



Thoughts on Review Committee Meeting

Thomas D McCracken

to:

David.Beaujon

10/04/2013 08:40 AM

Hide Details

From: "Thomas D McCracken" <tom@greeneearthfarm.com>

To: <David.Beaujon@state.co.us>,

2 Attachments



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Sir: Please forward these thought to the committee members. Thanks

Thoughts on the Review Committee Meeting 10/2/13

After witnessing the presentation of the State Engineer and the proponents of the sub-district plans, I have the following thoughts:

First in relation to the newly implemented "irrigation season", the committee was incensed that the USFS was trying to take ski areas water rights and make them government property without compensation. The state is doing exactly the same thing with the "irrigation season"; through the policy and rule making process the state has "taken" my water rights without compensation.

Second, it is evident that the sub-district plans are not adequate to address the ongoing depletion of the aquifer. Five of the six sub-districts are not yet operational and the district in operation is not required to incrementally replace the water in the aquifer over the 30 year time frame mandated in 2002 by SB222. It seems likely over appropriated pumping will continue, the aquifer will continue to drop and in a few years a new plan will be devised to allow the pumpers to continue depleting the aquifer. When the legislature required the State Engineer to bring wells into the priority system, why were the directives completely ignored? The priority system by definition means that wells not in priority are to be shut down. It is unlikely that this action would devastate the SLV economy. Most of the wells belonging to the established farms in the valley have been there a long time, are augmented and would be the last to be shut down. No one has any qualms about shutting my water off when the creek level drops. Wells in the valley that are not augmented must be shut down until the aquifer returns to sustainable levels.

Lastly the State Engineer and many others admitted injury to surface water users. This injury is now historical and ongoing with no end in sight. Why then are the sub-districts not required to provide a method of compensation for these injuries? On the one hand Mr. Wolf admits the harm done yet complains about the lawsuits that have been triggered, while simultaneously suggesting injured senior surface water right holders must sue in civil court if they want compensation. He is most likely aware that financially stressed ranchers do not have the resources to sue the RGWCD and the taxpayer funded state. The sub-districts should have a mechanism and funds from the taxation of ground water to compensate injured surface users. This could serve to placate those injured and foster a sense of trust between the competing groups. Cooperation amongst all those concerned could result from a fair approach to the problem.

Working together to solve these challenging circumstances could lead to a viable solution. Let's work towards an alternative approach to the current model that pits one user against another in this valley that we all love and call home.

Sincerely, Thomas D. McCracken President, Green Earth Farm

tom@greenearthfarm.com

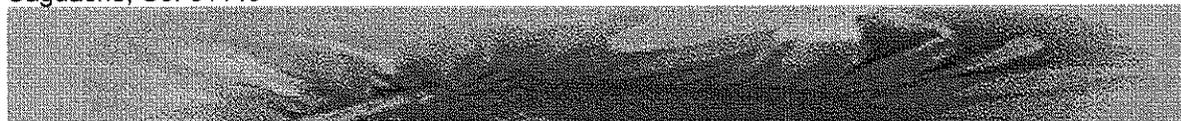
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4/3/12

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Saguache Water Users Association
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Mr. Dick Wolfe
State Engineer
Colorado Div. of Water Resources

Re: Irrigation Season

Dear Sir:

At the Water Users meeting held March 28, 2012, the "Irrigation Season" policy that has been recently initiated in Division 3 was discussed as part of a larger discussion that centered on the universally held belief that groundwater depletions are causing injury to surface water users, vegetation and wildlife habitat, and has been for quite some time. We recognize that the Division Engineer is not willing at this time to curtail the pumping of wells that are not augmenting their usage with replacement water.

The new "Irrigation Season" policy is written to treat surface water users and groundwater users the same, and amounts to a de-facto curtailment to the water usage of both groups by limiting the number of days each can irrigate. We find this policy to be extremely unfair to those that hold water rights that have not been historically regulated beyond the priority system.

Surface water usage has never been shown to damage or contribute to the decline of the aquifer. To the contrary, surface water use has supported a water table that is within reach of the roots of crops and wild vegetation and that supports springs, stream flow and ditch flow. We do not find any credible argument to limit the period in which we use water. Conversely we do find that the "Irrigation Season" policy could be a useful tool in regulating groundwater diversions.

Mr. Craig Cotton our Division Engineer spoke at the meeting and made it clear that the Dept. would now be making the decision as to what constitutes beneficial use of water as pertains to the beginning and end of the "Irrigation Season". The rule, (policy 2010-01) lists many examples of beneficial use of water in the list of criteria used to determine when the "Irrigation Season" should be initiated and or terminated, and is not limited to the uses stated. Certain uses have not been addressed such as water storage for irrigation and recharge and augmentation plans for residential use. Our experience in the past two seasons shows how arbitrarily this list is used to determine the season dates. Users are forced into a position of weakness, attempting to prove to the Div. that criteria such as extreme weather conditions and the ability to use water beneficially have been met so that the season can begin. This is an untenable position for the owners of absolute water rights who have for the past 100 years or more made their own decisions on how best to use water on their ranches and farms. The Div. has shown how easy it is to stonewall and forestall changing the presumptive "Irrigation Season" dates in order to meet its own stated goals of sending the water downstream to support the aquifer.

If surface water users are not able to use water that they have historically been able to use in priority, then personal property rights have been violated and compensation must be made for the loss of that property. The water users on Saguache Creek are prepared to defend their historic rights in court if necessary.

Simultaneous with the establishment of the "Irrigation Season", winter recharge decrees were approved for some of the water users on Saguache Creek. The new "Irrigation Season" policy is also being used to allow recharge users to irrigate during the "Winter Season". This aspect of the policy pits some surface water user's needs against others. This too is an untenable position for us as a group to be in. The only fair policy is the one that has been in effect since water law was established, "first in use, first in priority. We do not object to winter water usage as long as it does not conflict with the priority system as practiced historically.

In the preamble of the policy (2010-01) it states that the Division Engineer may "make any other modifications related to irrigation season that he deems appropriate." We hereby respectfully recommend and request that the Division Engineer separate the interests of the surface and groundwater users as related to the "Irrigation Season" on Saguache Creek so that the seasons are managed as separate seasons, and then change the presumptive dates of the season for surface users to a season that cannot under any circumstances interfere with the historical practices of the owners of absolute water rights in our drainage. This modification of your policy could limit further injury to surface water users and aid the sub-district that is being formed in its attempt to manage groundwater use. Modification of the existing policy could also pre-empt costly litigation that no one wishes to initiate.

Sincerely,

Thomas D. McCracken for
Saguache Water Users Association

Cc: Gov. John W. Hickenlooper, Div. 3 Engineer Mr. Craig Cotton, Attorney General John Suthers, Pres. Saguache Water Users John Werner.

This letter was approved by unanimous vote of the Water Users at its regular meeting held Oct. 16, 2012



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

October 26, 2012

Thomas McCracken
Saguache Water Users Association
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Moffat, CO 81143

RE: Letter Received October 19, 2012

Mr. McCracken,

Thank you for your letter regarding the irrigation season policy in the Rio Grande. Colorado statute 37-92-501(4)(b)(II) directs the State Engineer to "establish criteria for the beginning and end of the division 3 irrigation season for all irrigation water rights."

Establishing criteria for an irrigation season was a subject brought up with the Groundwater Rules Advisory Committee. A subcommittee was established to help draft the irrigation season policy. That committee recommended a 'normal' irrigation season of April 1 to November 1, in keeping with historical practices in the valley. The subcommittee also recognized that there would be times when the weather dictated a longer or shorter season may be appropriate and recommended allowance for extraordinary conditions.

You note that the policy treats groundwater and surface irrigators the same. Indeed having all rights subject to the same date is protective of surface water rights. Late in the season when surface rights are out of water groundwater users generally have water available and could press for an extended irrigation season based on water supply alone. The subcommittee, looking at crop needs, could not scientifically justify different irrigation seasons based solely on the source of water supply.

You note that the Division Engineer is making the irrigation season decision. The committee also recognized that, since it was a water administration issue, the decisions must be made by the Division Engineer. However, the Division Engineer consults with agronomic experts as needed in making the decision to start or end the irrigation season.

You note that the irrigation season policy does not address storage, recharge, or augmentation uses. You are correct in that the policy does not address storage, recharge, or augmentation uses. The policy only addresses the use of water for irrigation as directed by the statute in 37-92-501. Those other uses fall outside the directive from the legislature. I would note that those uses may

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have their own limitations based on the type of beneficial use and decree specifics. For example an augmentation plan may have to divert in winter to replace water depleted during the summer.

You are concerned that the irrigation policy will upset the historical practice of running water during the winter. On Saguache Creek the appropriation/adjudication of water for 'winter recharge' began in about 2003, six or seven years before the irrigation season policy was finalized. The amendments to the statute authorizing the establishment of criteria for an irrigation season in Division 3 were enabled in 2004. Prior to establishing the formal policy the Division Engineer used similar decision making to establish the beginning and end of the irrigation season including presumptive dates and consultation with experts.

In regards to the irrigation season the concept has been around a long time. An old volume of the statutes (Mills 1896) notes that "...from April 1, until November 1, in each year, keep a flow of water therein, so far as may be reasonably practical for the purpose of irrigation..." (Mills Annotated Statutes vol 3 Colorado 1891 - 1896 Para 2287 pg 668). And there are multiple early 1900 general adjudication decrees in the valley that refer to the irrigation season as being between April and November. For example: "Eleventh; Whenever in this decree the term 'irrigating season' is used, it shall be taken, deemed and held as covering the period extending from the first day of April in any year, to the first day of the following November..." (WD27 adjudication 1911, WD24 adjudication 1905, WD35 case Cn 50-915)

In a 1914 adjudication of 15 irrigation ditches (WD25) two of the ditches were specifically decreed rights for 'winter flooding purposes' in addition to their irrigation rights. That decree, along with the citations of 'irrigating season' in other decrees, makes it apparent that the early court recognized that there was a difference between 'irrigation' and 'winter flooding' and that there was an 'irrigating season' implied in the decrees. Also that 'winter flooding' was a different type of use that occurred after the irrigating season (aka in winter).

The problem comes in when you attempt to administer 'irrigation' water rights when they are out of season. Being out of season they cannot make a priority call. Thus we directed users to file for 'winter use' water rights if they wanted to divert in the winter.

There are several recharge decrees that implicitly recognize that the irrigation season does not last all year round. In 1979 the Rio Grande Water Users filed for a winter recharge decree on the Rio Grande. In the 1980's the Rio Grande Water Conservation District filed for recharge decrees all over the basin including Saguache Creek. In the 1990's there were filings for winter recharge decrees on Carnero Creek. And in the beginning of this century filings commenced for winter recharge decrees in the Saguache and San Luis drainages. These 'winter recharge' decrees on Saguache and Carnero Creeks are an attempt to recognize some of the historical, undecreed, practices of 'winter flooding' on Saguache and San Luis Creeks. The adjudication of these decrees sets up the ability to administer the creeks in accordance with State statutes and the court's direction.

Finally, you request that the Division Engineer select separate dates for the irrigation season within the Saguache Creek area. These dates would simply differentiate between surface water

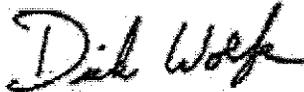
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supplies and groundwater supplies despite the fact that the decreed uses (irrigation) are the same. The irrigation season policy is based on the premise that the use (irrigation), not the source, is primary the deciding factor. So it would not be appropriate for me to overrule the Division Engineer's irrigation season determination simply on the basis of source of water.

I am sorry I am not able to accommodate your request. If you have further questions or concerns please contact Craig Cotten (719-589-6683) or Mike Sullivan (303-866-3581 x8202).

Sincerely,



Dick Wolfe
State Engineer and Director
Colorado Division of Water Resources

cc: Cotten Div 3

DRAFT

