



WATER-RIGHT DOCKET

Rocky Mountain National Park

Docket No: 68

CACHE LA POUDDRE AND WILD AND SCENIC RIVER SYSTEM

State Water Rights Documentation

12-24-1992: findings of fact: conclusions of law and decree

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO
Case No. 86CW367

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

CONCERNING THE APPLICATION OF THE UNITED STATES OF AMERICA FOR
RESERVED WATER RIGHTS FOR THE CACHE LA POUDDRE WILD AND SCENIC
RIVER IN LARIMER COUNTY (ROCKY MOUNTAIN NATIONAL PARK AND
ROOSEVELT NATIONAL FOREST)

THIS MATTER comes before the court for entry of Findings of Fact, Conclusion 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:

MIXED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On October 30, 1986 Congress designated the Cache la Poudre River as a component of the National Wild and Scenic Rivers System. Pub. L. 99-590, 100 Stat. 3330, 16 U.S.C. § 1274(a) (57) (1988). The reaches of the Cache la Poudre so designated are as follows:

(A) Beginning at Poudre Lake, Longitude/Latitude: 40°

25' 11" N, 105° 48' 38" W, downstream to the confluence of
*(SW1/4 SW1/4 Sec. 4, Township 5 North, Range 75 West)
Joe Wright Creek, Longitude/Latitude: 40° 38' 14" N, 105°
48' 14" W, as a wild river. This segment to be designated 75 West)
the "Peter H. Dominick Wild River Area."

(B) Downstream from the confluence of Joe Wright Creek
to a point where the river intersects the easterly north-
south line of the west half southwest quarter of section 1,

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township 8 north, range 71 west of the sixth principal meridian, NW1/4 SW1/4, Sec. 1, T8N, R71W, as a recreational river.

(C) South Fork of the Cache la Poudre River from its source, Longitude/Latitude: 40° 29' 34" N, 105° 38' 40" W, *(NW1/4 Sec. 13, Township 6 North, Range 74 West) to the Commanche Peak Wilderness Boundary, SW1/4 NW1/4, Sec. 29, T6N, R73W, approximately four miles, as a wild river.

(D) Beginning at the Commanche Peak Wilderness Boundary to a point on the South Fork of the Cache la Poudre River in section 1, township 7 north, range 73 west of the sixth principal meridian, at elevation 8050 mean sea level, SW1/4 NE1/4, Sec. 1, T7N, R73W, as a recreational river.

(E) South Fork of the Cache la Poudre River from its intersection with the easterly section line of section 30, township 8 north, range 72 west of the sixth principal meridian, SE1/4 NE1/4, Sec. 30, T8N, R72W, to confluence of the main stem of the Cache la Poudre River, NW1/4 SE1/4, Sec. 3, T8N, R72W, as a wild river.

* All located in unsurveyed areas sections projected.

2. The amount of water reserved is all of the native water arising upon or flowing through the designated segments of the Cache la Poudre River, subject to valid prior appropriations under Colorado law. These reserved rights shall apply only to native water of the designated wild and scenic river segments and shall not include, or in any way limit, either the amount or pattern of flow or releases of trans-basin diverted or foreign

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waters, meaning those waters imported into the Poudre River basin from the Grand (Colorado), Michigan, and/or Laramie River basins, or of native water diverted or stored pursuant to valid prior appropriations as defined herein.

3. Valid prior appropriations are defined as absolute and conditional decreed water rights, including decreed exchanges and decreed augmentation plans, decreed as of and with a priority date senior to October 30, 1986.

4. The Wild and Scenic Rivers Act provides that:

The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this chapter to the extent that such jurisdiction may be exercised without impairing the purposes of this chapter or its administration.

16 U.S.C. § 1284(d) (1988).

Accordingly, the State of Colorado may continue to exercise its jurisdiction over the designated reaches of the Cache la Poudre River, pursuant to 16 U.S.C. § 1284 (1988).

5. Section 102 of Public Law 99-590, 100 Stat. 3330 provides that:

Inclusion of the designated portions of the Cache la Poudre River and the Wild and Scenic Rivers System under section 101 of this title shall not interfere with the exercise of existing decreed water rights to water which has heretofore been stored or diverted by means of the present capacity of storage, conveyance, or diversion structures that exist as of the date of enactment of this title, or operation and maintenance of such structures. Nor shall inclusion of the designated portions of the Cache la Poudre River in the Wild and Scenic Rivers System be utilized in any Federal proceeding, whether

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concerning a license, permit, right-of-way, or other Federal action, as a reason or basis to prohibit the development or operation of any water impoundments, diversion facilities, and hydroelectric power and transmission facilities below Poudre Park located entirely downstream from and potentially affecting designated portions of the Cache la Poudre River, or relocation of highway 14 to any point east of the north-south half section line of section 2, township 8 north, range 71 west of the sixth principal meridian, as necessary to provide access to Poudre Park around such facilities: Provided, That due consideration shall be given to reasonable measures for minimizing the impact of such facilities and road relocation on the designated segments. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the designated portions of the Cache la Poudre River below Poudre Park, in accordance with the provisions of this section, is not incompatible with the designation of portions of the Cache la Poudre River in the Wild and Scenic Rivers System under section 101 of this title. The reservation of water established by the inclusion of portions of the Cache la Poudre River in the Wild and Scenic Rivers System shall be subject to the provisions of this title, shall be adjudicated in Colorado Water Court, and shall have a priority date as of the date of enactment of this title.

Accordingly, nothing contained in this Decree is intended to alter the provisions of section 102.

6. The United States filed its application for adjudication of its reserved rights for the Cache la Poudre Wild and Scenic River on December 30, 1986.

7. The following parties filed timely Statements of Opposition:
Cache la Poudre Water Users Association
City of Greeley

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City of Fort Collins

Colorado Water Conservation Board

Excalibur Resources Company

Northern Colorado Water Conservancy District

St. Vrain and Left Hand Water Conservancy District

City of Thornton

Tunnel Water Company

Water Supply and Storage Company

8. All notices required by law for filing and publication of the application in the Resume of Water Division No. 1 have been fulfilled and the court has jurisdiction over the subject matter and all parties who may be affected by this decree whether or not they have appeared.

9. The United States has demonstrated its entitlement to this Decree as a matter of law.

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DECREE

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The name, address and telephone number of the claimant:

United States of America

c/o Department of Justice

Environment and Natural Resources Division

999 18th Street, Suite 945

Denver, CO 80202

(303) 294-1900

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

3. The United States is entitled to reserved water rights with a priority date of October 30, 1986 in the following reaches and tributaries of the Cache la Poudre River:

(A) Beginning at Poudre Lake, Longitude/Latitude: 40° 25' 11" N, 105° 48' 38" W, downstream to the confluence of Joe Wright Creek, 40° 38' 14" N, 105° 48' 14" W, as a wild river. This segment to be designated the "Peter H. Dominick Wild River Area."

(B) Downstream from the confluence of Joe Wright Creek to a point where the river intersects the easterly north-south line of the west half southwest quarter of section 1, township 8 north, range 71 west of the sixth principal meridian, NW1/4 SW1/4, Sec. 1, T8N, R71W, as a recreational river.

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(C) South Fork of the Cache la Poudre River from its source, Longitude/Latitude: 40° 29' 34" N, 105° 38' 40" W, to the Commanche Peak Wilderness Boundary, SW1/4 NW1/4, Sec. 29, T6N, R73W, approximately four miles, as a wild river.

(D) Beginning at the Commanche Peak Wilderness Boundary to a point on the South Fork of the Cache la Poudre River in section 1, township 7 north, range 73 west of the sixth principal meridian, at elevation 8050 mean sea level, SW1/4 NE1/4, Sec. 1, T7N, R73W, as a recreational river.

(E) South Fork of the Cache la Poudre River from its intersection with the easterly section line of section 30, township 8 north, range 72 west of the sixth principal meridian, SE1/4 NE1/4, Sec. 30, T8N, R72W, to confluence of the main stem of the Cache la Poudre River, NW1/4 SE1/4, Sec. 3, T8N, R72W, as a wild river.

16 U.S.C. § 1274(a)(57) (1988).

4. The amount of water reserved is all of the native water arising upon or flowing through the designated segments of the Cache la Poudre River, subject to valid prior appropriations under Colorado law. These reserved rights shall apply only to native water of the designated wild and scenic river segments and shall not include, or in any way limit, either the amount or pattern of flow or releases of trans-basin diverted or foreign waters, meaning those waters imported into the Poudre River basin from the Grand (Colorado), Michigan, and/or Laramie River basins,

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or of native water diverted or stored pursuant to valid prior appropriations as defined herein.

5. Valid prior appropriations are defined as absolute and conditional decreed water rights, including decreed exchanges and decreed augmentation plans, decreed as of and with a priority date senior to October 30, 1986.

6. The State of Colorado may continue to exercise its jurisdiction over the designated reaches of the Cache la Poudre River, pursuant to 16 U.S.C. § 1284 (1988).

7. The provisions of §§ 101 and 102 of Title I, Public Law 99-590, 100 Stat. 3330, are incorporated by reference and made a part of this Decree.

8. 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 cases except as precluded by the terms of this Decree.

DATED this ____ day of DEC 24 1992, 1992.


RAYMOND S. LIESMAN
Water Referee
Water Division No. 1

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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 this ____ day of _____, 1992.

ROBERT A. BEHRMAN
Water Judge
Water Division No. 1
State of Colorado

Docket Information

Number of Documents in Docket 9

Documents Dated from 12/24/1992 to 12/24/1992

Docket Compiled: 6/16/2011