

Fish Pond and Dam History

Historically water issues have been of paramount interest and concern throughout the West. Senior and junior claims of water rights for the snow melt were filed in the 1800's. Water rights are bought and sold like a commodity and the storage of water for recreation, conservation, power, flood control and other multiple uses have and still are major issues today. There were many rules and laws passed through water courts and placed on the books in attempts to keep a semblance of order and discipline to this very complex subject. Hydraulic (water) engineering and litigation are major disciplines in and of themselves. This was the backdrop and probably the single largest and most complex issue that the original owner and decree applicant Richard R. Helmick and our Wildwood developer JAYLEN, Inc. faced in 1977, in the planning and getting approval to develop our subdivision. Our fish pond and storage dam was a major issue in the subdivision development plans.

In the undeveloped stage, Chalcedony Springs, that feed our current fishpond, flowed unimpeded at about two and a half gallons per second as I recall being told by the (then) district water commissioner Mark Cury. The initial development plan was to build a storage dam and use the spring flow and natural runoff to provide the water augmentation for well depletion that I covered in my March article. The storage reservoir required by the Court was to be located on Lot 216, and Out lot E in filing No. 1, in the flood plain known and legally described as Chase Gulch. This is at an elevation of 9200 feet. A dam was built but was later required to be enlarged and a layer of bentonite (clay) laid down to meet other legal hurdles. The height of the final dam, being about 20 feet, required that it be built under the State of Colorado Water Engineering jurisdiction and specifications. The original State implication here was to protect downstream occupants from flooding due to possible breaching.

Considerable work was done by JAYLEN to enlarge and improve the dam from the original in order to ensure that the required amount of water would be stored. Unfortunately, it was discovered that the reservoir would not hold sufficient water, due primarily to the fact that the surface runoff and water pressure over the springs would not generate sufficient water flow to meet demands of the Court. An alternative augmentation plan required alternative storage. The use of an alternative storage facility required additional amendments to the original 1977 augmentation plan and the complex legal maneuvers that I previously described. We were not privy to a lot of the legal maneuvering and decree requirement changes that involved the dam until the Association Board was officially transferred to us on January 28, 1984. The association had been governed by Jerome and Lloyd Lenz, and other officers of JAYLEN Inc., commencing July 11, 1978. However, we were given a letter from JAYLEN on April

1, 1983 concerning the problem with getting well permits during that time of trying to get the legal issues over the augmentation plan approved. At that time, JAYLEN further stated, "Upon discovery of the storage problem, it became necessary for us to seek an alternative place of storage, and more than a year of diligent effort was consumed in engineering studies, contacts with other land owners in the area, and investigation of various approaches to solving the problem. We are pleased to announce that in the summer of 1982 we entered into an agreement with the City of Colorado Springs under which we will be permitted to store the required water in its Montgomery Reservoir...This reservoir is located on the same river system as the Guiraud (pronounced Garro) 3T Ditch, and its use will permit us to store the spring water, the required summer runoff water and release it during the winter months." Actually, the final decree does not address the use of our Chalcedony Spring water and runoff as a part of the requirement of augmentation. Also they did not tell us that they had in fact also conveyed title to the amount of water historically consumed by 1.25 c.f.s. of Guiraud 3T water to the City of Colorado Springs in order to secure storage agreement. (Addendum to Lease and Storage Agreements, Book 359 page 89.

Nothing of real importance regarding the dam and reservoir happened for several years after the dam was brought into legal compliance during the early 80's. We bought our first five hundred trout from Fish Haven Farms north of Woodland Park (sorry I forget which year, senior moment). That first winter we had a lot of fish kill. So then the problem arose of identifying that the moss and algae fermented under the ice and poisoned the fish. Then we had to figure out how to get the water aerated. We bought an aerator and extended electrical wiring to it. Then the problem of gophers chewing up our buried electrical wiring arose. We had to bury a new electrical cable all the way back to the large service panel north of the Caretaker's house. Moss control continues to require a major effort during summers and new aerators have subsequently been installed.

Occasionally we've had ranchers who have run cattle on the open range including the non fenced lots of Wildwood, who have opened the head gate in the dam to let water out to provide for their cattle downstream. Ultimately we had to resort to pad-locking the head gate. There have even been times when the chain or lock has been cut.

I had an unforgettable question arise at one of our annual Board business meetings that I still remember. A young military man had just returned from Germany and attended our meeting. He had bought a lot in filing two from an unscrupulous real estate agent while in Europe. He demanded that I tell him where our marina was and where he could moor his boat. I still feel badly about that incident. We only have a fish pond and do not allow boats on it.

One year we had a minor flood from a spring thaw that did only minor damage. Years before, some residents had hauled in large logs and built foot bridges over the spring fingers so that fishermen would not have to walk all the way around the fingers to get to the west side of the pond to fish. The foot bridges that were normally about three to four feet above the pond level were washed out into the pond. We waited until the next winter until everything was frozen. Dick Hubbard and I used our trucks to skid the heavy logs back over the ice, restored them in place and rebuilt the foot bridges.

We had an abnormal amount of snow and cold weather at wildwood during the winter of 1991-2. That was the first time that we could have used a snowmobile around in the sub-division all winter. The snow was so deep that the elk came down out of the Pike National Forest and wintered around in the sub-division. The flat out along Apache Trail was pock marked where the elk would paw snow out of the way to get some grass. Everything was frozen solid and the pond looked like just a part of the valley toward Mud Springs to the west and northwest watershed for the pond. It was an unusually beautiful winter, that is, for the snow shoe hares that we had back then.

Then, unfortunately, we had a devastating spring thaw that did extensive damage to our pond and dam structure. We had always been aware that eventually the pond would fill with sediment. We did not, however, anticipate the suddenness of a quick thaw and subsequent flood that would cause extensive damage.

We were faced with major decisions. It became very controversial as to why we should go to expense of rebuilding the dam. I recall one Board member insisted that "the pond was nothing but a mud hole used by ducks anyway." Many residents became irate when our engineering studies revealed that it would cost over \$60,000 to repair. The reconstruction cost would require the first ever special assessment of \$125 per owner. One lot owner called me up one night and threatened to beat the ___ out of me (fact). Cooler heads finally prevailed. The Board voted to levy the special assessment and the long restoration (commonly called the damn project) commenced.

The basis for the special assessment levy had been established in 1988. Several members in 1987 had challenged the Board on a number of issues: the legality of keeping water in excess of use and wanted to sell some of our water rights; having to pay dues; some wanted to opt out of belonging to the association; and challenged the board's right to levy special assessments.

As a result, I was charged with doing the extensive research of the legal augmentation plan agreements and subsequent addendums, legality of our By-laws, covenants etcetera. I met

with our attorney, Marshall McClung, District water Commissioner Mark Cury, Division of Water Resources in Denver and also met with City of Colorado Springs engineers. I provided a report to the Board dated 1-25-88.

It was concluded that our water case No.W-8574 (77) dated 9/14/1983, filed in Park County Book 359, pages 71 thru 97 is a fact of law. Also the Declaration of Protective Covenants as filed with the Secretary of State and the Articles of Incorporation are iron clad. So those challenges were put to rest.

We had to hire hydraulic engineers from Breckenridge to dig test holes and design the dam to State specifications. It was at that time that we explored the possibility of taking the dam out of State jurisdiction. I personally met with the State Water Engineer, District Water Commissioner and hydraulic engineers to determine what would be necessary to accomplish this. The most critical of the State criteria was the previous dam height. We could take the dam out of State jurisdiction if we would lower the overflow level to no more than 15' above the flood plain. The previous dam had never held any more than that anyway, so the necessary legal work and documentation was originated to take the dam out of State jurisdiction. The benefit was a substantial reduction in cost to \$60,000, no costly State oversight control on construction nor control of dam maintenance. This ultimately paid off in the future when, as for example, we were required to re-dredge the pond due to the 2006 summer flash flood.

The old dam was dug out and a key-way was excavated into the bed rock. A concrete dike was poured and backfill was hauled in from Fairplay. This required considerable oversight and quality testing by the engineers and contractor.

I was president of the Board In 1991 when we became very active in obtaining an agreement with the (HFD) Hartsel Fire Department in locating a fire truck at Wildwood. I covered that endeavor in my November article. As a part of that project, however, The HFD needed an agreement for us to build a ramp to the pond and be able to pump water from the pond to fill the fire trucks. That seems like a simple request. However, as you can see from the foregoing information, any unusual use of our water is a sensitive subject and deserves intense scrutiny. The resulting conclusion of that question was that our Chalcedony Spring water (fish pond) was no longer subject to State of Colorado jurisdiction since our augmentation water is supplied by the Guiraud 3T agreement and stored exclusively now in Montgomery Reservoir.

I've always felt strongly that the pond is a major asset to the Association and residents, from an aesthetic standpoint, property values, re-sale values, real estate attraction, fishing recreation, and a wetland habitat for ducks and geese. It even provides habitat for a muskrat or

two from time to time that come up the creek from Spinney Reservoir. Real estate agents often take pictures of the pond and associate it with their promotions of Wildwood real estate.

Hopefully this article will provided some insight into the complexities and hard work of many owners that have been and continue to be necessary to maintain our pond to the delight and benefit of all.

Del Bills is a 28 year Wildwood resident; past Board president; liaison with the state water engineer and district water commissioner; was instrumental in extending power through filings one and two; electrical engineer; long time Boy Scout master; and a pioneering boyhood heritage with an intense interest in nature. You can contact him at www.delbertbills@msn.com.