



## B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
<u>Bozeman Sr. High School</u>	<u>Bozeman, MT</u>	<u>1969</u>	<u>General</u>
<u>Montana State University</u>	<u>Bozeman, MT</u>	<u>1973</u>	<u>B.A. History</u>
<u>University of Massachusetts</u>	<u>Amherst, MA</u>	<u>1971-72</u>	<u>Junior Year Exchange</u>
<u>University of Montana</u>	<u>Missoula, Mt</u>	<u>1989</u>	<u>J.D.</u>
<u>National Judicial College</u>	<u>Reno, NV</u>	<u>1999, 2014, 2015</u>	

8. List any scholarships, awards, honors and citations that you have received:

Graduated summa cum laude, Montana State University  
Graduated with Honors, University of Montana, School of Law  
Dean's Leadership Award, U of Montana Law School, 1989  
American Red Cross Circle of Life  
Distinguished Service Award, Montana Judiciary

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

I was not a member of the Law Review.

**C. PROFESSIONAL BACKGROUND AND EXPERIENCE**

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
<u>Montana State Courts</u>	<u>1989</u>
<u>U.S. Federal District Court for Montana</u>	<u>1989</u>

11. Indicate your present employment. (List professional partners or associates, if any).

Associate Water Judge, Montana Water Court. The Water Court presides over Montana's general stream adjudication. Every existing water right filed by a water user is examined by the Montana Department of Natural Resources and Conservation, issued in a Water Court Decree, and subject to objections. The Water Court resolves all objections and issue remarks resulting from DNRC examination. Water Masters are assigned to specific river basins and preside over all objection and issue remark resolution in that basin. The Associate Water Judge reviews Master's recommendations and hears objections to Master's Reports. The Judge also conducts evidentiary hearings including cases certified from district courts pursuant to Section 85-2-406(2)(b), MCA.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
<u>Nash, Guenther, Zimmer, and Screnar</u>	<u>Attorney</u>	<u>1989 to 1992</u>

The firm is no longer in business. Jim Screnar (587-8777) are currently practicing law in Bozeman, Montana.

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

I have been continuously employed since graduating from law school.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

I am the Associate Water Judge for the Montana Water Court. I work exclusively in water law. The Court's primary function is the adjudication of all existing water rights in this state. I supervise several Water Master's.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

For the past twenty four years, I have worked exclusively in water law. Prior to my current work, I dealt with the variety of cases common to the private practice of law in Montana. I took appointments as a public defender in city court, justice court, and district court. I had business clients. I drafted wills. I had personal injury cases. I worked on issues for my own clients and as co-counsel for other attorneys in my law firm.

16. If you specialize in any field of law, what is your specialty?

I specialize in Water Law.

17. Do you regularly appear in court?

As the Associate Water Judge, I regularly conduct court proceedings.

What percentage of your appearance in the last five years was in:

Federal court	<u>0%</u>
State or local courts of record	<u>100%</u>
Administrative bodies	<u>0%</u>

Other \_\_\_\_\_ 0%

18. During the last five years, what percentage of your practice has been trial practice? \_\_\_\_\_ 10%

19. How frequently have you appeared in court? \_\_\_\_\_ 1 \_\_\_\_\_ time per month on average.

20. How frequently have you appeared at administrative hearings?  
\_\_\_\_\_ 0 \_\_\_\_\_ times per month on average.

21. What percentage of your practice involving litigation has been:

Civil	_____ 100 %
Criminal	_____ 0%
Other	_____ 0%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I do not appear before the Montana Supreme Court. My decisions can and have been appealed to the Supreme Court. I currently have several cases pending before the Supreme Court.

23. State the number of jury trials that you have tried to conclusion in the last ten years.

None

24. State the number of non-jury trials that you have tried in the last ten years.

Over the past ten years I have presided over an average of 4-6 evidentiary hearings a year. The number of hearings depends on the status of each basin. Less than 10% of Water Court cases go to hearing. In 2010, I conducted three hearings in the Teton River basin. In 2011 and 2012, I conducted sixteen hearings in the same basin.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

In the last two years, I have primarily held hearings on objections to master's reports. The same attorneys often appeared in these cases. Attorneys that have appeared regularly in Water Court cases where I was the presiding judge:

John E. Bloomquist, PO Box 1185, Helena, MT 59624 ph 443-2211  
[jeb@doneylaw.com](mailto:jeb@doneylaw.com)

Steven R. Brown, PO Box 7909, Missoula, MT 59807-7909 ph 523-2500  
[srbrown@garlington.com](mailto:srbrown@garlington.com)

Renee Lynne Coppock, PO Box 2529, Billings, MT 59103-2529 ph 252-3411  
[rcoppock@crowleyfleck.com](mailto:rcoppock@crowleyfleck.com)

Michael J. L. Cusick, PO Box 1288, Bozeman, MT 59771-1288 ph 587-5511  
[morlaw@qwestoffice.net](mailto:morlaw@qwestoffice.net)

Holly J. Franz, PO Box 1155, Helena, MT 59624-1155 ph 442-0005  
[hollyjo@franzdriscoll.com](mailto:hollyjo@franzdriscoll.com)

James A. Hubble, PO Box 556, Stanford, MT 59479 ph 566-2500  
[jhubble@hrwplaw.com](mailto:jhubble@hrwplaw.com)

Ryan K. Mattick, PO Box 1288, Bozeman, MT 59771 ph 587-5511  
[mattick@qwestoffice.net](mailto:mattick@qwestoffice.net)

Roselyn Rennie, Special Asst. US Attorney, 316 North 26<sup>th</sup> Street, Billings, MT 59101  
ph 247-7545 [roselyn.rennie@sol.doi.gov](mailto:roselyn.rennie@sol.doi.gov)

Abigail J. St. Lawrence, PO Box 1185, Helena, MT 59624-1185 ph 443-2211  
[astlawrence@doneylaw.com](mailto:astlawrence@doneylaw.com)

Jeremiah D. Weiner, Asst Attorney General, PO Box 201401, Helena, MT 59620-1401 ph  
444-22026 [jweiner@mt.gov](mailto:jweiner@mt.gov)

Matthew W. Williams, 506 E Babcock, Bozeman, MT 59715 ph 586-1373  
[mattheww53@aol.com](mailto:mattheww53@aol.com)

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I do not appear before administrative boards or commissions.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

As part of the Court's public information program, I have authored several papers on the adjudication process. These are typically used as handouts at public meetings. Titles include:  
"Water Law - Real Questions for the Private Practitioner and Real Answers from the Water Court"  
"Water Rights for the Real Estate Professional"  
"Montana Water Court Settlement Primer"  
"A Brief History of Water"

The Water Court conducts a continuing public outreach program aimed at improving understanding of water rights and the adjudication process. I may hold public meetings to discuss general water law and specific issues affecting the local area. These meetings can be preludes to adjudication cases or post adjudication information if that area is requesting enforcement of a Water Court decree. I also conduct regular Basin meetings after the Water Court decree has been issued to help people understand the adjudication process. I have been invited to speak to local groups to address water right issues. For example, I gave presentations to the Teton River Watershed Group when the adjudication process was beginning in that Basin.

I have made CLE presentations for the Seminar Group, the Montana State Bar, and the Teton County Bar Association. The subject is always water law and the adjudication process. In 2000, I gave a series of four presentations to realtors as part of the Connole-Martin LLP continuing education program. I gave a similar talk to realtors in Great Falls through the Montana Water Course. In each case, the subject was water rights and the adjudication process. Each presentation was catered to the specific audience.

## D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

State Bar of Montana 1989 to present

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

I have been a member of the Bozeman Optimist Club for twenty five years. This service club sponsors several activities for the youth of this area. Some of the programs, such as our winter clothing program, help meet a critical need in our community. Other programs, such as Little Bobcat Track, are just for fun. I was president of the club from 1994 to 1996 and again from 2005 to 2006. I have been on the board of directors since 1994.

I have been a volunteer in the Eagle Mount adaptive skier program for nineteen years. For the past seven years, I have been on the ski program teaching team. Eagle Mount volunteers work with disabled skiers using specialized equipment that allows the skier to compensate for their disability. I have skied with a number of people over the years with a wide range of disabilities. As a teaching team member, I train new and returning volunteers.

30. Have you ever run for or held public office? If so, provide the details.

No

31. Explain your philosophy of public involvement and practice of giving your time to community service.

As a member of the judiciary, the opportunity for public involvement is limited. I am a public figure who avoids any appearance of impropriety through public involvement. That is less of a factor

in community service. Community service is important for any member of that community. It is rewarding and serves a fundamental need that is everyone's obligation. I find that giving time and personal involvement is more rewarding than simple donations

### **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No

## F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

No

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as an associate water judge, state whether you intend to resign such position immediately upon your appointment.

N/A

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

N/A

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No

41. If appointed by the Chief Justice, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?  X  Yes   No

If not, please explain.

N/A

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  
 Yes  No

If yes, please explain.

N/A

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No

### **G. WRITING SKILLS**

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

I perform most of my own legal research. One of the benefits of the Water Court is the many years of water law experience held by water masters and water judges. The ability to discuss issues with other colleagues and learn from that experience is invaluable. My research includes using that experience. I write all my own contested case decisions. These decisions are reviewed by other members of the court as part of the process, but the final product is my work.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

My legal writing is limited to the type of documents typically issued by a court. That includes decisions, and orders for case management. The extent of that writing is considerable.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

Final Order Regarding Farmers Co-op Canal Company Water Right Claims, Case 41O-118

48. What percentage of your practice for the last five years has involved research and legal writing?  
70 %

49. Are you competent in the use of Westlaw and/or Lexis?

Yes, Lexis

## H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

I ski, mostly at Bridger Bowl. There is at least one trip to another Montana ski area every winter, possibly a ski trip to the Beartooth in June. We try to backcountry ski several times each year, hopefully in Yellowstone. I mountain bike to stay in shape for skiing. I river raft. My wife and I own Appaloosa horses and spend summer and fall weekends trail riding. Photography is a part of all of these activities. There is usually a family reunion every year or so.

Horse ownership has made me a hobby farmer. I have extensively remodeled, and continue to remodel, our 100+ year old farm house and spend more time fencing than I care to.

51. Describe the jobs that you have held during your lifetime.

I graduated from college with a degree in history and a passion for skiing. I was a ski instructor at Bridger Bowl during college. After graduation, I moved to Big Sky and worked the first

winter as a ski mechanic for Lone Mountain Sports. That summer, I worked as a carpenter in Alaska. The second winter I became a professional ski patrolman. I stayed with this for four years, the last year as an avalanche consultant. I worked for Lone Mountain Ranch, first as a wrangler/bartender and then as head of maintenance and ski trail packer. My wife and I were the ranch managers for Trapper's Cabin Ranch, a private family ranch near Yellowstone Park. We managed a small horse herd, led trail rides, maintained the property, and did whatever else was necessary.

I began working as a carpenter out of high school and continued that work for several summers. When our daughter was born, we moved to Bozeman and I went back to carpentry. We also had the contract to clean the Bozeman Medical Arts building. We hired a few college students, but did most of the cleaning ourselves. While this was primarily my wife's work, I spent many nights cleaning medical offices. During law school, I commuted back to Bozeman every weekend and helped with the cleaning. We stayed with the cleaning contract for nearly two years after I graduated from law school in order to provide a secure income. It takes a while to build a private practice.

Prior to accepting my current position, I practiced law in Bozeman. The single biggest part of my practice was criminal defense. I had the variety of civil cases common to a small law practice.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

As a sitting judge, I do not engage in the practice of law, including pro bono work. I contribute to the Montana Justice Foundation.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

During law school, I worked for Nash, Guenther, Zimmer, and Screnar in Bozeman. After graduation, I went to work at the Nash law firm. Throughout this period of time, Mark Guenther was a mentor. Mark was a superior attorney and one of the most decent human beings I have ever known. He viewed the law as a calling, he was there to do good - and he did, always with a touch of humor. His attitude kept the most serious cases from becoming depressing. He gave me a perspective on the

practice of law that I keep to this day. Mark threw me into the deep end of the pool. I was in court within a few days of passing the bar. I had my first jury trial within a few months. I was on my own, but I knew all the support I needed was close at hand. Mark strived for a complete understanding of the facts of every case, the significance of those facts, and the legal ramification of those facts. He immersed himself in the subject. Mark learned everything from medical procedures to construction techniques as a case required. Good enough was not his standard. He knew our justice system works best when attorneys pay attention to detail and demand a high level of integrity from themselves.

We remained close friends after I went to work for the Water Court and Mark was elected to the bench. Sadly, I learned even more from him as he died of cancer. He never lost his humor. He was always more interested in what others were doing than in own his situation. To Mark, cancer was an annoyance, he just continued to move forward. Mark's passion for life and passion for the law have had a profound effect on my career.

54. In the space provided, explain the qualities that you believe to be most important in a good associate water judge.

The Water Court has a unique mandate. It is a specialty court charged with adjudicating all existing water rights in this State. There are well over 216,000 water right claims that must be addressed in this process. The legislature has given clear direction to complete this job as quickly as possible. The Associate Water Court Judge must be able to stay organized and focused on the job at hand. A strong work ethic is key to completing the adjudication.

The Water Court mandate to conduct a general stream adjudication came from the legislature. Water users did not request this process. However, they are required to take part to protect their water rights. It is stressful and in some cases, expensive. The Associate Water Court Judge must be sensitive to the affect this process has on individuals, families, and communities. I often hold public meetings, conducting status conferences, and holding hearings in areas of the state where water rights have not been controversial. It is important to keep the process from creating unnecessary strife in that community. The great majority of those proceedings result in an agreement between the parties. It is often simply a matter of clarifying the terms of the water rights involved. Nonetheless, it can cause a great deal of worry when water users are unfamiliar with the process. The judge must be sensitive to

the stress the process places on water users. Every party appearing in your court must be treated with respect. They must feel they have a fair and even chance to make their case. The Associate Water Court Judge must truly listen to them.

The Water Court does not have a courtroom. Proceedings are conducted all over the state in a variety of venues. In addition, most parties in Water Court proceedings represent themselves. Without the common trappings of a courtroom, the integrity and authority of the court depends on the judge. You are the court. Your conduct must keep proceedings fair and professional even if they tend to be informal.

Finally, any judge must have a passion about the subject matter. You must strive for a complete understanding of the facts of a case and the significance of those facts. Then, you must know the law with a level of detail that allows you to correctly apply the law to those facts. You must be curious. You must enjoy gaining an understanding of the facts even when it is difficult. That can be particularly true in water right cases when the significant facts are one hundred years old with precious little record to go by. You must have a broad experience in water law, how that law has developed, and how it applies to your facts. You must enjoy what you do.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

The basic tenants of water law in Montana have remained the same for over one hundred years. Beneficial use is the basis, measure, and limit of a water right. First in time is first in right. At the same time, after twenty four years at the Water Court, I continue to be amazed at the endless variety of facts presented by water users and objectors. The flexibility in the law is the application of statute and precedent to those facts. As facts change, the court must determine how statutes and established precedent apply to those facts. It is the facts that change, not the legal precedent.

Adhering to precedent is particularly important in Montana's general stream adjudication. Water is a finite resource, water users on any given source are in competition with one another for that resource. At the same time, few if any water users, including the federal government, have the time or resources to review, assess, and object to all of the rights filed by other water users in their area. There

is also a great reluctance to file an objection to a neighbor and possibly injure old friendships. Water users rely on the fair and consistent application of the law to everyone involved in this process. Everyone gets the same treatment.

Flexibility can apply to court procedures. The Water Court has initiated a number of procedural improvements over the years. As long as bedrock due process requirements, such as reasonable notice and a fair opportunity to be heard are upheld, I have always been willing to consider ways to make the adjudication more efficient and less stressful for participants. One of the most significant changes in the last several years came from the legislature. DNRC issue remarks must now be addressed and resolved as part of the adjudication process. See Sections 85-2-247 and 248, MCA (2005). Prior to enactment of these statutes, issue remark resolution was an important factor, but it was not mandatory. At the same time, objections were often based on issue remarks. Resolution of those remarks tends to resolve the objections. Recently decreed basins are seeing a drop in the number of objections as water users are apparently content to rely on the Water Court's mandatory resolution of all issue remarks. The Water Court has adapted procedure to effectively deal with these changes.

In striking a balance between precedent and flexibility, I see the role of the Associate Water Court Judge as the same as any district court. The consistent and fair application of precedent is vital to the integrity of the judicial system. Flexibility is found in the application of consistent precedent to a variety of facts.

56. In the space provided, state the reasons why you are seeking office as an associate water judge.

I hope to continue my work as the Associate Water Court Judge. I greatly enjoy what I do and stand by my record as a judge. I have a thorough understanding of the adjudication process and believe I am uniquely qualified to continue as the Associate Water Court Judge.

57. What items or events in your career have distinguished you or of which you are most proud?

I am proud of my work as the Associate Water Judge. I believe I have distinguished myself as a fair and capable judge. I have been fortunate to preside over several cases that touch the history of

Montana. I view this as an incredible stroke of good fortune. The Teton River is the most challenging basin I have ever encountered. I am very proud of my work in that Basin.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

Most of the questions in this application dwell on information reflecting positively on my abilities. I am not aware of anything reflecting negatively on my abilities. At the same time, most cases that end in a hearing have winners and losers. There may be water users who hold a different opinion on my performance as a judge.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best associate water judge applicant?

I see my experience as a water master and the Associate Water Judge as an asset to this adjudication. I believe I am uniquely qualified by experience, intellect, and temperament to continue in this position.

**CERTIFICATE OF APPLICANT**

I understand that the submission of this application expresses my willingness to accept appointment as Associate Water Judge for the State of Montana, if tendered by the Chief Justice, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

\_\_\_\_\_  
6/16/16  
(Date)

\_\_\_\_\_  
/S/  
(Signature of Applicant)

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A signed original **and** an electronic copy of your application and writing sample must be submitted by **5:00 p.m. on Monday, July 11, 2016.**

**Mail the signed original to:**

**Office of Court Administrator  
c/o Lois Menzies  
P.O. Box 203005  
Helena, MT 59620-3005**

**Send the electronic copy to: [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov)**

This writing sample consists of portions of the Master's Report issued in case 41O-451. It has been edited to comply with the page number limit.

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
TETON RIVER BASIN (41O)

\* \* \* \* \*

CLAIMANT: Kalanick Ranch Inc.

OBJECTORS: Teton Coop Canal Co., Eldorado Coop Canal Co.

COUNTEROBJECTORS: Farmers Cooperative Canal Co.

**Case 41O-451**  
41O 157797-00  
41O 157800-00  
41O 157801-00  
Implied Claim:  
**41O 30063584**

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**MASTER'S REPORT**

**FINDINGS OF FACT**

1. The portion of the Kalanick Ranch that is the subject of this proceeding is located on the Teton River about five miles northwest of Fort Benton, Montana. (Testimony of Raymond Kalanick) Fort Benton is one of the earliest permanent settlements in Montana dating from the 1840s. The Kalanick ranch is east and adjacent to what was previously the Stocking ranch. The Stocking ranch is generally considered to be the first ranch established on the Teton River and dates from the 1860s. (K-17) Early development in this area consisted of open range cattle. Cattle herds owned by various ranchers were allowed to graze over large areas between the Teton and Marias Rivers. (K-27) A successful open range livestock operation required a reliable water source. In this area, the Teton River is the only reliable source of surface water. (Testimony of Raymond Kalanick) As a result, ranchers in the Fort Benton area typically acquired land along the Teton River and used that land as the center of their livestock operation. All of these properties were originally acquired from the federal government as cash entries or homesteads.

2. Kalanick owns a significant amount of property in Sections 17 and 18, T24N, R8E, Chouteau County. The Teton River flows west to east through the middle of both Sections.

Kalanick acquired the property in 1966 from Emery, August, and Marion Redant (Redant). (K-7 p. 128) Redant assembled the ranch from smaller holdings over a period of several years. The two major portions acquired by Redant were the Jacobi ranch located generally in Section 17, T24N, R8E and the Neubert ranch located generally in Section 18, T24N, R8E. Kalanick asserts first use of stock water, as represented by claim 41O 157797-00, is based on development on the Neubert ranch in Section 18. The first use of water for irrigation, as represented by claim 41O 157801-00, is based on development of the Jacobi ranch in Section 17.

**Claim 41O 157797-00**

3. Claim 41O 157797-00 was filed by Kalanick as a direct from source stock water right from the Teton River. The claimed priority date was 1930 as a use right. No day or month was provided. Kalanick claimed 575 cattle and 6 horses were historically serviced by the claim. Pursuant to Montana Department of Natural Resources and Conservation (DNRC) claim examination procedures, the claim appeared in the Temporary Preliminary Decree for this Basin with a December 31, 1930 priority date, and standard remarks rather than a quantified flow rate or volume. Kalanick attached the affidavit of William K. Kelly to the Statement of Claim as support for the 1930 priority date.

4. On May 23, 2008, Kalanick filed a motion to amend the priority date for claim 41O 157797-00 from December 31, 1930 to December 31, 1873. The motion is based on the pre-emption land entry of John Neubert. (K-9) This pre-emption entry is located in the W2SE and the E2SW of Section 18, T24N, R8E and totals 160 acres. Neubert filed his final pre-emption documents in 1880. On his Pre-Emption Proof - Testimony of Claimant form, Neubert claims first settlement on the land in 1873. (K-9 p. 280) He stated he lived there since that time and used it as a farm. The form contains indications of livestock use including claimed improvements such as a stable, corrals, and 1½ miles of fence.

5. John Neubert was considered a pioneer of some note. As a result, newspaper articles beginning in the early 20<sup>th</sup> century recount his time in the Fort Benton area. The articles focus on Neubert's early adventures throughout Montana, but all indicate he settled on a Teton River ranch in about 1873. The consistent story is that John Neubert arrived in Fort Benton in about 1857. He followed the gold rush to various locations but always returned to the Fort Benton area. He opened a hotel in Fort Benton in about 1871 but soon went out of business. He married in about 1871 and took up ranching along the Teton River in 1872 or 1873. His son Cyrus Teton Neubert was born at the ranch in 1873. John Neubert lived on the ranch until about

1912 and passed away in 1914. His son Cyrus continued ranching on the property until about 1938. (K-33, K-34, K-36, K-37, & K-38) While the exhibits addressing Neubert's activities contain some inconsistencies, they are accurate enough to support the 1873 date of first entry Neubert claimed in his pre-emption filing. They also tend to show Neubert was running cattle on his Teton River property.

6. A June 10, 1914, newspaper profile of Neubert stated he was a successful stockman who by some estimates made a fortune in this business. (K-36) A history of the Neubert family in a local publication entitled Trails, Trials and Tributes states Neubert was successful at ranching and stock-raising. (K37 p. 363) However, it is not clear from this record when John Neubert became a successful rancher. Was he successful immediately or did it take several years to develop sufficient cattle numbers to be considered a success?

7. The evidence also shows Neubert's path to success had some setbacks. An 1882 deed of trust from Neubert to Richard Mee listed six different debts, totaling \$3,272.81, secured by the original Neubert pre-emption property. (K-7 p. 142) Neubert was apparently unable to meet all payments and lost the ranch to foreclosure on November 3, 1885. (K-7 p. 144) While this was clearly a setback, it appears Neubert maintained residency on the property after the foreclosure and reacquired the property, through his wife Teresa, on January 31, 1899. (K-7 p. 146) Neubert continued to build his ranch, acquiring three additional patents for adjacent land between 1889 and 1914.

8. Tax records from 1876 through 1884 seem to reflect the same up and down nature of Neubert's fortune:

<b>Exhibit</b>	<b>Year</b>	<b>Cattle</b>	<b>Horses/Mules</b>	<b>Total Livestock</b>
K-57-1	1876	40	8	48
K-57-1	1877	40	5	45
K-57-1	1878	60	10	70
K-57-1	1879	90	12	102
K-57-1	1880	162	10	172
K-57-1	1881	140	10	140
K-57-1	1882	6	20	26
K-57-1	1883	15	15 (+ 2 swine)	32

K-57-1	1884	18	22	40
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By 1876, three years after first entry, Neubert claimed a total of forty eight head of livestock. He increased that number to one hundred seventy-two head by 1880. Two years later he dropped to twenty-six head and only increased to forty head by 1884. A year later in 1885, he lost the ranch to foreclosure. (K-7 p. 144) Nonetheless, he was apparently able to persevere, continue ranching, and even acquire additional land. It is likely he was able to return to the higher cattle numbers he enjoyed in 1880 and 1881. However, there is no evidence indicating he was ever able to exceed those livestock numbers or that any increase should relate back to the original appropriation.

**41O 157800-00**

9. Claim 41O 157800-00 was filed by Kalanick as a direct from source irrigation water right from the Teton River. The claimed priority date was June 7, 1943 as a use right. The claim appeared in the Temporary Preliminary Decree with a remark indicating a potential priority date issue. The claim received multiple objections which were all withdrawn prior to hearing.

10. The issue remark indicates this claim is a use right with a priority date postdating Cause No. 371 for Teton County. Cause No. 371 is the district court decree for the section of the Teton River above Choteau, Montana. The decree does not include water rights in Chouteau County. As a result, Cause No. 371 does not apply to claim 41O 157800-00. The fact this claim is not in the district court decree has no bearing on the claimed priority date. The remark should not have been placed on the claim.

11. The evidence presented at hearing shows this claim is based on a 1943 expansion of the Redant irrigation system. By 1943, Redant had acquired both the Jacobi and Neubert ranches. The 1943 Redant expansion serviced the 115.20 acre place of use in Section 17 that had been irrigated since at least 1910 and an additional 82.60 acres in Section 18. The 115.20 acres are irrigated by both claims 41O 157800-00 and 41O 157801-00, while the 82.60 acres are only irrigated by claim 41O 157800-00.

**41O 157801-00**

12. Claim 41O 157801-00 was filed by Kalanick as a direct from source irrigation water right from the Teton River. The claimed priority date was January 18, 1910 as a filed right. The claim was based on a Notice of Appropriation filed by Harry A. W. Jacobi. Although

the Jacobi Notice of Appropriation claimed a 10.00 cfs flow rate, Kalanick's Statement of Claim asserted a 1.49 cfs flow rate for irrigation on 115.20 acres. Raymond Kalanick testified the Jacobi irrigation system could never have carried 10.00 cfs. The claim appeared in the Temporary Preliminary Decree with the same priority date issue remark as claim 41O 157800-00. Claim 41O 157801-00 is in the same position as claim 41O 157800-00. Both claims are located in Chouteau County and are not governed by the Teton County decree. The remark does not apply to claim 41O 157801-00 and should not have been placed on the claim.

13. On February 8, 2010, Kalanick filed a motion to amend the priority date for this claim from January 18, 1910 to August 28, 1874. The proposed amendment is based on the activity of George Hammond. In 1883, Hammond filed a homestead entry for the S2NW and N2SW of Section 17, T24N, R8E. (K-10 p. 239) Kalanick asserts the evidence shows Hammond was active in this area prior to this time and began developing an irrigation system for his homestead as early as 1874. Kalanick argues this activity is sufficient to support an August 28, 1874 priority date for claim 41O 157801-00.

14. George Hammond made first entry on 160.00 acres in the S2NW and N2SW of Section 17, T24N, R8E in 1880. (K-10) He received a homestead patent in 1888. (K-7 p. 164) In 1897, Hammond sold to Clarence D. Crucher. (K-7 p. 165) In 1903, Crucher sold to Harry A.W. Jacobi. (K-7 p. 166) Over the next three decades, Jacobi acquired most of Section 17 and a portion of Section 18. In 1910, Jacobi filed a Notice of Appropriation for a Teton River water right and developed a system that employed water wheels and an elevated ditch. Jacobi's system replaced any previous ditch system that may have been used on this property. (K-7 p. 167) In 1931 Jacobi sold his ranch to Prosper V. Redant. (K-7 p 197) In 1940, Prosper V. Redant acquired the Neubert ranch in Section 18, bringing both ranches into single ownership for the first time. (Testimony of Raymond Kalanick) Prosper V. Redant sold the combined ranches to his sons Emery, John, and August Redant in 1943. (K-7 p. 199) In the same year, the Redant brothers developed a gravity ditch system replacing the water wheels. This new ditch system expanded the land irrigated by the water wheels and included land in both Sections 17 and 18. The Redant Brothers owned this ranch until they sold to Kalanick Ranch, Inc. in 1966. (K-7 p. 113) Kalanick has owned the property since that time.

15. George Hammond received a patent for his 160 acre homestead in the S2NW and the N2SW of Section 17, T24N, R8E in 1888. (K-7 p. 164) Hammond's Homestead, Pre-Emption, and Commutation Proof. Testimony of Claimant form (K-10 pp. 261-264) states he

first made entry on this property in 1880 as a pre-emption cash entry but relinquished this entry in favor of a homestead application. In 1883, he filed on the same property as a homestead. It appears the 1880 date of first entry applied to the original pre-emption filing and the homestead filing. However, Hammond did not file his final homestead documents until 1888, indicating he used the 1883 filing date rather than the 1880 first entry date as the start of the homestead residency requirement. Hammond's answer to Question 14 on the testimony of claimant form is significant:

“Ques. 14 – Was the land occupied by any other person when you made such settlement? If so, state who lived there, and how you obtained possession.

Ans. I bought a little house of David Edward B. Hogh. A squatters right.”

(K-10 p. 262)

This seems to confirm there was a previous resident on the property and Hammond first acquired an interest in the property in 1880.

16. Kalanick asserts George Hammond was one of a group of appropriators who developed an irrigation ditch, referred to as the Stocking Ditch. Kalanick claims work on the ditch was initiated as early as 1874 and eventually served several parcels south of the Teton River stretching from Section 13, T24N, R7E, through Sections 17 and 18, T24N, R7E. According to Kalanick, several land owners diverted water from the river in approximately the SENE of Section 13, T24N, R7E on what was then the Stocking ranch. (K-12) Kalanick claims the ditch was used by Stocking for irrigation in Section 13 before it crossed into Section 18, T24N, R7E and was used by John Neubert. Kalanick asserts the ditch continued east into Section 17, T24N, R7E where George Hammond used it to irrigate his homestead.

17. Newspaper articles from the era discuss ditch building along the Teton River. The June 1, 1875 Benton Record states “the ranchmen of this vicinity” have opened several miles of ditch and intend to rely on artificial water supplies in the future. (K-19) Kalanick asserts this must refer to land along the Teton River close to Fort Benton. The July 3, 1875 Benton Record includes an article stating, “Messers Stocking, Neubert, Jeneaux, and others are constructing an irrigation ditch on their ranches near the Teton.” (K-20) Stocking and Neubert are clearly associated with this stretch of the Teton River. Jeneaux is an unknown. The name does not appear in any other document offered into evidence. Based on the evidence, Jeneaux did not acquire a patent to property along the Teton River in this area. (K-54) Kalanick asserts the “others” referred to in the article must include Hammond.

18. Lucille Stocking was the daughter of W.S. Stocking. She was living on the Stocking ranch in the 1870s. During that period of time, she kept a diary. (K-59) The diary contains short descriptions of the daily activity of the ranch. Exhibit K-59 is comprised of eighteen transcribed pages from the diary. The size of the entire diary is not known. However, based on the number of the last page included in the exhibit, it is at least eighty-five pages, and possibly substantially larger than that. The two earliest entries from July 14 and 16, 1874 state “watered the garden from the river.” The entry for August 28, 1874, states “Alex filled the ditch.” (K-59 p. 495) This entry is the specific basis for the priority date Kalanick is asserting for claim 41O 157801-00. Several other entries from January through May of 1875 contain similar comments about Alex working on the ditch. Alex was apparently the hired man. (Testimony of Steve Kelly) The diary does not give any more detail about where the ditch is located, where it goes, how big it is, how much water was running through the ditch, or the kind of work Alex was performing on the ditch. The diary never indicates any neighbors were working on the ditch with Alex.

19. A 1936 letter from Lou Stocking Stewart to Cyrus Neubert and M.F. Landsverk appears to connect Hammond to the Stocking Ditch. Lou Stocking Stewart is the same person who kept the 1870s diary. Apparently, Ms. Stocking Stewart had been asked to provide her recollections of early irrigation in the area of the Stocking ranch. In the letter Ms. Stocking Stewart states:

“In the beginning, small water wheels were used for irrigation from the Teton River. Along in 1874 or 1875 Messers. W.S. Stocking, John Neubert, Hogan, and George Hamon went up above the Stocking Ranch about a mile and got out a ditch so as to irrigate by the gravity system and at the time had it recorded. The records were destroyed when the old Court House burned. Many valuable records were destroyed at that time. In later years these same men found irrigating from the Teton River by water wheels was also a successful way.” (K-39)

Kalanick asserts the George “Hamon” identified by Lou Stocking Stewart is George Hammond. It is possible the “Hogan” she identified is the “Hogh” identified as a squatter by Hammond in his homestead filing. The letter does not provide any information on the size or location of this ditch. The evidence at hearing does not support any water wheel development by any of these four individuals. Stocking and Neubert did not continue to irrigate their ranches. (Testimony of Raymond Kalanick) Hammond sold out by 1897. Hogan is a complete unknown. Given the

fact that the letter was written sixty one years after the fact, it appears Ms. Stocking Stewart's recollections may have blended together names and events to some extent.

20. A Government Land Office map, estimated by Kalanick witness Monte Giese as dating from around 1880, shows what Kalanick asserts is a ditch in the SENE of Section 13 T24N, R7E. (K-12) This map marking is a "squiggly" line that appears to connect to the Teton River and travel away from the river to the Southeast. The line quickly passes off the map into Section 18. A similar squiggly line is located in the SESE of Section 13. Both lines are located next to rectangular hash-marked areas. Just below the lower squiggly line is a solid straight line accompanied by the word "ditch." This solid straight line is clearly distinguishable from the squiggly lines. Assuming the map maker used standard designations for the various map markings, it is apparent the line Kalanick asserts is the point of diversion for the Stocking Ditch and the first several hundred feet of that ditch is in fact intended to display some other map feature. There is a clearly marked and distinguishable ditch on the map. Kalanick expert witness Jay Johnson opined that the squiggly line is the correct location for the point of diversion for the historical ditch and seems to line up with later development. Johnson confirmed what he thinks is essentially the same ditch system in 1937 and 1941 aerial photographs of the area. (K-47) While that may be true, the ditch is not marked on the GLO map.

21. Harry A.W. Jacobi purchased the Hammond property in 1903. In 1908, the Teton River experienced significant flooding. Accounts of the flood indicate several diversion structures were wiped out. The river also changed course in some areas leaving other diversions high and dry. (K-37 p. 367) It appears the Stocking Ditch may have been one of the flood victims. On January 18, 1910, Jacobi filed a Notice of Appropriation for 10.00 cfs from the Teton River with a point of diversion in the SWSW of Section 17. (K-7 p. 167) The notice indicates Jacobi intended to install a series of four water wheels to lift water into an elevated ditch and thereby irrigate his Section 17 and Section 18 property. A profile of Jacobi in the May 11, 1925 Judith Basin County Press (K-40) includes a photograph of the water wheels, confirming construction of this diversion. The wheels apparently remained in use until about 1943. By this point in time, both the Jacobi ranch in Sections 17 and 18 and the Neubert ranch in Section 18 were owned by Redant. In 1943, Redant began diverting water into a single ditch system and expanded their irrigated property. This system employed a pump located in the NWNWSW of Section 18 and a gravity ditch from that point. This pump-ditch system replaced the water wheels. (Testimony of Raymond Kalanick)

22. Land classification maps from 1920 show 16 irrigated acres in the SE of Section 18, T24N, R7E and 89 irrigated acres in the SW of Section 17, T24N, R7E. (K-13A) Most of the irrigated acres in Section 17 are located on the Hammond homestead. Kalanick argues this location is consistent with what the original ditch could have served. All of the irrigated land identified in Exhibit K-13A is listed as owned by H.W. Jacobi. By 1920, Jacobi had filed a notice of appropriation with a 1910 priority date, installed his water wheel irrigation system, and was using that system to irrigate this property. In fact, the 1920 land classification map shows Jacobi's water wheels and elevated ditches. The presence of irrigation in a 1920 land classification map does not support first irrigation in 1874 rather than 1910.

23. The 1964 Chouteau County Water Resource Survey shows some irrigation throughout the S2 of Sections 17 and 18, T24N, R7E. (K-6) The Survey identified the conveyance as the "Redant Pump, Ditches." The point of diversion for the ditch is located in the NWNWSW of Section 18, T24N, R7E. Field notes from the Survey identify Harry A.W. Jacobi as the appropriator; a January 18, 1910 priority date; and the Redant dam, dike, ditch, and reservoir as the conveyance system. The field notes do not reference any other water rights for the Redant property. The field notes indicate information for the survey was obtained from Emery Redant. (Eldorado/TCCC-5)

24. While the evidence does seem to support development of the Stocking Ditch prior to 1910, there is no credible evidence showing the extent of the ditch system prior to 1910, the amount of water diverted into the ditch, or the size of the ditch. Of the three principal ditch developers identified by Kalanick, Stocking and Neubert apparently stopped irrigating in any meaningful way after the 1908 flood. Hammond sold out by 1897. Hammond's successor, Jacobi, developed a new irrigation system and asserted a 1910 priority date for that system. There is no evidence indicating Jacobi ever asserted a priority date other than 1910. Jacobi did not claim the 1910 appropriation as an addition to an earlier priority date water right. There is also no evidence indicating Redant ever asserted a priority date other than 1910 during the time they owned the property. Emery Redant claimed a 1910 priority date in his interview for the 1964 Chouteau County Water Resource Survey. Kalanick's Statement of Claim 41O 157801-00 claimed a 1910 priority date, based on the Jacobi Notice of Appropriation. The only time an 1874 priority date was claimed for the Hammond homestead is Kalanick's 2010 motion to amend the priority date for claim 41O 157801-00. Although there were apparently few times where it was necessary to assert a specific priority date, every owner of the Hammond homestead

from 1910 to 2009 claimed a 1910 priority date for the water right that is now represented by claim 41O 157801-00.

DATED this 31 day of August, 2012.

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Douglas Ritter  
Senior Water Master

This writing sample consists of portions of the Master's Report issued in case 41O-451. It has been edited to comply with the page number limit.