Bob Gotthe

HAND OUT DEFINITION

Introduction:
1. 3rd generation irrigator on Musselshell
2. Active for 15 years on Musselshell water problems
3. On Board of Deadman's Basin for approximately 14 years. Approx. 7 years as chairman of the board
4. On advisory committee for Judge Lobo
5. Have participated in adjudication process--Mother started--sent wives and mothers and daughters to town

The Musselshell Rivers is over 350 river miles long, counting the North and South forks, originating in the Little Belt, Castle and Crazy Mountains, just east of White Sulphur Springs and extending to Fort Peck west of Jordan. On this over appropriated river are 3 irrigation reservoirs, which are: Bair on the north fork, Martinsdale on the south fork and Deadman's Basin in the middle. Below Harlowtown there are 7 gauging stations and mandatory measuring devises on the north and south fork and on all river diversions. The North Fork, South Fork and the main stem are controlled by water commissioners under the direction of the District Court. Contract water below Deadman's Basin is also controlled by water commissioners under the district court. The water rarely runs out the end of the system during irrigation season so all water that is diverted can be accurately documented and the effect on other users measured. Without this control the bottom 1/3 of the river would probably have been dry the last 4 or 5 summers.

The test run of the temporary preliminary decrees has shown us the deficiencies of the adjudication process in our system.
1. We see claims decreed that never existed
2. We see expansion of water rights decreed under old priority dates. This is incremental development.
3. We see historical water rights not fully researched
4. We see marshalling of water which is the same claim being used for any number of ditches or diversions.
5. Individual water user expected to object to their neighbors--(tell neighbor story)
6. Individuals being expected to know what is happening 100 miles or more away, even on the tributaries.
7. A general lack of knowledge of the system and process and the time to protect our private property right.
8. We are seeing changes in use and increases in historical consumptive use, which is an on going drain on our system
   A. We see diverters moving diversions down stream---increases consumptive use
   B. We see sprinklers used to increase consumptive use
   C. We see no one has been objecting--mostly through ignorance

Return flows are the life blood of many ranches and farms on the lower Musselshell. Increased consumption should have a new priority date. This is a 0 sum game. If some

one gains on the Musselshell some one else loses.

II. So why does an accurate adjudication matter?

A. Water rights are private property rights based on your historical use

B. Ranchers and farmers have built their livelihood around a certain expectation of water

C. Prior appropriation is supposed to be orderly, lawful and systematic

D. If the system is inaccurate, then the system has failed to protect our private property rights

E. Real people are impacted by an inaccurate adjudication. Our enforcement bares this out.

III. Water users expected the following from the adjudication process

A. Protection of water rights

B. A fair process

C. An accurate process

D. A process that was not costly and time consuming due to litigation

IV. The underlying problems with the present adjudication process are

1. Water court relies entirely on objectors to get it right. Objectors must bring the problem issues forth.

2. The system relies on neighbors to object to each other. This does not work

3. The system expects irrigators to know how other irrigators historically used their water 200 or 300 miles away. (once again this is a 0 sum game)

4. The system expects ranchers to have the time to self police the process. The Musselshell has approximately 1700 claims

5. The system presumed water users would claim their water accurately and know what they used historically.

6. This is a judicial process that may be costly as ranchers may have to hire attorneys.

7. Claim examination procedures used in many basins were inadequate (issue remarks)

8. Certain elements of water right claims were not thoroughly researched for accuracy (Do old appropriations documents support the claim?)

V. We have a new process to improve and an old process to rectify.

1. New process

A. need to utilize on motions to correct right through their issue remarks

B. need to utilize as institutional objector, such as DNRC, Fish and Game or Federal Government

C. need to carefully scrutinize all elements of a water right claim

D. need to properly fund the process so the results are reasonable, accurate and timely. This is crucial

E. we need to protect private property rights--not reallocate them

2. Old process.. Where old verification rules were used

A. show chart

B. under old verification there were limited issue remarks. There was not sufficient information for objectors (like Musselshell)

C. new Supreme Court examination rules were developed because of the inadequacy of the old system

D. vast majority of water court decrees are under old system

3. Example of deficiency between two processes

A. under old process, DNRC did not fully utilize the resources they do today. (1949 water resources survey and 1979 aerial maps) They utilized the one resource that supported the most acres irrigated. (use Swimming Woman example)

B. Under new process both resources would be compared to the claimed water right and objectors would know if either resource did not support the claim. This is a very important issue in relation to verifying the correct priority date.

C. Consequently, objectors on the Musselshell were not aware of all issues

D. This is a big problem since much expansion of water rights have taken place after the popularity of sprinklers after most of the resource surveys were published

4. Comparisons made in the late 1980's between the old and new examination procedures

1. 53% comparison differences
2. A motion to have the Musselshell re-examined was denied

VI. Example of process gone bad (water right change on Musselshell)

1. Issues (there are no issue remarks on this)

A. incremental development including increased storage

B. inaccurately claimed priority dates

C. consumptive water use increases

D. stacking of water rights

E. marshalling of water

F. old appropriation documents do not support places of use where water is now used

2. DNRC did not compare the 1950 water resources survey with the newer aerial photo because rules did not specify they do so

3. DNRC did not scrutinize the old appropriation documents carefully

4. No objections were filed during temporary preliminary decree objection period

5. Water court then decreed these rights as claimed due to above.

WHAT WE NEED:

1. The system needs to be remodeled so that private property rights are not eroded

2. We need due process to take place

3. We have a system that relies on a level on expertise that water users do not have--Only the DNRC, the water court and some attorneys have that knowledge. It's unreasonable to think the general public can handle this process

4. Individual ranchers should not bare the full burden of financing and policing a state imposed system

5. The legislature needs to adequately direct and fund the DNRC and water court so

they have the tools and ability to do a timely and accurate job. The longer we wait the more some people will be rewarded for expanding their right and the dryer the Musselshell River bed will become downstream. Without the proper funding we might as well go home.