 41O 192872-00 will be amended to reflect a December 31, 1947 water right. Claims 41O 192869-00 and 41O 192873-00 will be amended to reflect a December 31, 1957 water right. Since the evidence gave only the year of first use, the priority date is the last day of that period. *Vidal v. Kensler*, 100 Mont. 592, 598, 561 P.2d 235, 238 (1935).

### **III. Volume**

18. Quantified volumes are appropriate when a water judge has determined both a quantified flow rate and volume are necessary for administration of the water right claims involved. Section 85-2-234(6)(b)(iii), MCA; *Wales Brothers*, Case 76F-1 at p. 11-12 (Mont. Water Court Marshaling Order Oct. 15, 2010, at p. 12). TCCC has agreed to quantified volumes for its Teton River water right claims. The evidence before the Court shows that the total volume found in the LTJO-TCCC Stipulation is within historical use. The Stipulations places 12,000.00 a/f of that total volume in TCCC's 1890 water right claims and contemplates a junior priority date for the remaining 2,000.00 a/f.

19. A preponderance of the evidence supports the 14,000.00 a/f total annual

volume found in the Stipulation. However, that volume should be apportioned between the original appropriation and the two increases in TCCC's offstream storage capacity:

<u>Priority Date</u>	<u>Volume</u>	<u>Claims</u>
April 18, 1890	12,000.00 Acre Feet	41O 192867-00 & 41O 192871-00
December 31, 1947	1,000.00 Acre Feet	41O 192868-00 & 41O 192872-00
December 31, 1957	1,000.00 Acre Feet	41O 192869-00 & 41O 192873-00
Total	14,000.00 Acre Feet	

#### **IV. Period of Diversion/Period of Use All Claims**

20. The law governing appropriations of water in this state has always contemplated that such amount of water that by pattern of use and means of use has been put to beneficial use dictates the extent of that water right. *McDonald v. State*, 220 Mont. 519, 529, 722 P. 2d 598, 604 (1986). This applies to the period of diversion and period of use. It is the historical pattern of use that dictates what TCCC can claim for these two elements. Rights that involve storage can have periods of diversion and periods of use that are not the same. That is the situation for TCCC's water right claims.

##### **A. Period of Diversion**

21. TCCC has historically diverted water throughout the year. While there are no firm dates when TCCC began offstream storage, corporate minutes indicate it did so as soon as it had that capability. It has continued to divert year round to this day. While records before 1963 cannot address the extent of that use, commissioner records from 1963 to 1973 show that diversions historically occurred every month of the year. These diversions did not take place every year, but were sufficiently common to support a year round period of diversion.

22. A preponderance of the evidence shows that TCCC has historically diverted water throughout the year when water was available and is therefore entitled to a January 1 to December 31 period of diversion. The period of diversion for all TCCC claims shall remain as it appeared in the Temporary Preliminary Decree.

## **B. Period of Use**

23. All TCCC claims appeared in the Temporary Preliminary Decree with the same April 20 to October 14 period of use. While TCCC asserts the period of use should be amended to April 1 to November 1, it presented no credible evidence to support this increase to period of use and therefore failed to carry its burden of proof. In fact, the evidence supports the current period of use. The period of use for all TCCC claims shall remain as it appeared in the Temporary Preliminary Decree.

## **V. Place of Use/Acres Irrigated All Claims**

24. Section 85-2-234(6), MCA, states that a water right claim appearing in a final decree include: "(e) the place of use and a description of the land, if any, to which the right is appurtenant." Therefore, a reasonably well-defined place of use is a requirement for all claims. The Water Right Claim Examination Rules, as adopted by the Montana Supreme Court on March 21, 2008, state: "The claimed POU will be identified and described by the nearest reasonable and concise legal land description and the associated irrigated acreage." Rule 12(a), W.R.C.E.R. TCCC complied with this requirement. Its place of use for all claims currently consists of 45 parcels ranging in size from 640.00 acres (entire Section) to 17.00 acres. These 45 parcels total 17,322.00 acres. This is consistent with both statute and rule.

25. In addition to this total place of use, TCCC has agreed to a 7,650.00 acre cap on annual irrigation. These 7,650.00 acres are not specifically identified within the 17,322.00 acre place of use. Nonetheless, the place of use legal land description is sufficiently accurate for administration of this claim.

26. TCRC argues TCCC is no different from any private water user and must be decreed a place of use that reflects the lands upon which its water rights are beneficially used. TCRC advocates a place of use limited to the 7,650.00 acres.

27. A liberally defined place of use or service area is appropriate for irrigation companies such as TCCC. In *Bailey v. Tintinger*, 45 Mont. 154, 122 P. 575 (1912), the Montana Supreme Court referred to companies organized for the purpose of providing

water to end users as public service corporations. While the Court gave no specific definition for a public service corporation, under the facts in *Bailey*, TCCC meets the criteria. As a result, TCCC's place of use can reflect the area it intended to service, has historically serviced, and continues to service. *Bailey* 45 Mont. at 177-78, 122 P.2d at 583. TCRC provided no credible evidence to refute historical irrigation on 17,322.00 acres or authority to support limiting TCCC's place of use to less than 17,322.00 acres.

28. The latitude provided by TCCC's current 17,322.00 acre place of use reflects historical flexibility given to shareholders. TCCC shareholders have historically had the ability to irrigate different parcels within their property. They can continue to follow this practice so long as the changes are within the 17,322.00 acre place of use and do not result in an expansion of the 7,650.00 acre annual limit.

#### **VI. TCCC Stock Claims**

29. TCCC shareholders historically used a portion of their water for stock. This use did not expand the amount of water diverted from the source or increase the total volume. Stock use only occurred when TCCC was diverting water for irrigation. TCRC has provided no evidence or authority supporting its assertion that TCCC is not entitled to separate stock claims.

30. At the same time, TCCC's stock use is tied to its irrigation use. TCCC has never diverted water just for stock use. Therefore, a remark noting that TCCC cannot call for stockwater independent from its irrigation water right claims will be added to all stock claims. With this remark, TCCC's stock claims are a valid reflection of historical use.

#### **VII. Issue Remarks**

31. All six TCCC claims appeared in the Temporary Preliminary Decree with multiple issue remarks. All of these remarks have been addressed and resolved through this process and will be removed from these claims.

### VIII. TCCC's Equitable Arguments

32. TCCC elicited evidence at hearing to show TCRC has voluntarily received its Teton River water through the water commissioner for several decades. The commissioner administered the TCRC right as junior to the TCCC rights. Based on this record, TCCC asserts TCRC is barred by the equitable doctrines of Laches, Waiver, Judicial Estoppel, and Collateral Estoppel from asserting any right to receive water as senior to TCCC.

33. At the commencement of the hearing phase of the upper Teton River cases, (41O-84, -118, -129, and -132) this Court ruled that these arguments are properly addressed in TCRC Case 41O-84. TCCC is a party to Case 41O-84 and made the same equitable arguments in that case. The Court will continue to follow this policy. TCCC's equitable arguments will be addressed in Case 41O-84.

### ORDER

The following changes shall be applied to the water right claims in this case. These changes are supported by a preponderance of the evidence before the Court and are required to accurately reflect the historical use of the claims. All elements of each claim that are not changed by this Order shall remain as they appeared in the Temporary Preliminary Decree for this Basin. All issue remarks are removed from all claims. Water Right claim abstracts for each claim, showing all claim elements and information remarks, are attached to this Order.

#### **41O 192871-00** (April 18, 1890, Irrigation)

Volume:	Remark	<u>12,000.00 AF/Year</u>
Acres Irrigated:	17,202.00-acres	<u>17,322.00 acres</u>
Place of Use:	Add Parcel #44 40.00 acres	SWSW Sec. 28, T25N, R5W
	Parcel #45 80.00 acres	S2SE Sec. 29, T25N, R5W

See attached claim abstract for the full parcel legal description.

Remarks: BY STIPULATION, THIS CLAIM IS LIMITED TO NO MORE THAN  
7,650.00 ACRES IRRIGATED DURING ANY IRRIGATION SEASON.

MULTIPLE USE: 41O 192867-00 and 41O 192871-00

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

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**41O 192867-00** (April 18, 1890, Stock)

Volume:	Remark	<u>12,000.00 AF/Year</u>
Place of Use:	Parcel #6 N2N2SW NW	Sec. 8, T24N, R3W
	Parcel #7 NWSW N2N2SW	Sec. 8, T24N, R3W
Add	Parcel #44 SWSW	Sec. 28, T25N, R5W
	Parcel #45 S2SE	Sec. 29, T25N, R5W

See attached claim abstract for the full parcel legal description.

Remarks: MULTIPLE USE: 41O 192867-00 and 41O 192871-00

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

USE OF THIS CLAIM IS RESTRICTED TO TIMES WHEN CLAIM 41O 192871-00 IS IN USE.

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**41O 192872-00** (Irrigation)

Priority Date:	<u>April 18, 1890</u>	<u>December 31, 1947</u>
Flow Rate:	<u>100.00 cfs</u>	<u>75.00 cfs</u>
Volume:	Remark	<u>1,000.00 AF/Year</u>
Acres Irrigated:	<u>17,202.00 acres</u>	<u>17,322.00 acres</u>
Place of Use:	Add Parcel #44 40.00 acres SWSW	Sec. 28, T25N, R5W
	Parcel #45 80.00 acres S2SE	Sec. 29, T25N, R5W

See attached claim abstract for the full parcel legal description.

Remarks: BY STIPULATION, THIS CLAIM IS LIMITED TO NO MORE THAN 7,650.00 ACRES IRRIGATED DURING ANY IRRIGATION SEASON.

MULTIPLE USE: 41O 192868-00 and 41O 192872-00

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

**41O 192868-00 (Stock)**

Priority Date:            April 18, 1890            December 31, 1947  
Volume:                 Remark                    1,000.00 AF/Year  
Place of Use:          Add Parcel #44            SWSW Sec. 28, T25N, R5W  
   Parcel #45            S2SE Sec. 29, T25N, R5W

See attached claim abstract for the full parcel legal description.

Remarks:    MULTIPLE USE: 41O 192868-00 and 41O 192872-00

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

USE OF THIS CLAIM IS RESTRICTED TO TIMES WHEN CLAIM 41O 192872-00 IS IN USE.

---

**41O 192873-00 (Irrigation)**

Priority Date:            April 18, 1890            December 31, 1957  
Flow Rate:              100.00 cfs                75.00 cfs  
Volume:                 Remark                    1,000.00 AF/Year  
Acres Irrigated:        17,202.00 acres        17,322.00 acres  
Place of Use:          Add Parcel #44 40.00 acres SWSW Sec. 28, T25N, R5W  
   Parcel #45 80.00 acres    S2SE Sec. 29, T25N, R5W

See attached claim abstract for the full parcel legal description.

Remarks:    BY STIPULATION, THIS CLAIM IS LIMITED TO NO MORE THAN 7,650.00 ACRES IRRIGATED DURING ANY IRRIGATION SEASON.

MULTIPLE USE: 41O 192869-00 and 41O 192873-00

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

---

**41O 192869-00 (Stock)**

Priority Date:            April 18, 1890            December 31, 1957  
Volume:                 Remark                    1,000.00 AF/Year  
Place of Use:          Add Parcel #44            SWSW Sec. 28, T25N, R5W  
   Parcel #45            S2SE Sec. 29, T25N, R5W

See attached claim abstract for the full parcel legal description.

Remarks: MULTIPLE USE: 41O 192869-00 and 41O 192873-00

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

USE OF THIS CLAIM IS RESTRICTED TO TIMES WHEN CLAIM 41O 192873-00 IS IN USE.

DATED this *3* day of *FEBRUARY*, 2015.



Douglas Ritter  
Associate Water Judge

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Service List updated 1/21/15



**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**TETON RIVER  
BASIN 410**

**IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 410 192867-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TETON CO-OP CANAL CO  
% CHARLES CRANE  
1903 8TH LN NW  
CHOTEAU, MT 59422

**Priority Date:** APRIL 18, 1890

**Type of Historical Right:** DECREED

**Purpose (use):** STOCK

**Flow Rate:** 75.00 CFS

THE COMBINED FLOW RATE FOR CLAIMS 410 192867-00, 410 192868-00, 410 192869-00, 410 192871-00, 410 192872-00, AND 410 192873-00 SHALL NOT EXCEED 75.00 CFS.

**\*Volume:** 12,000.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Source Name:** TETON RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	35	25N	6W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BURTON DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** EUREKA RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNE	36	25N	6W	TETON

**Depth:** 31.00 FEET

**Surface Area:** 390.00 ACRES

**Capacity:** 5,500.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

THE DAM EXTENDS INTO THE SENW, NWNW SEC 36 TWP 25N RGE 06W TETON COUNTY.

**Period of Use:**

APRIL 20 TO OCTOBER 14

USE OF THIS CLAIM IS RESTRICTED TO TIMES WHEN CLAIM 41O 192871-00 IS  
IN USE.

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		4	W2NW	5	24N	3W	TETON
2			NWSW	5	24N	3W	TETON
3			S2SW	5	24N	3W	TETON
4				6	24N	3W	TETON
5				7	24N	3W	TETON
6			NW	8	24N	3W	TETON
7			N2N2SW	8	24N	3W	TETON
8		1	E2NW	18	24N	3W	TETON
9				1	24N	4W	TETON
10				2	24N	4W	TETON
11				3	24N	4W	TETON
12				4	24N	4W	TETON
13				5	24N	4W	TETON
14				6	24N	4W	TETON
15				7	24N	4W	TETON
16				8	24N	4W	TETON
17				9	24N	4W	TETON
18				10	24N	4W	TETON
19				11	24N	4W	TETON
20				12	24N	4W	TETON
21			N2NE	13	24N	4W	TETON
22			SWSE	13	24N	4W	TETON
23			W2	13	24N	4W	TETON
24				14	24N	4W	TETON
25			S2	28	25N	4W	TETON
26			S2S2SE	30	25N	4W	TETON
27				31	25N	4W	TETON
28				32	25N	4W	TETON
29				33	25N	4W	TETON
30				34	25N	4W	TETON
31				35	25N	4W	TETON
32			S2	36	25N	4W	TETON
33			S2SE	25	25N	5W	TETON
34			SW	25	25N	5W	TETON
35			S2	26	25N	5W	TETON
36			S2	27	25N	5W	TETON
37			E2SE	28	25N	5W	TETON
38			NE	32	25N	5W	TETON
39			SE	32	25N	5W	TETON
40				33	25N	5W	TETON
41				34	25N	5W	TETON
42				35	25N	5W	TETON
43				36	25N	5W	TETON
44			SWSW	28	25N	5W	TETON
45			S2SE	29	25N	5W	TETON

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

192867-00 192871-00

PARENT FILE FOR THIS RIGHT IS 192866-00.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**TETON RIVER  
BASIN 410**

**IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 410 192868-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** TETON CO-OP CANAL CO  
% CHARLES CRANE  
1903 8TH LN NW  
CHOTEAU, MT 59422

**\*Priority Date:** DECEMBER 31, 1947

**\*Type of Historical Right:** USE

**Purpose (use):** STOCK

**\*Flow Rate:** 75.00 CFS

THE COMBINED FLOW RATE FOR CLAIMS 410 192867-00, 410 192868-00, 410 192869-00, 410 192871-00, 410 192872-00, AND 410 192873-00 SHALL NOT EXCEED 75.00 CFS.

**\*Volume:** 1,000.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Source Name:** TETON RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	35	25N	6W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BURTON DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** EUREKA RESERVOIR

	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<b>Depth:</b>		S2SWNE	36	25N	6W	TETON
<b>Surface Area:</b>						
<b>Capacity:</b>						

31.00 FEET  
390.00 ACRES  
5,500.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

THE DAM EXTENDS INTO THE SENW, NWNW SEC 36 TWP 25N RGE 06W TETON COUNTY.

**Period of Use:** APRIL 20 TO OCTOBER 14  
USE OF THIS CLAIM IS RESTRICTED TO TIMES WHEN CLAIM 41O 192871-00 IS  
IN USE.

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		4	W2NW	5	24N	3W	TETON
2			NWSW	5	24N	3W	TETON
3			S2SW	5	24N	3W	TETON
4				6	24N	3W	TETON
5				7	24N	3W	TETON
6			NW	8	24N	3W	TETON
7			N2N2SW	8	24N	3W	TETON
8		1	E2NW	18	24N	3W	TETON
9				1	24N	4W	TETON
10				2	24N	4W	TETON
11				3	24N	4W	TETON
12				4	24N	4W	TETON
13				5	24N	4W	TETON
14				6	24N	4W	TETON
15				7	24N	4W	TETON
16				8	24N	4W	TETON
17				9	24N	4W	TETON
18				10	24N	4W	TETON
19				11	24N	4W	TETON
20				12	24N	4W	TETON
21			N2NE	13	24N	4W	TETON
22			SWSE	13	24N	4W	TETON
23			W2	13	24N	4W	TETON
24				14	24N	4W	TETON
25			S2	28	25N	4W	TETON
26			S2S2SE	30	25N	4W	TETON
27				31	25N	4W	TETON
28				32	25N	4W	TETON
29				33	25N	4W	TETON
30				34	25N	4W	TETON
31				35	25N	4W	TETON
32			S2	36	25N	4W	TETON
33			S2SE	25	25N	5W	TETON
34			SW	25	25N	5W	TETON
35			S2	26	25N	5W	TETON
36			S2	27	25N	5W	TETON
37			E2SE	28	25N	5W	TETON
38			NE	32	25N	5W	TETON
39			SE	32	25N	5W	TETON
40				33	25N	5W	TETON
41				34	25N	5W	TETON
42				35	25N	5W	TETON
43				36	25N	5W	TETON
44			SWSW	28	25N	5W	TETON
45			S2SE	29	25N	5W	TETON

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

192868-00 192872-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

PARENT FILE FOR THIS RIGHT IS 192866-00.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**TETON RIVER  
BASIN 410**

**IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 410 192869-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TETON CO-OP CANAL CO  
% CHARLES CRANE  
1903 8TH LN NW  
CHOTEAU, MT 59422

**\*Priority Date:** DECEMBER 31, 1957

**\*Type of Historical Right:** USE

**Purpose (use):** STOCK

**\*Flow Rate:** 75.00 CFS

THE COMBINED FLOW RATE FOR CLAIMS 410 192867-00, 410 192868-00, 410 192869-00, 410 192871-00, 410 192872-00, AND 410 192873-00 SHALL NOT EXCEED 75.00 CFS.

**\*Volume:** 1,000.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Source Name:** TETON RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	35	25N	6W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BURTON DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** EUREKA RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNE	36	25N	6W	TETON

**Depth:** 31.00 FEET

**Surface Area:** 390.00 ACRES

**Capacity:** 5,500.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

THE DAM EXTENDS INTO THE SENW, NWNW SEC 36 TWP 25N RGE 06E TETON COUNTY.

**Period of Use:** APRIL 20 TO OCTOBER 14  
USE OF THIS CLAIM IS RESTRICTED TO TIMES WHEN CLAIM 41O 192871-00 IS  
IN USE.

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		4	W2NW	5	24N	3W	TETON
2			NWSW	5	24N	3W	TETON
3			S2SW	5	24N	3W	TETON
4				6	24N	3W	TETON
5				7	24N	3W	TETON
6			NW	8	24N	3W	TETON
7			N2N2SW	8	24N	3W	TETON
8		1	E2NW	18	24N	3W	TETON
9				1	24N	4W	TETON
10				2	24N	4W	TETON
11				3	24N	4W	TETON
12				4	24N	4W	TETON
13				5	24N	4W	TETON
14				6	24N	4W	TETON
15				7	24N	4W	TETON
16				8	24N	4W	TETON
17				9	24N	4W	TETON
18				10	24N	4W	TETON
19				11	24N	4W	TETON
20				12	24N	4W	TETON
21			N2NE	13	24N	4W	TETON
22			SWSE	13	24N	4W	TETON
23			W2	13	24N	4W	TETON
24				14	24N	4W	TETON
25			S2	28	25N	4W	TETON
26			S2S2SE	30	25N	4W	TETON
27				31	25N	4W	TETON
28				32	25N	4W	TETON
29				33	25N	4W	TETON
30				34	25N	4W	TETON
31				35	25N	4W	TETON
32			S2	36	25N	4W	TETON
33			S2SE	25	25N	5W	TETON
34			SW	25	25N	5W	TETON
35			S2	26	25N	5W	TETON
36			S2	27	25N	5W	TETON
37			E2SE	28	25N	5W	TETON
38			NE	32	25N	5W	TETON
39			SE	32	25N	5W	TETON
40				33	25N	5W	TETON
41				34	25N	5W	TETON
42				35	25N	5W	TETON
43				36	25N	5W	TETON
44			SWSW	28	25N	5W	TETON
45			S2SE	29	25N	5W	TETON



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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

~~192869-00~~ 192873-00

PARENT FILE FOR THIS RIGHT IS 192866-00.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**TETON RIVER  
BASIN 41O**

**IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 41O 192871-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TETON CO-OP CANAL CO  
% CHARLES CRANE  
1903 8TH LN NW  
CHOTEAU, MT 59422

**Priority Date:** APRIL 18, 1890

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 75.00 CFS

PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED.

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

**\*Volume:** 12,000.00 AC-FT ..

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 17,322.00

**Source Name:** TETON RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	35	25N	6W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BURTON DITCH

Reservoir: OFFSTREAM Reservoir Name: EUREKA RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNE	36	25N	6W	TETON
Depth:	31.00 FEET				
Surface Area:	390.00 ACRES				
Capacity:	5,500.00 ACRE-FEET				

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL  
RESERVOIR DATA.

THE DAM EXTENDS INTO THE SENW, NWNW SEC 36 TWP 25N RGE 6W TETON  
COUNTY.

Period of Use: APRIL 20 TO OCTOBER 14

\*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	52.00	4	W2NW	5	24N	3W	TETON
2	40.00		NWSW	5	24N	3W	TETON
3	80.00		S2SW	5	24N	3W	TETON
4	433.00			6	24N	3W	TETON
5	531.00			7	24N	3W	TETON
6	160.00		NW	8	24N	3W	TETON
7	40.00		N2N2SW	8	24N	3W	TETON
8	17.00	1	E2NW	18	24N	3W	TETON
9	546.00			1	24N	4W	TETON
10	547.00			2	24N	4W	TETON
11	550.00			3	24N	4W	TETON
12	553.00			4	24N	4W	TETON
13	554.00			5	24N	4W	TETON
14	552.00			6	24N	4W	TETON
15	630.00			7	24N	4W	TETON
16	640.00			8	24N	4W	TETON
17	640.00			9	24N	4W	TETON
18	640.00			10	24N	4W	TETON
19	640.00			11	24N	4W	TETON
20	640.00			12	24N	4W	TETON
21	80.00		N2NE	13	24N	4W	TETON
22	40.00		SWSE	13	24N	4W	TETON
23	320.00		W2	13	24N	4W	TETON
24	640.00			14	24N	4W	TETON
25	320.00		S2	28	25N	4W	TETON
26	40.00		S2S2SE	30	25N	4W	TETON
27	640.00			31	25N	4W	TETON
28	640.00			32	25N	4W	TETON
29	640.00			33	25N	4W	TETON
30	640.00			34	25N	4W	TETON
31	600.00			35	25N	4W	TETON
32	320.00		S2	36	25N	4W	TETON
33	80.00		S2SE	25	25N	5W	TETON
34	160.00		SW	25	25N	5W	TETON
35	320.00		S2	26	25N	5W	TETON
36	320.00		S2	27	25N	5W	TETON

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
37	80.00		E2SE	28	25N	5W	TETON
38	130.00		NE	32	25N	5W	TETON
39	147.00		SE	32	25N	5W	TETON
40	640.00			33	25N	5W	TETON
41	640.00			34	25N	5W	TETON
42	640.00			35	25N	5W	TETON
43	640.00			36	25N	5W	TETON
44	40.00		SWSW	28	25N	5W	TETON
45	80.00		S2SE	29	25N	5W	TETON

**Total: 17,322.00**

BY STIPULATION, THIS CLAIM IS LIMITED TO NO MORE THAN 7,650.00 ACRES  
IRRIGATED DURING ANY IRRIGATION SEASON.

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS  
HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY  
OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT  
INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE  
AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192871-00 192872-00 192873-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME  
RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF  
THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE  
(PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

192867-00 192871-00

PARENT FILE FOR THIS RIGHT IS 192870-00.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**TETON RIVER  
BASIN 41O**

**IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 41O 192872-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TETON CO-OP CANAL CO  
% CHARLES CRANE  
1903 8TH LN NW  
CHOTEAU, MT 59422

**\*Priority Date:** DECEMBER 31, 1947

**\*Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 75.00 CFS

PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED.

THE COMBINED FLOW RATE FOR CLAIMS 41O 192867-00, 41O 192868-00, 41O 192869-00, 41O 192871-00, 41O 192872-00, AND 41O 192873-00 SHALL NOT EXCEED 75.00 CFS.

**\*Volume:** 1,000.00 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 17,322.00

**Source Name:** TETON RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	35	25N	6W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BURTON DITCH

Reservoir: OFFSTREAM Reservoir Name: EUREKA RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNE	36	25N	6W	TETON
Depth:	31.00	FEET			
Surface Area:	390.00	ACRES			
Capacity:	5,500.00	ACRE-FEET			

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

THE DAM EXTENDS INTO THE SENW, NWNW SEC 36 TWP 25N RGE 06W TETON COUNTY.

Period of Use: APRIL 20 TO OCTOBER 14

\*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	52.00	4	W2NW	5	24N	3W	TETON
2	40.00		NWSW	5	24N	3W	TETON
3	80.00		S2SW	5	24N	3W	TETON
4	433.00			6	24N	3W	TETON
5	531.00			7	24N	3W	TETON
6	160.00		NW	8	24N	3W	TETON
7	40.00		N2N2SW	8	24N	3W	TETON
8	17.00	1	E2NW	18	24N	3W	TETON
9	546.00			1	24N	4W	TETON
10	547.00			2	24N	4W	TETON
11	550.00			3	24N	4W	TETON
12	553.00			4	24N	4W	TETON
13	554.00			5	24N	4W	TETON
14	552.00			6	24N	4W	TETON
15	630.00			7	24N	4W	TETON
16	640.00			8	24N	4W	TETON
17	640.00			9	24N	4W	TETON
18	640.00			10	24N	4W	TETON
19	640.00			11	24N	4W	TETON
20	640.00			12	24N	4W	TETON
21	80.00		N2NE	13	24N	4W	TETON
22	40.00		SWSE	13	24N	4W	TETON
23	320.00		W2	13	24N	4W	TETON
24	640.00			14	24N	4W	TETON
25	320.00		S2	28	25N	4W	TETON
26	40.00		S2S2SE	30	25N	4W	TETON
27	640.00			31	25N	4W	TETON
28	640.00			32	25N	4W	TETON
29	640.00			33	25N	4W	TETON
30	640.00			34	25N	4W	TETON
31	600.00			35	25N	4W	TETON
32	320.00		S2	36	25N	4W	TETON
33	80.00		S2SE	25	25N	5W	TETON
34	160.00		SW	25	25N	5W	TETON
35	320.00		S2	26	25N	5W	TETON
36	320.00		S2	27	25N	5W	TETON

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
37	80.00		E2SE	28	25N	5W	TETON
38	130.00		NE	32	25N	5W	TETON
39	147.00		SE	32	25N	5W	TETON
40	640.00			33	25N	5W	TETON
41	640.00			34	25N	5W	TETON
42	640.00			35	25N	5W	TETON
43	640.00			36	25N	5W	TETON
44	40.00		SWSW	28	25N	5W	TETON
45	80.00		S2SE	29	25N	5W	TETON

**Total:** 17,322.00

BY, STIPULATION, THIS CLAIM IS LIMITED TO NO MORE THAN 7,650 ACRES  
IRRIGATED DURING ANY IRRIGATION SEASON.

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS  
HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY  
OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT  
INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE  
AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192871-00 192872-00 192873-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME  
RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF  
THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE  
(PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

192868-00 192872-00

PARENT FILE FOR THIS RIGHT IS 192870-00.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**TETON RIVER  
BASIN 410  
IMPORTANT NOTICE**

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 410 192873-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TETON CO-OP CANAL CO  
% CHARLES CRANE  
1903 8TH LN NW  
CHOTEAU, MT 59422

**\*Priority Date:** DECEMBER 31, 1957

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 75.00 CFS

THE COMBINED FLOW RATE FOR CLAIMS 410 192867-00, 410 192868-00, 410 192869-00, 410 192871-00, 410 192872-00, AND 410 192873-00 SHALL NOT EXCEED 75.00 CFS.

**\*Volume:** 1,000.00 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 17,322.00

**Source Name:** TETON RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	35	25N	6W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Ditch Name:** BURTON DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** EUREKA RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNE	36	25N	6W	TETON

**Depth:** 31.00 FEET

**Surface Area:** 390.00 ACRES

**Capacity:** 5,500.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.



THE DAM EXTENDS INTO THE SENW, NWNW SEC 36 TWP 25N RGE 6W TETON  
COUNTY.

Period of Use: APRIL 20 TO OCTOBER 14

\*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	52.00	4	W2NW	5	24N	3W	TETON
2	40.00		NWSW	5	24N	3W	TETON
3	80.00		S2SW	5	24N	3W	TETON
4	433.00			6	24N	3W	TETON
5	531.00			7	24N	3W	TETON
6	160.00		NW	8	24N	3W	TETON
7	40.00		N2N2SW	8	24N	3W	TETON
8	17.00	1	E2NW	18	24N	3W	TETON
9	546.00			1	24N	4W	TETON
10	547.00			2	24N	4W	TETON
11	550.00			3	24N	4W	TETON
12	553.00			4	24N	4W	TETON
13	554.00			5	24N	4W	TETON
14	552.00			6	24N	4W	TETON
15	630.00			7	24N	4W	TETON
16	640.00			8	24N	4W	TETON
17	640.00			9	24N	4W	TETON
18	640.00			10	24N	4W	TETON
19	640.00			11	24N	4W	TETON
20	640.00			12	24N	4W	TETON
21	80.00		N2NE	13	24N	4W	TETON
22	40.00		SWSE	13	24N	4W	TETON
23	320.00		W2	13	24N	4W	TETON
24	640.00			14	24N	4W	TETON
25	320.00		S2	28	25N	4W	TETON
26	40.00		S2S2SE	30	25N	4W	TETON
27	640.00			31	25N	4W	TETON
28	640.00			32	25N	4W	TETON
29	640.00			33	25N	4W	TETON
30	640.00			34	25N	4W	TETON
31	600.00			35	25N	4W	TETON
32	320.00		S2	36	25N	4W	TETON
33	80.00		S2SE	25	25N	5W	TETON
34	160.00		SW	25	25N	5W	TETON
35	320.00		S2	26	25N	5W	TETON
36	320.00		S2	27	25N	5W	TETON
37	80.00		E2SE	28	25N	5W	TETON
38	130.00		NE	32	25N	5W	TETON
39	147.00		SE	32	25N	5W	TETON
40	640.00			33	25N	5W	TETON
41	640.00			34	25N	5W	TETON
42	640.00			35	25N	5W	TETON
43	640.00			36	25N	5W	TETON
44	40.00		SWSW	28	25N	5W	TETON
45	80.00		S2SE	29	25N	5W	TETON

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<b>Total: 17,322.00</b>								

BY STIPULATION, THIS CLAIM IS LIMITED TO NO MORE THAN 7,650.00 ACRES  
IRRIGATED DURING ANY IRRIGATION SEASON.

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS  
HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY  
OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT  
INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE  
AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192871-00 192872-00 192873-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME  
RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF  
THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE  
(PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

192869-00 192873-00

PARENT FILE FOR THIS RIGHT IS 192870-00.