

DISTRICT COURT, WATER DIVISION 6, STATE OF COLORADO

CASE NO. 91 CW 87

adjudication for 6 springs - 20 mls

NOTICE OF RULING

TO: Robert M. Perry
0163 Mt. Sopris Road
Carbondale, CO 81623

Cyprus Western Coal Company
c/o Holland & Hart
ATTENTION CHRISTOPHER L. THORNE
P.O. Box 8749
Denver, CO 80201

FILED WATER DIV. 6
STATE OF COLORADO

MAR 02 1992

The Water Referee for Water Division 6 has instructed me to forward you this copy of his ruling on the following structures:

Perry Springs Nos. 1, 2, 3, 4, 5, and 6

PLEASE CHECK YOUR RULING VERY CAREFULLY. If any errors are found, notify the Water Clerk IMMEDIATELY.

You have within twenty (20) days after the date of this Notice to file with the Water Clerk any Protest to the Referee's Ruling. Any protest to the Referee's Ruling must be filed on or before March 22, 1992. In the absence of any Protest being received, the Judge of Water Division 6 will incorporate the Referee's Ruling into the Decree which will be entered on/or after April 1, 1992.

Dated: March 2, 1992

JANICE M. JOHNER
WATER CLERK, WATER DIVISION 6

Janice M. Johner
Clerk

I hereby certify that a true and correct copy of the foregoing Ruling of Referee was delivered/deposited in the U.S. Mail, postage prepaid this 2nd day of March, 1992.

Edward W. Blank
Division Engineer
P.O. Box 773450
Steamboat Springs, CO 80477

State Engineer
Room 818, Centennial Building
1313 Sherman Street
Denver, CO 80202

Janice M. Johner

WATER COURT, WATER DIVISION NO. 6, STATE OF COLORADO

Case No. 91CW87

FILED WATER DIV. 6
STATE OF COLORADO
FEB 23 1992

REFEREE'S RULING - SURFACE (ABSOLUTE)

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

Robert M. Perry

IN ROUTT COUNTY, STATE OF COLORADO

The above captioned Application was filed on September 30, 1991, and was referred to the Water Referee in accordance with C.R.S. 37-92-101, et seq. On February 11, 1992, the Division Engineer submitted a Summary of Consultation. The Division Engineer has recommended approval of the Application.

A Statement of Opposition to the Application was filed on November 27, 1991, by Cypress Western Coal Company.

The Referee has made such investigations as are necessary to determine whether the statements in the Application are true and has become fully advised with respect to the subject matter of the Application.

IT IS HEREBY THE RULING OF THE WATER REFEREE:

1. The name and address of the Applicant are:

Robert M. Perry
0163 Mount Sopris Road
Carbondale, CO 81623

2. The names of the structures are:

Perry Spring No. 1, Perry Spring No. 2, Perry Spring No. 3,
Perry Spring No. 4, Perry Spring No. 5, Perry Spring No. 6

3. The legal description for the points of diversion are:

Perry Spring No. 1: Northwest 1/4 of the Northwest 1/4, of Section 36, T5N, R87W of the 6th P.M., Routt County, Colorado, at a point 1300 feet East of the West Line and 1020 feet South of the North Line of said Section.

Perry Spring No. 2: Southeast 1/4 of the Northwest 1/4 of Section 36, T5N, R87W of the 6th P.M., Routt County, Colorado, at a point 1740 feet East of the West Line and 1570 South of North Line of said Section.

Perry Spring No. 3: Northeast 1/4 of the of the Southwest 1/4 of Section 36, T5N, R87W of the 6th P.M., Routt County, Colorado, at a point 1770 East of the West Line and 3410 feet North of the South Line of said Section.

Perry Spring No. 4: Northwest 1/4 of the Northeast 1/4 of Section 12, T4N, R87W of the 6th P.M., Routt County, Colorado, at a point 3700 feet East of West Line and 200 feet South of North Line of said Section.

Perry Spring No. 5: Southwest 1/4 of the Southeast 1/4 of Section 36, T5N, R87W of the 6th P.M., Routt County, Colorado at a point 3270 East of the West line and 4910 South of North Line of said Section.

Perry Spring No. 6: Southwest 1/4 of the Northeast 1/4 of Section 12, T4N, R87W of the 6th P.M., Routt County, Colorado at a point 2300 feet West of East line and 2050 feet South of the North line of said Section.

4. The source of the water is:

Perry Spring No. 1: Fish Creek, tributary to Trout Creek, tributary to the Yampa River.

Perry Spring No. 2: Fish Creek, tributary to Trout Creek, tributary to the Yampa River.

Perry Spring No. 3: Fish Creek, tributary to Trout Creek, tributary to the Yampa River.

Perry Spring No. 4: Fish Creek, tributary to Trout Creek, tributary to the Yampa River.

Perry Spring No. 5: Foidel Creek, tributary to Middle Creek, tributary to Trout Creek, tributary to the Yampa River.

Perry Spring No. 6: Foidel Creek, tributary to Middle Creek, tributary to Trout Creek, tributary to the Yampa River.

5. The date of appropriation is:

Perry Spring No. 1: May 10, 1935

Perry Spring No. 2: June 5, 1943

Perry Spring No. 3: August 15, 1978

Perry Spring No. 4: May 5, 1940

Perry Spring No. 5: June 1, 1976

Perry Spring No. 6: June 10, 1935

6. The appropriation was initiated by:

Perry Spring No. 1: Putting water to beneficial use
Perry Spring No. 2: Putting water to beneficial use
Perry Spring No. 3: Putting water to beneficial use
Perry Spring No. 4: Putting water to beneficial use
Perry Spring No. 5: Putting water to beneficial use
Perry Spring No. 6: Putting water to beneficial use

7. The water was applied to beneficial use on:

Perry Spring No. 1: May 10, 1935
Perry Spring No. 2: June 5, 1943
Perry Spring No. 3: August 18, 1978
Perry Spring No. 4: May 5, 1940
Perry Spring No. 5: June 1, 1976
Perry Spring No. 6: June 10, 1935

8. The amount of water awarded is:

Perry Spring No. 1: 0.008 cfs absolute
Perry Spring No. 2: 0.011 cfs absolute
Perry Spring No. 3: 0.007 cfs absolute
Perry Spring No. 4: 0.009 cfs absolute
Perry Spring No. 5: 0.007 cfs absolute
Perry Spring No. 6: 0.007 cfs absolute

9. The use of water is:

Perry Spring No. 1: Livestock
Perry Spring No. 2: Domestic, Livestock
Perry Spring No. 3: Livestock
Perry Spring No. 4: Livestock
Perry Spring No. 5: Livestock
Perry Spring No. 6: Livestock

10. The water right herein awarded is awarded absolutely and unconditionally; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes in accordance with law.

It is accordingly Ordered that this Ruling shall be filed with the Water Clerk subject to Judicial review.

It is further ORDERED that a copy of this Ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Dated FEBRUARY 28, 1992.

BY THE REFEREE



Daniel R. Birch
Water Referee
Water Division No. 6
State of Colorado

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court.

Dated _____.

BY THE COURT

Rebecca L. Kourlis
Water Judge
Water Division No. 6
State of Colorado

DISTRICT COURT, WATER DIVISION 6, COLORADO

Case No.

APPLICATION FOR WATER RIGHTS (SURFACE)

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:
ROBERT M. PERRY

in ROUTT COUNTY

Name, address, and telephone number of applicant:

ROBERT M. PERRY
0163 MT. SOPHRIS RD
CARBONDALE, CO 81623 879-2187

Name of Structure: PERRY SPRING #1, PERRY SPRING #2, PERRY SPRING #3, PERRY SPRING #4, PERRY SPRING #5, PERRY SPRING #6

Legal description of each point of diversion:

PERRY SPRING #1 - NW quarter of the NW quarter of Section 36 Township 5 N, Range 87 W of the 6th PM
1300 FT EAST OF WEST LINE AND 1020 FT FROM SOUTH OF NORTH LINE OF SAID SECTION
PERRY SPRING #2 - SE quarter of the NW quarter of Section 36 Township 5 N, Range 87 W of the 6th PM
1740 FT EAST OF WEST LINE AND 1570 FT SOUTH OF NORTH LINE OF SAID SECTION
PERRY SPRING #3 - NE quarter of the SW quarter of Section 36 Township 5 N, Range 87 W of the 6th PM
1770 FT EAST OF WEST LINE AND 3410 FT NORTH OF SOUTH LINE OF SAID SECTION
PERRY SPRING #4 - NE quarter of the NW quarter of Section 12 Township 4 N, Range 87 W of the 6th PM
3700 FT EAST OF WEST LINE AND 200 FT SOUTH OF NORTH LINE OF SAID SECTION
PERRY SPRING #5 - SW quarter of the SE quarter of Section 36 Township 5 N, Range 87 W of the 6th PM
3270 FT EAST OF WEST LINE AND 4910 FT SOUTH OF NORTH LINE OF SAID SECTION
PERRY SPRING #6 - SW quarter of the NE quarter of Section 12 Township 4 N, Range 87 W of the 6th PM
2300 FT WEST OF EAST LINE AND 2050 FT SOUTH OF NORTH LINE OF SAID SECTION

Source: PERRY SPRING #1 - FISH CK of TROUT CK of YAMPA RIVER, PERRY SPRING #2 - FISH CK of TROUT CK of YAMPA RIVER,
PERRY SPRING #3 - FISH CK of TROUT CK of YAMPA RIVER, PERRY SPRING #4 - FISH CK of TROUT CK of YAMPA RIVER,
PERRY SPRING #5 - FOIDEL CK of MIDDLE CK of TROUT CK of YAMPA RIVER,
PERRY SPRING #6 - FOIDEL CK of MIDDLE CK of TROUT CK of YAMPA RIVER

Date of initiation of appropriation: PERRY SPRING #1 - 05/10/1935, PERRY SPRING #2 - 06/05/1943,
PERRY SPRING #3 - 08/15/1978, PERRY SPRING #4 - 05/05/1940, PERRY SPRING #5 - 06/01/1976, PERRY SPRING #6 - 06/10/1935

How appropriation was initiated: PERRY SPRING #1 - BY PUTTING WATER TO BENEFICIAL USE,
PERRY SPRING #2 - BY PUTTING WATER TO BENEFICIAL USE, PERRY SPRING #3 - BY PUTTING WATER TO BENEFICIAL USE,
PERRY SPRING #4 - BY PUTTING WATER TO BENEFICIAL USE, PERRY SPRING #5 - BY PUTTING WATER TO BENEFICIAL USE,
PERRY SPRING #6 - BY PUTTING WATER TO BENEFICIAL USE

Date water applied to beneficial use: PERRY SPRING #1 - 05/10/1935, PERRY SPRING #2 - 06/05/1943,
PERRY SPRING #3 - 08/15/1978, PERRY SPRING #4 - 05/05/1940, PERRY SPRING #5 - 06/01/1976, PERRY SPRING #6 - 06/10/1935

Amount claimed: PERRY SPRING #1 - 0.008 cfs Absolute, PERRY SPRING #2 - 0.011 cfs Absolute,
PERRY SPRING #3 - 0.007 cfs Absolute, PERRY SPRING #4 - 0.009 cfs Absolute, PERRY SPRING #5 - 0.007 cfs Absolute,
PERRY SPRING #6 - 0.007 cfs Absolute

Use or proposed use: PERRY SPRING #1 - LIVESTOCK, PERRY SPRING #2 - DOMESTIC, LIVESTOCK, PERRY SPRING #3 - LIVESTOCK,
PERRY SPRING #4 - LIVESTOCK, PERRY SPRING #5 - LIVESTOCK, PERRY SPRING #6 - LIVESTOCK

Number of acres historically irrigated: NOT APPLICABLE

Number of acres proposed to be irrigated: NOT APPLICABLE

If non-irrigation, describe purpose fully:

PERRY SPRING #1 - LIVESTOCK

PERRY SPRING #2 - LIVESTOCK
PERRY SPRING #3 - LIVESTOCK
PERRY SPRING #4 - LIVESTOCK
PERRY SPRING #5 - LIVESTOCK
PERRY SPRING #6 - LIVESTOCK

Name and address of owner of land on which each point of diversion or place of use is located:

PERRY SPRING #1 - SAME AS APPLICANT
PERRY SPRING #2 - SAME AS APPLICANT
PERRY SPRING #3 - SAME AS APPLICANT
PERRY SPRING #4 - SAME AS APPLICANT
PERRY SPRING #5 - SAME AS APPLICANT
PERRY SPRING #6 - SAME AS APPLICANT

STATE OF COLORADO
COUNTY OF Garfield

I, Robert M Perry, state under oath that I have read this application and
verify its content

Robert M Perry
Signature of Applicant

Subscribed under oath before me on Sept. 25, 1991
date

My commission expires: 1-25-94
date

Barbara Meek
Notary Public

IN THE DISTRICT COURT
IN AND FOR WATER DIVISION 6
STATE OF COLORADO

CASE NO. 91CW087

IN THE MATTER OF THE
APPLICATION FOR WATER
RIGHTS OF:

SUMMARY OF CONSULTATION

ROBERT M. PERRY
0163 MT. SOPHRIS ROAD
CARBONDALE, CO 81623

The Division Engineer and the Water Referee for the Water Division have consulted concerning the Application on file herein. The Division Engineer has made the following comments and recommendations to the Referee:

Applicant seeks Court approval of a Surface Water Right for six springs. Applicant claims water from these springs has been used for livestock purposes.

A Statement of Opposition was filed by Cyprus Western Coal Company. Opposer claims a potential for unspecified injury to their water rights if the requested application is approved without limiting terms and conditions. The only specific term or condition listed was for measuring devices to be installed on each structure.

A field inspection on October 28, 1991 determined that water from Springs No. 1, 3, 4 and 6 flow into stock ponds, Spring No. 2 is piped to a trailer with the overflow going to a stock pond, and Spring No. 5 is piped to a stock pond. The statements in the application appear to be correct.

Applicant has been beneficially using water from these structures for several years without benefit of a Court decree. There have been no complaints from the Opposer, or any other water right holders in the area, concerning the use of these structures. Based on this information, there has not been any injury to Opposer's water rights in the past and it is unclear how approval could injure Opposer's water rights now or in the future.

Based on this information, it is recommended that approval be granted as requested in the application.

2-10-1992

DATE

Edward W. Blank

DIVISION ENGINEER

The above Comments and Recommendations have been received and considered in compliance with CRS 1973, 37-92-302(4).

DATE

WATER REFEREE

CERTIFICATE OF MAILING

CASE NO. 91CW087

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

ROBERT M. PERRY


RE: ROUTT COUNTY

This is to certify that a true and correct copy of the Summary of Consultation was deposited in the U.S. mail, postage prepaid at Steamboat Springs, Colorado, this 10th day of February 1992, addressed as follows:

Robert M. Perry
0163 Mt. Sophris Road
Carbondale, CO 81623

Janice Johner
Clerk, Water Court
Water Division No. 6
P.O. Box 773117
Steamboat Springs, CO 80477
(Hand delivered)

Division of Water Resources
Centennial Building, Room 818
1313 Sherman Street
Denver, CO 80203



Lynae Campbell
Division of Water Resources
Division No. 6