

DISTRICT COURT, WATER DIVISION 2, COLORADO 320 WEST 10TH STREET PUEBLO, COLORADO 81003	EFILED Document – District Court 2005CW6 CO Pueblo County District Court 10th JD Filing Date: Jul 12 2011 11:52AM MDT Filing ID: 38640820 Review Clerk: N/A
CONCERNING APPLICATION FOR UNDERGROUND WATER RIGHTS, CHANGE OF WATER RIGHTS, AND PLAN FOR AUGMENTATION OF: CHEROKEE METROPOLITAN DISTRICT IN EL PASO COUNTY	Case Number: 05CW6 Division: 2
ORDER	

THIS MATTER is before the Court on Objector's Motion to Clarify Previous Water Court Orders and to Determine Wells 14-17 Water Rights Abandoned in Their Entirety and Motion to Quantify Cherokee's Replacement Obligation. Objector Upper Black Squirrel (UBS) is represented by Lisa M. Thompson. Objectors Wayne E. Booker and Frances G. Booker are represented by Timothy J. Beaton. Applicant, Cherokee Metropolitan District (Cherokee) is represented by Kevin Donovan and Martha P. Whitmore. The Court is now properly advised in the premises.

The Court finds and concludes:

The Objectors' Motion above was filed in response to the Supreme Court decision affirming this Court's order of July 28, 2009. 247 P.3d 567 (2011)

The Supreme Court affirmed the abandonment of the portions of Cherokee's Wells 14-17 conditional water rights for which Cherokee failed to timely file to make absolute.

The Supreme Court also held that the "Water Court did not rule on Cherokee's application for finding of reasonable diligence for the remaining conditional portions of Wells 14-17" and therefore made "no determination as to whether Cherokee should receive a finding of reasonable diligence for the remaining conditional portions."

The Court adopts the findings and judgments previously entered by the Court on July 28, 2009, September 30, 2009, and December 2, 2009.

The Court finds that Cherokee abandoned its water rights in Wells 14-17 in their entirety for two reasons:

First, the Supreme Court in its decision recognized at page 5 that “the stipulated decree requires Cherokee to file an application to perfect its conditional water rights that have been applied to beneficial use within two years of the first diversion. The stipulated decree also states that Cherokee will abandon the amounts of its conditional rights not used for beneficial purposes.” (Emphasis added)

As previously noted, Cherokee did not file an application within the required two-year period and said rights were determined to be abandoned. The Supreme Court affirmed the decision but opined that the “water court did not rule on Cherokee’s application for finding of reasonable diligence for the remaining conditional portions of Wells 14-17.”

The Court now finds that Cherokee also agreed to abandon those “amounts not used for beneficial purposes...” which results in the abandonment of the rights in their entirety.

Second, Cherokee specifically admitted that it would abandon those rights in Wells 14-17 which were not requested to be made absolute.

Concerning Wells 14, 15, and 16, the Amended Application specifically stated that “Applicant will abandon the portions of these wells’ conditional rights not requested to be made absolute herein.”

Concerning Well 17, Cherokee’s Amended Application states, “Applicant will abandon the portion of this well’s conditional rights not requested to be made absolute herein.”

The Supreme Court acknowledged Cherokee’s admissions at footnote 3 of its Opinion.

Admissions are binding on the parties “and generally continue to have effect for a subsequent part of the same proceedings.” Kempton v. Hund, 713 P.2d 1274, 1279 (Colo. 1986).

The admissions by Cherokee supports the findings that Wells 14-17 were abandoned in their entirety.

Objectors have also included in their Motion a request to quantify Cherokee’s Replacement Obligation.

Cherokee “does not disagree that it is required by this Court to replace withdrawals from Wells 14-17 that occurred after the Court’s Order of December 2, 2009.” Cherokee’s Response, p. 1.

The Court adopts Cherokee’s position that a hearing is required to determine Cherokee’s replacement obligation.

IT IS THEREFORE ORDERED AND DECREED:

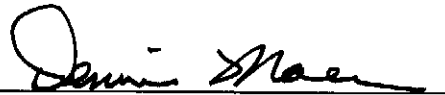
Cherokee has abandoned the conditional water rights for Wells 14, 15, 16, and 17 in their entirety.

Cherokee's replacement obligation for Wells 14-17 shall be determined at a hearing to be set by the parties.

The issue of attorney's fees is held in abeyance pending a final determination of the replacement obligation issue.

DONE this 12 day of July, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dennis Maes", written over a horizontal line.

Dennis Maes
District Court Judge