BOULDER COUNTY BAR ASSOCIATION NEWSLETTER
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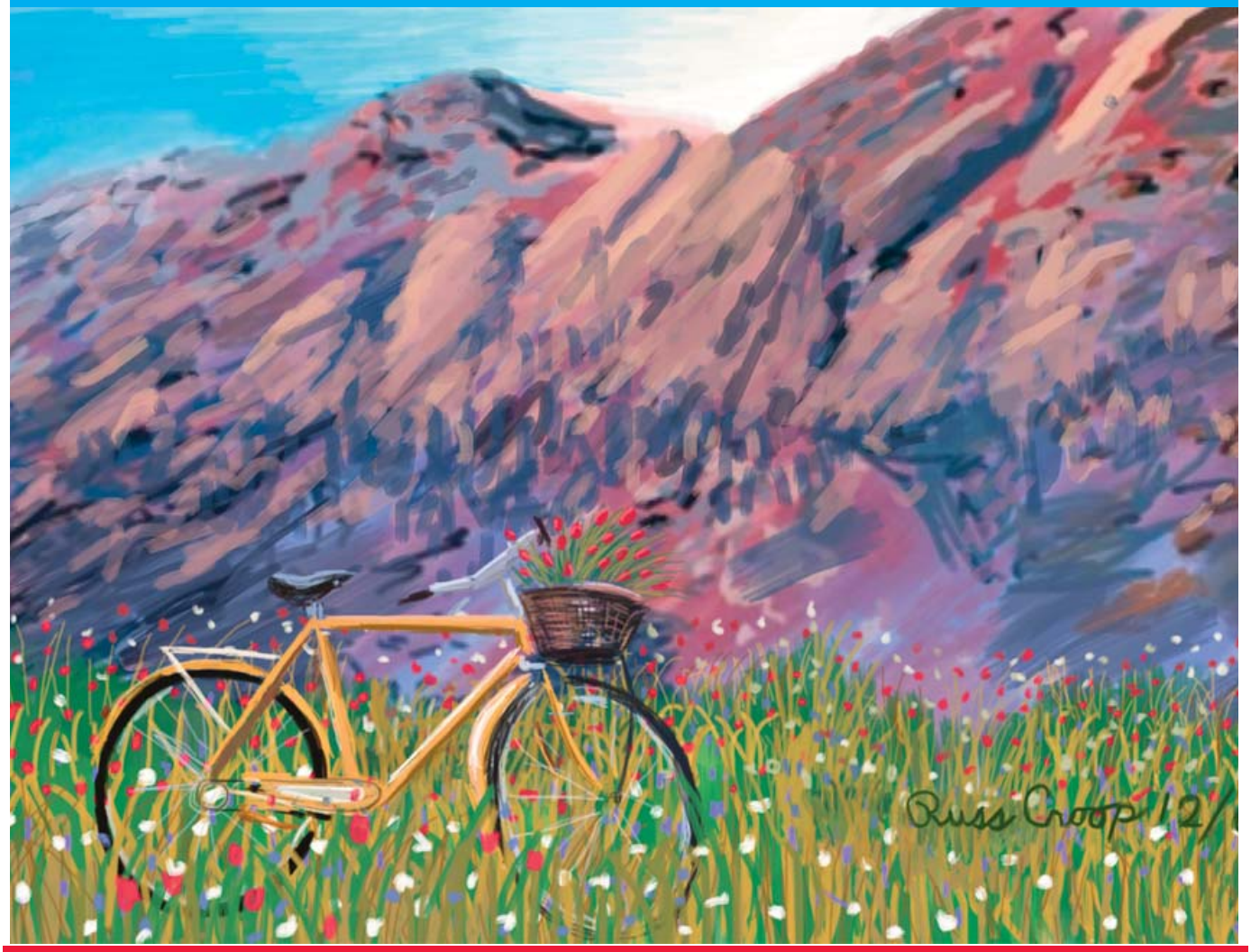

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CALENDAR OF EVENTS

Tuesday, May 6
SOLO/SMALL FIRM
Overview of Intellectual Property Law
Presenter: Kirstin Jahn
Noon @ Faegre Baker Daniels
$25 CLE, $15 New/Young Lawyer, $12 Lunch

Wednesday, May 7
Boulder Interdisciplinary Committee
View from the Bench
Noon @ Avalon
Presenters: Boulder District Court Judges & Magistrates
Register @ Boulderidc.org

Thursday, May 8
ALS
Health Reform: Eligibility & Appeals for Individual & Families Seeking Insurance Marketplace & Medicaid Coverage
Presenter: George Lyford
12 - 2 @ Justice Center, Courtroom B
$35 CLE, $20 New/Young Lawyer, Brown bag lunch
***This presentation will have 2 CLE credits**

Thursday, May 8
PARALEGALS
Understanding Key Business Financial Documents
Presenter: Craig Chaney, CPA
Noon @ Bryan Cave
No CLE, $12 Lunch

Wednesday, May 14
Longmont/East County Lawyers Lunch
Noon @ Sugarbeet
(101 Pratt Street, Longmont)
$25 Lunch and CLE

Wednesday, May 14
SOLO HAPPY HOUR
5:30 @ Conor O'Neills (1922 13th Street)

Thursday, May 15
INTELLECTUAL PROPERTY
Music Copyrights – How and Why They're Different
Presenter: David Ratner
Noon @ Hutchison Black and Cook
$25 CLE, $15 New/Young Lawyer, $12 Lunch

Thursday, May 15
REAL ESTATE AND NEW/YOUNG LAWYERS
REAL ESTATE 101
Presenter: Scott Osgood
Noon @ Dietze & Davis
$25 CLE, $15 New/Young Lawyer, $12 Lunch

Tuesday, May 20
BUSINESS
Non-Compete Agreements
Presenter: Chris Leh
Noon @ Hutchinson Black & Cook
$25 CLE, $15 New/Young Lawyer, $12 Lunch

Tuesday, May 20
ELDER
The Cultural, Social and Socio-Economic Aspects of Elder Law and Probate Practice
Presenters: A. Labode, B. Cashman, J. Martin, L. Trujillo, and moderated by Martha Ridgway
Noon @ Justice Center
Training Room East
$25 CLE, $15 New/Young Lawyer, Brown Bag Lunch

Wednesday, May 21
FAMILY
Social Security 101: A Primer for Family Law Practitioners
Presenter: Ruth Irvin
Noon @ Justice Center
Training Room East
$25 CLE, $15 New/Young Lawyer, Brown bag lunch

Thursday, May 22
NATURAL/ENVIRONMENTAL
New Methane Regulations for Oil & Gas Exploration & Production
Presenter: Garry Kaufman
Noon @ Bryan Cave
$25 CLE, $15 New/Young Lawyer, $12 Lunch

Thursday, May 22
IN HOUSE COUNSEL
Trademark Choice, Registration & Protection for In House Counsel
Presenters: Kathleen Ryan, AnaLisa Vella, and Tiffany Parcher
Noon @ UCAR Conference Room 3150 (3080 Center Green Drive)
$25 CLE, $15 New/Young Lawyer, Brown bag lunch (food is available in the cafeteria)

Thursday, May 22
BANKRUPTCY
Noon roundtable @ Agave in Boulder

Wednesday, May 28
TAX, ESTATE PLANNING AND PROBATE
Creating Advance Directives That Work
Presenter: Kim Mooney
Noon @ Hutchison Black & Cook
$25 CLE, $15 New/Young Lawyer, $12 Lunch

Wednesday, May 28
BOLDER YOUNG PROFESSIONALS HAPPY HOUR
5:30 – 7:30 at Sanitas Brewing Company
Register at http://bolderyoungprofessionals.com/events/april-happy-hour-2/

Friday, May 30
IMMIGRATION
8:30 Breakfast Roundtable @ Broadway Suites

YOU ARE INVITED TO ATTEND THE
Boulder County Bar Association
ANNUAL MEETING AND RECEPTION
Thursday, May 29th, 2014

5:30 PM at the Boulder Dushanbe Teahouse
1770 13th Street

Cost is $54 per person
RSVP at the bar's website www.boulder-bar.org/calendar
click on May 29

2014 ANNUAL PRO BONO AWARDS LUNCHEON

Howard Berstein receives the John Marshall Award, presented by BCBA President Judson Hite.

75-100 Pro Bono Hour Awards (left to right) Bruce Wiener, Michael Taylor, Mary Louise Edwards, Chrstina Ebner Chris Jeffers.

Right to Left: Justice William Hood presented the 100% Firm Participation Awards to Michael Taylor of Cooper Tanis PC; Kimberly Gent of Ebner & Gent LLC; Meghan Hungate of Robinson Tweedy PC; Tom Scott of Hutchinson Black & Cook LLC; Graham Fuller of Stone Rose & Fuller PC; Brooke Brestel of Vincent Romeo & Rodriguez LLC; and Laura Moore of Warren Carlson & Moore LLP.

Iman Tehrani receives the 100 – 200 Pro Bono Hours Award from Judge Noel Blum.

4th ANNUAL TREE PLANTING

4th Annual BCBA Spring Tree Planting A Success!

On April 5th, over 30 Bar Association volunteers of all ages from Boulder, Larimer, and Denver County came together to plant over 200 trees at the Bellevue-Watson Fish Hatchery. The Hatchery, located in Bellevue northwest of Fort Collins, is managed by the Colorado Parks and Wildlife and serves to stock Colorado public water bodies with fish, including rainbow trout pictured above. The Hatchery which raises more than 300,000 fish each year serves as an important resource for anglers and naturalists alike. It was affected by the 2012 High Park fire, as well as by the September 2013 flooding.

The saplings (above photo) and older trees planted by the volunteers will reduce erosion and will serve as an important wind break for the Hatchery. After working up a sweat and connecting with each other in the field, volunteers also enjoyed a tour of the Hatchery facilities and a pizza lunch.

A special thanks to the Larimer County Conservations Corps, Colorado Parks and Wildlife Staff, the Boulder County Bar Association, the Colorado Bar Association, and the Young Lawyers Section of the BCBA for coordinating this great event! We hope to sponsor a tree-planting to commemorate the 2013 flood in the fall of 2014. Please contact Gabriella Stockmayer, Co-Chair of the Young Lawyers Section, if you are interested in participating.

LAWYERS ANNOUNCEMENTS

IRVIN AND IRVIN
Attorneys at Law

It's been a great ride!

Irvin & Irvin, A.K.A. Richard D. Irvin and Ruth K. Irvin, will be riding into the sunset on May 31. 2014. We are shutting down out physical location at 595 Canyon Blvd. and transitioning into a 'new Act' (we don't want to call it retirement). Ruth has stopped taking new cases and after many fits-and-starts, Rich will no longer be taking new cases.

Although we are shutting down our physical offices' location on May 31, we will be bringing our case-loads to their conclusions, with 595 Canyon Blvd. continuing as our mailing address. The telephone, (303-543-0337), fax and email address will be the same while we close out our practices.

It has been a fun and interesting ride and we leave satisfied, unlike Thelma and Louise at the end of their ride! We will continue to be active in the Boulder County Bar Association and in the community.

So, as the Von Trapp family sang at the end of 'Sound of Music', "So long, farewell, auf Wiedersehen, adieu, adieu, adieu to you and you and you!"

BOLDER YOUNG PROFESSIONALS
OF THE BOULDER CHAMBER
AND
BOULDER COUNTY BAR ASSOCIATION
YOUNG LAWYER SECTION
HAPPY HOUR

will host a joint happy hour on
Wednesday, May 28
at 5:30 - 7:30 PM
Sanitas Brewing Company
$10 pre-registration required

http://bolderyoungprofessionals.com/events/april-happy-hour-2/

Both groups are passionate about working together and giving back to the community. Our happy hours are more than just social events. They are a chance to help those in need.

Congratulations
Magistrate Carolyn McLean
on receiving the
Youth Advocate Award from
Realities for Children
of Boulder County
at the Hero Awards Luncheon on
April 24, 2014

Colorado Judicial Institute
2014 Excellence Awards.
Nominations for this award is open until May 8.

Help Colorado Judicial Institute celebrate judges and magistrates across Colorado by submitting a nomination.
www.coloradojudicialinstitute.org

The Judicial Excellence Award Dinner is on November 12, 2014

LEGAL SPANISH COURSES
ESPAÑOL LEGAL

June 10 - July 29th
Tuesdays from 5:30 - 7 PM
8 classes, 12 hours of instruction

Develop Spanish skills that will help you in court and representing your Spanish speaking clients as well as a basic understanding of the cross cultural communication process.

Classes will be taught by 20th JD court interpreter, Sean Stromberg.
Cost is $250 includes materials and Spanish/English legal dictionary.
CLE Credits are applied for.
Call the bar office to register

Questions? Call Sean at 303.530.0853

RAILS-TO-TRAILS FRAIL AFTER SCOTUS DECISION IN *BRANDT V. UNITED STATES*

By Ann Rhodes and Tracy Taylor

In March, the United States Supreme Court issued its decision in *Marvin M. Brandt Revocable Trust v. United States,* holding that a railroad right of way issued under the 1875 General Railroad Right-of-Way Act ("1875 Act") is an easement which is extinguished after abandonment, leaving the land unburdened and the landowner free to deny access to the public. This holding jeopardizes the widely popular "rails-to-trails" program, which develops public trails in abandoned railroad corridors. Many of these trails are in Colorado and at least one is in Boulder County.

The *Brandt*[1] Decision

The 1875 Act reflected a policy shift in the federal government ("Government") where it no longer granted fee interests to railroads for the expansion of their lines into the vast, unsettled West. Instead, 200-foot-wide rights of way were granted across public lands if the railroads filed the appropriate plans and obtained Interior Department approval. The 1875 Act was repealed in 1976 by the passage of the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701-1787.

However, FLPMA did not affect existing rights of way.

In 1976, the Government granted a land patent in the Medicine Bow-Routt National Forest near Fox Park, Wyoming to Melvin Brandt. Fox Park is about 30 miles southwest of Laramie near the Colorado border. The patent reserved certain rights of way in the Government, including ditches, canals, and access roads. It also made the fee interest subject to the right of way granted under the 1875 Act to the Laramie, Hahn's Peak & Pacific Railway Company (the "LHP&P," sometimes known locally as the "Lord Help Push and Pull"). Several times over the decades, the LHP&P rail line through Fox Park changed hands and never proved to be profitable. In 1996, the current railroad owner filed a notice of intent to abandon the right of way, removed the rails, and completed abandonment in 2004. In 2006, the Government initiated an action seeking a declaration of abandonment and an order quieting title in the abandoned right of way to the United States.

The Government settled with or obtained default judgments against other landowners along the right of way, except for Marvin Brandt, representative of the family trust that now owns the Fox Park parcel. Brandt argued that the 1875 Act granted only an easement, which under common law property rules, is extinguished when abandoned. The Government argued that it retained a reversionary interest in the land that was restored after the railroad's abandonment. The district court granted summary judgment to the Government and the 10th Circuit affirmed.

The Supreme Court reversed,[2] primarily because in 1942 the Government won a Supreme Court case, *Great Northern Railway Co. v. United States,* by arguing that the property interests granted by the 1875 Act were mere easements. Adopting the reasoning of *Great Northern* in full, the Supreme Court rejected the Government's attempts to limit that holding to oil and gas interests in the subsurface, which were the subject of that case. The Supreme Court also rejected the Government's argument that the National Trails System Improvement Act of 1988 ("1988 Act") demonstrated Congress's intent to preserve reversionary interests in the United States, reasoning that the 1988 Act

only governs the disposition of property the Government actually owns, not the disposition of interests granted under the 1875 Act. The Supreme Court also faulted the Government for failing to expressly reserve a reversionary interest in the right of way when it granted the patent to Melvin Brandt. Consequently, because under common law property rules an abandoned easement disappears and all rights revert to the underlying landowner, Brandt obtained his full fee interest free of any encumbrances on the right of way when the successor to LHP&P abandoned it.

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RAILS-TO-TRAILS *(continued from page 4)*

The Rails-to-Trails Program and the Impact of *Brandt*[3]

The *Brandt* decision leaves many questioning what will become of the many recreational trails that were created pursuant to the rails-to-trails movement. The rails-to-trails movement started 35 years ago, seeking to convert thousands of miles of abandoned railroad lines into a vast network of recreational trails across the United States. The 1976 Railroad Revitalization and Regulatory Reform Act set up the Rails-to-Trails Grant Program and provided the first financial and technical assistance to preserve corridors and create recreational trails. To date, there are 1,853 open rail trails for a total of 21,768 miles. In Colorado alone, there are 35 open rail trails totaling 299 miles. In Boulder County, residents can follow 14 miles of a former railway corridor on the Switzerland Trail in the foothills just west of Boulder.

Rails-to-Trails Conservancy, a nonprofit organization dedicated to preserving former rail lines for recreational use, opened in 1986 and has been a major player in the rail-to-trail movement ever since. According to the Conservancy, the *Brandt* ruling will not directly affect the vast majority of rail-trails and rail-trail projects; the ruling will only affect non-rail-banked corridors that were created pursuant to the General Railroad Right-of-Way Act of 1875. This does not include:

• A railbanked rail corridor (a voluntary agreement between a railroad company and a trail agency enabling the agency to use an out-of-service rail corridor as a trail until the railroad company may need to use the corridor again for rail service).

• A rail corridor that was originally acquired by the railroad by a federally granted right-of-way through federal lands before 1875.
• A corridor that was originally acquired from a private landowner.
• A rail corridor where the trail manager owns the land adjacent to the corridor.
• A rail corridor where the trail manager owns full title (fee simple) to the corridor.
• A rail corridor that falls within the 13 original colonies.

The Conservancy notes that most railroad corridors created under the 1875 Act are located west of the Mississippi River. Unfortunately, the Brandt decision still leaves an uncertain future for many of the rail-trail corridors, Colorado's beloved trails included.

The Authors:
Tracy Taylor is a 2011 graduate of the University of Denver Sturm College of Law. She is currently seeking employment in the natural resources/environmental field.

Ann Rhodes is an associate attorney at Berg Hill Greenleaf & Ruscitti in Boulder where she practices civil litigation and water, natural resources, and environmental law. She is chair of the Natural Resources and Environment section of the Boulder County Bar Association and secretary of the Environmental Law Section of the Colorado Bar Association.

FOOTNOTES:
1. The Supreme Court's slip opinion can be obtained at http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf. For ease of reading, this article omits pinpoint citations.
2. Chief Justice Roberts wrote the opinion for an 8-1 majority; Justice Sotomayor was the lone dissenter.
3. Rails-to-Trails Conservancy, http://www.railstotrails.org/index.html.

HOMESTEAD EXEMPTION FOR WATER RIGHTS: RECENT COURT OF APPEALS DECISION AND POTENTIAL CONSIDERATIONS AND QUESTIONS

By Andrea Aseff Kehrl

A recent Court of Appeals decision, *Shigo, LLC v. Hocker,* 2014 COA 16, 2014 WL 785478 (Feb. 27, 2014), addressed whether the protections provided by the Colorado homestead exemption statute, C.R.S. § 38-41-201 to 212, include water rights. This article (I) provides an overview of the *Shigo* decision and (II) suggests that there may be outstanding questions and practical considerations in the wake of the Shigo decision.

I. Overview of *Shigo, LLC v. Hocker*

The background dispute involved Plaintiffs-Appellees Shigo, LLC et al. ("Shigo") suing Defendant-Appellant Hocker in 2010, resulting in a default judgment against Hocker for money damages exceeding four million dollars. *Shigo, LLC v. Hocker,* 2014 COA 16, 16 2014 WL 785478 (Feb. 27, 2014). After being unable to collect on the judgment, Shigo served Hocker with a writ of execution seeking to levy Hocker's shares in the Highland Ditch Company to satisfy the judgment. *Id*.

In protest, Hocker filed a claim pursuant to the homestead exemption statute, asserting that her property qualified as a homestead exempt from creditors and that her mutual ditch shares were part of the homestead property. *Id*. The homestead exemption was designed to spare homestead property from seizure by creditors, thus ensuring that families kept their homes regardless of financial conditions. *Id*. at 2. The district court disagreed with Hocker and found that while the homestead may consist of a "house…or a farm consisting of any number of acres," a farm only refers to "the dirt and structure [or residence] itself," not the water rights associated with the "farm." *Id*. As such, the district court held that the homestead exemption does not apply to Hocker's ditch company shares and denied her claim of exemption. *Id.* Hocker appealed.

On appeal, the Colorado Court of Appeals addressed two chief questions in reaching its ruling: (1) whether the homestead exemption for a "farm" includes water rights associated with the farm and (2) if so, what factor(s) determine whether particular water rights qualify for the exemption. In regard to whether the homestead exemption for a "farm" may include water rights, the Court analyzed the meaning of the word "farm." *Id*. at 2. The Court opined, "the word 'farm' connotes more than an empty tract of dirt…and is generally understood to be a tract of land used for agricultural purposes." *Id*. at 2. And as the Court described, without irrigation, agricultural lands in Colorado would cease to operate:

> In our state's semi-arid climate, land is often not suitable for agricultural use unless it is irrigated. Indeed, irrigation water is often the thing that distinguishes a fertile farm from a barren lot or a fallow field. … Thus, the fact that the General Assembly saw fit to make farms part of the homestead [statutory definition] suggests that it intended to protect more than just dirt and buildings.

Id. at 2-3. As such, the Court held that "the homestead exemption for a 'farm' includes not just the farm's soil, but also the water rights appurtenant to the land." *Id*. at 3.

The Court next addressed which of Hocker's water rights would qualify for

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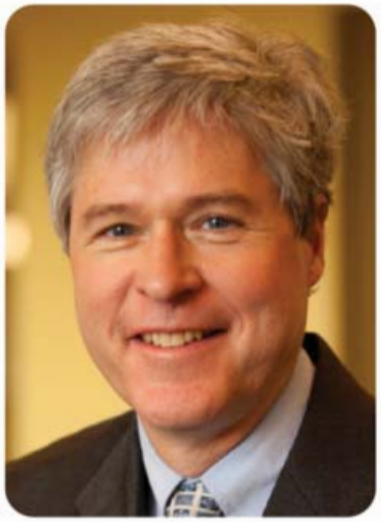


homestead protection, the key factor being appurtenance.[1] Citing long-standing Colorado caselaw,[2] the Court explained that water rights may or may not be appurtenant to land, and whether water rights are appurtenant to land hinges on their necessity to the use and enjoyment of the land. *Id*. at 3. Yet the Court also indicated "[o]nly water rights that are appurtenant to a tract of land are treated as part of the land." *Id.* (emphasis added.) On these grounds, the Court held that "only water rights that are appurtenant to Hocker's homestead property are include[d] in the homestead.," and thus protected under the homestead exemption. *Id..* Therefore, the Court remanded the matter to the district court to make factual findings as to the acreage of agricultural operations and the amount of water necessary to sustain those agricultural operations. Id. Based on these determinations, the amount of water necessary for the farming operation is considered appurtenant to the land and exempt as part of the homestead. *Id.*

Judge Booras dissented from the majority's decision, disagreeing that the homestead exemption was intended to protect ditch company shares. *Id*. at 5. The dissent describes the axiom in Colorado water law that a water right is not necessarily appurtenant to land and, thus, can be bought, sold, and transferred separately from land. *Id*. (citing *E. Ridge of Fort Collins, L.L.C. v. Larimer & Weld Irrigation Co.,* 109 P.3d 969, 973 (Colo. 2005)). Thus, a determination of appurtenance of water rights typically arises in the land transfer context. *Id.* For instance, where a deed conveying land is silent as to whether water rights are also transferred, the transfer of the water rights depends on whether they are necessary and essential for the beneficial use of the land—i.e., appurtenant. Id. If the water rights are determined to be appurtenant to the land conveyed, a presumption arises that a grantor intended to include the water rights in the conveyance. *Id.*

According to the dissent, and contrary to the majority's description of the term, appurtenance of water rights does not mean treatment as part of the land. *Id.* Further, because the case did not involve a conveyance of land and a determination of whether such conveyance included water rights, the dissent considers improper the majority's characterization of Hocker's water rights as appurtenant to land. *Id.*

The dissent also diverges from the majority opinion with regard to the meaning of "farm," observing that in other Colorado statutes, the term "farm" does not necessarily involve cultivation of crops. *Id.* at 6 (farm can include stock, dairy, poultry, fur-bearing animals, nurseries, ranges, greenhouses, orchards). Raising practical constraints on the use of water rights, the dissent further disagrees as to whether affording the homestead exemption to irrigation water rights in fact guarantees the use and enjoyment of irrigated farm land:

[D]ue to the nature of water rights in Colorado, ownership of a water right does not guarantee that enough water pursuant to that right will be available for irrigation of a particular tract of land. … The risk of curtailment is inherent to Colorado water rights holders. Therefore, exempting a water right from creditors does not guarantee that the character of a homestead as irrigated farm land will be maintained from year to year.

Id. at 7. (internal citations omitted). On this basis and the plain language of the homestead exemption statute, the dissent concludes: "the majority reads too much into the single word 'farm,' and in doing so, makes a decision of public policy that should be left to the General Assembly." Id. at 8. The dissent does not read the plain language of the statute to include water rights and, thus, would affirm the trial court's judgment. *Id.*

II. Considerations and Questions

The Court's holding in *Shigo* that the homestead exemption statute includes water rights appurtenant to homestead land raises several practical considerations and questions.

For one, as the dissent noted, the question of appurtenance of water rights to land typically arises in the land transfer context, where a deed is silent as to the transfer of water rights. In such cases, the appurtenance analysis primarily focuses not on the water rights being treated as *part of the land* but on whether the grantor intended that the water rights be transferred along with the land. See, e.g., *Hastings & Heyden Realty Co. v. Gest,* 70 Colo. 278, 201 P. 37 (1921)(in determining whether water rights are appurtenant to land, the provisions of the deed control, and if the deed is silent on the subject, the intention of the parties is to be determined from all circumstances, including whether the water is necessary and essential to the beneficial use and enjoyment of the land).[3] The appurtenance analysis in regard to the levy of water rights associated with a homestead is somewhat unique, although levy is a real property transfer as well, albeit a forcible one. , Also somewhat unique is the Shigo decision's treatment of necessity of the water rights for use of the land as the key factor in an appurtenance analysis. Cases preceding *Shigo* note that necessity of the water rights for use of the land is one circumstance of all the circumstances that may evidence the grantor's intent in an appurtenance analysis.

Other questions and considerations in applying *Shigo* may involve the following:

• If use and enjoyment as irrigated farm land cannot be guaranteed based on practical constraints such as water availability and priority administra-

(continued on page 11)

RIDICU - LAWS

RESOLUTION NO. 92-043

WHEREAS, legend, purported recent findings and spoor suggest that Bigfoot may exist, and
WHEREAS, if such creature exists, it is inadequately protected and in danger of death or injury;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that, Whatcom County is hereby declared a Sasquatch protection and refuge area, and all citizens are asked to recognize said status.

BE IT FURTHER RESOLVED, this resolution shall be effective immediately.

APPROVED the 9th day of June, 1991

Whatcom County Council, Whatcom County, Washington

Wyoming 16-6-802.
Construction of new public buildings; state funds.

(a) The original construction of any new building shall include works of art for public display, which shall be included by the agency in determining total construction costs of the building at an amount equal to one percent (1%) of total costs but not to exceed one hundred thousand dollars ($100,000.00) on any one (1) project. Any new construction project for which the total cost is less than one hundred thousand dollars ($100,000.00) is exempt from this subsection.

HOMESTEAD EXEMPTION FOR WATER RIGHTS (continued from page 9)

tion, should the homestead exemption be afforded to water rights on the basis of their necessity for use and enjoyment of the land as irrigated farm land, from a policy perspective? Considering the necessity of water rights for the use and enjoyment of particular lands seems somewhat contrary to the truism that Colorado water rights are separate real property rights, severable from land. However, the scope of a water right property interest is defined by its beneficial use, which for irrigation rights is use on specified lands.

• With most land in semi-arid Colorado unable to cultivate crops without irrigation water, is a practical result of Shigo that most irrigation water rights associated with the agricultural acreage of a homestead farm are likely to be considered necessary for the use of farmland (i.e., appurtenant) and thus afforded homestead exemption protection?

• Where a homestead owner leases part of his/her appurtenant irrigation water rights and uses only some of those water rights to irrigate the homestead farm, would a court deny homestead exemption protection to the portion of leased water rights? Would such an analysis turn on appurtenance in the sense of the parties' intent and/or the necessity of using the homestead, in its entirety or in part, as irrigated farmland?

• If legislation is passed that allows a more flexible change-in-use system (such as currently pending House Bill 14-1026 which would allow applicants who seek to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the permanent dry-up of irrigated lands to apply for a change in use without designating specific future beneficial uses) and a homestead owner obtained such a flexible change in use, would the water right, in whole or in part(s), be eligible for homestead exemption protection?

• As the law stands today, is the General Assembly likely to clarify the meaning of "farm" in the homestead exemption statute to specifically include water rights?

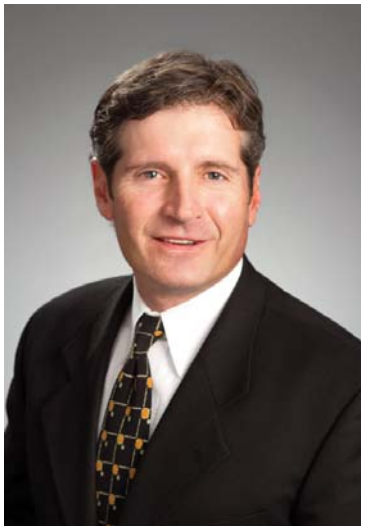
Notwithstanding some unanswered questions, practitioners may rely on the *Shigo* holding—and specifically the factors the Court considers when determining appurtenance for farm exemption purposes—when advising homestead owners and/or creditors.

FOOTNOTES:

1. The fact that Hocker's water rights are mutual ditch company shares, which are delivered via the Highland Ditch to a pond on Hocker's farm, was not a dispositive factor in the Court's holding. After all, as the Court described, shares of stock in a mutual ditch company represent water rights and the real property interest in those water rights. *Id.* at 4. (*citing Jacobucci v. Dist. Court*, 189 Colo. 380, 387-88, 541 P.2d 667, 672 (1975)). "Naked title" to ditch company shares is held in the ditch company's name, but the water rights are actually owned by the shareholders. *Jacobucci,* 189 Colo. at 388, 541 P.2d at 673. Thus, the Court treated the ditch company shares no differently than other water rights.
2. *E.g., Hastings & Heyden Realty Co. v. Gest,* 70 Colo. 278, 201 P. 37 (1921).
3. See also *Denver Joint Stock Land Bank v. Markham,* 106 Colo. 509, 513, 107 P.2d 313, 315 (1940); *Kinoshita v. North Denver Bank*, 181 Colo. 183, 508 P.2d 1264 (1973); *Mesa County Land Conservancy, Inc. v. Allen,* 2012 COA 95, ¶ 33, 318 P.3d 46, 55 (2012), *cert. denied*, 2013 WL 4008745 (Aug. 5, 2013).

PRESIDENT'S PAGE

By Judson Hite



This month, meet TWO judges: Bruce Langer and Robert Gunning.

Judge Langer first. The 20th Judicial District's newest judge was born in Boulder, grew up in the suburbs of Chicago, but returned to summer in Colorado – which is a great time to get out of Chicago (as is the winter). Judge Langer moved back to Colorado as soon as he turned 18. His first four years here he serviced industrial conveyor belts in the mining and power plant industries. Identifying the need for a safer workplace, he entered college at CU, and emerged as a reporter with the Daily Camera.

Covering all the beats, the future judge was eventually assigned to cover the courts. There he was exposed to a wide variety of cases, though mostly criminal matters. He recalls the prosecution of Michael Bell, accused of quadruple homicide, after escaping a department of corrections work farm, and who had to be shot to be re-incarcerated. He recalls a young Dan Caplis suing the City of Boulder for failing to properly sand and clear icy streets, and Judge Bellipanni ruling upon whether CU athletes could be randomly drug tested.

He was hooked, and entered law school. He interned with the District Attorney's office, and upon graduation worked there full time for the next 18 years. Through his exposure to DAs as a journalist, Judge Langer came to find the office more interested in justice that in grand standing. During his tenure he handled all types of cases, worked as a special prosecutor for other districts, and mentored and trained many aspiring prosecutors. He began applying for judicial positions when he realized his next move up was to become the District Attorney, a job he did not want.

By his own admission, he wanted a judgeship "a lot" and applied a lot to become one. Last September his perseverance paid off when he was chosen to replace the Hon. Gwyneth Whalen. Judge Langer says he loves the position, enjoys the support of his colleagues, and is fast learning to manage a civil docket after nearly two decades on the criminal side. He has been surprised at the different prism through which he views a case now that he has no stake in the fight; the strengths and weaknesses of the facts and law are not the only issues he has to manage, which include juries, procedure and evidentiary rulings.

Judge Langer confides that he misses the broad social interaction he enjoyed working at the DA's office, where he may have interacted with 100s of people a week. Now, he and his judicial colleagues, although very collegial, largely work alone in their chambers, albeit surrounded by staff and clerks.

His heretofore unknown self-revealed characteristic, is not actually unknown, but is not widely known: as a reporter, he finagled a ride on an F-18. In their periodically performances at the JeffCo air show, the Blue Angels would send an advance team to drum up publicity with the local press, including rides in a two-seater trainer. Bruce got one of those rides, and he got to steer – a little – and he got schooled a little: apparently at 8 or 9 times the force of gravity, the uninitiated human blacks out. Pushed through a tight turn by the F-18 pilot, Judge Langer blacked out, but he explains the blackout was not complete … he couldn't move, or feel or see, but his brain was functioning, leaving him in a conscious blackout. I think it's a good thing he wasn't steering then.

Thank you Judge Langer for your time and your dedication to local bar.

Next: Magistrate Judge Robert Gunning. Judge Gunning is the newly appointed (February 2013) District Court Civil Division Magistrate of the 20th Judicial District. He grew up in Syracuse, New York, attended college at William & Mary, and law school at Berkeley. After becoming well educated, he worked practicing water law in Sacramento, before moving to Denver with the intention of teaching high school. He waived in to the practice of law here, took a summer clerkship, found out he enjoyed civil litigation and signed on for three years with a Denver solo practitioner.

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PRESIDENT'S PAGE *(continued from page 12)*

Judge Gunning then worked five years with the Boulder County Attorney's Office as a property tax specialist, before joining a state and local tax firm as a litigator. After seven years there, he became an Administrative Law Judge with the Colorado State Personnel Board, a position he held for two years before being appointed as a Magistrate to the 20th JD.

Judge Gunning confides he sought the bench looking for a new challenge and believing he had the mindset to look at facts and law and reach just decisions. He also looked forward to continuing to serve the community in a public role.

He has found the experience rewarding and believes himself fortunate to have been appointed. The judges and staff he works with are excellent and hardworking colleagues. The attorneys who appear before him are great advocates. He's been surprised by the sheer number and variety of discovery disputes, and is impressed by the creativeness and diligence of the advocates. Like Judge Hartman, Judge Gunning sees a lot of pro se litigants who tend to complicate the judicial process and make matters take longer and become more difficult than necessary.

Suggestions to those appearing before him are to be prepared and know the facts and law of your case. Judge Gunning notes that the District is running a pilot project for personal injury cases requiring honest "conferral" before seeking Court intervention in discovery disputes, which are moved directly to hearing without motion practice. Judge Gunning suggests that the conferral obligation applies to all discovery disputes, not just in the pilot program, and that he believes conferral often requires more than mere email exchanges. Consider yourself warned before your next discovery dispute.

Like Judge Langer, Judge Gunning's unknown characteristic is also a known, just not widely: while studying for his teaching certificate, the young Gunning worked as Jonesy the Giraffe donning mascot attire to cajole school kids into better dental hygiene. A friend working at McNichols got Judge Gunning invited to a battle of the mascots during the half-time of a Nuggets game. Nine others, including the Jolly Green Giant, showed up. Judge Gunning's claim to fame however went up in flames when he got the ball under the hoop for an easy layup, but blocked his own shot with the giraffe head! The game ended tied at zero.

Thank you too Judge Gunning for sharing your time and insight.

This concludes our meet the new guys on the bench series. Recall that nearly every other judge of the 20th JD is sitting for retention this year. If you have been sent a judicial questionnaire regarding one of the judges, please complete it and return it to the Judicial Performance Commission.

PRO BONO PAGE

Pro Bono Referrals

Twenty-five cases were referred during the month of March. Thank you to the following attorneys:

Scott Brenner
Brooke Brestel
Christina Ebner
Melody Fuller
Peggy Goodbody
Maki Iatrides
Matt James
Christopher Jeffers
James Lionberger
Roseann Murray
Ellen Ross
Craig Small
Mary Street
Chelsea Victor
Bruce Wiener

Pro Se Program Volunteers

Josh Anderson
Johanna Blumenthal
M.L. Edwards
John Hoelle
Lauren Ivison
Michael Morphew
Michelle Stoll
Helen Stone

BCAP Volunteers

Thank you to the following attorneys who accepted pro bono referrals for the Boulder County AIDS Project in March:

Paul Bierbaum

Pro Bono Corner

Interested in a Pro Bono case? Please call Erika at 303-449-2197. CLE credits available for pro bono service.

PROFESSIONALISM ON-CALL LIST

May 5	**Mark Langston**	**303.440.9684**
May 12	**Meghan Pound**	**303.443.8010**
May 19	**Tom Rodriquez**	**303.604.6030**
May 26	**Karl Kumli**	**303.447.1375**

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