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In re Scott Ranch, LLC, 402 P.3d 1207 (Mont. 2017)

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contained in a settlement agreement . . . the settlement agreement is recorded in Bingham county [] and Bonneville county [] and is enforceable by the parties thereto.”

Consequently, the Settlement Agreement cannot define, add, or subtract from the defining elements of 181C. It can only provide “additional conditions and limitations” on the exercise of 181C. To allow the Settlement Agreement to enlarge or otherwise alter the clearly decreed elements of 181C would allow private parties to alter a judicial decree.

The Court then determined if the circumstances demonstrate mitigation for 12261 regardless of the elements of 181C. The City argued that incidental recharge occurs from the seepage each year at the Jensen reservoir, and therefore, recharge should be an authorized use of 181C without filing a transfer. However, the Court held that recharge is a statutorily recognized beneficial use which must be identified under the purpose of use element of a water right. Water right 181C does not include recharge, and incidental recharge cannot be used to claim or expand that water right. Accordingly, without a transfer approving recharge as a beneficial use, any seepage that occurs under 181C is incidental recharge and not eligible to be used for mitigation purposes.

The Idaho Supreme Court affirmed the district court ruling that the plain unambiguous language of 181C’s purpose of use element does not authorize the City to use water for recharge and if the City wanted to use 181C as mitigation for 12261 it would have to file a transfer.

Natalie Norcutt

MONTANA

In re Scott Ranch, LLC, 402 P.3d 1207 (Mont. 2017) (holding that: (i) water rights claims were recognized under state law, not as a federally reserved water right established under the Crow compact; and (ii) the water court lacked jurisdiction to adjudicate the water rights claims, which should instead be filed with the Department of Natural Resources and Environment under the exempt claims filing procedure pursuant to the revised statute).

Scott Ranch is a Montana limited liability company owned by three non-Indian siblings that acquired Indian allotment lands in Big Horn County within the Crow Indian Reservation (“Crow Reservation”) in Montana. The lands were previously held in trust by the United States for the benefit of Thor Lande, a member of the Crow Tribe who was an allottee of the Crow Reservation’s federally reserved water right. Lande passed away in 1997, and the United States issued fee patents and converted the lands to fee status in 2006. Scott Ranch purchased the lands from an heir of Lande in 2010 and 2012.

In July of 2016, Scott Ranch filed for adjudication of existing water rights in the water court, asserting all of its forty-seven claims were exempt from the filing requirements of sections 85-2-221 and -222 of the Montana Constitution. Scott Ranch claimed that its water rights were not available for state adjudication until 2006 when the fee patents were issued, and it filed the petition on the ground that the recent issuance of fee patents created a unique set of facts that prevented it or its predecessors-in-interest from seeking adjudication until now. Scott Ranch additionally claimed that it possessed “Walton” rights, water rights held by a non-Indian successor to allotment lands derived from the allottee’s share

of the federally reserved water rights for the reservation, as appurtenances to the lands.

In November 2016, the water court denied Scott Ranch's petition and held that the water rights were part of the tribal water right established under the Crow Compact because Scott Ranch's water rights were appurtenant to an allotment and the allottee's water rights were part of the tribal water right. Consequently, the water court determined that Scott Ranch's water rights did not require separate adjudication. After Scott Ranch moved for amended judgment in December 2016 that its *Walton* rights should be subject to state law, the water court held that Scott Ranch's water rights did not exist until the ratification of the Crow Compact in 1999; therefore, Scott Ranch had no separate water rights, and the allottees could not have conveyed such a separate right. Scott Ranch appealed.

The Supreme Court of Montana first considered whether Scott Ranch had "existing" water rights. The Water Use of Act of 1973 ("the Act") defines an existing water right as a right to use of water that would be protected under the law as it existed prior to July 1, 1973. All water rights appropriated after July 1, 1973, must submit to a mandatory permitting process administered by the Department of Natural Resources and Conservation ("the Department"). Federal law mandates that an Indian reservation receives an implied entitlement to the water rights within its boundaries with the priority date being the date of the reservation's creation. The Crow Reservation's water rights have a priority date of 1868; thus, the Crow Tribe's water rights were "existing" prior to the enactment of the Act, which means that Scott Ranch's water rights existed as well.

Next, the Court answered the question of whether Scott Ranch has *Walton* rights. Non-Indian successors to Indian allotment lands acquire *Walton* rights because the water rights appurtenant to the tribal member's land transfer to a non-member when the tribal member conveys the land to the non-member. Scott Ranch is a non-Indian successor-in-interest to allotment lands conveyed by Lande. Therefore, it possesses *Walton* rights.

Third, the Court affirmed that Scott Ranch's water rights are governed by state law. Under the Crow Compact, state law recognizes water rights held by a non-tribal member that the United States does not hold in trust. Scott Ranch acquired the water rights from a tribal allottee, not out of the Crow Compact, and therefore state law governs its rights.

Lastly was the question of whether the water court had jurisdiction to adjudicate Scott Ranch's claims. All claims for existing water rights must have been filed by July 1, 1996 under section 85-2-221(1) of the Montana Constitution unless exempted by section 85-2-222. Water rights claims existing before 1973 are exempt if they are for livestock or individual uses as opposed to municipal uses, but an amendment to the Act allows claims for exempt water rights to be filed until June 30, 2019, which must be adjudicated through the required filing procedures with the Department. Forty-five of Scott Ranch's forty-seven claims were for livestock or individual uses and were thereby exempt from the filing deadline. Its other two claims, Scott Ranch argued, were not subject to the exempt claims requirements even though they were not for livestock or domestic uses. However, the water court may not adjudicate claims of non-exempt water rights filed after July 1, 1996. Thus, the water court did not have jurisdiction over Scott Ranch's claims and could not hear its petition.

Accordingly, the Supreme Court reversed the water court's judgment denying Scott Ranch's petition and remanded the case with instructions to dismiss without prejudice so that Scott Ranch may file exempted water rights claims with the Department using the proper filing procedures under the revised statute.

Gianni Puglielli

Danreuther Ranches v. Farmers Coop. Canal Co., 403 P.3d 332 (Mont. 2017) (holding that: (i) Danreuther's statement of claims is presumed valid because proof of precise facts as to persons' activities over one hundred years ago is often not possible, even where written records are kept; and (ii) the trial court erred in finding an implied second water right based on filings by Danreuther's predecessor in interest in 1880 and 1887 for water rights because the second filing related back to the date of the first filing).

Danreuther Ranch ("Danreuther") filed claims for irrigation and stockwater rights from the Teton River. Farmers Cooperative Canal Company ("Canal Company") objected to the claims. The water court upheld Danreuther's claims based on a presumption of validity regarding historical filings. However, the water court found that Danreuther's predecessor in interest had increased farming acreage from nine to fifty acres, as stated in their 1880 and 1887 filings, which gave rise to the implication of a second separate water right. The Canal Company appealed and Danreuther cross-appealed. The Montana Supreme Court reviewed the appeal for clear error.

The Court first considered whether the water court had committed clear error in finding Danreuther had inherited various claims. The first claim the court reviewed stemmed from an 1874 filing by Nelson Vieux ("Vieux"), Danreuther's predecessor in interest. The court found Vieux's 1874 claim was sufficient to establish a water right because the contents of a statement of claims are presumptively true unless overcome by a preponderance of the evidence. The Court reasoned that proof of precise facts as to specific activities that occurred over 100 years ago is difficult to obtain, even when written records exist. Courts will presume facts in the record to be true, unless the objector can provide sufficient evidence to rebut the presumption of validity. Otherwise, the Court reasoned, claimants would be subject to an unjustifiably heavy burden to prove the existence of their claim.

The Court upheld the presumption of validity of Vieux's 1874 filing. The Court found that Vieux's various filings, along with the fact that Vieux's irrigated acreage increased from nine to fifty acres in an area unsuitable for non-irrigated farming, were sufficient evidence that Vieux was in fact irrigating acreage and working on perfecting his 1880 claim. Furthermore, the Court found the lack of actual evidence that Vieux started any ditch construction in 1874 as insufficient to overcome the presumption of validity. The Court affirmed the water court's ruling and held that the lower court had not committed clear error in finding Danreuther had a valid claim as an inheritor of Vieux's 1874 filing.

In addition to valid water claims by Vieux, the lower court found that Danreuther had inherited a second valid claim through a 1914 notice of appropriation filed by his predecessor in interest Helen Hibbard ("Hibbard"). Ap-