WATER RIGHTS AND LEGAL ISSUES IN THE GRAND VALLEY

2016 Water Course:
Planning for Resilience

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Overview

• Water Law 101
• Irrigation Water Entities in the Grand Valley
• Easement Law 101
• Easement Issues Relating to Irrigation Ditches
Prior Appropriation Doctrine

Colorado Constitution

Article XVI. Mining and Irrigation

§ 5. Water of streams public property. The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, *subject to appropriation as hereinafter provided.*

§ 6. Diverting unappropriated water . . . The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied . . .
Basic Principles

- Public ownership of water
- No riparian rights
- Ability for remote landowners to access water sources
- Beneficial use requirement
- No speculation in water rights
CREATION OF WATER RIGHTS

Two critical elements
1. Diversion or Control
Removing or controlling water in its natural course
2. Beneficial Use

Reasonable amount for intended use

No waste
CREATION OF WATER RIGHTS

• When these two items occur:
  – There has been an “appropriation” of water
  – A water right is created

• Nothing else needed to create a water right
  – But: need additional action to perfect the water right and get a priority for it
PERFECTION

• Requires “adjudication” in court
  – Adjudication gives the water right a priority

• Current Law
  – Continuous adjudications in water courts
  – Initiated by applications
Water Divisions
TYPES OF WATER RIGHTS

• Absolute v. Conditional
  – Absolute
    • Appropriation completed
  – Conditional
    • Appropriation started but not completed
TYPES OF WATER RIGHTS

• Direct Flow v. Storage

  – Direct Flow
    • Water flowing in a ditch or pipeline
    • Rate of flow - c.f.s. or g.p.m.

  – Storage
    • Water in a reservoir or pond
    • Volume - acre feet
EQUIVALENTS

• One c.f.s. ≈ 450 g.p.m.

• One acre foot ≈ 326,000 gallons

• One c.f.s. flowing for 24 hours ≈ 2 acre feet
SUMMARY

• Creation of water rights
  – Diversion or control
  – Application to beneficial use

• Perfection of water rights
  – Adjudication
WHO CAN OWN A WATER RIGHT?

• Individuals

• Entities
  – Energy companies
  – Business entities
  – Cities and towns
  – Irrigation organizations
Grand Valley Irrigation Entities

GVWUA
GVIC
REDLANDS
OMICD
PID
MCID
COLORADO RIVER WATER RIGHTS
“CAMEO CALL”

<table>
<thead>
<tr>
<th>Entity</th>
<th>Amount (cfs)*</th>
<th>Approp. Date</th>
<th>Adjud. Date</th>
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</thead>
<tbody>
<tr>
<td>Grand Valley Irr. Co.</td>
<td>520.81</td>
<td>1882</td>
<td>1912</td>
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<td>Palisade Irr. District</td>
<td>80</td>
<td>1889</td>
<td>1912</td>
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<td>Orchard Mesa Irr. Dist.</td>
<td>10.2</td>
<td>1900</td>
<td>1912</td>
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<tr>
<td>Mesa County Irr, Dist.</td>
<td>40</td>
<td>1903</td>
<td>1912</td>
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<tr>
<td>Orchard Mesa Irr. Dist.</td>
<td>450</td>
<td>1907</td>
<td>1912</td>
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<tr>
<td>GFWUA/USA</td>
<td>730</td>
<td>1908</td>
<td>1912</td>
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<tr>
<td>GFWUA/USA</td>
<td>400/800</td>
<td>1908</td>
<td>1941</td>
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<td>Grand Valley Irrig. Co.</td>
<td>119.47</td>
<td>1914</td>
<td>1941</td>
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<tr>
<td>Palisade Irrig. District</td>
<td>23.5</td>
<td>1918</td>
<td>1941</td>
</tr>
</tbody>
</table>

*All are decreed for irrigation use except for the 400/800 cfs right, which is decreed for power purposes.
Roller Dam
GVWUA, OMID, PID and MCID

GVIC Diversion Dam
GUNNISON RIVER IRRIGATION RIGHTS

- Redlands Water and Power Company
  - Three water rights
    - Senior right: 670 c.f.s., 1905 approp. date
    - Junior right: 80 c.f.s., 1941 approp. date
    - Junior Right: 100 c.f.s., 1994 approp. date
  - Diverted from Gunnison River
  - Used for irrigation and power
Waiting for water – residence of B.B. Freeman in Sect. 16, T2N, R3W. 
Mr. Freeman and family have been waiting nearly 6 years; 
they moved into this cabin in 1908.  
August  21, 1913
Unirrigated land to come under Govt Canal (Book Cliffs in background)
Aug 7, 1910
Photos courtesy of Google Images
BENEFITS OF IRRIGATION ENTITIES

• Pool resources

• One diversion from River in large canal

• Irrigate lands far from the River

• More efficient operations
MUTUAL DITCH COMPANIES

- Grand Valley Irrigation Company (GVIC) and Redlands Water and Power Company
- Private companies with shareholders
- Shares representing proportionate interest in water rights
- Assessments for operation and maintenance
- Transferability of shares – water not tied to land
IRRIGATION DISTRICTS

• Orchard Mesa Irrigation District (OMID), Palisade Irrigation District (PID) and Mesa County Irrigation District (MCID)
• Quasi-Public entities
• Defined service area
• Right to water based on irrigated acreage – no shares
• Assessments collected like real estate taxes
• Water is tied to the land
WATER USERS ASSOCIATIONS

• Grand Valley Water Users Association (GVWUA) – operates federal Grand Valley Project
• Private, non-profit company
• Assessments for operation and maintenance
• Right to water based on irrigated acreage – no share certificates
• Water is tied to the land
EASEMENT BASICS

• What is an Easement?

• Easement estates (for ditch easements)
  – Dominant estate – ditch owner
  – Servient estate – underlying landowner
EASEMENT BASICS

• Easement does not grant title to property
  – Dichotomy of interests
  – Landowner can use easement area – no unreasonable interference with easement
  – Easement owner can make reasonable use of easement – no expansion
CREATION OF EASEMENTS

- Express grant or reservation
- Prescriptive easement – 18 years of adverse use
- Easement by acquiescence
- Easement by implication on split of land
- Condemnation
RIGHTS OF DITCH OWNER

• Ditch owner can do whatever is reasonably necessary for the enjoyment of the easement
  – Repairs
  – Maintenance
  – Ingress and egress

• Rights extend to bed, banks, and sufficient ground on either side to operate the ditch properly
  – What is sufficient depends on facts and circumstances relating to the ditch
RIGHTS OF DITCH OWNER

• Third persons cannot interfere with flows in a ditch
  – Can’t break or cut banks of a ditch
  – Can’t obstruct or interfere with flow in ditch
  – Can’t interfere with headgates or measuring devices
  – Criminal penalties
  – Restitution
DUTIES OF DITCH OWNER

• Carefully operate and maintain the ditch so it does not flood or damage property of others
  – Negligence standard, not strict liability
• Maintain ditch to prevent water from wasting
  – During summer season can’t run any greater quantity of water than is necessary for irrigation, stock and domestic
DUTIES OF DITCH OWNER

• Make a tail ditch to return tail water to stream

• Construct and maintain suitable headgates and measuring devices
  – State or division engineer can refuse to allow ditch to divert if owner breaches this duty
WIDHT

• Express easements
  – Refer to document creating easement

• Prescriptive and other easements
  – No standard width – varies from ditch to ditch
  – That width that is “reasonably necessary”
  – Additional space for future needs
ENCROACHMENTS

• Servient owner (underlying landowner) cannot unreasonably interfere with the enjoyment of the easement

  – Gates across easement

  – Encroaching structures
RELOCATION OF EASEMENTS

• *Roaring Fork Club v. St. Jude’s Company*

  – Servient owner cannot move or modify a ditch on his property unless:
    • Ditch owner consents or
    • Court allows ditch to be moved or modified

  – Standards for court approval of relocation or modification
    • Does not lessen the utility of easement
    • Does not increase burdens on ditch owner
    • Does not frustrate the purpose of the easement
BRIDGES AND CULVERTS

• Bridges on roads crossing ditches
  – Constructed according to specifications of governmental entity having jurisdiction
  – Maintained at cost of governmental entity

• Culverts
  – Roaring Fork Club issues
  – Assumption of burden to keep culvert operating
SEEPAGE AND CANAL BREAKS

• Duty: Carefully operate and maintain the ditch so it does not flood or damage property of others
  – Negligence standard, not strict liability
  – Examples
    • Unavoidable circumstances
    • Exceeding carrying capacity
    • Seepage issues
STORMWATER DRAINAGE

• Issue: Urban runoff contains more, or at least different, contaminants than irrigation runoff

• Clean Water Act regulation
  – Exemption for agricultural runoff
  – Permits required to discharge urban runoff that is collected and discharged

• Can urban runoff be discharged into irrigation canals and drains?