



Dec 3 2007  
9:39AM

<b>DISTRICT COURT, WATER DIVISION 7, COLORADO</b>  Court Address: 1060 East Second Avenue Durango, Colorado 81301 Phone Number: (970) 247-2304	
<b>IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF: LA PLATA COUNTY and SOUTHWESTERN WATER CONSERVATION DISTRICT.</b>  <b>IN LA PLATA COUNTY</b>	<b>▲ COURT USE ONLY ▲</b>
	Case Number: 06CW127  Div: 7                      Ctrm:
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE</b>	

This matter is before the Water Court on application for water rights of the Southwestern Water Conservation District and La Plata County. The Water Court, having made such investigations to determine whether the statements in the application are true, having considered the pleadings and the comments of the Division Engineer, and otherwise being fully advised, hereby makes the following findings of fact, conclusions of law and enters this judgment and decree

**FINDINGS OF FACT**

1. Name, address, telephone number of Applicants:

La Plata County  
Southwestern Water Conservation District

2. Filing Date: The application in this matter was filed on December 29, 2006, by Southwestern Water Conservation District ("SWCD"). La Plata County ("La Plata") was added as a co-applicant in this case by order dated November 7, 2007.

3. Notice: Timely and adequate notice of these proceedings has been given in the manner required by law. The Court has jurisdiction over the subject matter of these proceedings and over all parties affected hereby, irrespective of whether they have appeared.

4. Statements of opposition, Stipulations and Standstill Agreement: Statements of opposition to the application were filed by the United States of America, the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Colorado Division of Wildlife, the Colorado Division of Water Resources, and the City of Durango. The period for filing statements of opposition to the application has ended. Stipulations have been reached with all parties who filed statements of opposition. Marc and Kaye Linden, the Grouse Gulch Group, LLC, Caballo Del Hierro, LLC, Richard and Karen Langhart, Kroulik Tree Farm, LLC, Kroulik Living Trust, LLC, Living Trust Agreement of Steven Robert Spiggs, UTD, September 23, 1994, Red Mountain Ranches, LLC, and Animas Water Company ("Standstill Parties") entered into a Water Rights Filing Cooperative Standstill Agreement ("Standstill Agreement") with SWCD whereby they were to be allowed to file Statements of Opposition after SWCD re-published notice of this matter in the resume. The Standstill Parties have amended the Standstill Agreement to state that they concur with the entry of this decree and waive their contractual right to receive notice and to file Statements of Opposition under the Standstill Agreement and waive their right to require re-publication of the application.

5. Description of water rights quantities, uses and locations:

- A. Name of water right: Animas Service Area Water Right ("ASA Water Right").
- B. Legal description: Water will be diverted within the Animas Service Area which shall be defined as any point within the Animas River Basin (which includes the Animas River and all of its tributaries) upstream of a point in the Animas River that is located as follows: in the SW1/4SW1/4 of Section 29, T35N, R9W, NMPM, 1250 feet from the South Section Line and 720 feet from the West Section Line of said Section 29, La Plata County, Colorado.
- C. Source: Ground water and surface water in the Animas River and its tributaries upstream of the location described in paragraph 5.B.
- D. Appropriation Date: February 22, 2006. How initiated: participation in 1995 by the SWCD in the Colorado Water Conservation Board Workgroup Report entitled Colorado River Compact Water Development Projections, however the parties have stipulated to the later date of February 22, 2006 for the purposes of settlement.
- E. Amount: The rates of depletion to the Animas River at the location described in paragraph 5.B. above associated with the ASA Water Right will be up to and including the Depletion Flow Rates listed below (conditional). The Depletion Flow Rate of any increment of the ASA Water Right made absolute shall be defined as the depletion arising from the beneficial use of water quantified as an instantaneous flow rate as set forth in Table 1 or as determined by decree of the court.

TIME PERIOD	DEPLETION FLOW RATE (in cfs)
January 1 through January 31	20
February 1 through February 28(29)	20
March 1 through March 31	20
April 1 through April 14	20
April 15 through April 30	25
May 1 through May 31	30
June 1 through June 14	40
June 15 through June 30	30
July 1 through July 14	25
July 15 through July 31	20
August 1 through August 31	20
September 1 through September 30	20
October 1 through October 31	20
November 1 through November 30	20
December 1 through December 31	20

F. Uses: Year round depletions associated with beneficial uses of water diverted from the Animas River and its tributaries in the Animas Service Area from non-exempt wells and surface diversions for irrigation; supplemental irrigation; wetlands and wetlands irrigation; domestic and municipal use; pond, reservoir, water feature and other evaporation; industrial and manufacturing use; power; geothermal; commercial use; gravel and other mining; stock and wildlife watering; fire fighting; recreation; snow and ice making; piscatorial; recharge; augmentation; and exchange.

6. Perfection of the ASA Water Right: The ASA Water Right may be perfected incrementally as follows:

a) Upon submission of a notice of intent to develop an increment of the ASA Water Right to La Plata and SWCD in a form substantially consistent with that provided in Exhibit A, attached hereto, any person or entity may perfect an increment of the ASA Water Right by placing it to beneficial use and, by application to the water court, seek to confirm an increment of the ASA Water Right as absolute. After entry of a decree of the court confirming any increment of the ASA Water Right as absolute and presentation of such decree to SWCD and La Plata, SWCD and La Plata shall convey by deed the increment of the ASA Water Right decreed absolute to such person. Such deed may contain reversionary provisions.

b) Any person or entity placing an increment of the ASA Water Right to beneficial use pursuant to paragraph 6(a), shall file an application with the water court to confirm such increment as absolute within:

i. 6 months after the date such increment is first put to beneficial use, or

ii. 6 months of the filing of the notice of intent to develop an increment of the ASA Water Right if the increment was placed to beneficial use prior to the filing of a notice of intent.

c) In the event that any person or entity fails to file an application with the water court to confirm any increment as absolute within the time periods set forth in Paragraphs 6(b)(i) and 6(b)(ii) such person or entity shall file a second notice of intent pursuant to Paragraph 6(a) prior to filing an application with the water court.

d) All parties to this case may file statements of opposition to any applications for diligence and/or to make absolute increments of the ASA Water Rights decreed herein, except that the City of Durango's right to file statements of opposition to such applications is governed by the terms of its stipulation with applicants in this case.

e) Any person or entity that has submitted a notice of intent pursuant to Paragraph 6(a) is entitled to divert water under the priority of the ASA Water Right for purposes of perfecting any increment of the ASA Water Right.

7. Depletions Quantification:

a) Any application to make absolute any increment of the ASA Water Right and any decree issued pursuant to such application shall quantify the depletions associated with the beneficial use or uses of that increment of the ASA Water Right in cfs for each time period identified in Paragraph 5.

b) In any proceeding to confirm an increment of the ASA Water Right as absolute, there shall be a rebuttable presumption that depletions associated with the beneficial use of water diverted under the ASA Water Right shall be considered to be instantaneous.

c) In any proceeding to confirm any increment of the ASA Water Right as absolute, any applicant may rely upon the depletions identified in Table 1 attached hereto as conclusive as to the quantification of such depletions for stock watering, domestic use, irrigation use, commercial use, and evaporation.

d) Paragraph 7(c) shall apply only so long as the increment is used within the Animas Service Area and shall not apply to any later change of the place of use of any increment of the ASA Water Right to any place outside of the Animas Service Area.

e) In perfecting an increment of the ASA Water Right, no applicant shall be precluded from seeking to have the court recognize and confirm a quantification of depletions other than those set forth in Table 1.

8. Potential Need for Additional Water Right or Augmentation Plan Recognized:

Any person seeking to perfect an increment of the ASA Water Right may need also to apply for a plan for augmentation if that person desires to make out-of-priority diversions under the ASA Water Right.

9. Reporting Requirements:

Not later than August 1 of each year, SWCD shall prepare a report which identifies each increment of the ASA Water Right previously decreed absolute which has been presented to SWCD pursuant to Paragraph 6(a), the name and address of the person or entity making such increment absolute, the name of the structures diverting such increment, and the depletions in cfs associated with such increment of the ASA Water Right made absolute for each time period identified in Paragraph 5.E. The report shall also include a summary of the total depletions confirmed absolute to date for each of the time periods identified in Paragraph 5.E, the sequence of increments within the ASA Water Right confirmed absolute consistent with Paragraph 10 and the depletion rate remaining conditional with respect to each of the time periods identified in Paragraph 5.E. The report shall be available for review and copying by any person or entity upon request made to the SWCD. If the report for any year shows that the total depletion rate for any time period identified in Paragraph 5.E. has been made absolute, the SWCD shall file the report with the water court under the above-captioned case number. In the event of clerical error or other discrepancy between the report identified herein and any decree entered by the Court making absolute an increment of the ASA water right, the decree shall prevail.

10. Administration:

All portions of the ASA Water Right shall be administered as against other water rights based on a filing date of 2006 and an appropriation date of February 22, 2006. Administration of the sequence of relative priorities of increments of the ASA Water Right decreed absolute, as among the various increments for which applications to make absolute shall be administered on the basis of the date the applications to confirm such increments as absolute were filed with the court.

11. Federal Lands:

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 section 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.

12. Notice of Abandonment:

No later than July 31, 2010 and every tenth anniversary thereafter, the Division Engineer shall notify La Plata and SWCD by mail of any increment of the ASA Water Right that has been listed on the decennial abandonment list compiled pursuant to C.R.S. § 37-92-401(2)(b). La Plata and SWCD may object to the inclusion of such increment of the ASA Water Right in the decennial abandonment list by filing a statement of objection with the Division Engineer in accordance with C.R.S. § 37-92-401(3). No later than December 31, 2011 and every tenth anniversary thereafter, the Division Engineer shall notify La Plata and SWCD by mail of any increment of the ASA Water Right that has been listed on any revised decennial abandonment list compiled pursuant to C.R.S. § 37-92-401(4). La Plata and SWCD may protest the inclusion of such increment of the ASA Water Right in the revised decennial abandonment list by filing a protest with the Water Court and the Division Engineer in accordance with C.R.S. § 37-92-401(5).

13. Non-speculative Intent:

Settlement of Division 7 Water Court case number 06CW9 and the conditional water rights applications in Division 7 Water Court case number 06CW99 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, the Co-Applicants, as governmental water supply agencies, have demonstrated the requisite intent to make a non-speculative conditional appropriation of unappropriated water. The Co-Applicants have demonstrated that the amount of water claimed is reasonably necessary to serve substantiated projections of population growth and development within the Animas Service Area based on a normal rate of growth for a reasonable water supply planning period.

14. Can and will:

Water can be and will be beneficially used and the uses covered under this decree can and will be completed with diligence and within a reasonable time.

15. Non-injury:

The ASA Water Right if exercised and administered in accordance with the provisions of this decree, will not cause injury to an owner of, or person entitled to use water under any vested water right or decreed conditional right.

16. No precedent:

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.

17. ALP Project:

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

### CONCLUSIONS OF LAW

18. The foregoing findings of fact are incorporated herein to the extent they constitute conclusions of law.

19. The Application herein is one contemplated by law. Section 37-92-302, C.R.S.

20. Timely and adequate notice of these proceedings has been given in the manner required by law. The Court has jurisdiction over the subject matter of these proceedings and over all parties affected hereby, irrespective of whether they have appeared. Section 37-92-302, C.R.S.

21. The Co-Applicants have made all required showings and met all applicable standards and burdens of proof, including without limitation those set forth in C.R.S. Sections 37-92-103(3)(a), -302(2)(b), -302(3) and -305(9)(b).

### JUDGMENT AND DECREE OF WATER COURT

22. The foregoing findings of fact and conclusions of law are incorporated herein.

23. The application for conditional water right filed in this matter is hereby granted, subject to the depletion flow rate limits and terms and conditions set forth in this decree.

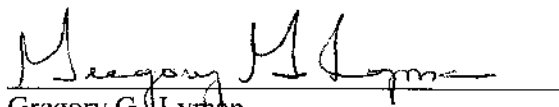
24. The application herein was filed in the water court in the year 2006 and the water right confirmed and awarded herein shall be administered as having been filed in that year and shall be junior to all water rights for which applications were filed in previous years. As among all water rights for which applications were filed in 2006, priorities shall be determined and the water rights shall be administered based upon decreed appropriation dates, and the water right confirmed and awarded herein shall be administered as senior in priority to all water rights filed in 2006 for which appropriation dates later than February 22, 2006 are decreed.

25. Any person perfecting an increment of the ASA Water Right may be required to install and maintain measuring devices or other structures and maintain records of diversions as determined necessary by the Division Engineer acting within statutory authority.

26. The conditional water right decreed herein is continued in full force and effect through the last day of November, ~~200~~<sup>2013</sup>. If either of the Co-Applicants desires to continue the water right in full force and effect beyond that date, 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 right has become absolute by reason of the completion of the appropriation.

Dated November 30, 2007.

BY THE COURT:



Gregory G. Lyman  
Water Judge, Water Division No. 7



**Notice of Intent to Make Absolute**

The below identified applicant hereby notices its intent to make absolute an increment of the Animas Service Area conditional water right decreed in Case No. 06CW127 consistent with the terms and conditions decreed therein.

Applicant Information:

Name:

Address:

Telephone:

Prospective Water Right Increment Information:

Proposed Use of Water (e.g. domestic, irrigation, commercial):

Proposed Place of Use:

Anticipated Amount of Depletions:

The applicant is advised and recognizes that the execution of this Notice of Intent to Make Absolute confers no right, title, or interest in water beyond the right to perfect an increment of the Animas Service Area conditional water right consistent with the decree in Case No. 06CW127.

\_\_\_\_\_  
Signed for the Applicant, (Title)

\_\_\_\_\_  
Printed Name

Governmental Endorsements:

\_\_\_\_\_  
La Plata County

\_\_\_\_\_  
Southwestern Water Conservation District

**EXHIBIT A**

**TABLE 1**  
**STANDARD DEPLETION AMOUNTS**  
(Final Version: 11/7/07)

Type of Use	Description	Amount of Use														
		Jan	Feb	March	Apr	May	June	July	August	September	October	Nov	Dec			
		cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre	cfs/acre
In-House Septic	15% consumed x 350 gal/home/day	0.000081														
In-House Central Sewer	10% consumed x 350 gal/home/day	0.000054														
Commercial, Septic	15% consumed x 700 gal/unit/day	0.000163														
Commercial, Central Sewer	10% consumed x 700 gal/unit/day	0.000109														
Livestock	100% consumed x 15 gal/head/day	0.000023														
Irrigation Consumption	Land at 6,500 to 7,500 feet				0.002470	0.005553	0.007981	0.007642	0.005853	0.004704	0.002276					
	Land at 7,300 to 8,100 feet				0.001294	0.005203	0.007611	0.007187	0.005382	0.004318	0.001593					
	Land at 8,100 feet and above				0.000202	0.004032	0.007124	0.006650	0.004975	0.004015	0.001203					
	the mean annual CU															
NOAA Evaporation Rates	6,500 to 8,500 feet, 45"yr	0.000567	0.002041	0.003687	0.005460	0.007657	0.009381	0.009784	0.007940	0.006580	0.004537	0.002380	0.000851			
	8,500 feet and above, 35"yr	0.000441	0.001587	0.002867	0.004444	0.005955	0.007635	0.007610	0.006176	0.005356	0.003529	0.001937	0.000662			

Note: The irrigation CU is based on bluegrass that is the highest use crop using the mean annual CU.