



## **DITCH STOCK...WHAT IS IT AND HOW IT IS CONVEYED AT CLOSING**

**A** mutual ditch company may be a profit or a non-profit organization. The shareholders own the water rights appropriated to the organization based upon a pro rata share compared to the total outstanding shares of stock. The shareholders also have pro rata obligations for assessments including operational, maintenance, repair and legal and engineering costs. The stock certificates are deemed personal property but the interest represented by the certificates is a water right with associated ditch rights being considered real property. The shareholders also own the personal property that accompanies a water right such as the ditch and the head gates.

Stockholders need to know the nature of the organization and the existence and nature of any limitations on the right to change the water rights and the process needed to obtain the organization's approval for those changes.

Even though the water rights may be held in the name of the organization, the Colorado Supreme Court in 1975 held that the owners of stock within a mutual ditch company are the equitable owners of the water rights. In addition, the shareholder owns the right to delivery of water in proportion to the stock ownership.

**Assignment of the share certificate and the reissue of a new share certificate generally transfer title to mutual ditch company stock to the assignee following board approval. It is also recommended that the conveyance of mutual shares may be further accomplished by a recorded deed. Buyer must do their due diligence by verifying that there are no liens and encumbrances reflected on the company's books and all assessments are current.**

The following is an example of the terminology which may be employed when a mutual ditch company stock is being conveyed”

*“For ten dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the “grantor” hereby sells, grants, transfers and assigns to “grantee” whose address is \_\_\_\_\_ # of shares of stock in the \_\_\_\_\_ Ditch Company which are represented by Certificate No. \_\_\_\_\_, (copy of which is attached) together with all associated water rights, right for the use of the water, and other rights represented by the subject shares and warrants title to the same against all persons claiming under grantor. Grantor does hereby irrevocably constitute and appoint the Secretary of the Company to transfer said subject shares upon the books of the association with full power of substitution in the premises.” (Signed and acknowledged by the grantor.)*

A **carrier ditch company** owns the legal right to the appropriated water rights and the personal property connected with those water rights. Carrier ditches deliver water to the customer or consumer who has a contract with the carrier company. Rights to receive water may be represented by shares or certificates. These shares of stock may place restrictions of water use and could be forfeited by nonpayment of charges.

**These contract rights are transferred by deed** and the board of directors must approve the subject transfer. **Carrier ditch company share certificates do not evidence the formal transfer.** Some carrier rights are measured in inches of water. Fees are also

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charged when transfers occur and checked to see if any assessments are due. The board of directors approve transfers.

**Purchasers should be aware that no assessments are due as the interest being conveyed may be declared forfeited for nonpayment of assessments. Purchasers should also review the company's bylaws, articles and rules and regulations that may restrict transfer of rights.**

The 1937 Water Conservancy Act created **Water Conservancy Districts** and interests in the project water are represented by allotment contracts. For example, the Northern Colorado Water Conservancy District approves allotment contracts for the Colorado Big Thompson Project (C-BT units) and for the Windy Gap Project.

**Lands included within a water conservancy district are subject to ad valorem taxes and special assessments. Each district enacts transfer rules and a critical review of the rules early in the transfer process is critical. When a right to receive conservancy water occurs, a contract right evidences it and the transfer should be by deed when required. Always check each district's rules.**

**Reservoir rights are a right to stored water in a reservoir. Therefore, when purchasing a water storage right, the conveyance should provide for not only the transfer of the water storage right but also should provide for use of the reservoir itself. If the reservoir is located upon another property, an easement for carriage of water and access to the reservoir should be described. If the reservoir is also being conveyed, then the instrument of conveyance should describe the separate interest in the land that is used to store the water.**