



Dec 3 2007
8:45AM

District Court, Water Division 7, Colorado Court Address: La Plata County Courthouse 1060 E. Second Ave. Durango, CO 81301 Phone: 970-247-2304	
CONCERNING THE APPLICATION FOR CONDITIONAL WATER RIGHTS OF:	▲ COURT USE ONLY ▲
LA PLATA COUNTY	Case Number: 06CW99
IN LA PLATA COUNTY, COLORADO	Division Courtroom
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This application was filed with the Water Clerk, Water Division No. 7, on December 20, 2006, and the Court, having considered the pleadings, the recommendations of the Division Engineer, the stipulations of the parties, and the evidence presented, does hereby find and conclude as follows:

1. The applicant is La Plata County ("La Plata"), 1060 East 2nd Avenue, Durango, CO 81301, (970) 382-6211.

2. Timely and adequate notice of the application was given as required by statute, and the court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. None of the lands or water involved in this application are within the boundaries of a designated groundwater basin.

3. Timely statements of opposition were filed by the City of Durango, the State and Division Engineers, Animas Water Company, Colorado Division of Wildlife and the United States of America.

4. La Plata has entered into stipulations with Animas Water Company.

5. La Plata seeks conditional water rights as follows:

La Plata County Water Right No. 1: La Plata County claims a conditional water right from the Animas River and its tributaries at a depletive flow rate of up to 6 cfs. The water will be diverted upstream of the point in the Animas River which point is located as follows: 2540 feet east of the West line and 50 feet south of the North line of Section 16, Township 35 North, Range 9 West of the NMPM, in La Plata County. The combined net depletions associated with the future uses of this water right above this point will not exceed 6.0 cfs

The County also claims points of diversion for La Plata County Water Right No. 1 which will be located at any points upstream of the diversion point stated in paragraph 5 above that are in and tributary to the Animas River and its tributaries as located in La Plata County as shown in Exhibit A attached hereto which is incorporated by reference herein. The cumulative depletive rate for all of the La Plata County Water Right No. 1 points shall not exceed 6 cfs.

La Plata County Water Right No. 2: La Plata County claims a conditional water right from Junction Creek and its tributaries at a depletive flow rate of up to 1.0 cfs. The water will be diverted upstream of the point in Junction Creek which point is located as follows: 2515 feet east of the West line and 1360 feet south of the North line of Section 20, Township 35 North, Range 9 West of the NMPM, in La Plata County. The combined net depletions associated with the future uses of this water right above this point will not exceed 1.0 cfs

The County also claims points of diversion for La Plata County Water Right No. 2 which will be located at any points upstream of the diversion point stated in paragraph 5 above that are in and tributary to Junction Creek and its tributaries as located in La Plata County as shown in Exhibit A attached hereto which is incorporated by reference herein. The cumulative depletive rate for all of the La Plata County Water Right No. 2 points shall not exceed 1 cfs.

La Plata County Water Right No. 3: La Plata County claims a conditional water right from Lightner Creek and its tributaries at a depletive flow rate of up to 2.0 cfs. The water will be diverted upstream of the point in Lightner Creek which point is located as follows: 1050 feet east of the West line and 200 feet south of the North line of Section 25, Township 35 North, Range 10 West of the NMPM, in La Plata County. The combined net depletions associated with the future uses of this water right above this point will not exceed 2.0 cfs.

The County also claims points of diversion for La Plata County Water Right No. 3 which will be located at any points upstream of the diversion point stated in the paragraph 3 above that are in and tributary to Lightner Creek and its tributaries as located in La Plata County as shown in Exhibit A attached hereto which is incorporated by reference herein. The cumulative depletive rate for all of the La Plata County Water Right No. 3 points shall not exceed 2 cfs.

The water being appropriated under the La Plata County Water Right Nos. 1-3 will be used year around by water users within La Plata County for depletions associated with irrigation, domestic, livestock, domestic animal uses and commercial uses. La Plata claims direct use, use by storage and/or use by augmentation.

6. The source of the water rights is groundwater and/or surface water in the Animas River drainage.

7. La Plata is a county organized under C.R.S. § 30-11-101, et. seq. and holds powers which authorize it to appropriate water for its own use and the use of persons within its boundaries. The water appropriated herein is solely for use within the county boundaries. The Applicant has stipulated to an appropriation date of February 21, 2006.

8. Settlement of Division 7 Water Court case number 06CW9 and the conditional water rights applications in Division 7 Water Court case number 06CW127 and this Action allows water users within the State of Colorado to consumptively use water senior to the non-consumptive recreational in-channel diversion water rights in 06CW9, which allows development of compact entitlements in the future within the State of Colorado. Under the circumstances of these cases, La Plata, as a governmental water supply agency, has demonstrated the requisite intent to make a non-speculative conditional appropriation of unappropriated water. La Plata has demonstrated that the amount of water claimed is reasonably necessary to serve substantiated projections of population growth and development within La Plata County based on a normal rate of growth for a reasonable water supply planning period.

9. La Plata has a specific plan and intent to divert or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

10. La Plata has demonstrated that unappropriated water is available in the amounts set forth herein from the source claimed.

11. La Plata has demonstrated that the water can and will be diverted and beneficially used, and that the project can and will be completed with diligence and within a reasonable time.

12. The La Plata County Water Rights Nos. 1, 2 and 3, if exercised and administered in accordance with the provisions of this decree, will not cause injury to any owner of, or person entitled to use water under any vested water right or decreed conditional water right.

13. The water rights are depletive claims at specified locations. The county, through its land use process, issues building permits consistent with its planning and zoning process. When a permittee receives its land use approval, it will be given the option of using a portion of the La Plata water right based on predetermined depletions for each type of use as decreed. If the permittee elects to use this water right, the portion of the water right needed for the approved uses will be conveyed by deed and the ownership of that portion of the water right will pass to the water user. Persons or entities making lawfully existing water uses that do not require County land use approval may petition La Plata for conveyance of the portion of the La Plata water right needed for the established uses. The predetermined depletions and their rationale are provided below:

Depletion Calculations. The depletions associated with these assumptions are determined to be instantaneous in the amounts as follows:

Use	Consumptive Use	Net Annual Depletions	July (maximum) daily depletive rate
Animas Valley & North County Land Use Districts			
Lawns Average 2000 square feet	2.097 af/ac	0.0963 af/lawn	0.00034 cfs/lawn
West Durango & Junction Creek Land Use Districts			
Lawns Average 2000 square feet	2.157 af/ac	0.099 af/lawn	0.000346 cfs/lawn
All Land Use Districts			
In-House Use (350 gpd) w/Septic Treatment	15%	0.0588 af/house	0.0000812 cfs/house
Limited Commercial Use	15%	0.1176 af/commercial use	0.000163 cfs/commercial use
Horses Or Domestic Animals 15 gpd/animal	100%	0.0168 af/animal	0.000023 cfs/animal
Irrigated Agriculture	1.689 af/ac	1.689 af/ac	0.0069 cfs/acre

Depletion Rationale:

Domestic Animals: An average of 2 large domestic animals is provided for all lots over 6 acres in size. It is assumed that the animals each will consume 15 gallons per day and the water consumed is considered 100% depletive to the stream system. The decreed annual depletion for each large domestic animal shall be 0.0168 AF.

Domestic Residential Uses Including Lawns: Each residential unit will be permitted to use 350 gallons per day for in house uses and will be limited to irrigation of 2000 square feet of lawn and gardens. The lawn or garden irrigation shall be assumed to cause an annual depletion of 2.097 AF per acre of which 0.456 AF per acre occurs in July in the combined Animas Valley and North County Land Use Districts. The lawn or garden irrigation shall be assumed to cause an annual depletion of 2.157 AF per acre of which 0.463 AF per acre occurs in July in the combined Durango West and Junction Creek Land Use Districts. Since each residential lot is limited to 2000 square feet of lawn or garden irrigation, the annual depletion associated with each residential lot that has irrigation will be 0.0963 AF of which 0.0209 AF occurs in July in the combined Animas Valley and North County Land Use Districts and 0.099 AF of which 0.0212 AF occurs in July in the Durango West and Junction Creek Land Use Districts. The in house use was assumed to be treated by a septic system which will have a 15% depletion to the stream system or 0.0588 acre foot for each residential unit per year or 0.0000812 cfs daily .

Irrigated Agriculture: Irrigated agriculture in the West Durango Planning District was estimated to be 268 acres in 2000 using the Colorado River Decision Support System model. It was assumed that 80 acres of these existing irrigated lands may be served with water supplies that are not decreed in water court. The number of existing acres of irrigated agriculture in La Plata County upstream of the Durango RICD along the Animas River and its tributaries, excluding the West Durango Planning District in 2000 was estimated to be 4,196 acres. To be conservative it was assumed that 460 acres of these existing irrigated lands may be served with water supplies that are not decreed in water court in the combined Animas Valley and North County Land Use Districts. It was also assumed that in the Junction Creek Planning District there may be 30 acres of existing irrigated lands served with water supplies that are not decreed in water court. It was assumed that these lands are used to grow primarily pasture grasses. To be conservative it was assumed that the consumptive use would be no more than 1.689 AF per acre of which 0.422 AF depletion occurs in July. Those individuals that currently have irrigated lands in the areas identified in this decree and do not obtain an independent water court decree will be transferred a portion of this water right if requested by the landowner. This decree also provides for 215 acres of future new irrigated agricultural land development. Fifteen acres of the future new irrigated agricultural lands are included as a part of this decree in the West Durango Planning District, 25 acres of the future irrigated lands are in the Junction Creek Planning District and 175 acres of future irrigated agriculture are provided for in the combined Animas Valley and North County Land Use Districts. The consumptive use of 1.689 AF per acre is assumed for these new irrigated lands of which 0.422 AF depletion occurs in July.

Commercial Use With No Outside Irrigation. La Plata County is seeking to protect small commercial uses such as a convenience store, gas station, small office or a bed and breakfast that meets the following conditions. This commercial permit use cannot allow any outside water use. The inside uses should be limited to water for restrooms and sanitary purposes. In order to be conservative it was assumed that the inside water use would not exceed 700 gallons per day and the water would be treated by a septic tank system with a 15% depletion to the stream system or 0.1176 acre foot annually or 0.000163 cfs daily.

Commercial Use With Outside Irrigation. If outside irrigation occurs this water right would only cover the outside irrigation of lawns and gardens. The consumptive use associated with the lawn and garden area would be based upon increments of 2000 square feet of lawn and garden. For example, if the commercial use had a lawn or garden of 3000 square feet the annual depletive amount would be 1.5 times the consumptive use assumptions for a 2000 square foot lawn or 0.1485 AF annual depletion and the daily depletive rate would be 0.000518 cfs for the West Durango and Junction Creek Land Use Districts and 0.1445 AF annual depletion and the daily depletive rate would be 0.000511 cfs for the Animas Valley and North County Land Use Districts.

Predetermined Depletions not Binding in Augmentation Plans. In the event the owner of a transferred portion of the La Plata County Water Rights files an application for approval of an augmentation plan, the predetermined depletion rates set forth above shall not be binding in that case.

14. Water Facilities Located on National Forest System or BLM Lands. The Application describes water diversion which might potentially be located on federal lands either within the San Juan National Forest managed by the U.S.D.A Forest Service ("Forest Service") or public lands managed by the Bureau of Land Management ("BLM"). Entry of a decree in this matter does not create any right, title or interest in the use of federal lands managed by the Forest Service or BLM. Any use of federal lands for diversion or conveyance of water rights decreed herein is contingent on and subject to applicant having or obtaining appropriate authorization issued by the appropriate federal land management agency pursuant to pertinent statutes, regulations and policies applicable to the occupancy and use of the federal lands. Absent other appropriate authorization recognized by the Forest Service or BLM, any person or entity seeking to perfect a portion of this water right under Paragraph 6 must apply for and obtain appropriate authorization and approval for use and operation on federal lands before it can construct, reconstruct, alter or revise any diversion or conveyance facilities on National Forest System or Bureau of Land Management lands. The entry of the decree herein shall not in any way limit the authority of the Forest Service or BLM with respect to the agency's consideration of and action on such requests for permits, approvals, or authorizations. The ability of the Forest Service or

BLM to impose terms and conditions, and/or deny such requested contracts, approvals, or authorizations is not in any way limited or affected by the entry of the water rights decree herein.

15. Administration: No later than February 15 of each year, La Plata will provide annual accounting to the Division Engineer of the number of water right transfers within each La Plata water right No.1, No. 2 or No. 3, the names of the water users, total depletions allowed for each water user, total net annual depletions for all water users, total July (maximum) daily depletions for all water users, types of uses as listed on the tabulation above and the locations of the intended water use. At the same time each year, La Plata County will also provide an annual accounting of the remaining conditional water rights that the County holds under this decree. The annual accounting required hereunder will be provided to objectors upon request. In any year in which the February 15 accounting report first shows that the amount of the total July (maximum) daily depletions for the conditional water rights that have been conveyed by La Plata County equal the July (maximum) daily depletion rates decreed herein for any one of the La Plata County Water Rights Nos. 1, 2 or 3, La Plata shall also file the accounting report with the water court under the above-captioned case number and shall serve the accounting report on counsel of record for each of the objectors herein. The individual water user, water district or home owner association, will be required, as a condition of the transfer, to file with the water court of Division 7 to make the water right conveyed absolute. Each individual water user or entity will be required to install and maintain measuring devices upon application of the water to beneficial use or other structures required by the Division Engineer for administration and to report its uses to the Division Engineer as required or requested by the Division Engineer as a term of the decree making the water right absolute. After the transfer to a water user obligations under the decree will pass to the owner of each increment of the water right.

16. Consent to future applications for findings of reasonable diligence and to make absolute: The City of Durango agrees to not oppose all future diligence applications by the applicant and its transferees for the conditional water rights decreed herein, and all applications to make portions of said conditional water rights absolute, that are in accordance with this decree; provided, however, that Durango may file statements of opposition to any of such applications for diligence and/or to make absolute portions of the conditional water rights decreed herein for the sole and limited purpose of determining whether the claims contained in any such applications are consistent with the terms and conditions of this decree and may oppose any claims that are not consistent with the terms and conditions of this decree.

17. Priority and administration: All portions of the La Plata County Water Rights decreed herein that are made absolute shall be administered as against other water rights based on a filing date of 2006 and an appropriation date of February 21, 2006. As among subsequent owners and users of the La Plata County Water Rights, priorities of the transferred water rights shall be determined first on the basis of the calendar year in which applications to make the transferred water right absolute are filed. As among subsequent owners and users of the La Plata

County Water Rights who file applications to make the La Plata County Water Rights absolute in the same calendar year, priorities shall be determined by the date of the deed from La Plata County conveying the water right, and not affected by the date of entry of the absolute decree.

CONCLUSIONS OF LAW

18. The Court has jurisdiction over the subject matter of this application and over all persons and water rights affected hereby, whether they have appeared or not.

19. Timely and adequate notice of this proceeding was given in the manner required by law.

20. La Plata has complied with all requirements and met all standards and burdens of proof and is therefore entitled to a decree confirming and approving La Plata County water rights No. 1, No. 2, and No. 3.

21. The La Plata County Water Rights Nos. 1, 2 and 3, if exercised and administered in accordance with the terms and conditions of this decree, will not cause injury to any owner of or person entitled to use water under any vested water right or decreed conditional water right.

JUDGMENT AND DECREE

22. The foregoing Findings of Fact and Conclusions of Law are incorporated herein by this reference as if fully set forth in this judgment and decree.

23. The La Plata County Water Rights Nos. 1, 2 and 3 are hereby confirmed and approved.

24. Nothing in this Decree is intended to impair the operation of the Animas-La Plata Water Project.

25. The water user shall install and maintain measuring devices or other structures, and shall maintain records of diversions as may be required by state water administration officials for administration.

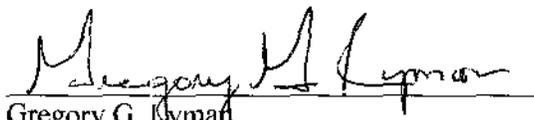
26. This decree is entered based upon settlement and compromise of the claims in this case, and the findings of fact and conclusions of law set forth herein have not been litigated. Nothing in this decree shall be construed or interpreted to establish any precedent for the existence or quantification of similar claims in any other proceeding.

27. The application in this case was filed in the Water Court in the year of 2006 and the water rights herein confirmed and awarded shall be administered as having been filed in that year and shall be junior to all water rights for which applications were filed in previous years. As between all water rights, the applications for which were filed in the same calendar year, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of entry of this decree.

28. The conditional water rights decreed herein are continued in full force and effect through November 30, 2013. If La Plata desires to maintain such conditional water rights, an application for finding of reasonable diligence shall be filed on or before the last day of November, 2013, or a showing made on or before such date that the conditional water rights have become absolute by reason of the completion of the appropriation.

Dated this 30th day of November, 2007.

BY THE COURT:



Gregory G. Lyma
Water Judge
Water Division No. 7
State of Colorado

