

# Legacy Ditch Company Legislation



INTERIM WATER RESOURCES REVIEW  
COMMITTEE

SEPTEMBER 7, 2012

# History

- **Initiation of Ditches (1860s)**
- **Adjudication Acts (1879) (1881)**
  - Ditches in various stages of completion
  - Silent on irrigated acreage, contained flow rate and ditch specs
  - “Statements of Claim”



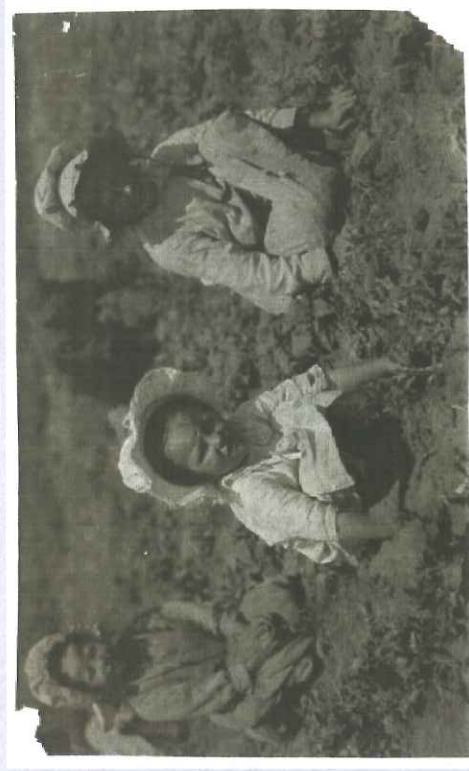
Crossing the River Platte  
Worthington Whittredge (1820-1910)

“the amount of land capable of irrigation by said ditch between the headgate and the reservoirs is 12,000 acres, and the amount of lands susceptible to being irrigated by the water of said ditch and said reservoirs lying North and North-west and North-east from said reservoirs is 28,000 acres, in addition thereto, in fact the amount is unlimited as it may continue to the eastern line of Colorado.”



# History

- **Continuing Development (1880-1930)**
  - Financial Ups and Downs (1893)(1907)
  - Ditch extensions, multiple rights, joining of ditches
  - Increasing settlement (Homestead Act)
  - Build out – stabilized acreage



# Jones Ditch And Burlington Ditch

- **Jones Ditch**
  - 1867 Water Right
  - Serves 700-900 acres
  - Development to 900 acres by 1930
  - Court: Intent of Jones 344 acres
  - Result: Reduction of CU and service area



On the Cache La Poudre River, 1876  
Worthington Whittredge (1820-1910)

- **Burlington Ditch Reservoir and Land Company**
  - 1885 Water Right
  - Burlington Ditch, delivery through Barr Lake 1909
  - Court: Intent of Burlington appropriator limited to above Barr Lake
  - Result: reduction of CU and service area



# Impact



- **Uncertainty**
  - Permissible Irrigated Areas
  - Reliability for change purposes
  - Value: estate planning, business management
- **Prevents Ditch Wide Change in Use Cases**
  - Hinders flexibility, development of water rights markets, application of alternatives to dry-up
- **Creates potential for large scale re-quantification of Senior Rights**
  - 19<sup>th</sup> Century development levels

## Proposed Solution

**IF** water right decreed prior to 1937 **AND** decree is silent on permissible acreage **THEN** all acreage within 50 years of decree is lawful.

- Recognize longstanding use
- Support senior rights holders, agricultural economies by ‘grandfathering’ usage made within 50 years of entry of decree
- Eliminate ad hoc determinations based on ‘intent of appropriator’
- Restore certainty, support water rights markets

March 1, 2013

Letter of Support for SB 74

As an employee of Central Colorado Water Conservancy District I have been able to witness firsthand the harm to our water rights and to our members as a result of the court ruling regarding the WR Jones Ditch and what the court determined to be an "expansion of use".

The Legacy Ditch Bill is a sound piece of legislation that will avoid future harm to water rights when they fall under the criteria of the bill. Without passage of this bill, agricultural users will continue to be fearful of allowing a change of use, especially on a ditch wide basis, because they feel their irrigated acreage will be reduced. It doesn't seem to matter that the historical usage dates back over a hundred years. The very real threat exists that if some attorney can find an esoteric document hidden away for decades that calls into question the original "intent" of how many acres the ditch will irrigate, an ag user could lose the right to irrigate land that they have farmed for generations.

Cities have the ability to pay powerful attorneys and their clerks to spend countless hours in search of some scrap of paper hidden away that might question the original "intent" of the appropriator. Most water districts, farmers and ditch companies have neither the time nor money to search out these records, or spend countless hours fighting these claims in court.

To top it off, current law allows the court to interpret that "intent", which may be ambiguous or unclear. SB 74 would give clear direction and guidance to the court under these circumstances. The rules of the bill are very specific as to the date of the ditch decree, and if the decree is silent regarding permissible acreage. Then and only then would it allow the court to use irrigated acreage equal to the maximum used in the first 50 years of the decree.

A proposed amendment to the bill, requiring review of the underlying record, completely defeats the whole purpose of the bill. Contrary to some emotional reaction, SB 74 will help protect senior rights along the river.

I respectfully ask the House Ag Committee to give their full support to SB 74.

Sincerely yours,

Kathryn L. Parker  
Public Information/Education Officer  
Central Colorado Water Conservancy District, Groundwater Management  
Subdistrict, and the Well Augmentation Subdistrict



## **P. Andrew Jones**

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**From:** Everett Kissler <diamond5kfarmandranch@gmail.com>  
**Sent:** Thursday, February 07, 2013 10:31 AM  
**To:** paj@ljcglaw.com  
**Subject:** Legacy Ditch Senate At Hearing

My family heritage like many of my colleagues is from many centuries of European agriculturalists who migrated here and built the water system providing the water to the semi-arid desert we live in and transformed it into a garden Paradise. I am a 5th generation, my grand children are 7th generation Coloradoans Sand American Agriculturists proudly producing food and fiber for the people of this State, our Nation, and the World, all along the front range of Colorado for over 110 years! This heritage entangled with hardships, life and death struggles, devastating legendary storms and glorious triumphs give us the heart to fight for what is right! It is the basic American Principal, The Legacy Ditch Bill is founded in the principal of making it right. This Bill will help preserve the water rights procured under the laws of our Prior Rights Doctrine System. This is the lifeblood of family farms and ranches all over our State. We cannot turn our backs on irrigated agriculture water rights as was done in 1969 water act and again in 2002 water act . If this Legacy Ditch Bill is not passed as is, without defamation of its intent, water rights holders will be suffering another form of improvidently governmental "takings" of water and water rights. The future generations of Colorado and Colorado Agriculture are at stake!!! The Future is in your hands. You owe it to them!

Sincerely,

Everett D. Kissler  
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