

DISTRICT COURT,
WATER DIVISION 4, COLORADO
1200 N. Grand Avenue, Bin A
Montrose, CO 81401

Plaintiffs:

UPPER GUNNISON RIVER WATER
CONSERVANCY DISTRICT and LAKE
SAN CRISTOBAL WATER ACTIVITY
ENTERPRISE,

v.

Defendants:

THE HINSDALE MINING AND
DEVELOPMENT COMPANY, a defunct
South Dakota corporation, DANIEL L. PLIES,
AND ALL UNKNOWN PERSONS WHO
MAY CLAIM ANY INTEREST IN THE
SUBJECT MATTER OF THIS ACTION.

in Hinsdale County.

▲ COURT USE ONLY ▲

Case Number: 11CW61

JUDGMENT AND ORDER

The Court, having reviewed the Plaintiffs' Application for Entry of Judgment, and being fully advised with respect to the subject matter of the verified Complaint, hereby enters and makes the following findings of fact, conclusions of law and ruling.

Findings of Fact

1. This action was initiated by Plaintiffs filing of a verified Complaint: Application for Determination of Abandonment seeking abandonment of a storage water right to decreed to The Lake San Cristobal Reservoir on January 9, 1928, for 426,278,160 cubic feet of water "for the purpose of diverting and applying same for the generation and production of electrical power".

2. More than 30 days have passed since completion of service by publication on all Defendants except Daniel L. Plies, as authorized by this Court in its Order dated June 1, 2011,

more than 60 days have passed since notice of this action was published in the Water Court resume for Water Division 4, and no responsive pleading has been filed in this action.

3. Defendant Daniel L. Plies has executed and delivered a Quitclaim Deed dated August 5, 2011, quitclaiming all of his right title and interest in the 1928 Storage Right which is the subject of this action to the Upper Gunnison River Water Conservancy District, a Plaintiff herein, and therefore has no further interest in this matter.

4. The verified Complaint: Application for Determination of Abandonment, and the Exhibits attached thereto, provides sufficient facts to support the relief sought by Plaintiffs; specifically:

a. In Case No. 3516, upon the application of the Hinsdale Mining and Development Company, L. F. Hulen lessee, the Montrose County District Court decreed a storage water right to The Lake San Cristobal Reservoir on January 9, 1928, for 426,278,160 cubic feet of water “for the purpose of diverting and applying same for the generation and production of electrical power” (the 1928 Storage Right). The decreed location of Lake San Cristobal Reservoir is “on the S $\frac{1}{2}$ Section 10; S $\frac{1}{2}$ Section 15; S $\frac{1}{2}$ Section 38; SW $\frac{1}{4}$ Section 27; NE $\frac{1}{4}$ Section 28; SE $\frac{1}{4}$ Section 21, Township 43 North, Range 4 West, New Mexico Principal Meridian in Hinsdale County, Colorado” (the 1928 Storage Right).

b. No storage or diversion for the generation and production of electrical power has been made under the 1928 Storage Right for at least sixty years.

c. In Case No. 3516, upon the application of the Hinsdale Mining and Development Company, L. F. Hulen lessee, the Montrose County District Court decreed a direct flow water right to The Lake City Power Company’s Pipe Line on January 9, 1928, in an amount not to exceed 200 cubic feet of water per second “for the development and the production of electrical power for general use and application as a public utility” (The Pipe Line Right).

d. Diversions under the 1928 Storage Right were made from the Lake Fork of the Gunnison River through the Lake City Power Company’s Pipe Line as an integral part of the power system.

e. The Lake City Power Company’s Pipe Line has not existed for at least thirty years.

f. The Pipe Line Right was cancelled on grounds of abandonment, without protest, by this Court on March 13, 1975 in Case CW-(74)361.

g. Water levels in Lake San Cristobal have been controlled by a rock and timber dam constructed by Hinsdale County and the Town of Lake City in 1954, and later by boulders placed at the outlet of the lake by Hinsdale County employees since at least

1970, and no protest of these practices controlling lake levels has ever been lodged on behalf of any party claiming an interest in the 1928 Storage Right.

h. The record owner of the 1928 Storage Right, The Hinsdale County Mining and Development Company, a South Dakota Corporation, ceased operations prior to 1953 and its corporate charter was canceled on July 1, 1970 for failure to file annual reports as required by law.

i. On February 5, 1980, the Colorado Water Conservation Board obtained a natural lake level decree with a priority date of May 12, 1976 (amended by decree dated March 21, 1991) controlling the entire volume of water in Lake San Cristobal, "a natural lake", to protect the natural environment to a reasonable degree in Case No. W-3366, and no statement of opposition was filed in that case by any party claiming an interest in the 1928 Storage Right.

j. No fact or condition exists that excuses the nonuse or shows the owner's intent not to abandon the 1928 Storage Right.

Conclusions of Law

5. Timely and adequate notice of the pendency of this proceeding *in rem* was given in the manner required by law.

6. This Court has jurisdiction over the subject matter of this proceeding and over all who have standing to appear as parties, whether they have appeared or not.

7. The facts set forth in paragraph 4 above establish an unexplained period of nonuse for an unreasonable time, which creates a rebuttable presumption of abandonment and no evidence has been presented to this Court which rebuts the presumption of abandonment.

RULING AND ORDER

IT IS HEREBY RULED AND ORDERED:

8. The foregoing Findings of Fact and Conclusions of Law are incorporated into and form a part of this Ruling and Order, as if fully set forth herein at this point.

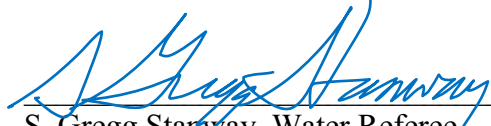
9. The facts alleged in the verified Complaint: Application for Determination of Abandonment are true.

10. The water right decreed to The Lake San Cristobal Reservoir on January 9, 1928, in Case No. 3516, Montrose County District Court, for 426,278,160 cubic feet of water is hereby declared abandoned and cancelled.

11. Any further diversions based on said abandoned and cancelled water right are hereby permanently enjoined.

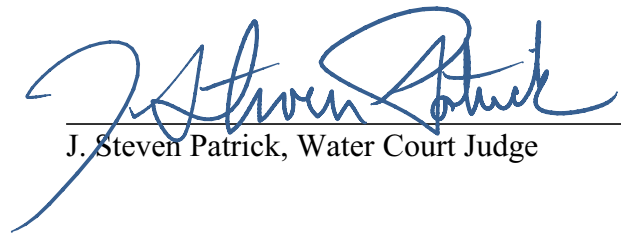
12. This Judgment and Order shall be filed with the water clerk and a copy shall be filed with the State Engineer and Division Engineer, Water Division No. 4.

Dated this 27th day of October, 2011.



S. Gregg Starway, Water Referee

Approved by the Court this 21st day of Nov., 2011.



J. Steven Patrick, Water Court Judge