1-1-1999

Application for Surface Water Rights

James Fosnaught

town's application. The opposition asks that if the Applicant is claiming to use any municipal effluent return flows for augmentation or exchange, appropriate wastewater treatment standards and accounting procedures be specified to prevent injury or loss of water quality to downstream users. Resulting injury could change the regimen of Clear Creek administration, causing calls at times when there have historically been none. They request sufficient conditions be imposed to prevent such occurrences.

Chip Cutler

APPLICATION FOR SURFACE WATER RIGHTS. Case No. 98CW448 (Water Division 1, December 10, 1998) Applicant: City of Golden (Atty. Porzak Browning & Johnson).

1. Application

The City of Golden ("Golden" or "Applicant") seeks confirmation of absolute water rights on Clear Creek for eight separate existing structures which constitute the City of Golden White Water Course ("Course"); approval of additional conditional water rights for the same eight structures during the months of May, June, July; and approval of conditional water rights for ten additional structures which Golden plans to construct to extend the course.

The existing Course is located in the NW1/4 of the NE1/4 of section 33, T.3 S., R. 70 W. of the 6th P.M., Jefferson County, Colorado. The structures within the Course begin with a rock deflector designed to control, concentrate, and direct stream flow for the beneficial uses of boating, piscatorial, and general recreation, and include seven dams following the rock deflector.

The extension of the Course for which Golden seeks conditional water rights will consist of approximately ten additional dams designed to control, concentrate, and direct the stream flow for the beneficial uses of boating; piscatorial; and general recreation. The extension will be distributed within the channel of Clear Creek immediately below Structure 8 (the last dam in the existing Course), extending the Course approximately 2,750 feet within the channel, terminating at a point in the SW1/4 of the SW1/4 of section 27, T. 3 S., R.70 W of the 6th P.M., approximately 1,300 feet north of the south section line and 800 feet east of the west section line, in Jefferson County.

The Applicant seeks confirmation of absolute water rights initiated November 15, 1996, by the formation of intent to appropriate coupled with actions that manifested such intent sufficient to put third parties on notice, including, but not limited to, the City of Golden's approval of the Course and appropriation of money for the construction of the Course structures. The Applicant claims absolute water rights in the following amounts as measured in cubic feet per second ("cfs") at the Clear Creek at Golden U.S.G.S. stream gauge: January – 101; February

– 75; March – 96; April – 255; May – 836; June – 992; July – 768; August – 559; September – 251; October – 143; November – 103; December – 128; and seeks conditional rights for any portion of the above amounts not found absolute.

The Applicant requests additional conditional water rights for the course in the amounts of 164 c.f.s for the month of May, 8 cfs for the month of June, and 232 cfs for the month of July, allowing it to divert a total of 1,000 cfs during the months of May, June, and July. Additionally, the Applicant seeks conditional water rights equal to the above rights for the proposed extension of the Course."

2. Opposition

The Clear Creek County Board of County Commissioners, the Clear Creek Skiing Corporation, the Coors Brewing Company, the Town of Georgetown, the City of Idaho Springs, the City of Arvada, the Colorado Water Conservation Board, and the City of Westminster have filed statements of opposition to the Application.

The City of Arvada's Statement of Opposition exemplifies the general grounds of opposition by the objectors. The City of Arvada filed opposition based on two broad grounds. First, water rights to divert from Clear Creek, including but not limited to water rights in the decrees entered in Case Nos. W-8762-77, 82CW359, 85CW409, 85CW410, 88CW105, W-7484 and 89CW224, may be adversely affected without proper limitations and conditions placed on the application. Second, the Applicant should be held to strict proof regarding: its ownership of or enforceable property interest in the structures included in the application; the required steps under Colorado law to initiate the claimed rights; whether the Applicant can be granted a decree for the claimed water rights; whether the claimed conditional appropriations can and will be completed with diligence; whether the claimed diversions were within priority and in what amount; and measurement, recording, and water handling obligations in compliance with any terms and conditions in any decree entered.

The Clear Creek County Board of County Commissioners and the City of Idaho Springs requested in their statements of opposition that the court hold the City of Golden to strict proof that the amount of water requested is reasonable and without waste.

In addition, the Colorado Water Conservation Board ("CWCB") filed a statement of opposition claiming the City of Golden's request for absolute water rights and conditional water rights resembles an instream flow. The CWCB objects to the application pursuant to Section 37-92-102(3) C.R.S. which provides that, "no other person or entity [other than the CWCB] shall be granted a decree adjudicating a right or interests in water for instream flows in a stream channel between specific points . . . for any purpose whatsoever."

James Fosnaught