

DATE OF MAILING

2-5-86

FEB 7 1986

Filed In The District Court
Water Division Four

DISTRICT COURT, WATER DIVISION NO. 4, STATE OF COLORADO

FEB 5 1986

Case No. 83 CW 45

Kay Phillips, Clerk

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE
UNITED STATES OF AMERICA IN THE DOLORES RIVER, IN SAN MIGUEL,
MONTROSE, AND MESA COUNTIES, STATE OF COLORADO.

DISTRICT COURT, WATER DIVISION NO. 7, STATE OF COLORADO

Case No. 83 CW 14

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE
UNITED STATES OF AMERICA IN THE DOLORES RIVER, IN MONTEZUMA,
DOLORES, AND SAN MICHEL COUNTIES, STATE OF COLORADO.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

THIS MATTER, coming on to be heard this 5th day of February,
upon setting, and the Applicant, United States of America,
appearing by John R. Hill, Jr., Attorney, Department of Justice,
and the Objectors, by Wendy C. Weiss, Assistant Attorney General,
and the Court having heard the evidence adduced by the parties
and having examined the records and files herein, and being now
fully and sufficiently advised in the premises, enters these
findings of fact, conclusions of law and decree:

FINDINGS OF FACT

1. The United States of America filed an application for
change of water rights and approval of plan for augmentation in
the District Court in and for Water Division No. 4 on February 25,
1983.

2. The United States of America filed an application for change of water right and approval of plan for augmentation in the District Court in and for Water Division No. 7 on February 25, 1983.

3. The Supreme Court, pursuant to its supervisory powers under Article VI, § 2 Colorado Constitution and C.R.S. 1973 37-92-203(2) assigned the undersigned District Judge for Water Division No. 4 to hear the application in Water Division No. 7. A copy of the Order is attached hereto as Exhibit A.

4. All notices required by law for filing and publication of each application in the resums of each Water Division have been fulfilled, and the Water Judge sitting in both Water Divisions has jurisdiction of the subject matter of these proceedings and over all parties affected hereby, whether they have appeared or not.

5. Joint Statements of Opposition were filed by Jeris A. Danielson, State Engineer, and William McDonald, Director, Colorado Water Conservation Board, in both Water Divisions. Ralph V. Kelling, Division Engineer, Water Division No. 4, joined in the Statement of Opposition filed in Water Division No. 4. Daries C. Lile, Division Engineer, Water Division No. 7, joined in the Statement of Opposition filed in Water Division No. 7. Time for filing Statements of Opposition has expired.

6. Applicant owns the following water rights in Water
Division No. 7:

Name of structure: House and Sommers Ditch
From previous Decree:

- A. Date entered: February 1, 1892
Case No. 473, 967
Court: District Court, Montezuma County
- B. Point of diversion: On the East bank of the Dolores River, 1162 feet S 73°30'W of the East quarter corner of Section 31, T38N, R15W, N.M.P.M. Montezuma County (Alternate points of diversion for 1 c.f.s. for this right were decreed in Case No. 81CW41, January 15, 1982.)
- C. Source: Dolores River
- D. Appropriation Date: 3/1/1881, 4/6/1891
Amount: 1.00 c.f.s., 1.40 c.f.s.
Total: 2.40 c.f.s.
*542 000, 3614 004
651 004, 3114 005
651 005*
- E. Use: Irrigation and industrial for the construction of the Dolores Project.

Name of structure: Kuhlman Ditch
From previous Decree:

- A. Date entered: February 1, 1892
Case No. 473
Court: District Court, Montezuma County
- B. Point of diversion: On the right bank of the Dolores River, S 42°00'E, 1224.0' from the East quarter corner of Section 19, T38N, R15W, N.M.P.M. Montezuma County. (Alternate points of diversion for 1 c.f.s. for this right were decreed in Case No. 81CW41, January 15, 1982.)
- C. Source: Dolores River
*3614 005
651 0116*
- D. Appropriation Date: May 1, 1881
Amount: 1.20 c.f.s.
- E. Use: Irrigation and industrial for the construction of the Dolores Project.
- F. Historic Location: Approximately 1,600' from the South line and 775' from the West section line of Section 20, T38N, R15W, N.M.P.M.

Name of structure: Bradfield Ditch
From previous Decree:

513 22
36m 213

- A. Date entered: December 18, 1933
Case No. 967
Court: District Court, Montezuma County
- B. Point of diversion: On the North bank of the Dolores River, at a point whence the Northeast corner of Section 1, T39N, R16W, N.M.P.M. bears N42°E, 4410 feet, Montezuma County.
- C. Source: Dolores River
- D. Appropriation Date: April 1, 1891
Amount: 1.50 c.f.s.*
- E. Use: Irrigation

*The original decree is for 3.0 c.f.s. The United States of America owns one-half of the right.
- F. Historic Location: Approximately 1,000' from the North section line and 1,800' from the East section line of Section 18, T38N, R15W, N.M.P.M.

Name of structure: Dickinson Ditch
From previous Decree:

513 22
36m 213

- A. Date entered: December 18, 1933
Case No. 967
Court: District Court, Montezuma County
- B. Point of diversion: On the East bank of the Dolores River, from which point the Section corner between Sections 7 and 8 in T38N, R15W, N.M.P.M., bears N28°W 640 feet, Montezuma County.
- C. Source: Dolores River
- D. Appropriation Date: October 31, 1882
Amount: 1.67 c.f.s.
- E. Use: Irrigation
- F. Historic Location: Approximately 1,000' from the North section line and 1,800' from the East section line of Section 18, T38N, R15W, N.M.P.M.

Name of structure: Porter Ditch
From previous Decree:

- A. Date entered: December 18, 1933
Case No. 967
Court: District Court, Montezuma County
- B. Point of diversion: On the West bank of the Dolores River, whence the Southwest corner of Section 30, T38N, R15W, N.M.P.M. bears S59°10'W, 3610 feet, Montezuma County.
- C. Source: Dolores River
- D. Appropriation Date: May 1, 1883
Amount: 1.38 c.f.s.
- E. Use: Irrigation

Name of structure: Van Winkle Ditch
From previous Decree:

- A. Date entered: December 18, 1933
Case No. 967
Court: District Court, Montezuma County
- B. Point of diversion: On the left bank of the Dolores River, at a point whence the East quarter corner of Section 19, T38N, R15W, N.M.P.M. bears N72°45'E, 896 feet, Montezuma County.
- C. Source: Dolores River
- D. Appropriation Date: May 1, 1895
Amount: 1.50 c.f.s.
- E. Use: Irrigation

Name of structure: McPhee Pipeline
From previous Decree:

- A. Date entered: March 22, 1963
Case No. 967
Court: District Court, Montezuma County
- B. Point of diversion: At a point on the left side of the Dolores River, whence the Southeast corner of Section 31, T38N, R15W, N.M.P.M., bears N38°18'W 2224.7 feet, Montezuma County.
- C. Source: Dolores River

D. Appropriation Date: November 1, 1927
Amount: 2.17 c.f.s.

E. Use: Domestic and Manufacturing

Name of structure: Dunham and Johnson
From previous Decree:

A. Date entered: February 1, 1892
Case No. 473
Court: District Court, Montezuma County

B. Point of diversion: On the North bank of the
Dolores River, 1127.5 feet S34°45'W from the
center of Section 8, T37N, R15W, N.M.P.M.,
Montezuma County

C. Source: Dolores River

D. Appropriation Date: June 1, 1891
Amount: 1.00 c.f.s.

E. Use: Irrigation

Name of structure: Aztec Ditch
From previous Decree:

A. Date entered: February 1, 1892
Case No. 473
Court: District Court, Montezuma County

B. Point of diversion: Main Canal No. 2, located at
a point on the South bank of the Dolores River,
in the NW1/4 NE1/4 of Section 17, T37N, R15W,
N.M.P.M. Montezuma County.

C. Source: Dolores River

D. Appropriation Date: May 23, 1891
Amount: 4.00 c.f.s.

E. Use: Irrigation

Name of structure: Ritter Ditch
From previous Decree:

A. Date entered: February 18, 1933
Case No. 967
Court: District Court, Montezuma County

- B. Point of diversion: On the left bank of the Dolores River, whence the North quarter corner of Section 17, T37N, R15W, N.M.P.M. bears N15°15'W 637 feet, Montezuma County.
- C. Source: Dolores River
- D. Appropriation Date: April 1, 1908
Amount: 2.50 c.f.s.
- E. Use: Irrigation

7. Applicant proposes to change the water rights listed in paragraph 6, above, to storage rights in the authorized McPhee Reservoir, the dam of which is located in the SW1/4 of Section 1, T 38 N, R 16 W of the N.M.P.M. The change is from irrigation to replacement storage for salinity control and fish and wildlife propagation in the reservoir. Such salinity control will enable downstream Colorado water users to beneficially use waters of the Dolores River that would otherwise be too saline for irrigation purposes.

8. Applicant proposes to use the water stored in McPhee Reservoir as a result of this proposed change to replace depletions in the Dolores River resulting from out-of-priority pumping of one or more wells at the Paradox Valley Salinity Control Unit. The Paradox Valley Salinity Control Unit is located in the Paradox Valley, astride the Dolores River in Water Division No. 4. Water released from McPhee Reservoir for the purpose of augmentation will be delivered to a point where the Dolores River intersects the northeast section corner of Section 9, T47N, R18W of the N.M.P.M.

9. The average annual consumptive use resulting from the historic irrigation use of those rights to be changed to storage is 924 acre-feet. The breakdown by water right is as follows:

<u>NAME</u>	<u>WATER RIGHTS (C.F.S.)</u>	<u>ACRES IRR.</u>	<u>CONSUMPTIVE USE (A.F.)</u>
House & Sommers Ditch	2.40	119	173
Kuhlman Ditch	1.20	69	73
Bradfield Ditch ^{1/}	1.50	33.5	43
Dickinson Ditch	1.67	35	11
Porter Ditch	1.38	40	46
Van Winkle Ditch	1.50	68	69
McPhee Pipeline ^{2/}	2.17	--	12
Dunham & Johnson Ditch	1.00	57	75
Aztec Ditch ^{3/}	4.00	200	352
Ritter Ditch	2.50	85	70
TOTAL	19.32	706.5	924

^{1/} Total acreage irrigated by the Bradfield Ditch was determined to be 67 acres, however, the applicant only owns one-half of the water rights.

^{2/} McPhee Pipeline was not used for irrigation but was used to fill a four-acre pond which in turn was used for domestic and industrial purposes. Consumption is estimated on a 3 ft/yr. evaporation.

^{3/} Aztec Ditch was decreed to irrigate 50 acres for each c.f.s. There has been an expansion of the acreage as a result of water being also supplied by Montezuma Valley Irrigation Company's canal through an agreement with the Aztec Ditch Company for use of a right-of-way. There is no Montezuma Valley Irrigation Company's water right being transferred in this application.

10. The lands historically irrigated by the rights described in paragraph 6, above, will be removed from irrigation due either to inundation by the pool of the reservoir or because of the transfer of ownership to the United States

of America for purposes of the McPhee Unit of the Dolores Project. A map showing the lands to be removed from irrigation and a legal description of such lands shall be furnished to the division engineer for Water Division 7.

11. The changes from irrigation to storage in McPhee Reservoir proposed by Applicant can be effected without injuriously affecting the owner of or persons entitled to use water under any vested right or decreed conditional water right by the imposition of the following conditions:

A. That the amount of water stored in McPhee Reservoir under each priority be limited to the amount of average historic consumption as set forth in this Decree on an annual basis.

B. That the water can only be stored during the historic use period when the water rights are in priority.

C. That storage be allowed when there is adequate space available in McPhee Reservoir, so as to provide that Dolores Project supplies will not be reduced.

D. Release will be made from McPhee Reservoir to replace depletions associated with the pumping of the Paradox Salinity Control Wells along with the necessary transportation losses as required by the division engineer for Water Division 4.

E. That proper measuring devices and records be kept as required by the division engineers for Water Divisions 4 and 7.

12. Each of the following Paradox Valley Salinity Control Unit Wells were decreed conditional water rights in the amount of 0.26 c.f.s. by this court in Case W-3549.

Well No. 1W - 72 ft. depth, NE1/4, SW1/4, Section 16, T47N, R18W, N.M.P.M., 2,020 ft. from South Section line, 2,030 ft. from West Section line.

Well No. 1E - 70 ft. depth, NE1/4, SW1/4, Section 16, T47N, R18W, N.M.P.M., 1,870 ft. from South Section line, 2,540 ft. from West Section line.

Well No. 23A - 68 ft. depth, NE1/4, SW1/4, Section 16, T47N, R18W, N.M.P.M., 2,240 ft. from South Section line, 2,500 ft. from West Section line.

Well No. 23CX - 300 ft. depth, NE1/4, SW1/4, Section 16, T47N, R18W, N.M.P.M., 2,320 ft. from South Section line, 2,425 ft. from West Section line.

Well No. 2W - 72 ft. depth, NW1/4, SE1/4, Section 16, T47N, R18W, N.M.P.M., 2,420 ft. from South Section line, 2,440 ft. from East Section line.

Well No. 2E - 77 ft. depth, NW1/4, SE1/4, Section 16, T47N, R18W, N.M.P.M., 2,040 ft. from South Section line, 2,430 ft. from East Section line.

Well No. 3E - 65 ft. depth, NW1/4, SE1/4, Section 16, T47N, R18W, N.M.P.M., 2,300 ft. from South Section line, 2,110 ft. from East Section line.

Well No. 3W - 62 ft. depth, NW1/4, SE1/4, Section 16, T47N, R18W, N.M.P.M., 2,640 ft. from South Section line, 2,180 ft. from East Section line.

Well No. 4E - 53 ft. depth, NW1/4, SE1/4, Section 16, T47N, R18W, N.M.P.M., 2,510 ft. from South Section line, 1,720 ft. from East Section line.

Well No. 4W - 53 ft. depth, SW1/4, NE1/4, Section 16, T47N, R18W, N.M.P.M., 2,460 ft. from North Section line, 1,920 ft. from East Section line.

Well No. 5E - 70 ft. depth, SW1/4, NE1/4, Section 16, T47N, R18W, N.M.P.M., 2,500 ft. from North Section line, 1,430 ft. from East Section line.

Well No. 5W - 72 ft. depth, SW1/4, NE1/4, Section 16, T47N, R18W, N.M.P.M., 2,060 ft. from North Section line, 1,500 ft. from East Section line.

Well No. 6W - 72 ft. depth, SW1/4, NE1/4, Section 16,
T47N, R18W, N.M.P.M., 1,720 ft. from North Section line,
1,380 ft. from East Section line.

Well No. 2C1A - 145 ft. depth, SW1/4, NE1/4, Section 16,
T47N, R18W, N.M.P.M., 1,390 ft. from North Section line,
1,560 ft. from East Section line.

Well No. 6E - 71 ft. depth, NW1/4, SE1/4, Section 9,
T47N, R18W, N.M.P.M., 1,930 ft. from South Section line,
2,320 ft. from East Section line.

Well No. 7E - 75 ft. depth, NW1/4, SE1/4, Section 9,
T47N, R18W, N.M.P.M., 2,590 ft. from South Section line,
1,760 ft. from East Section line.

Well No. 7W - 59 ft. depth, NW1/4, SE1/4, Section 9,
T47N, R18W, N.M.P.M., 2,540 ft. from South Section line,
2,340 ft. from East Section line.

Well No. 8E - 48 ft. depth, SE1/4, NE1/4, Section 9,
T47N, R18W, N.M.P.M., 2,240 ft. from North Section line,
1,079 ft. from East Section line.

Well No. 10W - 67 ft. depth, SW1/4, SE1/4, Section 9,
T47N, R18W, N.M.P.M., 1,030 ft. from South Section line,
2,100 ft. from East Section line.

13. Applicant has drilled five additional wells and proposes to have each of the five designated as an alternate and supplemental point of diversion for any one or any combination of the wells decreed in Case W-3549. The five additional wells are described as follows:

Well No. 9E - 48 ft. depth, SW1/4, NE1/4, Section 9,
T47N, R18W, N.M.P.M., 2,415 ft. from North Section line,
1,500 ft. from East Section line. Permit No. 26277-F.

Well No. 10E - 76 ft. depth, SE1/4, NE1/4, Section 16,
T47N, R18W, N.M.P.M., 1,440 ft. from North Section line,
1,035 ft. from East Section line. Permit No. 26278-F.

Well No. 11E - 62 ft. depth, NE1/4, NE1/4, Section 16,
T47N, R18W, N.M.P.M., 745 ft. from North Section line,
1,230 ft. from East Section line. Permit No. 26279-F.

Well No. 12E - 65 ft. depth, SW1/4, SE1/4, Section 9, T47N, R18W, N.M.P.M., 195 ft. from South Section line, 1,490 ft. from East Section line. Permit No. 26280-F.

Well No. 13E - 71 ft. depth, NW1/4, SE1/4, Section 9, T47N, R18W, N.M.P.M., 1,515 ft. from South Section line, 2,180 ft. from East Section line. Permit No. 26281-F.

14. Applicant also proposes to have each of the 24 wells designated as alternate and supplemental points of diversion for any one or all of the others subject to the limitation pumping from any one or all of the 24 wells shall not exceed 4.94 c.f.s.

15. The 24 wells comprise the Paradox Valley Salinity Control Unit, authorized by Congress in § 202(1) of the Colorado River Basin Salinity Control Act, Pub. L. 93-320, 43 U.S.C. 1592(1). The wells pump saline groundwater from the alluvium of the Dolores River to prevent it from flowing into the Dolores River, thereby reducing the salt load in the Dolores River. The brine is either evaporated or injected into deep wells resulting in total consumption. At times of the year, the Dolores River in Colorado below the Paradox Valley Salinity Control Unit is so saline that it cannot feasibly be used to irrigate crops. By reducing the salt load, the salinity control unit will enable downstream Colorado water users to beneficially use waters of the Dolores River that would otherwise be too saline for irrigation purposes.

16. Applicant must pump continuously to achieve the maximum reduction in salinity. Pumping continuously at the rate

of 4.94 c.f.s. the wells would cause depletion of the Dolores River at the rate of 297.96 acre-feet per month.

17. In times of low brine inflow, pumping at a rate of 2.0 c.f.s. will reduce the salt load in the Dolores River to an acceptable degree. Pumping continuously at the rate of 2.0 c.f.s. would cause depletion in the Dolores River at the rate of 120.63 acre-feet per month.

18. Applicant proposes to release water from McPhee Reservoir and transport it via the natural channel of the Dolores River whenever necessary to replace depletions in the Dolores River resulting from pumping the wells out of priority.

19. Operation of the five wells listed in paragraph 13, above, as alternate and supplemental points of diversion for any one or combination of the 19 wells listed in paragraph 12, above, will not injuriously affect the owner of or persons entitled to use water under any vested right or decreed conditional water right provided that the total pumping rate shall not exceed 4.94 c.f.s.

20. Operation of any one or combination of the 24 wells as alternate and supplemental points of diversion each with respect to the other will not injuriously affect the owner of or persons entitled to use water under any vested right or decreed conditional water right provided the total pumping rate does not exceed 4.94 c.f.s.

21. The Applicant's plan for augmentation can be administered by the State Engineer in the course of his normal duties.

22. All or any of the 24 wells can be pumped out of priority without injuriously affecting the owner of or persons entitled to use water under any vested right or decreed conditional water right by the imposition of the following conditions:

A. The total pumping rate does not exceed 4.94 c.f.s.

B. Water is released from storage in McPhee Reservoir at a rate to be determined by the division engineer.

C. In the event that the need to augment the Dolores River continuously for an extended period of time, the total pumping rate can be reduced to a maximum of 2.0 c.f.s.

D. In the event that the storage in McPhee Reservoir allocated to this plan for augmentation is exhausted, and Applicant is unable to provide a substitute supply of replacement water, Applicant's wells at Paradox Valley shall be subject to administration and curtailment in accordance with the priority system.

CONCLUSIONS OF LAW

23. That the plan for augmentation proposed by the applicant and approved by this decree is one contemplated and authorized by law, and if implemented and administered in accordance with this decree, will permit the uninterrupted use of the 24 wells at the Paradox Valley Salinity Control Unit described in paragraphs 12 and 13, above, without adversely

affecting the owner of or person entitled to the use of water under any vested water right or decreed conditional water right.

24. Applicant is entitled as a matter of law to this decree approving the plan for augmentation and changes of water rights in accordance with the terms and conditions outlined herein.

25. This Decree was entered pursuant to agreement of the parties, the issues decided herein have not been litigated between the parties and therefore, as a result of this Decree, the parties shall not be collaterally estopped from asserting any factual or legal issues in any other case not involving these water rights. Moreover, the parties have agreed that they will not cite these Findings of Fact, Conclusions of Law and Decree as precedent in any other case.

DECREE

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

26. The plan for augmentation which is the subject of this action is hereby approved subject to the terms and conditions described herein.

27. The findings of fact and conclusions of law contained in paragraphs 1 through 24 above are incorporated by reference and made a part of this decree.

28. The State Engineer, acting through the Division Engineers for Water Divisions No. 4 and 7 respectively (hereinafter "the Division Engineers"), shall administer this plan for augmentation and changes of water rights in accordance with the specific conditions outlined in this decree, and so long

as the operation of this plan for augmentation is in compliance with those conditions, he shall not curtail the diversion and use of water by the Applicant which is in accordance with this plan. To the extent that Applicant is ever unable to provide replacement water required hereunder, the wells described in paragraphs 12 and 13, above, which are the subject of this plan, shall not be entitled to operate under the protection of this plan and shall be subject to administration and curtailment in accordance with the priority system.

29. Applicant will install, operate and maintain such measuring devices, keep such records, and make such periodic reports as may be reasonably required by the respective Division Engineers to operate this plan in compliance with this Decree.

30. In order to assure that no injury will occur to any vested water rights or decreed conditional water rights by virtue of the operation under this plan for augmentation or its administration by the Division Engineer, this court shall retain continuing jurisdiction in this case for a period of five (5) years from the date of commencement of full-scale operation of the Paradox Valley Salinity Control Unit.* The court's continuing jurisdiction may be invoked by any party hereto for the purpose of addressing a claim of injury from operation of this plan for augmentation. (* The applicant or its successor in interest to the subject water rights shall give written notice ^{of completion} to this Court within 45 days after the Paradox Valley Salinity Control Unit commences full-scale operation.)

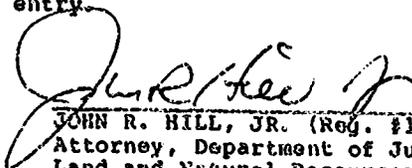
KAB
2-5-8

DONE this 5th day of February, 1986.

/S/ ROBERT A. BROWN

ROBERT A. BROWN
District Judge
Water Division No. 4 and, by
Order of the Supreme Court,
Water Division No. 7
State of Colorado

The undersigned state that they have read the foregoing
decree and consent to its entry.



JOHN R. HILL, JR. (Reg. #10214)
Attorney, Department of Justice
Land and Natural Resources Division
1961 Stout Street, Drawer 3607
Denver, CO 80294

Attorney for Applicant
United States of America

Wendy C. Weiss, 7254

WENDY C. WEISS
Assistant Attorney General
Natural Resources Section
State of Colorado
1525 Sherman Street, 3rd Floor
Denver, CO 80204

Attorney for Objectors