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FILED

APR 22 2016

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
BLACKFOOT RIVER - BASIN 76F

Montana Water Court

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CLAIMANTS: James C. Quigley; Linda M.S. Quigley;  
Richard L. Beck

OBJECTORS: Avista Corporation; James C. Quigley

COUNTEROBJECTORS: Richard L. Beck

**CASE 76F-75**  
76F 97900-00  
76F 108071-00  
76F 108074-00  
76F 108075-00  
76F 108076-00  
76F 108077-00  
76F 117732-00  
76F 120974-00  
76F 120975-00  
76F 120976-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules (W.R.Adj.R) requires that written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure (M.R.Civ.P.) provides an additional 3 days to the 10-day objection period. This means your objection must be received no later than 13 days from the above stamped date.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court.

61

*If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.*

### **MASTER'S REPORT**

The Quigleys and Dr. Beck own adjoining ranches. Quigleys own sections 33 and 34, T12N R9W. Beck owns sections 27 and 28, T12N R9W. Both parties claim irrigation rights out of Nevada Creek. Both parties claim to have water rights with historical irrigation under the water rights adjudicated to J. W. Blair in 1909 by the district court. Quigleys contend that the Nevada Creek appropriations belong to them alone. Beck contends that his land was irrigated with Nevada Creek water historically and that the Nevada Creek appropriations should be divided based upon the number of irrigated acres on each ranch. The water court held a hearing in Helena and viewed the premises in company with the parties. The water court's task is to adjudicate the rights as they were used historically. If post-1973 events illuminate the historical use, they may be considered for that purpose. Much of the evidence concerns post-1973 events. See §85-2-227 (2).

All witnesses were credible. Differences in their testimony are accounted for by their differing opportunities and needs to observe, the passage of time, and the normal variability of human memory.

The standard of proof is that facts must be proven by a preponderance of the evidence. Statements of claim are prima facie evidence of their contents. Facts in a statement of claim may be overcome by a preponderance of the evidence. All findings of fact in this report were established by a preponderance of the evidence.

#### *Findings of Fact*

##### *Introduction*

1. The parties are claimants James C. Quigley, Linda M.S. Quigley, and Richard L. Beck; objectors Avista Corporation and James C. Quigley, and counterobjector Richard L. Beck. Avista Corporation filed a stipulation which settled its objection to 76F 97900-00, withdrew all of its other objections, and did not participate in the hearing.

2. The court held a hearing in this case in Helena, Montana, on September 8 and 9, 2015. Following the hearing, the master and the parties visited the site. No testimony was taken, evidence offered, or argument made during the site visit.

3. In the early 20<sup>th</sup> Century, J. W. Blair owned what was called the Finn Ranch along Nevada Creek and Washington Gulch (Sometimes called Washington Creek. The names are interchangeable.) in Powell County. His ranch included sections 27, 28, 33, and 34, T12N R9W. In the past hundred years, Mr. Blair's ranch has been divided between neighboring outfits. Of the irrigated ground, Dr. Richard L. Beck owns the portion that is in sections 27 and 28, T12N R9W; while Quigleys own the portion that is in sections 33 and 34, T12N R9W. The parties have a total of about 900 irrigated acres in dispute, 630 owned by Beck and 270 owned by Quigleys. The places of use are described in the abstracts of the claims in this case.

4. The water right claims now in this case were originally decreed by the district court in *Geary v. Raymond*, Cause No. 143, Powell County, Montana, on April 2, 1909. Nine of the claims divert from Nevada Creek. One of the Quigleys' claims (76F-97900-00, proposed to be amended to a stock right) diverts from Spring Creek. The Beck ranch uses some water diverted from Washington Creek. The Washington Creek rights are not at issue here. The Nevada Creek claims assert the right to use more water than the 1909 decree awarded to Mr. Blair.

5. The dispute is about claims to the water of Nevada Creek. Both parties have claims based on the same J. W. Blair decreed appropriations. Quigleys hope to prove that the historical irrigation on the Beck ranch was done from Washington Creek with no Nevada Creek water. Quigleys ask to have the water rights in dispute adjudicated in their names alone. Beck hopes to prove that the historical irrigation on his portion of the old Blair ranch used water from Nevada Creek in addition to Washington Creek. Beck would have the Nevada Creek appropriations allocated using the rule in *Spaeth v. Emmett*, 142 Mont. 231, 383 P. 812 (1963), meaning that the rights would be divided between the two ranches on the basis of the number of irrigated acres in each.

6. The evidence of historical use comes from several sources. Witnesses testified to their recollection of irrigation on the two ranches going back as far as the 1940s. The county water resources survey, both map and field notes, are in evidence. The evidence includes water commissioner distribution records of distributions from Nevada Creek.

7. Some of the evidence concerns events after July 1, 1973. We begin with the prima facie showing made by the statements of claim and the evidence of use of water from Nevada Creek made before July 1, 1973. Evidence of events after that date may illuminate historical use.

8. Claim 76F 97900-00 was claimed as an irrigation right. The Quigleys amended the purpose to stock water as part of the Avista settlement.

9. The Quigleys claimed 76F 108074-00 as an irrigation right for 2 cfs from Nevada Creek. The claim is based on a right decreed to J. S. Perry in Cause 143. It does not have issue remarks. This claim does not have a competing Beck claim.

10. The remaining eight claims divert from Nevada Creek. They are based on four water rights decreed to John W. Blair in Cause 143. In order of priority, the claims are:

<u>Claim</u>	<u>Claimant</u>	<u>Priority Date</u>	<u>Flow Rate</u>
76F 108071-00	Quigley	April 28, 1876	1.88 cfs
76F 117732-00	Beck	April 28, 1876	1.88 cfs
76F 108077-00	Quigley	June 10, 1889	2.5 cfs
76F 120975-00	Beck	June 10, 1889	2.5 cfs
76F 108076-00	Quigley	September 30, 1898	3.75 cfs
76F 120976-00	Beck	September 30, 1898	3.75 cfs
76F 108075-00	Quigley	October 14, 1898	2.5 cfs
76F 120974-00	Beck	October 14, 1898	2.5 cfs

11. Each of these claims has a decree exceeded issue remark.

12. Claim 76F 108077-00 is a separate right with an 1889 priority date, decreed to Perry in 1909. Quigleys seek to change its priority date from 1889 to 1885 based upon a different Perry decreed right that was not claimed when claims were filed in the general

adjudication. Quigleys seek to amend 76F 108077-00 by changing the priority date to that of a right that was never claimed in the general adjudication. Parties who ask to amend a water right have the same burden of proof as an objector. They must show by a preponderance of the evidence that the elements originally claimed are incorrect. *Nelson v. Brooks*, 2014 MT 120, ¶ 37, 375 Mont. 86, 329 P.3d 558. The Quigleys argue that 76F 108077-00 is based on a right decreed to Perry in Cause 143, not to Blair. If accepted, Quigleys' amendment of that claim would resolve the decree exceeded issue on that claim and on Beck's claim 76F 120975-00. Beck replies that the Perry right of April 1, 1885, was not claimed by Quigleys, their predecessors, or anyone else in the general adjudication. Rights not claimed were forfeited. §85-2-221, MCA; *In re Yellowstone River*, 253 Mont. 167, 832 P.2d 1210 (1992). The Quigleys have not shown facts sufficient to overcome the prima facie showing of the statement of claim concerning the priority date of claim 76F 108077-00. This amendment would give the claim an earlier priority date. Water users not party to this case might be adversely affected and should have personal notice and an opportunity to be heard. See below for findings concerning the problem of tying a specific appropriation in the 1909 decree to a claimed historical water right. This report will recommend denying the amendment.

13. The remaining six claims are disputed. The Quigleys claim sole ownership of the underlying water rights. Beck claims that the rights were historically shared to irrigate the ranches now owned by the parties.

14. Richard L. Beck's predecessor Soren N. Beck, who owned the Beck place from 1954 to 1987 (Ex. B-20), filed timely claims for water rights 76F 117732-00, 76F 120974-00, 76F 120975-00, and 76F 120976-00. James C. Quigley and Avista Corporation filed timely objections to the claims.

15. James C. Quigley's predecessor Donald W. Hilger filed timely claims for water rights 76F 97900-00, 76F 108071-00, 76F 108074-00, 76F 108075-00, 76F 108076-00, and 76F 108077-00. The Quigleys acquired their claims when they purchased their ranch in 1989. Avista Corporation filed timely objections to the claims. Beck filed timely counterobjections to all of the claims except 76F 97900-00.

16. The April 2, 1909 district court decree in Cause No. 143, Powell County, decreed the following water rights to John W. Blair:

April 28, 1876: 75" Nevada Creek

September 30, 1898: 150" Nevada Creek

October 14, 1898: 100" Nevada Creek

August 30, 1872: 75" Washington Gulch

June 2, 1882: 100" Washington Gulch

October 1, 1883: 50" Washington Gulch

March 1, 1888: 30" Washington Gulch

June 1, 1898: 80" Washington Gulch

March 1, 1882: 15" Finn Creek

May 10, 1893: 75" Finn Creek

June 14, 1897: 50" Finn Creek through Chapman Ditch (Finn Creek rights are subject to appropriation of Eliza A. Farley from the West Fork of Finn Creek.)

September 1, 1886: 75" Gallagher Creek (No priority over 9/1/1886 right of Ellen Murphy)

July 9, 1895: 150" Gallagher Creek

May 1, 1893: 40" Spring Creek, tributary of Gallagher Creek

October 1, 1883: 40" Rhine Creek (subject to appropriations by Davis, Price, Parker, and Richards)

June 10, 1889: 100" Nevada Creek (Blair-Keiley ditch, no priority against P and M Keiley right of the same date)

17. The district court in Cause No. 143 made two general findings of fact:

1. The various allegations and claims set out in the complaint of the plaintiffs and the several separate answers of the several defendants herein, so far as they are not sustained by, or are inconsistent with, these findings, are all found not to be sustained by the testimony in this case; and the Court finds against all such allegations and claims to such extent as they may be inconsistent with these findings.

2. That the respective rights of the several parties as found herein are subject only to the respective rights of any of the other parties to this action whose appropriations appear or are found to have been made prior to their respective dates.

Ex. Q-3, p. Quigley 139.

18. A. The parties' exhibits included portions of the transcript of the 1906 trial in Case No. 143. Quigley asks the court to use the pleadings and testimony from Case No. 143 to construe the decree in a way favorable to Quigley. Quigley cites *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067 (1940), *Cate v. Hargrave*, 209 Mont. 265, 680 P.2d 956 (1984) and *State ex rel. Jones v. Dist. Court*, 283 Mont. 1, 938 P.2d 1312 (1997) in support of the request. In Cause No. 143, the district court referred to the pleadings to associate the water rights it decreed with lands the court described generally as belonging to the parties. The court did not award to Mr. Blair the priority dates or flow rates he alleged in the pleadings. The court was specific in listing the priority dates and flow rates of the claims it decreed. It could have been equally specific in listing the places of use. The allegations in the pleadings are subject to the general findings of fact cited above. The district court did not attach the appropriations to specified places of use within Blair's land. It would be an exercise in speculation to try to match the flow rates and priority dates with the legal subdivisions mentioned in the pleadings.

B. In *Hill v. Merrimac*, 211 Mont. 479; 687 P.2d 59; 1984 Mont. LEXIS 989; the Montana Supreme Court looked at a water court case where the water court had used pleadings to support findings concerning a 1929 district court decree. The Supreme Court said,

The answer and counterclaim filed by Owen Fergus in the 1929 case had no evidentiary value. The rule has long been that statements in pleadings may be used against the pleader, but they may not be used to advance the pleader's cause. *Taque v. John Appliance Co.* (1903), 28 Mont. 51, 72 P. 297; 63 A.L.R.2d 415 . . . Simply stated, the self-serving

statements of Hill's predecessor, Owen Fergus, could not be used some 50 years later to advance Hill's cause. 211 Mont. 479, 501.

Quigleys are successors of Blair and stand in the same position as Hill. The statements in Blair's pleadings filed in Cause No. 143 cannot be used to advance their claims in our case.

C. In his amended answer (Exhibit B-17), Blair alleged two 1898 rights from Nevada Creek. Were we to use the pleadings to construe the decree, this exhibit shows that Blair alleged that he had the ability to deliver Nevada Creek water to sections 27 and 28 before the 1906 trial of Cause no. 143.

19. Blair's answer alleged ownership of 600 m.i. from Nevada Creek with a spring 1874 priority. Ex. Q-1, p. Quigley 31. The 1909 decree contains no right with those elements. The earliest Blair right awarded by the district court is for 75 m.i. with a priority of April 28, 1876. D1, 2:23:00. The district court consistently awarded different flow rates and priority dates from those alleged by the litigants. Where the district court did not decree two of the elements of the Blair claims as they were pled, finding that the court intended to grant the third element as pled requires us to guess which right goes with which parcel.

20. The John W. Blair decreed rights which are pertinent to our case are:

- a. April 28, 1876, 75 miner's inches
- b. June 10, 1889, 100 miner's inches
- c. September 30, 1898, 150 miner's inches
- d. October 14, 1898, 100 miner's inches.

21. John W. Blair's ranch at the time of the Cause No. 143 decree included irrigated lands in sections 27, 28, 33, and 34, T12N R9W. Beck is successor to the lands in sections 27 and 28. Quigley is successor to lands in sections 33 and 34.

22. The Cause No. 143 decree granted Blair his rights for "irrigating the lands belonging to and described in the answer of the said John W. Blair" and for domestic and other useful purposes. Beck Ex. 11 p. 25. The decree did not specify what ditches carried the water or where the points of diversion were. The decree, Beck Ex. 12 p. 5,



said that the owners are entitled to their appropriations where their ditches first enter their lands.

23. Beck Ex. 16 is a copy of John W. Blair's answer to the amended complaint in Cause No. 143. The answer gives Blair's ownership as, p.2 ff (claimed flow rate shown for ease of reference),

300 miner's inches from Washington Gulch Creek, priority 1872, to irrigate S2 and S2NW of section 27; SE and SENE of section 28, NE of section 33.

300 miner's inches from Washington Gulch Creek, priority 1882, for the same land.

200 miner's inches from Nevada Creek, priority 1889, for the same land.

600 miner's inches from Nevada Creek, priority 1874, for NE of section 33, 40 acres in SE of section 33, NW and SWSE section of section 34, 20 acres in SWSW of section 34.

300 miner's inches from Nevada Creek, priority spring 1874, for 180 acres in S2 of section 11, T12N R10W.

24. Beck Ex. 17 is a copy of John W. Blair's handwritten amendment to his answer. In the amendment, Blair claims an appropriation of 300 miner's inches from Nevada Creek with a priority date of September 1, 1898 to irrigate the land in sections 27, 33, and 34, T12N R9W already described in the answer. In the amendment, Blair claims a second appropriation of 300 miner's inches from Nevada Creek with a priority date of October 1, 1898 for use on the same land.

25. In the decree, the court did not award either the quantities or the priority dates alleged in the various answers. The district court did not tie the awards in the decree to any specific parcels within the ownerships.

### Historical Use

#### A. The diversion from Nevada Creek

26. The diversion from Nevada Creek in section 35 for use in section 27 has been in place since the time the Exhibit Beck 15 map was made. The map was used by the district court at the time of the 1909 decree. The map shows a ditch labeled B No 4.

That ditch is shown as diverting from the north bank of Nevada Creek in section 35 at the location of the current Beck diversion and taking water west into section 27 (now owned by Beck). At the time of the decree, there were ditches that could take Nevada Creek water to property that the Becks now own. Jim Quigley testimony, D1 2:34. The B No 4 ditch is no longer there. When the highway was constructed (1930s or 40s, Thelma Arkell testimony) along the section line, a culvert was installed to carry the Nevada Creek water under the road into section 27. The ditch now runs from Nevada Creek north parallel to the highway, then turns to the west into the culvert. This ditch is the only diversion from Nevada Creek that serves the Beck place. It is unreasonable to presume that in times when ditches were dug using horses, slips, and shovels; someone constructed ditch B No 4, which was about ½ mile long, without intending to use it. It is unreasonable to presume that the diversion was re-routed and a culvert emplaced to carry Nevada Creek water under the road into section 27 unless someone was using Nevada Creek water on the west side of the road. By a preponderance of the evidence, the physical means to transport irrigation water from Nevada Creek into section 27 has been in place since before the 1909 decree.

B. The County Water Resources Survey

27. Exhibit Q-15 is the record of the field check from the county water resources survey. The record is dated July 24, 1958. The information came from Soren N. Beck. At the time, the Blair (Finn Ranch, Beck) appropriation was diverting 75 miner's inches from Washington Gulch under the August 30, 1872 right and 100 miner's inches from Washington Gulch under the June 2, 1882 right. The John and Mary O'Neill appropriation (October 1, 1895) was in use, diverting from Nevada Creek. The remarks section of the form is confusing. Under the O'Neill entry it has an asterisk leading to the remarks section where it says "Not using any Nevada Creek water." The form does not explain how the O'Neill appropriation could be using 70 m.i. from Nevada Creek but not be using any Nevada Creek water. One can speculate that it was contract water from the Nevada Creek Reservoir downstream of the diversion and that the 70 m.i. are replacement water for the reservoir, but that is speculation, no more. Exhibit Q-15 does

not prove that Soren Beck did not use Nevada Creek water historically. It does show that the surveyors believed he was not using Nevada Creek water on the date of the farm check.

28. Exhibit Q-16 is the record of the farm check of July 15, 1958. It deals with diversions on the Finn Ranch under the John W. Blair appropriations. The land owner is George V. Davis. The report is that Mr. Davis was not using any Washington Gulch or Rhine (Half Way) Creek water and that he was using Nevada Creek, Finn Creek, Gallagher Creek, and Spring Creek water through what were described as the Davis ditches.

29. Exhibit Q-17 (same as B-15) is the map of T12N R9W from the county water resources survey. The map shows extensive irrigation from Washington Gulch in section 27. The map does not show any ditches diverting from Nevada Creek running into section 27 (Beck land at the time).

30. The field notes to the 1959 Powell County Water Resource Survey are found in exhibits Q-15 and Q-16. Quigley suggests that the notes show that the Beck place was not irrigated with Nevada Creek water. Beck suggests that the notes are too flawed to be dependable. The field notes identify but 115 acres of Nevada Creek irrigation on what is now the Quigley ranch and 385 acres on the Beck ranch. The DNRC examination of the claims found significantly more irrigated acreage.

31. Exhibit Q-15 is a copy of field notes dated July 24, 1958. The information came from Soren N. Beck, who would purchase the place later that same year. This exhibit concerns irrigation in sections 27 and 28. The notes show that there was irrigation on the Finn Ranch from Washington Gulch under the John W. Blair rights of August 30, 1872 and June 2, 1882 and the John and Mary O'Neill rights with priorities October 1, 1895, June 1, 1882, and June 1, 1887. The entry notes that the irrigator is not using any Nevada Creek water.

32. Exhibit Q-16 is a copy of field notes dated July 15, 1958. The information came from Geo. V. Davis. The exhibit concerns irrigation in sections 32, 33, and 34. It shows no use of water from Washington Gulch and use of water from Nevada Creek

under the appropriations of June 1, 1898, April 28, 1876, September 30, 1898, October 14, 1898, and June 10 1889. The second page shows use of the J. S. Perry April 1, 1884 right from Nevada Creek. The irrigation shown from Finn Creek, Rhine Creek, Spring Creek, Gallagher Creek, and waste water is not pertinent to our case.

33. WRS field notes and maps have limited value. As with aerial photographs, field notes are a snapshot. These notes speak of a moment in the late 1950s. What happened in the two or three months of irrigation before mid-July of 1958 is not recorded. Neither is what happened in late July, August, or the fall of that year, or other years. The notes are most useful to show things positive (X ditch was diverting from Y creek). The notes are not useful to prove a negative. Without more, a note of No Irrigation from Z creek means no use of Z creek when the surveyor observed the ranch and talked to the contact person. Concluding from the notes that Z creek was not used that season, or at any other time, is assuming more than the notes say. Proving that a source was not used historically requires more than a showing that it was not in use on one day at a time of year (mid to late July) when irrigation may be shut off for haying or is in support of aftermath grazing or a second cutting. The other historical evidence cited in this report is of more weight than the county WRS notes.

34. Beck points to deficiencies and internal inconsistencies in the field notes. The notes for Blair's Finn Ranch identify two Washington Creek rights (August 30, 1872 for 75 m.i. and June 2, 1882 for 100 m.i.). The decree in Cause No. 143 identified five Washington Creek rights for Mr. Blair. Beck Ex. 11, pp. 25-26. The field notes do not mention the other three Washington Creek rights.

35. The field notes for Nevada Creek identify the October 1, 1895 O'Neill right of 70 m.i., which is shown as in use, but the notes section says "not using any Nevada Creek water." The contradiction is not explained. The notes do not identify the June 10, 1889 100 m.i. right decreed to Blair. Quigley admits that this right belongs to Beck. There are other problems with the field notes, such as Nevada Creek having 4 rights on the Davis (now Quigley) place, reporting 115 irrigated acres. Quigley claims 230 acres from Nevada Creek. Jim Quigley testified that the 115 acres seems low.

36. Beck asks the court to find the field notes unreliable on the basis of the noted omissions. The variance between the notes and the water rights owned by the parties at the time goes to the weight of the WRS as evidence.

C. The Water Commissioner Records:

37. Both parties introduced water commissioners' records. Quigley Ex. Q-9 includes commissioner records from 1993, 1994, 1998, and 2000. The Ex. Q-9 records are not records of historical (pre-7-1-1973) irrigation. Beck Ex. B-14 includes commissioner records from 1968 and 1969, which are records of historical irrigation. Jim Quigley searched microfilm for water commissioner records and found no water commissioner records from 1944 to 1968. D1, 2:38:00. His testimony is consistent with the water commissioner records that Beck included in Exhibit B-14, which consists of records from 1944 and beginning again in 1968.

38. Exhibit B-14 begins with a petition to have a water commissioner appointed for Nevada Creek beginning May 15, 1944, but no reports or billings from that year. The record does not include any commissioner reports or billing statements before 1968.

39. In 1968, the district court appointed John Geary as water commissioner for Nevada Creek with a term from May 20 through November 1.

40. Ex. B-14, Mr. Geary's July 22, 1968 report, shows that in 1968 Quigley's ancestor in title (Davis) used 31,920 inches while Soren Beck used 9,590 inches from May 20 through June 19, both from Nevada Creek. For June 20 through July 10, 1968, Davis used 6,245 inches and Beck used 2,705 inches from Nevada Creek.

41. On July 18, 1968, the court appointed E. L. Harrison as commissioner for Nevada Creek to serve until November 1, 1968. The record does not disclose what happened to commissioner Geary. The record does not include any reports from Commissioner Harrison in 1968.

42. In 1969, the court appointed E. L. Harrison to serve as commissioner for Nevada Creek from June 1 to November 1. Commissioner Harrison filed reports. In June, 1969, Soren Beck diverted 75 m.i. from Nevada Creek most days for a total diversion during the month of 1,800 m.i. In August, he diverted 1,350 m.i. In

September, he diverted 1,420 m.i. Pages Beck 135 and 136, diversion records for August 1969, are duplicates. The units used in the totals are the number of miner's inches diverted times the number of days of diversion. The number represents miner's inch days, a unit not otherwise used. The value of this kind of record is that it shows the regular daily diversion that Soren Beck made from Nevada Creek.

43. In April, 1970, the court appointed E. L. Harrison as Nevada Creek water commissioner to serve from April 15 to November 1.

44. In June, 1971, the court appointed Leland D. Weaver as Nevada Creek water commissioner to serve from June 17, 1970, to November 1, 1970.

45. In May, 1973, the court appointed Orson Atkinson as commissioner to serve until November 1, 1973.

46. The record does not include any water use or billing statements for the years 1970, 1971, or 1973.

47. Exhibit Q-9 includes the water commissioner records that Quigleys want the court to consider. The court appointed Carl Kidwell as commissioner for Nevada Creek in 1993. The April 1993 billing shows that Beck used 675 m.i. from Washington Gulch while Quigley used 1,025 m.i. from Nevada Creek. In May, Beck used 5,930 m.i. from Washington Gulch. In June, Beck used 2,250 m.i. from Washington Gulch. The 1993 records do not show any Beck use of Nevada Creek water. These records do not show historical use.

48. In May, 1994, the commissioner's statement shows that Laurence Beck diverted 1,720 m.i. from Washington Gulch. In July, 1994, Beck used 1,699 m.i. from Washington Gulch. The 1994 records, the commissioner's report for May, 1998, and the water commissioner bills for June and July, 2000, do not show deliveries of Nevada Creek water to Beck. These records do not show historical use. The units used must be miner's inch days, for a diversion of 1,699 m.i. would equal over 42 cfs.

49. At this point in the findings, it is useful to recall that the water court's task is to determine the historical use of the water rights in this case. The water commissioner

records from after 1973 are mentioned for completeness and do not demonstrate historical use of water.

50. The water commissioner records, Ex. B-14, show that Soren Beck made historical use of Nevada Creek water. During his ownership of the ranch, Soren Beck appears in all of the pre-1973 Nevada Creek distribution records in evidence. The commissioner report of July 22, 1968 (B-14) shows that Soren Beck was billed for 9,590 inches of water used between May 20 and June 19, 1968; 2,705 inches used from June 20 through in July 10, 1968; 1,800 inches in June 1969, and 1,350 inches in August 1969. Beck has shown by a preponderance of the evidence that Soren Beck used Nevada Creek water for historical irrigation on his ranch.

*D. Testimony:*

51. Jim Arkell is 90 years old. He ranched on what is now the Quigley place for thirteen years beginning in 1954. George Davis owned the ranch. Mr. Arkell irrigated the whole bottom from a single ditch diverting from Nevada Creek. Mr. Arkell testified that Soren Beck irrigated his ranch from Washington Creek. When Mr. Arkell was asked if Soren Beck used any Nevada Creek water, he replied "Not that I know of." D1 11:41. Mr. Arkell testified on cross examination that his diversion from Nevada Creek was about 1,000 yards west of the house. Soren Beck lived east of Avon, not on the Beck place. There was no water commissioner on that part of Nevada Creek during Mr. Arkell's residence on the Davis place. He was not familiar with the culvert under the road. Mr. Arkell did not testify that no one used Nevada Creek water on the Beck place, but rather (and with care) he explained that he had never seen the people on the Beck place use Nevada Creek water.

52. Thelma Arkell is married to Jim Arkell. She lived on what is now the Quigley place for 13 years beginning in 1954. She was not involved in the irrigation ("Only when my kids tried to drown themselves in it." D1: 11:40) Mrs. Arkell testified that a high-water ditch from Nevada Creek ran behind the garage on the Quigley place. She recalled the log/tree dam in Nevada Creek which other witnesses testified about. The ditch went through a culvert which had to have been installed when the highway was built in the

1930s or 1940s. The only time the ditch had water was when water was flowing over the dam in the creek. When the creek went down, there was very little water in the ditch. The logs which supported the dam were never removed from the creek. Mrs. Arkell did not follow the ditch to see where it went. The ditch Mrs. Arkell testified about is the ditch which diverts from Nevada Creek in section 35 and serves sections 27 and 28 (now owned by Beck).

53. Charles Beck is 89 years old. He is the son of Peter Beck. He graduated from high school in 1943. He took care of the Beck place from the time he was in high school or shortly thereafter because his dad was ill. He and his parents lived on the Davis (now Quigley) place for 5 or 6 years when his father was leasing the George Davis place. His dad died in 1954. Charles Beck finished the haying in 1954. He left the ranch after his uncle Soren Beck acquired it. During Charles Beck's time on the ranch, the Beck property used water from Washington Creek and from Nevada Creek. The Nevada Creek diversion was upstream about 200 feet from the highway crossing. West of the highway, the water from Nevada Creek was dumped into a natural swale or old creek bed where it ran for about a quarter mile then was diverted out of that. He would irrigate with Nevada Creek water as long as it was available.

54. Charles Beck and Glen Davis (who worked for George Davis) placed a log in Nevada Creek in about 1950 to raise the water level so that more water could be diverted into the ditch that served the Beck place. The ditch may have served Davis' (now Quigleys') land too, but Charlie Beck was not on their land to see whether or not they used Nevada Creek water. The owners of the Davis place never claimed priority or prevented him from using Nevada Creek water.

55. Don Hilger and his parents owned what is now the Quigley Ranch from the fall of 1978 to 1989. George Davis' widow sold the Davis ranch, which was divided between five purchasers including Don Hilger. Soren Beck owned the Beck place at the time. Mr. Hilger irrigated primarily with Nevada Creek water. He understood that the Becks used Washington Gulch water and was not familiar with them using Nevada Creek water. Eldon Friezen was on the Beck place at the time. The Nevada Creek diversion



was not on the Quigley (Davis) land; rather, it was on the Stuckey (Keiley) property east of the highway in section 35. Mr. Hilger's testimony describes a time after July 1, 1973.

56. Eldon Friezen testified by telephone. He lives in Gig Harbor, Washington. He is 60 years old. He lived on the Beck place from 1976 to 1986. Soren Beck owned it at the time. Mr. Friezen was sharecropping for 40% of the weight of the calves. He irrigated the Beck property from Washington Creek and Nevada Creek. On Nevada Creek he had a small dam. The water passed through a 24" culvert. He used Washington Creek water for land on the right (north) side of Washington Creek and Nevada Creek water on the left (south) side. The Hilgers did not challenge or prevent his use of water from Nevada Creek. Mr. Friezen's testimony describes events after July 1, 1973. It is relevant because of his residence on the Beck place and use of Nevada Creek water with an existing diversion and ditch beginning within 3 years of July 1, 1973.

57. Tim Quigley is Jim Quigley's son. This paragraph is based on his testimony. He lived on the Quigley ranch on Nevada Creek from the summer of 1989 until two years ago. Now he comes over for calving and haying. Tim Quigley took over irrigating the place from his father in about 1993. He irrigated in times of high water and times of drought. The ditch shown on Quigley Ex. Q-7 and Beck Ex. 15 as B No. 4 has been relocated since the map was made. The ditch goes under the road where the water enters in an old creek channel and flows for 300 to 400 yards, and then it is picked up by a ditch that takes it to the northwest. When Stuckey leased the Beck property from about 1995 to 2005, Stuckey used Nevada Creek water. There is a suggestion that the Nevada Creek water may have been contract water from the (downstream) Nevada Creek reservoir, but no proof. Quigleys leased the Beck place in 2008-2009. They irrigated the Beck place primarily with Washington Creek water and runoff of Washington Creek water coming from the Stuckey ranch. In high water, Tim Quigley irrigated the Beck place with Nevada creek water. That testimony shows that the system in place can carry Nevada Creek water to the Beck place. The testimony describes events and conditions after July 1, 1973.

58. The Quigley place has gravelly soil. The Beck place has some gravelly soil and some gumbo especially up toward the highway. Gumbo soil loses less water to percolation than gravelly soil does and therefore requires less water to irrigate.

59. Tim Quigley's knowledge of irrigation on the Beck place was gained since 1989. There is a ditch from Nevada Creek that conveys water over to the Beck property. The diversion is on the east side of the road near the house. The ditch begins on the north bank of Nevada Creek. The ditch carries water to the Beck place. The ditch can be used to irrigate most of the irrigable acres. Some years, the Beck place needs Washington Creek water. D1 1:53.

60. The Beck ranch has 630 irrigated acres. Beck Ex. 1. Tim Quigley irrigated the Beck irrigable acreage with Nevada Creek water in 2008. The second year he was on the place he decided not to irrigate it. Tim Quigley testified that the 2008 irrigation was with high water, which to him means that the stream is high enough that the 1898 right and later rights are in priority. His testimony demonstrates that the physical system to deliver Nevada Creek water to the Beck ranch was operative in 2008. His testimony did not concern the historical use of water on either ranch.

61. Tim Quigley testified that when water is low, the 80 m.i. Perry right is good and the 75 m.i. right is usually good.

62. Tim Quigley's testimony shows that the diversions and ditches can supply Nevada Creek water to the Beck place.

63. Richard Beck testified by telephone. Dr. Beck inherited the Beck ranch from his father, Lawrence Beck, taking possession in about June, 1995. Dr. Beck is a veterinarian in Hemet, California. He was 66 years old at the time of the hearing in September 2015. He was a child during the 1950s when Soren Beck owned the place. Dr. Beck's father Lawrence Beck put up the hay on the Soren Beck place in return for half of the hay. Every summer, Dr. Beck went out and put the hay up for his father.

64. For 15 years or more, in the summer during haying, Dr. Beck ran the mowing crew, sharpened sickles and repaired machinery at night, then started mowing in the morning before the rest of the crew arrived. He lived on the ranch during haying.

65. Lawrence Beck was an avid irrigator. When haying was done on one side of Washington Creek, he would turn the water back on to build moisture in the soil for the next spring. He used Nevada Creek water for late-season irrigation because Washington Creek would be low.

66. Becks' Nevada Creek diversion washed out in high water. The Becks would cut down a tree, float it down and place it the creek at the diversion, cut all the branches, put them on the upstream side of the tree, then put rocks on the branches. That dam put Nevada Creek water into Beck's ditch where it was conveyed to irrigate land in sections 26 and 27 after haying.

67. Beck's Nevada Creek diversion was attractive to beaver. When Dr. Beck was in high school, he took a .22 to the diversion and sat in the mosquitos and the dark with a flashlight waiting for the beaver to come so he could shoot them. This finding and those above concerning Dr. Beck's testimony describe events before July 1, 1973 and are therefore evidence of historical use.

68. After Dr. Beck inherited the ranch, he continued to irrigate with water from both Washington Creek and Nevada Creek. He continued his father's practice of late season irrigation. One year he turned all of the available water into his ditches. Randy Hawkins, who was sometimes a water commissioner and sometimes a ditch rider for the Nevada Creek Water Users Association, told him he could not have all of the water and explained to him about priority dates and measuring devices. Since then, Dr. Beck used half of the available Nevada Creek water calculated based on the disputed rights. This paragraph describes events after July 1, 1973 and is included for completeness.

Evidence of title:

69. Exhibit Q-20 shows the chain of title to section 27. The deed to Andrew A. Beck and Peter L. Beck is dated March 18, 1946. In 1995, Richard Beck conveyed the portion of section 27 north of highway 141 to Earl B. and Glenna K. Stuckey. Our case does not involve land north of highway 141.

70. Exhibit Q-21 shows the chain of title to section 28. The deed to Andrew A. Beck and Peter L. Beck was executed in March 18, 1946.

71. Exhibit Q-22 shows the chain of title to section 33. It shows that the warranty deed from Hilgers to Quigleys was executed April 7, 1989.

72. Exhibit Q-23 shows the chain of title to section 34. It shows that the warranty deed from Hilgers to Quigleys was executed April 7, 1989.

73. Throughout the chains of title, no conveyance limits or reserves water rights appurtenant to the land.

Claim 76F 97900-00:

74. Quigley filed claim 76F 97900-00 as an irrigation right from Spring Creek. Quigley and Avista filed a stipulation asking to amend this claim to a stock right. The amendment is supported by testimony of the historical use of this right. The requested amendments are:

Purpose: Stock

Maximum Flow Rate: Flow rate has not been decreed because this use consists of stock drinking directly from the source, or from a ditch system.

Maximum Volume: This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source.

Point of Diversion and Means of Diversion:

ID	GovtLot	QtrSec	Sec	Twp	Rge	County
1		N2NW	32	12N	9W	Powell

Period of Diversion: January 1 to December 31

Diversion Means: Direct from Source

Period of Use: January 1 to December 31

Place of Use:

ID	Acres	QtrSec	Sec	Twp	Rge	County
1		N2NW	32	12N	9W	Powell

Claims 76F 108077-00 (Quigley) and 76F 120975-00(Beck):

75. Quigley asks to amend claim 76F 108077-00 (1889 priority date) to reflect the priority date and flow rate of the April 1, 1885 right of 30 miner's inches decreed to Perry in Cause No. 143. The Cause No. 143 decree, p. 75, shows an award of 30 miner's inches from Nevada Creek to J. S. Perry with a priority date of April 1, 1885. Motions to amend are subject to the same burden of proof as an objection. Quigley's burden is to overcome the prima facie showing made by the statement of claim by a preponderance of the evidence showing that the elements in the original claim are incorrect. *Nelson v. Brooks*, 2014 MT ¶ 37, 375 Mont. 86, 329 P.3<sup>rd</sup> 558. Water Court case 41J-265.

76. Quigley did not present evidence to link the Cause No. 143 decree finding that J. S. Perry had "An additional thirty (30) inches of the waters of said Nevada creek as of date April the first, 1885." to our case.

77. Beck is of two minds about claim 76F 108077-00. In his proposed findings of fact and conclusions of law, Beck suggests that Quigley's amendment either fails because the Perry right awarded by the district court was not claimed in the general adjudication and therefore was forfeited, or that the amendment resolves the decree exceeded issue for Beck's claim 76F 120975-00. In his proposed conclusion of law J, Beck would conclude that 76F 108077-00 was amended and the decree exceeded issue resolved; while in proposed conclusion of law K Beck would have the court conclude that the amendment to 76F 108077-00 to change the priority date cannot be sustained. In proposed conclusion of law L, Beck would have the court conclude that the amendment of 76F 108077-00 requires notice to other water users before the court considers it. Beck's inconsistent positions cannot be reconciled.

78. There is no information in the claim file linking the 1885 Perry decreed right to claim 76F 108077-00. The Basin 76F Summary Report lists all claims filed in the basin. The Basin 76F Summary Report has no water right claim with an April 1, 1885 priority date. By a preponderance of the evidence, the court should find that the Perry 1885 right was not claimed in the general adjudication and is therefore forfeit. The Quigley amendment fails.

79. The decree exceeded remark will be resolved by applying the *Spaeth* formula to divide the flow rate between Quigley and Beck on the basis of historically irrigated acreage.

Claim 76F 120975-00:

80. The amendment to 76F 108077-00 resolves the decree exceeded issue remark on the abstract of Beck's claim 76F 120975-00.

Claim 76F 108074-00:

81. This claim has no issue remarks. Beck filed a counterobjection seeking confirmation of ownership and historic use. Beck did not introduce evidence concerning this claim. The prima facie showing of the statement of claim has not been overcome. This report recommends no changes to this claim.

Conclusions of Law

1. Any findings of fact which a reviewer believes should be conclusions of law shall be treated as conclusions of law. Any conclusions of law which a reviewer believes should be findings of fact shall be treated as findings of fact. The distinction between the two can be blurred.

2. The Montana Water Court has exclusive jurisdiction to interpret and determine all existing rights. *Mildenberger v. Galbraith*, 249 Mont. 161, 166, 815 P.2d 130, 134 (1991). An existing water right is "a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The terms includes . . . water rights created under state law. Section 85-2-102(12), MCA.

3. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. The 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.

4. The standard of proof necessary to contradict or overcome the prima facie roof statute is a preponderance of the evidence. *Burkhartsmeyer et al. v. Burkhartsmeyer et al.*, Case 40G-2 (MT Water Court Memorandum Opinion and Order Adopting Master's Report, March 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.

5. The law concerning the conclusiveness of a judgment is noted in *Missoula Light & Water Co. v. Hughes*, 106 Mont. 355, 366 (Mont. 1938):

A judgment not appealed from is conclusive as to all issues raised by the pleadings, actually litigated and adjudged, as shown on the face of the judgment and necessarily determined in order to reach the conclusion announced. *Brennan v. Jones*, 101 Mont. 550, 55 P.2d 697; *Swaim v. Redeem*, 101 Mont. 521, 55 P.2d 1; *State ex rel. Sullivan v. School Dist.*, 100 Mont. 468, 50 P.2d 252; *State ex rel. Tague v. District Court*, 100 Mont. 383, 47 P.2d 649.

A decree of a court stands as an absolute finality, "not merely as to the conclusions expressed, but as to everything directly or implicitly involved in reaching them." *Lokowich v. City of Helena*, 46 Mont. 575, 129 P. 1063, 1065; *State ex rel. Silve v. District Court*, 105 Mont. 106, 69 P.2d 972; *Blaser v. Clinton Irr. Dist.*, 100 Mont. 459, 53 P.2d 1141.

6. The district court judgment in Cause No. 143 is final as to the priority dates, flow rates, and general description of irrigated land on the J. W. Blair ranch. That irrigated land includes land now held by the Quigleys and Dr. Beck.

7. There is a present diversion from Nevada Creek in section 35 east of the highway which takes water to the north, where it crosses under the highway and enters Beck property in section 27. From there, the water flows down a swale or old creek bed for about ¼ mile to a secondary diversion, where it is taken to the north and west. That diversion pre-dates the highway which was constructed before the middle of the 20<sup>th</sup> Century. The ditch runs to Washington Gulch, where Nevada Creek water can be taken across to irrigate land on the north side of Washington Gulch, or sent down Washington Gulch to irrigate land to the west. The Beck place was irrigated with water from Nevada

Creek and water from Washington Gulch historically, both during high water and late in the season.

8. The decree in Cause No. 143 did not attach the John W. Blair rights to any particular land. Rather, all of the rights decreed to Mr. Blair were made appurtenant to all of his land as listed in his answer to the complaint. Quigley may argue that the specific aliquot subdivisions mentioned in Blair's pleadings attach the rights adjudicated in 1909 to those parcels. The district court did not adopt the flow rates and priority dates alleged in the pleadings. From the record, we cannot attribute any of the district court's allocation of flow rates and priority dates to narrowed legal descriptions in the pleadings. That information is not in the 1909 decree and cannot reasonably be derived from it.

9. The evidence of use of the disputed water rights since July 1, 1973, is not evidence of historical use. Evidence of post-1973 events confirms that the ditch which carries Beck's Nevada Creek water was in place before July 1, 1973; and that the pre- and post-1973 owners and operators of what are now the Quigley and Beck ranches irrigated with water from Nevada Creek.

10. Quigleys' case is at least partially based on the pleadings from Cause No. 143. Pleadings are allegations, no more, and normally are not part of a judgment. The district court referred to the pleadings to identify the lands subject to the decree. The decree did not adopt the allegations about priority dates and flow rates. The court's finding against the allegations in the complaint and answers not sustained or inconsistent with its findings forecloses speculation about what the decree said about the precise places of use. Beck Ex. 11 p. 55.

11. The Cause No. 143 decree establishes these elements of the disputed water rights: Source, name of the appropriator, priority date, flow rate, and general description of the place of use.

12. Accepting Tim Quigley's definition of high water rights as those rights from 1898 and after, D1 2:00:50, the contested rights here are not high water rights.

13. By a preponderance of the evidence, the owners and operators of the ranches now owned by Quigleys and Dr. Beck made historical use of water from Nevada Creek.



A diversion from Nevada Creek in section 35 with a ditch into what is now Beck property was in place before the 1909 district court decree. When the road along the east line of section 27 was constructed decades before July 1, 1973, a culvert was installed to carry Nevada Creek water under the road into section 27. Witnesses who were familiar with irrigation in the 1940s, 50s, and 60s testified consistently that both ranches used Nevada Creek water. The few available water commissioner records show both ranches diverting from Nevada Creek historically. While the county WRS map, Exhibit Q-17, does not show the Beck diversion from Nevada Creek, it is consistent with the field notes. The WRS field notes show what was happening on one day in July of 1958, but do not disprove Beck's historical use of Nevada Creek water. The WRS interviewer spoke to Soren Beck on July 15, which is during haying season when the water is ordinarily shut off.

14. The decreed rights of John W. Blair should be divided between Beck and Quigley to resolve the decree exceeded issue remarks. There is no evidence that the rights were attached to specific smaller parcels within the general description given in the Cause No. 143 pleadings. The district court made specific findings about flow rates and priority dates, all at variance with the pleadings, and could have made specific findings about places of use, but chose instead to refer generally to the pleadings. The pleadings give specific places of use for each priority date asserted. We have no way to match the court's findings of priority dates and flow rates back to the pleadings. The division of the Nevada Creek rights between the two ranches is controlled by the formula from *Spaeth v. Emmett*, 142 Mont. 231, 328 P.2d 812 (1963).

15. The record includes the chain of title to both properties. Ex. Q-20-23, B-20. The documents in the record do not include conveyances or reservations of any specific water rights.

16. A judgment not appealed from is conclusive as to all issues raised by the pleadings, actually litigated and adjudged, as shown on the face of [\*\*\*19] the judgment and necessarily determined in order to reach the conclusion announced. (*Brennan v. Jones*, 101 Mont. 550, 55 P.2d 697; *Swaim v. Redeem*, 101 Mont. 521, 55 P.2d 1; *State ex*

*rel. Sullivan v. School Dist.*, 100 Mont. 468, 50 P.2d 252; *State ex rel. Tague v. District Court*, 100 Mont. 383, 47 P.2d 649.)

17. A decree of a court stands as an absolute finality, "not merely as to the conclusions expressed, but as to everything directly or implicitly involved in reaching them." (*Lokowich v. City of Helena*, 46 Mont. 575, 129 P. 1063, 1065; *State ex rel. Silve v. District Court*, 105 Mont. 106, 69 P.2d 972; *Blaser v. Clinton Irr. Dist.*, 100 Mont. 459, 53 P.2d 1141.)

18. All of the rights decreed to Mr. Blair were made appurtenant to all of his land as listed in his answer to the complaint. Subsequent conveyances have split the ownership of Blair's ranch into the current configuration.

19. Since at least the 1940s, the irrigators of the Beck property have used Nevada Creek for the historical irrigation of 630 acres in sections 27 and 28. The land and water rights were formerly owned by Mr. Blair. The record does not include evidence about irrigation between 1909 and about 1943. Charles Beck irrigated the place beginning about 1943 but did not give evidence that he had to put in a diversion or dig a new ditch to do so. The system had to have been in place before he began irrigating. The irrigators of the Beck property since before the time of Charles Beck's irrigating have used Nevada Creek water to irrigate the 630 acres described in their abstracts.

20. The irrigators of the Quigley property have used Nevada Creek for the historical irrigation of 270 acres in sections 33 and 34. The land and water rights were formerly owned by Mr. Blair.

21. The disputed Nevada Creek water rights should be divided between Quigleys and Beck in proportion to the irrigated acres each holds by mesne conveyances from J. W. Blair. This result is compelled by *Bullerdick v. Hermsmeyer*, 32 Mont. 541, 553; 81P. 334, 337 (1905), and *Spaeth v. Emmett*, 142 Mont. 231, 236-7, 383 P.2d 812 (1963).

22. The decreed flow rates and priority dates based upon water rights from Nevada Creek decreed to John W. Blair in Cause No. 143 are shown below, with the Beck and Quigley claims paired:

- a. Claim 76F 117732-00 (Beck)/Claim 76F 108071-00 (Quigley), 75 miner's inches (1.88 cfs), priority date April 28, 1876.
- b. Claim 76F 120974-00 (Beck)/Claim 76F 108075-00 (Quigley), 100 miner's inches (2.50 cfs), priority date October 14, 1898.
- c. Claim 76F 120975-00(Beck)/Claim 76F 108077-00 (Quigley), 100 miner's inches (2.50 cfs), priority date June 10, 1889.
- d. Claim 76F 120976-00 (Beck)/Claim 76F 108076-00 (Quigley), 150 Miner's Inches (3.75 cfs), priority date September 30, 1898.

23. The division indicated by *Spaeth* is  $630/900 = 70\%$  for Beck,  $270/900 = 30\%$  for Quigleys, which yields this result:

Claim	Claimant	Priority Date	Flow Rate
76F 108071-00	Quigley	April 28, 1876	0.564 cfs
76F 117732-00	Beck	April 28, 1876	1.316 cfs
76F 108077-00	Quigley	June 10, 1889	0.75 cfs
76F 120975-00	Beck	June 10, 1889	1.75 cfs
76F 108076-00	Quigley	September 30, 1898	1.125 cfs
76F 120976-00	Beck	September 30, 1898	2.625 cfs
76F 108075-00	Quigley	October 14, 1898	0.75 cfs
76F 120974-00	Beck	October 14, 1898	1.75 cfs

24. Accept the stipulated changes to claim 76F 97900-00.

25. The record does not contain evidence concerning claim 76F 108074-00.

There are no changes to the claim.

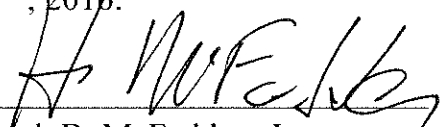
26. While the irrigated acreage under the decreed claims may have changed or expanded after the district court decree, the record does not include evidence which would allow us to decide the timing or extent of any expansion sufficiently to create implied claims for any expansion that did happen.

27. Each abstract should bear an information remark which says that the owner is entitled to the appropriation at his field boundary.

Recommendations

Make the changes listed above to the abstracts.

DATED this 22 day of April, 2016.

  
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