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Tongue River Watershed Alliance

March 4th 2008, Ashland Montana

Meeting Minutes

Attendees: Kenny Kolka, Brian Dice, Doris L Dunning, John Morris, Dee Dunning, Mark Fix, Ray Muggli, Doug Campbell, Jae Nottie, Jim Domino, Kevin Smith, Connie J Morris, Ace & Addie Goodwin, Ted Fletcher, Frank Rollefson, Bill Isaacs, Brett Emmons, Tom Emmons, Terry Punt, Art Hayes, Laurie Kelley, Warren Kellogg, Keith Kerbel, and Bobbi Vannattan.

Keith Kerbel was guest speaker and he provided a presentation on the Adjudication of the Upper and Lower Tongue River Basin.

- ❖ The Supreme Court oversees it all/ratified the rules
- ❖ Everyone in the group should have received a notice in the mail from Helena, about their water right(s)
 - It should have also included a copy of the original claim that you or your predecessor had filed with the Montana Water Course.
 - There is a box on one of the papers for issue remarks, if the box is empty then the water courts have no issues with your claim, if there are any remarks in the box then you need to address them as instructed on the form, some may be very simple to resolve others may be more complicated, but you need to read them carefully
 - Then you need to check the priority date of your water right, if you developed a new well or spring between 1962 & 1973 you had to file at the court house with the clerk and recorders office under the '62' Ground Water Codes(these will have an 80-83 priority date which will be held unless you request for an objection and hearing
- ❖ When you go into the courthouse to find your claim, you will need to know who owned the property between 1961 and 1973, and have the legal description of the property to track the water right
- ❖ if you file an objection and can prove that the water right was filed in the C & R office you will most likely get your water right priority date back, unless you are happy with the 80-83 priority date
- ❖ If you haven't filed or your predecessor didn't file on a pre-62 well you are out of luck if you hadn't filed
- ❖ All pre-73 water rights are involved in the adjudication process. All rights after 73 should have a permit from DNRC
- ❖ The Water Courts Judge Loble will hold two public meetings in the Tongue River Basins in May. The Water Master will also be at these meetings
- ❖ The decree indexes will be at these meetings, you will need to have the page number and decree of your water right claim with you and the page number and decree of the water right you are objecting to

- This information is also available at all courthouses located within the Tongue River Watershed Basins or on the water courts website.
- ❖ Before 1962, there was no way to file a water right for a well or spring.
- ❖ If you have a well or spring before this date then you need to get an affidavit from anyone who knows when the water right was put to use
 - You will want them to be as descriptive as they can on what it looked like, include legal descriptions, well logs (don't prove use but are helpful). Receipts, invoices on route pipe specific to development are also useful
- ❖ The water right is the date the pump goes in and is put to use, not the date that the well or spring was built
- ❖ Water commissioners have the authority to control the water rights on a river or stream
- ❖ Priority dates tell the water commissioner who is first and who is last, prior appropriations doctrine has been in use since the 1860's. Priority date is really important, it is established by the date of first use
- ❖ There is no fee for change of address on water rights
- ❖ All parties up and down the creeks and river from the Stateline to Miles City are affected by the adjudication decree

❖ **OBJECTIONS:**

- ❖ If someone challenges your right, you need to put yourself in their lawyer's shoes and how you are going to provide information to prove you had use of the water... Keith discussed GW (ground water forms) with the group and the differences between.

- He also expressed his opinion on how it only takes \$40 to file for a water right on a spring or a well and that the file stands up in court.

- ❖ The decree is now out you are now dealing with the water courts, you now need to work with the water master and the water courts
- ❖ When you file an objection you must send a copy to the water courts and one to the party whose right you are objecting
 - It will take about a year for objections to be looked at
 - Because parties were waiting until the last day to send out their objections to the person the objection was against and they did not have time to respond, there is now a counter objection period of 90 days
 - There are copies of the index's at the county courthouse of the Tongue River and DNRC
 - Copies will be expensive- the lower tongue alone is 10 Books
- ❖ Presently the first part of the Adjudication Process is not complete until after the final decree is established, the whole basin is complete.
 - There will be several decrees before, the final decree
 - Temporary Preliminary, Preliminary, ect.

❖ **Water Rights:**

- "First in time first in right"
- 1.5 acre feet per 150 head of cattle
- Q. If I have a 1913 water right for 10cfs, and I have a pump that is pumping 5cfs, do I still have the water right for 10cfs?

- If no one has a problem with you having 10cfs and pumping 5cfs , then you are fine, however if there is someone who does object, you will have to go through the courts and most likely would lose 5cfs, you may want to buy a bigger pump or put in another 5cfs pump and apply for another point of diversion to preserve your 10 cfs water right
- Q. I have not been able to pump and use my water right because there has been no water.
- If you cannot pump due to mother-nature it does not constitute abandonment
- When property are bought and sold, it is now a requirement to transfer the water rights with the sale of the property. In July of 2008 the water rights will automatically transfer with the sale of the property.
- Splits will have to be handled by hand. Example:
- If someone has 100 acres and sells 25 acres then they would transfer 25% of the water rights to the new owner and the remaining 75% would stay with the 75% of the property.
- Montana wants to protect water rights that are for you stock and irrigation do not want to give water rights to wells, and they cannot take a water right away without due process
- If you do not have a beneficial use to the water then you do not have a right to the water, this is not a riparian doctrine
- ❖ **Use it or Lose it**
- The only way to lose a water right before 1973 was to decide you would not use it, tell your neighbor you were done, and then not use the water right, *it is the act and the intent*, or you could get sued and the water courts could take your water right away from you.
- Water Right administration OHIO, I live closest to the water I have the rights
- When doing a change in application you want to look at every water user and make sure they have the same conditions on shore as they did when they started using the water
- ❖ **Protect your water Right**
- You want to protect your water rights!
- The only way Keith sees to protect your groundwater rights is through agreements, go through the process and make sure the information is correct, DNRC is not an enforcing agency
- ❖ **Enforcement**
- DNRC is not an enforcing agency, after the decree the Water Commissioner for a basin will have enforcement authority
- ❖ **Oil & Gas**
- 82-510-water associated with the oil and gas are not under water rights, they are under the oil and gas division
- Water has to be a beneficial use to fall under the water rights and is governed by the DNRC-the water is of oil and gas is just a byproduct and is not governed by DNRC
- Oil and Gas board discussed the case with Wyoming and the supreme courts decided we did have a case

- Presently they want to ship water to Nebraska, who would then have beneficial use of the water, there is now a lawsuit with Wyoming and the CBM taking the water out of the basin
- Because the compact doesn't specifically state surface water, they are taking that the CBM water and runoff contains ground water, it is not known yet what will happen.
- Two cases exist where a landowner is using runoff for a beneficial use and they have to file for a water right

❖ **WATERSHED.**

- Warren Kellogg introduced himself and asked how many had previously been involved in the watershed and how many would be interested in continuing with the group
- The majority had previously been involved and would like to continue.
- The current meetings on file were from April 15, 2006
- The group responded that there had been a meeting in June of 06 and that they had done elections at that time.
- Megan's computer had crashed and that information was lost
- Warren asked if the group was interested in scheduling another meeting to discuss issues that could be addressed by the watershed group
- Art Hayes thought that there were several topics that could be addressed:
 - fuel reduction
 - controlled burns
 - using pine trees for bio fuels
 - weed problems are a major topic that can be addressed
- Warren introduced Bobbi Vannattan as interested in being the coordinator for the watershed and would be taking Megan Sweedlands job
- Laurie Kelley stated that Bobbi is employed by Rosebud Conservation District and is physically available in the USDA office in Forsyth

❖ **Positions:**

- Warren asked the group if they would like to do a vote or just a declaration of positions on the watershed
- The group discussed who had been elected in the June of 06 meeting and thought it would be ok to stick with those positions.
- Mark Bloxham had moved away so his position would be open, and Jay Notti thought that the group might need to find someone else for his position, but since no one was interested he remains

The Positions are as follows:

Stateline to Birney:

Art Hayes
Denise Woods-

Birney to Brandenburg:

Ron Hauso
OPEN

Cheyenne Reservation

Allan Clubfoot-art will ask who he would want
OPEN

Brandenburg to Miles City:

Ray Muggli

Tim Hamilton- Ray will get a hold of and see if he is interested

Miles City Urban /T & Y:

Mike Blum- Ray will contact and see if he is still interested

OPEN

Otter Creek:

Jay Notti-

Jan Stevens-Sent her an e-mail to see if she was still interested

Pumpkin Creek:

Bill Isaacs

Tom Emmons

Officers:

Chair-Art Hayes

Vice Chair-Jan Stevens

- ❖ USGS monitoring stations 09, requests for funding are going in, funding in 08 was not funded. If TRWA would like to sign on with request for funds monitoring USGS sites, to continue with existing sites, need a letter of support if everyone agrees they would add TRWA to the letter of support. It was agreed to proceed with TRWA support.
- ❖ It was agreed that the next meeting would be scheduled after the public meetings to be held by Judge Loble in May.
- ❖ Bobbi will send out notices and agendas for the next meeting.