

YJWCD
HIGHLAND DITCH PRIORITY NO. 701
REVIEW OF MINUTES
1988 TO AUG 2012

The history of the Highland Ditch Fourth Enlargement conditional water rights of 61cfs prior to 1988 was not reviewed in detail.

1. 9/13/1988 Minutes: Scott Balcomb made a lengthy presentation following which a motion to consider the application of the owners of the Ditch for water allotment to have Yellow-Jacket obtain an absolute decree for the Fourth Enlargement of the Highland Ditch for 61 feet of water for irrigation and domestic use, and to apply this priority and decree on to the lands underneath the Highland Ditch. The motion was m/s/p unanimously. The domestic water requirements of the Town of Meeker are noted in the resolution.

2. 11/17/1988 Minutes: These minutes contain a lengthy discussion of the application of the members of the Highland Ditch and the Board approved the allocation in principle and directs its counsel to prepare agreements with ditch owners under the following conditions: The remainder itemizes the seven conditions.

3. 6/26/1988 Minutes: The principal business was the water allotment contracts with the shareholders of the Highland Ditch. Contracts signed by the owners of the Highland Ditch were presented with concerns. The primary concern being the automatic increase in price on April 1, 1993 contained in Exhibit "A". It was resolved that the note shall be interpreted by the District to mean: "may be revised..."

4. Highland Ditch files contain the following contracts recorded in 1989: Hal Pearce, 9.96cfs, Book 479 Page 458; David Smith, 5.40cfs, Book 479 Page 435; Forrest Nelson, 3.32cfs, Book 480 Page 378; Sam Love, 7.14cfs, Book 479 Page 440. Total 25.82cfs, there is no reference in the files to the remaining 35.18cfs. At risk of abandonment?

5. 4/7/1992 Highland Ditch Association billed by letter for \$762.00 per "Water Service Agreement dated June 26, 1989. \$12.49 per cfs for all 61cfs.

6. 4/23/1992 & 10/1/1992 Minutes: There are comments on the Highland Ditch but no discussions. Comments allude to work to change conditional to absolute right.

7. 5/17/1993 Highland Ditch Association billed by letter for \$762.00 indicating the Board did not double the fee in April, 1993 as indicated in Exhibit "A". Also there is a direction to counsel to draft a letter to the Secretary-Treasurer of the Highland Ditch to arrange a meeting. (No letter could be found)

8. 12/9/1993 Minutes: Counsel is directed to expedite Highland Ditch settlement. No discussion, what settlement is unknown.

9. 7/5/1994 The Water Division No. 5 Judge signs Case No. 89 CW 131 making the 61cfs absolute and, among other conditions, includes: "d. The standard Water Service Contracts (dated June 26, 1989) between Yellow-Jacket and various water users and owners of the Highland Ditch shall at all times control the use of the Fourth Enlargement: and"

10. Note: No mention of the Highland Ditch could be found in the minutes until 2007.

11. 11/13/2007 Minutes: "The Board discussed the annual leasing of water rights to the Highland Ditch Company. The Board discussed the annual fee for the lease of \$762.00." There is no indication of action or resolution.

12. 12/9/2009 Minutes: "Highland Ditch Company: Secretary-Counsel gave an accounting of the Highland Ditch arrangements and historical payments. Payments in the amount of \$762.00 were made in 2007 and 2008. The Board directed Secretary-Counsel to follow-up with Highland Ditch Company to determine why payments were not made in the other years and request payment accordingly."

13. Miscellaneous: An email from Lee Leavenworth to Secretary-Counsel dated 5/17/2011 summarizes the history of the Highland Ditch Fourth Enlargement from the 1966 decree and the 1972 agreement between YJWCD and the Town of Meeker. This is a partial explanation of paragraph 9. "Town of Meeker" in each of the Water Service Contracts.

14. Summary:

a. The \$762.00 rental fee since 1989 remains valid since it tracks through the Minutes history with no action to change it.

b. The action item to collect overdue fees indicated in the 12/9/2009 Minutes remains open.

15. Recommendations: These recommendations are based on the statement of Secretary-Counsel that the Board has a six year limit on collection of past rental fees and the recognition that Highland Ditch Company paid the fee in 2007 and 2008.

a. Prepare a formal bill to Highland Ditch Company for \$3,048.00 for overdue payments for 2006, 2009, 2010 and 2011.

b. Prepare a formal bill to Highland Ditch Company for \$762.00 for 2012.

c. Put a motion before the Board to raise the fee in 2013 to \$1,421.48 which is nothing more than adjusting the 1989 \$762.00 to present value.

d. Put a standing action item on the Boards agenda to review, approve or adjust the rental fee prior to March of each year to comply with paragraph 6. "PAYMENT" contained in each Water Service Agreement.

e. Formally bill the Highland Ditch Company annually.

f. Consider holding a joint meeting with YJWCD and the Highland Ditch Company to combine all individual Water Service Agreements into one Agreement between YJWCD and the Ditch Company and clearly cover the total of the 61cfs in the Fourth Enlargement.

g. If the original Water Service Contracts are left to stand, the Board must review every contract to insure compliance with Paragraph 7. Some users have changed since 1989 and approval of the new user is not recorded as approved by Board action.