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## The Pioneer Ditch settlement: A history of fiercely-contested property rights

The Pioneer Ditch was hand-dug in 1865, during the early Anglo settlement of the Verde Valley.

And it's been in litigation ever since. Well, not quite.

But the first contentious action regarding West Clear Creek water rights and the Pioneer Ditch was filed in 1900, with subsequent actions filed in 1912, 1938, 2005, and most recently in 2013. One hundred fifteen years of suspicion, conflict, hostility, and fiercely-contested property rights.



The first contentious action regarding West Clear Creek water rights and the Pioneer Ditch was filed in 1900. Subsequent actions were filed in 1912, 1938, 2005 and most recently in 2013. VVN photo by Bill Helm

Linda Buchanan became a 1/29 beneficial interest in the Sierra Verde Homeowners Association (SHVOA) irrigation system in 1987, with the purchase of Lot 24, in a platted Yavapai County subdivision recorded in 1982. Unwittingly, she - and her heirs and assigns became party to misunderstanding.

Jeni O'Callaghan is a principle in Park Central Properties, owner of multiple Verde Valley ranch and farm parcels with irrigation interests. One such parcel, leased by Hauser Farms is located 'down-ditch' from Sierra Verde Estates. In wet years, there were disputes. In dry years, there were battles.

SVHOA oversees its collective irrigation delivery system as the most precious asset of the organization. "We aren't one of those associations where all the houses are painted matching colors," says SHVOA Board secretary Barb Barber. "But we share a common interest in maintaining the elevated real estate values which come with irrigation."

So in early 2014, when Buchanan and O'Callahan sat down together over a cup of coffee, expectations were naturally low. It was a leap of faith for both. When court filings accuse each party of unlawful taking of water, it's difficult to find the high and dry ground of compromise and collaboration.

"When the lawsuit was filed, we hunkered down for a fight," says former SVHOA Board president, Ray Nelson. "Our first line of defense was to assess ourselves several times the normal annual dues to brace for legal expenses. That was a tough bullet to bite."

### History of the Pioneer Ditch

The association Board appointed a negotiating committee, chaired by retired APS engineer Jack Duffy, Yuma County Development Director Monty Stansbury, and Buchanan, a community activist. "Jack dug into the history of the ditch and the record of previous settlements," says

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Stansbury. "I began to strategize for the newest court battle, and Linda kept wondering what might happen if we made an attempt to mitigate, rather than litigate a solution."

Says Buchanan, "I just remember being grateful that Jeni was willing to talk about options. It's easy for small property owners to demonize the large land-owner as being disconnected from community interests. But it was easy to see this simply wasn't the case with the O'Callaghans. Jeni teaches Nursing at [Yavapai College](#), and husband Mike teaches and coaches at Camp Verde High School. On their Verde real estate holdings, O'Callaghans host an annual Cub/Boy Scout Jamboree, special events such as weddings and reunions, and Jeni is a renowned artist and conservationist, birder, supporting everything that is good and right about the Verde Valley."

That first meeting between Buchanan and O'Callaghan was guardedly optimistic. "We talked about private property values, and community values," says Buchanan. "We found a bit of common ground (or riverbank) in our desire to leave a healthy riparian ecosystem for future generations."

From there, even as the expensive gears of the Superior Court mechanization begin to grind, periodic meetings kept the two abreast of communication deeper within their respective organizations (for O'Callaghan, the family partnership, and for Buchanan, the homeowners association).

"Even as we made headway," says O'Callaghan, "we allowed for ratification from our partners, or Board, to validate progress."

The duo of Buchanan and O'Callaghan dove headlong into dissension (some historical, and some hysterical) contradicting the likelihood of a compromise.

"Some folks are preconditioned to fight first, and ask why later," says Buchanan. "There appeared to be a faction of upstream interests who were more invested in a fight than a solution." What do you do when that happens? "End run," says Buchanan.

#### Negotiations

One of the biggest barriers to resolving the conflict was lack of measurement. "They had some good people coming to the table to negotiate," says Kim Schonek, [Verde River](#) project manager for The Nature Conservancy. "Good people, but bad data. It's hard to value what you don't measure." For too many decades, the front line was accustomed to saying, 'I want as much as I can get, whenever I can get it.' How do you settle that in court?

Frequent appearances were required in Yavapai County Superior Court for status conferences, settlement hearings, and at one point, a defendant's demand to have the Honorable Judge David Mackey recuse himself. Along the way, O'Callaghan and Buchanan persevered. Some topics were 'too hot' and were put to cool on the back burner. They remained committed to what they could accomplish; what steps - no matter how small - could be taken next.

A Pioneer Ditch Stakeholders Committee was established. Not to vote shares or 'rights,' but to attempt to reach consensus. Decades of polarized interests loomed. Baby steps. Miners' inches. Acre feet. Cubic Feet per Second. Time. Flow. Data unquantified for more than a century past.

"One of the first people I met through the Pioneer Ditch Stakeholders process was Alan Williams," says Buchanan. "Alan represented a consortium of small, up-ditch users, deeply committed to protecting their property rights. He hosted our first Pioneer Ditch Stakeholder meeting at the Verde Lakes Water Company, and I was impressed by his knowledge and work ethic."



The advertisement for Verde SOL-AIR Services features a central circular graphic with four quadrants: HEAT/AC (showing people in a meeting), SOLAR HOT WATER (showing solar panels), GEOTHERMAL heat pumps (showing a geothermal well), and PLUMBING (showing a person in a bathtub). The graphic is surrounded by icons of buildings, wind turbines, and water droplets. At the top, the company name and phone number (567-5315) are displayed. At the bottom, it includes the Carrier logo and the slogan "turn to the experts" with a leaf icon.

A few weeks later, during an early monsoon flood, Buchanan arrived at the Pioneer Ditch diversion on West Clear Creek to find Williams waist-deep in the creek, heaving fallen timber and debris out of the channel to restore irrigation. "He brushed off my offer of assistance, and made it clear he was just 'doing what he always does' to ensure flow. I realized, it's not so much about rights, as responsibility," says Buchanan. "One without the other is meaningless."

In December, Pioneer Ditch shut down to effect annual maintenance. Money that parties set aside to bear legal costs was redirected to improvements. Stakeholders better known as plaintiffs and defendants found themselves working shoulder-to-shoulder to improve irrigation efficiency, and ultimately enhance the health of West Clear Creek, and the Verde River.

Late January, under the cloud of litigation, more than 200 shareholders in the Verde Ditch Company convened in the Camp Verde Performing Arts Center auditorium, revisiting decades of diversion patterns, historical records, and irrigation practices which affect not only the Verde Valley, but protected parties far south in Maricopa County, and the [Salt River Project](#) utility and irrigation district.

#### Irrigation efficiencies

Meanwhile, U.S. Department of Agriculture announced more than \$2.8 million dollars in federal grant money awarded to improve irrigation efficiencies in the Verde Valley. These funds are to be administered by The Nature Conservancy, in a concerted effort to ensure agricultural irrigation efficiency, while enhancing perennial stream flow in the Verde River and tributaries. "Court action on the Pioneer Ditch dates back to 1900 because West Clear Creek was being completely de-watered, even way back then," says Schonek. Today it's one of the few waterways in Arizona poised to trend in a healthy direction." Farming, following, and friendly consideration bode well for the future of a perennially flowing West Clear Creek.

This fall, Pioneer Ditch Stakeholders will reconvene in a court-ordered hearing. Imagine if the Superior Court Judge looks beamingly out on the litigants and states, simply, "Well done. Sally forth." What if neighbors could collaboratively manage resources in a meaningful way for future generations?

Says Buchanan, "Today is a like a Polaroid snapshot in a feature movie. Each of us have choices and personal responsibility in determining if a flowing Verde River is part of the legacy we pass to the next generation. Do we choose the River, or do we opt to fight a paper dragon in court, with water rights as dry as the parchment upon which they are writ? A 'share' of surface diversion from a stream which no longer flows, is worth exactly what?"

For most of the past century, Verde Valley wealth and power was measured in acreage owned and rendered verdant by systematic irrigation. A new time, place, and sensibility in the Verde Watershed may be marked by how effectively consumables are produced on arable acreage, while landscaping that integrates best practices in water harvesting becomes the new beacon of wisdom and wealth. In a perfect world, these changes will be driven by free-market forces: willing buyers and willing sellers of water rights newly balanced with responsibility.

The Verde Valley is uniquely poised, from its fiercely independent Native inhabitants, European settlers and descendants, and even the most recent transplants, to blaze a new trail in water management. One which promises a healthy, free-flowing river to heirs and assigns. Is there any greater legacy to bequest?

#### Enjoying, celebrating the ditch

On Sunday, Feb. 15, neighbors on the 150 year-old Pioneer Ditch stakeholders gathered for a rubber ducky race. Steve Ayers, Camp Verde's Economic Development Director, was on hand to initiate placement of a sign reading "Historic Pioneer Ditch, est. 1865." The sign is placed on Sierra Lane, where the trusty old Pioneer Ditch crosses under a ribbon of asphalt, connecting neighbors to jobs that rarely require buckets, shovels, or sweat.

"This isn't just the oldest ditch in Camp Verde, it's one of the three oldest ditches in the Verde Watershed," Ayers says.

Schonek was on hand to encourage the neighbors to consider even greater efficiencies: those of modern technology wherein the work of old zanjeros is replaced by high-tech telemetry; where solar-powered mini-computers gather data, post to a web "cloud," and guardedly share results with the smart phone set.

Private and public resources exist to support innovative and collaborative solutions sought by the Pioneer Ditch stakeholders and other similarly challenged irrigators. "History is a beautiful thing if it becomes a springboard, rather than a quagmire," says Ayers. "Each of us has a role and responsibility to challenge the status quo. That's what makes us a vibrant community."

"It's about cooperation," says Nelson. "During our winter maintenance shut-down, we texted Zach Hauser about an easement issue, and he responded immediately from his hunting camp. It breaks the Man Code to text during hunting season, but Zach took a few precious seconds to say keep going."

"The Hauser farming family is one of our Verde Valley resources," says Buchanan. "They might be known for growing great alfalfa and sweet corn, but they should be equally known for growing

future leaders."

SVHOA Board member, Jack Duffy says we're "part of a bigger thing. Two other historic ditches also divert from West Clear Creek: the Wingfield #1 and the Wingfield #4. Unravelling history is a great step in understanding what the future holds. This is what builds community. Us. Working together. Continuity. Collaboration. Mitigation versus Litigation. Stay tuned. And wind up your rubber duck. The race is on to a legacy of good neighbors and a flowing river."

Linda Buchanan is employed at Yavapai College and serves on the Board of Directors for Sustainable Economic Development Initiative (SEDI) of Northern Arizona, the Verde Valley Ag Coalition (VVAgC), and the Verde River Institute (VRI).



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