

# Three Options for the Effective Use of Water in Shining Mountains West and the North Meadow Creek Area

At the 2012 SMWOA annual meeting, the Board of Directors were asked to find options for water management in which only the water rights owners would pay for all the costs associated with the use of the irrigation water in SMWOA. The SMWOA directors would also like to find ways to reduce conflict while promoting the proper use of the irrigation water. We have found 3 options that might be effective. These options are: 1) Petition District Court for a water commissioner, 2) Form a water users group, or 3) Combine options 1 and 2 by both forming a group and hiring a water commissioner.

## OPTION 1: PETITION THE DISTRICT COURT FOR A WATER COMMISSIONER

### A. Why would a water commissioner be helpful?

1. A water commissioner would help to reduce conflicts inside and outside the SMW water claims area. A water commissioner is assigned by District Court and would enforce the use of the correct amount of water that each water user is entitled to from North Meadow Creek. Water Court has identified the landowners who own the "SMW" water claims. We will refer to the water rights ruled on by Water Court as "SMW water claims" for the purpose of this document.
2. With a water commissioner, all water users would have to install water measuring and control devices before they could use water. Headgates and measuring devices are very important elements in managing water use and reducing conflicts. (See appendix 1 at the end of this document for more information on headgates)
3. A water commissioner would control the amount of water that is used by the water users in a timely and effective manner. A water commissioner has the authority to close and lock a headgate if he finds that water is being taken illegally.
4. A water commissioner officially documents that the water is being used. This can be helpful if documentation of water use is ever needed.

## OPTION 2: FORM A WATER RIGHTS OWNERS/ WATER USERS GROUP

### A. Why would a Water Group be helpful?

1. The benefit of joining a Water Group is that the members of the group could share water and therefore be able to use more than the amount of water allowed for their individual acreage.
2. The water rights owners would protect their water right by making sure the water is used and the use is documented.

3. Membership would be voluntary. The group should encourage water rights owners who are not planning to use water in 2013 to join so more water can be shared and used by the members who were planning to irrigate.

### OPTION 3: FORM A GROUP AND HIRE A WATER COMMISSIONER

#### A. Why would both a Water Group and a Water Commissioner be helpful?

1. Members of the Water Group could share water, but they would not have to act as an enforcer.

a. A water commissioner would be the enforcer and control the water usage of both the members of group as well as the water users outside the group.

b. The monitoring of water use would be done by a person who has the power of the law behind him. Misuse would be dealt with legally and quickly.

#### BACKGROUND FOR HIRING A WATER COMMISSIONER

Water Court has ruled that 67 landowners own the SMW water claims. A water commissioner might be the most effective way to assure that all water rights owners, both in SMW and on North Meadow Creek, use the legal amount of water assigned to their land.

To hire a water commissioner, District Court requires 3 items on the petition: 1)the area for the water commissioner to monitor, 2)signatures of 10-15% of the water rights owners, and 3)the dates for which the commissioner would be hired.

1) One possible area for the commissioner to monitor is the north end of North Meadow Creek from the SMW Green Acres diversion to and including Zabel's diversion. This would include all water users on both SMW Green Acres and Nugget ditches and all the water users north of these ditches on North Meadow Creek up to Zabel's diversion.

2) If a water commissioner was hired for the north end of North Meadow Creek including SMW, we would need 10-14 signatures of water rights owners.

3) The commissioner could be hired to work during July and August during low water.

(See appendix 2 at the end of this document to find more specifics on the District Court requirements for signatures. )

#### B. What funding is required for hiring a water commissioner?

1. The petition would designate the daily rate (possibly \$50-\$100 a day) for the commissioner. Each water user would be charged on a pro rata basis. The more water that a water user uses, the more they are charged. In addition, all water rights

owners would probably pay a share of workman's compensation insurance so that they are covered by insurance in case the water commissioner is injured on their property while walking or driving along the ditch. Since there are about 92 water rights owners in the proposed area, each owner might pay about \$3 for his/her share of the workman's compensation insurance which is estimated to be about \$250.

2. Only the people using water would fund the daily costs of the water commissioner.
  - a. It is difficult to figure out how much each user would pay without knowing how many people will be using water in any given year and therefore what percentage (pro rata) of water flow in CFS each person is using. In 2012, about 16 people were using water during the start of low water both on SMW and on the north end of North Meadow Creek.
  - b. District Court would ask the water users to sign up if they wanted to use water and then the actual costs would be determined.
3. To keep the costs down, the water commissioner could be hired to monitor water usage only during a limited time such as for one or two months instead of during the whole irrigation season. It is recommended that a commissioner be hired to work before the critical time of low water. This way he will be familiar with the irrigation area. However, a water commissioner does not have to work everyday if no water issue has been identified.

#### BACKGROUND FOR FORMING A WATER GROUP

1. There are several ways to form a water group
  - a. One type of Water Group could manage the water using a system based on the SMW water use plan. This group could be less expensive to begin. All expenses would be paid for by either the whole water group or just the members using water.
  - b. Another type of Group could be based on a new set of by-laws written by the Water Group members and run by a Board of Directors elected by the Water Group. This group would require more funds to begin. All expenses would be paid for by either the whole water group or just the members using water.
2. The Group would use the 2012 DNRC and Water Court data to identify the water rights owners and the number of acres that these owners can irrigate.
3. Effective enforcement of water usage is essential to help reduce conflict within the group. Members must decide if the group can effectively enforce the proper use of water both inside and outside the group. In other words, does the Group want to be the enforcer?
  - a. The water group could hire a ditch walker and/or canal operator to enforce the members' water use.
  - b. The water group should require headgates and measuring devices be installed by all water users. Members who are not planning to use water in 2013 would not have to install these devices. When they did want to use water, they would have to install a headgate and measuring device before they could use water. The group would have to have the legal power to enforce the installation of headgates.

4. Some start up fees would be required depending on the type of group formed. The water rights owners would be responsible for any costs associated with the group and water use. SMWOA would not pay for any costs.
  - a. Fees for the maintenance of the main ditches and diversions off North Meadow Creek would have to be determined. All water rights owners have some obligation to maintain these ditches and headgates. SMWOA would not fund any expenditures.
  - b. The water users would pay to hire a “ditch walker” if required.
  - c. The members who are using water would fund all or most of the Group. The members who are not using the water might pay nothing or just a minimal fee. All correspondence could be by email.

#### Appendix 1:

#### INFORMATION ON HEADGATES AND MEASURING DEVICES

1. Water users must make sure that they put the headgates and measuring devices in their legal or proper locations. DNRC or other water experts may be helpful.
2. It is important to determine the legal diversion point. Water users who have property that is not on the main SMW ditches should determine the best way to convey their water from the main ditch. Again DNRC might help.
3. A water user is responsible for any property damage done to other people’s property when installing the required water control devices. Water users may want to obtain written permission from neighboring landowners when they have to work on their secondary ditches that goes across any neighboring land. Having permission from a neighbor might help to reduce conflict. Landowners who have an historical secondary ditch going through their property may want to contact the water user to see if the person plans to install a headgate and measuring device on the secondary ditch.
4. Water users are responsible for paying for the installation of a headgate and measuring device on each of their diversions before they will be allowed to use water.

#### Appendix 2: PETITION SIGNATURES

District Court requires that the signatures represent 10-15% of the water rights owners and these owners should represent 10-15% of the water claims and the water flow (CFS).

The total number of water rights owners in the designated area is 92. 10-15% is 10-14 owners. (About 66 SMWOA members own water rights.)

The total number of water claims in the designated area is 20. 10-15% of the claims are 2-3 claims (SMW has 4 claims on North Meadow Creek)

The total volume of water in the proposed area is 50.59CFS. 10-15% of the water volume is 5-8 cfs (SMW has 22 CFS)