

MEMO

TO: File

FROM: James Cefalo

DATE: May 16, 2011

RE: Analysis of Brossard v. Morgan Decree (1899)

A water user on Stockton Creek, Glen Merrill, asked me to look at an old decree for Stockton Creek (Brossard v. Morgan) to verify that the water rights in the IDWR database are consistent with the language in the decree. This memo identifies some of the inconsistencies in the decree file and proposes changes to some of the water right records based on an updated interpretation of the decree language.

The Brossard v. Morgan Decree presents a unique situation. The decree file contains various documents from the Bannock County District Court that present different descriptions of the water right elements. It appears that there may have actually been two separate cases, or a re-hearing of the initial case, resulting in two separate judgments.

The decree file contains a document titled "Findings of Fact and Conclusions of Law" (hereinafter "FF/CL"). The caption for the matter reads: "Alphonse Brossard and Joseph Vaness, and Intervenor Richard Hadley, Plaintiff, vs John T. Morgan, Jason Howell, Maria Howell, John Jorgenson, Peter Jorgenson and Mrs Peter Jorgenson, Defendants." The FF/CL was signed by Judge DW Standrod on **January 25, 1898**. It states that a trial was held in the matter without a jury, but does not give a specific date for the trial. The end of the document states, "Let judgment be entered accordingly." However, the document does not contain an "Order" or "Judgment" section.

The decree file also contains a second document titled "Judgment and Decree." Its caption reads: "Alphonse Brossard and Joseph Vaness, Plaintiffs, vs. J.T. Morgan, Jason Howell, Maria Howell, John Jorgenson, Peter Jorgenson, and Mrs. Peter Jorgenson, Defendants." The Judgment and Decree was signed by Judge Joseph C. Rich on **April 28, 1899**. The document states a trial was held in the matter on **March 31, 1899**. It refers to findings of fact and conclusions of law, but those specific portions are not attached.

We recently contacted Bannock County to see if additional records or documents could be found in the archives (for example, the findings of fact from the 1899 case). Unfortunately, the county could not find any documents beyond those already contained in the file.

The difficulty for purposes of creating an accurate water right record is that there are clear discrepancies between the two court documents. The FF/CL gives very detailed descriptions of the water rights, including priority dates and acres irrigated. It also sets forth

three separate water use periods (winter, early spring, and summer) for most of the water rights. The parties were given different diversion rates for each water use period. In contrast, the 1899 Judgment and Decree only states a single flow rate for each party and does not mention priority dates, acres, or places of use.

Because the water users on Stockton Creek need some certainty regarding their water rights for administration, IDWR has to interpret the two documents to derive a water right record. I believe the 1898 FF/CL be used to establish the basic elements of the water rights. The water rights should only be altered by the 1899 Judgment and Decree to the extent that specific elements of the water rights were addressed in that document. Therefore, I propose that the water rights on Stockton Creek should be recorded as listed below.

Water rights 13-55, 13-56 and 13-57 all include wintertime irrigation. The 1898 FF/CL specifically identified wintertime irrigation and acknowledged that the water users obtain a benefit from running water on the meadows in the winter. The 1899 Judgment and Decree also refers to year-round water usage under those water rights.

(Note: All of the water rights are for irrigation. The elements described in the 1898 FF/CL are shown in regular type. Some of the season of use cut-off dates were assumed based on the local irrigation season. Assumed values are underlined. The changes to the elements resulting from the 1899 Judgment and Decree are highlighted in yellow.”

Water Right Information Obtained from Various Decree Documents

Water Right 13-55 (Brossard)

Priority Date: May 1, 1873

Period of Use / Diversion Rate:	<u>Apr 1</u> – June 1	3.2 cfs
	June 2 – Oct 15	1.6 cfs
	Oct 15 – <u>Mar 31</u>	<u>1.6 cfs</u>

Period of Use / Diversion Rate	Jan 1 – Dec 31	2.3 cfs
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Place of Use: NE $\frac{1}{4}$ of Sec 23, T13S, R38E (160 acres)

Water Right 13-56 (Vaness / Caldwell)

Priority Date: May 1, 1873

Period of Use / Diversion Rate:	<u>Apr 1</u> – June 1	1.8 cfs
	June 2 – Oct 15	1.4 cfs
	Oct 15 – <u>Mar 31</u>	<u>1.4 cfs</u>

Period of Use / Diversion Rate	Jan 1 – Dec 31	2.1 cfs
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Place of Use: S $\frac{1}{2}$ SE and E $\frac{1}{2}$ SW of Sec 14, T13S, R38E (160 acres)

Water Right 13-57 (Hadley)

Priority Date: May 1, 1873

Period of Use / Diversion Rate:	Jan 1 – Dec 31	0.34 cfs
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Period of Use / Diversion Rate	Jan 1 – Dec 31	0.50 cfs
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Place of Use: NWSE, SWNE, SENW, Lots 2 & 3 of Sec 14, T13S, R38E (175 acres)

Water Right 13-58 (Morgan)

Priority Date: February 5, 1880

Period of Use / Diversion Rate: Apr 1 – Oct 31 3.2 cfs

Period of Use / Diversion Rate: Apr 1 – Oct 31 3.0 cfs

Place of Use: S½SW and S½SE of Sec 24, T13S, R38E (160 acres)

Final Water Rights (as recorded in IDWR database)

Water Right 13-55 (Brossard)

Priority Date: May 1, 1873

Period of Use / Diversion Rate Jan 1 – Dec 31 2.3 cfs

Place of Use: NE ¼ of Sec 23, T13S, R38E (160 acres)

Water Right 13-56 (Vaness / Caldwell)

Priority Date: May 1, 1873

Period of Use / Diversion Rate Jan 1 – Dec 31 2.1 cfs

Place of Use: S½SE and E½SW of Sec 14, T13S, R38E (160 acres)

Water Right 13-57 (Hadley)

Priority Date: May 1, 1873

Period of Use / Diversion Rate Jan 1 – Dec 31 0.50 cfs

Place of Use: NWSE, SWNE, SENW, Lots 2 & 3 of Sec 14, T13S, R38E (175 acres)

Water Right 13-58 (Morgan)

Priority Date: February 5, 1880

Period of Use / Diversion Rate: Apr 1 – Oct 31 3.0 cfs

Place of Use: S½SW and S½SE of Sec 24, T13S, R38E (160 acres)

IDWR database was updated to match list of Final Water Rights on May 16, 2011.