

**COMMITTEE MEETING FOR THE
UINTA AND WHITEROCKS RIVER COMMISSIONER
OF JANUARY 17, 2020, 10:00 A.M.**

MINUTES

Present: Shane Hamblin, River Commissioner for the Uinta and Whiterocks Rivers; committee of Ken Asay, Uintah Indian Irrigation Service; Wayne Malnar, Associated Water Users; David Yeaman, Ouray Park Irrigation Company representing the Whiterocks River. Tyson Murray, Whiterocks Irrigation Company was also present, but not on the committee.

2019 Minutes Approved

Mr. Malner approved the minutes from 2019 and Mr. Yeaman seconded it.

2019 Expended Budget

The mileage was higher in 2019 in part because more miles were driven in March in diverting water to Montes Creek Reservoir. The Workers Compensation seems to fluctuate up and down from year to year and was less in 2019. The legal fees were more because of opposition posed by the Uinta Valley Shoshone Tribe. They were claiming they had the legal right to all of the water.

Uintah and Ouray Reservation

Mr. Asay explained how the Uintah and Ouray Reservation was set aside for the Utah Valley Indians. The Uinta Valley Shoshone claim they were the original people and that other Ute bands were brought in under their privilege as the host tribe. The Termination Act was to terminate all of the tribe, but only 490 of the original people were terminated.

Allotted Lands, Trust Lands, and Homestead Lands

The Allotment Act gave 160 acres to a male head of household and 40 acres to unmarried males 18 years of age and older. At first allottees could sell their land, but the tribe put a stop to that practice before more than half of the land was sold and they would have lost control. Allottees handed down their land undivided so now we have cases of 40 acres split up among 200 owners. The Federal government decided the Indians needed a grazing reserve so that is why we have a band of tribal land in the foothills with no homesteading in it that are trust lands. Once the government finished with the allotments and trust lands they opened the reservation up for homesteading.

Uintah Indian Irrigation Project (UIIP) and Allotted Lands

Generally any land with UIIP water on it was allotted land, although there were some transfers. The tribe bought back some allotted lands. The UIIP and the homesteaders were building canals along the side of each other before the government came in and said they must build one canal and have carriage agreements for the non-federal water. Some water users with homestead land have thought they had

UIIP water because their water was delivered through a UIIP canal. If there is a question on an UIIP water right they can check with the BIA Irrigation office. Because of the Winters Doctrine, the UIIP water rights have a priority date back to 1861 when the reservation was created. With the earliest priority date, the UIIP has the first call on the water distribution. The UIIP water became adjudicated in the 1923 court decree when the Federal Government sued the individual irrigation companies saying they were interfering with their water. The court decree set the water priorities, defined the number of irrigated acres, set a maximum accumulation of 3 acre feet per acre, and set the maximum diversion rate of 1 cfs for 70 acres. The decree also had options for stock watering and some culinary use.

Bifurcation

The Bifurcation project is ready to begin and all that is needed is for the Ute Tribe Business Committee to sign a memorandum of understanding relating to the cultural resources of abandoning the old structure and the right of way needed to put the new structure in the new location. In discussions with Duane Moss, the water rights director for the tribe, we have learned that their tribal water committee would like to have the control of the Bifurcation structure. Mr. Asay also said they want to have a seat on the River Commissioners Committee and have a say in the distribution of the irrigation water. Mr. Asay informed Mr. Moss that we just figure out a budget with this committee and don't make decisions on the water delivery because the water rights are already in place with priority dates and quantities. They also dislike the fact that the river commissioner is appointed by a state court when the tribe has federal water rights. They would also like instream flows for fish habitat, however, the way it is set up, there is no water right to leave an instream flow. With the WaterSmart Grant we were showing a water savings of 3,000 acre feet and they would like to see that water used for instream flows. Mr. Moss said they think this 3,000 acre feet will just end up in Pelican Lake and that Ouray Park Irrigation Company will then sell it to oil companies. Mr. Yeaman said that last year the total oil field water they sold was under 200 acre feet. Mr. Murray mentioned that since the tribe has first priority on the water, they will get taken care of before Ouray Park gets a drop of water anyway. The tribe did get some RCCP funding with the NRCS to use on the Uinta River and Mr. Moss said some of those funds could be put towards the Bifurcation project. The new Bifurcation would benefit everybody and would make it so we don't have to put heavy equipment in the river, which angers the tribe, to divert the water for storage in the fall and then back for irrigation in the Spring. The whole point of moving the Bifurcation up stream would be to control the flows. There are times when we have way too much water in the West channel and are dumping a ton of water out every outlet and off the end of the Bench Canal. When water spills at the Bench heading it comes back into the main river below all the headings except for the Henry Jim Canal, which is small. The new structure could also help minimize the fluctuation of the water flows.

UIIP Water Classifications

Mr. Asay explained that the UIIP water is classified as presently accessible, temporarily non-accessible, and permanently non-accessible. The presently accessible water of the tribe would be 47 percent of the UIIP water, the non-tribal water would also be 47 percent, and the remaining 6 percent would be allottee water. If the temporarily non-accessible and permanently non-accessible waters were added it would become 49 percent tribal to 45 percent non-tribal and then allottee water that remaining. The

temporarily non-accessible and permanently non-accessible waters are included on the certificated water rights. The federal reserve water rights cannot be lost from non-use like a state water right.

UIIP Water Transfers

The UIIP water is generally tied to the ground, although there have been some transfers in the past. It is not easy to transfer this water which is in part due to the fact that the tribe says they are an interested party. There have, however been over 200 transfers made over the years and most of those were made by the tribe itself. Now there is some water on trust land that was never irrigated before and it never was allotted land, but the water right came from allotted land. There are some transfers still pending.

UIIP Water Disputes

If a dispute cannot be settled with the irrigation office, then there is the option of a tort claim with the government. It will go to the solicitor's office where they will weigh the information and make a ruling. If you are not satisfied with that ruling, you could actually end up in federal court to try to settle it.

UIIP Water Rights

The BIA water is not shares of a company but it is called acres with water rights. They recommend that you have those water rights included on your deed. If there is a change in ownership of the land you need to bring them a copy of the deed that has been signed by all parties, notarized, and recorded with the county and then they will make changes to their records. If a person does not pay their assessment they will not be delivered water. Overdue payments will be assessed penalties and fees and if not paid by August it will go to the US Treasury for collection.

Pressurized Systems

Many tribal water users are opposed to piping ditches because it is unnatural. Mr. Asay said they have talked of piping the Bench Canal, but then all of the springs and trees would be gone. One solution may be to pipe most of the water, but continue to run a small portion of water down the old canal occasionally to keep it soaked.

Old Ouray Park Canal

Mr. Yeaman said that they had abandoned their canal after they put in their pipeline to Pelican Lake, but the pipeline wasn't large enough for highwater flows and the BLM wanted them to run water down the canal occasionally to sustain the habitat, so they reinstated usage of the canal for 30 days out of the year.

Whiterocks Irrigation Canal

Mr. Murray said that after piping their system, Whiterocks Irrigation Company will maintain their old canal for mitigation and also for flood control. Whiterocks Irrigation had contacted the county to see if they would help maintain their canal but they refused because of liability concerns.

Ouray Park Extension Canal

Ouray Park Irrigation Company did not want to be liable for flooding down their old Extension Canal going to Brough Reservoir and so they legally abandoned that canal.

Heavy Equipment

With the higher flows of 2019, the heavy equipment budget was over expended. The heavy equipment budget had been used to pay for work that benefited more than one irrigation company. The construction company used had been reasonably priced and had been on call throughout high water. It is too early to tell what the river flows might be like for this next irrigation season.

Budget for 2020

Mr. Yeaman made a motion to approve the budget for 2020 and Mr. Malnar seconded it.

Chairman

Mr. Malnar volunteered to be the river committee chairman for 2020.