

DISTRICT COURT, WATER DIVISION 6, COLORADO Court Address: 522 Lincoln Ave. Steamboat Springs, CO 80477	FILED Document CO Routt County District Court 14th JD Filing Date: Sep 21 2012 04:17PM MDT Filing ID: 46590424 Review Clerk: Melissa Rogers
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: SENECA COAL COMPANY, IN ROUTT COUNTY	▲ COURT USE ONLY ▲ Case Number: 09CW43 Div.: Ctrm.:
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING AND DECREE OF WATER COURT	

This matter comes before the Court on the Application to Make Conditional Water Right Absolute filed by Seneca Coal Company ("Applicant") on September 28, 2009. Applicant filed an Amended Application to Make Conditional Water Right Absolute, Application for Change of Water Right, and Application for Water Storage Rights on June 29, 2010 (the original application and the amended application are collectively referred to herein as the "Application").

The Application was referred to the undersigned as Water Referee pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 through 602. The Water Referee, having considered the pleadings and other evidence in this matter, and having made any investigations necessary to determine that the statements in the Application are true, and being otherwise fully advised in the premises, does hereby enter the following findings of fact, conclusions of law, ruling and decree.

FINDINGS OF FACT

1. Name, Address and Telephone Number of Applicant:

Seneca Coal Company
 P.O. Box 670
 Hayden, CO 81639-0670
 Telephone: (303) 276 5209

2. Notice of the Application was properly published in the Water Resume for Water Division 6. The Court has jurisdiction over all those persons and entities that have standing to appear, whether they have appeared or not.

3. None of the water rights or sources thereof involved in this Application are located within a designated ground water basin.

4. No statements of opposition were filed, and the time for filing statements of opposition has expired.

5. The Division Engineer for Water Division 6 issued a Report of the Division Engineer on January 4, 2010; a Revised Report of the Division Engineer on January 29, 2010; and an Amended Report of the Division Engineer on October 27, 2010.

CLAIM TO MAKE CONDITIONAL WATER RIGHT ABSOLUTE

6. Name of Structure: Seneca Yoast Mine Pond 012.

7. Prior Decree:

A. Original Decree: April 30, 1996, Case No. 95CW74.

B. Prior Diligence Decree: September 15, 2003, Case No. 02CW26.

C. Location: NW 1/4 NE 1/4 Section 19, T5N, R87W of the 6th P.M., at a point approximately 350 feet from the North Section Line and 2,200 feet from the East Section Line, in Routt County, Colorado.

D. Source: Unnamed tributary to Sage Creek, tributary to Yampa River.

E. Appropriation date: August 5, 1994.

F. Amount: 50 acre feet, conditional.

G. Use: Augmentation and non-potable purposes including dust suppression, equipment washing, reclamation and flood control.

8. Amount and Uses Made Absolute: The Court finds that Applicant has stored 15.43 acre feet of water in Seneca Yoast Mine Pond 012 and applied it to beneficial use for reclamation purposes, specifically sediment control and wildlife and stock watering.

9. Date Water Applied to Beneficial Use: February 28, 2006.

10. Remainder of Conditional Water Right Cancelled: The remainder of the conditional water right for Seneca Yoast Mine Pond 012 that is not made absolute herein, in the amount of 34.57 acre feet for all decreed uses and 15.43 acre feet for all uses except reclamation, will be cancelled.

CLAIM FOR CHANGE OF WATER RIGHT

11. Name of Structure: Seneca Yoast Mine Pond 012.

12. Prior Decree: As described in paragraph 7, above.

13. Amount Subject to Change: 15.43 acre-feet, with the right to fill and refill when in priority.

14. Description of Change:

A. Change in location to NE 1/4 NW 1/4, Section 19, T5N, R87W of the 6th P.M., at a point approximately 300 feet from the North Section Line and 2,900 feet from the East Section Line, in Routt County, Colorado.

B. Applicant has withdrawn its claim for a change of use for the absolute portion of the Seneca Yoast Mine Pond 012, on the basis that sediment control and wildlife and stock watering are included within the decreed use of reclamation. Accordingly no change of use is required. *See* Amended Report of Division Engineer, Case No. 09CW43, October 27, 2010.

CLAIM FOR WATER STORAGE RIGHT

15. Name of Reservoir: Seneca Yoast Mine Pond 12A.

16. Legal Description of Location and Dam Centerline: NW 1/4 NE 1/4, Section 19, T5N, R87W of the 6th P.M. at a point approximately 830 feet from the North Section Line and 1,950 feet from the East Section Line in Routt County, Colorado.

17. Source: Unnamed tributary to Sage Creek, tributary to Yampa River.

18. Appropriation Date: June 29, 2010. The water right decreed herein for Seneca Yoast Mine Pond 012A shall be administered as having been filed in 2010.

19. Amount: 6.28 acre feet, absolute, with the right to fill and refill when in priority.

20. Use: Reclamation purposes, specifically sediment control and wildlife and stock watering.

21. Surface Area of High Water Line: 0.92 acres.

A. Vertical Height of Dam: Approximately 7.2 feet.

B. Length of Dam: Approximately 250 feet.

22. Total Capacity of Reservoir: 6.28 acre feet.

A. Active capacity: 0

B. Dead storage: 6.28 acre feet.

23. Name and Address of Owners of Land Upon Which All Structures Are Located: Applicant, see paragraph 1 above.

ADDITIONAL CLAIMS FOR WATER STORAGE RIGHTS: WITHDRAWN

24. Applicant has withdrawn its claims for new water storage rights associated with the Seneca Yoast Mine Ponds 013 and 014.

CONCLUSIONS OF LAW

25. The foregoing Findings of Fact are fully incorporated herein.

26. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 through -602.

27. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(2) and (3). The Court has jurisdiction over the Application and over all persons or entities that had standing to appear, whether they have appeared or not.

28. The Court has given due consideration to the Report of the Division Engineer issued on January 4, 2010; the Revised Report of the Division Engineer issued on January 29, 2010; and the Amended Report of the Division Engineer issued on October 27, 2010. *See* C.R.S. § 37-92-302(4).

29. Applicant has fulfilled all legal requirements for a decree for the requested claim to make a conditional water right absolute, change of water right, and water storage right, including without limitation the requirements of C.R.S. §§ 37-92-305(3) and 37-92-305(9)(a).

RULING OF THE REFEREE AND DECREE OF THE WATER COURT

30. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein.

31. The Application is granted. The Court hereby adjudicates and decrees that the conditional water right for the Seneca Yoast Mine Pond 012 has been made absolute for the amount and uses described herein, approves and confirms the requested change in location of the Seneca Yoast Mine Pond 012 as described herein, and adjudicates and decrees an absolute water storage right for the Seneca Yoast Mine Pond 012A.

32. The remainder of the conditional water right for Seneca Yoast Mine Pond 012 that is not made absolute herein, in the amount of 34.57 acre feet for all decreed uses and 15.43 acre feet for all uses except reclamation, is hereby cancelled.

33. The water right decreed herein for Seneca Yoast Mine Pond 012A shall be administered as having been filed in 2010.

34. This Decree does not and cannot affect the finality of any decree mentioned herein. This decree is final and appealable upon entry. The Court expressly determines that there is no just reason for delay and expressly directs the entry of judgment.

35. Nothing in this Ruling and Decree shall be construed to restrict the alienability of the subject water rights.

36. The Application, as decreed herein, is administrable by the State and Division Engineers. Review of determinations made by the Division Engineer or the State Engineer in administration of the subject water rights is a "water matter" which the Water Court may review under its exclusive jurisdiction.

It is accordingly ORDERED that this Ruling and Decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to C.R.S. § 37-92-304, as amended.

It is FURTHER ORDERED that a copy of this Ruling and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 6.

District Court, Water Division 6
Findings of Fact, Conclusions of Law, Ruling and Decree
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Within twenty days following the entry of this Ruling, any person who wishes to protest the Ruling shall file a pleading in protest with the Water Clerk. In the absence of any protest being received, the Water Judge for Water Division 6 may incorporate the Referee's Ruling into the Decree which will be entered on or after twenty days of the date of this Ruling.

Dated this 21st day of September, 2012.

BY THE REFEREE:

/s/ Daniel R. Birch
Daniel R. Birch, Water Referee

NO PROTEST WAS FILED IN THIS MATTER. THE FOREGOING RULING OF THE REFEREE IS CONFIRMED AND APPROVED, AND IS MADE A JUDGMENT AND DECREE OF THIS COURT.

Done at the City of Steamboat Springs, Colorado, this __ day of _____, 2012.

BY THE COURT:

Hon. Michael A. O'Hara III, Water Judge
Water Division 6