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DISTRICT COURT, WATER DIVISION 7, STATE OF COLORADO	
Court Address: LaPlata County Courthouse 1060 2nd Avenue P. O. Box 3340 Durango, CO 81302	
Phone Number: 970-247-2304	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF SAN JUAN WATER CONSERVANCY DISTRICT	▲ COURT USE ONLY ▲
IN ARCHULETA COUNTY	Case No.: 2008CW68 (01CW41) (73-308D) Div.: Ctrm.:
FINDINGS OF FACT, RULING OF THE REFEREE, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

FINDINGS OF FACT

1. **Applicant.** San Juan Water Conservancy District ("SJWCD"), timely filed its Application for Findings of Continued Diligence on September 26, 2008. Applicant's address is:

San Juan Water Conservancy District
P.O. Box 4632
Pagosa Springs, Colorado 81157
Telephone: 970-731-2691
2. **Notices.** All notices of the application were given in the manner required by law, and the Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected hereby irrespective of whether these persons or owners of property have appeared.
 - a. **Certificate of Notice to Landowners:** Applicant provided a notice to the Pagosa Area Water and Sanitation District (co-owner of property at the location of the proposed reservoir) as required by §37-92-3(2)(2)(b), C.R.S. on October 10, 2008. A certificate of such notice was filed with this Court on October 10, 2008.

- b. **Certificate of Publication:** Applicant filed a certificate with this Court on December 9, 2008 certifying that the application in this matter had been published in the Pagosa Springs SUN newspaper on October 16, 2008.
3. **Statements of Opposition.** No Statements of Opposition were filed. The time for filing statements of opposition has expired.
4. **Summary of Consultation.** The Division 7 Engineer filed his Summary of Consultation on November 7, 2009, recommending that an additional 6-year diligence period be granted for the claimed water rights.
5. **Real Parties in Interest.** SJWCD is a quasi-municipal political subdivision of the State of Colorado, organized under § 37-45-101, *et seq.*, C.R.S., the Water Conservancy Act. SJWCD owns conditional water rights and collaborates with private and public landowners and public water providers for in the development was water resources for all beneficial purposes. SJWCD is the owner of the conditional water storage right for Dry Gulch Reservoir, originally decreed for 6,300 ac-ft, which is the subject matter of this Ruling and Decree.
6. **Description of Subject Water Right.** The subject Dry Gulch Reservoir water storage right was originally, and subsequently, decreed as follows:
 - a. **Original Decree:** Case No. 73-308D on December 19, 1968, by the District Court Within and For the County of Archuleta, *In the Matter of the Supplemental Adjudication of Priorities of Water Rights for the Use of Water for Irrigation and Other Beneficial Uses in Water District No. 29 of the State of Colorado (San Juan River and Tributaries)*.
 - b. **Subsequent Decrees:** Findings of reasonable diligence were made and the Dry Gulch Reservoir water storage right has been granted continued conditional viability for successive diligence periods by this Court in the following prior cases: Case No. W-200 (October 29, 1979), Case No. 84CW64 (May 31, 1985), Case No. 88CW52 (April 24, 1989), Case No. 94CW52 (July 19, 1995), and Case No. 01CW41 (September 27, 2002).
 - c. **Location:** The storage reservoir will be located on Dry Gulch in Sections 4, 5, 8 and 9 of Township 35 North, Range 1 West, N.M.P.M. The intersection of the proposed dam axis with the center line of the channel of Dry Gulch is located at a point whence the south 1/4 corner of Section 8, Township 35 North, Range 1 West, N.M.P.M. bears South 09°13' West, a distance of 5,724 feet.
 - d. **Source:** Runoff tributary to Dry Gulch, and water diverted from the San Juan River.
 - e. **Appropriation Date:** July 22, 1967.

- f. Amount: 6,300 ac-ft, CONDITIONAL.
 - g. Uses: Industrial, domestic, municipal, recreation and piscatorial purposes.
7. The following activities contributed toward the further development and perfection of the Dry Gulch Reservoir water storage right originally decreed in Case No. 73-308D. During the relevant diligence period, SJWCD, together with the Pagosa Area Water and Sanitation District ("PAWSD"), has continued in the planning, permitting, design and development of the joint Dry Gulch Project. Costs incurred by SJWCD during the relevant diligence period totaled approximately \$1,246,150. Specific projects and expenses are described below:
- a. Water Measurement: SJWCD incurred costs of \$1,206 in the cooperative installation and maintenance of stream flow measuring devices during 2001.
 - b. Engineering for Permitting and Planning: SJWCD incurred costs of \$1,796 during 2001 for cooperative, with PAWSD, engineering analyses of the Stevens Reservoir enlargement project, which has now been constructed by PAWSD and serves to provide additional stored water supplies to the PAWSD service area.
 - c. Water Resources Master Planning: SJWCD incurred annual costs during the 2001 through 2006 period totaling \$87,841 for a cooperative master planning effort concerning projected water demands within the SJWCD boundaries and the structural options for meeting such demand.
 - d. Cloud Seeding Program: SJWCD incurred annual costs during the 2002 through 2007 period totaling \$89,350 for cooperative funding of cloud seeding initiatives within the San Juan River watershed. Such initiatives were also funded by other water resources development agencies in the region.
 - e. Dry Gulch Project Property: SJWCD expended \$1,053,462 during the 2006 through 2008 diligence period for its proportion of the contracting, due diligence and eventual purchase costs of the Running Iron Ranch and related properties – site of the Dry Gulch Project. Approximately \$8,827,000 was expended by PAWSD for its proportion of the costs concerning acquisition of the same property. The property acquired, now owned in co-tenancy with PAWSD, contains approximately 80 percent of the total property necessary for the planned Dry Gulch Reservoir and related structures. Efforts to acquire the balance of property needed for the project will continue in subsequent diligence periods.
 - f. Dry Gulch Project Development: SJWCD participated in, and contributed approximately \$2,250 toward, a county-wide study in 2005 and 2006 to determine the feasibility of impact fees to be imposed by Archuleta County and the Town of Pagosa Springs for various infrastructure demands created by population growth. As a result of the study, conducted by Economic & Planning Systems, Inc., the

Town of Pagosa Springs implemented the collection of impact fees as part of its development permit application process. Fees were instituted for roads, schools, fire protection and water storage, among other infrastructure needs. SJWCD entered into an intergovernmental agreement with the Town of Pagosa Springs on August 1, 2006 to receive water storage impact fees, and received over \$30,000 in such funds from 2006 through the portion of 2008 within the diligence period. SJWCD terminated its intergovernmental agreement with the Town of Pagosa Springs in early 2009, but continues to receive the balance of payments on deferred portions of such fees still collected by the Town. The fee receipts will be used by SJWCD for development of the Dry Gulch Reservoir project and have been, or will be, expended in subsequent diligence periods.

- g. Southwestern Water Conservation District Water Information Program: SJWCD incurred annual costs during the 2001 through 2008 diligence period totaling \$16,874 as its contribution to the regional Water Information Program conducted annually by the Southwestern Water Conservation District. The Water Information Program provides public education on water conservation, water resources development and related topics.
- h. Water Rights Protection and Development: During the diligence period, SJWCD expended approximately \$213,750 in legal fees and costs for defending, maintaining and developing SJWCD's water rights in water court adjudications, including additional Dry Gulch Reservoir water rights, and related activities.

CONCLUSIONS OF LAW

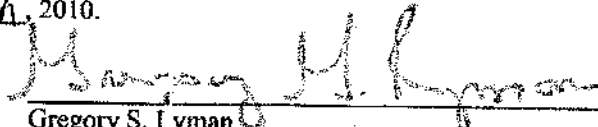
- 8. This application is one contemplated by law pursuant to § 37-92-301(4), C.R.S.
- 9. Timely and adequate notice of this application was given in the manner required by law and the court has jurisdiction over the subject matter of this proceeding and over all persons and water rights affected thereby, irrespective of whether those persons or owners of water rights have appeared in accordance with §§ 37-92-203 and 37-92-302, C.R.S.
- 10. SJWCD has pursued with steady application of effort the completion of the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. Applicant's work to develop water resources and structures for capturing and putting same to beneficial uses as described herein demonstrates that reasonable diligence has been exercised toward development of its water rights, including the Dry Gulch Reservoir water storage right, within the meaning of § 37-92-301(4)(b), C.R.S.
- 11. Based on the circumstances described herein, Applicant can and will perfect the conditional Dry Gulch Reservoir water storage right with diligence and within a reasonable time as required by § 37-92-305(9)(b), C.R.S.

12. SJWCD is entitled to a decree of this Court continuing the conditional Dry Gulch Reservoir water storage right for an additional diligence period.

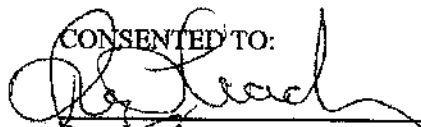
RULING OF THE REFEREE, JUDGMENT AND DECREE

13. The foregoing Findings of Fact and Conclusions of Law are hereby adopted and incorporated into this Ruling of the Referee, judgment and Decree as if fully set forth herein.
14. The Dry Gulch Reservoir water storage right in the total amount of **6,300 ac-ft** is hereby continued in full force and effect as conditional water storage right.
15. The decree issued in Case No. 73-308D, and all subsequent decrees granting continued diligence, shall be unaffected by this Ruling and Decree.
16. If Applicant desires to maintain this conditional water right, an application for a finding of reasonable diligence shall be made on or before the last day of April, 2016, or a showing made on or before such date that the conditional water right has been made absolute by reason of completion of the appropriation.

Dated this 22 day of March, 2010.



Gregory S. Lyman
Acting as Water Referee
Water Division No. 7

CONSENTED TO:



Rege Beach
Division 7 Engineer

3-17-2010
Date

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: April 23, 2010



GREGORY S. LYMAN, Water Judge
Water Division No. 7