

DA 24-0656

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 34

PETRICH FAMILY LIMITED PARTNERSHIP,

Claimant, Appellee,
and Cross-Appellant,

v.

TROUT UNLIMITED,

Objector, Appellant,
and Cross-Appellee.

JAMES R. MELIN,

Claimant, Appellee,
and Cross-Appellant,

v.

TROUT UNLIMITED,

Objector, Appellant,
and Cross-Appellee.

APPEAL FROM: Montana Water Court, Case Nos. 43B-0354-R-2021 and 43B-0148-R-2020
Honorable Stephen R. Brown, Chief Water Judge

COUNSEL OF RECORD:

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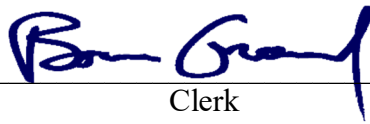
For Amicus Curiae Mill Creek Downstream Water Users:

William Cardiff Fanning, Fanning Law PLLC, Dillon, Montana

Submitted on Briefs: October 22, 2025

Decided: February 24, 2026

Filed:



Ben Gray

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Trout Unlimited appeals the Water Court’s decision to generate implied rights in adjudicating the water right claims of James R. Melin and the Petrich Family Limited Partnership (“Petrich”) (collectively “Claimants”). Melin and Petrich cross-appeal the Water Court’s determination that Trout Unlimited had standing to object and its partial grant of summary judgment in favor of Trout Unlimited. We address the following issues on appeal:

- 1. Whether Trout Unlimited had standing to object to Melin’s and Petrich’s claims issued in the Water Court’s Preliminary Decree for Basin 43B.*
- 2. Whether the Montana Water Court erred in limiting Petrich’s and Melin’s decreed periods of use and diversion to May 1 to July 15.*
- 3. Whether the Montana Water Court erred in generating implied claims outside the decreed period of use.*

We affirm the Water Court’s conclusion that Trout Unlimited had standing to object and its grant of partial summary judgment. We reverse the Water Court’s generation of implied rights and remand for further consideration.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Mill Creek flows north and northwest from its headwaters in the Absaroka Mountains to its confluence with the Yellowstone River near Pray, Montana, in Park County. Mill Creek’s hydrological cycle is typical for streams fed primarily by runoff from mountain snowpack. Historically, flows increase during spring and early summer from snowmelt and generally decline into the latter summer months. Petrich and Melin are both water users on Mill Creek, which lies entirely within hydrological Basin 43B.

¶3 On October 14, 1981, and April 22, 1982, as part of the general adjudication process under the 1973 Montana Water Use Act (“WUA”), Title 85, MCA, Petrich and Melin’s predecessors in interest filed statements of claim for several existing water rights on Mill Creek. The statements of claim identified decreed rights based on two pre-1973 decrees entered by the Sixth Judicial District Court. *Allen v. Wampler*, No. 7583 (Mont. Sixth Judicial Dist. filed June 1, 1938) (*Allen Decree*); *Petrich v. Allen*, No. 11616 (Mont. Sixth Judicial Dist. filed July 22, 1964) (*Petrich Decree*).¹ Petrich’s statements of claim 43B 101013-00 and 43B 101014-00 stated a period of use from April 15 to September 15. Melin’s statements of claim 43B 194542-00 and 43B 194543-00 asserted a period of use of April 1 to August 1, and April 1 to October 1, respectively.

¶4 On May 9, 2019, the Water Court issued a Preliminary Decree for Basin 43B, generally adjudicating the Montana portion of the Yellowstone River above and including Bridger Creek. Trout Unlimited timely filed several objections to Petrich’s and Melin’s water right claims.² Relevant to this appeal, Trout Unlimited alleged that the Claimants overstated the period of use for several claims as decreed in the 1964 *Petrich Decree*.

¶5 Trout Unlimited moved for summary judgment, contending that the *Petrich Decree* unambiguously limited their period of use. The Water Court granted Trout Unlimited partial summary judgment and modified the Claimants’ period of use for the decreed right

¹ The *Petrich Decree* treats the period of use and period of diversion elements as the same for all disputed claims. We will refer to them collectively as the “period of use” throughout this Opinion.

² Trout Unlimited objected to Petrich’s claims 43B 101013-00, 43B 101014-00, and 43B 101015-00 and to Melin’s claims 43B 194537-00, 43B 194539-00, 43B 194540-00, 43B 194541-00, 43B 194542-00, and 43B 194543-00.

to May 1 to July 15. The court left open the possibility for additional proceedings to further adjudicate the Claimants' existing water rights. The Claimants, in proposed pre-trial orders, requested that the Water Court generate implied claims. After holding hearings for Melin's and Petrich's claims, the Water Court upheld Trout Unlimited's standing and issued final rulings on its objections. The Court ordered the generation of two implied claims for Petrich and one implied claim for Melin. It held that the Claimants had perfected a use right between the *Petrich Decree* and the passage of the WUA. The Water Court gave the implied claims a priority date of June 30, 1973. Trout Unlimited appeals the implied claims, and Claimants appeal the prior summary judgment ruling. We consolidated the Petrich and Melin cases in this proceeding. The Clark Fork Coalition and Mill Creek Downstream Water Users requested and were granted leave to file *amicus curiae* briefs in support of Trout Unlimited.

STANDARDS OF REVIEW

¶6 We review de novo the determination of a party's standing to sue and the interpretation of a statute. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 28, 360 Mont. 207, 255 P.3d 80.

¶7 A motion for summary judgment is proper where there exists no genuine dispute of material fact, and the movant is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). Applying this standard, we review a trial court's grant of summary judgment de novo. *Mont. Trout Unltd. v. Mont. Dep't of Nat. Res. & Conservation*, 2025 MT 1, ¶ 13, 420 Mont. 85, 561 P.3d 995. The interpretation of a judgment or decree is a question of

law reviewed de novo for correctness. *In re Quigley*, 2017 MT 278, ¶ 9, 389 Mont. 283, 405 P.3d 627 (citing *Granite Cnty. Bd. of Comm'rs v. McDonald*, 2016 MT 281, ¶ 5, 385 Mont. 262, 383 P.3d 740).

¶8 We review the Water Court's conclusions of law for correctness. *Hoon v. Murphy*, 2020 MT 50, ¶ 24, 399 Mont. 110, 460 P.3d 849. We review its findings of fact for clear error. *Skelton Ranch, Inc. v. Pondera Cnty. Canal & Reservoir Co.*, 2014 MT 167, ¶ 27, 375 Mont. 327, 328 P.3d 644. We apply these same standards to the Water Court's generation of implied claims. *See Hoon*, ¶¶ 46-54.

DISCUSSION

Legal Background

¶9 Prior to the WUA, a water right claim could be perfected by one of two ways: the appropriator could establish a "use right" by simply putting water to beneficial use or a "filed appropriation right" by posting notice at the point of diversion and filing a notice of appropriation with the county clerk. *Hoon*, ¶ 33 (citing *In re Powder River Drainage Area*, 216 Mont 361, 367, 702 P.2d 948, 951 (1985); *Murray v. Tingley*, 20 Mont. 260, 269, 50 P. 723, 725 (1897)); *see also* W.R.C.E.R. 2(a)(25), (71). Water users adjudicated their claims by watercourse segments, seeking out localized decrees from district court judges. *In re Foss*, 2013 Mont. Water LEXIS 17, *6-7 (Water Ct. Jan. 31, 2013) (citing Albert Stone, *Are There Any Adjudicated Streams in Montana?*, 19 Mont. L. Rev. 19 (1957)).

Once adjudicated in those courts, use rights and filed appropriation rights became decreed rights.³

¶10 Under the water rights adjudication process declared in Montana’s 1973 WUA, “pre-1973 existing rights, new beneficial uses, and any proposed changes of use [fell] under one administrative umbrella.” *Parrot Ditch Co. v. Ashcraft*, 2024 MT 272, ¶ 29, 419 Mont. 93, 558 P.3d 1183 (internal quotations omitted); *see also* Mont. Const. art. IX, § 3(4). Decreed rights, use rights, and filed appropriation rights are types of historical rights deemed existing water rights under the WUA. Section 85-2-102(13), MCA (“‘Existing right’ or ‘Existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.”); W.R.C.E.R. (2)(a)(70). Because the WUA recognizes existing water rights, pre-1973 law is used to determine the existence and validity of water rights acquired before 1973. *Teton Co-Op Canal Co. v. Teton Coop Reservoir Co.*, 2015 MT 344, ¶ 20, 382 Mont. 1, 365 P.3d 442 (citing *Axtell v. M.S. Consulting*, 1998 MT 64, ¶ 25, 288 Mont. 150, 955 P.3d 1362); *see also Hoon*, ¶¶ 33-35 (distinguishing statutes predating WUA for perfecting use rights and filed rights).

¶11 In 1979, the Legislature created the Water Court and gave it “exclusive jurisdiction” to adjudicate all matters related to existing water rights in Montana, including the systematic, general adjudication of those rights. Sections 84-2-212 through -282, 3-7-101 through -502, MCA; *Eldorado Coop Canal Co. v. Hoge*, 2016 MT 145, ¶ 19, 383 Mont.

³ Decreed rights made prior to the commencement of the general adjudication process are legally distinct from the decreed rights issued by final decree under the WUA. Section 85-2-234, MCA; W.R.C.E.R. (2)(a)(18).

523, 373 P.3d 836 (citing § 3-7-224(2), MCA). The first step in the general adjudication process required persons who claimed existing water rights to file a statement of their existing water right claims by the statutory deadline. *Mont. Trout Unltd. v. Beaverhead Water Co.*, 2011 MT 151, ¶ 2, 361 Mont. 77, 255 P.3d 179 (*Trout Unltd. I*); Section 85-2-212, MCA.⁴

¶12 The statement of claim form required the claimant to list the elements of their claim, including the “times of use claimed,” and “the approximate dates of first putting water to beneficial use for the various amounts and times claimed” Section 85-2-224(1)(c), (f), MCA. The WUA also directed claimants to provide “maps, plats, aerial photographs, decrees . . . or other evidence in support of their claim.” Section 85-2-224(2), MCA. Once properly filed, a statement of claim became prima facie proof for the elements of a water right. Section 85-2-227(1), MCA. Failure to file a statement of claim by the extended deadline, however, “establishe[d] a conclusive presumption of abandonment of that right.” Section 85-2-226, MCA; *see generally In re Yellowstone River*, 253 Mont. 167, 832 P.2d 1210 (1992).

¶13 The WUA’s complete overhaul of Montana’s water law and the general adjudication process led to unintended errors. *In re Foss*, 2013 Mont. Water LEXIS 17, *31. Claimants needed to readily engage with new legal standards, resulting in mistakes and “substantial confusion surrounding [the] correct filing procedures.” *In re Foss*, 2013 Mont. Water

⁴ The Legislature eventually extended this deadline to July 1, 1996, though “late claims” were penalized with restrictions. Section 85-2-221(3), MCA; *Hill v. Ellinghouse*, 2024 MT 158, ¶ 37, 417 Mont. 308, 553 P.3d 365.

LEXIS 17, *31. A common mistake included filing several existing water right claims in a single statement of claim. *In re Foss*, 2013 Mont. Water LEXIS 17, *31. To mitigate this common error, the DNRC and Water Court generate what is known as “implied claims” from the originally filed statement of claims. W.R.C.E.R. 2(a)(33), 11(b), 13(e), 35; *In re Foss*, 2013 Mont. Water LEXIS 17, *31-32; *In re Climbing Arrow Ranch Inc.*, 2019 Mont. Water LEXIS 1, *4-6 (Water Ct. Mar. 6, 2019). The generation of implied claims is intended to “strik[e] a balance between recognizing existing water rights and forbidding the creation of water rights that were forfeited by missing the statutory claim filing deadline.” *Open A Ranch Inc. v. Clark Canyon Water Supply Co.*, 2020 Mont. Water LEXIS 356, *55 (Water Ct. June 8, 2020) (citing *In re Climbing Arrow Ranch*, 2019 Mont. Water LEXIS 1, *5); *see* § 85-2-226, MCA.

Petrich’s and Melin’s Existing Water Rights

¶14 In 1938, the Park County District Court adjudicated the rights of parties to divert water from Mill Creek in the *Allen Decree*. The *Allen Decree* adjudicated water rights diverted through several ditches constructed on Mill Creek. The *Allen Decree* required all decreed water users to install and maintain headgates and measurement devices at the point of diversion. Melin has three claims whose historical basis is the *Allen Decree*, 43B 194539-00, 43B 194540-00, and 43B 194541-00, all diverted through the Melin Ditch. Petrich did not claim any water rights based on the *Allen Decree*.

¶15 In 1963, Petrich and Melin’s predecessors in interest, together with Alexander A. and Elizabeth Malcomb, petitioned the district court to enter a supplemental decree for

“surplus water” flowing in Mill Creek. After receiving evidence from the parties, the court entered the *Petrich Decree*. In this Decree, the district court made the finding of fact that “during the months of May and June and until approximately the 15th of July” excess water flowed in Mill Creek. The court decreed water rights to Petrich, Melin, and other water users. It also required the awarded parties to install and maintain measuring boxes at the point of diversion. The *Petrich Decree* is the sole historical basis for several of Petrich and Melin’s existing water rights.

¶16 When the Water Court entered its Preliminary Decree for Basin 43B in May 2019, it decreed the period of use for all claims consistent with the Claimants’ statements of claims, allowing Petrich April 15 to September 15 periods of use and Melin periods of use from April 1 to October 1 and April 1 to November 1.⁵ Trout Unlimited timely filed three objections to Petrich’s claims and six objections to Melin’s claims. The Water Court consolidated Trout Unlimited’s objections into two separate proceedings—one for Petrich’s water right claims and another for Melin’s. Among other objections, Trout Unlimited alleged that both Claimants overstated the period of use as decreed in the 1964 *Petrich Decree*.

⁵ Melin’s predecessors in interest self-objected to the period of use during the objection period for Basin 43B’s Temporary Preliminary Decree entered on January 16, 1985. They objected to 43B 194542-00’s decreed period of use of April 1 to August 4, stating that it should be from “April 1 to November 1, because in late summer and fall water is available at the point of diversion from the water source because of extra late summer and fall moisture and failure by prior appropriators to use their water right.” A subsequent Water Master’s Report amended the period of use to April 1 to November 1, which the Water Court adopted on May 25, 1994. *In re the Adjudication of the Existing Rights to the Use of All Waters*, Case No. 43B-402 (Mont. Water Ct. filed on May 25, 1994).

¶17 Trout Unlimited moved for summary judgment in both the Melin and Petrich proceedings, asserting that the *Petrich Decree* unambiguously limited the period of use to May 1 to July 15. The Water Court agreed and granted partial summary judgment in favor of Trout Unlimited. The court reserved ruling on whether Claimants were entitled to periods of use extending beyond those dates. Petrich and Melin then requested the Water Court to generate implied claims based on historical use and authorized from the original claims whose period of use was limited at summary judgment. The Water Court held a hearing on all objections that it had not resolved in the summary judgment order. After the objection hearing and in their proposed findings and conclusions, Petrich and Melin alleged that Trout Unlimited lacked standing to object.

¶18 Following the parties' post-trial submissions, the Water Court concluded that Trout Unlimited had standing and issued orders generating two implied claims for Petrich and one for Melin. The Water Court determined that Petrich and Melin had perfected historical use rights, which it found were indicated in their statements of claim. Though the Claimants were unable to establish with certainty when the water first was put to beneficial use, the Water Court determined the implied claims had a priority date of June 30, 1973.

¶19 *1. Whether Trout Unlimited had standing to object to Melin's and Petrich's claims issued in the Water Court's Preliminary Decree for Basin 43B.*

¶20 To have standing under the WUA, an objector must show "good cause" to object with a timely filed written statement. Section 85-2-233, MCA. Even if a party has no ownership of a water right interest, we do not interpret § 85-2-233, MCA, "to deny a party's ability to be heard where that party has met all common law and statutory requirements for

standing to object to a preliminary decree and has shown that its interest in the use of water has been affected by the decree.” *Trout Unltd. I*, ¶ 33 (internal quotations and citations omitted).⁶ An objector satisfies common law standing when they “allege past, present or threatened injury to a property or civil right, and the alleged injury must be distinguishable from the injury to the public generally, but it need not be exclusive to the complaining party.” *Trout Unltd. I*, ¶ 27 (citations omitted). Citizen organizations also have standing to challenge governmental actions on behalf of their members under this standard. *Trout Unltd. I*, ¶ 27 (citations omitted).

¶21 The Water Court concluded that Melin and Petrich failed to preserve their standing argument by raising it in their proposed findings of fact and conclusions of law because the issue was not raised as a contention in the Claimants’ proposed prehearing orders. The Water Court added that even if Melin and Petrich preserved their claims, they failed to properly apply *Trout Unlimited I* when they asserted that Trout Unlimited did not have standing because it lacked an interest in a water right claim on Mill Creek. Melin and Petrich argue on appeal that the Water Court failed to assess whether Trout Unlimited met

⁶ Our decision in *Trout Unlimited I* turned on the Water Court’s improper interpretation of “good cause” in § 85-2-233, MCA (2005). Based on its interpretation, the Water Court narrowed the field of persons with good cause to object to only those with an ownership interest in a water right in the watercourse at issue. ¶¶ 9, 33-34. Since *Trout Unlimited I*, the Legislature has expanded “good cause” to object to include showing “an ownership, leasehold, economic, or clearly demonstrated particularized interest in an existing water right, permit, certificate, state water reservation under [§] 85-2-316, [MCA,] or right to receive water through an irrigation project and that the person’s interest has been affected by the decree.” Section 85-2-233(1)(b), MCA (2015 Mont. Laws ch. 283, § 1).

the common-law standing requirements and reached its conclusion solely on its assessment that Trout Unlimited had “good cause” to object.

¶22 Trout Unlimited’s timely objections to Melin and Petrich’s claims included a letter stating that its organization had been active in the Yellowstone Basin for decades. In briefing, Trout Unlimited explained that its Montana chapter was chartered expressly to defend the Yellowstone River and its tributaries. It asserted and provided evidence demonstrating the organization’s participation in Montana’s Fish and Game Commission’s petition for instream flow reservations on the Yellowstone River in 1977. This action resulted in instream flow reservations on Mill Creek. Trout Unlimited maintained that the organization continues to work with Montana’s Fish, Wildlife and Parks Department to address the persistent dewatering of Mill Creek—a critical habitat for the Yellowstone Cutthroat Trout. In its prehearing disclosures, Trout Unlimited included witnesses to substantiate its standing to object.

¶23 Trout Unlimited’s objections claimed that the Preliminary Decree did not reflect the historic basis for the Claimants’ existing water rights and affected instream flow reservations for the Yellowstone River and Mill Creek. Trout Unlimited contended that Petrich and Melin’s water right claims as adjudicated in the Preliminary Decree interfered with the organization’s goals to reconnect tributary streams dewatered by over-appropriation, to defend the instream flows Trout Unlimited historically supported, and to restore habitat for the Yellowstone Cutthroat Trout. The organization alleged an

injury distinguishable from the general public and showed good cause to object. The Water Court correctly concluded that Trout Unlimited had standing.

¶24 2. *Whether the Montana Water Court erred in limiting Petrich’s and Melin’s decreed periods of use and diversion to May 1 to July 15.*

¶25 To succeed on a motion for summary judgment, the movant bears the burden to show that there is no genuine dispute of material fact. *Axtell*, ¶ 21. Once this is accomplished, the burden shifts to the non-moving party to prove, “by more than mere denial and speculation,” that a genuine dispute of material fact exists. *Axtell*, ¶ 21 (citation omitted). A court reviews the evidence in the light most favorable to the non-moving party. *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 38, 345 Mont. 12, 192 P.3d 186. If there is no genuine dispute of material fact, it must then determine whether the moving party is entitled to judgment as a matter of law. *Axtell*, ¶ 21.

¶26 The original and properly filed statement of claim for a water right is “prima facie proof of the element of a claim.” Section 85-2-227(1), MCA. An objector seeking to overcome this prima facie proof must prove by a preponderance of evidence “that the elements of the claim[s] do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973.” W. R. Adj. R. 19; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. A preponderance of evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

¶27 The Water Court found that “[t]he unambiguous language and context of the *Petrich Decree* provides for a period of use of May 1 to July 15.” It concluded that Trout Unlimited

had overcome its burden to prove that Petrich and Melin’s period of use in their statements of claim did not accurately reflect the *Petrich Decree*. The Water Court granted summary judgment and modified the decreed period of use for claims 43B 194542-00, 43B 194543-00, 43B 101013-00, and 43B 101014-00 to May 1 to July 15. On appeal, Petrich and Melin argue that the *Petrich* court did not intend to set a precise period of use and that the Water Court impermissibly relied on extrinsic evidence to hold otherwise. Petrich and Melin add that the third-party abstracts from Mill Creek are evidence demonstrating a genuine dispute of material fact, which the Water Court errantly ignored. Trout Unlimited counters that the Water Court properly relied on the *Petrich Decree* to come to its conclusion that, given the context, the court unambiguously limited the period of use, and the presentation of third-party abstracts is unavailing.

¶28 The construction of a prior judgment’s effect should be “in accordance with its clear and unambiguous operative language.” *Meine v. Hren Ranches, Inc.*, 2020 MT 284, ¶ 21, 402 Mont. 92, 475 P.3d 748 (citing *Harland v. Anderson Ranch Co.*, 2004 MT 132, ¶ 24, 321 Mont. 338, 92 P.3d 1160; *Quigley v. McIntosh*, 110 Mont. 495, 510, 103 P.2d 1067, 1074 (1940) (*Quigley II*); *Gans & Klein Inv. Co. v. Sanford*, 91 Mont. 512, 523, 8 P.2d 808, 811 (1932)). The subject language must be read “in the context of the entirety of the operative language of the judgment as a whole, with ‘effect to every word and part,’” *Meine*, ¶ 21 (quoting *State ex rel. Foote v. First Jud. Dist. Ct.*, 72 Mont. 374, 379, 233 P. 957, 959 (1925)), including “such effects and consequences as follow by legal implication from its terms, although not expressed,” *State ex rel. Foote* (citation omitted).

¶29 A court must interpret a prior judgment to have “reasonable intendment,” *In re Quigley*, ¶ 15 (quoting *Granite Cnty. Bd. of Comm’rs*, ¶ 19), and construe it to avoid “a positive wrong” where possible, *Gans & Klein*, 91 Mont. at 524, 8 P.2d at 811 (citation omitted). A court’s interpretation of a historical decree should be consistent with established and applicable law. *In re Quigley*, ¶ 15 (citing *Granite Cnty. Bd. of Comm’rs*, ¶¶ 21-22). A historical water right’s characteristics are determined by the law existing at the time it arose. Section 85-2-102(13), MCA; *Teton Co-Op Canal Co.*, ¶ 20 (citing *Axtell*, ¶ 25).

¶30 The *Petrich Decree* came about years after the *Allen Decree*, when Petrich, Melin, and Malcomb—who were planning to construct a diversion ditch—filed a petition under § 89-829, RCM (1947), to appropriate “surplus” or “extra” water not decreed in the *Allen Decree* and alleged to be available in Mill Creek. Several defendants responded to the petition and contested the petitioners’ allegations. Central to the responding defendants’ claims was that they had been taking spring flood waters not previously decreed and had senior use rights to water that the petitioners sought. After considering these facts and evidence presented at trial, the district court entered the *Petrich Decree*.

¶31 The *Decree* included the following findings of fact:

That the Court finds that during the months of May and June and until approximately the 15th day of July of the normal irrigating season there is flowing in the Mill Creek at the headgate of the Mill Creek Flat Ditch approximately 10,000 miners’ inches of water in excess of the total quantity of water heretofore adjudicated and decreed by this Court in the aforesaid action.

¶32 Based on this and other findings, the district court then made several conclusions of law, including:

The Court concludes, as a matter of law that each of the parties to this action are the owners of and entitled to the possession of their respective lands as described in their complaints and cross complaints filed herein and in these Findings of Fact; and that each of the parties to this action are owners of the right to use of that quantity of the waters of Mill Creek and its tributaries in addition to their previous decreed rights, hereinabove set forth in said findings of fact

The *Petrich Decree* declared water rights perfected before trial but after the *Allen Decree* with a priority date of June 4, 1964, and decreed new water rights for the petitioners with a priority date of June 3, 1964.

¶33 Petrich and Melin point out that the court did not specify the period of use in its conclusions of law. The court stated twice in its findings of fact, however, that the period of available water was from May 1 to approximately July 15. It further implied this fact when it found that the soil required more water “especially in the early growing portion of the summer season, in the months of June and July.” The court also expressly incorporated its findings of fact into its conclusion. The findings of fact “provide a foundation for the court’s judgment,” *In re Marriage of Johnson*, 1999 MT 254, ¶ 24, 296 Mont. 311, 989 P.2d 356, and “a decree can only determine rights in accordance with the issues as framed in the proceedings.” *Quigley II*, 110 Mont. at 510, 103 P.2d at 1074 (citation omitted). *Petrich’s* conclusions of law rested on its factual determinations, including the limited availability of excess water in Mill Creek, both in terms of quantity and time of year.

¶34 Whether the subject language of a prior judgment is “ambiguous, unclear, or imprecise” as it relates to a subsequent dispute is a question of law reviewed for correctness. *Meine*, ¶ 21 (citing *In re Quigley*, ¶ 15 (citing *Granite Cnty. Bd. of Comm’rs*, ¶ 19)). Ambiguity exists only where the disputed language is “susceptible to more than one objectively reasonable meaning or effect when read in the context of the entirety of its operative language, with effect to all.” *Meine*, ¶ 22 (citations omitted). Ambiguity does not exist where there is “mere disagreement or dispute over the correct interpretation,” or a party asserts that there is ambiguity. *Meine*, ¶ 23 (citations omitted). A court’s “[i]nterpretations must be reasonable.” Section 1-3-233, MCA; *see Meine*, ¶ 21 (“[T]he interpretation and construction of a prior judgment is generally subject to the same rules for the interpretation and construction of other written instruments.”).

¶35 “Approximately July 15,” even if imprecise, cannot reasonably be construed to read September, October, or even November, when read in the context of the entirety of the Decree. Nowhere else does the *Petrich Decree* contain language reflecting dates so far adrift from May 1 to mid-July to leave the court’s repeated reference to these dates ambiguous when it was addressing “the early growing portion of the summer season.” Citing *Quigley v. McIntosh*, 88 Mont. 103, 290 P. 266 (1930) (*Quigley I*), the Claimants argue that, historically, only priority limited a water user’s right to excess water. But the Water Court here was construing the language of a specific decree, which Petrich and Melin’s predecessors in interest had sought to determine their rights to excess water. It concluded that the *Petrich* court’s repeated reference to May 1 to approximately July 15

shows a clear intention to limit Mill Creek water users' right to excess waters with a period of use. The Water Court's interpretation and construction of the *Petrich Decree* as a defined period of use between May 1 to no later than July 15 is reasonable. *Cate v. Hargrave*, 209 Mont. 265, 272-73, 680 P.3d 952, 956 (1984); *Granite Cnty. Bd. of Cmm'rs*, ¶ 19 (citing *Gans & Klein*, 91 Mont. at 522, 8 P.2d at 811).⁷

¶36 The Water Court held that the *Petrich Decree* unambiguously decreed the period of use from May 1 to July 15, and the Claimants attached no other documents to their statements of claim to indicate otherwise. The Water Court thus correctly determined that Trout Unlimited overcame the prima facie proof of Melin's and Petrich's statement of claims. The burden then shifted to Melin and Petrich to show the existence of specific, disputed facts. M. R. Civ. P. 56(e)(2). The Claimants' presentation of third-party abstracts was insufficient to establish a dispute of material fact on the Claimants' historical use of water inconsistent with *Petrich*. The Water Court did not err in concluding that they had

⁷ Because the Water Court determined that the *Petrich Decree* was unambiguous, Melin and Petrich take issue with the Water Court's citation to facts in external documents. The Claimants support their argument with the principle that a court must first find ambiguity before "resort[ing] to pleadings or evidence" when construing a judgment or decree. *Harland*, ¶ 23 (quoting *Quigley II*, 110 Mont. at 510, 103 P.2d at 1074); *Meine*, ¶ 21 (citations omitted). Montana law, however, does not bar consideration of all extrinsic evidence when the instrument is adjudged to be unambiguous. "[F]or the purposes of aiding the court in determining, as a preliminary matter, whether the instrument contains ambiguity, objective evidence of 'the circumstances under which [the instrument] was made, including the situation of the subject of the instrument and of the parties to it,' may be shown and considered." *Mary J. Baker Revocable Tr. v. Cenex Harvest States, Coop.*, 2007 MT 159, ¶ 55, 338 Mont. 41, 164 P.3d 851 (quoting § 1-4-102, MCA). The cited facts include that the petitioners sought to build a ditch and to divert available surplus flood waters and that the increased efficiency of several ditches led the defendants to divert surplus waters outside of the *Allen Decree*. The object of the extrinsic evidence was to clarify the circumstances under which the *Petrich Decree* arose. The court's consideration of the pleadings was proper to adjudge whether ambiguity existed in the *Petrich Decree*.

not shown the existence of disputed material facts and properly granted partial summary judgment in favor of Trout Unlimited.

¶37 3. *Whether the Montana Water Court erred in generating implied claims outside the decreed period of use.*

¶38 Once the Water Court granted partial summary judgment based on the *Petrich Decree*, it gave Petrich and Melin the opportunity to show that the excess period claims should be implied as historical use rights. The Water Court found that the Claimants' and other witnesses' testimony that water was diverted historically supported a use right perfected prior to July 1, 1973. Considering the evidence presented at trial and in the statements of claim, the Water Court authorized Petrich's implied claims based on claims 43B 101013-00 and 43B 101014-00, with a period of use and diversion from April 15 to April 30 and from July 16 to September 15, respectively.⁸ The Water Court also recognized an implied claim based on Melin's 43B 194543-00 claim, with a period of use and diversion from April 1 to April 30 and from July 16 to October 1.⁹ Because the Claimants did not request a supplemental decree as required by statute predating WUA, the Water Court applied a penalty pursuant to § 89-837, RCM (1947), making the Claimants' rights junior to all other existing rights generated under that framework.¹⁰ The Water Court did not,

⁸ The implied claims generated are 43B 30160099 and 43B 30160100.

⁹ The implied claim generated is 43B 301060105.

¹⁰ Trout Unlimited argued at summary judgment that the Claimants were "barred" from using Mill Creek outside of the scope of the *Petrich Decree*. On appeal, Trout Unlimited incorporates this contention into its argument that the Water Court lacked the authority to generate implied claims under the enjoining language in the *Petrich Decree* and under § 89-829, RCM (1947). As an initial matter, the *Petrich* court prohibited appropriators from using or interfering with rights already

however, issue an order to generate Melin's second requested implied claim for 43B 194542-00, noting that Melin could not produce evidence that flow rates were greater than what was decreed for other, senior rights diverted at the same point during the disputed period of use. Trout Unlimited contends that the court improperly used the implied claims principle to expand the Claimants' decreed water rights.

¶39 The Water Rights Claim Examination Rules define an implied claim as “a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” W.R.C.E.R. 2(a)(33). Typically, the DNRC identifies an implied claim during the claim examination period and requests the Water Court's review. *In re Musselshell River below Roundup Basin*, 1994 Mont. Water LEXIS 18, *78-79 (Water Ct. July 14, 1994); W.R.C.E.R. 35(a). But the DNRC does not always identify implied claims during the claim examination process. *In re Musselshell River*

decreed. As the Water Court noted in its summary judgment order, that injunction did not bar all subsequent appropriation from the stream. The *Petrich Decree* enjoined only those appropriations that caused injury. Subsequent appropriation by beneficial use alone was contemplated by the statutory framework that Trout Unlimited cites, albeit with a penalty. Section 89-837, RCM (1947). Under the 1921 statutory framework, Mill Creek became an “adjudicated stream” after the district court's entry of the *Allen Decree*. Sections 89-829, -839, RCM (1947). Once a district court adjudicated a stream, the petition process became the proper method for new appropriations on that stream. *Anaconda Nat'l Bank v. Johnson*, 75 Mont. 401, 410-11, 244 P. 141, 144 (1926); see also *A Summary Digest of State Water Laws*, Nat'l Water Comm'n, 455-56 (Richard L. Dewsnup & Allen W. Jenson ed. 1973). Absent a petition and new adjudication, a water user exceeding a previously decreed amount was deemed by statute to have a junior priority date to all other senior and properly decreed appropriators. Section 89-837, RCM (1947) (“Failure to comply with the provisions of this act deprives the appropriator of the right to use any water of such stream, or other source of supply, *as against any subsequent appropriator mentioned in or bound by a decree of the court.*”) (emphasis added); see also *Donich v. Johnson*, 77 Mont. 229, 245, 250 P. 963, 967-68 (1926) (holding that without subsequent, intervening appropriators, a water user could perfect a use right outside of the statutory framework). The *Petrich Decree* did not bar the Claimants from perfecting use rights on the adjudicated streams; at most, it would have operated to penalize them with juniority to other previously decreed users.

below Roundup Basin, 1994 Mont. Water LEXIS 18, *78-79. Consequently, if during the general adjudication process it becomes apparent or a party requests it, the Water Court may generate an implied claim after issuance of an interlocutory decree. *In re Foss*, 2013 Mont. Water LEXIS 17, *31-32; *In re Climbing Arrow Ranch Inc.*, 2019 Mont. Water LEXIS 1, *4-6. This Court recognizes the Water Court’s authority to generate implied claims when based on “substantial credible evidence” *Hoon*, ¶¶ 46-54.

¶40 The Water Court has developed a legal standard for determining when it will generate an implied claim.

First, the implied claim must be justified by some evidence in the claim form or the documents attached thereto, although supplemental evidence can be used to explain or clarify the claim and its contents. Second, evidence must exist of actual historic use corroborating the implied claim. Third, the creation of the implied claim should not result in a change to historic water use or increase the historic burden to other water users. The burden to meet these criteria rests on the person seeking recognition of an implied claim.

In re Foss, 2013 Mont. Water LEXIS 17, *32. The Water Court uses the *Foss* test in determining whether to modify the content of a statement of claim. *Open A. Ranch Inc.*, 2020 Mont. Water LEXIS 356, *44-46, 55; *Circle S. Ranch*, 2019 Mont. Water LEXIS 8, *15-17 (Water Ct. May 16, 2019). When a party requests the generation of an implied claim, they are asserting that the original statement of claim does not accurately reflect the existence of multiple claims. *Circle S. Ranch*, 2019 Mont. Water LEXIS 8, *15-17; W.R.C.E.R. 2(a)(33), 35. The person seeking an implied claim thus must prove that all elements of the *Foss* test are met. *In re Paulson*, 2020 Mont. Water LEXIS 254, *5 (Water Ct. April 17, 2020) (citation omitted); *In re Foss*, 2013 Mont. Water LEXIS 17, *32; W. R.

Adj. R. 19. Like all other claims, an implied claim must include the elements of the existing right. W.R.C.E.R. 35 (citing § 85-2-224, MCA).

¶41 “[I]t must be clear that a claimant intended to claim two or more rights in a single filing, and is not simply trying to make up for an un-claimed water right that was overlooked prior to the filing deadline.” *In re Martinell*, 2018 Mont. Water LEXIS 3, *11-12 (Water Ct. June 14, 2018). The generation of implied claims may not “be used to circumvent the claim filing process” or to “expand the elements of a filed statement of claim and thereby create the groundwork to add additional water rights” *In re Eliasson Ranch Co.*, 2004 Mont. Water LEXIS 2, *6-7 (Water Ct. June 28, 2004). The existence of multiple rights within a single statement must be evident; a usual indicator is “an overstatement of some element of claim on a single statement of claim form.” *In re Eliasson Ranch Co.*, 2004 Mont. Water LEXIS 2, *5-6 (reciting examples “such as: listing points of diversion on two or more sources; listing two previously decreed rights with different priority dates on one claim form; combining the flow rates of multiple decreed rights on one claim; claiming a flow rate in excess of a previously decreed right; or combining multiple purposes such as irrigation, stock, and mining uses on one claim form”).

¶42 The Claimants raised their request for the generation of implied claims in proposed pre-trial orders filed in August 2023, preceding the objection hearing. The Water Court conducted hearings for Melin’s claim on December 18, 2023, and for Petrich’s claim two days later. Trout Unlimited called expert hydrologist Rankin Holmes and the Claimants to

testify. Claimant James Melin is the son of Robert and Wanda Melin. Robert and Wanda were among the *Petrich* petitioners who filed statements of claim for those decreed rights in 1982. James Melin was born in 1949 and has lived in the Mill Creek area for nearly all his life. He inherited the property from his parents in 2017. Gerald Petrich represented the Petrich Family Limited Partnership. Gerald was another named petitioner in the *Petrich Decree* and filed statements of claim for his decreed rights in 1981. Gerald Petrich was the only witness to testify to personal knowledge of the litigation surrounding the *Petrich Decree*. The Claimants also called Arthur Burns, a fence-line neighbor to Melin for 24 years; Keith Neal, who has lived in the area for approximately 60 years; Gordon Rigler, a 66-year-old homesteader living in the area nearly all his life; and Randy Petrich, Gerald's son and Melin's neighbor. The Water Court found all witnesses credible.

¶43 The Claimants divert the water at issue through the Northside Ditch. The Northside Ditch did not exist at the time of the *Allen Decree* and was the impetus for the *Petrich* litigation. The Claimants began constructing it shortly after the *Petrich Decree* was issued. They first ran water through it sometime after 1965. According to witnesses, the ditch diverts no other water rights with a priority date senior to the *Petrich Decree*.

¶44 The Water Court determined from the evidence that the Claimants' historic use of water from the Northside Ditch beyond the periods specified in the *Petrich Decree* justified an implied claim for use rights for those periods of time. The Water Court recognized, as it had in previous cases, that the claimants' "overstatement" of the period of use in their claim was a proper basis for generating an implied claim and not an attempt to add new

rights under the auspices of a previously filed statement of claim. The Water Court's precedent shows that an implied claim may be permitted under such circumstances. *See In re Eliasson Ranch Co.*, 2004 Mont. Water LEXIS 2, *5-6 (identifying as one example "claiming a flow rate in excess of a previously decreed right"). The court thus was not foreclosed as a matter of law from considering Melin and Petrich's asserted implied claims once it ruled on partial summary judgment that the *Petrich* Decree declared a defined period of use.

¶45 Trout Unlimited contends that the Claimants failed nonetheless to meet their burden to satisfy all elements of the *Foss* test. Trout Unlimited urges this Court to require that the Water Court impose a standard of proof and afford notice to other water users when the Water Court generates an implied right. The *amici* mount similar arguments, emphasizing that the Claimants should have filed a use right for the additional periods they claimed to have used historically. In response, Melin and Petrich argue that the overstatement of the period of use is evidence of their intent to claim multiple water rights and gave sufficient notice to other water users. The Claimants posit that witness testimony at the hearing constituted substantial credible evidence to establish actual historic use during the period at issue. Finally, they assert that because the parties historically used the water as claimed on the statements of claim, there is no increased historic burden to other water users.

¶46 Under the clear error standard, we first determine whether the Water Court's findings are supported by substantial evidence. *Skelton Ranch, Inc.*, ¶ 27 (citation omitted). Next, if the findings are supported by substantial evidence, we determine whether "the trial

court misapprehended the effect of the evidence.” *Skelton Ranch, Inc.*, ¶ 27 (citation omitted). Finally, we may find clear error if the entirety of evidence leaves us with the “definite and firm conviction that a mistake has been committed.” *Skelton Ranch, Inc.*, ¶ 27 (citation omitted). “Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion, even if the evidence is weak or conflicting.” *Skelton Ranch, Inc.*, ¶ 27 (quotation omitted). It need not amount to a “preponderance of the evidence, but it must be more than a scintilla.” *Skelton Ranch, Inc.*, ¶ 27 (citation omitted). “[S]ubstantial evidence is not synonymous with clearly erroneous and a reviewing court may find that a finding is clearly erroneous even though there is evidence to support it.” *Skelton Ranch, Inc.*, ¶ 27 (citation omitted).

¶47 Because the burden of proof is on a claimant, W. R. Adj. R. 19, Melin and Petrich have the “initial burden of producing evidence as to a particular fact,” as they would “be defeated if no evidence were given on either side.” Section 26-1-401, MCA. “The party holding the affirmative of the issue must produce the evidence to prove it The burden throughout is on him who has the affirmative of an issue.” *Stocking v. Johnson Flying Serv.*, 143 Mont. 61, 66, 387 P.2d 312, 315 (1963). “[N]othing can be left to mere conjecture.” *Stocking*, 143 Mont. at 65, 387 P.3d at 314; *see also Hoon*, ¶¶ 46-54; *In re Foss*, 2013 Mont. Water LEXIS 17, *35.

¶48 With these standards in mind, we turn to the Water Court’s consideration of the three *Foss* elements on the record presented.

Evidence in the Statements of Claim

¶49 When determining whether the statement of claim contains evidence of an implied claim, “the narrow [i]nquiry before the [c]ourt is whether the original claim, or its supporting documents[,] reference two water rights rather than one.” *Open A Ranch Inc.*, 2020 Mont. Water LEXIS 356, *56. This threshold element must be met. *In re Eliasson Ranch Co.*, 2004 Mont. Water LEXIS 2, *6-7.

¶50 In this case, all three statements of claim show a similar pattern. The statement of claim described the other water right elements—besides the period of use—as identical to the *Petrich Decree*.¹¹ On the statement of claim form, the Claimants overstated the period of use, ranging from as early as April 1 to as late as October 1. Each Claimant checked “Decreed Water Right” on its statement of claim, selecting from the options of “Decreed Water Right,” “Filed Appropriation Right,” or “Use Water Right.” The Claimants submitted only the *Petrich Decree* to support their claimed period of use.

¶51 Because the *Petrich Decree* limited the period of use from May 1 to July 15, the Water Court found more than one right within each of the stated claims—one, a decreed right whose period of use dates from May 1 to July 15 and another, a use right, bookending those dates. Though the Claimant checking “Decreed Water Right” supplies evidence that the Claimant intended to claim only the rights decreed in the *Petrich Decree*, that statement is not dispositive to the existence of multiple rights contained within a single statement of claim. *In re Foss*, 2013 Mont. Water LEXIS 17, *27-28 (holding that claimants checking

¹¹ Although not an issue on appeal, Trout Unlimited also objected to the place of use for Melin’s claims.

the “Filed Appropriation Right” instead of the “Use Water Right” did not overcome the prima facie proof that the statement of claim provided for the claimant’s priority date). Trout Unlimited argues that the Water Court erroneously recognized the Claimants’ “expanded water use through the creation of new post-1973 implied water rights in the adjudication context, rather [than] referring them to the DNRC permit or change processes outside the Water Court’s jurisdiction.” The court determined, however, that the Claimants’ overstatement of the period of use reflected their *pre-1973* water use, a proper reason to imply a claim for use rights within their timely filed statements of claim.

¶52 Applying its standard for implied claims, the Water Court did not err in finding the overstatement of the period of use sufficient to satisfy the first element of the *Foss* test.

Corroborative Evidence of Actual Historic Use

¶53 At the objection hearing, the burden fell on the Claimants to demonstrate in fact that the requested implied claims existed. The Water Court requires that the Claimant produce evidence showing actual historic use. *In re Foss*, 2013 Mont. Water LEXIS 17, *32. The court allows the submission of “supplemental evidence . . . to explain or clarify a claim and its contents.” *In re Foss*, 2013 Mont. Water LEXIS 17, *32. Such supplemental evidence, however, must find some basis in the statement of claim form or the attached documents. *In re Climbing Arrow Ranch Inc.*, 2019 Mont. Water LEXIS 1, *8-9 (rejecting claimant’s supplemental evidence for larger place of use because it was “untethered from anything in the claim file”); *In re Foss*, 2013 Mont. Water LEXIS 17, *36-37. As the Water Court explained in *In re Foss*, “[o]ne of the purposes of a trial is to clarify or augment existing

evidence so an informed decision about a claim can be made.” 2013 Mont. Water LEXIS 17, *36.

¶54 The *Petrich Decree* was the only supporting document attached to the statement of claim forms substantiating the Claimants’ actual historic use as relevant to the period of use. To satisfy the second *Foss* element, the Claimants needed to present supplemental evidence for each element of their implied claims as they existed prior to July 1, 1973. Section 85-2-224, MCA; *In re Foss*, 2013 Mont. Water LEXIS 17, *26-28; W. R. Adj. R. 19; W.R.C.E.R. 35(c).

¶55 At trial, counsel asked Gerald about the following stipulation made during the *Petrich* litigation:

It was stipulated by and between attorneys of record that the Court is to take as a matter of proof that Mill Creek has surplus water in excess of decreed water which is at least 10,000 inches which exists during the spring run-off, but no later than July 15

Although Gerald was aware of the stipulation, he did not think that the *Petrich Decree* provided a period of use in accordance with that stipulation. Gerald testified that he believed the *Petrich Decree* gave him the right to divert water so long as he did not injure senior users and water was available at his point of diversion. He believed all of his rights were decreed rights, including the uses outside of the *Petrich Decree*’s period of use limitation. James Melin testified to a similar understanding. Attaching the *Petrich Decree* as the primary document in support of their claim reinforces this belief. Witnesses asserted that the only variations in the Claimants’ diversion of water from year to year were a product of available flows and calls from senior appropriators or as administered by the

water commissioner. Gerald and the other witnesses observed that excess water typically became available in early April and began to peter out around August to early October.

¶56 The Claimants could not prove an exact date they began diverting water outside of the *Petrich Decree's* limitations. All witnesses testified, however, that it was done consistently and historically. Witnesses recalled only one occasion on which the water commissioner shut off the Northside Ditch in accordance with the July 15 limitation. The date of this event is unclear, but witnesses stated that a district court judge subsequently ordered that the water for the Northside Ditch be reinstated. Evidence of the Claimants' historic use outside the *Petrich Decree's* period of use limitation was complicated, however, by the installation of a pipeline on Mill Creek sometime in the 1990s, which made water delivery more efficient throughout the watercourse. The Northside Ditch's headgate is immediately above the pipeline inlet.

¶57 An appropriator's intent and beneficial use are central principles underpinning water use rights. *79 Ranch, Inc. v. Pitsch*, 204 Mont. 426, 431-32, 666 P.2d 215, 217-18 (1983). "The intention of the claimant is . . . a most important factor in determining the validity of an appropriation of water. When that is ascertained, limitation of the quantity of water necessary to effectuate his intent can be applied according to acts, diligence, and needs of the appropriator." *Toohey v. Campbell*, 24 Mont. 13, 17, 60 P. 396, 397 (1900) (quoting *Power v. Switzer*, 21 Mont. 523, 530, 55 P. 32, 35 (1898)). A claimant's intent is determined by "his acts and the circumstances surrounding his possession of the water, its

actual and contemplated use and the purposes thereof.” *Toohey*, 24 Mont. at 18, 60 P. at 397.

¶58 As this Court has held, “Water rights [are] limited to the amount of water actually put to beneficial use, despite the amount of water diverted or claimed.” *79 Ranch, Inc.*, 204 Mont. at 431-32, 666 P.2d at 217-18; *see also Hoon*, ¶ 35. Stated differently, “[u]ntil a claimant is himself in position to use the water, the right to the water, or water right does not exist” for the purposes of establishing seniority, *Miles v. Butte Elec. & Power Co.*, 32 Mont. 56, 69, 79 P. 549, 554 (1905), and for the purposes of establishing an existing water right under the general adjudication process, § 85-2-102(13), MCA. Taken together, these principles create a “policy of the law . . . [that] prevent[s] a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses.” *Toohey*, 24 Mont. at 17, 60 P. at 397.

¶59 Neither the Claimants nor the Water Court gave much attention to the stipulation between the *Petrich Decree*’s litigants. Those parties—Gerald Petrich and Melin’s predecessors—agreed that 10,000 miner’s inches of water was available for diversion from Mill Creek during spring run-off and “no later than July 15.” The Water Court did not mention the stipulation in its order despite its significance to the Claimants’ intent and the availability of water for beneficial use prior to July 1, 1973. Gerald testified at the hearing that his lawyer during the *Petrich* litigation let the stipulation and the period of use limitation “slip by.” But the attorney-client relationship is one of agency; generally, if the

attorney is acting within the scope of his authority, the client is bound to the statements made by that attorney. *Crane Creek Ranch, Inc. v. Cresap*, 2004 MT 351, ¶ 12, 324 Mont. 366, 103 P.3d 535; *State v. Dow*, 71 Mont. 291, 300, 229 P. 402, 405 (1924). The stipulation is at odds with the Claimants' testimony that they did not believe the *Petrich Decree* limited their period of use because it shows the litigants' then-present intent not to appropriate later than July 15. Besides Gerald's testimony, it is the only available evidence on the parties' intent when the *Petrich Decree* was entered.¹²

¶60 The Water Court did not address the inconsistencies between Gerald's testimony and the stipulation. This Court typically defers to the trial court on issues of fact, as it is in the best position to determine the candor and credibility of witnesses when findings are dependent on oral testimony. *In re Kelly*, 2010 MT 14, ¶ 25, 355 Mont. 86, 224 P.3d 640 (citation omitted). When contemporaneous documents contradict oral testimony, however, the trier of fact should give little weight to that oral testimony. *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395-96, 68 S. Ct. 525, 542 (1948), *cited in Skelton Ranch*, ¶ 27. Though Gerald was not the only witness the Claimants offered, he was the only witness testifying to the Claimants' intent and available water when the court entered the *Petrich*

¹² In 1985, when the Water Court entered a temporary preliminary decree for Basin 43B, Melin was decreed an existing right, 43B 194537-00, with a priority date of April 1, 1912. Gerald and several other water users objected in part because the use right was not decreed in the *Petrich Decree*. The parties stipulated to a use right whose priority date was May 1, 1965, with a period of use of April 1 to July 15. The parties amended the period of use, however, to April 20 to September 24. When asked about the stipulations, Gerald could not explain why the initial stipulation ended on July 15 or why the parties agreed to amend, only that he objected because he believed Melin's use of water was inefficient.

Decree. The weight of his testimony on these facts is diminished because it contradicts the stipulation.

¶61 The stipulation also calls into question whether, prior to the enactment of the WUA, water actually was available outside the *Petrich Decree*'s limitations. The Water Court even acknowledged that most of the witnesses' observations post-dated July 1, 1973. An added wrinkle is that witnesses testified, and the Water Court recognized, that the installation of the pipeline in the 1990s increased the efficiency of water delivery on Mill Creek. Gerald testified that the pipeline increased water availability by 30 to 45 days. Melin also testified that the efficiency of the new irrigation systems, especially the pipeline, completely changed the water availability as compared to 1963 or 1973. The Water Court did not explain the pipeline's effect—or other improvements' effects—on the increased availability of water, nor did it offer reasoning for determining that the pipeline was inconsequential to the witnesses' observations.

¶62 The Water Court generated implied claims for an additional 76 to 107 days beyond the limitations in the *Petrich Decree*. Without grappling with the installation of the pipeline or the *Petrich Decree* stipulation, the Water Court concluded that the witnesses' testimony was unrebutted and was substantial credible evidence supporting its findings. But the span of time the Claimants and other witnesses discussed ranged from 1965, when the Claimants first ran water through the Northside Ditch, to as late as the day before the objection hearing. Given these omissions, the Water Court's finding of historical use was insufficient to conclude that the water was both legally and physically available outside of

the *Petrich Decree* period of use limitation or that the Claimants used water at those times and prior to July 1, 1973.

¶63 The Water Court did conclude that Melin failed to offer substantial evidence supporting the generation of an implied claim from 43B 194542-00. The court reasoned that Melin did not provide evidence of flow rates exceeding other senior rights flowing through the same ditch—the Melin Ditch. It noted that this information should have been available because the *Petrich Decree* required measuring boxes. Despite remarking that historical flow rates should have been available for one claim, the Water Court seemingly found this fact unimportant for the Claimants’ other existing water right claims diverted through the Northside Ditch. On appeal, we are unable to decipher its reasoning for the distinct treatment between ditches and the availability of evidence establishing historical flow rates.

¶64 The Claimants bore the burden of presenting specific facts to prove the elements of the implied claim as they existed prior to July 1, 1973. W.R.C.E.R. 35(c) (citing § 85-2-224, MCA); *Musselshell River below Roundup Basin*, 1994 Mont. Water LEXIS 18, *81-86. For the reasons discussed, we are unable to conclude that the Claimants met their burden.

¶65 This case is distinguishable from *Hoon*. The Water Court in *Hoon* generated an implied claim based on observations that the Claimants diverted the full capacity of the ditch and proof that the ditch exceeded the amount claimed in the original filed right. *Hoon*, ¶ 54. Though the key witness testified from memory that the ditch had always diverted its

full capacity, the court found no substantial evidence proving an exact date. *Hoon*, ¶ 51. The Water Court used the death of the witness’s grandfather in 1950 as a moment in time to establish the priority date, based on the witness’s observation and memory. *Hoon*, ¶ 51.

¶66 Similarly, in *Musselshell River below Roundup Basin*, 1994 Mont. Water LEXIS 18, *81-86, after finding evidence of two claims in the statement of claim form, the Water Court determined the contours of the implied claim by methodically discussing the evidence or lack thereof supporting each element. Under its analysis for priority date, the Water Court noted that “[w]hen the testimony of a witness is sufficient to prove an act or transaction within a certain period, but is so vague and uncertain as not to fix the time within that period, the best that can be done for the party producing such witness is to fix the date at the end of the period.” *Musselshell River below Roundup Basin*, 1994 Mont. Water LEXIS 18, *81-82 (quoting *Vidal v. Kensler*, 100 Mont. 592, 598, 51 P.2d 235, 238 (1935)).

¶67 Under the second element of the *Foss* test, the Water Court did not adhere to its standard governing modifications to existing water rights. It did not explain how the record evidence proved that generating the implied claims Melin and Petrich requested would not “expand the elements of [their] filed statement of claim . . . to add additional water rights.” *Eliasson Ranch Co.*, 2004 Mont. Water LEXIS 2, *6-7. Without findings addressing that evidence—or lack thereof—we conclude that the Water Court did not support its conclusions that the second *Foss* element was satisfied, particularly that the Claimants provided sufficient proof of a priority date for their use right perfected before July 1, 1973.

Skelton Ranch, Inc., ¶ 27 (citation omitted). In light of our remand on the third *Foss* element, as discussed next, we do not foreclose the Water Court from reconsidering the second *Foss* element, explaining its reasoning as applied to the entire record.

Change to Historic Use or Increase in Burden to other Water Users

¶68 “[T]he creation of the implied claim should not result in a change to historic water use or increase the historic burden to other water users.” *In re Foss*, 2013 Mont. Water LEXIS 17, *32. When historic evidence exists and no one asserts that recognizing the implied claims would cause a change to historic use or increase historic burdens on other water users, this element is satisfied. *In re Foss*, Mont. Water LEXIS 17, *33.

¶69 The Water Court’s analysis under this element was cursory. It stated that because water was historically used beyond the *Petrich Decree*, there was no change to historic water use or historic burden to other water users. The Water Court then supported this claim by asserting that it used the most junior date of existing water rights to “avoi[d] conflict with other Mill Creek water users holding existing water rights.”

¶70 The Water Court’s analysis terminated at the passage of the WUA, even though the *Foss* test instructs the Water Court to consider changes to historic use and historic burden. The WUA allows for new appropriations, albeit under the DNRC’s permitting process. Section 85-2-302, MCA. These water users, like those with existing rights, took “with notice of the conditions existing at the time they make their appropriations.” *Quigley II*, 110 Mont. at 505, 103 P.2d at 1072 (citation omitted). They, too, are entitled to notice and an opportunity to be heard.

¶71 “Water rights are property rights, and the adjudication of property rights requires that a property owner be afforded due process.” *Little Big Warm Ranch, LLC v. Doll*, 2018 MT 300, ¶ 11, 393 Mont. 435, 431 P.3d 342 (citations omitted). “Notice must be reasonably calculated to inform parties of proceedings [that] may directly and adversely affect their legally protected interests.” *Little Big Warm Ranch, LLC*, ¶ 11. In *Circle S Ranch*, the Water Court maintained that a “request for an implied claim is a form of motion to amend [the] parent claim filed after date of issuance of the preliminary decree. Notice is necessary because the implied claims are not included in the preliminary decree.” 2019 Mont. Water LEXIS 8, *16-17 (citing § 85-2-233(6), MCA).

¶72 Amicus Mill Creek Downstream Water Users argues that the overstatement of a single element on the Claimants’ statements of claim and abstracts gave them insufficient notice of the generation of implied claims. Mill Creek Downstream Water Users contends that in granting the implied claim for 17.24 cfs on an already over-appropriated stream that has historically been dewatered after the snowmelt runoff recedes, the Water Court failed to recognize the new burden on Mill Creek. Even though these implied rights received a priority date of June 30, 1973, decreeing more water rights on a contentious, over-decreed source only produces more complication for both junior and senior water rights holders. Without adequate notice, they contend that they had no chance to rebut Petrich’s and Melin’s claimed historic use. Given its summary conclusion on the *Foss* elements, we conclude that the Water Court erred in generating the implied claims without adequate notice or full consideration of its effect on other water users.

CONCLUSION

¶73 We affirm the Water Court's conclusion that Trout Unlimited had standing to bring its objections. We also affirm the Water Court's decision that the *Petrich Decree* unambiguously limited the period of use from May 1 to July 15. We reverse the Water Court's generation of implied claims as authorized by 43B 101013-00, 43B 101014-00, and 43B 194543-00. We remand for further consideration of the implied claims consistent with this Opinion. The Water Court is instructed to provide notice of the implied claims and, following the opportunity for other water users to be heard, to make factual findings and conclusions for each element of the implied claims as enumerated in § 85-2-224(1) and as they existed before July 1, 1973. W.R.C.E.R. 35(c); *see e.g. Musselshell River below Roundup Basin*, 1994 Mont. Water LEXIS, *81-86.

/S/ BETH BAKER

We Concur:

/S/ CORY J. SWANSON
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE