

DISTRICT COURT, WATER DIVISION 4, STATE OF COLORADO Montrose County Justice Center 1200 N. Grand Avenue Montrose, CO 81401	DATE FILED: November 2, 2020 8:41 AM CASE NUMBER: 2011CW31
CONCERNING THE WATER RIGHTS OF THE UNITED STATES OF AMERICA IN THE TAYLOR RIVER, A TRIBUTARY TO THE GUNNISON RIVER	▲ COURT USE ONLY ▲
	Case No.: 2011CW31 (C/R 86CW203 and 96CW224)
AMENDED DECREE OF THE WATER COURT	

This matter comes before the Court upon a Motion to Amend the Stipulation dated July 31, 2015 and the Decree approved by the Court on May 9, 2016. filed by the United States of America (“United States” or “Applicant”), and the Opposers, Taylor Placer, Ltd., the Colorado River Water Conservation District, the Upper Gunnison River Water Conservancy District , and the City of Gunnison. The Water Judge, having made such investigations as are necessary to determine whether the statements in the Motion are true, and having become fully advised with respect to the subject matter of the application, hereby enters and makes the following findings of fact, conclusions of law, and decree.

FINDINGS OF FACT

1. The United States filed the Application on March 30, 2011.
2. Taylor Placer, Ltd. (“Taylor Placer”) (through its predecessors), the Colorado River Water Conservation District (“CRWCD”), the Upper Gunnison River Water Conservancy District (“Upper Gunnison District”), and the City of Gunnison (“City”) filed timely Statements of Opposition to the Application. The time for filing statements of opposition and motions to intervene has expired.

3. The water right the United States seeks to make absolute in this case is the conditional portion of the water right decreed by this Court in Case No. 86CW203 on September 18, 1990, and amended by an Order dated November 13, 1990 (Refill Decree), for the refill of Taylor Park Reservoir (Refill Right).

4. The dam impounding Taylor Park Reservoir is located in Gunnison County in the N½ of Section 24, Township 14 South, Range 83 West of the 6th Principal Meridian. The initial point of survey for the reservoir impounded by the dam is at a point whence the North quarter corner of Section 8, Township 14 South, Range 82 West of the 6th Principal Meridian bears North 39° 13' East a distance of 15,911.5 feet.

5. The Refill Right was decreed for 106,230 acre-feet, of which 44,700 acre-feet was decreed absolute and 61,530 acre-feet was decreed conditional, with a priority date of August 28, 1975. The source of supply for the water right decreed to the Refill Right is the Taylor River and its tributaries, tributaries of the Gunnison River.

6. The Refill Decree was granted upon an Application filed by the Upper Gunnison District; thereafter, the Refill Right was assigned to the United States by the Upper Gunnison District by an Assignment of Water Rights dated March 22, 1993 in accordance with a contract dated April 16, 1990 between the United States, the Upper Gunnison District, the Uncompahgre Valley Water Users Association and the Colorado River Water Conservation District.

7. The Refill Decree provides that while the water is impounded in Taylor Park Reservoir, it shall be used for recreational purposes, including fishery and wildlife, and that the impounded water shall be released at times and in quantities calculated to enhance the fishery and recreational uses of the Taylor and Gunnison Rivers above Blue Mesa Reservoir.

8. Of the 106,230 acre-feet, 19,200 acre-feet were decreed for additional use for increased and supplemental irrigation within the Upper Gunnison District. Of said 19,200 acre-feet, 13,777 acre-feet were decreed absolute (as part of the 44,700 acre-feet), and the remaining 5,423 acre-feet were decreed conditional (as part of the 61,530 acre-feet).

9. The 61,530 acre-feet conditional portion of the Refill Right, including 5,432 acre-feet decreed for increased and supplemental irrigation, was continued in force until March 31, 2011 by this Court by decree entered on April 12, 2005 in Case No. 96CW224.

10. According to the Official Accounting Sheet (Gunnison River System) maintained by the Division 4 Engineer, Taylor Park Reservoir achieved its decreed refill by storing 106,230 acre-feet of water in priority in water years 2005, 2006, 2007, 2008 and 2009. In each of those water years, water stored in the reservoir under the Refill Right was used for recreational purposes, including fishery and wildlife, and was released at times and in quantities calculated to enhance the fishery and recreational uses of the Taylor and Gunnison Rivers in accordance with the Refill

Decree. Table 1, attached, provides a summary of relevant information from the Official Accounting Sheet.

11. The expert report prepared by Slattery & Hendrix Engineering LLC establishes that in water year 2009 19,200 acre-feet of the Refill Right decreed for increased and supplemental irrigation by the Refill Decree was stored in priority in Taylor Park Reservoir and released in August, September and October for increased and supplemental irrigation use within the boundaries of the Upper Gunnison District. (See Table 2 attached to this Amended Decree and incorporated herein.)

12. The United States has completed its appropriation of 106,230 acre-feet of water stored under the Refill Right and applied that water to all decreed beneficial uses, including 19,200 acre-feet decreed for increased and supplemental irrigation within the Upper Gunnison District.

CONCLUSIONS OF LAW

13. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.

14. All notices required by law have been properly made, including those required under C.R.S. §§ 37-92-302(2)(b)(II) and 37-92-302(3). This Court has jurisdiction over the Application and over all persons or entities that had standing to appear, even though they did not do so.

15. 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, *et seq.*, and should be granted.

16. The United States has fulfilled all legal requirements for a finding that the conditional portion of the Refill Right decreed to the Taylor Park Reservoir should be made absolute.

TERMS AND CONDITIONS

October 29, 2020

17. In accordance with the Amended Stipulation filed in this Court dated _____, 2020, entered into among the parties as a compromise and settlement of disputed issues, which Amended Stipulation has been approved by the Court, the terms and conditions contained in paragraph 18 below are incorporated into this Amended Decree.

18. For the purposes of: (1) a compromise and settlement of the issues in dispute concerning the administration of instream flow rights in the Taylor River and certain of its tributaries as decreed in Case No. W-1991, Water Division No. 4, on February 11, 1975 (the “W-1991 Rights”) and the Refill Right; (2) specifying terms and conditions in a water court decree granting the application in this Case No. 11CW31 in whole or in part; (3) specifying terms and conditions in the Amended Decree in Case No. 2015CW3064; and (4) the administration of any

exchanges between or among the Wayne N. Aspinall Unit, Taylor Park Reservoir, and the Gunnison Tunnel; the parties agree that the W-1991 Rights and all water stored in and released from Taylor Park Reservoir shall be administered according to the following procedures and criteria, which shall be incorporated verbatim into any decree presented to the Water Court in this case and into a decree changing the use of the Refill Right as provided above:

A. Taylor Placer shall be notified of each annual Taylor Park Reservoir operations meeting of the parties to the 1975 Exchange Agreement and may attend and provide written and oral information at each meeting.

B. The Taylor Local Users Group (TLUG – defined below) shall meet once per month in March, April, May, June, July, and August of each year as soon as possible after the Forecasted Inflow is available for that month; provided, however, that if the Forecasted Inflow changes significantly from the previous forecast at any time during that period of the year, the TLUG shall meet as soon as possible after the significantly changed Forecasted Inflow is issued. Additional meetings may occur upon the call of the District or upon the request to the District of any three members of the TLUG. The Upper Gunnison District shall maintain accurate minutes of each TLUG meeting and shall promptly circulate drafts of the minutes for review, correction and approval by the members of TLUG, following which final meeting minutes shall be distributed. The meetings may be recorded.

C. The parties shall cooperate with one another to determine the amount and timing of releases from Taylor Park Reservoir in accordance with the terms and conditions of this paragraph 18.

D. Subject to the terms of this paragraph 18, and subject to the Secretary of the Interior's exercise of discretion pursuant to the laws governing operation of the Reservoir and Federal Reclamation projects generally, the rate and timing of releases from Taylor Park Reservoir shall be established by the United States, after consultation with Taylor Placer, the Taylor Local Users Group (if any), and the other parties to the 1975 Exchange Agreement, in a manner consistent with the following criteria:

1. Definitions. As used in this paragraph 18:

(a) "Forecasted Inflow" means the forecast for the Taylor River Basin issued by the Colorado Basin River Forecast Center or successor agency, and used by the Bureau of Reclamation for forecasts, of the most probable (50% chance of exceedence) unregulated April 1 through July 31 inflow to Taylor Park Reservoir. After consultation with the Colorado State Engineer and the Upper Gunnison River Water Conservancy District, the United States may adopt a different forecast methodology which uses the best scientifically accepted techniques to predict unregulated inflow to

Taylor Park Reservoir. Such different forecast methodology may utilize the forecast issued by the Colorado Basin River Forecast Center in combination with other scientifically accepted data, including without limitation data from other snotel and SnoLite stations maintained by the Upper Gunnison District or other public agency.

(b) “TLUG” consists of five citizen members appointed by the Board of Directors of the Upper Gunnison District and the representative selected by Taylor Placer. TLUG provides recommendations to the District regarding Taylor Park Reservoir operations. The members presently represent rafting or boating interests, flat water recreation interests in Taylor Park Reservoir, irrigation users along the Taylor and Gunnison Rivers, wade fishermen, and property interests along the Taylor and Gunnison Rivers. The chair of the TLUG is the Upper Gunnison District Director representing Division 4.

A representative selected by Taylor Placer shall be appointed to and shall serve on the TLUG and any successor entity that serves the same or a similar purpose. Taylor Placer shall provide to the Upper Gunnison District the name and contact information of Taylor Placer’s selected representative. Actions of Taylor Placer’s selected representative shall be binding on Taylor Placer.

(c) “Available Water” is water that is available for release from Taylor Park Reservoir in accordance with the Accounting Conditions of the Refill Decree and as determined using the criteria set forth below.

2. Year types: The May 1 Forecasted Inflow to Taylor Park Reservoir shall be used to define year categories as specified in Table 1 below:

Table 1: Year Types

Year type	A year in which the Forecasted Inflow is:
Dry Year	Less than 75,000 acre-feet
Average Year	equal to or greater than 75,000 acre-feet but less than 110,000 acre-feet
Wet Year	equal to or greater than 110,000 acre-feet

(a) Provided, that the year type shall be finally determined based on the June 1 Forecasted Inflow. The year type shall not be altered based on Forecasted Inflows after the June 1 Forecasted Inflow.

(b) Provided further, that the volumetric criteria for the Dry, Average, and Wet year types (initially less than 75,000 acre-feet, 75,000 to 110,000 acre-feet, and equal to or greater than 110,000 acre-feet as set forth above) shall be recalculated prior to May 1 of each year so that the Dry Year, Average Year, and Wet Year Types each represent 1/3 of the years of actual unregulated April 1 through July 31 inflow to Taylor Park Reservoir during the 30 years preceding the year of such adjustment (the “Nominal 1/3 Volumetric Criteria”);

(c) Provided further, that in each year the volumetric criteria to be used to determine the year type shall be the average of the Nominal 1/3 Volumetric Criteria that were calculated for the preceding five years in accordance with the foregoing subparagraph 18.D.(2)(b) (the “Adjusted Volumetric Criteria”)¹

3. Storage objectives: In each year, Reservoir releases shall be established in order to meet or exceed the objective of a minimum Reservoir storage level (the “Minimum Storage Objective”) of:

- (a) 75,000 acre-feet as of October 31 in Wet Years; and
- (b) 70,000 acre-feet as of October 31 in Average Years; and
- (c) The storage levels specified in Table 2 below in Dry Years.

Table 2
Minimum Storage Objectives in Dry Years

May 1/June 1 Forecasted Inflows (acre-feet)	October 31 Minimum Storage Objective (acre-feet)
>=70,000<75,000	70,000
>69,000<70,000	70,000
>68,000<=69,000	69,000
>67,000<=68,000	68,000
>66,000<=67,000	67,000
>65,000<=66,000	66,000
>64,000<=65,000	65,000
>63,000<=64,000	64,000

¹ As of 2018, the Adjusted Volumetric Criteria were determined pursuant to the foregoing requirements to be less than 75,764 acre-feet for Dry Years, 75,764 to 107,228 acre-feet for Average Years, and equal to or greater than 107,228 acre-feet for Wet Years.

May 1/June 1 Forecasted Inflows (acre-feet)	October 31 Minimum Storage Objective (acre-feet)
>62,000<=63,000	63,000
>61,000<=62,000	62,000
>60,000<=61,000	61,000
<=60,000	60,000, subject to subparagraph (f) below.

(d) The volume of Available Water during the period of May 1 through October 31 shall initially be determined based on the May 1 Forecasted Inflow and May 1 Reservoir storage level. Reservoir releases during May shall be established in order to meet or exceed the Minimum Storage Objective for the year type that is determined based on the May 1 Forecasted Inflow.

(e) Except as specifically provided in the following subparagraph 18.D.(3)(f):

(i) The volume of Available Water during the period of June 1 through October 31 shall be determined based on the June 1 Forecasted Inflow and June 1 Reservoir storage level;

(ii) Reservoir releases during June through October shall be established in order to meet or exceed the Minimum Storage Objective for the year type that is determined based on the June 1 Forecasted Inflow; and

(iii) The Minimum Storage Objective shall not be altered based on Forecasted Inflows after the June 1 Forecasted Inflow.

(f) In any year when the June 1 Forecasted Inflow is less than 60,000 acre-feet, the Minimum Storage Objective shall be finally determined based upon actual April through July inflow; provided, however, that releases from the Reservoir shall be managed in order to avoid, if possible, an October 31 Reservoir content less than 60,000 acre-feet.

4. Peak flows: Releases of Available Water will be made to achieve the following minimum peak flow rates for the minimum number of consecutive days each year specified below. The timing of such peak flow releases will be during the runoff period from May 1 through June 30, and will be coordinated with the other parties to the 1975 Exchange Agreement and Taylor Placer.

(a) Average Year (as defined in Table 1): Not less than 445 c.f.s. for 5 consecutive days.

(b) Wet Year (as defined in Table 1): Not less than 445 c.f.s. for 10 consecutive days.

(c) Releases shall be adjusted to avoid a Reservoir spill and flooding in the Taylor and Gunnison Rivers, with consideration given to projected East River flows.

5. Rate and timing of other releases of Available Water:

(a) At times during the period of May 1 through October 31 when the foregoing peak flows are not being released from the Reservoir, the rate and timing of release of available water as determined pursuant to subparagraphs 18.D(3)(d) and (e) above shall be established based on the following multi-use considerations, which are not listed in any order of priority:

- (i) Optimizing fish habitat in the Taylor and Gunnison Rivers;
- (ii) Recreational fishing in the Taylor and Gunnison Rivers;
- (iii) Recreational boating in the Taylor and Gunnison Rivers;
- (iv) Fisheries management in Taylor Park Reservoir;
- (v) Recreational boating and fishing in Taylor Park Reservoir;
- (vi) Irrigation; and,
- (vii) Any other purpose for which Taylor Park Reservoir is authorized to release water.

(b) The rate and timing of May 1 through October 31 releases shall be adjusted in accordance with the volume of Available Water as determined pursuant to subparagraphs 18.D(3)(d) and (e) above after consultation with the parties to the 1975 Exchange Agreement, and the TLUG.

6. Winter operations (November – March): The rate of release of Available Water from the Reservoir from November 1 to March 31 will be established on or before November 1 based on the actual content of the Reservoir on October 31, as specified below:

(a) If the actual content of the Reservoir on October 31 is equal to or greater than 75,000 acre-feet, the release rate shall be 100 c.f.s.

(b) If the actual content of the Reservoir on October 31 is less than 75,000 acre-feet and greater than 70,000 acre-feet, the release rate shall be determined by the following formula:

$85 + .003 \times (\text{actual October 31 content} - 70,000)$ rounded to the nearest whole number.

(c) If the actual content of the Reservoir on October 31 is less than 70,000 acre-feet and greater than 60,000 acre-feet, the release rate shall be determined by the following formula:

$75 + .001 \times (\text{actual October 31 content} - 60,000)$ rounded to the nearest whole number.

(d) These values are reflected in the following Table 3:

Table 3
November – March Release Rate

Oct. 31 content >= (acre-feet)	Release Rate (cfs)
75,000	100
74,000	97
73,000	94
72,000	91
71,000	88
70,000	85
69,000	84
68,000	83
67,000	82
66,000	81
65,000	80
64,000	79
63,000	78
62,000	77
61,000	76
60,000	75

(e) Provided, however, that notwithstanding the reservoir content and release rate schedule described above:

(i) subject to paragraph 18.D.(3)(f) above, the objective of reservoir operations shall be to achieve a minimum Reservoir storage level of 75,000 acre-feet as of October 31 in Wet Years, 70,000 acre-feet as of October 31 in Average Years, and the minimum storage levels specified in Table 2 above in Dry Years;

(ii) the rate of release from the Reservoir from November 1 to March 31 shall be no less than 100 c.f.s. in years in which the actual April through July inflow to the Reservoir is equal to or greater than that specified for a Wet Year type; and

(iii) the rate of release from the Reservoir in March may be decreased from the rate established pursuant to Table 3 (but in no event below 50 c.f.s.) if the Forecasted Inflow available during March indicates that the upcoming April 1 through July 31 period will be a Dry Year Type and may be increased if the March 1 Forecasted Inflow indicates that the upcoming April 1 through July 31 period will be an Average or Wet Year Type, The objective of such increase or decrease is to proactively manage Reservoir contents coming into the runoff period in anticipation of the indicated year type; and

(iv) If the adjustments described in paragraph 18.D.(2)(c) result in Adjusted Volumetric Criteria for a Wet Year Type with Forecasted Inflow of less than 105,000 acre-feet, the rate of release for Wet Year Type set forth in subparagraph 18.D.(6)(e)(ii) above shall be reduced proportionately according to the following formula and rounded to the nearest whole number:

Rate of release from November 1 – March 31 = $85 + .0005 \times$
(Adjusted Volumetric Criteria for Wet Year Type – 75,000)

(f) The parties recognize that it may not be possible to set the release from the dam to the exact number and that the release rate may vary from the initial setting due to gage drift over time.

7. Winter operations in certain years: In years when actual April through July inflow to the Reservoir is less than 70,000 acre-feet and, despite the provisions of paragraph 18.D.(3)(f), the Reservoir content on October 31 is less

than 60,000 acre-feet (1977, 1981, 2002, 2012, and 2018 in the historical period of record), the rate of release from the Reservoir from November 1 to March 31 shall be reduced from 75 c.f.s. by 2.5 c.f.s. for every 1,000 acre-feet that the reservoir content is below 60,000 acre-feet, with a minimum release of 50 c.f.s.

8. Reservoir operations during April. Reservoir operations during April shall be based on the most recent Forecasted Inflow in order to proactively manage Reservoir contents at the beginning of the runoff period in anticipation of the year type indicated by the Forecasted Inflow.

9. Ramping rates: The rate of change in releases (“ramping”) shall be as follows: Ramping down shall be limited to no more than 100 c.f.s. per day from flows of 500 c.f.s. or greater, 50 c.f.s. per day from flows between 250 c.f.s. and 500 c.f.s., and 25 c.f.s. per day from flows of less than 250 c.f.s. The rate of ramping up shall generally be no more than 50 c.f.s. per day, but can occur at higher rates to mobilize sediments and other material in the stream. Exceptions to the foregoing ramping rates may be made for emergency operations.

E. The implementation of the foregoing release criteria shall be subject to the following limitations:

1. The rate and timing of releases shall not interfere with the rights of the UVWUA under the 1975 Exchange Agreement or the impair the ability of the UVWUA to utilize the full amount of water stored in the exercise of the 1904 right in accordance with the Accounting Conditions of the decree in Case No. 86CW203.

2. Nothing in the Amended Stipulation or this Amended Decree shall prevent the United States from altering the rate and timing of releases if necessary to respond to emergency conditions, to accommodate maintenance and repair of the Reservoir, or comply with its non-discretionary obligations under federal law.

3. In addition, and notwithstanding paragraph 18.C.(2) herein, the terms and conditions of the Amended Stipulation and this Amended Decree are subject to the Secretary of the Interior’s exercise of discretion pursuant to the laws governing operation of the Reservoir and Federal Reclamation projects generally.

F. A copy of the proposed operations of Taylor Park Reservoir established or modified in accordance with the Amended Stipulation and this Amended Decree shall promptly be provided by the United States to Taylor Placer, the parties to the 1975 Exchange Agreement, and the Division Engineer.

- G. For purposes of performing the terms of the Amended Stipulation and this Amended Decree, Taylor Placer shall provide to the United States and the Upper Gunnison District the name, mailing address, and email address of the person authorized to represent Taylor Placer in matters related to the Amended Stipulation and this Amended Decree.
- H. Taylor Placer agrees that inflows to Taylor Park Reservoir not needed to meet the release schedule established or modified in accordance with the Amended Stipulation and this Amended Decree may be physically stored in the Reservoir, provided that such water is released according to the terms of the Amended Stipulation and this Amended Decree and allowed to flow through the decreed reach of the W-1991 Rights. The storage of such water shall occur under the priority of the 1904 right and the Refill Right, in accordance with the Accounting Conditions of the decree in Case No. 86CW203 as the same were modified by the Amended Decree in Case No. 2015CW3064.
- I. The operation of Taylor Park Reservoir in accordance with the provisions of the Amended Stipulation and this Amended Decree shall be considered to be consistent with the “historical operation” of the Reservoir, as that term is used in the decree in Case No. W-1991, and achieve the optimum use of such water for the purposes of the 1975 Exchange Agreement, as amended on July 9, 1979 and April 16, 1990; and the beneficial uses of the Refill Right as decreed in Case No. 86CW203 as the same were modified by the Amended Decree in Case 2015CW3064.
- J. Releases from Taylor Park Reservoir (whether of first fill or second fill water stored in the Reservoir, or inflows to the Reservoir) shall be credited by the Division Engineer as an exercise of the 1904 right or the Refill Right of Taylor Park Reservoir, in accordance with the Accounting Conditions of the decree in Case No. 86CW203 as the same were modified by the Amended Decree in Case No. 2015CW3064, and also as an exercise of the W-1991 Rights, up to their decreed rate of flow.
- K. Nothing herein shall be construed as a subordination of the W-1991 Rights to any water right, conditional water right, or appropriation. The terms of the Amended Stipulation and this Amended Decree represent a compromise and settlement of a disputed issue as to the relative priority of the W-1991 Rights and the Taylor Park Reservoir water rights and an agreed interpretation of the specific terms of the decrees in Case Nos. W-1991 and 86CW203. Nothing in the Amended Stipulation or this Amended Decree shall limit or impair the exercise by Taylor Placer or administration by the State and Division Engineers of the W-1991 Rights as against any other water right, conditional water right, or appropriation, including without limitation exercise and administration as against diversions or

depletions that would reduce inflows to Taylor Park Reservoir that are accounted under the Refill Right. The Amended Stipulation and this Amended Decree do not include a selective subordination. Nothing in the Amended Stipulation or this Amended Decree constitutes any admission by any party as to the legality of selective subordination, or shall be used as precedent in any other case regarding any party's position on selective subordination.

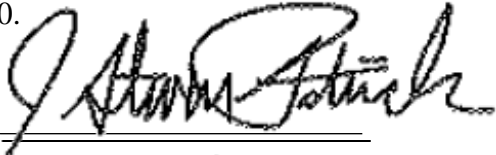
- L. The Amended Stipulation was entered pursuant to agreement of the parties to address their interests and concerns and resolves them finally in this matter. However, because the issues addressed therein have not been litigated by the parties, the parties shall not be collaterally estopped from asserting any factual or legal issues in any other cases not involving these water rights. Neither the Amended Stipulation nor this Amended Decree shall 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.

AMENDED DECREE OF THE WATER COURT

19. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference and are hereby modified as necessary to constitute part of this Amended Decree.
20. The Motion to Amend the Decree is GRANTED, and this Amended Decree shall supersede the Decree approved by the Court on May 9, 2016.
21. The Application to Make Water Right Absolute is GRANTED for the 61,530 acre-foot conditional portion of the Refill Right decreed to Taylor Park Reservoir, including 5,432 acre-feet decreed for increased and supplemental irrigation within the Upper Gunnison District.
22. A copy of this Amended Decree of the Water Court shall be filed with the State Engineer and the Division Engineer for Water Division No. 4.
23. It is further ORDERED that this Amended Decree shall be filed with the Water Clerk, subject to judicial review.

November 2, 2020

Dated this _____ day of _____, 2020.



J. Steven Patrick
Water Judge, Water Division No. 4