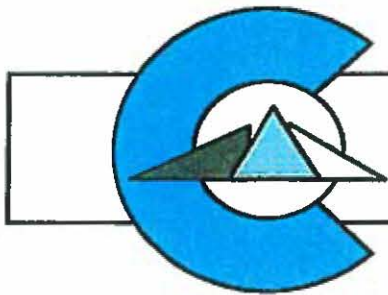


Planning Commission, May 13, 2015 continued from 3/11/15 and 12/10/14  
 Exhibits – DARCA Text Amendment

Exhibit Letter (A to Z)	Exhibit
A	Public Hearing Notice Affidavit, with attachments
B	Garfield County 2013 Land Use and Development Code, as amended
C	Garfield County Comprehensive Plan 2030, as amended
D	Application, Revised January 2015
E	Staff Report dated December 10, 2014
F	Email dated February 3, 2015 from Andy Schwaller
G	Email and attachments dated February 23, 2015 from Craig Corona on behalf of the Missouri Heights-Mountain Meadow Irrigation Company and Needham Ditch Co.
H	Letter dated February 23, 2015 from Grand River Ditch Company
I	Letter dated February 26, 2015 from Steve Sims, Brownstein Hyatt Farber Schreck
J	Email dated February 27, 2015 from Dr. James Campbell, Thompson Glen Ditch Co.
K	Email dated February 27, 2015 from Michael Erion, Water Resources Engineer
L	Letter dated February 27, 2015 from Don Chaplin, DARCA Board Member
M	Letter dated February 25, 2015 from Chris Hale, Mountain Cross Engineering
N	Referral Form
O	Revised staff report dated March 11, 2015
P	Letter dated March 3, 2015 from Silt Water Conservancy District - Kelly Lyon
Q	Letter dated March 6, 2015 from Silt Water Conservancy District – Jeff Houpt
R	Email dated March 11, 2015 from Stephen Jaouen of NRCS
S	Letter dated March 11, 2015 from Robert Burry, Mount Sopris Conservation District
T	Email dated March 20, 2015 from staff to engineers/attorneys requesting comment
U	Copy of advertisement publication requesting comments on irrigation ditches
V	Documentation of phone call from Sam Bryant commenting on ditches
W	Revised staff report dated May 13, 2015
X	

TXTP 8122



# Garfield County

## PUBLIC HEARING NOTICE INFORMATION

Please check the appropriate boxes below based upon the notice that was conducted for your public hearing. In addition, please initial on the blank line next to the statements if they accurately reflect the described action.

My application required written/mailed notice to adjacent property owners and mineral owners.

\_\_\_\_\_ Mailed notice was completed on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_ All owners of record within a 200 foot radius of the subject parcel were identified as shown in the Clerk and Recorder's office at least 15 calendar days prior to sending notice.

\_\_\_\_\_ All owners of mineral interest in the subject property were identified through records in the Clerk and Recorder or Assessor, or through other means [list] \_\_\_\_\_

- Please attach proof of certified, return receipt requested mailed notice.

My application required Published notice.

Notice was published on the 20th day of NOVEMBER 2014.

- Please attach proof of publication in the Rifle Citizen Telegram.

My application required Posting of Notice.

\_\_\_\_\_ Notice was posted on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_ Notice was posted so that at least one sign faced each adjacent road right of way generally used by the public.

I testify that the above information is true and accurate.

Name: KATHY EASTLEY

Signature: [Handwritten Signature]

Date: 11/20/14

## **PUBLIC NOTICE**

TAKE NOTICE that the Director of the Garfield County Community Development Department is proposing certain amendments to the Text of the Garfield County 2013 Land Use and Development Code, as amended. The Garfield County Planning Commission is required to make a recommendation to the Board of County Commissioners in a noticed public hearing for the following amendments to Article 7 - Standards:

**Amend Section 7-201 E. to add language regarding protection of irrigation ditches.**

All persons affected by the proposed amendments are invited to appear and state their views, protests or support. If you can not appear personally at such hearing, then you are urged to state your views by letter, as the Planning Commission will give consideration to the comments in deciding whether to recommend approval of the proposed amendments. The draft amendments may be reviewed at the office of the Community Development located at 108 8<sup>th</sup> Street, 4<sup>th</sup> Floor, Garfield County Plaza Building, Glenwood Springs, Colorado between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

This public hearing where the Planning Commission shall make a decision regarding these amendments has been scheduled for **December 10, 2014 at 6:30 PM** which will be held in the County Commissioners Meeting Room, Garfield County Plaza Building 108 8<sup>th</sup> Street, Glenwood Springs, Colorado.

Wed, Nov 12, 2014

15:36:19

10719151

Ad Ticket #5

**Acct:** 1008693  
**Phone:** (970)945-8212  
**E-Mail:** TALLEN@GARFIELD-COU  
**Client:**  
**Caller:** Kathy Eastley

**Name:** Garfield County Building  
**Address:** 108 8th Street - Ste 401

**City:** Glenwood Springs  
**State:** CO

**Zip:** 81601

**Receipt**

**Ad Name:** 10719151A

**Original Id:** 0

**Editions:** 8CT/

**Class:** 0990

**Start:** 11/20/14

**Stop:** 11/20/14

**Color:**

**Issue** 1

**Copyline:** ct Amend Section 7-201 E DARCA

**Rep:** PI Legals

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Published in the Citizen Telegram November 20, 2014 (10719151)

Lines:	39
Depth:	3.27
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
<b>Total</b>	<b>19.73</b>
Payment	0.00

Ad shown is not actual print size

Ad Name: 10719151A  
Customer: Garfield County Building  
Your account number is: 1008693

PROOF OF PUBLICATION  
**THE RIFLE  
CITIZEN TELEGRAM**

STATE OF COLORADO,  
COUNTY OF GARFIELD

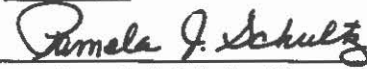
I, Michael Bennett, do solemnly swear that I am Publisher of *The Rifle Citizen Telegram*, that the same weekly newspaper printed, in whole or in part and published in the County of Garfield, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Garfield for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement; that said newspaper has been admitted to the United States mails as a periodical under the provisions of the Act of March 3, 1879, or any amendments thereof, and that said newspaper is a weekly newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said weekly newspaper for the period of 1 consecutive insertions; and that the first publication of said notice was in the issue of said newspaper dated 11/20/2014 and that the last publication of said notice was dated 11/20/2014 the issue of said newspaper.

In witness whereof, I have here unto set my hand this 11/24/2014.

  
Michael Bennett, Publisher

Publisher Subscribed and sworn to before me, a notary public in and for the County of Garfield, State of Colorado this 11/24/2014.

  
Pamela J. Schultz, Notary Public  
My Commission expires:  
November 1, 2015



My Commission Expires 11/01/2015

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Published in the Citizen Telegram November 20, 2014. (10719151)

**PROJECT INFORMATION**



TYPE OF REVIEW: Text Amendment to the Garfield County Land Use and Development Code Standards for Protection of Irrigation Ditches – 7-201 E.  
 FILE NUMBER: TXTP 8122  
 APPLICANT: Director of Community Development  
 DATE: December 10, 2014

**I. PROPOSAL BACKGROUND**

The Ditch and Reservoir Company Alliance (DARCA) had provided Garfield County with documentation related to Model Land Use Codes to develop guidelines and standards that are intended to reduce transaction costs and risks for Colorado ditch and reservoir companies. Urbanization and development in Colorado has led to conversion of farmland/ranchland to ranchettes or suburban communities and disputes have arisen due to poorly defined property rights, lack of local ordinances to protect activities associated with ditches, incompatible zoning and uses, and decisions made without the input of local ditch and irrigation companies. Ditch and reservoir companies have had to spend significant time and resources related to compliance and management of their facilities which has impacted their ability to pursue their main function of providing ranchers and farmers with water.

DARCA began this endeavor by reviewing the rights that ditch and reservoir companies have now pursuant to State Statutes and to determine what local regulations include with regard to protection of these water resources. Workshops throughout the state resulted in guiding principles and the model code.

State Statute

Colorado Revised Statutes have what is known as the “Ditch Act” in Article 42 of Title 7. and §7-42-103 provides that ditch companies “...shall have the right-of-way over the line named in the articles of incorporation, and shall also have the right to run water from the stream, channel, or water source, whether natural or artificial, named in the articles through its ditch or pipeline...” Title 37, Water and Irrigation, of the Statutes further specifies right and obligations of ditch and reservoir companies.

DARCA states that these statutory protections are vague and open to interpretation, resulting in case law being developed through the court system to clarify many aspects of the law. Many controversies remain and there is uncertainty and gray areas that burden ditch companies.

DARCA held several workshops, with the first held in Glenwood Springs in 2012. The audience for this workshop was primarily DARCA members and conservation group representatives who focused on local conflict and legal issues related to uncertainty in the statutes. A list of concerns and costs to ditch companies became the foundation for subsequent workshops held around the state.

Principles were formulated based upon six especially prominent issues identified in the workshops – Easements, Liability, Ditch Company Organization, Review Process and Notice Procedures, Overtopping of Ditches and Seepage, Stormwater and Water Quality. DARCA utilized existing code language from local governments as examples in support of these principles, and Garfield County code language appeared in several of the issues. However there is still an opportunity to further define requirements in the LUDC, particularly with regard to encroachments and to utilize ditch companies as referral agencies for the review of development that may impact their waterways.

## **II. COMPREHENSIVE PLAN**

The Comprehensive Plan 2030, Plan Elements include a section devoted to Agriculture with one of the Strategies and Action listed to “Review and revise county land use regulations as appropriate to increase their effectiveness for land conservation and agricultural protection.”

Additional compliance with Issues, Goals, Policies and Strategies and Actions include the following:

### Issues:

- Agriculture accounts for approximately 2% of county employment and contributes \$22 million to the county economy.
- Agriculture is strongly associated with the western heritage and rural image of the unincorporated areas of the county.
- Farm and ranch operators have been diligent stewards maintaining the most significant landscapes, enjoyed by residents and visitors.

### Goals:

1. Promote the continuation and expansion of agricultural uses.
2. Preserve a significant rural character in the county.
3. Preserve scenic and visual corridors in the county.

### Policies:

1. Agricultural land will be protected from infringement and associated impacts of higher density land uses...

### Strategies and Actions:

2. Ensure active agricultural uses are buffered from higher-intensity adjacent uses.
6. Research and present for public consideration options appropriate to Garfield County regarding agricultural protection.

The proposed text amendment would appear to be generally consistent with the Goals, Policies and Actions contain in the Comprehensive Plan as ditches and reservoirs are critical to the success of agricultural operations in Garfield County.

## **III. PROPOSED CODE REVISIONS AND STAFF COMMENTS**

The proposed language related to protection of ditches would be added to existing Irrigation Ditch standards in 7-201:

**EXISTING CODE**

**E. Irrigation Ditches.**

1. **Maintenance.** Where irrigation ditches cross or adjoin the land proposed to be developed, the developer shall insure that the use of those ditches, including maintenance, can continue uninterrupted.
2. **Rights-of-Way.** The land use change shall not interfere with the ditch rights-of-way.
3. **Maintenance Easement.** A maintenance easement of at least 25 feet from the edges of the ditch banks shall be preserved and indicated on any Final Plat for the division of land or for the final development plan for any other land use. When agreed to in writing by the ditch owner(s), that distance may be decreased.

**PROPOSED CODE**

DARCA information contained numerous additional standards which staff has added for initial discussion purposes:

**7-201. AGRICULTURAL LANDS.**

**A. Irrigation Ditches.**

1. **Maintenance.** Where irrigation ditches cross or adjoin the land proposed to be developed, the developer shall insure that the use of those ditches, including maintenance, can continue uninterrupted.

Staff Comment: The general nature of this regulation results in some difficulty with enforcement should issues arise post-development. The developer may be gone by that time and new owner(s) and or operators may not be aware of this requirement. The general nature of the statement may work in favor of the regulation as it may be utilized and applied when interruption occurs to the ditch.

2. **Rights-of-Way.** The land use change shall not interfere with the ditch rights-of-way. **Ditch right-of-ways shall be recognized and/or granted if not already established.**

Staff Comment: General language regarding "interference with ditch rights-of-way" may not be sufficient to protect irrigation ditches. The 'recognition' of ditches and potential requirement for an easement or acknowledgement of the existence of the ditch should be considered to protect it from the proposed development. Staff seeks direction on the degree of the recognition that could be required – should a formal easement be created or is acknowledgment of the ditch on the site plan and/or plat sufficient? One unanswered question is related irrigation ditch easements - whether they exist and, if so, are they recorded? If not the It appears that this issue varies from ditch to ditch.



3. **Maintenance Easement.** A maintenance easement of at least 25 feet from the edges of the ditch banks shall be preserved and indicated on any Final Plat for the division of land or for the final development plan for any other land use. When agreed to in writing by the ditch owner(s), that distance may be decreased. **No structure or fence shall be placed within the right-of-way or easement without written permission from the appropriate ditch owner(s) or ditch company.**

Staff Comment: Access to ditches for maintenance purposes is sometimes problematic as property owners may be unaware of rights of ditch companies to access their property. Currently the LUDC stipulates a 25' easement on either side of the ditch edges to allow for access for maintenance. Further, this is required to be formalized on the final plat for any division of land or on the site plan for a Land Use Change Permit. The addition of language regarding encroachments into this easement is requested to allow unimpeded access for maintenance purposes and to put property owners on notice that the easement must remain clear and accessible.

4. **Liability.** Property owners shall incur the following liabilities with regard to irrigation ditches:
- a. **The owner of any ditch crossing is liable for any damage caused by the crossing such as ditch overflow resulting from debris collecting at and impeding flow through the crossing.**

Staff Comment: This regulation places a burden on the property owner to assure protection of the ditch in cases where there is a crossing that may impact the flow of water. Chaffee County regulations contain a very stringent regulation that requires an agreement binding between the current, and all future, property owners to accept liability for damages caused by the improvements installed in the ditch. The Planning Commission may want to consider regulations that place additional burdens on owners to protect the ditches on their property.

5. **Ditch Crossings.** Ditch crossings shall respect the rights of ditch owner(s) to operate and maintain their ditch without increased burden of maintenance or liability. Development shall minimize ditch crossings by roads and driveways. At a minimum all irrigation ditch crossings shall:
- i. **Require the crossing be sized to not interfere with ditch operations or change existing hydraulic flow characteristics. Provisions shall be made for routine inspection of the crossing and removal or disposal of trash;**
  - ii. **Provide vehicle and maintenance equipment access to the ditch from both sides of the ditch crossing from all roads for use by the ditch owner(s);**

- iii. Require a letter from the ditch owner(s) or ditch company approving the crossings prior to permit application or construction within the ditch easement;
- iv. Require execution of an agreement binding the property owner and all successor property owners to accept all liability for damage caused by the improvements installed in the ditch;
- v. Require execution of an agreement requiring present and successor property owners to maintain the crossing and to keep it and the ditch access easement safe and free of trash at all times. Maintenance shall include without limitation frequent and timely trash and debris removal, repair or replacement of the crossing as needed, and construction of necessary improvements. Ditch owner(s) shall be notified in writing by certified mail prior to any work being performed within the ditch easement;
- vi. The BOCC may require specific improvements to ditch crossings in order to limit liability of ditch owners caused by the crossing, improvements or realignment. Improvements may be required to address safety concerns, minimize flood danger, or to protect downstream water rights;
- vii. Ditch crossings by any utility within any public or private right-of-way shall meet the requirements of this code with regard to permits and agreements required, construction, maintenance, and minimizing flood danger. Underground utility locations shall be marked on each side of the ditch.

Staff Comment: Crossings include those seeking to bore under the ditch, typically for utilities; structures located within the ditch 'easement'; and improvements located above the ditch such as bridges or utility lines. These ditch crossings create a variety of issues for the ditch operator and many times result in court cases which create burdensome costs to defend the right to transport the water in the ditch.

- 6. Referral to Ditch Company. Application for Division of Land or Land Use Change Permit that may affect or impact any ditch right-of-way shall include the name and mailing address of the ditch owner(s) or ditch company so that the application may be referred to the ditch owner(s) or ditch company for review and comment.

Staff Comment: Garfield County sends requests for referral comment to a variety of agencies that may be affected by the proposed development. Informing the ditch company of potential development that may impact their facilities seems to be a simple way of enhancing communication and reducing uncertainty between the County and ditch companies. Soliciting comments from the ditch company may result in additional requirements to developers that would mitigate future issues. The difficulty is finding out who manages or owns the ditch, as well as obtaining contact information in order to send the referrals. This regulation would place the burden on the property owner to

provide the contact information to the county, however staff is at a loss on how to find this information. Online research has resulted in discovery of numerous websites devoted to ditches and reservoirs in Colorado including:

- DARCA – Membership listing but limited contact information
- Water Colorado – this website states that if you need to contact a ditch representative and don't know who to call, to check with your neighbors as those who hold shares in the ditch should have that information. Additionally they state that you can contact the local division engineer for this information. This website has a list of ditch companies and contacts, but neither the Glenwood Ditch Company nor the Cactus Valley Ditch Company were listed.

In fact many of the ditch companies may not be formally created or managed which creates difficulty in finding contact information.

7. **Overtopping and Seepage. Application for Division of Land or Land Use Change Permit that includes any improvements located adjacent to or below grade of an irrigation ditch shall address and mitigate potential impacts in a drainage plan. The drainage plan shall demonstrate that the drainage will not impair operation of the ditch.**

Staff Comment: Improvements placed adjacent to ditches may be impacted if the ditch seeps or is overtopped during extreme precipitation events. The provision of a drainage plan should identify and mitigate potential issues, however DARCA states that the prohibition of below grade improvements in the vicinity of a ditch would alleviate this concern. If the county would adopt regulations that would require provision of the drainage plan and solicit comments from the ditch company this may result in an acceptable compromise for all parties.

8. **Water Quality. No development or changes in land use shall channel surface waters into any irrigation system without the written consent of the ditch owner(s) or ditch company.**

Staff Comment: The potential for stormwater contamination of ditches, overtopping issues, and maintenance of the ditch is an ongoing and persistent issue that may not be solved at the time of the initial development review. The intent of requiring the drainage plan is to prevent this channeling from occurring, particularly with regard to stormwater discharge. A requirement for a covenant on an HOA, or note on a plat or site plan could be required.

**IV. LUDC CRITERIA FOR A TEXT AMENDMENT**

Section 4-114 outlines the procedures and criteria for consideration of a Land Use Code Text Amendment request to the ULUR. The criteria for approval of a Land Use Code Text Amendment are as follows:

- a. **The proposed text amendment is in compliance with any applicable Intergovernmental Agreements.**

Staff Comment: There are no intergovernmental agreements impacted by the proposed text amendment.

- b. **The proposed text amendment does not conflict with State law.**

Staff Comment: This proposed text amendment is in compliance with statutory requirements.

**V. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission continue the Public Hearing to January 14, 2015 in order to allow the Planning Commission the opportunity to review the proposed regulations based upon the hearing discussion, and provide additional hearing time to discuss the proposed regulations.

Staff would anticipate that the January hearing for the proposed text amendment would then be continued to March in order to solicit review comments from various local and state organizations. These organizations may include local ditch companies, local attorneys that work with irrigation issues, water conservation districts, DARCA, local ranchers, local division engineer at Colorado Division of Water Resources, and any other potential agency identified through this public hearing process. At the March hearing staff would be able to present the refined proposed regulations for Planning Commission review and consideration.



**From:** Andy Schwaller  
**Sent:** Tuesday, February 3, 2015 12:18 PM  
**To:** Tamra Allen; Fred Jarman  
**Subject:** Zoning Code Amendments

Tamra and Fred,

Not sure if there is a list of future amendments, but here is one to add to it. Sec 7-201 E 3. needs to possibly be deleted or amended.

#### **E. Irrigation Ditches.**

1. **Maintenance.** Where irrigation ditches cross or adjoin the land proposed to be developed, the developer shall insure that the use of those ditches, including maintenance, can continue uninterrupted.
2. **Rights-of-Way.** The land use change shall not interfere with the ditch rights-of-way.
3. **Maintenance Easement.** A maintenance easement of at least 25 feet from the edges of the ditch banks shall be preserved and indicated on any Final Plat for the division of land or for the final development plan for any other land use. When agreed to in writing by the ditch owner(s), that distance may be decreased.

Based on this requirement, any main ditch or hundreds of lateral ditches in the county automatically have a 50 ft. easement associated with them. State law provides for maintenance of any irrigation ditch based on the required width to get the maintenance done, if there is not a surveyed easement. With some of the larger ditches in the county, it might be close to 50ft. to accommodate a 30 ft. ditch and a 10 ft. access road. Possible the canals around Grand Junction have 100 ft. easements. For what it is worth based on my 30 years in the valley 15 years dealing with a variety of irrigation ditches, 50 ft. is very excessive and arbitrary.

With most of the lots on Missouri Heights, 4 mile area, along the Crystal and Roaring Fork that get irrigation water, main ditches are rarely over 10-20 ft. wide. The many lateral ditches may be as small as 1- 2ft. wide. A 50 ft. easement for all of these is over kill and not very practical. I would guess the zoning code requiring it, is probably somewhat illegal as well. Based on this section of the code, small lots in Satank, Aspen Glen, below Harvey Gap, and any county road adjacent to a ditch would be a zoning code violation with construction in the 50 ft. easement. To try to enforce this 50 ft. easement for any new construction would also be interesting. Finally, leaving it up to the ditch owners for something less than the 50ft. generates another arbitrary issue not based on state law, and opens a door for a wide variety of interpretation and difficulty in determining, if one has to wait for the yearly ditch meeting for consensus.

I think the solution is to delete this item 3 under 7-201 E. Items 1, 2 and existing state law probably adequately address the maintenance issue with irrigation ditches. I am sure legal could add some clarification as well.

Thanks,  
Andy



**From:** [Craig Corona](#)  
**To:** [Kathy A. Eastley](#)  
**Cc:** [Felix Tornare \(milagrobeef@gmail.com\)](#); [Andrea Traul \(andreat@sopris.net\)](#); [sproctor](#); [Kit Strang](#); [Gay Lewis](#); [Mike Spayd \(mospayd@spradlevfarms.com\)](#)  
**Subject:** Irrigation Ditch Regulations  
**Date:** Monday, February 23, 2015 10:36:39 AM  
**Attachments:** [GarCo.FINAL.022315.pdf](#)

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Kathy,

On behalf of the Missouri Heights-Mountain Meadow Irrigation Company and the Needham Ditch Company, attached is a letter providing comments on the Garfield County Planning Commission's draft regulations regarding irrigation ditches.

For your records, here is the contact information for both companies:

Missouri Heights-Mountain Meadow Irrigation Company  
P.O. Box 548  
Carbondale, CO 81623

Needham Ditch Company  
P.O. 722  
Carbondale, CO 81623

Again, the Companies appreciate the opportunity to take part in this important process. Please don't hesitate to contact me if you have any questions or concerns.

Craig Corona

**CORONA**  
WATER LAW

420 E. Main St., Ste. 203  
Aspen, CO 81611  
(970) 948-6523  
[cc@craigcoronalaw.com](mailto:cc@craigcoronalaw.com)

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recommend clarifying that the term “ditch owner” means individual owners of unincorporated ditches and incorporated ditch companies and using only that term in the regulations. This could be handled in the Definitions section with the following provision:

*Ditch Owner. Where used in these regulations, the term “ditch owners” means both individual owners of an unincorporated ditch and/or a ditch company as the owner of an incorporated ditch.*

Our use of the term “ditch owner” in these suggested revisions is intended to apply to both individual owners of unincorporated ditches and companies as owners of incorporated ditches.

**Maintenance Easement.** Setting a width for ditch easements will help to give underlying owners notice and avoid conflicts. However, in certain circumstances, a set width may not be practical. Also, while easements included on a final plat bind future buyers of the property in a development, they are not binding on ditch owners without their agreement. To avoid a situation where future property owners have expectations based on the final plat while the ditch owners have different expectations of their rights, the Company provides the following suggested revision (in italics):

*Ditch Easement. An easement shall be reserved for the benefit of the ditch owners and indicated on any Final Plat for the division of land or for the final development plan for any other land use. The easement shall be for the purposes of ingress and egress for inspection, operation, maintenance, improvement, repair and replacement of the ditch. It shall be of sufficient width as determined and approved by the ditch owners for these purposes. The developer shall reimburse the ditch owners for the costs incurred, including legal and engineering consultants, to review any such proposal. No structure or fence shall be placed within the right-of-way or easement without written permission from the appropriate ditch owner(s) .*

**Ditch Crossings.** The proposed language on ditch crossings appears sufficient to protect ditch owners. To ensure that the owners themselves have an opportunity to review any planned ditch crossings, we recommend adding language to state that “*No ditch crossing shall be allowed without the written consent of the ditch owners .*”

**Drainage.** With regard to structures being built that may be subject to drainage or flooding, we recommend the following language from Pitkin County land use approvals in addition to the provision proposed:

*No building shall be constructed immediately downhill of an irrigation ditch without the ditch being placed in a culvert, lined or otherwise treated to avoid leakage of water downhill toward the building. Any such treatment must first be approved by the ditch owners.*

**Definition.** Finally, for the definition of Irrigation Ditch, many of the Companies’ shareholders have obtained augmentation plans using their Company water to support uses other than irrigation and agricultural use. As you are likely aware, this is common practice. While the Companies do not advocate the “buy and dry” practices that are affecting many areas of the state and want to

# CORONA

WATER LAW

Craig V. Corona, Esq.  
420 E. Main St., Ste. 203  
Aspen, CO 81611  
(970) 948-6523  
[cc@craigcoronalaw.com](mailto:cc@craigcoronalaw.com)

*Via E-Mail*

February 23, 2015

Garfield County Planning Commission  
108 8th Street, Suite 401  
Glenwood Springs, CO 81601

Re: Revised Draft Regulations Regarding Irrigation Ditches

Dear Commission Members:

On behalf of the Missouri Heights-Mountain Meadow Irrigation Company and the Needham Ditch Company and their shareholders, thank you for the opportunity to review and comment on the Revised Draft Regulations Regarding Irrigation Ditches generated after the County's public hearing held on December 10, 2014. The Companies appreciate the Commission's effort to safeguard their ability to continue to provide water to shareholders for their various needs. Following are the Companies' comments and proposed revisions.

As the Commission is undoubtedly aware, ditch easements and their accompanying rights-of-way are often ill-defined. According to Colorado law, ditch owners have the right to do all that is reasonably necessary to operate, maintain, repair, and replace their ditches. This, of course, is a fairly broad standard. In many cases, this can operate to the benefit of ditch owners whether they are incorporated ditch companies or individuals, for example, where a set width for an easement may not be practical given the topography. However, the lack of certainty can also result in dispute.

In addition, Colorado law requires that no alteration can be made to a ditch without the owners' consent. The Commission's proposed regulations seek to avoid conflicts by providing better certainty regarding ditch easements and putting underlying property owners on notice of the ditch owners' rights. The Companies provide these comments in an effort to assure the regulations don't have the unintended effect of reducing their overall rights.

Ditch Owners. The regulations alternatively use the term "ditch owner" or "ditch company." To avoid issues of interpretation and questions over whether certain provisions apply to individual unincorporated ditch owners while others apply only to incorporated ditch companies, we



promote, primarily, agricultural uses, we recognize that reality, progress, and the law require us to accommodate some new uses. Under common law, the Companies' ditch easement rights are the same so long as the water is put to beneficial use, not just agricultural use. To avoid the Companies losing the protection of the proposed regulations because some of their shareholders are not using the water for agricultural lands or watering crops, forage, or livestock, we propose the following definition for Irrigation Ditch:

*Irrigation Ditch. Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to lands for application to beneficial uses.*

Liability. One of the biggest concerns for the Companies and their shareholders is liability. Of course, both companies have liability insurance policies to cover their own activities on the ditches. However, they and their shareholders should not be required to defend claims for damages caused by the acts of others, such as developers and subsequent landowners. To help protect ditch owners, we recommend the County consider including the following provision in its regulations:

*Developers are required to execute an agreement binding the developer as owner of the property and all future property owners to accept liability for damages arising from any act by the developer and/or subsequent owners related to the ditch and to insure against the same.*

This will mitigate the impact on ditch owners of having to defend against claims for damages that were actually caused by underlying landowners.

Again, we appreciate the opportunity to comment on the proposed code revisions and hope you find these comments helpful.

Please feel free to call me with any questions or concerns.

Sincerely,



Craig V. Corona

cc: MHMMIC Board  
Needham Board



# Grand River Ditch Company

EXHIBIT

tabblier

H

February 23, 2015

**GARFIELD COUNTY**

**ATTN: Ms. Kathy Eastley**

**Community Development**

**108-8<sup>th</sup> Street, Suite 401**

**Glenwood Springs, CO 81601**

Dear Ms. Eastley:

The Board of Directors of our ditch company has reviewed the revised draft of the Garfield County Land Use Code regulations pertaining to irrigation ditches. As one of the longer ditches in the County, we have certainly experienced a multitude of issues over the years that appear to be addressed in these changes.

Many of the operational issues have resulted from development, especially in the Town of Silt, which our ditch traverses from east to west. Over the years, the Town has become a major shareholder in the ditch, and a good working relationship has been enjoyed in recent years. The ditch water has been developed into an excellent resource for use in the raw water irrigation system now used in much of the town, making it a model of multi-jurisdictional use of our water right.

However, many of the challenges experienced are related to the earlier development of areas on the edges of the town proper—i.e. Lyons Subdivision on the east and Kruger Subdivision on the west. Without the protections afforded in the proposed amendments, the ditch right-of-way is much too narrow in many places (making access and maintenance most difficult) and numerous structures were built dangerously too close to the ditch. Just the location of the ditch through the Town of Silt presents a multitude of problems with residents adjacent to the ditch itself using it as their favorite dumping ground for everything from yard trash to old bicycles and even furniture. Most don't appear to realize that it's their source of irrigation water, too, and clogging the ditch with refuse can result in damaging "topover" and/or lack of supply to their own system.


More recent applications for development have resulted in near-confrontational relationships with developers over width of right-of-ways, ditch crossings and drainage of storm water into the ditch. One proposal even included the developer changing the present placement of the ditch, placing the ditch in a pipe of minimal quality throughout the subdivision, including utilities in the same trench and then transferring the on-going maintenance of the same to the ditch company. Thankfully, the reviewing agencies/authorities, especially the Town of Silt and Garfield County were responsive to the ditch company's concerns and positions in these applications.

**c/o Alvin G. Hansen, President  
3290 County Road 210  
Rifle, CO 81650**

**Garfield County**  
**February 23, 2015**  
**Page Two**

It almost appears that the proposed amendments to the current Garfield County Land Use Code with regard to the protection of irrigation ditches was developed with many of the issues we have experienced in mind. Therefore, the Board strongly supports the changes, appreciates the opportunity to submit our position, and only wishes they would have been in place many years ago.

Sincerely,



for Alvin G. Hansen  
President, Board of Directors



February 26, 2015

Steven O. Sims  
Attorney at Law  
303.223.1149 tel  
303.223.0949 fax  
ssims@bhfs.com

Kathy Easterly, AICP  
Senior Planner  
Garfield County Community Development  
108 8th Street, #401  
Glenwood Springs, CO 81601

Re: Comments on behalf of Carbondale Investments LLC Concerning Irrigation Ditches

Dear Ms. Easterly:

Brownstein Hyatt Farber Schreck is water counsel for Carbondale Investments LLC. Thank you for the opportunity to comment on their behalf concerning the proposed amendments to the Garfield County Land Use and Development Code (LUDC) concerning Irrigation Ditches.

Carbondale Investments LLC owns shares in the Glenwood Ditch Company ("TGDC"). TGDC provides water for both agricultural and non-agricultural purposes. Carbondale Investments LLC agrees with The Ditch and Reservoir Company Alliance (DARCA) that more certainty in local regulations will allow ditch companies to prosper, but they suggest a slight modification in the language of the proposed amendments to avoid unintended consequences.

The current proposed amendment to the LUDC Article 15 definition of Irrigation Ditch states:

Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to agricultural lands for the purpose of watering crops, forage, or livestock.

Carbondale Investments LLC understands that the context of the proposed amendments involves Irrigation Ditches as the term is used in section 7-201 Agricultural Lands, but there are numerous instances where the LUDC concerns all ditches not just irrigation ditches. LUDC §§ 3-301, 4-203 D, 4-203 O, 5-402 C, 5-402 D, 5-402 F.

Carbondale Investments LLC suggests making changes to the definition of Irrigation Ditch to clarify that the provisions in the Agricultural Lands section would apply even if the Irrigation Ditch provides part of its water supply to non-agricultural uses. We also propose that you develop the same helpful protections for the other ditches referenced in the LUDC that are accorded for Irrigation Ditches. In that regard, within the context of this rulemaking, the first step would be to add a definition of Ditch in Article 15. The language we propose for both proposals shows new material as underlined:

Irrigation Ditch means a naturally occurring or artificially constructed channel used in whole or in part to carry water from a stream, lake, reservoir, or other source to agricultural lands for the purpose of watering crops, forage, or livestock.

410 Seventeenth Street, Suite 2200  
Denver, CO 80202-4432  
main 303.223.1100

Kathy Easterly, AICP  
February 26, 2015  
Page 2

Ditch means a naturally occurring or artificially constructed channel used in whole or in part to carry water from a stream, lake, reservoir, or other source for the purpose of transporting water for beneficial use in accordance with its decreed water right or conditional water right.

The Ditch definition is adapted from C.R.S. 37-86-102, concerning ditch rights of way. The state constitution's right of way provision also applies to ditches other than irrigation ditches. Colo. Const. Art. XVI, Section 7 (All persons and corporations shall have the right-of-way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.)

In summary, Carbondale Investments LLC supports the proposed amendments to the Garfield County Land Use and Development Code (LUDC) concerning Irrigation Ditches with the suggested changes to the definitional section.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sims', with a stylized flourish extending to the right.

Steven O Sims  
Attorney for Carbondale Investments LLC

cc. Ted Skokos, Carbondale Investments LLC



**From:** [DR JAMES CAMPBELL](#)  
**To:** [Kathy A. Eastley](#)  
**Cc:** [drjim@rof.net](#); "[Glen Jammaron](#)"; "[Leo Jammaron](#)"; [Rick Neiley](#); [Brixton Peterson](#); [Cheryl McGrath](#)  
**Subject:** DARCA Model code comments from Thompson Glen Ditch Company  
**Date:** Friday, February 27, 2015 5:01:38 PM

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Dear Kathy:

Thanks for giving us the opportunity to review the proposed regulations based on the DARCA Model code. From our review it appears that the proposed code changes reflect TGDC's bylaws and current practices, and if anything reinforces them.

There is one modification we would like to have made. In *Article 15: Definitions* the language should be broadened to read:

*Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source*  
*to agricultural lands for the purpose of watering crops, forage, other vegetation, or livestock.*

This change will more accurately reflect how many shareholders of ditch companies put their water to use, and will accommodate modern irrigation trends.

Again, thanks for including us in your call for comments. If you have questions or concerns, please don't hesitate to email us.

My best,

Jim Campbell

Secretary, Thompson Glen Ditch Company



**From:** [Michael Erion](#)  
**To:** [Tamra Allen](#); [Kathy A. Eastley](#)  
**Subject:** Draft LUDC text change regarding irrigation ditches  
**Date:** Friday, February 27, 2015 5:08:21 PM

---

Tamra and Kathy:

I reviewed the proposed revisions to Section 7-201 AGRICULTURAL LANDS regarding subsection A. Irrigation Ditches. Overall I am concerned about the County providing too much detailed guidelines since the State Statutes cover irrigation ditches and there is a Colorado Supreme Court decision regarding modification of irrigation ditches. In basic terms, the Supreme Court said you cannot alter, modify, impact or interfere with a ditch structure or the quantity or quality of flow in a ditch without approval of the ditch owner(s) or a determination by the Court that the proposed activity will not have any adverse impact. I do think it is important for the County to identify the issues related to ditches since many people are not aware of the rights of ditch owners.

With respect to the proposed text revisions, paragraph A.4. should be deleted. Ditch crossings are not allowed without ditch owner approval. Paragraph 4 could be revised to indicate that no alterations or impacts can occur without ditch owner approval. We could get a water attorney to provide suggested language if one does not provide comments (I understand several water attorneys may provide comments to the County).

Paragraph 5 may not be appropriate if language in a new paragraph 4 states that the Applicant must provide evidence that they have addressed ditch matters with the ditch owner. Likewise, paragraphs 6 and 7 would be incorporated into a catch all about impacts to ditches including drainage and water quality.

The proposed change in definition appears appropriate.

Please call if you have any questions or to discuss specific proposed language for a new paragraph 4.

Regards,  
Michael

**Michael Erion, P.E.**  
**Water Resources Engineer**  
**(970) 945-6777 Voice**  
**(970) 945-1137 Facsimile**  
[www.resource-eng.com](http://www.resource-eng.com)



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February 27, 2015

Kathy Eastley  
Senior Planner  
Garfield County Community Development  
108 8th Street, Suite 401  
Glenwood Springs, CO 81601

Subject: Response to request, Draft Land Use Regulations  
regarding the protection of irrigation ditches.

Dear Kathy;

As a Director of DARCA I must allow the Model Code to stand on it's own merit. However, I have just two comments:

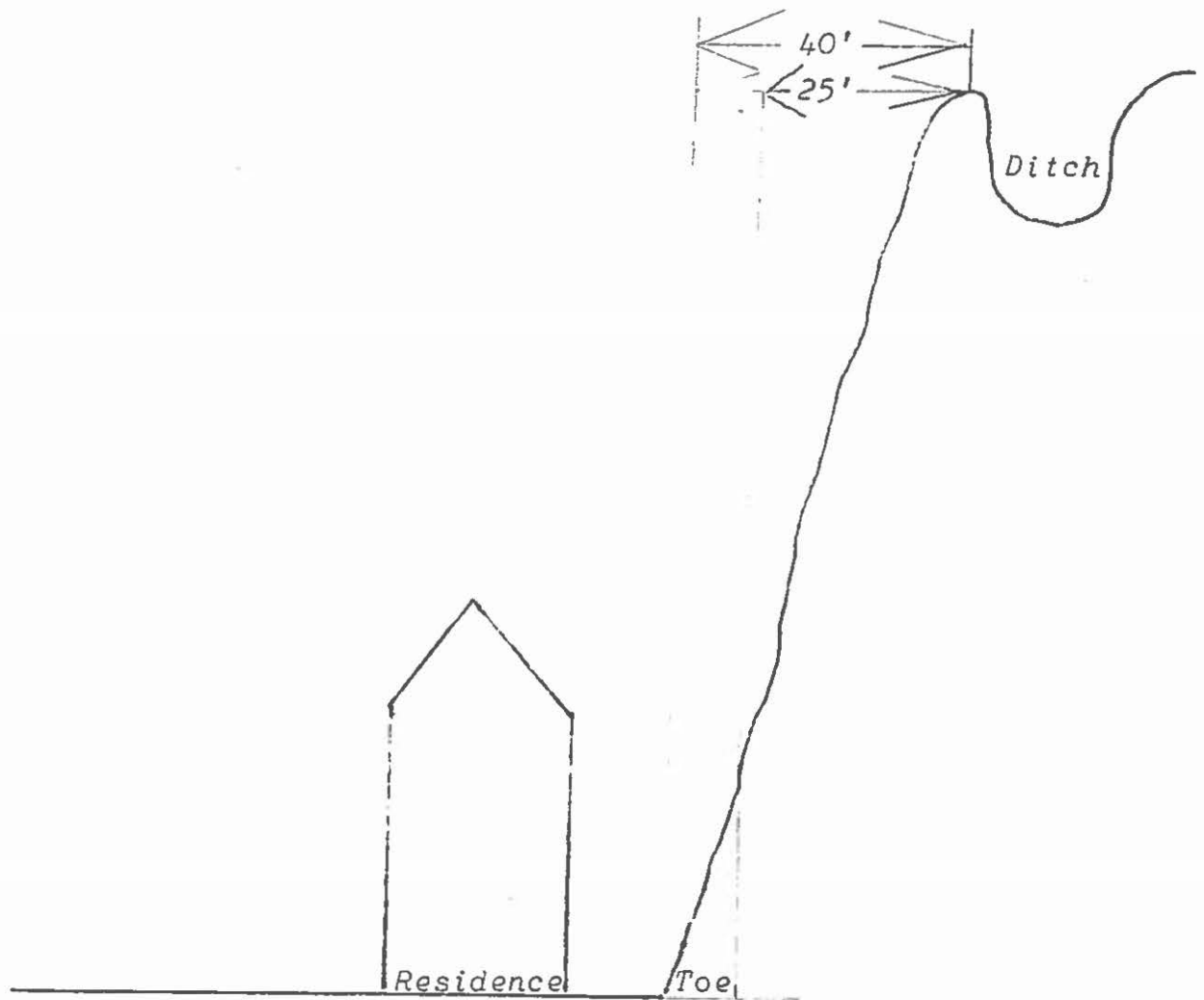
- 1) Clearly, a compilation of all irrigation ditches,... location, contact information, adjudicated rights, etc. be undertaken at an early date. Perhaps DARCA can be helpful in this effort; and
- 2) Please see drawing attached. If the downhill side of a given ditch is a steep and extended slope,... a 25 foot setback may not be adequate.

Thanks very much for the opportunity to be involved.

Sincerely,

Don A. Chaplin





Attachment to letter response, Kathy Eastley of February 27, 2015.

Obviously, a very primitive drawing! Here's the point: If the 25' setback allows removal (excavation) of the toe,...then, the ditch is at risk of collapse.

Therefore, there must be consideration of the "slope" in the approval of a development plan. In this drawing a 40 foot setback seems appropriate.

Donald M. Chaplin

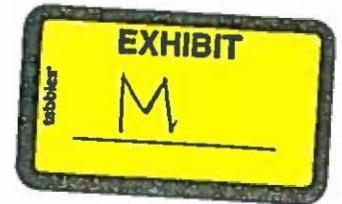


# MOUNTAIN CROSS ENGINEERING, INC.

Civil and Environmental Consulting and Design

February 25, 2015

Ms. Kathy Eastley  
Garfield County Planning  
108 8<sup>th</sup> Street, Suite 401  
Glenwood Springs, CO 81601



**RE: Review of Land Use Regulations Text Amendment – Irrigation Ditches: TXTP-8122**

Dear Kathy:

This office has performed a review of the documents provided for the proposed text amendment to the Land Use Regulations.

To help understand the following comments, it would be helpful to realize that irrigation and storm water ditches are frequently combined. Storm water and irrigation water is mixed and comingled especially when considering open ditches (opposed to pipelines.) For example, to minimize costs only one culvert may be used by both irrigation and storm water ditches to convey water beneath a roadway with combined flows in a single ditch on the downstream side. Also, tail water from irrigation may provide an historic drainage to the river that storm water may historically use or vice versa. The concern is that the proposed regulations may allow irrigation companies to prohibit the combination of storm flows. This in the best case would require redundant and parallel systems and in the worst case would make release of storm water to historic flow patterns impossible.

Therefore, the review generated the following comments:

1. A review of the NRCS website did not reveal the standards that would be used to determine compliance. Additionally the text amendment would require an approval letter from the NRCS. There is no evidence provided in the documents that the NRCS is staffed adequately to provide the review and approvals required by the proposed text amendment. It is recommended to delete Section 4.iii in its entirety.
2. Based on the discussion above it is recommended that Section 7 be deleted in its entirety. Section 5 requires referral from the Ditch Company and Section 6 seems to accomplish the desired intent of mitigating drainage impacts to irrigation systems.
3. The definition reads now that tail water ditches would not be considered irrigation ditches.

Feel free to call if you have any questions or comments.

Sincerely,  
Mountain Cross Engineering, Inc.

Chris Hale, PE

# REFERRAL FORM

Date Sent: January 23, 2015  
Return Requested: February 27, 2015

Garfield County Building and Planning Department  
108 8<sup>th</sup> Street, Suite 401, Glenwood Springs, CO 81601  
(970) 945-8212/Fax: (970) 384-3470



<b>File Number/Name(s)</b>	<b>Project Name(s)</b>	<b>Type of Application</b>
<b>Staff Planner:</b> Kathy Eastley ( <a href="mailto:keastley@garfield-county.com">keastley@garfield-county.com</a> )		<b>Phone:</b> 970-945-1377 x 1580
<b>Applicant:</b> Garfield County Community Development		<b>Phone:</b>
<b>Contact Person:</b> Tamra Allen		<b>Phone:</b>
<b>Location:</b> County-wide		
<b>Summary of Request:</b> Draft Land Use Regulations regarding the protection of irrigation ditches		

The Garfield County Planning Department has received a land use request as referenced above. Your comments are an important part of the evaluation process. In order to review all appropriate agency comments and incorporate them into the Staff Report, we request your response by Friday February 27, 2015.

GARFIELD COUNTY	Office or Division	OTHER	Number or Detail
Road & Bridge – Deb Fiscus	X	Engineering - Chris Hale Mtn Cross	CD
Attorney	CD		
Vegetation Management	CD	Planning Commission	10
		Board of County Commissioners	4
		Public	X
COLORADO STATE		LOCAL/FED GOVT ENTITIES	
Water Resources / State Engineer	CD		
DISTRICTS/SERVICES			
Basalt Water Conservancy District – Michael Erion	X	Thompson Glen Dr. Jim Campbell	X
Book Cliff, Mount Sopris, South Side Conservation Districts – Sharie Prow	X	Lower Cactus Valley Ditch Company – LeeRoy Shelewski	X
West Divide Water Conservancy District – Janet Maddox	X	Glenwood Ditch Company	X
Silt Water Conservancy District – Pearl Knight	X	Basin Ditch Company	X
Colorado River District - Eric Kuhn	X	Ware and Hines Ditch	X
		Ward Reynolds Ditch	X
		East Mesa Ditch	X
		Mulit Trina Ditch - Don Louthan	X
		SGM Engineering – Louis Meyer	X

PROJECT INFORMATION

EXHIBIT

TYPE OF REVIEW: Text Amendment to the Garfield County Land Use and Development Code Standards for Protection of Irrigation Ditches – 7-201 E.  
FILE NUMBER: TXTP 8122  
APPLICANT: Director of Community Development  
DATE: March 11, 2014, Continued from December 10, 2014

**I. INTRODUCTION**

At a public hearing on December 10, 2014 the Planning Commission provided Staff with direction on advancing the proposed text amendment to Section 7-201, Agricultural Land. This was to commence with obtaining agency and ditch company review and comments regarding the amended text amendment proposal that resulted from discussion at the December Planning Commission hearing.

The attached referral form, Exhibit N, identifies nineteen (19) agencies that were provided a copy of the 'Proposed Text Amendments dated December 2014, revised January 2015' documentation. Staff requested that each agency review the proposal and provide comments, as well as to distribute the documentation to any interested party with the intent to solicit comments from a wide variety of interested parties.

This report contains a synopsis of the comments received and seeks direction from the Planning Commission on how to proceed with this proposal based upon those comments.

**II. ISSUE AND INTENT**

One critical issue became apparent in reviewing the comments, and that is that the terms 'ditch' and 'irrigation ditch' are very broad.

- A. LUDC - The broad characterization of ditches includes the current definition in the LUDC:

**Irrigation Ditch.** A manmade channel designed to transport water.

This definition could include many types of ditches, such as those that deliver water to serve agricultural uses, however it does not distinguish this use from a roadside ditch, a stormwater ditch, a lateral ditch, a tailwater ditch, wastewater ditch, or any of the many other types of ditches. Some of these ditch types are utilized in support of agriculture, and some are not – all may be characterized as 'irrigation ditch'.

- B. Colorado Revised Statutes – The "Ditch Act" also appears to take a broad definition of ditches as it discusses the transport of water used for 'beneficial purposes'.

- C. **Intent** - Staff entered into this proposed text amendment with a narrow scope that limited irrigation ditches to those ditches that transport water in support of agricultural uses, which led to the proposed amendment being located in Section 7-201, Agricultural Lands. The proposed amendment was then supported by determining general conformity with the Comprehensive Plan based upon Goals, Policies and Actions related to protection of agricultural uses and the rural character of Garfield County.

Direction is needed from the Planning Commission on whether to proceed with the limited definition of irrigation ditches or to broaden the definition to include all types of ditches that carry water to be used for beneficial uses, or a variety of purposes.

### III. REFERRAL AGENCY COMMENTS

The proposed code text amendment was sent to the following agencies for comment, see Exhibit N for a comprehensive list of agencies/companies:

- A. **County Road & Bridge:** Discussions with the R&B Director, Debbie Fiscus, resulted in comments that irrigation culverts under county roads are not adequately maintained and therefore R&B has had to assume the responsibility for maintenance.
- B. **Engineering Consultant:** Mountain Cross Engineering has responded, Exhibit M, that:
- 1) NRCS may not be staffed to review and approve ditch crossings and therefore section 4. iii. should be deleted;
  - 2) Section 7, Water Quality and Stormwater Management, should be deleted as stormwater ditches and irrigation ditches are frequently combined, and it appears that this section would prohibit that combination causing redundant and parallel systems to be required;
  - 3) The definition of "irrigation ditch", as proposed, would not include tail water ditches.
- C. **Thompson Glen Ditch Company:** Dr. Jim Campbell, Secretary of the Thompson Glen Ditch, responded, Exhibit J, with a recommended change to the proposed definition of "Irrigation Ditch":

Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to ~~agricultural~~ lands for the purpose of watering crops, forage, other vegetation or livestock.

- D. **Grand River Ditch Company:** Alvin G. Hansen, President of the ditch company, responded in Exhibit H, that the Grand River Ditch is one the longer ditches in the County. The ditch company experiences operational issues related to development, such as ditch right-of-way being too narrow and structures built too close to the ditch.

Dumping in the ditch is common and results in damaging 'topover' and resulting loss of water to supply the system. Right-of-way width, ditch crossings, placement of ditch into minimal quality pipe, drainage of storm water and placement of other utilities into the ditches are issues cited resulting in problems for the company.

The Board of Directors strongly supports the proposed changes.

- E. **Basin Ditch Company:** Jim Pitts phoned the week of February 23, 2015 about concerns with non-water rights holders 'stealing' water from the ditches. The ditch companies have no support in preventing this from occurring.
- F. **Michael Erion, Resource Engineering:** Mr. Erion responded with a concern that the guidelines are too detailed since the State Statutes cover irrigation ditches. Further, that a Colorado Supreme Court decision stating that said you cannot alter, modify, impact or interfere with a ditch structure or the quantity or quality of flow in a ditch without approval of the ditch owner(s), or a determination by the Court that the proposed activity will not have any adverse impact.

Recommended revisions include:

- 1) Deleting paragraph A.4 regarding Ditch Crossings as these crossing are not permitted without ditch owner approval;
- 2) A.5. may not be appropriate if new language is incorporated into subsection 4 that states that the Applicant must provide evidence that they have addressed these issues with the ditch owner(s);
- 3) Subsections 6 and 7 may not be appropriate language if language is incorporated regarding the requirement to address ditch matters with the ditch owner.

The proposed change to the definition of 'irrigation ditch' appears to be appropriate.

- G. **Don Chaplin, DARCA Board Member:** Mr. Chaplin responded to the proposed text amendment, Exhibit L, that a compilation of all irrigation ditches, including location and contact information, should be undertaken, with DARCA assisting; and that the 25' width of the maintenance easement may not be sufficient when considering topography of a site.
- H. **Missouri Height-Mountain Meadow Irrigation Company and the Needham Ditch Company:** Craig Corona of Corona Water Law has responded on behalf of the referenced ditch companies, Exhibit G. Mr. Corona explains that Colorado law requires that no alteration can be made to a ditch without the owners' consent. Ditch owners have the right to do all that is reasonably necessary to operate, maintain, repair and replace their ditches.

Mr. Corona recommends the following:

- 1) Clarifying the term "ditch owner" to include individual owners of unincorporated ditches and incorporated ditch companies. The term 'ditch owner' and 'ditch company' appears to have been used interchangeably in the proposed amendment.
- 2) Setting Ditch Easement widths will provide property owners with notice and avoid conflicts. However a set width may not be practical. Setting that width on a final plat may bind future owners of the property it does not bind the ditch owners without their agreement. In light of these differing expectations they suggest a revision:

"Ditch Easement. An easement shall be reserved for the benefit of the ditch owners and indicated on any Final Plat for the division of land or for the final development plan for any other land use. The easement shall be for the purposes of ingress and egress for inspection, operation, maintenance, improvement, repair and replacement of the ditch. It shall be of sufficient width as determined and approved by the ditch owners for these purposes. The developer shall reimburse the ditch owners for the costs incurred, including legal and engineering consultants, to review any such proposal. No structure or fence shall be placed within the right-of-way or easement without written permission from the appropriate ditch owner(s)."

- 3) Add language in Ditch Crossings that states "No ditch crossing shall be allowed without the written consent of the ditch owners."
- 4) Drainage. Structures being built may be subject to drainage or flooding and they recommend the following:

"No building shall be constructed immediately downhill of an irrigation ditch without the ditch being placed in a culvert, lined or otherwise treated to avoid leakage of water downhill toward the building. Any such treatment must first be approved by the ditch owners."

- 5) Definition. Many of the Companies' shareholders have obtained augmentation plans using their company water to support uses other than irrigation and agriculture. Under common law, the Companies' ditch easement rights are the same so long as the water is put to beneficial use. To avoid the Companies' losing protection of the proposed regulations we suggest the following definition:

Irrigation Ditch. Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to lands for application to beneficial uses.

- 6) Liability. One of the biggest concerns is liability. Though there is liability insurance the ditch owners should not be required to defend claims for damages caused by the act of others. To help protect ditch owners we suggest the addition of the following language:

Developers are required to execute an agreement binding the developer as owner of the property, and all future property owners to accept liability for damages arising from any act by the developer and/or subsequent owners related to the ditch and to insure against the same.

The following agencies/companies did not respond.

Vegetation Management  
Division of Water Resources  
Basalt Water Conservancy District  
Book Cliff, Mount Sopris, South Side Conservation Districts  
West Divide Water Conservancy District  
Silt Water Conservancy District  
Colorado River District  
Lower Cactus Valley Ditch Company  
Ware and Hines Ditch Company  
Ward Reynolds Ditch Company  
East Mesa Ditch Company  
Multi Trina Ditch Company  
SGM Engineering

**OTHER COMMENTS RECEIVED:**

- A. Brownstein Hyatt Farber Schreck – As water counsel for the River Edge PUD, who owns shares in The Glenwood Ditch Company, the following comments are provided on their behalf:
- 1) Change the definition of Irrigation Ditch to clarify that the provisions in the Agricultural Lands section would apply even if the ditch provides part of its water to supply non-agricultural uses.

Irrigation Ditch means a naturally occurring or artificially constructed channel used in whole or in part to carry water from a stream, lake, reservoir or other source to agricultural lands for the purpose of watering crops, forage, or livestock.

Ditch means a naturally occurring or artificially constructed channel used in whole or in part to carry water from a stream, lake reservoir, or other source for the purpose of transporting water for beneficial use in accordance with its decreed water right or conditional water right.

This definition is adapted from C.R.S. 37-86-102, concerning ditch rights of way.

**Staff Note – The Thompson Glen Ditch and the Glenwood Ditch are the same but appear to be known by different names. The official name of the ditch is the Thompson Glen Ditch.**



- B. Andy Schwaller – Section 7-201 E. (3) needs to be deleted or amended. Based on the requirement for 25 foot easement from the edges of the ditch bank would be required on any ditch or lateral ditch and state law provides for maintenance of any irrigation ditch based on the required width to get the maintenance done.

#### IV. PROPOSED CODE REVISIONS

The proposed language related to protection of ditches would be added to existing Irrigation Ditch standards in 7-201:

#### PLANNING COMMISSION REVIEW DECEMBER 10, 2014

#### 7-201. AGRICULTURAL LANDS.

##### A. Irrigation Ditches.

1. Maintenance. Where irrigation ditches cross or adjoin the land proposed to be developed, the developer shall insure that the use of those ditches, including maintenance, can continue uninterrupted.
2. Rights-of-Way. The land use change shall not interfere with the ditch rights-of-way.
3. Maintenance Easement. A maintenance easement of at least 25 feet from the edges of the ditch banks shall be preserved and indicated on any Final Plat for the division of land or for the final development plan for any other land use. When agreed to in writing by the ditch owner(s), that distance may be decreased. **No structure or fence shall be placed within the right-of-way or easement without written permission from the appropriate ditch owner(s) or ditch company.**
4. **Ditch Crossings. Ditch crossings shall respect the rights of ditch owner(s) to operate and maintain their ditch without increased burden of maintenance or liability. Development shall minimize ditch crossings by roads and driveways. At a minimum all irrigation ditch crossings shall:**
  - i. **Require the crossing be sized to not interfere with ditch operations or change existing hydraulic flow characteristics;**
  - ii. **Provide vehicle and maintenance equipment access to the ditch from both sides of the ditch crossing from all roads for use by the ditch owner(s);**
  - iii. **Prior to permit application, or construction within the ditch easement (ROW?) the Applicant shall provide a letter from the Natural Resource Conservation District (NRCS) regarding crossing compliance with recommended standards of the NRCS for construction of ditch crossings;**
  - iv. **The BOCC may require specific improvements to ditch crossings if determined to be necessary in the review process, particularly if these improvements are required to address safety concerns;**

5. Referral to Ditch Company. Application for Division of Land or Land Use Change Permit that may affect or impact any ditch right-of-way shall include the name and mailing address of the ditch owner(s) or ditch company or contact an appropriate agency such as the U.S. Department of Agriculture Natural Resources Conservation Service, to determine if a ditch owner/company exists for purposes of requesting review and comment on the development proposal.
6. Drainage. Application for Division of Land or Land Use Change Permit that includes any improvements located adjacent to or below grade of an irrigation ditch shall address and mitigate potential impacts in a drainage plan. The drainage plan shall demonstrate that the drainage will not impair operation of the ditch.
7. Water Quality and Stormwater Management. No development or changes in land use shall channel surface waters into any irrigation system without the written consent of the ditch owner(s) or ditch company.

Article 15: Definitions:

~~Irrigation Ditch. A manmade channel designed to transport water.~~

Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to agricultural lands for the purpose of watering crops, forage, or livestock.

**V. STAFF COMMENTS**

- A. It appears that there is some conflict in the comments and recommendations that were received, as listed below.
  1. Some recommended removal of those sections that State Statute already addresses while other were in support of providing notice, via the LUDC, to property owners/developers regarding the rights of ditch owners.
  2. Stormwater drainage into the irrigation ditch – Chris Hale, Mountain Cross Engineering suggests allowing irrigation ditches to be used for stormwater in order to prevent redundancies. Grand River Ditch Company and conversations with DARCA appear to indicate that stormwater drainage into ditches is not acceptable to the ditch owners.
  3. Some recommend deleting the requirement for the maintenance easement while others have commented that the width of the maintenance easement is dependent upon a variety of factors, including topography.
  4. Comments included four separate proposals to redefine irrigation ditch. Other proposed definitions include 'ditch easement' and 'ditch owner'.
- B. No response was received from the conservation districts or the Division of Water Resources. Staff recommends changing subsections 4(iii) and 5, deleting the referral to NRCS in favor of placing the burden on the property owner to obtain the necessary

approvals from the ditch company, as required by state statute. The ditch company approval would be a submittal requirement for Division of Land and Land Use Change applications that may affect irrigation ditches.

- C. Staff agrees with the comment regarding the need to define 'ditch owner' and recommends incorporation of this proposed definition:

Ditch Owner. Where used in these regulations, the term "ditch owners" means both individual owners of an unincorporated ditch and/or a ditch company as the owner of an incorporated ditch.

- D. A conservative approach to the proposed code amendments might include a provision that requires consistency with State Statutes. This would put property owners on notice regarding requirements but would not obligate the County to enforce the statutory requirements.

#### **VI. LUDC CRITERIA FOR A TEXT AMENDMENT**

Section 4-114 outlines the procedures and criteria for consideration of a Land Use Code Text Amendment request to the ULUR. The criteria for approval of a Land Use Code Text Amendment are as follows:

- 1. The proposed text amendment is in compliance with any applicable Intergovernmental Agreements.**

Staff Comment: There are no intergovernmental agreements impacted by the proposed text amendment.

- 2. The proposed text amendment does not conflict with State law.**

Staff Comment: This proposed text amendment is in compliance with statutory requirements.

#### **VII. PROPOSED FINDINGS**

- 1. That the hearings before the Planning Commission were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard.**
- 2. That the application has met the public notice and public hearing requirements of the Garfield County 2013 Land Use and Development Code, as amended.**
- 3. That the proposed text amendment can be determined to be in the best interest of the health, safety, convenience, order, prosperity and welfare of the citizens of Garfield County.**

4. The proposed text amendment is consistent with applicable standards of the 2013 Land Use and Development Code, as amended.
5. The proposed text amendment is in general conformance with the Garfield County Comprehensive Plan of 2000, as amended.
6. The proposed text amendment does not conflict with State statutory provisions regulating land use.

#### **VIII. PLANNING COMMISSION DELIBERATION**

Staff seeks direction from the Planning Commission on the following issues:

- A. Should the County rely solely on State Statute and remove any land use regulations related to ditches? Should we proceed with minor changes to the code amendment or consider deleting those that are specifically administered under state statute?
- B. If the Planning Commission determines that county regulations are necessary - should the definition of irrigation ditch, and thus any regulations, be limited to agricultural uses? Should the definition be broadened to include all beneficial uses? Would this mean moving the proposed text amendment from the standards for Agriculture?
- C. The code currently contain a requirement for a 25' maintenance easement on – is 25' too much, too little? Should a specific distance not be deleted from the code? Should a 25' setback for structures be maintained from the ditch?

Silt Water Conservancy District  
120 South 7<sup>th</sup> Street, P. O. Box 8  
Silt, Colorado 81652



March 3, 2015

Kathy Eastley  
Senior Planner  
Garfield County Community Development  
108 8th Street, #401  
Glenwood Springs, CO 81601

Re: Code Revisions Proposed by DARCA

Dear Kathy,

Thank you for requesting input from the Silt Water Conservancy District on proposed revisions to the Garfield County land use code designed to provide greater recognition of and protections for ditches during land-use considerations. The District has encountered many of the issues that the proposed code revisions are intended to address.

The District is responsible for the operation and maintenance of a network of ditches, reservoirs and related facilities known as the Silt Project. These facilities include the Davie Ditch, the Grass Valley Canal, Harvey Gap Reservoir, the East and West Laterals, the Silt Pump Canal, and others. Although the system started with traditional ditches and a reservoir, the Silt Project facilities have expanded over the years to include other types of water conveyance facilities, such as siphons and pipelines. Further, the District's operations extend beyond the delivery of water for agricultural irrigation. Water can be delivered under the District's water rights for domestic and stockwatering purposes and its facilities are used to deliver augmentation water that allows many household wells on Silt Mesa to operate.

In general, the District supports the proposed code revisions. As a general matter, the District believes the recognition and protections offered by these code revisions should extend beyond "irrigation ditches" to include all types of water diversion, storage and conveyance facilities. The language offered by DARCA should also be broadened to accommodate and include water facilities that are used for purposes beyond irrigation, such as domestic and stockwatering uses.

Thus, the term "Irrigation Ditch," as defined in Article 15 and used throughout Section 7-201, should be broadened and defined to include not only irrigation ditches, but all types of water diversion, storage, and conveyance facilities. A term such as "water conveyance structure" might be appropriate, and could be defined as "an improved or unimproved channel, ditch, pipe, culvert, pond, reservoir or other structure used to transport or store water from a stream, lake, reservoir or other water source for application to beneficial use." (The District has not considered any implications that this change might have for use of the term "Irrigation Ditch" in other parts of the Land Use Code. If this proposed change would cause unintended

interpretations elsewhere in the Code, perhaps it could be limited to use in Section 7-201). Although we strongly recommend this change, we have not attempted to insert it into the language of our comments below, because doing so might cause confusion.

The District's comments on specific provisions are provided below; the paragraph numbering corresponds to the numbering used in the Proposed LUDC Regulations you provided.

7-201.A. As discussed above, we suggest that the term "Irrigation Ditches" be changed to "water conveyance structures."

7-201.A.1. We suggest additional language to avoid increase costs of maintenance to the ditch owner: "... the developer shall ensure that the use of those ditches, including maintenance, can continue uninterrupted and without increased burden upon the ditch owner.

7-201.A.3. The appropriate width of an easement may depend on site-specific circumstances, such as steep topography. Access to the easement must be preserved as well as the easement itself. We suggest the following addition: "A maintenance easement of at least 25 feet from the edges of the ditch banks, and reasonable access thereto, shall be preserved and indicated on any Final Plat for the division of land or for the final development plan for any other land-use. The width and location of the ditch within the easement shall consider site-specific conditions. When agreed to in writing by the ditch owner(s), ...."

7-201.A.4.i. The size of the ditch crossing should accommodate the maximum rate of flow reasonably anticipated, not just existing hydraulic flow characteristics. We suggest:

"i. Require the crossing to be sized to:

- (a) accommodate the maximum rate of flow reasonably expected to be carried by the ditch;
- (b) prevent interference with ditch operations, including maintenance; and
- (c) not change existing hydraulic flow characteristics;..."

7-201.A.4.iii. The District believes that the ditch owner, and not NRCS, is the appropriate person or entity from whom the suggested letter should be obtained.

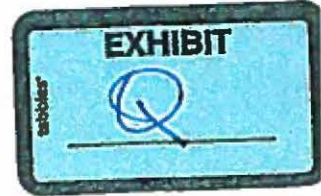
Thank you for the opportunity to provide these comments. Should you have any questions, please do not hesitate to contact the District.

Sincerely,

SILT WATER CONSERVANCY DISTRICT



Kelly Lyon, President



## SILT WATER CONSERVANCY DISTRICT

P.O. Box 8  
Silt, Colorado 81652

March 6, 2015

Kathy Eastley  
Senior Planner  
Garfield County Community Development  
108 8th Street, #401  
Glenwood Springs, CO 81601

*Re: Land Use Code Revisions Proposed by DARCA*

Dear Kathy,

Thank you for requesting input from the Silt Water Conservancy District on proposed revisions to the Garfield County land use code designed to provide greater recognition of and protections for ditches during land-use considerations. The District has encountered many of the issues that the proposed code revisions are intended to address.

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pond, reservoir or other structure used to transport or store water from a stream, lake, reservoir or other water source for application to beneficial use.” (The District has not considered any implications that this change might have for use of the term “Irrigation Ditch” in other parts of the Land Use Code. If this proposed change would cause unintended interpretations elsewhere in the Code, perhaps it could be limited to use in Section 7-201). Although we strongly recommend this change, we have not attempted to insert it into the language of our comments below, because doing so might cause confusion.

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7-201.A.4.i. The size of the ditch crossing should accommodate the maximum rate of flow reasonably anticipated, not just existing hydraulic flow characteristics. We suggest:

- “i. Require the crossing to be sized to:
  - (a) accommodate the maximum rate of flow reasonably expected to be carried by the ditch;
  - (b) prevent interference with ditch operations, including maintenance; and
  - (c) not change existing hydraulic flow characteristics;...”

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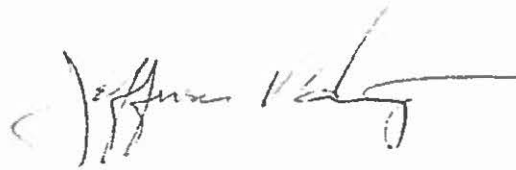


*Kathy Eastley  
March 6, 2015  
Page 3 of 3*

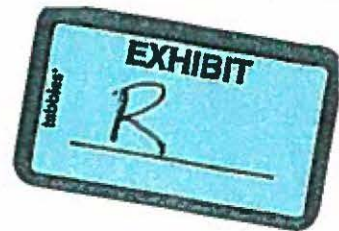
Thank you for the opportunity to provide these comments. Should you have any questions, please do not hesitate to contact the District.

Sincerely,

SILT WATER CONSERVANCY DISTRICT

A handwritten signature in black ink, appearing to read "Jefferson V. Houpt", with a long horizontal flourish extending to the right.

Jefferson V. Houpt, Legal Counsel



**From:** [Jaouen, Stephen - NRCS, Glenwood Springs, CO](#)  
**To:** [Kathy A. Eastley](#)  
**Cc:** [Prow, Sharle - NRCS, Glenwood Springs, CO](#)  
**Subject:** NRCS within Garfield County LUDC & Irrigation Ditches  
**Date:** Wednesday, March 11, 2015 11:05:27 AM

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Kathy,

Yesterday the draft land use code proposed changes were brought before Mount Sopris Conservation Districts board for review and comment.

Within the draft two parts concerned me with regards to NRCS:

- 1) iii. Prior to permit application, or construction within the ditch easement (ROW?) the Applicant shall provide a letter from the Natural Resource Conservation District (NRCS) regarding crossing compliance with recommended standards of the NRCS for construction of ditch crossings;
  - a. As a federal organization if NRCS is going to give compliance (our blessing) then NRCS has to do an environmental evaluation on the project. This is a lengthy process and means an additional load on our already strained staff. As an agency we don't want to be giving out compliance letters for development applications as this is beyond our duties. Instead I would recommend stating that the permit application should contain a letter from the ditch owner stating that the applicant and ditch owner have come to an agreement on the engineering of the crossing. You can always mention NRCS standards and specifications if you wish as they are available online.
- 2) 6) Referral to Ditch Company. Application for Division of Land or Land Use Change Permit that may affect or impact any ditch right-of -way shall include the name and mailing address of the ditch owner(s) or ditch company or contact an appropriate agency such as the U.S. Department of Agriculture Natural Resources Conservation Service, to determine if a ditch owner/company exists for purposes of requesting review and comment on the development proposal.
  - a. I believe the appropriate agency would be the Division of Water Resources as they have records of who owns which ditch. I would recommend that any development crossing or near a ditch will contact the appropriate Water Commissioner from the Division of Water Resources as they will be up to date on who owns what and where the water goes.

This being said I'm glad Garfield County is taking the necessary steps to ensure our agriculture water users are consulted when dealing with their water assets. If NRCS and/or the Conservation District can be of any help by providing comments on proposed changes please feel free to send them our way.

Thanks,

Stephen R. Jaouen  
District Conservationist  
Glenwood Springs Service Center  
258 Center Drive  
Glenwood Springs, CO 81601  
(work) 970.945.5494 ext 109  
(fax) 1-844-496-7211 (shared fax, cover sheet needed)



## Mount Sopris Conservation District

258 Center Dr, Glenwood Springs, CO 81601  
970-945-5494 ext. 105  
[www.mountsopriscd.org](http://www.mountsopriscd.org)



March 11, 2015

Garfield County Community Development  
Attn: Kathy Eastley  
108 8<sup>th</sup> St., Suite 401  
Glenwood Springs, CO 81601

On behalf of Mount Sopris Conservation District (MSCD), I am responding to your January 23, 2015 letter requesting review and comment on draft land use regulations pertaining to irrigation ditches. I have read thru the information packet which accompanied your letter, and briefed the other MSCD board members at our March 10, 2015 meeting.

The MSCD board of directors is appreciative of Garfield County's interest in adopting model code language from the Ditch and Reservoir Company Alliance (DARCA) for the protection of irrigation ditches. Most of our board members are actively involved in the operation of irrigation ditches. During our discussion, a number of cases were related of ditch liability and maintenance problems resulting from new development which took place adjacent to long-standing irrigation canals. I cite two examples below from my own knowledge.

- A residence was constructed into a hillside downslope from the Glenwood Ditch. The homeowner experienced seepage into his basement, and brought suit against the ditch company for relief. The case was settled out of court, with the ditch company bearing the costs to pipe the section of the ditch above the residence.
- Historically, the Glenwood Ditch ran from Carbondale into old Glenwood, traversing the red hillside above Highway 82 between Buffalo Valley and 13<sup>th</sup> Street. After the ditch north of Buffalo Valley was inundated twice in one year with mudflows from cloudbursts, the shareholders determined that section of the ditch had become cost-prohibitive to maintain, and was legally abandoned. But some years later, following another cloudburst, the ditch company was notified by legal counsel for Walmart of their intent to sue the ditch company for damages resulting to their Glenwood store from the new mudflow. Fortunately, the ditch company had recorded their prior abandonment of the ditch easement above Walmart, and no lawsuit resulted.

Jeff Nieslanik, President, Sandy Jackson, V-President, Robert Burry, Secretary / Treasurer  
Sean Martin & Mike Wilde, Board Members  
Dennis Davidson, IWM Specialist & Rick Brooks, Conservation Technician  
Sharie Prow, District Manager

In light of the above experiences, I would like to see an additional provision from the DARCA model code be addressed in Garfield County's Land Use and Development Code. The pertinent section is copied below.

**V. Overtopping of Ditches and Seepage.** – Unfortunately, homes and businesses have been placed adjacent to ditches where water from the ditch has historically seeped. Similarly, ditches have historically overtopped when during extreme precipitation events.

**Recommendations:** Ditch company problems regarding seepage can be alleviated by the prohibition of below grade improvements in the vicinity of a ditch. Floodplain areas are adopted in land use codes when dealing with natural creeks and rivers. However, floodplain restrictions have not been extended to manmade ditches that act like natural waterways but should be.

**Examples:**

**Chaffee County:** "Commissioners may require a developer to improve the ditch within the subdivision by fencing, lining, piping, or other means where increased activity, geography, density, or other conditions create unreasonable liability for the ditch company, or to protect new residential development from damage due to seepage or flooding."

Again, the Mount Sopris Conservation District appreciates your work to preserve and protect the agricultural irrigation ditches in Garfield County. Our board members are available to meet with you for what insight we may be able to offer in this effort.

Sincerely,  
Robert Burry,  
Mount Sopris Conservation District

Jeff Nieslanik, President, Sandy Jackson, V-President, Robert Burry, Secretary / Treasurer  
Sean Martin & Mike Wilde, Board Members  
Dennis Davidson, IWM Specialist & Rick Brooks, Conservation Technician  
Sharie Prow, District Manager

**Kathy A. Eastley**

**From:** Kathy A. Eastley  
**Sent:** Friday, March 20, 2015 3:13 PM  
**To:** 'taz@za-engineering.com'; 'Britt Kelly'; 'chris@coloradorivereng.com'; 'jkelly@wrightwater.com'; 'jsikora@urs.com'; sarad@balcombgreen.com  
**Cc:** Tamra Allen; Kelly Cave  
**Subject:** Irrigation Ditches and County Codes

The Garfield County Planning Commission is considering an amendment to the 2013 Land Use and Development Code, as amended (LUDC) to add language regarding the protection of irrigation ditches. As part of the process to revise the Land Use and Development Code, the Planning Commission is seeking comments on this proposal. Should you wish to review the documentation and provide comment please visit our website to access the application documentation. A link is provided <http://www.garfield-county.com/community-development/planning-project-information.aspx> – the file number is TXTP8122, Code Text Amendment to Article 7, Ditch and Reservoir Standards.

Please provide any written comments prior to May 1, 2015, or you may present your comments to the Planning commission at their public hearing on Wednesday, May 13, 2015 at 6:30 p.m.

I am available to answer any questions you may have on this proposal. Thank you.

Kathy Eastley, AICP  
Senior Planner  
Garfield County Community Development  
108 8th Street, #401  
Glenwood Springs, CO 81601  
Phone: 970-945-1377 ext. 1580  
Fax: 970-384-3470  
[keastley@garfield-county.com](mailto:keastley@garfield-county.com)

public hearing as part of its role to make non-binding suggestions to government regulators.

Charlie Leocha, the consumer representative on the committee, said the government sets standards for the conditions for dogs flying as cargo but doesn't dictate minimum space standards for passengers.

"In a world where animals have more rights to space and food than humans," Leocha said, "it is time that the DOT and FAA take a stand for humane treatment of passengers."

Fliers last summer squeezed into the least amount of personal space in the history of flying. In July, U.S. airlines sold a record 87.8 percent of seats on domestic flights, according to the Bureau of Transportation Statistics. And that figure does not



In this file photo taken May 8, 2013, passengers are seen boarding a flight in separate numbers. Planes are filled with more passengers than ever before, and tall travelers no longer get exit row seats for free. All of this, flight attendants are leading to an increased amount of air rage. Just last summer two men fought over reclining a seat.

include all the seats occupied by passengers who redeemed frequent flier miles or airline employees flying for free.

"Unfortunately, the days of the empty middle seat are a thing of the past," said Julie Frederick, a representative for the American Airlines flight attendants union.

Following the implementation of checked-bag fees in 2008, Frederick said,

more and more passengers are fighting for overhead bins, and passengers bump and bang their knees against the overhead bins. Questions were also asked about increased density of seats.



## Planning Commission Comment Period – Irrigation Ditches

Submit comments now regarding a proposed amendment to the 2013 Land Use and Development Code. This proposal is to incorporate protective language regarding irrigation ditches. Garfield County Community Development will propose the amendment on behalf of the Ditch and Reservoir Company Alliance (DARCA).

Feedback from ranchers and other large property owners, land use and water attorneys, and property owners affected by ditches on their properties is encouraged.

Please submit comments to the Planning Commission prior to May 1, 2015, - contact Kathy Eastley at [keastley@garfield-county.com](mailto:keastley@garfield-county.com). Citizens may appear before the Planning Commission at a hearing May 13, 2015, at 6:30 p.m., to offer comments as well.

The application is available at <http://www.garfield-county.com/community-development/planning-project-information.aspx>, File Number TXTP-8122.



**Garfield County**

[www.garfield-county.com](http://www.garfield-county.com)

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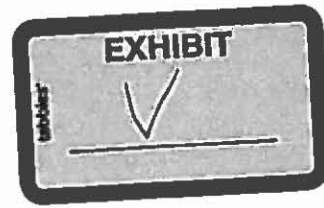
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For more info: Debbie Bannon,

POST INDEPENDENT APRIL 15, 2015





TO: Planning Commission

FROM: Kathy Eastley

DATE: April 16, 2015

REFERENCE: Proposed Text Amendment – Irrigation Ditches

---

Planning Commissioners;

A phone call was received from a citizen, Sam Bryant, in response to the Post Independent advertisement published on April 15<sup>th</sup>.

Mr. Bryant's property is encumbered by the Grass Valley Canal. He questioned whether the ditch companies would be responsible for clean-up after ditch maintenance – he has had difficulty getting the ditch company (or their designee) to remove vegetation they pulled from the ditch and to generally clean up the area after their work.

Mr. Bryant stated that they have a good relationship with the ditch company but he has had to clean up and remove a lot of vegetation, etc. after ditch cleaning and maintenance. He would like to be reimbursed for his time but would prefer that they clean up after themselves. The clumps of grasses and other vegetation have resulted in noxious weeds and areas of his property where nothing will grow due to the refuse on the ground.





**PROJECT INFORMATION**

**TYPE OF REVIEW:** Text Amendment to the Garfield County Land Use and Development Code Standards for Protection of Irrigation Ditches – 7-201 E.  
**FILE NUMBER:** TXTP 8122  
**APPLICANT:** Director of Community Development  
**DATE:** May 15, 2015, Continued from March 11, 2015 and December 10, 2014

**I. INTRODUCTION**

At a public hearing on December 10, 2014 the Planning Commission provided Staff with direction on advancing the proposed text amendment to Section 7-201, Agricultural Land. Direction was provided to staff to obtain agency and ditch company review and comments regarding the amended text amendment proposal. Those comments were then considered at the March 11, 2015 continued hearing.

Questions and comments arose from the Planning Commissioners related to the responses received; primarily the Commission questioned the need for the local regulations when the State Constitution and State Statutes contain protective measures related to irrigation ditches. The Commission agreed that educating the public about ditch owner rights was important and that the LUDC could provide notice of those rights in-lieu of standards that may or may not fit each situation. Under state law, the ditch owner is ultimately the authority to determine what standards are required relative to maintenance access and other potential impact to ditches from development.

The Commission directed staff to amend the proposed code amendment, dated 3/11/15, in response to the referral comments and to seek additional public input, particularly from local water engineers and attorneys. Staff solicited comments by sending emails to local attorneys and engineers (Exhibit T) and by placing an advertisement in the Post Independent seeking public comment on this issue (Exhibit U). Comments received are discussed in Section V. of this report.

**II. ISSUE AND INTENT**

One critical issue became apparent in reviewing the comments, and that is that the terms ‘ditch’ and ‘irrigation ditch’ are very broad.

A. LUDC - The broad characterization of ditches includes the current definition in the LUDC:

**Irrigation Ditch.** A manmade channel designed to transport water.

This definition could include many types of ditches, such as those that deliver water to serve agricultural uses, however it does not distinguish this use from a roadside ditch, a stormwater

ditch, a lateral ditch, a tailwater ditch, wastewater ditch, or any of the many other types of ditches. Some of these ditch types are utilized in support of agriculture, and some are not – all may be characterized as ‘irrigation ditch’.

- B. Colorado Revised Statutes – The “Ditch Act” also appears to take a broad definition of ditches as it discusses the transport of water used for ‘beneficial purposes’.
- C. Intent - Staff entered into this proposed text amendment with a narrow scope that limited irrigation ditches to those ditches that transport water in support of agricultural uses, which led to the proposed amendment being located in Section 7-201, Agricultural Lands. The proposed amendment was then supported by determining general conformity with the Comprehensive Plan based upon Goals, Policies and Actions related to protection of agricultural uses and the rural character of Garfield County. These Goals, Policies and Actions may still apply to the broader definition which references ‘beneficial use’.

Based upon much of the discussion, as well as comments received, it would appear that limiting the scope of potential regulations to those ditches that serve agricultural uses is inappropriate. This is due to the water rights issue whereby agricultural water rights are permitted to be converted for domestic use. Broadening the scope and definition of ditch, for transportation of water for beneficial use, would be consistent with the statutory definition and protective intent.

- D. The Planning Commission discussed the statutory protections that currently exist for ditch companies and considered whether standards placed in the Land Use Code were appropriate, particularly as circumstances are not a ‘one size fits all’ proposition to protect ditch rights. The current code language contained in Section 7-201 E., requiring a maintenance easement of at least 25 feet from the edges of the ditch banks, was discussed as arbitrary – in certain circumstances this size easement may be appropriate but in other instances it may be more or less than what is necessary for maintaining the ditch.

The Planning Commission also discussed the enforcement of standards in the land use code and determined that county enforcement of arbitrary standards would be difficult and time-consuming. It would be best to allow the ditch owners to determine their individual needs.

**III. REFERRAL AGENCY COMMENTS**

The proposed code text amendment was sent to the following agencies for comment; see Exhibit N for a comprehensive list of agencies/companies:

- A. **County Road & Bridge:** Discussions with the R&B Director, Debbie Fiscus, resulted in comments that irrigation culverts under county roads are not adequately maintained and therefore R&B has had to assume the responsibility for maintenance.
  
- B. **Engineering Consultant:** Mountain Cross Engineering has responded, Exhibit M, that:
  - 1) The National Resource Conservation Service (NRCS) may not be staffed to review and approve ditch crossings and therefore section 4. iii. should be deleted;
  - 2) Section 7, Water Quality and Stormwater Management, should be deleted as stormwater ditches and irrigation ditches are frequently combined, and it appears that this section would prohibit that combination causing redundant and parallel systems to be required;
  - 3) The definition of "irrigation ditch", as proposed, would not include tail water ditches.

- C. **Thompson Glen Ditch Company:** Dr. Jim Campbell, Secretary of the Thompson Glen Ditch, responded, Exhibit J, with a recommended change to the proposed definition of "Irrigation Ditch":

Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to agricultural lands for the purpose of watering crops, forage, other vegetation or livestock.

- D. **Grand River Ditch Company:** Alvin G. Hansen, President of the ditch company, responded in Exhibit H, that the Grand River Ditch is one the longer ditches in the County. The ditch company experiences operational issues related to development, such as ditch right-of-way being too narrow and structures built too close to the ditch.

Dumping in the ditch is common and results in damaging 'topover' and resulting loss of water to supply the system. Right-of-way width, ditch crossings, placement of the ditch into minimal quality pipe, drainage of storm water and placement of other utilities into the ditches are issues cited resulting in problems for the company.

The Board of Directors strongly supports the proposed changes.

- E. **Basin Ditch Company:** Jim Pitts phoned the week of February 23, 2015 about concerns with non-water rights holders 'stealing' water from the ditches. The ditch companies have no support in preventing this from occurring.
  
- F. **Michael Erion, Resource Engineering:** Mr. Erion responded with a concern that the guidelines are too detailed since the State Statutes cover irrigation ditches. Further, that a Colorado Supreme Court decision stating that said you cannot alter, modify, impact or interfere with a ditch structure or the quantity or quality of flow in a ditch without approval of the ditch

owner(s), or a determination by the Court that the proposed activity will not have any adverse impact.

Recommended revisions include:

- 1) Deleting paragraph A.4 regarding Ditch Crossings as these crossing are not permitted without ditch owner approval;
- 2) A.5. may not be appropriate if new language is incorporated into subsection 4 that states that the Applicant must provide evidence that they have addressed these issues with the ditch owner(s);
- 3) Subsections 6 and 7 may not be appropriate language if language is incorporated regarding the requirement to address ditch matters with the ditch owner.

The proposed change to the definition of ‘irrigation ditch’ appears to be appropriate.

- G. **Don Chaplin, DARCA Board Member:** Mr. Chaplin responded to the proposed text amendment, Exhibit L, that a compilation of all irrigation ditches, including location and contact information, should be undertaken, with DARCA assisting; and that the 25 foot width of the maintenance easement may not be sufficient when considering topography of a site.
  
- H. **Missouri Height-Mountain Meadow Irrigation Company and the Needham Ditch Company:** Craig Corona of Corona Water Law has responded on behalf of the referenced ditch companies, Exhibit G. Mr. Corona explains that Colorado law requires that no alteration can be made to a ditch without the owners’ consent. Ditch owners have the right to do all that is reasonably necessary to operate, maintain, repair and replace their ditches.

Mr. Corona recommends the following:

- 1) Clarifying the term “ditch owner” to include individual owners of unincorporated ditches and incorporated ditch companies. The term ‘ditch owner’ and ‘ditch company’ appears to have been used interchangeably in the proposed amendment.
- 2) Setting Ditch Easement widths will provide property owners with notice and avoid conflicts. However a set width may not be practical. Setting that width on a final plat may bind future owners of the property it does not bind the ditch owners without their agreement. In light of these differing expectations they suggest a revision:

“Ditch Easement. An easement shall be reserved for the benefit of the ditch owners and indicated on any Final Plat for the division of land or for the final development plan for any other land use. The easement shall be for the purposes of ingress and egress for inspection, operation, maintenance, improvement, repair and replacement of the ditch. It shall be of sufficient width as determined and approved by the ditch owners for these purposes. The developer shall reimburse the ditch owners for the costs incurred, including legal and engineering consultants, to review any such proposal. No structure or fence shall be placed

within the right-of-way or easement without written permission from the appropriate ditch owner(s).”

- 3) Add language in Ditch Crossings that states “No ditch crossing shall be allowed without the written consent of the ditch owners.”
- 4) Drainage. Structures being built may be subject to drainage or flooding and they recommend the following:

“No building shall be constructed immediately downhill of an irrigation ditch without the ditch being placed in a culvert, lined or otherwise treated to avoid leakage of water downhill toward the building. Any such treatment must first be approved by the ditch owners.”

- 5) Definition. Many of the Companies’ shareholders have obtained augmentation plans using their company water to support uses other than irrigation and agriculture. Under common law, the Companies’ ditch easement rights are the same so long as the water is put to beneficial use. To avoid the Companies’ losing protection of the proposed regulations we suggest the following definition:

Irrigation Ditch. Irrigation Ditch means a naturally occurring or artificially constructed channel used to carry water from a stream, lake, reservoir, or other source to lands for application to beneficial uses.

- 6) Liability. One of the biggest concerns of ditch owners is liability. Ditch owners should not be required to defend claims for damages caused by the act of others. To help protect ditch owners we suggest the addition of the following language:

Developers are required to execute an agreement binding the developer as owner of the property, and all future property owners to accept liability for damages arising from any act by the developer and/or subsequent owners related to the ditch and to insure against the same.

- i. **Silt Water Conservancy District** – Both Kelly Lyon and Jeff Houpt responded on behalf of the District, Exhibits P and Q. The District is responsible for the operation and maintenance of facilities that include the Davie Ditch, Grass Valley Canal, Harvey Gap Reservoir, the East and West Laterals and the Silt Pump Canal. Generally supportive of the proposed code revisions and thinks that the recognition and protection offered should extend to all water diversion, storage and conveyance facilities. The District also recommends that the 25 foot maintenance easement be amended and determined on a case-by-case basis. Other recommendations include how to determine the necessary width to accommodate a ditch crossing, and the ditch Owner (not NRCS) should determine these standards.

- J. **Mt. Sopris Conservation District** – Robert Burry responded in Exhibit S with examples of issues that have arisen related to liability and maintenance problems and recommends inclusion of overtopping and seepage issues into the land use code.
  
- K. **Natural Resource Conservation District (NRCS)** - Stephen Jaouen, District Conservationist, responded in Exhibit R, that the NRCS is not the appropriate reviewing authority, but recommends that an agreement occur with the ditch owner. Referral should not occur to the NRCS and states that the appropriate agency would be the Division of Water Resources.

**The following agencies/companies did not respond.**

Vegetation Management	Division of Water Resources
Basalt Water Conservancy District	West Divide Water Conservancy District
Colorado River District	Lower Cactus Valley Ditch Company
Ware and Hines Ditch Company	Ward Reynolds Ditch Company
East Mesa Ditch Company	Multi Trina Ditch Company
SGM Engineering	

**OTHER COMMENTS RECEIVED:**

- A. **Brownstein Hyatt Farber Schreck** – As water counsel for the River Edge PUD, who owns shares in The Glenwood Ditch Company, the following comments are provided on their behalf:
  - 1) Change the definition of Irrigation Ditch to clarify that the provisions in the Agricultural Lands section would apply even if the ditch provides part of its water to supply non-agricultural uses.

Irrigation Ditch means a naturally occurring or artificially constructed channel used in whole or in part to carry water from a stream, lake, reservoir or other source to agricultural lands for the purpose of watering crops, forage, or livestock.

Ditch means a naturally occurring or artificially constructed channel used in whole or in part to carry water from a stream, lake reservoir, or other source for the purpose of transporting water for beneficial use in accordance with its decreed water right or conditional water right.

This definition is adapted from C.R.S. 37-86-102, concerning ditch rights of way.

Staff Note – The Thompson Glen Ditch and the Glenwood Ditch are the same but appear to be known by different names. The official name of the ditch is the Thompson Glen Ditch.

- B. Andy Schwaller – Section 7-201 E. (3) needs to be deleted or amended. Based on the requirement for 25 foot easement from the edges of the ditch bank would be required on any ditch or lateral ditch and state law provides for maintenance of any irrigation ditch based on the required width to get the maintenance done.

**IV. PROPOSED CODE REVISIONS**

The proposed language related to protection of ditches would be added to existing Irrigation Ditch standards in 7-201:

Based upon Planning Commission direction and discussion at the December 10, 2014 and March 11, 2015 hearings, Staff has revised the proposed text amendment as follows:

**7-201. AGRICULTURAL LANDS.**

**E. Irrigation Ditches.**

1. Colorado State Statutes, C.R.S. 37-86-102, provides that "any person owning a water right or conditional water right shall be entitled to a right-of-way through the lands which lie between the point of diversion and point of use or proposed use for the purpose of transporting water for beneficial use in accordance with said water right or conditional water right." A standard County note (staff note: see section V.F. of this report for proposed note language) shall be placed on all final plats and site plans for land use change permits.
2. The Colorado Constitution Article XVI, Section 7 provides that all persons and corporations shall have the right-of-way across public, private and corporate lands for the construction of ditches for the purposes of conveying water for domestic, agricultural, mining, manufacturing and drainage purposes upon just compensation
3. Rights-of-Way. The land use change shall not interfere with the ditch rights-of-way.
4. Maintenance. Where irrigation ditches cross or adjoin the land proposed to be developed, the developer shall insure that the use of those ditches, including maintenance, can continue uninterrupted.
5. Maintenance Easement. A maintenance easement of at least 25 feet from the edges of the ditch banks shall be preserved and shall be indicated on any Final Plat for the division of land or for the final development plan for any other land use. **The Applicant shall provide a letter from the ditch owner accepting that the development proposal will have no impact on their ability to maintain the ditch and that an adequate maintenance easement is possible. No structure or fence shall be placed within the right-of-way or easement without written permission from the appropriate ditch owner.**
6. **Ditch Crossings. Ditch crossings shall respect the rights of ditch owner(s) to operate and maintain their ditch without increased burden of maintenance or liability. Development shall minimize ditch crossings in roads and driveways. At a minimum all irrigation ditch crossings shall:**

PC  
OK

*edit*  
*7*  
*of ditches*

- i. Require the crossing be sized to not interfere with ditch operations or change existing hydraulic flow characteristics;
  - ii. Provide vehicle and maintenance equipment access to the ditch from both sides of the ditch crossing from all roads for use by the ditch owner(s);
  - iii. Prior to permit application, or construction within the ditch right-of-way the Applicant shall provide a letter from the ditch company regarding agreement with standards contained in the proposed crossing;
  - iv. The BOCC may require specific improvements to ditch crossings if determined to be necessary in the review process, particularly if these improvements are required to address safety concerns;
7. Referral to Ditch Owner. Application for Division of Land or Land Use Change Permit that may affect or impact any ditch right-of-way shall include the name and mailing address of the ditch owner. (This information may be obtained by contacting the Water Commissioner at the Colorado Division of Water Resources to determine the ditch owner for purposes of requesting review and comment on the development proposal). *ok*
8. Drainage. Application for Division of Land or Land Use Change Permit that includes any improvements located adjacent to ~~or below grade of~~ an irrigation ditch shall address and mitigate potential impacts to the irrigation ditch in a drainage plan. The drainage plan shall demonstrate that the drainage will not impair operation of the ditch. *Edit*
9. Water Quality and Stormwater Management. No development or changes in land use shall channel surface waters into any irrigation ~~system~~ ditch without the written consent of the ditch owner. *ok*

Article 15: Definitions:

~~Irrigation Ditch. – A manmade channel designed to transport water.~~

Irrigation Ditch means a naturally occurring or artificially constructed channel used to ~~carry~~ transport water in accordance with its decreed or conditional water right. *pipeline*

Ditch Owner. Where used in these regulations, the term "ditch owner(s)" shall mean both individual owners of an unincorporated ditch and/or a ditch company as the owner of an incorporated ditch. *plac note*

V. STAFF COMMENTS

- A. It appears that there is some conflict in the comments and recommendations that were received, as listed below. Updated comments are provided in italics.



1. Recommendations included removal of those sections of the proposed amendment that State Statute already addresses, while other were in support of providing notice, via the LUDC, to property owners and developers regarding the rights of ditch owners.

*Staff Comment: Staff has attempted to craft language that would be consistent with each of these recommendations in that statutory requirements are noted in the land use code and there is a requirement for obtaining approval from the ditch owners for easement dimensions and crossing standards.*

2. Stormwater drainage into the irrigation ditch – Chris Hale, Mountain Cross Engineering suggests allowing irrigation ditches to be used for stormwater in order to prevent redundancies. Grand River Ditch Company and conversations with DARCA appear to indicate that stormwater drainage into ditches is not acceptable to the ditch owners.

*Staff Comment: Drainage into ditches would be reviewed through the grading and drainage plan required to be submitted with most application types for both land use permits and divisions of land. Staff recommends ditch owner approval be required for use of a ditch for drainage purposes.*

3. Recommendations included deleting the requirement for the maintenance easement while others have commented that the width of the maintenance easement is dependent upon a variety of factors, including topography.

*Staff Comment: The firm dimension of 25 feet currently required by the land use code for the maintenance easement has been removed, and instead it is recommended that the County rely upon the property owner and ditch owner to come to an agreement on of the easement necessary to complete maintenance operations.*

4. Comments included four separate proposals to redefine irrigation ditch. Other proposed definitions include ‘ditch easement’ and ‘ditch owner’.

*Staff Comment: Staff has prepared recommended definitions based both upon statutory language and comments received, for both ‘Irrigation Ditch’ and ‘Ditch Owner’.*

- B. Responses received from the conservation districts (Mt. Sopris and Silt) identify concerns related to liability issues.

*Staff Comment: Staff recommends changing subsections 4(iii) and 5, deleting the referral to NRCS in favor of placing the burden on the Applicant to obtain the necessary approvals from the ditch company, as required by state statute. Ditch company determination of no impact of the development on the irrigation ditch would be a submittal requirement for Division of Land and Land Use Change permits. The Water District Commissioner may provide assistance in determining the ditch owner(s).*

- C. A conservative approach to the proposed code amendments might include a provision that solely requires consistency with State Statutes. This would put property owners on notice regarding requirements but would not obligate the County to enforce the provisions.

*Staff has attempted to include notice regarding statutory requirements relative to irrigation ditches and requiring the Applicant of a land use or division of land application to consult with the ditch owner in determining appropriate standards. A plat/plan note has been proposed that would be placed on all final plats and final site plans that would provide notice regarding ditch owner rights.*

- D. Solicitation for additional comments on the proposal was recommended by the Commission. Staff completed that request by sending an email, Exhibit T, to local engineers and a local water attorney.
- E. An advertisement was placed in the Wednesday April 15, 2015 edition of the Post Independent, Exhibit U. One comment was received from Sam Bryant, Exhibit V, who is a property owner that is impacted by the Lower Cactus Valley Ditch.
- F. Discussion regarding placement of a note on plats and site plans occurred at the last hearing. This note would provide notice to property owners regarding ditch owner rights. Staff has crafted language for consideration:

*Revised*  
 "Ditch Owner(s) Rights: Colorado State Statutes 37-86-102 provides that any person owning a water right or conditional water right shall be entitled to a right-of-way through the lands which lie between the point of diversion and point of use or proposed use for the purpose of transporting water for beneficial use in accordance with said water right or conditional water right. Any impact, change or crossing of a ditch shall require approval from the ditch owner."

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**VI. LUDC CRITERIA FOR A TEXT AMENDMENT**

Section 4-114 outlines the procedures and criteria for consideration of a Land Use Code Text Amendment request to the ULUR. The criteria for approval of a Land Use Code Text Amendment are as follows:

- 1. **The proposed text amendment is in compliance with any applicable Intergovernmental Agreements.**

Staff Comment: There are no intergovernmental agreements impacted by the proposed text amendment.

- 2. **The proposed text amendment does not conflict with State law.**

Staff Comment: This proposed text amendment is in compliance with statutory requirements contained in Colorado State Statutes 37-86-102.

**VII. PROPOSED FINDINGS**

1. That the hearings before the Planning Commission were extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard.
2. That the application has met the public notice and public hearing requirements of the Garfield County 2013 Land Use and Development Code, as amended.
3. That the proposed text amendment can be determined to be in the best interest of the health, safety, convenience, order, prosperity and welfare of the citizens of Garfield County.
4. The proposed text amendment is consistent with applicable standards of the 2013 Land Use and Development Code, as amended.
5. The proposed text amendment is in general conformance with the Garfield County Comprehensive Plan of 2000, as amended.
6. The proposed text amendment does not conflict with State statutory provisions regulating land use.

**VIII. PLANNING COMMISSION DELIBERATION**

The Planning Commission has the following options:

- A. Recommend that the Board of County Commissioners approve the proposed text amendment related to irrigation ditches in the land use code.
- B. Continue the hearing in order to make changes to the proposed language.
- C. Recommend denial of the request to amend land use code regulations related to irrigation ditches.