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## Giese v. Blixrud, 285 P.3d 458 (Mont. 2012)

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**Giese v. Blixrud, 285 P.3d 458 (Mont. 2012)** (holding a district court must certify a petition to the Chief Water Judge when the petition alleges a dispute between water users on a water source where prior court decrees have not conclusively determined all parties' rights on that water source).

In 1908, the Montana Eleventh Judicial District Court ("district court") adjudicated water rights on the upper portion of the Teton River in *Perry v. Beattie*. This decision, which was part of the district court's ongoing adjudication of the State's water, decreed certain water rights on the upper Teton River and appointed a Water Commissioner to administer the decreed rights. Fifty to sixty years after *Perry*, the Water Commissioner began diverting a majority of upper Teton River flow into the Bateman Ditch, which runs parallel to the natural channel of the river before it re-enters the natural river channel of the lower Teton River above the Burd Ditch. While water commissioners in Montana commonly employed this type of diversion, the district court did not specifically authorize this measure in any prior decree.

Monte Giese, Steven Kelly, and William Reichelt ("Plaintiffs") initially filed suit in February 2011 in District Court for Teton County ("district court" as hereinafter used) against the Water Commissioner. Their complaint sought to cease the Water Commissioner's diversions of excess water into the Bateman Ditch and to satisfy their senior water rights on the lower Teton River. Plaintiffs contended their water rights were senior to many of those adjudicated under *Perry*. The district court dismissed Plaintiff's complaint because Plaintiffs had other procedural remedies available to satisfy the relief requested. In its dismissal, however, the district court invited Plaintiffs to select their other remedy of certifying their petition to the Chief Water Judge under MCA § 85-2-406(2)(b) ("statute"). The statute created a right to certify questions of law to a water court when such questions were not yet conclusively determined under a water rights decree.

Plaintiffs abided and filed their amended petition. However, the district court again dismissed their petition on a motion summary judgment, finding Plaintiffs failed to state a valid claim to a water right on the lower Teton River. Specifically, the district court found Plaintiffs failed to specifically claim water rights on the lower Teton River adverse to the upper Teton rights adjudicated in *Perry*.

On appeal, the Montana Supreme Court first established that a district court's dismissal of a complaint for failure to state a claim may only be affirmed if the plaintiff is not entitled to relief under any set of facts alleged, when such facts are taken as true. Here, the statute provided that any party to a controversy arising over a water source in which all existing rights have not been conclusive determined may petition the district court to certify the matter to the Chief Water Judge.

With respect to Plaintiffs' claims, the Court held Plaintiffs satisfied their burden under the statute because they (i) established a controversy; and (ii) proved that prior court decrees have not conclusively established their water rights. First, the Court held Plaintiffs' petition properly established a controversy over a water source by alleging the Water Commission ignored calls on upstream water users with rights junior to those of Plaintiffs. The Court identified further proof of a controversy over a water source in Plaintiffs' challenge

to the Water Commissioner's diversion of water in excess of the decreed rights under *Perry*. Second, the Court held Plaintiffs proved prior court decrees did not conclusively establish their water rights, because Plaintiffs claimed water rights not yet subject to a water decree in the lower Teton River, a portion of the river that *Perry* did not specifically adjudicate.

Moreover, the Court held the district court's determination of its authority and obligation to water users operating under a water decree alone would be contrary to the statute. The Court noted that adopting the district court's view would leave parties without conclusive water decrees without a means of protecting their water rights. Viewing Plaintiffs' complaint in a light most favorable to Plaintiffs, the Court held the district court erred in dismissing the Plaintiffs' petition and not certifying the petition to the Chief Water Judge.

Accordingly, the Court reversed the district court and held the district court's dismissal of Plaintiffs' certification under the statute was inappropriate.

*Jacob A. Watterson*

**Montana Dep't of Natural Res. & Conservation v. ABBCO Inv., LLC, 285 P.3d 532 (Mont. 2012)** (holding (i) the State of Montana held islands that arose vertically from the river bed after statehood in trust for funding for public schools; (ii) the State provided sufficient evidence of the boundary of the land to place a legal description of the land in a final judgment; (iii) the district court violated the State's due process rights when it required the State to reimburse defendants for all property taxes and improvements on the land; and (iv) the judgment in favor of the State allowed it to recover costs).

In 2006, the State of Montana brought a quiet title action in the Seventh Judicial District Court ("district court") concerning three islands with an aggregate land area of roughly 487 acres, located in the Richland County section of the Missouri River. The islands initially grew out of the riverbed due to sediment accretion. Over time, these islands became attached to the riverbank.

The State claimed that, because the islands emerged after statehood, its title to the land was superior to that of all the defendants named in the complaint, and filed a motion for summary judgment. In its motion for summary judgment, the State asserted that the lands at issue were property characterized as "vertical accretions to a navigable river" and thus the property of the State to be held in trust for common public schools. Defendants Boyde Hardy, Shirley Hardy, Hardy Investments, L.P., and Nickie Roth (collectively, "Defendants") filed an answer and cross-motion for summary judgment alleging they owned parts of the land in fee simple because they had acquired rightful title to the land by adverse possession.

The district court granted summary judgment in favor of Montana, finding the State had title to the land based under the equal footing doctrine and Defendants could not acquire title by adverse possession against public trust land. The district court further ruled, however, that the riverbeds were not school trust lands because the land board had never designated them as such. The district court also ruled *sua sponte* and under the doctrine of unjust enrichment that the State was required to reimburse Defendants for all paid property taxes and improvements on the land, but required each party to pay its own