

## Water Rights History of the Roseman Ditch

Patrick Thompkins made the first claim to beneficial use of Elk Creek water under the ditch now known as the Roseman Ditch. First use was in March 1883. A decree granting 0.8 cubic feet of water per second (cfs) with Priority No. 4 was awarded to Mr. Thompkins for "irrigation of lands." No map of the original claim survives, but the ditch alignment is shown on subsequent filings. Thompkins diverted water from the right (west) bank of Elk Creek in the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 23, T.5S., R.91W, about 1.5 miles above the mouth of the East Fork. The original ditch was approximately 2,900 feet long and (based on the claimed amount of water and standard duty of 1cfs per 50 acres) irrigated approximately 40 acres in Section 23 and 26.

Note:

Priority No. 4 is very senior in the Colorado River system. It is senior to everything downstream on Elk Creek, and cannot be called out by major irrigation rights in the Grand Valley. The original decree is for irrigation only, and only on the land specified.

On November 18, 1907, a plat was filed with the State Engineer in Denver for the Walter Enlargement and Extension of the Thompkins ditch. The statement of claim is very specific as to the lands to be irrigated by the newly enlarged ditch. Altogether, 241.16 acres were identified, and the claimed water was to be used for irrigation, stock, and domestic purposes. The new construction enlarged the original Thompkins Ditch by 3.88 cfs, for a total diversion capability of 4.68 cfs. The Walter Extension, which lengthened the original ditch by approximately 5 miles, had a carrying capacity of 3.276 cfs. First work on the Enlargement and Extension occurred in November 1900.

A decree was entered for the Walter Enlargement and Extension on February 1, 1912, in Civil Action No. 1269 in Garfield County District Court. The decree is very specific as to the lands owned and irrigated by the petitioners in the case, which included Lucy Roseman. The decree describes by lot and section the 240 acres owned by the petitioners, and the 138 acres irrigated by the enlarged and extended ditch. A total of 2.76 cfs is awarded to the Walter Enlargement and Extension, with Priority No. 158aab, dating from November 10, 1900. The stated use of the water is irrigation.

Note:

There were only 3 petitioners for the Walter Enlargement, which was built starting in 1900. Only 2.76 cfs was added to the decreed capacity of the Thompkins Ditch headgate, in spite of the amounts claimed on the ditch plat. The water produced by Priority No. 158aab was to be used only on the land owned by the three petitioners. The only decreed use of the water was irrigation. The duty of water used by the court in calculating the diversion amount was one cubic foot per second for each 50 irrigated acres (9 gallons/minute).

On March 9, 1910, work was started on the Second Enlargement and Extension of the P.Tomkins Ditch. A plat map was filed with the State Engineer on November 9, 1910. The statement attached to the map identifies the headgate of the Second Enlargement and Extension to be the same location as the Walter Enlargement, and lists 16 landowners to be served, for a total of 288 acres to be irrigated. The Second Enlargement increased the headgate capacity by 7.32 cfs, for a total diversion capability of 12 cfs. The map and statement include a feeder pipeline bringing water from East Elk Creek, joining the Tomkins Ditch where it crosses the north-south line bisecting the SE¼ of Section 25, T.5S. R.91W. Capacity of the feeder pipeline is not stated, and no separate claim is made for the East Fork water.

On February 10, 1913, two of the landowners served by the Second Enlargement went to court to get their rights adjudicated (Civil Action 1614, Garfield County District Court). G.L. Noren and M.L. Youmans claimed to irrigate a total of 70 acres with 1.4 cfs out of the Second Enlargement. A decree was awarded for irrigation purposes and granted Priority No. 177a. The court specified that the amount of water to which each was entitled depended on the ratio of irrigated land held by each, but must not be allowed to adversely affect the rights of others served by the ditch. Then, recognizing that there might be conflicts and difficulties with the 15 or more landowners, the court said: "IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT, that each, every and all of said owners taking, or entitled to take water from Elk Creek through the Second Enlargement and Extension of the P.Tomkins Ditch, for the purpose of irrigation, be, and they and each of them hereby are commanded and required to construct, under the supervision of the Water Commissioner of Water District No. 39, at their own expense, at the head, or as near thereto as practicable of each and every of their several individual ditches or laterals taking water from said enlargement a and extension, a measuring wier, or dividing box, so as to measure and apportion the water taken by each owner, or user, from said enlargement and extension, and to maintain the same henceforth.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED BY THE COURT, That each, every, and all of the owners therein be enjoined and restrained from taking water from said enlargement and extension for irrigation purposes except by means of and through said wiers and measuring boxes."

The decree goes on to place the distribution of water within the Second Enlargement under the supervision of the Water Commissioner, and empowers the Water Commissioner to divide the water in the ditch between the users, based on the irrigated acreage of each.

In March 1913, the remaining landowners under the Second Enlargement petitioned the Court to adjudicate their rights (Civil Action No. 1626, Garfield County District Court). The petitioners in this case claimed to have irrigated 208 acres with 4.16 cfs. Notices of a hearing were posted, and a hearing was scheduled for May 12, 1913. Following the hearing, a decree was entered which granted the amounts of water for the lands claimed by the petitioners, with a priority of 177a, equal to the priority granted to Noren and Youmans in Civil Action 1614.

The Court concluded by repeating the decree provisions from CA 1614 addressing the power and authority of the Water Commissioner in apportioning the water carried by the

Second Enlargement, and requiring measuring devices approved by the Water Commissioner.

Note:

1. The language authorizing and requiring the water commissioner to take charge of measurement and distribution of water along the ditch is very rare, if not unprecedented. The court obviously intended that the owners of the Second Enlargement would pay for the Water Commissioner's time, because it specifically prohibited any increase in cost to the entity paying the Water Commissioner (Garfield County, in those days). Recent court rulings prevent the Colorado Division of Water Resources from accepting money for staff salaries from entities regulated by the Division.
2. Two landowners, Wm. Henrickson and P.J. Davis, were left out of the adjudication process after the ditch plat was filed. They each owned 5 acres at the far west end of the ditch, but their acreage was not represented in the calculation awarding water to the petitioners in either CA 1614 or CA 1626.
3. Once again, irrigation is the only decreed use.

On July 27, 1942, a ditch claim statement was filed in Garfield County District Court on behalf of the owners of the Thompkins (a/k/a Highline or Roseman) Ditch. The claim was made for the Third Enlargement, with an appropriation date of June 5, 1913, for an additional 7.2 cfs. The acreage claimed to be irrigated was 398.2 acres.

In a decree dated January 11, 1943 and filed with the Court on November 23, 1943, the "flood rights" for all ditches taking water from Elk Creek were adjudicated at the same time (Civil Action 3431, Garfield County District Court). The decree allocates the "high water and unusual flows" of Elk Creek, and the priority number assigned to the Thompkins Ditch (Priority No. 220I) is *equal* to all the flood rights numbered 220 in Elk Creek. The Thompkins Ditch was awarded 11.88 cfs for irrigation purposes. The water decreed was not apportioned to specific land parcels, but was intended to benefit the ditch as a whole, compensating for losses in transportation of water across side hills and steep terrain, and the presence of coarse gravel and other causes of ditch seepage and water loss. The award of 11.88 cfs to the Third Enlargement brought the total decreed capacity of the ditch to 21 cfs.

Note:

In spite of conflicting statements in the Claim Statement, the court awarded 11.88 cfs for the flood rights. The amount was based on the difficulty of moving water from Elk Creek to Peach Valley, not on the number of acres being irrigated.