

Attachment N-1

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
Consolidated Civil Case Nos. 2782, 5016 and 5017
and

District Court Water Division No. 5, Colorado Garfield County Courthouse 109 8 th Street, #104 Glenwood Springs, Co 81601-3303	November 1, 2010 DRAFT ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN SUMMIT COUNTY.	Case Number: 2003CW039 (Part 2 of 2) (1987CW376; 2003CW39 (Part 1 of 2) WD5) Division 5 Courtroom
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE TO MAKE ABSOLUTE	

THIS ACTION comes before the Court upon an application for Finding of Reasonable Diligence and to Make Absolute filed by the City and County of Denver, acting by and through its Board of Water Commissioners for Dillon Reservoir refill right. This conditional water right was originally adjudicated in Case No. 87CW376, Water Court Water Division 5 on February 13, 1997 and confirmed and approved by the United States District Court, District of Colorado on September 23, 1999.

I. FINDINGS OF FACT

The Court has made such investigations as are necessary to determine whether the statements in the application are true and is fully advised with respect to the subject matter of this application. The Court, under the standards codified at §§ 37-92-301(4) and 37-92-305(9), 10 C.R.S. finds, determines, and rules as follows:

GENERAL INFORMATION

1. Name, address, telephone number of Applicant:

City and County of Denver, acting by and through its Board of Water Commissioners
("Applicant" or "Denver")
1600 West 12th Avenue,
Denver, Colorado 80204-3412
(303) 628-6460

2. Application. The Applicant filed an Application for a Finding of Diligence and to Make Absolute with the Water Clerk on February 28, 2003 pursuant to § 37-92-302, 10 C.R.S. and this Court's decree in Case No. 87CW376 dated February 13, 1997. The Applicant also filed the Application with the United States District Court, District of Colorado for confirmation and approval that this decree does not adversely affect the objectives of the Final Decree in Consolidated Case Nos. 2782, 5016 and 5017. Applicant filed an amended application to make an amount absolute on February 16, 2006.

3. Notice and Jurisdiction. Notice of the Application was given in the manner required by 37-92-302(3), 10 C.R.S. The Water Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected by this application, regardless of whether those persons or owners of property have appeared. The United States District Court has jurisdiction under its continuing jurisdiction in Consolidated Case Nos. 2783, 5016 and 5017.

4. Statements of Opposition. The following parties filed timely statements of opposition: Middle Park Water Conservancy District ("Middle Park"), Colorado River Water Conservation District ("River District"), Board of County Commissioners of the County of Summit ("Summit County"), Orchard Mesa Irrigation District ("Orchard Mesa"), Grand Valley Water Users Association ("GVWUA") and Ute Water Conservancy District ("Ute Water").

5. Summary of Consultation. The Division Engineer, Water Division No. 5 consulted on the Application and issued a report on November 13, 2003. On November 18, 2003 and February 27, 2004, the Applicant served copies of the Division Engineer's Report/Summary of Consultation on all parties.

6. Stipulation. By stipulation dated August 1, 2003, Summit County and the River District consented to an entry of a decree for diligence and Denver agreed, if not otherwise settled by separate stipulation, to not seek a final determination on the amount made absolute until after March 1, 2005. Denver further agreed to bifurcate its claim to make absolute. On or about November 2, 2003, the water court granted the motion to bifurcate. The water court entered a diligence decree (Part 1 of 2) on October 29, 2004 and the United States District Court subsequently approved the diligence decree on November 15, 2004.

DESCRIPTION OF DILLON RESERVOIR REFILL RIGHT

7. Name of structure. Dillon Reservoir (Refill).
8. Description of the conditional water right (“Original Decree”).
 - A. Date of Original Decree and Case Number. February 13, 1997, by the District Court for Water Division No. 5, Case No. 87CW376.
 - B. Legal description. The reservoir is located in Sections 7, 8, 17, 18, 19, 20, 21, 30, 31, T5S, R77W of the 6th P.M., and Sections 13, 23, 24, 25, 26, 35 and 36, T5S, R78W of the 76th P.M. The dam is located across the channel of the Blue River, with the easterly end located at a point whence the E 1/4 corner of Section 18, T5S, R77W of the 6th P.M. bears South 59° 00’ East 5507.7 feet.
 - C. Sources. The sources of water supply for storage in Dillon Reservoir are the Blue River, the Snake River, and Ten Mile Creek, all of which are tributaries of the Colorado River and the waters which would naturally become a part of said streams.
 - D. Date of appropriation. January 1, 1985.
 - E. Amount.

141,712	acre feet, ABSOLUTE
<u>33,288</u>	acre feet, conditional
175,000	acre feet, total
 - F. Uses. All municipal uses, including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds. This water right may also be used for flood control. Denver’s use of waters stored under this refill priority shall comply with and be subject to the Blue River Decree and any stipulations, orders or judicial decisions entered in Consolidated Case Nos. 2782, 5016 and 5017.

CLAIM TO MAKE ABSOLUTE

9. Date. April 1, 1996- March 31, 1997.
10. Amount. 141,712 acre feet.
11. Use. During the period April 1, 1996 through March 31, 1997, 141,712 acre feet of water was used to: (1) replenish and recover water originally stored under Denver’s June 24, 1946 storage right, from which water was released to the Blue River for flood control under

paragraphs 11(A) and (B) of the Original Decree; (2) bypass refill water for flood control under paragraph 11(C) of the Original Decree; and (3) store water and replace evaporation losses after the first fill under paragraph 11(D) of the Original Decree. Pursuant to paragraph 17(D) water in storage under the refill right on April 1 of any administrative year was considered and accounted for as water stored under the first fill decree in that administrative year.

12. Place of use where water is applied to beneficial use. The Applicant subsequently delivered through the Roberts Tunnel the water stored in Dillon Reservoir under the refill water right to areas served by the Denver Municipal Water System as depicted in the map attached and incorporated hereto as Exhibit A.

II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this Court concludes as a matter of law that:

13. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. § 37-92-301(4) (2010).

14. Notice. Denver Water satisfied all requirements for notice under C.R.S. § 37-92-302(3) (2010).

15. Can and Will. No claim for a water right may be recognized or a decree therefor granted except to the extent that the waters have been diverted, stored, or otherwise captured, possessed, and controlled and have been applied to a beneficial use. C.R.S. § 37-92-305(9)(a) (2010).

16. Perfection of Water Rights. In order to perfect the conditional right, the applicant must satisfy the following criteria: (1) capturing, possessing, and controlling water; and (2) the application of the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992, 998-99 (Colo. 1954)). The applicant may then petition the water court to declare the right absolute for purposes of fixing the appropriator's place in the priority system in relation to all other appropriators. *New Anderson Ditch Co.*, 962 P.2d 962; C.R.S. § 37-92-306 (2010).

17. Application is lawful. The Applicant has satisfied all statutory and legal requirements to make absolute a portion of the conditional water right adjudicated in Case No. 87CW376, Water Division 5.

III. JUDGMENT AND DECREE

The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

18. THIS COURT DETERMINES AND RULES that the Applicant placed to beneficial use 141,712 acre feet in accordance with the Original Decree and is entitled to that amount being made absolute.

19. THE COURT FURTHER DETERMINES AND RULES that pursuant to the terms of the decree entered in Case No. 03CW039 (Part 1 of 2) the remaining conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

DATED this ___ day of ____, 2010.

Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY
MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

James Boyd
Water Judge
Water Division No. 5
State of Colorado

THE WITHIN FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE DO NOT ADVERSELY AFFECT THE OBJECTIVES OF THE FINAL DECREE ENTERED BY THIS COURT IN CONSOLIDATED CASE NOS. 2782, 5016 AND 5017; AND THE DECREE IS APPROVED AND CONFIRMED.

DATED: _____

BY THE COURT

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO