

Over the past few weeks the Republican River Water Conservation District (RRWCD) has come under considerable criticism for its handling of negotiations with the Hutton Foundation. I would like to furnish some information as to the decision making process involved in those negotiations. First, however, it is helpful to remember that the Colorado Legislature created the RRWCD with the purpose of aiding the State of Colorado in Republican River compact compliance. That is done through 1. Water retirement, 2. Compact compliance projects (i.e. compact compliance pipeline, CCP) and 3. Water conservation programs. The Legislature did not create the RRWCD to solve all of the water issues in the Basin.

RRWCD is not named as a defendant in the suit brought by the Hutton Foundation against the Division of Water Resources, but RRWCD has attempted to purchase the Hutton Foundation's surface water rights in the past and continues to try to assist the State in staying in compliance with the compact. RRWCD also has water permits used for compact compliance that could be affected by the outcome of the suit.

Since its inception, RRWCD has negotiated with many different water right holders and purchased some of those water rights. RRWCD tries to represent area water users and their assessment fees in a responsible manner. We try to get the best value while treating everyone equitably and fairly. The Hutton Foundation has been treated no differently. In recent editorials, the claim is made that the Trust has 27.5 Cubic Ft. per Second (CFS) of valuable water rights. Of those rights, 65% (Hutton 1 & 2) have a legal priority of 1977, which is junior to over 95% of the wells in the basin (and under current state law, the wells operate under their own system, separate from surface water rights). In 1978, water court Judge Donald Carpenter ruled, **"The priorities herein awarded said Hutton No. 1 and No. 2 were filed in the Water Court in the year 1977 and shall be administered as having been filed in that year; and shall be junior to all priorities filed in previous years."** Would you purchase those rights for \$4,500,000? 7% of the rights (Tip Jack) in question were in litigation as to whether or not they even still existed during the time of negotiations. Even after Judge Hartmann ordered this right off the abandonment list, he went on to state, **"Nothing in this order is intended to confer a right to the foundation to continue diverting the Tip Jack water right from any non decreed point of diversion."** The Tip Jack right has no diversion structure, no ditch, and no record or witness to it ever being used. Even with the abandonment issue settled, would you pay over \$500,000 for that right with the community's money? The remaining 28% of the surface water rights is one third of the Hale Ditch which is worth approximately \$2,000,000, based on previous purchases. So, with that knowledge, would you pay over \$7,000,000 on all of those rights if you were negotiating a contract? That is tantamount to having 4 Cadillacs for sale, one of which actually runs, and demanding the same price for all four.

As for the Lawsuit against the Division of Water Resources and various representatives of state agencies, please understand that there are over 50 surface water rights in all areas of the basin that are still valid. If the basin gives in to the threat of well curtailments and pays extortion-like sums, a precedent will be set. Some of these outstanding surface rights may be tempted to follow the same settlement threat, even if they have never used any of their surface water right. The protective legislation, SB-52 that was put into effect for this very purpose after the Pioneer/Laird lawsuit, has not been constitutionally tested. That process is now underway.

So, outside of finding a resolution that works for everyone, basin residents have two basic choices. We can stay the course, and help the State in the defense of this suit, or capitulate to the demands of the Hutton Foundation as we all try to find a gold mine to pay this suit and potential future suits. The gold mine most likely will come in the form of much higher water use fees that many may find financially unbearable.

The RRWCD board is comprised of 15 members. 7 members are appointed from 7 Ground Water Management Districts. 7 members are appointed by the commissioners of 7 counties and 1 member is appointed by the state Groundwater Commission. In the future, if you have specific questions about these issues, feel free to call any of the following people for the direct answers to your questions. If they don't have answers to your questions, they will know where to get the answers.

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