FILED
08/23/2021
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 21-0079

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0079

EAST BENCH IRRIGATION DISTRICT; UNITED STATES OF AMERICA (Bureau of Reclamation),

Claimants and Appellees,

EAST BENCH IRRIGATION DISTRICT; POINT OF ROCKS ANGUS RANCH, INC.,

Objectors and Appellees,

MADISON VALLEY GARDEN RANCH, LLC

Counterobjector and Appellee,

OPEN A RANCH, INC.,

Counterobjector and Appellant,

GEODUCK LAND & CATTLE, LLC; SMITH'S ELK MEADOWS RANCH, LLC,

Notice of Intent to Appear and Appellees,

BAR J. RANCH; DAVID E. & SHELLI SCHUETT; BALDY VIEW ENTERPRISES, LLC; WILLIAM C. MANCORONAL; ROXANNE E. MANCORONAL; JUSTIN D. DEVERS; WILLIAM R. GROSE; POINT OF ROCKS ANGUS RANCH, INC.; CLARK CANYON WATER SUPPPLY,

Intervenors and Appellees.

RESPONSE BRIEF OF APPELLEES

On Appeal from the Montana Water Court, Case No,: 41B-265,
The Honorable Russ McElyea, Chief Water Judge Presiding

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STATEMENT OF ISSUES

1. Whether the Water Court correctly concluded that EBID historically irrigated 28,005 acres within a Service Area?

2. Whether the Water Court correctly identified a service area place of use for water right 41B 40854-00?

3. Whether the Water Court correctly described the relationship between CCWSC Project User's private water rights and water right 41B 40854-00?

STATEMENT OF THE CASE

Claimant and Appellee East Bench Irrigation District ("EBID") and Intervenor and Appellee Clark Canyon Water Supply Company ("CCWSC") jointly file this Response Brief and generally concur with the Statement of the Case as presented by Appellant Open A Ranch Inc. ("Open A").

STATEMENT OF FACTS

HISTORY OF BEAVERHEAD VALLEY AND EAST BENCH UNIT

The Beaverhead River basin begins at the confluence of Horse Prairie Creek and the Red Rock River and flows north to Twin Bridges, where it joins the Ruby and Big Hole Rivers to form the Jefferson River. Before the Clark Canyon Dam was constructed, the Beaverhead River provided an erratic water supply with excessive flood irrigation that ruined much land. (OA Ex. 29, 002351).

The East Bench refers to a swath of land that runs from south of Dillon

nearly to Twin Bridges in Madison County and was long eyed for its irrigation potential, if only water could be obtained. Storage and regulation of the water supply was an obvious solution to the hydrological problem, and investigations into how to store water and develop land on the East Bench began as early as 1919. (EBID Ex. 49, 9[1]). In 1922, landowners organized a 25,000 acre EBID, planning a diversion of the Beaverhead River to a storage reservoir on Grasshopper Creek, but this project was never built. (EBID Ex. 49, 9). Due to this interest, in 1938, the Bureau of Reclamation ("BOR") began field work on studies that ultimately led to a reconnaissance report for the Missouri River and its tributaries.

"Missouri River Basin," published in Senate Document 191 (78th Congress, 2d session) recommended transferring water rights to the reservoir owned by landowners in Beaverhead Valley and the East Bench Unit ("EBU") was included in the plan for the Pick-Sloan Missouri Basin Program (formerly Missouri River Basin Project) presented in this report and authorized by Congress in 1944. In 1956, BOR prepared a definite plan report ("DPR") on the EBU. (EBID Ex. 49, 10-11). A revised DPR was prepared in April 1960. (OA Ex. 28). The plan included impounding water in the Clark Canyon Reservoir that would furnish a full

[1] Exhibits at trial were labeled EBID & CCWSC but here are identified only by EBID to abbreviate the citations. Certain documents were unable to be Bates numbered and are identified by the running page number of the entire document which may be different than the actual number on the page of text.

supply of water for irrigation on the East Bench and a supplemental supply of water for valley lands with existing water rights. (EBID Ex. 1, 5).

The 1960 DPR identifies some of the problems that the EBU was intended to solve:

> The average [Beaverhead Valley] operator is in a most untenable position. He cannot intelligently expand and improve his present operation because of the uncertainties associated with an unstable water supply. . . With the improved and stabilized water supply that will be provided under the proposed plan of development, the average operator can establish a more profitable relationship between investments in land, labor, and capital.

(OA Ex. 29, 002352) (emphasis supplied).

PLANNING AND FEASIBILITY OF EAST BENCH UNIT

The June 30, 1950 *Annual Report of the Commissioner Bureau of Reclamation to the Secretary of the Interior Michael Straus* identifies a DPR is used "as a check to determine the engineering, agricultural, and economic soundness of the plan in its various details of development… before actual construction is undertaken." (OA Ex. 46). The 1960 Beaverhead DPR "was an attempt to estimate project size, water availability, water needs, project costs, and expense reimbursement." (Order Den. Open A Ranch Mot. for Partial Summ. J. at 5 (July 3, 2019) ("July 3 Order")). BOR used a Benefit-Cost ratio to justify the expense of building the dam. It identified certain lands as Pay Class, or irrigable, lands that would provide a return on the government's investment. The DPR

found that the minimum number of irrigated acres that would return an acceptable cost benefit ration were 21,800 full service and 28,004 supplemental service acres. (OA Ex. 28, 43-47, G-1, G-44 to G-45; D4, 95:25-96-8).

The BOR's expert, Rita Frasure explained that the DPR was an economic/financial feasibility study answering the question: can it [the EBU project] pay for itself? (D4, 14:16-20). According to the BOR's expert, nothing in the DPR was intended to limit either the economic benefit or the number of acres or a defined acreage. (D4, 99:4-16).

AUTHORIZATION AND CONSTRUCTION

Authorized by the 1944 "Pick-Sloan Act," or Flood Control Act, Flood Control Act of 1944, Pub. L. 78-534, 58 Stat. 887 (1944), the BOR built the Clark Canyon Dam as an on-stream reservoir at the head of the Beaverhead River to impound surplus water flows.

Acquisition of lands was required as 57% of the bench lands were owned by the State of Montana which agreed to sell these lands to further the project; 57 farm units containing 22,144 acres of land were sold at public auction by the State of Montana on November 20-21, 1963. (EBID Ex. 2, 0009; EBID Ex. 49, 19).

Although President Eisenhower vetoed the bill authorizing the EBU, Senators Mansfield and Metcalf persuaded Congress to override the veto. (EBID Ex. 2, 0010). Construction began in the late 1950's and water was first available

for the 1965 irrigation season.

Although recreationists were initially opposed to the dam, the impact of a regulated flow of water on fish populations was ultimately recognized as a benefit-- "Montana Outdoors" reported the EBU has played the pivotal role in making the upper Beaverhead one of the finest wild trout fisheries in the nation. (EBID Ex. 2, 0011; EBID Ex. 49, 17-18).

Today, the EBU consists of 156 Farm Units providing full-service water to approximately 120 farms in the EBID with 134 Farm Units providing supplemental water to approximately 160 farms in the CCWSC through private water rights. (EBID Ex.'s 5, 51, 54; US Ex. 034)

EAST BENCH IRRIGATION DISTRICT

EBID was formed by an order of the Madison County District Court in 1957 pursuant to § 85-7-107, MCA. *In re Formation of E. Bench Irrigation Dist*., 2009 MT 135, ¶ 10, 350 Mont. 309, 207 P.3d 1097. EBID executed a water service contract with BOR on October 8, 1958. (OA Ex. 50). BOR agreed to furnish a water supply for the district from natural flows and stored water in the amount of "3.1 acre feet of water per irrigable acre per annum and such further amount as is available and is required for beneficial use on District lands," subject to the "senior rights of prior appropriators." *Id*. at 2-3 (¶ 1(e)). EBID agreed to pay water service charges and to repay its share of construction costs. *Id*. at 3, 5 (¶¶ 4, 9).

In accordance with federal reclamation law, 43 U.S.C. § 485h(d)(1), the contract specified a ten-year "development period" in which EBID would be subject to reduced operation and maintenance costs and during which the obligation to repay construction costs would be postponed. *Id*. at 3, 5-6 (¶¶ 4, 9-10). EBID and BOR co-own natural flow claim 41B 40850-00 which is used within the irrigation district. (EBID Ex. 1, 16; EBID Ex.'s 55 & 56).

CLARK CANYON WATER SUPPLY COMPANY

CCWSC is a Montana Corporation that contracts with BOR for supplemental water that it delivers to its shareholders. (EBID Ex. 6; OA Ex. 28, I-4). The creation of CCWSC was the solution to a complicated problem—how to deliver supplemental water but assure the water users that their existing rights would not be taken. (EBID Ex. 2, 4).

Carl Davis, a local Dillon attorney who was instrumental in setting up the project, explained the relationship between the private rights and supplemental water in his 1980 Water Symposium address:

> These [CCWSC shareholders] rights were evaluated and if a landowner, for example, was trying to irrigate 200 acres but only had a sufficient water supply for 150 acres he could buy supplemental water for the additional 50 acres. . . . The by-laws of the corporation provided that each stockholder would receive a minimum of 4 acre feet of water for each irrigable acre with the allotment increased to 5 acre feet when water was available. . . This unique approach was the first time a private corporation was used for purposes of contracting for repayment with [BOR].

(EBID Ex. 2, 4).

CCWSC entered a water service contract with BOR on October 8, 1958. EBID. (OA Ex. 35). The water CCWSC purchases from BOR and provides to its users is stored under BOR's storage water right claim 41B 40854-00. The 1958 contract identifies the need for supplemental water to fully irrigate shareholder lands, and explains that "all agree[d] to curtail the full exercise of their [pre-existing] rights" in exchange for reservoir regulation and supplemental water. *Id.* at 1. The contract explained that from the "conservation storage," the United States furnished water: (1) first priority to CCWSC shareholders, in the amount of 4.0 a.f.a. for shareholder lands under irrigation or with "valid irrigation rights" upon the date of the contract; (2) second priority to EBID, in the amount of 3.1 a.f.a, for "each of the irrigable acres" in the district; and (3) third priority to CCWSC, in the amount of any remaining "available" water, "in excess of 4 [a.f.a.] as can be used during the irrigation season under subsisting water rights on [shareholder] lands." *Id.* at 3-4.

To repay BOR, CCWSC sold shares to existing irrigators identified as Class A, B, C shares. (EBID Ex. 6, 4). Class A shares were for lands that had a "full and sufficient" water right from natural flow and which were to be assessed for operation and maintenance costs only. *Id.* Class B and C shares were issued for lands requiring supplemental water to achieve a full irrigation supply, defined as

4.0 acre feet per acre ("a.f.a"). *Id*. CCWSC ultimately issued shares covering 25,995 acres. (OA Ex. 31, 4).

Steve Cottom, a member of CCWSC, explained that the 25,995 "Share Acres" form the basis of a volume allotment of water that the Company distributes to its shareholders. (D2, 57:1-6). In a typical year, the allotment is 4 a.f.a and CCWSC receives a total volume of 103,980 acre feet divided amongst its 160 shareholders.

The CCWSC Subscription Agreements were the instrument by which the Company and Shareholder were obligated to one another to deliver and pay for supplemental water. The Subscription Agreements do not identify any particular acres to which water must be applied. (OA Ex. 42 BN 002743-002745).

The CCWSC's subscription process did not alter the Shareholders' senior existing water rights, nor did it reduce the acres the Shareholders' could irrigate with senior existing water rights and the supplemental water supplied by the CCWSC. (EBID Ex. 6, MVGR 15,16).

WATER RIGHTS FOR THE EBU

The basis of storage right 41B 40854-00 is BOR's timely filed a notice of appropriation dated February 21, 1961 to "construct a dam and reservoir on the mainstem of the Beaverhead River . . . to regulate waters appropriated by various users in the Beaverhead Valley, Beaverhead County, Montana and to store, utilize,

and administer under the federal reclamation laws, all of the unappropriated and undecreed flood flows of the Beaverhead River but not in excess of the amount of water required to fill at any given time, the said reservoir of 261,000 acre-feet capacity. . . . 3. The place of the intended consumptive use of the water is hereby appropriated and claimed for domestic, livestock grazing, irrigation, mining, industrial, municipal and other miscellaneous purposes is generally within the Beaverhead Valley in Beaverhead and Madison Counties, Montana, in the general vicinity of Dillon Montana." (EBID Ex. 56, 0962-0963; US Ex. 039, BN 0956-0961) (emphasis added).

CONSTRUCTION AND DEVELOPMENT OF EBU

Between 1961 and 1965 BOR, constructed Clark Canyon Dam and built out the other structures of the EBU, but in many details the "as built" version of the EBU deviated from the DPR plans. For example, the number of pay class acres that formed the basis of the water allotment, was increased from 21,800 to 22,722 post construction. (D2, 54; D4, 102:17-18).

The DPR estimated the length of the canal as either 46 or 53 miles long canal--today the "as built" length of the canal is today 44 miles long. (D4, 244:22-24). Even the amount of stored water available for sale changed in volume. In 1965, BOR negotiated an additional 20,000 acre feet of joint use storage from the U.S. Army Corps. of Engineers because it had additional water to sell to new

shareholders in CCWSC who had not signed up yet. (EBID Ex. 11, 00012; D4, 330:11-23).

The original boundaries of the Irrigation District have not survived intact. With changes in land ownership and irrigation patterns, legal modifications to the boundaries have been granted by the District Courts of both Madison and Beaverhead Counties and the Supreme Court. *See In re Formation of East Bench Irrigation Dist.*, *supra*. (EBID Ex.'s 42-47).

CCWSC's infrastructure was largely in place at the time of contracting, but the final number of Share Acres was different from what was anticipated in the DPR--while the DPR identified 28,004 Share Acres, the Company eventually sold 25,995. (D4, 311:10-16; D4, 328:16-25).

Water was delivered for the first season in April of 1965 which began the development period and the users of EBID began breaking new ground and applying the water to beneficial use. (EBID Ex.22; OA Ex. 50).

PROJECT DEVELOPMENT

Contractual period

Pursuant to its contract with EBID, BOR identified a ten-year development period, after which the farmers would take over operations. (OA Ex. 50). Recognizing the challenges of laying out new farms and irrigating new acreage, BOR contracted with Extension Service of Montana State College and the Soil

Conservation Service to implement a “settler assistance program” to iron out financial and technical problems. (EBID Ex. 49, 20).

During this period, the amount paid by the members for water would be less than what it cost to operate and maintain the project-- not more than 50 cents per irrigable acre per year . . . after that time the water users will begin paying an additional charge of $2.25 per acre per year for their share of the construction costs. (EBID Ex. 37 at 0370; EBID Ex. 32 at 0293; D2, 84:4-23).

BOR’s expert explained that the ten-year development period was akin to “training wheels” where the farmers learned how to operate, costs were less. (D4, 19:2-21). There were no rules mandating that farms had to be fully developed by end of development period. (D2, 89:1-4).

Actual Development

The EBU project was designed as a flood irrigation project. But, when electric pump and sprinkler technology arrived, farmers quickly adapted to this revolutionary method of irrigated agriculture. (D2, 86:2-3; 84:4-23). Technology allowed for the efficient use of the same amount of water to more acres. (D2, 80:6-15; D4, 329: 17-20).

Testimony at trial came from representative EBID farmers who explained what it was like to implement the plans from the US government engineers and economists on over 20,000 acres of dry, unbroken ground that had never been

irrigated; "it was virgin ground with sagebrush, cactus, and prairie mounds" (D4, 256:7-20).

The first full year of irrigation the project lands yielded 16,307 acres of crops; in 1967 full irrigation service increased by 2,443 acres, and in 1968 another 1,701 acres were put into production. (EBID Ex.'s 49, 20).

By the early 1970s, EBID landowners turned to sprinkler systems, which over time became increasingly sophisticated. (US Ex. 4 at 2; D4, 274:22-275:-7; 289:11-21). This allowed EBID landowners gradually to irrigate more of their lands, including lands originally deemed non-irrigable. *Id*.; *see also*, OA Appendix 2 at 6-7.

According to BOR's expert, from 1964 to 1974, BOR was aware of changes and expansion in acres but was not concerned as long as the farmers stayed within their allocation. (D4, 104:13-21.) Expansion continued through conversion from flood to sprinkler, bringing in more Class 4 and 6 lands all until 1979. (D4, 105:10-22). BOR's expert testified that 14 years (from 1965-1979) to develop a project like the East Bench was a reasonable amount of time to build out an irrigation system of this size. (D4, 170:22-171-3). When electricity costs increased in the 1980's, the operators on the north end of the project built pressurized pipelines, Gravity One and Two that ended up servicing 6,000 and 2,000 acres respectively. (D4, 2642:1-25; D4, 277:4-278:6). Almost all acreage irrigated

today on the project is done by a method (sprinkler and pump) not considered in the DPR. (D2, 86:2-3). BOR never limited irrigation to only the Class 1, 2 and 3 acres in East Bench Irrigation District. (D1, 86:11-1). Any increase in acreage did not lead to increase in water allotted to the District; in fact the volume stayed the same. (D4, 105;2-9).

IRRIGATION PRACTICES IN THE VALLEY, CCWSC

The advent of a stable water supply provided more hydrological certainty allowing a farmer of the CCWSC to "intelligently expand and improve his present operation." (OA Ex. 29, 002352). After 1965, CCWSC shareholders adapted to the newly regulated supply of water in the Beaverhead, and like irrigators across the West, changed from flood to sprinkler irrigation, greatly increasing efficiency.

Stored water is delivered to CCWSC users at the same time that reservoir inflows are being passed to the reservoir to satisfy the demands of senior downstream users including CCWSC members. (D4, 109: 14-20).

Although CCWSC required each shareholder to have an underlying water right that received supplemental water from BOR's storage, this water was mixed in each farmers allotment, which is generally 4.0 a.f.a. and there is no practical way to differentiate between stored water and the underlying private water right. (D1, 231; OA Ex. 99, 3498-3499).

CCWSC shareholders' places of use were known as Farm Units and they

moved water around within their Farm Units without regard for the particular classification of the ground as 1, 2, 3, 4, or 6 type acres by the DPR. (D4, 314:23-315:5). CCWSC's treasurer testified that he had seen DPR Table G-23, (OA. Appendix 5) but did not consult it in determining what lands to irrigate. (D4, 299:2-17; (D4, 298:16-25).

CCWSC shareholders explained at trial that during the irrigation season, "they just had an allocation [of water] for the [farm] unit." (D4, 315:4-11). Under the arrangement with BOR, the individual farmer, the CCWSC shareholder, is free to make the best economic use of the water within the limits of the contract. (D4, 65:10-21). Farmers of the Beaverhead basin did not ask, and the BOR did not tell them where on their property, they could spread their combined supplemental and stored water allotment. *Id.* BOR has no control over where the water goes once it is delivered to the headgate of a CCWSC user and never limited irrigation to certain acres--rather the shareholders were held to their allotments. (D1, 86:17-21; D4, 64:1-3).

2006 CONTRACTS BETWEEN BOR AND EBID AND CCWSC

Because the 1958 CCWSC and EBID contract had 40-year terms, EBID and CCWSC entered new contracts with BOR in November 2006 after performing an Environmental Assessment and a resulting Finding of No Significant Impact. (US Exs. 7 & 8. OA Ex. 35, 2-3; EBID Ex. 1).

The 2006 contracts specify that BOR is to distribute, from stored and natural flows, first priority to CCWSC in the amount of 4.0 a.f.a. for each of the 25,995 "share" acres; second priority to EBID in the amount of 3.1 a.f.a for each of 22,689[2] irrigable acres, and third priority, when sufficient water is available, in an additional amount of 0.5 a.f.a. for each of the 25,995 "share acres" within CCWSC. (EBID Ex. 10, 0183; Ex. 33, 0315).

The 2006 contracts identify 28,055 acres of eligible land within EBID, (US Ex. 7, 0068, 0094-95), and 33,706 acres of eligible land among CCWSC shareholders (US Ex. 8, 0120, 0140-42; D2, 57:7-11). EBID based this number on the maximum extent of its water allotment.

For CCWSC, the annual allotments are based on the originally determined "share" and "irrigable" acres[3] amounting to 25,995--the 2006 contracts specify that the allotments may be used on all project "eligible" lands, defined as lands with water rights or pending water-rights claims. (US Ex. 7, 0085, 0092-95; US Ex. 8, 0133, 0140-43). 33,706 was the number that represented the sum total of what all the shareholders in the Company believed that they could legitimately defend in

[2] 22,689 acres is the current, corrected number of EBID's class 1, 2, and 3 acres for calculating the volume of the project and billing after accounting for the reduction of lands near the Dillon Airport. (D2, 54; D4, 240).

[3] The 25,995 number was called "Share Acres" in the 1958 Contract and was renamed to "Allotment Acres" in the 2006 Contract. (D2, 57:1-6).

the adjudication, or what the limit of what they had expanded to before 1973. (D2, 57:12-25).

The 2006 Contract also stated that the maximum acres described for each entity "provides a general understanding of the eligible acres eligible to receive Contract water" and that such acres were subject to revision. (EBID Ex. 10, 213). The Court correctly found that these provisions are not consistent with intent to restrict irrigation to acreage referenced in the DPR. (Final Order, 25).

STANDARD OF REVIEW

While Open A correctly recites the appropriate standards of review, its argument incorrectly urges de novo review for a factual finding by the Water Court. Specifically, Open A asserts that the determination by the Chief Water Judge that that "EBID members historically irrigated up to 28,005 acres within EBID's Service Area." Final Order, p. 41 is a legal issue and subject to de novo review. However, the case it cites in support of such a non-deferential standard of review, *Curry v. Pondera County Canal & Reservoir Co.,* 2016 MT 77, 383 Mont 93, 370 P.3d 440 (Appellant Opening Brief, p 30) actually concerned two standards of review involving both a Water Master's decision, the Water Court's review of that decision, and this Court's review of the Water Court's decision. *Id* at 17. In *Curry*, this Court applied de novo review only to the legal errors presented, not the factual determination.

Unlike the posture of that case, the decision appealed is not intermediate. Here, the Chief Judge sat as the trier of fact, and rendered his decision based on the facts as he found them. No intermediate Water Master decision is involved and, as the trier of fact, the Chief Judge is entitled to deference in his factual findings as he assessed the credibility of the evidence and witness testimony presented. Stated another way, the underlying findings supporting the Water Court's ruling must be upheld unless Open A can show that the Water Court somehow abused its discretion by issuing clearly erroneous factual findings. *Little Big Warm Ranch, LLC v. Doll*, 2018 MT 300, ¶ 8, 393 Mont. 435, 431 P.3d 342. As argued below, it has made no such showing.

"A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if after reviewing the entire record, this Court is left with the definite and firm conviction that a mistake was made." *Id*.

This Court should reject Open A's attempt to recharacterize the issues of fact underlying its position as issues of law. The Court must review the evidence in the light most favorable to the prevailing party and leave the trial court to determine the credibility of witnesses and the weight assigned to their testimony. *Only A Mile, LLP v. State*, 2010 MT 99, ¶ 10, 356 Mont. 213, 233 P. 3d 320.

SUMMARY OF ARGUMENT

When the BOR filed its notice of appropriation for 261,000 acre feet of water, built a reservoir and the requisite infrastructure, and stood ready to deliver the water, its appropriation was perfected under this Court's case law on public service corporations. The BOR's intent was properly identified in its Notice of Appropriation and did not include any acreage limits.

Since the project's inception, BOR has contracted with EBID and CCWSC for the sale of storage water—full service on the Bench and supplemental service in the Valley. The basis of the use of water by these two entities has always been a volumetric allotment and not an acreage limitation. EBID receives 3.1 a.f.a for each of its 22,689 allotment acres and CCWSC 4.0 a.f.a for each of its 25,995 allotment acres. Open A objected to the BOR's and EBID's water rights and many of the CCWSC shareholders' private water rights on the basis that the DPR was the sole basis for BOR's intent. Open A argued that the number of irrigated acres on the abstracts of the water rights of any recipient of stored water should reflect the project planning sheets of the DPR--even though those project tables were created solely for assessing the ability for the project to pay for the infrastructure and do not reflect the historical use of water.

The Water Court correctly found that 28,005 acres were historically irrigated on the Bench with stored water and denied the DPR had legal significance for the intent of the project. For the shareholders of CCWSC, the Water Court looked to

the Painted Rocks project to craft a solution that recognized the historical practice of delivering the stored and direct flow water rights in tandem to the shareholders' places of use.

The Water Court did not err in declining to impose an aggregate acreage limit on CCWSC rights based on a table from the DPR. Nor did the Water Court err when it when it declined to subordinate all CCWSC shareholders' historic direct flow water rights to the BOR's 1961 storage right. Open A has vigorously participated in the adjudication and has ample opportunity to exercise its rights to object to other water rights in the basin.

ARGUMENT

I. THE WATER COURT CORRECTLY CONCLUDED THAT EBID HISTORICALLY IRRIGATED 28,005 ACRES USING AN ALLOTMENT OF STORED WATER WITHIN A SERVICE AREA.

The Water Court correctly found that 28,005 acres on EBID were historically irrigated based on evidence at trial and testimony of witnesses. The Water Court's factual finding of acreage was based on review of hundreds of pages of documents, four days of trial, and the testimony of witnesses with personal knowledge of the EBID. Open A's argument against this acreage figure rests solely on a single document, the DPR, written long before any concrete was poured for the dam, contracts for water executed, or land sold to farmers.

Open A argues that the DPR is the only evidence of intent that this Court should use to trim 6,205 acres from the project that have unquestionably been historically irrigated. Open A's argument ignores the fact that EBID's water comes from the storage right perfected by BOR and EBID is limited by a consistent, contractual, volumetric amount that is the 22,689 allotment acres times 3.1acre feet per year. Open A's focus on the number of acres misapprehends the storage system on the Beaverhead in which water is stored in the reservoir under a junior priority and released during the irrigation system under contract. By extolling the DPR as both the alpha and omega of the EBU system, Open A also misreads the case law on perfection, diligence, and the role of public service entities who appropriate water for future use.

The Water Court correctly determined that it is unreasonable to rely on the DPR and the end of the ten-year development period to arbitrarily limit acreage for the project. (Final Order, 26). The Water Court recognized that winding back the clock and overlooking years of historical use and settled expectations would needlessly penalize EBID farmers and confer little benefit to Open A and restricting acreage for EBID in the manner Open A asserts is not required by federal law, nor were such restrictions mandated by project approval. *Id.*

A. **The Water Court found correctly that the DPR was a planning and feasibility document without legal significance to limit perfectionor intern.**

The evidence shows that the DPR was a feasibility study to ensure BOR's investment in the Clark Canyon Dam—"could the project pay for itself?" (D4, 14:16-20). Financial feasibility looks at the minimum requirements necessary for the principal to obtain a return on investment. (OA Ex. 28 at 43-47, G-1, G-44 to G-45; D4, 95:25-96-8). The cost of the dam was to be paid by selling water to irrigators and it was necessary to determine the minimum number of acres that would make the project pay. (July 3 Order at 5; D4, 14:16-20; 95:25-96-8). Nothing in the DPR was intended to limit the economic benefit or number of acres or require particular acreage irrigation. (D4, 99:4-16).

The Water Court addressed the DPR in summary judgment arguments identifying it as a plan, a planning exercise, and a forecast of the behavior of third parties who were intended to be consumers of Project water. (July 3 Order at 5). Additionally, this Court is not required to stop the analysis of intent after examining a feasibility document. It must also look to notice, diligent execution and beneficial use.

> It is well established, however, that a declaration of intent is not by itself determinative of a water right. Intent must be followed by diligent execution, and by actual beneficial use *Irion v. Hyde,* 107 Mont. 84, 81 P.2d 353 (1938).

B. Open A's use of the DPR confuses the elements of intent and perfection

It is well-established that the elements of an appropriation of water are intent, notice, diversion, and application to beneficial use. *In re Adjudication of Existing Rights to the Use of All Water Within the Missouri River Drainage Area*, 2002 MT 216, ¶ 10, 311 Mont. 327, 55 P.3d 396. Ultimately, beneficial use perfects the water right which then must be used and not abandoned.

> Under traditional prior appropriation law, a water user "perfected" a water right by first intending to put water to a beneficial use, and ultimately, using the water as intended. . . for appropriators proceeding under the statutory method of appropriation, additional recording requirements applied. . .

Stephen R. Brown, Michelle L. Bryan & Russ McElyea, MONTANA WATER LAW p.36 (Rocky Mt. Min L. Fdn. 2021).

Generally, intent helps determine a water right's characteristics and requires an overt act like filing a notice of appropriation. Where a clear statement of intent was not available, intent could be inferred from "acts and circumstances surrounding his possession of the water, its actual or contemplated use and the purposes thereof." *See Toohey v. Campbell,* 24 Mont. 13, 17, 60 P. 396, 397 (1900) (where the squatter expanded his flow rate from a few inches to 150 within his original homestead, he was allowed to relate back to the original priority date but could not claim the same date when he acquired new land holdings, consequently receiving a later priority date for that acreage).

The law recognizes the difficulties inherent in water development and does not require the use be made immediately to the full extent of the needs of the

appropriator. . . provided that the appropriator proceeds with due diligence to apply the water to his needs. *Wheat v. Cameron*, 64 Mont. 494, 210 P. 761; *O'Shea* v. *Doty*, 68 Mont. 316, 218 P. 658 (1923); *St. Onge v. Blakely*, 76 Mont. 1, 23, 245 P. 532, 539 (1926).

Evaluation of intent in a project like this necessarily requires a look at the history, its objectives, and the actions of the appropriators before, during, and after project completion. Beginning with the notice, Open A does not question the sufficiency of BOR's timely filed Notice of Appropriation "to store, utilize, and administer . . . all of the unappropriated and undecreed flood flows of the Beaverhead River but not in excess of the amount of water required to fill at any given time, the said reservoir of 261,000 acre-feet capacity, (EBID Ex. 56, 0962-0963; US Ex. 039, 0956-0961).

The Notice describes the type of right—1961 for storage as well as the purposes and places of use sufficiently to notice all senior and junior appropriators. There is no record of Open A or its predecessors objecting to or taking issue with the elements of the BOR appropriation. Where such changes went unchallenged for decades, the Water Court has been loath to re-open questions of injury many years later. *See e.g. Curry v. Pondera Cty. Canal & Reservoir Co*., Case No. WC-2006-01, Order Amending and Partially Adopting Master's Report 14 Mont Water Ct. Apr. 25, 2014.

The BOR thus gave proper notice of its intent to appropriate a volume of junior stored water which satisfied both intent and notice. To fully perfect the right under the general rule, appropriators next must divert and apply the water to beneficial use. However, in the cases of public service companies, this Court has recognized a modified analysis for entities that develop water for use by third parties but do not own the underlying land themselves.

C. **Public Service Companies –intent and perfection.**

The concepts of intent and appropriation are necessarily different when an appropriation is made by a public service company ("PSC") for future use by third parties. *Bailey v. Tintinger*, 45 Mont. 154, 175-78, 122 P. 573, 582-84 (1912). BOR is a PSC and EBID a statutory irrigation district with a service area instead of a place of use. Service areas have been recognized by this Court in *Master's Report,* Montana Water Court Case 76HE-166 (*the Painted Rocks case*) (Mar. 9, 2000); *Order Vacating Master's Order and Approving Stipulation*, Water Court Case 40J-99, (Nov. 16, 2018); *Bailey,* 45 Mont. at 177, 122 P. at 583; *Curry v. Pondera Cnty. Canal & Reservoir Co*., 2016 MT 77, 383 Mont. 93, 370 P.3d 440.

Appropriations made for future use by a PSC acquire a right by filing notice of intent to appropriate and then diligently constructing the project. *Id.*; *see also* Revised Code of Montana (1947), § 89-811 (steps for diligence in filing an appropriation). Because a PSC does not own the land like a private appropriator, a

PSC's perfection is complete when it stands ready to deliver water to third parties. *Bailey*, 45 Mont. at 178, 122 P. at 583.

For a PSC, completion of the facilities means the doctrine of relation back applies, and the appropriation is perfected consistent with the appropriator's original bona fide intent with a priority date as of the date of posting. § 89-812, RCM (1947); *Bailey*, 45 Mont. at 173-174, 122 P. at 581-582; *Mont. Dept. of Nat. Res. & Conservation v. Intake Water Co*., 171 Mont. 416, 430, 558 P.2d 1110, 1118 (1976).

As beneficial use occurs prior to application of water to land, the right cannot be "constrained by the actual use of the water, nor can it be indelibly constrained by the exact land upon which the water is put to beneficial use." *Curry*, 370 P.3d at 453. While this is true in cases involving direct flow claims as in *Bailey* and *Curry,* it is even more apt in the special case where the appropriator has built a reservoir and appropriated stored water. *Infra.* The ultimate use of water depends on the actions of third parties, but are not "determined" by them as Open A argues. When the Court looked to the actions of third parties during the so-called development period, it was to understand the history of the project's build out, and to ensure that no abandonment had occurred. *Id.*; *Bailey*, 122 P. at 583.

The BOR clearly stated its intent, was diligent in the planning and construction of the project—only taking four years to go from the notice of

appropriation to its first delivery of water. The facts adduced at trial and through the project history, show third party diligence in applying a volume of stored water to irrigable ground in an irrigation district.

D. EBID Development Period.

The Water Court correctly found that the Development Period was a time of learning and adjustment, not a window during which irrigated acreage had to be developed or lost. (Final Order, 25).

Open A mistakes a ten-year orientation period for a hard deadline to put every available irrigable acre in the EBID under cultivation. This is not required under the law, nor was it the intent of the parties when they agreed to a development period in the 1957 contract beginning when:

> The Secretary of the Interior will announce when there will be a full water supply. . . beginning of the development period after which assessments will be made to cover operation and maintenance expenses. At the end of this period the project will be turned over to the water users to maintain. At that time the water users will begin paying an additional charge of $2.25 per acre per year for their share of the construction costs.

(EBID Ex. 37 0369).

Characterized by the BOR and farmers with personal knowledge of the time they saw the ten years as a financial training period. (D4, 19:2-21; D4, 256:7-20).

Although unable to point to any contemporaneous document or subsequent report to support this contention, Open A argues that this ten-year period was an

absolute deadline to use it or lose it. Once again Open A confuses what the BOR appropriated and perfected—storage water not a set number of acres. The storage water applied to EBID was put to use as quickly and efficiently as possible considering the economics of the time and the changes to irrigated agriculture that were underway in the 1970's.

If as *Intake* teaches, the water right is perfected upon completion of the facilities, and there is no dispute that the BOR perfected 178,062 acre feet of storage water, then it is difficult to see why the diligent application of 70,336 acre feet of this right to lands within an irrigation district on the Bench is problematic

Water was first delivered to East Bench farmers in the irrigation season of 1965, but only 8,491 acres were irrigated that year and farmers were limited to 40 acres of water. (EBID Ex. 22; OA Ex. 50). For the next fourteen years, the individual irrigators of the Bench were developing an entirely new irrigation system on ground that had never been irrigated before. (US Ex. 4, 2; D4, 274:22-275:-7; 289:11-21; *see also*, OA Appendix 2, 6-7).

They were also transitioning the project from its original DPR design as a flood irrigation project to the new methods of pipelines, pumps, hand and wheel lines. In 1973, 61% of the acres were irrigated by the sprinkler method. (EBID Ex. 23, 0252). Although the acreage increased past the 21,800 acres referenced in the DPR, the volume of water never increased, rather the irrigators were just able

to spread the same volume of water to more acres. (D4, 105;2-9).

At trial, witnesses testified that EBID farmers continued to expand irrigation within the project after the Development Period ended due to a variety of circumstances but mainly the advent of sprinklers and pumps and the amount of irrigation increased to 28,005 acres by 1979. (D2, 80:6-15; D4, 105:10-22; D4, 329: 17-20).

Farmers within EBID testified to the hardships they endured, but in general, they were trying to develop irrigation as fast as the financial, physical and technological constraints allowed.

Despite the testimony from the actual irrigators who continued to modify the project and their individual systems in the 1970's and 1980's, Open A argues for a legal significance of the development period and a term limit on the reasonable diligence. The law does not require this.

E. Open A mistakes the role of 3rd parties in the seminal PSC Cases, *Bailey* and *Curry*.

Open A seizes on the actions of third parties as somehow limiting the nature of a PSC's water right by arguing that the actions of third parties reflect the intent and perfection of the water right. This is the exact opposite lesson that the first PSC case stands for.

Consider that in *Bailey*, the Glass Lindsey Company appropriated 5,000 miner's inches of water to sell in 1892. The original company failed but the

successors in interest managed to steadily increase the diversion and ultimately the capacity of the system was found to be 2,200 inches by 1910. *Curry*, 370 P.3d at 447. The Court did not penalize plaintiffs for what they could not do—force third parties to irrigate the land—and limiting the intent and perfection.

> [W]e base our conclusion that, as to a public service corporation, its appropriation is complete when it has fully complied with the statute and has its distributing system completed and is ready and willing to deliver water to users upon demand, and offers to do so. The right thus obtained may be lost by abandonment or nonuser for an unreasonable time (1 Wiel, sec. 569), <u>but cannot be made to depend for its existence in the first instance upon the voluntary acts of third parties— strangers to its undertaking.</u>

Curry, 370 P.3d at 448. (emphasis supplied).

Open A takes cases about perfection and relation back of a priority date and argues that they mean "intent cannot be *determined* by the subsequent acts of third parties. (OA Brief at 30)." Open A would make third parties a limit rather than a reason for extended period of diligence. Once it is apparent that the US appropriated an amount of storage water for sale to farmers on the EBID, the actions of the farmers are not even an issue in discussing intent. The actions of the third parties in putting the water to use diligently and in building out the project are evidence that the amount of storage water was not abandoned, but rather put to actual beneficial use in a timely fashion.

Open A would use *Bailey* and *Curry* to <u>penalize</u> PSC's and limit what they perfected based on the actions of the third parties, whereas *Bailey* actually holds

the opposite--giving PSC's an additional layer of protection because of the work they are engaged in: "[i]t is clearly the public policy of this state to encourage these public service corporations in their irrigation enterprises, and the courts should be reluctant to reach a conclusion which would militate against that policy. *Curry*, 370 P.3d at 449.

Open A's argument that a PSC should be limited or determined by what the third parties do is exactly the opposite lesson of these two cases, in which appropriators took far longer to grow into their water right than EBID did. *Bailey* and *Curry* instruct that the actions of third parties are relevant when considering whether a perfected water right has been abandoned by failure to apply the water to beneficial use over a reasonably diligent period of time—not as to establishing intent at the outset.

Fundamentally, Open A wants the discussion to center on acres because the DPR contains acreage numbers. However, the BOR appropriated a quantum of water, not a certain number of acres.

F. Open A's focus on DPR acres ignores the facts of this case and law of storage.

"Storage water acquires a unique status once impounded. *Granite Cnty. Bd. of Comm'rs v. McDonald*, 2016 MT 281, ¶¶ 14, 15, 385 Mont. 262, 383 P.3d 740. Water released from storage is not part of the natural flow and other users are only entitled to the natural flows of a stream and nothing more. *Id*.

It is telling that Open A's opening brief mentions the word "storage" approximately 14 times where the Water Court's Final Order uses the word more than 50 times. This is no mistake as a downstream appropriator has no rights to water stored behind an upstream dam. *Id*. Open A is such appropriator who has been unable to show any harm or adverse effect from EBID and CCWSC's use of storage water, ignoring the vital fact of storage to buttress its allegations of adverse effect.

Importantly on the EBU, the Water Court cited to *Painted Rocks* for the following proposition:

> The use of stored water means that the project cannot increase the burden on the source beyond its claimed volume. Once the water is stored in the reservoir, it is no longer available to other appropriators, junior or senior. Where the project water goes and how many acres it irrigates or how many livestock drink it, does not adversely change the condition of the source or cause potential injury to junior appropriators.

Master's Report at 8-9, Montana Water Court Case 76HE-166 (*the Painted Rocks case*) (Mar. 9, 2000).

The volume of water in storage for 41B 40854-00 was perfected when the facilities were complete in 1965 and by 1979, 14 years after the project began, the full extent of the use of storage was realized on EBID. There is no contention that the farmers of CCWSC and EBID have abandoned the use of stored water by failing to put the contracted volume of water to beneficial use each year it was available. (EBID Ex. 22). To the contrary, the testimony and exhibits related to

the diligence and build out of the project show diligent application of water to beneficial use in adverse conditions. *Id.*

By the 2006 contract EBID agreed to limit its use of that volume to 28,055 which was close to the number of maximum number of acres found to have been irrigated before 1979, 28,005 acres. (US Ex.'s 7, 0068, 0094-959, 10; D4, 107: 7-13).

There is no debate that each year the BOR stores as much water as it can behind the Clark Canyon dam and if there is sufficient volume, EBID takes its share 3.1 acre feet per acre times 22,689 allotment acres or 70,336 acre feet. That water is no longer available to other appropriators whether junior or senior and by definition, use of stored water can cause no adverse effect. *Supra*, *Painted Rocks.*

The Water Court was cognizant of this dynamic when it correctly found a volume for 41B 40854-00 of 178,062 acre feet based on historic use. This volume of water is what the BOR perfected with diligence.

Neither the fundamental principles of Montana Water Law, nor any principles of *Curry* or *Bailey*, limit one from perfecting his appropriation through diligent application of the same amount of water to beneficial use. Additionally, unlike *Curry*, where the PCCRC argued for the inclusion of acreage that it had never irrigated, BOR has stored as much water as it could each year and distributed EBID's and CCWSC allotments to members and shareholders who irrigated as

much land as their system and technology were capable of. The diligence shown by the EBID farmers in putting that water to use was insurance and proof that the BOR's appropriated stored water was not abandoned.

II. THE WATER COURT CORRECTLY IDENTIFIED A SERVICE AREA PLACE OF USE FOR WATER RIGHT 41B 40854-00.

The Water Court identified a supplemental service area but correctly declined to set an acreage limit or use the DPR table G23 as an acreage limitation on the use of stored water delivered by contract to the CCWSC shareholders. The Water Court found that irrigation of lands by CCWSC shareholders changed over time, (Final Order, 30) and that CCWSC shareholders have historically used storage water mixed with their direct flow water right. There is no way to decipher what is storage water and what is natural flow, once the water is in the ditch. (D1, 231:18-25).

Here, the Water Court correctly analogized to *Painted Rocks* which presented a similar situation regarding the delivery of storage rights through a river system. Clark Canyon Dam, like Painted Rocks Reservoir, was built for economic development, and sale of water, and to create stable, consistent water supplies. (Montana Water Court Case 76HE-166 (Mar. 9, 2000)).

To receive storage water delivered by the Company, each CCWSC water users must have an underlying state-based water right. (EBID Ex. 10; D2, 77:1-16; 81:21-83:6). At the present time, the hundreds of water rights of the company

shareholders are currently being determined through the state adjudication. In that adjudication, the place of use will be determined based on historical use. (US Ex. 34).

DPR table G-23 does not represent actual historical irrigation under the project as it was created before the dam was built and any supplemental water was delivered. The DPR was published in 1960. (OA 29 0002332). First deliveries of water from Clark Canyon Reservoir occurred in 1965, (D4, 43:22-44:3) making the table G-23 an artifact of the plan before the dam changed everything. Additionally, the land classification maps contained in the DPR, which were used to calculate the supplemental irrigation service area stated in the DPR, were found to be inaccurate as to the lands historically irrigated pursuant to the water rights decreed in several cases referenced at trial. (D3, 152-157:18, 158:16-159:10; OA, 33 002379).

Thus, the DPR does not represent actual historical irrigation under the project because it pre-dates creation of the Clark Canyon Reservoir, and any beneficial use of the supplemental and regulated water later delivered to CCWSC Shareholders. Additionally, as argued at length above, the DPR was not created or used as a limit on the irrigation practices of users of storage water.

The Water Court correctly identified that the historical beneficial use of the storage water was used in conjunction with the underlying private water rights in

their legal places of use in accord with the 1972 Montana Constitution which provides all existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed. (Article IX, Section 3). Identifying the places of use for water used today in the Beaverhead Valley on the basis of a table created some 70 years ago before the construction of the Clark Canyon Dam would create an absurd result because the DPR never attempted to analyze the maximum historical use of any pre-existing water rights in the valley.

Open A's citation to *Curry* arguing for a "delineated place of use," (OA Brief at 45) is misplaced because there this Court allowed Pondera to use its water for 72,000 acres anywhere within its non-delineated service area of 377,255.5 acres. *Curry*, 370 P.3d at 452.

Open A's argument that it was not afforded sufficient process should also be dismissed by the Court. (OA Brief at 43-44). Open A has had the opportunity to participate in any case in the Beaverhead Valley involving CCWSC shareholder rights. Open A filed many objections to CCWSC shareholders and is still pursuing those objections in ongoing cases in the Water Court. (See e.g. 41B-269 stayed pending the resolution of the instant case.).

Allowing Open A to re-litigate closed cases to readjudicate the elements of CCWSC shareholders violates the legal principles of *res*

judicata by reopening the objection phase in Basin 41B upsetting settled law and expectations.

III. THE WATER COURT CORRECTLY DESCRIBED THE RELATIONSHIP BETWEEN CCWSC PROJECT USER'S PRIVATE WATER RIGHTS AND 41B 40854-00.

The Court correctly declined to add a remark subordinating hundreds of water rights owned by CCWSC shareholders to the 1961 BOR water right (See US Ex. 034) as Open A suggested in its brief at 45-48.

Open A incorrectly claims that "CCWSC shareholders rights are "curtailed under both [1958 and 2006] contracts" "throughout the entire year" Open A Brief at 46. The 1958 Contract only covered the "irrigation season". (EBID Ex. 9, 016100162). In furtherance of this argument, Open A states: "Both [1958 and 2006] contracts subordinate the senior rights of CCWSC shareholders to the storage right of the BOR. *Id.* The citation above the *Id.* is Transcr. D1, 230; OA Ex. 99, BN 3498-3499.

The citations that Open A identifies do not support its argument. The trial testimony on Day 1 was by current Beaverhead Water Commissioner Ted Crampton who does not use the word "subordination," and OA Ex. 99 is the deposition transcript of former Beaverhead Water Commissioner Clyde Proctor who also does not use the word "subordination."

Open A relies on a conflation of two dissimilar words, curtail and subordinate to argue that the Water Court misinterpreted a1958 contract by not making all members of CCWSC subordinate to water right 41B 40854-00—despite the word "subordinate" not appearing in the documents it cites. While the word "curtail" does appear in that contract, these words are by no means synonymous—"curtail" is a verb meaning to cut short or reduce whereas "subordination" is a verb meaning to put in a lower or inferior rank or class.[4] Shortening a period of use for exercise of a water rights is a far cry from permanently taking a junior position on the source.

In a water rights context "subordinate" means that each CCWSC shareholders would permanently lose the most important element of their water right, their priority date. The loss of priority of hundreds of water rights without any due process would likely not satisfy the shareholders' opportunity "to be heard at a meaningful time and in a meaningful manner." *Geil v. Missoula Irrigation Dist.,* 2002 MT 269, ¶ 61, 312 Mont. 320, 59 P.3d 398.

Additionally, is clear that at the time of the project's initiation, the existing rights of CCWSC stockholders "were not disturbed." "[O]ne of the first and most

[4] The American Heritage Dictionary of the English Language, Fifth Edition copyright ©2020 by Houghton Mifflin Harcourt Publishing Company.

complicated problems was assuring the water users [of CCWSC] that their existing rights wouldn't be taken. EBID Ex. 2, 0005.

The Court should not grant Open A's request to add all this remark to all private water rights of CCWSC shareholders.

CONCLUSION

The December 24, 2020 order of the Water Court is correct as a matter of fact and law. The order should be affirmed.

Respectfully submitted this 23rd day of August, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, excluding certificate of service and certificate of compliance.

/s/ William Fanning
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I, William Cardiff Fanning, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-23-2021:

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Representing: Smith's Elk Meadows Ranch, LLC
Service Method: eService

Ryan P. McLane (Attorney)
21 N. Last Chance Gulch, Ste. 210
P.O. Box 1155
Helena MT 59624-1155
Representing: Point of Rocks Angus Ranch, Inc.
Service Method: Conventional

James J. DuBois (Attorney)
U.S. Department of Justice
Natural Resources Section
999 18th Street, South Terrace, Suite 370
Denver CO 80202
Representing: United States of America, Bureau of Reclamation
Service Method: Conventional

Max A. Hansen (Attorney)
8 S. Idaho, Ste. A
P.O. Box 1301
Dillon MT 59725-1301
Representing: Baldy View Enterprises, LLC, Bar J Ranch, Justin Devers, William R. Grose, William C. and Roxanne E. Mancoronal
Service Method: Conventional

John L. Smeltzer (Attorney)

Environment & Natural Resource Div.
U.S. Department of Justice
P.O. Box 7415
Washington DC 20044
Representing: United States of America, Bureau of Reclamation
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P.O. Box 7415
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Washington DC 20044
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Service Method: Conventional

Electronically Signed By: William Cardiff Fanning
Dated: 08-23-2021