
Ouray Wins Battle to Have Its Water Rights Re-Tabulated

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OURAY – Colorado River District President Andy Mueller reported to the Ouray Board of County Commissioners this week that, with mediation help from the river district, one of the county's two municipalities [Ouray] has had its water rights re-tabulated to a much more senior position.

As a senior partner with the Tisdell Law Firm, Mueller has long urged the county and its municipalities to shore up their water rights in the face of diminishing water resources and increasing downstream and trans-basin demands.

He was pleased to report that “the state has actually come around significantly to our way of seeing things on how the Uncompahgre River should be administered, and has done so without having great expense in terms of litigation and any other kind of administrative battle.”

Mueller credited the river district legal counsel and engineering staff for helping to negotiate a successful outcome. “It really backstopped our local efforts tremendously,” he said.

The matter dates back to last summer, when the City of Ouray plunged into an effort to fend off future water calls by downstream agricultural users belonging to the Uncompahgre Valley Water Users Association, questioning the historic appropriateness of water calls that UVWUA has made on Ouray with its Montrose and Delta Canal, and demanding that the Colorado Division of Water Resources re-tabulate the water rights within its Division 4, which encompasses Ouray.

The fate of Ouray's re-tabulation request was first revealed on Jan. 17 at the Colorado River District office in Glenwood Springs, at a meeting attended by the City of Ouray's attorney, city administrator and engineer, as well as representatives from the State Attorney General's Office and State Engineer, representing the Colorado Division of Water Resources.

“The upshot was, after a lot of research from the Attorney General's office, and consulting with other water divisions, the decision was to re-tabulate,” said Bob Hurford, CDWR's Division Engineer of Water District 4.

The decision hinged on the timing of the state's historic adjudications of water rights in the late 1800s. The first of these adjudications were irrigation water rights, and were conducted in big batches known as general adjudications.

In each water district, the first general adjudication – called the original general adjudication – is where relative priorities within the district were established. The dates of the original general adjudications vary from water district to water district. Some date to the late 1800s, and others happened as late as 1912. District 4's original general adjudication happened in 1897.

“Through research what we found out was that the City of Ouray came to water court with an application prior to the original adjudication in District 4, and it was turned down by court,” Hurford said.

The city re-applied along with other water users in the original general adjudication of 1897, and was again turned down.

Historic water rights in Colorado essentially have two relevant dates. The first of these is the adjudication date of the court-decreed water right, within which there may be relative priorities established by appropriation date. Then there is the date that the water user constructed a ditch or diversion and started taking water.

Based on the outcome of its research, the Attorney General's office agreed to insert Ouray's historic appropriation date into the original general appropriation of District 4. "This gave them a number ahead of the M&D canal," Hurford said.

Ouray could still be subject to a call by a couple of downstream historic ditches that are senior to Ouray's Weehawken and Oak Creek pipeline water rights, but the fact that the city's water rights have been re-tabulated to be in a senior position to the M&D Canal is "huge," Hurford said.

"We really don't know the details of what went on between the city and court system," he said. "There was no memo; it was probably just someone standing in front of judge talking, and they duked it out with no explanation."

Now, that void will be rectified. The Division of Water Resources intends to provide a record of its decision which will be filed for prosperity.

"We are treating the City of Ouray the way they should have been treated when its rights were originally tabulated to be consistent with similar applications throughout the state from late 1880s to early 1900s," Hurford said.

A formal opinion from the Attorney General's office regarding Ouray's re-tabulation is forthcoming. The City of Ouray's attorney Kathryn Sellars declined to comment.

The Town of Ridgway, which joined in with Ouray in a petition to have its own water rights re-tabulated to make them senior to the M&D Canal, was not successful in its effort. "Their water rights clearly were made in a supplemental adjudication, subsequent to the original general adjudication, and they aren't entitled to be re-tabulated with earlier appropriations," Hurford said.

Hurford tipped his hat to the AG's office for its findings regarding Ouray's re-tabulation. "It's like finding a needle in a haystack," he said. "They chomped on to this like a dog on a bone and aggressively went after it and uncovered a mountain of data. Ouray just fell through the cracks, I believe."

As far as the Uncompahgre Valley Water Users Association is concerned, "In the grand scheme of things this is such a small amount of water that they were never opposers" to Ouray's re-tabulation request, Hurford said. "It has no real impact to them. It's not that measurable, but it's huge to Ouray."

And, he added, "It's huge to me. I am not going to be the guy that shuts [Ouray] off [in the event of another downstream call]. No one is happier than me."

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