



Stillwater Conservation District

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February 4th, 2025

Declaratory Ruling Hearing Minutes

Location: USDA Service Center Conference Room (334 N. 9th Street, Columbus, MT)

Meeting called to order by: Ben Walker at 5:02 pm

Supervisors Present: Robert Van Oosten (*Chairman*), Noel Keogh (*Vice Chairman*), Butch Behrent (*Treasurer*), Steve Story (*Secretary*), Ben Walker (*Urban Supervisor*), Nathan Jones (*Urban Supervisor*)

Others Invited & Present: Sharon Flemetis (*District Admin*), Celeste Barnett (*310/Volunteer Coordinator*),

Guests: Dan Aadland, Richard M. Ostrum, Terrill Ostrum, Marilyn & John Simmons, Casey Kircher, Ben Sudduth via TEAMS

Hearing Officer's Findings

Drone footage taken by the hearing officer was shown and property lines, diversion point, and headgate location were pointed out and explained. Hearing Officer's findings document that had been previously provided to both the ditch members and petitioners through their attorney was read aloud. The 54 page packet emailed by the petitioner's attorney on Monday Feb 3rd, 2025, at 1:51 pm was recognized as being received and hard copies were provided to all Board Members and offered to the ditch members present.

Public Comment ** 3 Minute Limit Per Person**

The Public will conduct themselves in a professional manner or be asked to leave.

Mr. Sudduth attorney for Mr. & Mrs. Simmons started off the public comment by thanking us for allowing him to attend virtually due to the weather. He stated that the goal of this petition is not to deny the Agency Ditch their water, but the submitted permit was not filled out sufficiently. He also stated that he felt that if the Agency Ditch needed to do work to get water, they could do it under the 275 Emergency Form, so the Annual Maintenance Permit is not needed. There is no proof that this diversion point has been used historically, and its use should not be permitted now. There is no year round water rights on Agency Ditch so they should not divert water year round. The work that was done on the emergency permit after the flood was a permanent modification to the stream. As no annual maintenance has occurred with this permit, it is invalid. He sees the largest problem as the identified point of diversion as it is not at the headgate's location. He asks for the annual maintenance plan to be revoked, and the Ditch should re-apply with a properly filled out application for a 310 permit when work is needed. He sees that the East Rosebud seems to change a lot so feels that the emergency process should be used when work is needed. The ditch has used the inlet below Power's bridge in the past and just because it's not an option right now it doesn't mean that they can use any diversion they'd like. He restated that he is not denying they should have

access to their water but that the channel they are using is running too much water and should be reconsidered.

Mr. T Ostrum commented on the ditch user's behalf that this point of diversion has been used as a primary diversion in the past, his grandfather talked about it. In the past several years the East Rosebud River has bounced off the west side, so they used the diversion below Power's bridge but since the historic 2022 flood and the 100 year 2024 flood the river has changed to the east side so the current diversion is the best.

Mr. Aadland stated that he can remember his mother-in-law telling him it was used in the past. It has been a secondary channel for many years. It ran 30-40% of the river and there were no issues, but since the river has changed it has become the necessary point of diversion. When asked if the headgate was ever supplied from a different location in those days Dan stated that it wasn't necessary at that point there was more than enough water. In the past Carl Gustad would sometimes divert water at a lower point if necessary. The Agency Ditch was originally dug by the Crow Indians in 1875 when the land was part of their reservation. At that time the water was federally owned so the ditch wasn't granted water rights until the reservation was moved in 1892. There is significant archaeological data to back this up and the reservation site is recognized as a registered historic place.

Mr. Simmons stated that in the last 20 years the channel has been mostly dry and that Carl Gustad in the past has done a lot of work on the Power's pond and lower inlet to the headgate. He stated that when the emergency work was done no one consulted him. He is aware that the ditch needs to get their water. He is feeling responsible for the water for Agency Ditch and Mr. Powers, he has shut the water down in order to fix his fences and been asked by Mr. Power's to turn it back on. He is concerned that during high water this channel runs 29 feet wide. He has been informed by the ditch that they have a right to access his land with equipment. He quoted a letter contained in the packet sent by his attorney from DNRC, and also a statement from a USACE representative that the ditch had an exemption from them. He stated that the latitude and longitude on the submitted permit is incorrect for the location where the work will be done and is concerned about selling his property in the future with this access in place. He doesn't like that this has come down to this, but he can't deal with 29 feet of water crossing his land instead of the 70 inches it used to be.

Mr. RM Ostrum states that he is 84 years old and can remember when he was 10 or 12 going to Siegrid Eggan's place and watching him get in the river at this location with his CAT and place rocks in the river to divert the water at the current location. In the past Oltrogge Construction has also done work for the ditch at this point of diversion.

Mr. Aadland confirmed that this matches his recollection of events.

Steve Story, a Board Supervisor, stated that the intake for a ditch is normally above the headgate and that it is normal that these locations change when the stream does.

Mr. Sudduth commented that he understands the historical evidence and referred to Exhibit 6 in the packet he sent. He stated that this basin is coming up in water court and if a water commissioner is appointed, he does not feel this would be a defensible point of diversion and the ditch should change this with DNRC Water Rights. He recognized the burden this petition has put on the SCD and thanked us for following through.

Noel Keogh, Board Supervisor, clarified that in his experience water rights abstract recognize the point of diversion as the location of the headgate and the location where the water leaves the river to be diverted to the headgate is called the takeout and usually occurs in a side channel. He stated that this happens to all headgates at some point, the water has to be supplied by the stream and when it moves the takeout needs to move also.

Mr. RM Ostrum states that he believes that at least one of the abstracts states that the diversion may happen from any tributary of the East Rosebud and the Board confirms that they have seen similar wording before on other abstracts.

Mrs. Simmons discussed flow rates that have been measured at the takeout point, these are included in the packet sent by the attorney. The hearing officer reminds her that the SCD does not handle water rights.

She submits photos of the high flow and states that they cannot deal with this much water ruining their property.

The hearing officer states that we will be setting a date and time for the special meeting where the board will make its decision during our regular board meeting following the hearing.

Mr. T. Ostrum asks for clarification that the decision is on whether or not the Board will revoke the maintenance permit, and the hearing officer confirms this is correct. The Board states that they have not previously revoked a permit they have granted.

Mr. Aadland states that he may have a document showing that the current diversion location has been used before and will submit it if he does.

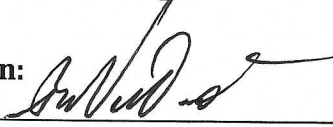
MOTION TO ADJOURN THE MEETING: Nate

SECONDED: Bob

MEETING ADJOURNED AT: 5:52 pm

Minutes Approved on:

Minutes Approved By



Date:

3/4/25