

RECEPTION#: 2015006307, 09/04/2015 at
02:58:57 PM,
1 OF 7, , Additional Names Fee: Doc
Code:ORDER
Sara L. Rosene, Grand County Clerk,
Colorado

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 89CW298

RECEIVED

JUL 30 '90

ORDER, JUDGMENT AND DECREE OF THE COURT

WATER RESOURCES
STATE ENGINEER
COLO

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE MUNICIPAL
SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, IN
GRAND COUNTY

The Court having considered the pleadings and evidence presented at the hearing in this matter on July 19, 1990, and being fully advised in the premises, does hereby find and conclude:

1. The Application herein was filed by the Municipal Subdistrict, Northern Colorado Water Conservancy District ("Subdistrict") with the Clerk of the Water Court on December 29, 1989 and was referred to the Water Referee by the Water Judge. The Application requested that conditional water rights in the amount of 410 c.f.s. out of the Colorado River for the Windy Gap Pump, Pipeline and Canal, the Windy Gap Pump, Pipeline and Canal, First Enlargement, and the Windy Gap Pump, Pipeline and Canal, Second Enlargement, be made absolute, for a total of 600 c.f.s., for municipal, industrial, irrigation, and recreational uses, including reuse and successive uses. The Subdistrict claims that on June 24, 1988, it diverted at least 600 c.f.s. of water under and in accordance with the subject conditional and absolute water rights, and applied it to beneficial uses in Northern Colorado, including the use, reuse, and successive use for municipal, industrial, agricultural, and recreational uses.

2. The following Statements of Opposition were filed in this matter:

- a. Middle Park Water Conservancy District, on or about February 14, 1990;
- b. Board of Summit County Commissioners, on or about February 21, 1990; and
- c. City and County of Denver, on or about February 26, 1990.

No other statements of opposition, entries of appearance or petitions to intervene have been filed herein and the time for filing any such pleadings has expired.

3. Upon Motion to Rerefer to the Water Judge made by Applicant pursuant to C.R.S. § 37-92-303(2), the Water Referee

CENTRAL FILES

entered an Order on March 19, 1990 rereferring this matter to the Water Judge.

4. On March 1, 1990, the Statement of Opposition filed by the Board of Summit County Commissioners was ordered withdrawn pursuant to the motion of February 27, 1990.

5. On July 18, 1990, Applicant and Middle Park Water Conservancy District stipulated to the entry of an absolute decree in accordance with the application. A copy of the Stipulation was filed with the Court on July 19, 1990.

6. On July 19, 1990, the Statement of Opposition filed by the City and County of Denver was ordered withdrawn pursuant to the motion dated July 18, 1990.

7. Notice of the Application was provided in accordance with law and the Court has jurisdiction over the subject matter of the Application and over all parties affected thereby, whether they have appeared or not.

8. Name, address, telephone number of applicant:
Municipal Subdistrict, Northern Colorado Water
Conservancy District ("Subdistrict")
P.O. Box 679
Loveland, Colorado 80539
(303) 667-2437

9. Name of structures:

Windy Gap Pump, Pipeline and Canal, Windy Gap Pump,
Pipeline and Canal, First Enlargement, and Windy Gap
Pump, Pipeline and Canal, Second Enlargement

10. Description of conditional water rights to be made absolute:

A. Date of Original Decrees: October 27, 1980

Case Nos.:

Windy Gap Pump, Pipeline and Canal, a part of the
Windy Gap Water System: Case No. C.A. 1768, Grand
County District Court

Windy Gap Pump, Pipeline and Canal, First
Enlargement, a part of the Windy Gap Water System:
Case No. W-4001, District Court, Water Division
No. 5

Windy Gap Pump, Pipeline and Canal, Second
Enlargement, a part of the Windy Gap Water System:

Case No. 80CW108, District Court, Water Division
No. 5

B. Locations:

Windy Gap Pump, Pipeline and Canal and Windy Gap Pump, Pipeline and Canal, First and Second Enlargements: A point on the north bank of the Colorado River whence the northwest corner of Section 25, T. 2 N., R. 77 W. of the 6th P.M. bears north 17°30' west a distance of 2,380 feet.

C. Source: Colorado River (for all structures).

D. Appropriation Dates:

Windy Gap Pump, Pipeline and Canal: June 22, 1967

Windy Gap Pump, Pipeline and Canal, First Enlargement: July 9, 1976

Windy Gap Pump, Pipeline and Canal, Second Enlargement: April 30, 1980

Originally Decreed Amounts:

Windy Gap Pump, Pipeline and Canal: 300 c.f.s. conditional

Windy Gap Pump, Pipeline and Canal, First Enlargement: 100 c.f.s. conditional

Windy Gap Pump, Pipeline and Canal, Second Enlargement: 200 c.f.s. conditional

E. Uses: Municipal, irrigation, industrial and recreational.

11. At the hearing on this matter on July 19, 1990, Applicant presented evidence in support of the Application. The evidence consisted of the testimony and affidavit, including appendices, of Larry D. Simpson, which was un rebutted, and established that development of the subject conditional water rights and the application of water to beneficial uses were as follows:

a. The subject water rights are components of the Windy Gap Water System, which is an integrated project also known as the Windy Gap Project. The Project water right components consist of the Jasper Pump and Pipeline, Jasper Reservoir, Windy Gap Pump, Pipeline and Canal, Windy Gap Pump, Pipeline and Canal, First

Enlargement, Windy Gap Pump, Pipeline and Canal, Second Enlargement, and the Windy Gap Reservoir.

b. The Subdistrict was awarded decrees for conditional water rights in the total amount of 600 c.f.s. for the following components of the Windy Gap Project which are the subject of this Application: (i) the Windy Gap Pump, Pipeline and Canal, decreed for 300 c.f.s. in Case No. C.A. 1768, District Court, Grand County with an appropriation date of June 22, 1967; (ii) the Windy Gap Pump, Pipeline and Canal, First Enlargement, decreed for 100 c.f.s. in Case No. W-4001, District Court, Water Division No. 5 with an appropriation date of July 9, 1976; and (iii) the Windy Gap Pump, Pipeline and Canal, Second Enlargement, decreed for 200 c.f.s. in Case No. 80CW108, District Court, Water Division No. 5 with an appropriation date of April 30, 1980. Diligence decrees for these conditional water rights were entered by this Court in Case Nos. 84CW110, 84CW111, and 84CW112.

c. The decrees entered in Case Nos. C.A. 1768, W-4001, 80CW108 and 85CW135 approved, and incorporated as an integral part of these decrees, the "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project", dated April 30, 1980, as modified in part by the "Supplement to Agreement of April 30, 1980", dated March 29, 1985. Pursuant to these Agreements, the Subdistrict paid \$10,200,000.00 to the Colorado River Water Conservation District, which in combination with the other provisions agreed to by the Subdistrict, constitutes a full and complete plan which satisfies the requirements of C.R.S. § 37-45-118(1)(b)(IV) for the diversion by the Windy Gap Project under its decrees of up to 65,000 acre feet annually on a ten-year running average with no more than 90,000 acre feet in any given year, as measured through the Alva B. Adams tunnel of the C-BT Project. In addition, up to 3,000 acre feet of water shall be diverted annually by the Windy Gap Project for Middle Park Water Conservancy District upon the request of that District.

d. The State Engineer officially accepted the Windy Gap Dam for water storage on September 12, 1985.

e. One hundred ninety (190) c.f.s. of the 300 c.f.s. conditional water right for the Windy Gap Pump, Pipeline and Canal, and four hundred forty-five (445) acre feet of the 1,546.14 acre foot conditional water right for the Windy Gap Reservoir, were decreed absolute in Case No. 88CW169, District Court, Water

Division No. 5, dated February 6, 1989. The remaining 110 c.f.s conditional decree for the Windy Gap Pump, Pipeline and Canal, the remaining 1,101.14 acre foot conditional decree for Windy Gap Reservoir, and the conditional decrees for the Jasper Pump and Pipeline, Jasper Reservoir, Windy Gap Pump, Pipeline and Canal, First Enlargement, and Windy Gap Pump, Pipeline and Canal, Second Enlargement, were continued in full force and effect as conditional water rights until May, 1992 (which by operation of SB 90-13 has been extended to May, 1994) by the decrees entered in Case Nos. 88CW169, 88CW170 and 88CW171.

f. The Windy Gap Project was designed to divert water available in the Colorado River in priority in an economically feasible manner. When the Windy Gap Project is in priority, the number of the four pumps which are operated on a daily basis depends on the quantity of and fluctuations in the inflows to the Windy Gap Project which are projected to be available. The inflows are regulated by Windy Gap Reservoir, which acts as a forebay for the Windy Gap pumps and accommodates short term fluctuations in the Colorado River. Optimum operation of the Windy Gap Project requires the operation of the minimum number of pumps at any time that will divert average daily inflows to the Windy Gap Reservoir.

g. In June, 1988, the Subdistrict diverted approximately 19,863 acre-feet of water pursuant to the conditional water rights decreed in Case Nos. C.A. 1768, Grand County District Court, and W-4001, 80CW108, 85CW135, Water Court, Water Division No. 5, and the absolute water right decreed in Case No. 88CW169, Water Court, Water Division No. 5. On June 24, 1988 the Subdistrict operated the four Windy Gap Pumps and diverted water from the Colorado River at a rate of at least 600 c.f.s. The water diverted was introduced, stored, carried and delivered in and through the components of the Windy Gap and Colorado-Big Thompson Projects to and for beneficial uses of water in Northern Colorado, including the use, reuse, and successive use of water for municipal, industrial, agricultural, and recreational uses. Affidavits establishing the use, reuse, and successive use of this water to all decreed beneficial uses were admitted into evidence.

h. The diversion of water by the Subdistrict pursuant to the Windy Gap decrees in 1988 did not exceed the limit of 90,000 acre feet in one year or 65,000 acre-feet on a ten-year running average as measured through

the Alva B. Adams Tunnel of the C-BT Project, as established and allowed by the "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project", dated April 30, 1980, as modified in part by the "Supplement to Agreement of April 30, 1980", dated March 29, 1985, which agreements were approved by this Court in Case Nos. C.A. 1768, W-4001, 80CW108 and 85CW135 and incorporated as an integral part of the Windy Gap decrees.

i. The Subdistrict continued to perform its obligations under the 1980 Agreement approved by the Court as full satisfaction of the requirements of C.R.S. § 37-45-118(1)(b)(IV), which Agreement was amended in part in 1985 and, as amended, re-approved by this Court in Case No. 85CW135.

j. The Subdistrict has entered into the "Amendatory Contract for the Introduction, Storage, Carriage and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado", Contract No. 4-07-70-W0107 ("Carriage Contract"), executed between the United States of America, the Subdistrict and the Northern Colorado Water Conservancy District, and dated March 1, 1990. The Carriage Contract defines the rights and obligations of the Subdistrict with respect to the use of the facilities of the Colorado-Big Thompson Project to introduce, store, carry and deliver water diverted by the Windy Gap Project.

k. The Subdistrict has also asserted and exercised its right to use, reuse and successively use to extinction all water diverted pursuant to the Windy Gap decrees.

12. The allegations and statements in the Application are true. The Applicant has diligently worked toward the application of water from the conditional water rights which are the subject of this Application to the decreed beneficial uses, and has diverted and caused to be placed to beneficial uses water diverted at the rate of 600 c.f.s. in accordance with the Windy Gap decrees.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

13. The findings of fact and conclusions of law set forth above are hereby incorporated herein.

14. Absolute water rights are hereby awarded to the Subdistrict in the following amounts for municipal, industrial,

irrigation and recreational uses, including reuse, successive use and use to extinction of such waters for such purposes:

Windy Gap Pump, Pipeline and Canal: 110 c.f.s. in addition to the 190 c.f.s currently decreed absolute, for a total of 300 c.f.s. absolute, with an appropriation date of June 22, 1967,

Windy Gap Pump, Pipeline and Canal, First Enlargement: 100 c.f.s. absolute, with an appropriation date of July 9, 1976,

Windy Gap Pump, Pipeline and Canal, Second Enlargement: 200 c.f.s. absolute, with an appropriation date of April 30, 1980,

for a total of 600 c.f.s. absolute for these components of the Windy Gap Project.

15. Applicant has fully complied with and satisfied the requirements of C.R.S. § 37-45-118(1)(b)(IV) by virtue of the plan set forth in the "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project", dated April 30, 1980, as modified by the "Supplement to Agreement of April 30, 1980", dated March 29, 1985, which agreements were approved by this Court in Case Nos. C.A. 1768, W-4001, 80CW108 and 85CW135 and are hereby incorporated as a part of this decree.

16. This Order, Judgment and Decree shall be filed with the Water Clerk and copies hereof shall be filed with the Division Engineer for Water Division No. 5 and the State Engineer.

Done at the City of Glenwood Springs, Colorado, this 19th day of July, 1990.



Water Judge
Water Division No. 5