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Montana Water Resources Association

THE MONTANA WATERLINE



SUPREME COURT UPHOLDS IRRIGATION PROJECT SERVICE AREA RIGHTS

The Montana Supreme Court recently issued a decision regarding irrigation project service areas in a case involving Pondera County Canal and Reservoir Company and a local area rancher. The issue was raised to the Supreme Court following a determination by the Montana Water Court that upheld the Canal Company's right to a service area and several other related issues. **Montana Water Resources Association filed an amicus brief in support of the irrigation project's right to a service area to protect the right on behalf of irrigation entities and the individual irrigators throughout the State who would be impacted by an adverse decision. The decision significantly affects the ability to move water to varying lands within an established service area without the need to go through a potentially costly and time-consuming change of use through DNRC.**

In a six to one decision the Court upheld the previous Water Court ruling and stated that Pondera County Canal and Reservoir Company's rights are not limited by the shareholders' actual historical acreage irrigated and is entitled to a service area rather than a place of use based upon historically irrigated land. In addition to the service area issue, the Supreme Court also upheld the Water Court tabulation of water right claims without a volume determination. However, in its' determination, the Supreme Court held that while included in the service area, the Water Court did error in its determination of the Birch Creek Flats area acreage and remanded that issue back to the Montana Water Court for further discussion and determination within the adjudication proceedings.

“Montana's Voice for Montana's Water”

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Exec's Comments

Dear Montana Water Users:

It is a pleasure for me to provide these comments as the Executive Director of the Montana Water Resources Association

People involved in Agriculture truly understand the meaning of hard work. As we leave the calving pens of winter, spring brings new challenges and, yah, more hard work. Wonder what summer will bring? Hard work or not, we all love our chosen profession.

In my position with MWRA, I have been fortunate to work with many hardworking Montanans, including many who are not directly involved in production agriculture. While we may not completely agree on all issues, we respect each other's position and strive for a balance that is fair and equitable to all of us hardworking Montanans.

The challenges in irrigated agriculture, while daunting and frustrating at times, keep us enthused, motivated and willing to work even harder. I have no doubt that our hard work will enable us to succeed in finding the balance for success and strengthen the agricultural industry for future generations.

Sincerely,

Mike

Mike Murphy





FINANCING INFRASTRUCTURE – CHALLENGE FOR IRRIGATED AGRICULTURE

Financing to meet the challenge of maintaining infrastructure within irrigation projects is certainly no easy task and a challenge for any irrigation entity. Ongoing maintenance and rehabilitation of existing facilities is paramount to the long-term operation of the system and being able to pass a functional system on to future generations. While annual acreage assessments are crucial to operations and normal ongoing maintenance, long-term rehabilitation of primary project structures and facilities, such as diversions and syphons or development of a new irrigation project, may be beyond the short-term annual financing ability of the individual producers and assessment capability. Finding a source of funding for these very often extremely expensive and long-term projects, whether government or privately held, can be, to say the least, difficult. The demand for available funding programs by other public and private infrastructure needs and general government operations is very competitive, particularly considering the public assessment of benefits associated with areas such as schools, roads and bridges, etc. Private financing is also limited by collateral and other requirements, etc.

The 2015 Legislature attempted to address the infrastructure needs within the state through several legislative vehicles. Unfortunately, the legislature was unable to find a compromise that worked for everyone and no major infrastructure legislation was passed. Also equally unfortunate was the fact that the proposals considered provided very little opportunity for irrigated agriculture.

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FINANCING INFRASTRUCTURE

Finding an acceptable means of providing funding for the back log of important state-wide infrastructure financing is an increasingly hot topic and one that will probably take center stage as elections draw near and the 2017 Legislature meets in January. Finding a workable solution that addresses the various segments of the economy, including irrigated agriculture, is a challenge that will have to overcome political ideologies and financial realities.

A group organized to address the infrastructure issue and to potentially recommend and lobby for legislative action recently formed and is comprised of various industry and other organizations. While the intent is a good one, participation as a voting member of the group requires a sizable financial buy in that is not within MWRA's budget capability or, most likely, that of other agricultural organizations. While membership in the group may provide a vote, it does not ensure that agriculture will be happy with or necessarily benefit greatly from the results.

It is important for agriculture to be actively involved in the infrastructure discussions as they develop within the upcoming months. All of us in irrigated agriculture will need to communicate our local infrastructure issues and the extent of projected financial needs to our local legislators, as they are determined, and to the Governor and respective administration. Montana Water Resources Association has presented our concerns to the current administration, but we will need to continue to express our interest in being included in respective discussions and legislation as it develops and presenting the economic benefits associated with agricultural production and the costs associated with lost production capability if, or when, systems fail in the future.



Preserving the Future



TRIBAL RESERVED WATER RIGHT COMPACTS MOVING FORWARD

Since being sparked several years ago by House Bill 22 and the necessary financing, Montana's overall water right adjudication program is progressing well. Recognizing the importance of completing the water right adjudication program, the Montana Legislature has continued to approve general funding to keep the program on track.

Completion of water right adjudication is very much dependent upon settlement of tribal reserved water rights. The Montana Reserved Water Right Compact Commission was established over thirty years ago to facilitate negotiation on behalf of Montana water users regarding the numerous federal and tribal reserved rights. The commission successfully negotiated all various federal and tribal compacts and the tribal compacts are moving forward. Completion of the final and most complex tribal compact and associated water rights was successfully negotiated with the Confederated Salish and Kootenai Tribes and a compact was approved by the 2015 Legislature.

After being approved by the Montana Legislature, tribal compacts and associated settlements must receive Congressional authorization. Congressional settlement authorization legislation to move the Crow Tribal compact forward was approved by Congress several years ago. The compact for settling the Blackfeet tribal reserved water rights was approved by the Montana Legislature several years ago. Settlement legislation to move the Blackfeet compact forward was recently introduced by Senator Tester and Senator Daines and approved in the Senate Committee on Indian Affairs. Congressional/federal settlement legislation provides authorization and appropriations



for implementation of water right compacts negotiated by the Tribes, State of Montana, and the United States and for other purposes. The purpose of the federal legislation is to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana. The Blackfeet settlement authorization would provide for an appropriation of approximately a half billion dollars for water development and other purposes. The CSKT settlement, as recently introduced by Senator Jon Tester, (scheduled for a June 29, 2016 hearing) would authorize over two billion dollars for various economic and community related investments for jobs creation etc. As introduced, the settlement authorization would include over one and a half billion dollars for water delivery efficiency improvements, infrastructure rehabilitation, and modernization of the Flathead Indian Irrigation Project.

Federal compact settlement authorizations and related appropriations, as well as state contributions, are unquestionably expensive and difficult to negotiate in a manner that achieves the desired fair and equitable outcome, particularly in light of the current U.S. economy and other infrastructure needs, etc. However, compact settlements provide finality and certainty regarding water rights for all Montana water users and prevents costly litigation that could very well equal or exceed the settlement costs, stifle the adjudication program for decades, and leave all other water rights in jeopardy.



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Coming Events:

Montana Water Resources Association
Summer Board Meeting
July 21 & 22, 2016

National Water Resources Association
Summer Conference
August 3-5, 2016