

IRRIGATION COMPANIES; WATER USERS ASSOCIATIONS; IRRIGATION DISTRICTS; STATE WATER PROJECTS

Development of irrigation systems can be an expensive undertaking. As a result, various organizations have evolved over time to aid in this development. State and federal programs have played a significant role. The typical government input has been to provide the source for financing projects, and in some cases, inexpensive land with available irrigation systems. Government has also provided the mechanism to collect assessments to build and maintain these projects.

There is little restriction on who can claim a water right in Montana. §85-2-223 MCA, simply refers to a "person" filing an existing right. §85-2-102 MCA. defines a person as an "individual, association, partnership, corporation, state agency, political subdivision, the U.S.A. or any agency thereof or any other entity". Given this broad definition, it is not surprising that a great variety of entities have claimed water rights.

Organizations that deal with water rights fall into three categories. Private, quasi public and public. Unfortunately the distinction between the three is oftentimes blurred by everyone who deals with water rights. There is a distinction between a Water Users Association, an Irrigation Company and an Irrigation District. The terms are too often interchanged to such an extent that the differences can be lost. To further confuse the issue, Water Users Associations and Irrigation Companies can have different forms of organization that the name will not convey.

An Irrigation Company or Ditch Company can be a private company. It can be organized as a corporation or partnership. It may not be organized at all. It may own water rights itself or simply control the means of diversion. In essence, it is a private business entity

organized by a group of water users to help get their individual water rights from the point of diversion to the place of use. Typically a group has a common point of diversion and several places of use that can all be serviced by the same ditch. The main goal is maintenance of the means of diversion and conveyance. Each party can own their own water rights, or the company may hold the rights and the parties hold shares in the company. Their shares entitle them to a certain amount of water. The lure of government assistance often moves the Irrigation Company or Users Association into the quasi-public arena. One of the early incentives for this was the Federal Desert Lands Act or Carey Act, (43 USC 641). Under this legislation, the Federal Government gave land to the States under the following conditions:

- 1.) The land must be identified as irrigable.
- 2.) A suitable method of irrigation must be planned.
- 3.) The land must be divided into parcels no larger than 160 acres and made available to settlers.

The State's role was to initiate the development of the irrigation project and then deed the land with accompanying water rights to "settlers". The actual development of the irrigation project and subdivision of the land was done by private businesses chartered by the state for that purpose. The state financed the project through bonds. The development company could then build the irrigation project and sell shares in that project. Shares were based on acres irrigated, so a parcel with 120 irrigable acres would receive 120 shares in the company. When a certain percentage of the shares were sold, the development company reorganized as a users association or company. Settlers received shares from the company and a deed to the land from the State. The company, typically called a Ditch Company or Water Users Association, served as the administrator of the irrigation project. Assessments for maintenance or improvements were based on the number of shares owned.

Under the Carey Act the landowners water right is represented by shares in the company. They also have an interest in the irrigation project. The water right is appurtenant to the land acquired by the settler inside the project area. Originally the right was said to run with the land although there has been a certain amount of success by some landowners in severing the water right from the land within project boundaries.

Irrigation Districts are the most "public" form of control over water rights. Districts are created under §85-7-101 et seq. MCA. Usually this is done to take advantage of federal reclamation projects such as those authorized by 43 USC 371 et seq. The response of Montana and most states has been to create irrigation districts to facilitate use of the water made available by federal projects.

Irrigation Districts are created by petitioning the district court in the county where the majority of the proposed District lies. At least 60% of the individual landowners within the proposed District must sign the petition. Also, these landowners must represent a certain percentage of the land within the District (usually 60%). Land owners can be included in a district against their will, but only after they have had the opportunity to be heard in district court on the proposed District. Once included they can be taxed for maintenance and improvements to the District's irrigation system.

The District is organized as a public corporation. It has the power to assess taxes on all irrigated property within its boundaries. Parties with existing water rights that are included within a District boundary retain their water rights as they existed prior to the creation of the District. However, some aspects of their water right can be changed if the District's commissioners determine that it is in the District's best interest. The changes cannot adversely affect the use of the water right by the individual right holder. For example, the District may

improve a canal system thereby altering the means of diversion of an individual right holder. As long as the change is not adverse, the district is within its authority to proceed.

The key elements of an Irrigation District are:

1. Landowners with an existing right can be included against their will.
2. The District can use the state's tax system to receive its funding.

The District can acquire water rights as well as water supply systems (canals, reservoirs, dams etc.), but cannot, without consent, alter existing rights of landowners included within a District.

Montana appears to view districts as an available step when the use of a water commissioner has been unsuccessful. Under both §85-7-207 MCA and §85-7-301 MCA, landowners can petition for creation of a District covering existing irrigation systems where administration by a water commissioner is not effective. These two statutes deal with adjudicated streams and common water supply. They appear to differ from the "general" irrigation district statutes in that they do not involve government projects. They also appear to be more restrictive. In particular, §85-7-301 MCA states that the Districts organized under this part should not acquire water rights, systems or works owned by the respective water right owners within the district.

Montana Law also provides for Drainage Districts and Conservancy Districts. Drainage Districts (85-8-101 et seq. MCA) are formed and administered in the same manner as Irrigation Districts. Their function, as the name implies, is to improve the quality of land by draining excess water. Conservancy Districts (§85-9-101 et seq. MCA) contemplate a broader purpose including flood and erosion control, regulation of stream flow, improvement of drainage and promotion of recreation. Creating a Conservancy District is accomplished in a significantly different way than an Irrigation District. The process is initiated by a petition to the DNRC by at

least 10% of the registered voters within the proposed district. The DNRC then conducts a preliminary survey on the proposed district and issues a feasibility report. If the DNRC believes the District is feasible, it can petition the District Court for the Conservancy District. The Department's petition must be signed by owners of 51% of the land involved and a percentage of voters in any incorporated municipality inside the district. If the district is approved following hearing on the petition, it is organized as a public corporation and is considered a political subdivision of the state.

The evolution of organizations dealing with water issues reflects the development of the West. While the federal government tried to maintain a presence in the West as development began, this presence was usually for protection, not water development. People settled the land and began using water long before the government initiated irrigation projects. It seems natural then that the earliest type of organization was the small private water user's group. As the federal government became more active with legislation such as the Carey Act, larger quasi-public water companies came into being to take advantage of government sponsored development of land. One key factor for these groups is that they usually dealt with undeveloped land and therefore were not required to contend with the existing water rights of prior appropriators. Finally, the federal government got into the reclamation business in a big way. The projects initiated after the turn of the century were of such a size that only the government could undertake them. These projects spawned completely public corporations called Irrigation Districts. Because they arrived years after original settlement and because often times reclamation projects were improvements in areas that were already irrigated, Irrigation Districts can deal extensively with existing water rights.

All three types of water user group, private, quasi-public and public are alive and well in Montana today. The future should see continued use of all three. Maintenance and improvement of water projects is still expensive. Increased emphasis on conservation of water in agricultural practices could lead to even more expensive systems. The benefits of Irrigation Districts, Water Users Associations, and Ditch Companies assure that they will continue to be a factor in the adjudication process.