



WATER-RIGHT DOCKET

Great Sand Dunes National Monument

Docket No: 5

DENTON SPRING

State Water Rights Documentation

00-00-0000: district court, water division no. 3, state of colorado; case no. 81cw164, findings go fact, conclusions of law and decree

COPY

JUL 5 - 1981
DISTRICT COURT
WATER DIVISION NO. 3
STATE OF COLORADO

Filed in District Court
Water Division 3, Colorado

DISTRICT COURT, WATER DIVISION NO. 3, STATE OF COLORADO

CASE NO. 81CW164

JUN 29 1981

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

Carl S. Rolling
Clerk Of The Water Court

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES
OF AMERICA IN ALAMOSA AND SAGUACHE COUNTIES

FINDINGS OF FACT

THIS MATTER comes before the court for entry of Findings of Fact, Conclusions of Law and Decree, the parties having consented thereto. The court, having examined the records and files herein, and being now fully and sufficiently advised in the premises, hereby makes the following Findings of Fact, Conclusions of Law and Decree:

1. The United States of America was joined as a party in Water Division No. 3 pursuant to the McCarran Amendment, 43 U.S.C. §666, in 1979.

2. The United States of America filed an application for water rights in December 20, 1979, styled a general application which was assigned Case No. 79CW85. Thereafter, on November 24, 1981, the United States filed this application for water rights at the Great Sand Dunes National Monument as an amendment to Case No. 79CW85 which was assigned Case No. 81CW164.

3. In this case, the United States claims reserved rights in the Great Sand Dunes National Monument "the sources of which are in, on, under, adjacent to, or otherwise appurtenant to the land described by Proclamation No. 1994 of March 17, 1932, 47 Stat. 2506, amended by Proclamation No. 2681 of March 12, 1946, 60 Stat. 1339 and Proclamation No. 3138 of June 7, 1956, 70 Stat. C31." Application, ¶2. The purposes for which the United States claims water are "to conserve the scenery and the natural and historic objects and wildlife therein." Id. at ¶3. The United States claims water for a multitude of specific uses including "preservation of objects of scenic, scientific and educational interest" and "preservation of educational, historic, scientific, scenic, aesthetic and other public values and habitat protection and management." Id.

4. The amount and source of the water claimed is "that quantity of surface, ground and underground waters, both tributary and non-tributary, which are located in, on, under, adjacent to, or otherwise appurtenant to the aforescribed reservation, and which are, or will become necessary to fulfill the purposes for which the reservation was created." Id.

5. The United States also claims a reserved right to Denton Spring in the amount of 0.02 cfs for "maintenance of the ecosystem." Id. at ¶4.

27. Cold Creek contributes to the flow of Sand Creek and, thereby, to the unique pulsating flow phenomenon observed in Sand Creek and the maintenance of the pond, or water hole, located in Section 23, T. 41 N., R. 12 E., New Mexico P.M.

28. Maintenance of instream flows in Medano Creek and its tributaries, Little Medano Creek, Horse Canyon Creek, Castle Creek, Sawmill Canyon Creek, Buck Creek, Garden Creek, an unnamed creek, Mosca Creek, and Morris Gulch and Sand Creek and its tributary, Cold Creek in the Great Sand Dunes National Monument is necessary for the preservation of the great sand dunes and additional objects of scenic, scientific, and educational interest. The amounts necessary for the aforestated purpose are as stated in paragraph 2 of the decree, infra. The quantified flows recognized in this decree are based on currently existing flow conditions and therefore reflect the impact, if there is any, of existing groundwater withdrawals outside the monument. Existing lawful levels of groundwater withdrawals, therefore, will not affect the decreed flows at their quantification points.

29. Maintenance of the entire yield of Denton Spring for "ecosystem maintenance" is not necessary for preservation of the great sand dunes and additional objects of scenic, scientific, and educational interest. However, the flow of the spring has created wildlife habitat and provided drinking water for wildlife

since at least 1946 and has been managed since that time for wildlife purposes by the National Park Service.

30. In addition to the foregoing requirements for water, the National Park Service needs an additional 8.0 acre-feet per year to satisfy future requirements for staff and visitor domestic needs directly related to the administration and operation of the Great Sand Dunes National Monument for preservation of the great sand dunes and additional objects of scenic, scientific, and educational interest. This water is to be diverted through one or more wells to be located on land reserved by one of the proclamations and used on reserved land for the aforesated purpose.

31. In order to facilitate administration of the rights decreed in decretal paragraph 14 and described in paragraph 30 and to facilitate contracting for construction of wells, the United States agrees to provide the State Engineer all information that is required for a permit to construct a well. Upon receipt of such information, the State Engineer agrees to issue a well permit in accordance with the provisions of paragraph 30 above and of decretal paragraph 4.

32. The time for filing Supplemental Statements of Opposition to the captioned case expired Sept. 2, 1986, pursuant to the Referee's Order filed July 15, 1986.

CONCLUSIONS OF LAW

33. All notices required by law for filing and publication of the application in the Resume of Water Division No. 3 have been fulfilled and the court has jurisdiction over the subject matter and all parties whether or not they appeared.

34. The primary purpose of the Great Sand Dunes National Monument is as stated in the March 17, 1932, proclamation, to wit: "preservation of the great sand dunes and additional objects of scenic, scientific, and educational interest."

35. As found in paragraph 28, above, water, in the form of minimum stream flows in Medano Creek and its tributaries, Little Medano Creek, Horse Canyon Creek, Castle Creek, Sawmill Canyon Creek, Buck Creek, Garden Creek, an unnamed creek, Mosca Creek, and Morris Gulch, and in Sand Creek and its tributary, Cold Creek is necessary to fulfill the primary purpose of the Great Sand Dunes National Monument. Therefore, the United States reserved instream flows in Medano Creek and Sand Creek and their respective tributaries described above, with priority dates as of the dates the respective parts of the Monument were reserved. Cappaert v. United States, 426 U.S. 128, 138 (1976); United States v. Denver, 656 P.2d 1, 20 (Colo. 1982).

36. The flow of Denton Spring for "ecosystem maintenance" is not necessary for the primary purpose of the Great Sand Dunes National Monument, therefore the claimed flow of Denton Spring is not reserved. United States v. New Mexico, 438 U.S. 696 (1978).

37. Denton Spring has been beneficially used by the United States for the purpose of wildlife habitat and wildlife drinking since 1946. Therefore, the United States has appropriated 0.02 cfs of the flow of Denton Spring for the aforesated purposes.

38. The federal reserved rights doctrine applies to quantified present and future needs for water necessary to achieve the purpose of federal reservations, Arizona v. California, 373 U.S. 546, 600 (1963); United States v. Denver, 656 P.2d 1, 34-35 (Colo. 1982). Therefore, the United States has reserved 8.0 acre-feet of water per year for future use for the operation and administration of the Great Sand Dunes National Monument for staff and visitor use for purposes directly related to preservation of the great sand dunes and additional objects of scenic, scientific, and educational interest.

39. In its application, the United States made very broad claims for a multitude of uses. The only water necessary for the primary purpose of the Great Sand Dunes National Monument is that required for Medano Creek and Sand Creek and their respective tributaries as found and described in paragraphs 10 through 28

above and the 8.0 acre-feet per year for future use described in paragraph 30, above. Therefore, no reserved rights were created by the proclamations pertaining to Great Sand Dunes National Monument except those decreed herein. Id.

40. This court has previously ruled that applications filed as amendments to Case No. 79CW85 prior to March 31, 1982, relate back to Case No. 79CW85. See, this court's Orders dated December 31, 1981, and June 9, 1988, Case No. 79CW85. The application in this case is within the terms of those Orders and is a clarifying amendment to the application filed by the United States in Case No. 79CW85, and the United States is, therefore, entitled to antedate priorities subsequent to March 17, 1932. United States v. Bell, 724 P.2d 631, 645 (Colo. 1986).

41. The United States has demonstrated its entitlement to this decree as a matter of law.

DECREE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Findings of Fact and Conclusions of Law contained herein are incorporated by reference and made a part of this Decree.

4. The United States is entitled to a reserved right to 8.0 acre-feet of water per year to be withdrawn from one or more wells to be constructed in the future in the Alamosa Formation in Section 26, 27 (unsurveyed), 34 or 35 of T. 26 S., R. 73 W. or Section 3 or 10 of T. 27 S., R. 73 W. all with respect to the 6th P.M. The priority of this right is March 17, 1932.

5. The United States appropriated 0.02 cfs of the waters of Denton Spring located approximately 3140 feet from the west section line and approximately 2850 feet from the north section line which point is in the NW1/4 SE1/4 Section 15, T. 27 S., R. 73 W. of the 6th P.M., as of December 31, 1946, for wildlife purposes.

6. The priorities of the reserved rights confirmed in this decree antedate priorities subsequent to March 17, 1932, or June 17, 1956, as appropriate.

7. This judgment and decree constitutes the final adjudication of all claims of the United States for reserved rights for Great Sand Dunes National Monument pursuant to Proclamation No. 1994, 47 Stat. 2506; Proclamation No. 2681, 60 Stat. 1339; Proclamation No. 3138, 70 Stat. C31, and any act or acts of Congress approved prior to March 31, 1982.

8. The reserved and appropriative rights decreed herein are subject to administration by the State Engineer as is any other decree for the purposes decreed herein with their respective priorities.

9. Prior to construction of any well for future use decreed in paragraph 4 hereof, the United States shall provide the State Engineer all information that is required for an application for a permit to construct a well. Whereupon, the State Engineer shall issue a permit subject only to the conditions of said paragraph.

10. The Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from said office. Provided, however, that such devices shall not be located so as to interfere with the purposes of the Great Sand Dunes National Monument.

11. This Decree was entered pursuant to agreement of the parties, the issues decided herein have not been litigated between the parties, and therefore, the parties shall not be collaterally estopped or barred in any way by these proceedings or this Decree from asserting any factual and/or legal issues in

any other action not involving these water rights. This Decree shall not be used, considered, or cited as precedent in any other case except and only to the extent that the rights decreed herein are at issue.

12. Nothing in this decree is intended to interfere with or be used to curtail the operation of the Closed Basin Division, San Luis Valley Project, as authorized by Congress in Pub L. 92-514, 86 Stat. 964; Pub. L. 96-375, 94 Stat. 1507; Pub. L. 98-570, 98 Stat. 2941.

13. The water clerk shall serve a copy of this Decree upon the parties, the Division Engineer, Water Division No. 3, and the State Engineer.

DATED this 30th day of June, ¹⁹⁸⁹~~1988~~

BY THE COURT:


ROBERT W. OGBURN, Judge
Water Division No. 3
State of Colorado

The undersigned consent to the entry of this Decree.

DATED: 7 June 1989

MICHAEL J. NORTON
United States Attorney

By John R. Hill, Jr.
JOHN R. HILL, JR. #10214
Attorney
U. S. Department of Justice
Land and Natural Resources Div.
1961 Stout Street, Drawer 3607
Denver, CO 80294
(303) 844-2892

ATTORNEYS FOR APPLICANT
UNITED STATES OF AMERICA

DATED: 11-8-88

FOR THE ATTORNEY GENERAL

By Carol D. Angel
CAROL D. ANGEL #13123
Assistant Attorney General
Natural Resources Section
1525 Sherman Street, 3rd Floor
Denver, CO 80203
(303) 866-5114

DATED: 11-3-88

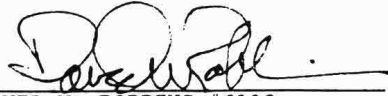
FOR OBJECTOR RIO GRANDE WATER
USERS ASSOCIATION

By Paula C. Phillips
PAULA C. PHILLIPS #8029
Carlson, Hammond & Paddock
2750 One United Bank Center
1700 Lincoln Street
Denver, CO 80203
(303) 861-9000

DATED: 10-31-88

FOR OBJECTOR RIO GRANDE WATER
CONSERVATION DISTRICT

By

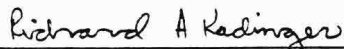


DAVID W. ROBBINS #6112
Hill & Robbins
1441 Eighteenth Street, Suite 100
Denver, CO 80202
(303) 296-8100

DATED: 1-3-88

FOR OBJECTOR OTAKA INTERNATIONAL,
INC.

By



RICHARD A. KADINGER #9788
Lucero, Kadinger & Lester
P. O. Box 1270
Alamosa, CO 81101
(719) 589-6626

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 81CW164

CERTIFICATE OF MAILING

I do hereby certify that on the 30th day of June, 1989,
I personally deposited in the United States Mail, a signed copy of
the foregoing Findings of Fact, Conclusions of Law, Judgment and
Decree in a sealed envelope bearing sufficient postage
properly addressed to:

Jeris A. Danielson
State Engineer
1313 Sherman Street
Denver, CO 80203

Steven E. Vandiver
Division Engineer
Water Division 3
P.O. Box 269
Alamosa, CO 81101

United States of America
c/o John R. Hill, Jr.
Dept. of Justice
Land & Natural Resources Sec.
1961 Stout St., Drawer 3607
Denver, CO 80294

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Attorney, U.S. Dept. of Justice
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Assistant Attorney General
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State of Colorado
Dept. of Natural Resources
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Rio Grande Water Conservation District
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Alamosa, CO 81101

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Rio Grande Water Users Association
c/o John U. Carlson
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Paula D. Phillips
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Otaka International, Inc.
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Atlanta, Georgia 30327

Richard A. Kadinger
LUCERO, KADINGER & LESTER
P.O. Box 1270
Alamosa, CO 81101

BY:  Deputy
Carol S. Redding
Clerk of the Water Court
Water Division 3



United States Department of the Interior

NATIONAL PARK SERVICE
ROCKY MOUNTAIN REGIONAL OFFICE
655 Parfet Street
P.O. Box 25287
Denver, Colorado 80225

IN REPLY REFER TO:

L54 (RMR)MW

JUL 3 1980

John Hill, Jr., Esq.
Trial Attorney
Department of Justice
Land and Natural Resources Division
Denver Federal Building
1961 Stout Street
Drawer 3607
Denver, Colorado 80296

Dear Mr. Hill:

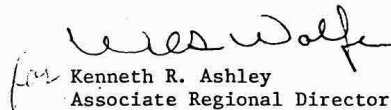
Enclosed are the Water Division 3 applications and related materials for National Park Service water rights claims at Great Sand Dunes National Monument.

We are including claims for three ditches within the monument that were acquired when certain lands were purchased. Since none of the three ditches have been used for many years, it appears they would be considered abandoned under Colorado law. However, inasmuch as it is our understanding that such rights cannot be abandoned we are submitting the claims including copies of the original filings. The only use contemplated for the ditches is for historical interpretation of the area.

The reserved rights for the monument consist of a number of intermittent streams and springs. One spring, Denton Spring, located in the extreme southeast corner of the monument, maintains a somewhat more consistent flow, and a claim for the spring is included herewith. As you know determination of the flow of an intermittent spring is virtually impossible so the estimate of .02 c.f.s. might be difficult to establish and defend. The use of the spring is for wildlife water and to maintain the natural integrity of the area.

If you need further information please call either Bill Mekeel or Ron Hermance at 234-5997.

Sincerely yours,


Kenneth R. Ashley
Associate Regional Director
Park Operations
Rocky Mountain Region

Enclosures



WATER FORM A

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION 3

STATE OF COLORADO

Case No. W-_____

IN THE MATTER OF THE
APPLICATION FOR
WATER RIGHTS OF

<u>United States of America</u>	)	APPLICATION FOR WATER
_____	)	RIGHT
_____	)	(Surface)
_____	)	
_____	)	

IN Alamosa COUNTY.

1. Name of applicant: United States of America, c/o John R. Hill, Jr.

Address of applicant: 1961 Stout Street, Drawer 3607

Denver, Colorado Zip 80294

Telephone number of applicant: 303-837-2065

2. Name of ditch or other structure: Denton Spring

3. Legal description of each point of diversion or proposed

diversion: The spring is located within the Great Sand Dunes National Monument in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 15, T. 27 S, R. 73 W of the 6th P.M.

Amended 4/8/72

4. Description of Diversion, pump, or pipeline: a natural intermittent

spring

5. Source of water (River and tributary): Denton Spring

tributary to intermittent unnamed stream

6. A. Date of initiation of the appropriation: March 17, 1932

B. Date water first applied to beneficial use: N/A

C. How appropriation was initiated: The date that the lands
were withdrawn from the public domain for park purposes.

7. Amount of water claimed by diversion in cubic feet per
second of time (Indicate whether conditional or absolute):

A. Portion absolute: 0.02 cfs B. Portion conditional:

0 cfs

8. Use or proposed use of the water: Ecosystem Maintenance

9. In case of an irrigation priority, the number of acres
being irrigated: 0; the number of acres historically
irrigated: 0; and the number of acres proposed to
be irrigated 0 by the decree sought.

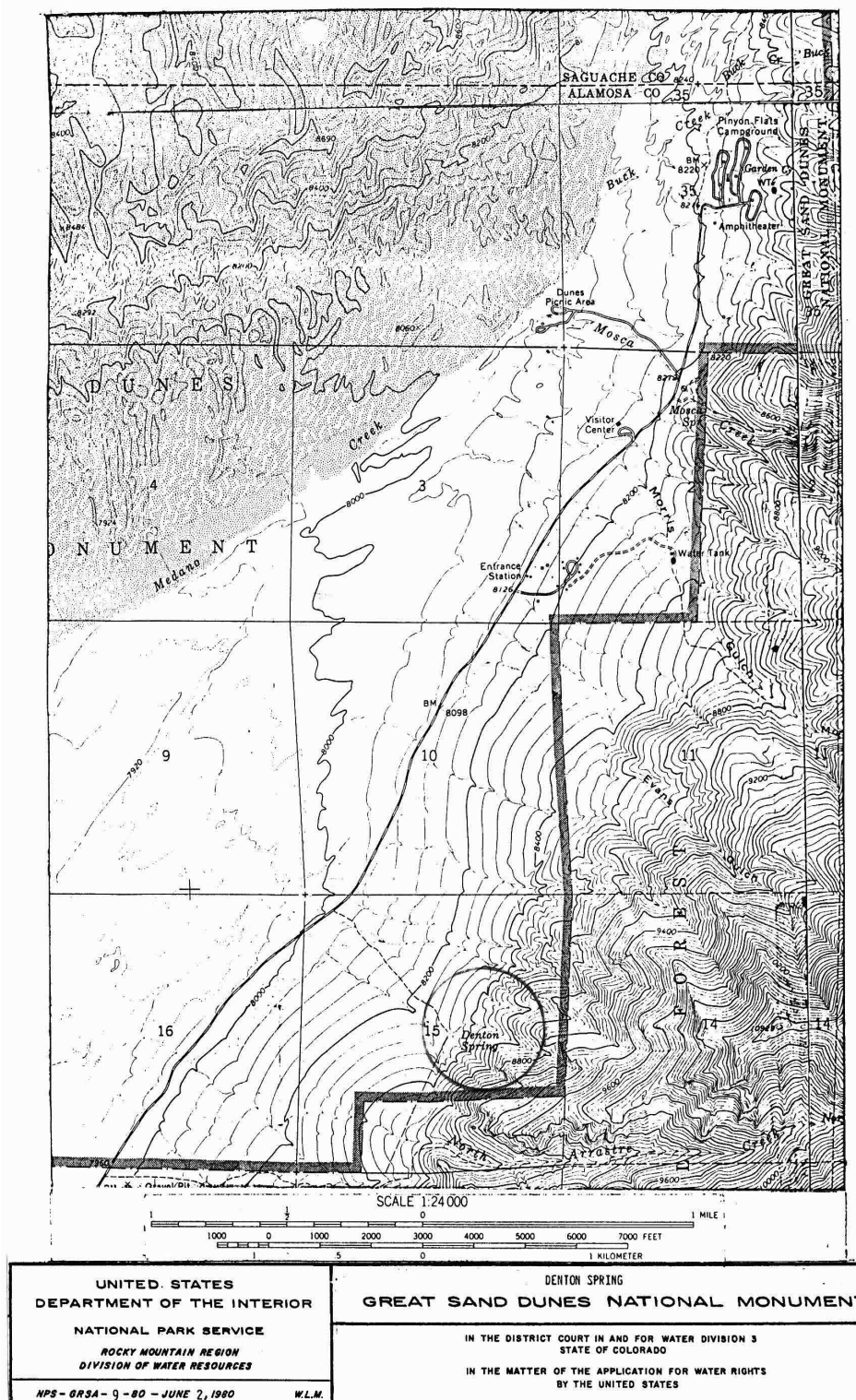
(a) The United States seeks to antedate the adjudication dates of
10. Remarks: ~~earlier decrees insofar as they, in conjunction with applicable statutes~~
~~appear or purport to preclude this court from awarding to the United States its water rights~~
~~bearing their true priority dates. (b) The filing fees which accompany this application~~
~~are paid under protest. The United States hereby claims reimbursement thereof on the grounds~~
~~that filing fees constitute "costs" within the meaning of 43 U.S.C.A., Section 666(a), and as~~
~~such are not properly taxed against the government in water adjudication proceedings.~~

JOSEPH DOLAN, UNITED STATES ATTORNEY
HANK MESHORER, Senior Trial Attorney, Dep
of Justice

By:
Signature of applicant or
attorney for applicant, JOHN R. HILL,
1961 Stout Street, Drawer 3607
Denver, Colorado 80294

(303-837-2065)

Name, address and telephone
number of attorney for applicant.



Docket Information

Number of Documents in Docket 18

Documents Dated from 6/2/1980 to 6/30/1989

Docket Compiled: 3/29/2011