

CORONA

WATER LAW

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Via E-Mail

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Mike Meiners
Sopris Village HOA
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Re: Sopris Village HOA Water Rights

Dear Mike,

Following is my analysis of the value of Sopris Village HOA's well water rights. For this, I have reviewed the well files available from the State for the wells, the water court decrees for the well water rights, the decree that changed the Robinson Ditch water rights to the wells, and the diversion records for the wells. I also communicated with other water attorneys in the valley regarding the Robinson Ditch, recent transactions, and value. I have not reviewed any documents related to the Robinson Ditch Company. My opinion made here is based solely on the information provided and is presented for guidance only.

Based on my review, I estimate the value of the well rights to be quite low currently. Water is plentiful in the mid-valley, especially with Basalt Water Conservancy District Ruedi Reservoir supplies, and there is little strain on the supply from senior water rights calls. In the future, if water supplies become tighter and if all Ruedi Reservoir replacement water is leased, then the value of these rights would increase. Currently, though, there is very little demand and almost no market. The greatest value of the rights is to Sopris Village HOA for its current uses and the HOA may consider holding onto the water rights to see if their value grows in the future. The only real market for the rights is in the Robinson Ditch system and, for that, they may be worth \$2,500.

Background - Well Water Rights.

The HOA owns two well water rights, the Sopris Village Well No. 1 and No. 2. They are permitted under Division of Water Resources Well Permit Nos. 38624-FR and 23521-F, respectively. The wells also have court-decreed water rights. Well No. 1 received a decree in Division 5 Water Court Case No. W-2413 on January 15, 1975. Well No. 2 was decreed in Case No. W-3594 on September 28, 1979. The wells are decreed to pump at a maximum rate of 0.22 cfs, each, for domestic, municipal, and irrigation uses.

Background - Robinson Ditch Water Rights.

The value of the well rights depends in large part on the value of the Robinson Ditch rights. The HOA owns 0.5 cfs of the Robinson Ditch water rights. I did not review any title documents related to the Robinson Ditch rights and this is not meant to be a title opinion. The 0.5 cfs figure is based solely on the decree in Case No. W-3593 in which the Robinson Ditch rights were changed to be diverted at the wells for domestic, municipal, and irrigation uses. It appears there may be some conflicting information on the exact amount owned based on State records. We can discuss this further, if you feel it is necessary.

The W-3593 decree allows the Sopris Village Wells to be used to divert all of Sopris Village's Robinson Ditch water rights. However, the wells are only allowed to pump at 0.22 cfs each, total 0.44 cfs. This leaves 0.06 cfs that can be diverted at the headgate and delivered through the ditch to Sopris Village.

Value – Well Rights.

Since the well water rights are relatively junior, their value is minimal. They are senior to the Colorado Water Conservation Board's in-stream flow water rights decreed in this reach of the Roaring Fork River in 1985. However, given the location, this doesn't enhance their value greatly since water is readily available from the Basalt Water Conservancy District to address any in-stream flow calls in the Roaring Fork River.

Value – Robinson Ditch Rights.

The senior Robinson Ditch water rights that are decreed for diversion through the wells would have a greater value in a typical market where there is adequate demand. However, because of their location and the availability of Basalt District water, their value is likely only to other users on the Robinson Ditch.

The value of a senior water right is based on its historical consumptive use since, in order for the water right to be changed for use elsewhere or for different uses, the changed right would be limited to the historical consumptive use. When the Robinson Ditch rights were changed to the wells, the decree said 65 acre feet of consumptive use is associated with historical irrigation under the rights. This amount would be reduced in any new change case since, for years, the rights have not consumed the full 65 acre feet.

Currently, based on available diversion records, it looks like Sopris Village is diverting, on average, 155 acre feet per year.¹ For the domestic use portion of that, 10% would be consumed and, of the diversions to irrigation, 75% would be consumed. This amounts to about 54 acre feet consumed annually. For non-use since the change decree was entered, the 65 acre feet mentioned in the decree would be reduced to about 61 acre feet. Thus, Sopris Village's water rights represent

¹ For Well No. 2 diversion records are only available for 1985-1990.

about 61 acre feet of consumptive use water. Please note, these are rough approximate calculations based on publicly available information and are not based on engineered calculation and analysis.

Cost Approach.

Based on the cost approach, the value would be derived by determining what it would cost to replace the water rights. In this case, the simplest replacement would be through a Basalt District contract. The Basalt District could provide water to individuals in areas similarly situated to Sopris Village for their standard contract rate. For domestic use (includes irrigation) the District charges \$180 per acre foot plus \$20 for every developed residence. So, to provide 61 acre feet of water annually, the cost would be \$6588 per year, plus \$20 per unit. For 130 units, that's \$2,600 per year, for a total annual cost of \$9,188. Basalt District contracts have forty-year terms.

On a purely economic basis, using the cost approach, one could value the water rights at the cost of a forty-year Basalt District contract. This value would have to be reduced by half because the Basalt District contract provides year-round water and the Robinson Ditch is limited to irrigation season only. It would also have to be reduced by the cost of a water court change case and a calculation for net present value. So, a forty-year Basalt District contract at \$9,000 per year gives a value of \$360,000. Reduced by half is \$180,000, then reduced by the cost of water court (\$40,000 - \$60,000), gives \$120,000 for a value in a market with demand.

But, water court change cases involve expense and risk that the water right will be reduced. Using a Basalt District contract doesn't require a water court case because the District has water court decrees in place. Therefore, there is almost no demand because any potential buyer in the area would opt for the Basalt District contract to avoid the expense and risk of water court. This cost approach value, therefore, is not realistic given the market realities.

Comparable Sales.

I was unable to come up with any Robinson Ditch comparable sales that could be used to value the rights. As I understand it, there haven't been any recent Robinson Ditch transactions. I am aware of two transactions on Missouri Heights recently that work out to \$1,141 per acre foot of consumptive use and \$3,534 per acre foot. However, because that is such a water-short area and demand is high, those sales are not comparable for Robinson Ditch rights.

Market.

As mentioned above, demand for Robinson Ditch water is very low since the supply is high and there is a readily available alternative source. There is very little use on the Robinson Ditch compared to the historical use and the ditch is still diverting most of its decreed rights which means there is likely a lot more water in the ditch than is needed. Without a ready market and demand, the value is quite low. In the opinion of one attorney I spoke with, the rights have no value, although I believe that is an extreme opinion.

There may be a market to other individuals on the Robinson Ditch, but with so much water available in the ditch, that may not be the case. I have seen offers for junior water rights in the upper valley for \$5,000 per cfs. On that basis, Sopris Village's rights, at 0.5 cfs, would be worth \$2,500.

One alternative the HOA may want to consider would be to "lease" the Robinson Ditch rights to the Colorado Water Conservation Board for their in-stream flow use. This likely wouldn't produce much, if any, income but it would allow the HOA to hold onto the water rights without risk of their being reduced for non-use. The HOA would be required to obtain a Basalt District contract to cover their uses while the CWCB used the Robinson Ditch rights. The HOA could then offer the wells to Mid-Valley with the Basalt District contract. However, Mid-Valley may not agree to take over the system without the Robinson Ditch water rights. I would have to look into this closer to see if it is worthwhile.

Thank you very much and please feel free to call me with any questions or concerns.

Sincerely,



Craig V. Corona

cc: Rick Borkovec