

DISTRICT COURT, WATER DIVISION 2 PUEBLO COUNTY, COLORADO Pueblo County Judicial Building 501 North Elizabeth Street, Room 116 Pueblo, Colorado 81003	DATE FILED: May 18, 2015 1:18 PM CASE NUMBER: 2013CW3048
Concerning the Application for Water Rights of: OGDEN BROWN III, PERSONAL REPRESENTATIVE OF THE ESTATE OF ALYCE BROWN, DECEASED; CRAIG TAYLOR and DARLA TAYLOR; and SADDLE MOUNTAIN MUTUAL WATER COMPANY In the Arkansas River and its tributaries In Teller County	▲ COURT USE ONLY ▲
	Case No. 2013CW3048
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

The Court hereby enters its findings of fact, conclusions of law, judgment and decree:

FINDINGS OF FACT

1. Applicants. The applicants herein are:
 - A. Ogden “Ted” Brown III, Personal Representative of the Estate of Alyce Brown, Deceased, 1705 Johnson Blvd., Murray, KY 42071; e-mail: ted.brown@murraystate.edu; phone: 270.753.1773;
 - B. Craig Taylor and Darla Taylor, 2 Hanover Drive, Midland, TX 79705, e-mail: craig@taylor-resources.com; phone: 432.682.0201;
 - C. Saddle Mountain Mutual Water Company, c/o Deborah Egan and Brian Bertrand, 123 Deerview Drive, Florissant, CO 80816, phone nos.: 719.748.6008 and 303.933.3324.
2. Date of Application. The application in this case was filed in Water Division 2 on

October 31, 2013, and was duly referred to the referee.

3. Publication. The application was published in a newspaper of general circulation in Teller County, Colorado, and the resume notice appeared on the web site for Water Division 2. The publication costs have been paid.

4. Statements of Opposition. A timely statement of opposition was filed by John T. Hatton. No other statements of opposition have been filed, and the time in which to file statements of opposition has expired. No motions to intervene have been filed. Applicants stipulated with Mr. Hatton on April 30, 2015.

5. Re-referral. This application was re-referred to the Water Judge on March 2, 2015.

6. Consultation Report. The Court has considered the Consultation Report of the Division Engineer, which was filed on December 17, 2013. The Division Engineer indicated that he has no objection to the approval of this application.

7. Designated Ground Water Basin. The water rights which are the subject of this application are not located within a designated ground water basin.

8. Description of Water Right. The water right which is the subject of this application is described as follows:

A. Name of decreed right for which change is sought: Watson No. 1 Ditch

B. Date of original and all relevant subsequent decrees: The Watson No. 1 Ditch was originally decreed for irrigation use in an unnumbered decree in Fremont County District Court, dated February 3, 1894. 1.46 cfs of the water right, which is now owned by the Estate of Alyce M. Brown, Deceased, by Helen Sharon Hammer (successor in interest to part of the Estate's ownership interest), and by Craig and Darla Taylor, was subsequently changed and included in a plan for augmentation in Case No. 85CW78, Water Division 2, decreed on April 8, 1986. Saddle Mountain Mutual changed the use and included in a plan for augmentation its 0.14 cfs interest in Case No. 03CW99, Water Division 2, decreed on December 22, 2009.

C. Legal description of structure: "...its headgate is located on the East side of Said Four Mile Creek in the N.E. 1/4 of the N.E. 1/4 of Sec. 1, Twp. 15 S. R. 71 W. in the County of El Paso [sic] at a point 150 feet from the S.W. corner of said tract...."

D. Decreed source of water: Four Mile Creek.

E. Appropriation Date: May 1, 1872.

F. Total amount decreed to structure: 1.6 cfs.

G. Decreed use or uses: The water was originally decreed absolute for irrigation purposes. The use of the Estate's, the Taylors' and Ms. Hammer's 1.46 cfs was changed in 85CW078 to include "municipal uses including, without limitation, domestic, commercial, and fire protection." The use of Saddle Mountain's 0.14 cfs was changed to augmentation uses.

H. Amount of water that Applicants intend to change: all 1.6 cfs of Watson No. 1 Ditch.

9. Ownership. The Estate of Alyce M. Brown, Deceased owns 1.244 cfs; Helen Sharon Hammer owns 0.09 cfs, Craig Taylor and Darla Taylor jointly own 0.216 cfs; Saddle Mountain Mutual Water Company owns the remaining 0.14 cfs. Applicants seek to change the point of diversion for all 1.6 cfs of their combined ownership interests in this simplified change case pursuant to C.R.S. § 37-92-305 (3.5).

10. Pending Application. Helen Sharon Hammer is the applicant in Case No. 14CW3005, which is pending at the time of entry of this decree, which will, if and when a decree is entered in that case, approve additional changes to her 0.09 cfs interest in the Watson No. 1 Ditch and a plan for augmentation utilizing her interests.

11. Detailed description of change. Three separate ditch rights that have decreed points of diversion on Four Mile Creek a short distance downstream from Mt. Pisgah Reservoir. The decreed point of diversion for the Wilson Ditch is a very short distance downstream from Mt. Pisgah Reservoir, followed by the Watson Ditch No. 2, and then by the Watson Ditch No. 1. Their priorities are in reverse order, with the Watson Ditch No. 1 being the most senior of the three, and the Wilson Ditch being the most junior. At some unknown time, but almost certainly more than 50 years ago, the Watson No. 1 Ditch began to be diverted at the headgate of the Wilson Ditch, a practice which continued until the summer of 2012, at which time the water authorities indicated that they would no longer allow the Watson No. 1 Ditch to be diverted through the diversion structure for the Wilson Ditch absent an approved substitute water supply plan or a decreed change of water rights. Rather than continue to divert the Watson No. 1 Ditch through the Wilson Ditch headgate, Applicants seek to move the point of diversion a short distance downstream of the Watson No. 2 Ditch, to the following UTM location: N: 4293386.77 E: 476055.86. The approximate location in the NW1/4 SW1/4 Section 31, T. 14 S., R. 70 W., 6th P.M. is shown on Exhibit A, a portion of a USGS map.

12. Intervening ditches and streams. There are no surface diversions from Four Mile Creek

between the decreed location and the new location of the Watson No. 1 Ditch. The USGS map for this area shows a stream named Dry Creek entering Four Mile Creek from the west, between the old and the new points of diversion. However, according to water commissioner Brian Sutton, Dry Creek is an ephemeral stream, i.e., it exhibits a surface flow only during short periods of time following snowmelt or heavy rainfall.

13. No greater amount of water diverted. The Applicants intend to install a measuring device approved by the Division Engineer at the changed point of diversion. By utilizing such measuring device, the Division Engineer will be able to administer the Watson No. 1 Ditch right according to the terms of the original decree and the changes of water rights decreed in Case Nos. 85CW78 and 03CW99. By so doing, this change will not result in the diversion of a greater flow rate or amount of water than has been decreed to the Watson No. 1 Ditch.

14. Diversions limited to amounts physically and legally available at original point of diversion. As required by C.R.S. §37-92-305(3.5), and as previously described in paragraph 101 above, there are no points of diversion or significant inflows of water to Four Mile Creek between the original decreed point of diversion and the new point of diversion. The distance between the two is less than a mile, so there is no significant transit loss in Four Mile Creek between the two points of diversion. Under these circumstances, this change of water rights will not result in the diversion of more water at the new point of diversion than was physically and legally available at the original decreed point of diversion.

15. No additional changes sought. Other than a change in the location of the approved point of diversion for the Watson No. 1 Ditch, no other changes, such as in place or type of use, are requested or granted herein.

16. No injury. The Court finds that no injury will result to the vested or conditionally decreed water rights of others as a result of the change in point of diversion in this case.

CONCLUSIONS OF LAW

17. Jurisdiction. The application in this case was published as required by law. Therefore, the Court has jurisdiction over the subject matter of this case and over all persons who could have appeared herein, whether or not they made an appearance.

18. “Simple Change Case.” The Court finds that the facts of this case make the application eligible for treatment as a “simple change in a surface point of diversion” pursuant to C.R.S. §37-92-305(3.5). Particularly:

A. The Court concludes that the presence of an ephemeral stream which enters the stream upon which the change of location is sought, between the original and the sought changed point of diversion, does not preclude evaluation of this case under C.R.S. §37-92-305(3.5);

B. The Applicants have made prima facie showings of the matters required in C.R.S. §37-92-305(3.5)(c)(I) and (II), as addressed in paragraphs 11 and 12 above.

JUDGMENT AND DECREE

19. The Applicants are granted a change in point of diversion for the Watson No. 1 Ditch to the location specified in paragraph 11 above.

20. No changes are made to any aspect of the Watson No. 1 Ditch except for the change of point of diversion as described herein.

21. Applicants shall properly install, operate, maintain, and repair as necessary a diversion dam and measuring device at the new point of diversion. Such measuring device must meet the requirements established by the Division Engineer.

22. Unless and until further changed by Applicants Ogden Brown III, Personal Representative of the Estate of Alyce M. Brown, Deceased, and/or by Craig Taylor and Darla Taylor, and their successors and assigns, including Helen Sharon Hammer, the times and amounts of diversions, place of use and type of use of their respective interests in the Watson No. 1 Ditch, shall be as established in the original decree for the Watson No. 1 Ditch, as modified pursuant to Case No. 85CW78, Water Division 2.

23. Unless and until further changed by co-Applicant Saddle Mountain Mutual Water Company, the times and amounts of diversions, place of use and type of use of its interest in the Watson No. 1 Ditch, shall be as established in the original decree for the Watson No. 1 Ditch, as modified pursuant to Case No. 03CW99, Water Division 2.

Dated: May 18, 2015

BY THE COURT:

LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2

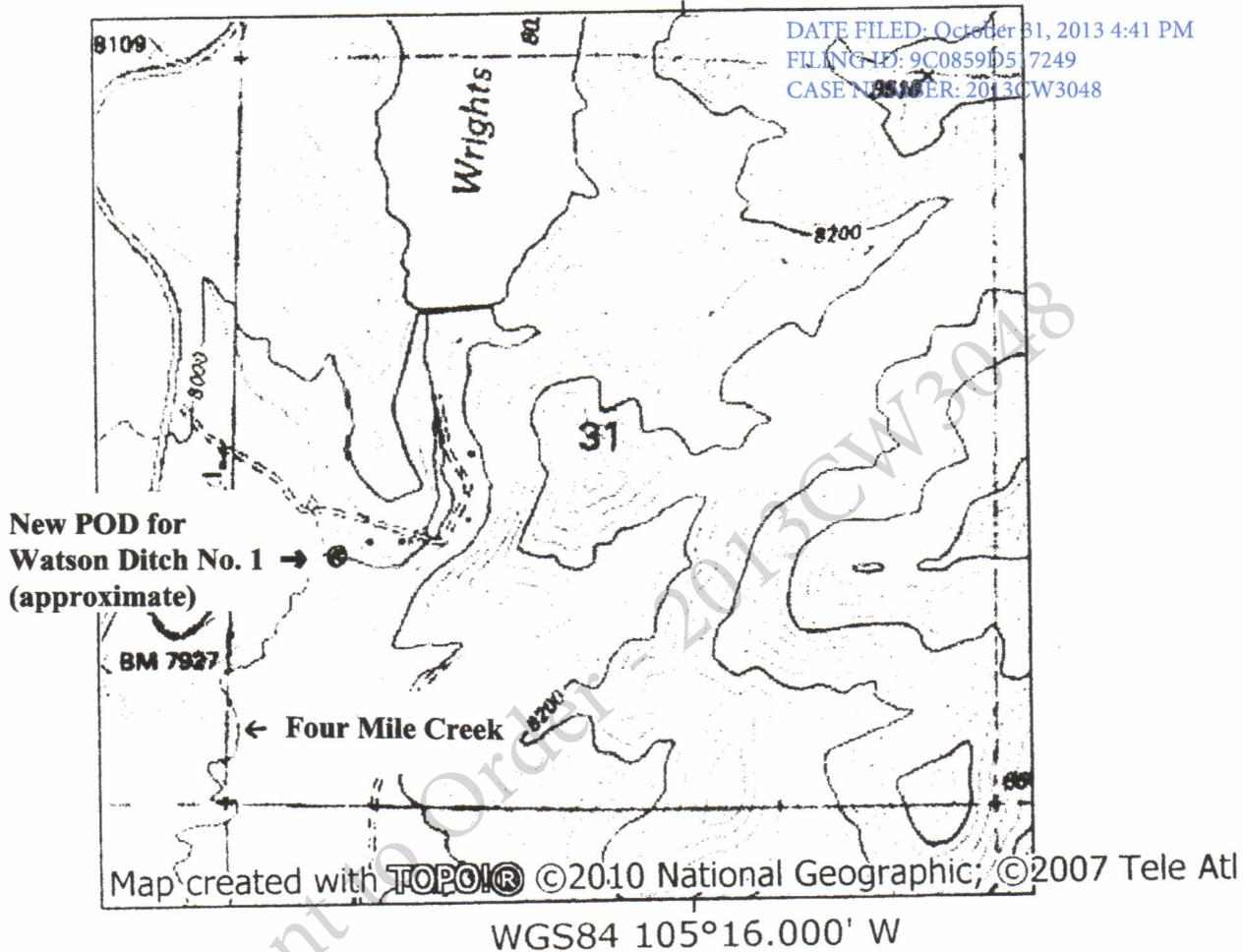
Decree of the Water Court
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TOPO! map printed on 07/11/13 from "Untitled.tpo"

WGS84 105°16.000' W

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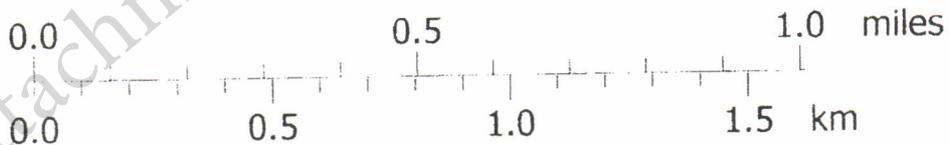


EXHIBIT A

Sec. 31, T. 14 S., R. 70 W., 6TH P.M.