

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601	CO Garfield County District Court 9th JD Filing Date: Nov 29 2007 10:15AM MST Filing ID: 17456505 Review Clerk: Kathy Hall
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS, COUNTIES OF EAGLE AND SUMMIT, COLORADO	▲ COURT USE ONLY ▲
	Case Number: 02CW125 Division: 5
DECREE OF THE WATER COURT	

This matter having come before the Court on the Stipulated Motion for Entry of Decree filed herein by Co-Applicants the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver"), and the Colorado River Water Conservation District (the "River District") and Objectors Eagle River Water and Sanitation District ("Water District") and Upper Eagle Regional Water Authority ("Water Authority"), and the Court being fully advised, orders and decrees as follows:

1. Application. The application in this case was filed on May 30, 2002, by Denver. The application sought a finding of reasonable diligence for the Piney River Unit and Straight Creek Conduit of the Roberts Tunnel Collection System, and the Eagle-Colorado Collection System, as described in the decree entered in Civil Action Nos. 2371, 1548 and 1529 dated January 21, 1987 ("Consolidated Cases"). The application was referred to the Water Referee for the District Court in and for Water Division No. 5, State of Colorado ("Water Court") by the Water Judge in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969. By order dated October 5, 2005, this matter was rereferred to the Water Judge.

2. Jurisdiction. All notices required by law have been duly given and the Water Court has jurisdiction over the application and all parties affected thereby, whether or not they have chosen to appear.

3. Statements of Opposition. Statements of opposition to the application were timely filed by Climax Molybdenum Company ("Climax"), the Water Authority and the Water District. The time for filing additional statements of opposition has expired.

4. Climax Stipulation. Climax stipulated to the entry of a proposed decree on August 1, 2003. On June 20, 2007, Climax and Denver further entered into a stipulation. The Court hereby approves both of Climax and Denver's stipulations.

5. Ruling of the Water Court.

(a) Eagle-Colorado Collection System. Subject to the terms of this decree, the Court hereby finds that Denver has exercised reasonable diligence towards putting the water rights for the Eagle-Colorado Collection System, as defined in the Consolidated Cases, to beneficial use, and has established that it can and will complete such appropriations within a reasonable time. The parties have agreed, and the Court hereby orders and decrees that the conditional water rights comprising the Eagle-Colorado Collection System are continued, subject to the following modifications from the decree entered in the Consolidated Cases:

- i. the Eagle River Gravity Diversion point located near Avon, Colorado is hereby abandoned;
- ii. the diversion rate of the Eagle River Unit from the Eagle River and tributary drainage is hereby reduced from 2,500 cfs to 500 cfs;
- iii. the diversion rate of the Colorado River Unit from the Colorado River is hereby reduced from 3,000 cfs to 600 cfs;
- iv. the water diverted and stored by the Eagle-Colorado Collection System shall be used only for the following purposes: on-site recreation; direct beneficial uses within the Colorado River basin; indirect beneficial uses by replacement, substitution or exchange by West Slope and East Slope water users; and endangered fish flow purposes. The proposed Vail Pass Tunnel or pipeline over Vail Pass will not be constructed, and there shall be no other direct delivery to the East Slope.

Denver, the River District, the Water District and the Water Authority have agreed that Denver may amend the 1986 MOA to fix a priority date to the Eagle Colorado Project, subject to later approval by the Court.

(b) Straight Creek Conduit. The Court hereby finds that Denver has exercised reasonable diligence towards putting the water rights for the Straight Creek Conduit of the Roberts Tunnel Collection System to beneficial use, and has established that it can and will complete such appropriations within a reasonable time. The parties have agreed, and the Court hereby orders and decrees that the conditional water rights comprising the Straight Creek Conduit are continued.

(c) Piney River Unit. The Piney River Unit of the Roberts Tunnel Collection System was decreed in CA No. 1548 dated January 21, 1987. By Order dated November 28, 2007, the River District was granted leave to intervene as a co-applicant in this matter insofar as the application relates to the Piney River Unit.

- (1) 170 cfs Piney Right. The Court hereby finds that Denver has exercised reasonable diligence towards putting the 170 cfs decreed from the Piney River as part of the Piney River Unit ("170 cfs Piney Right") to beneficial use, and has established that it can and will complete such appropriations within a reasonable time. The parties have agreed, and the Court hereby orders and decrees that the conditional water rights comprising the 170 cfs Piney Right are continued. Denver has conveyed the 170 cfs Piney Right to the River District, the Water Authority and the Water District. By Order dated November 28, 2007, the Water Authority and the Water District were made co-applicants in this matter with respect to the 170 cfs Piney Right.

- (2) Other Piney River Unit Water Rights. Denver has conveyed all of the other components of the Piney River Unit of the Roberts Tunnel Collection System described in the Consolidated Cases to the River District. The River District has agreed, and the Court hereby orders and decrees abandoned the following components of the Piney River Unit:
 - (a) Piney Reservoir decreed for 40,000 acre feet;
 - (b) East Meadow Creek for 35 cfs;
 - (c) Meadow Creek for 30 cfs;
 - (d) Freeman Creek for 15 cfs;
 - (e) Dickson Creek and its branches for 25 cfs;
 - (f) Moniger Creek for 15 cfs; and
 - (h) The intervening drainages associated with the above creeks.

6. Future Diligence. An application for a finding of reasonable diligence shall be filed before the last day of November, 2013, with respect to the conditional water rights continued in Section 5 above, and thereafter in accordance with the provisions of C.R.S. § 37-92-301(4), so long as the owner thereof, or their successors and assigns, desires to maintain said conditional rights or until the rights are made absolute or otherwise disposed of.

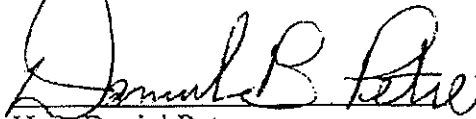
7. Costs and Fees. The parties shall bear their own costs and fees incurred in connection with this matter.

It is ORDERED that his decree shall be filed with the Water Clerk subject to judicial review.

It is further ORDERED that a copy of this decree shall be filed with the appropriate Division Engineer and with the State Engineer.

Entered this ~~23~~²⁴ day of November, 2007.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Daniel B. Petre". The signature is written in a cursive style with a large initial "D".

Hon. Daniel Petre
Water Judge
Water Division No. 5