

INDEX TO DECREES, POINTS OF DIVERSION CHANGES,  
TRANSFERS AND COURT DECREES RELATING TO  
WATER RIGHTS OF  
THE CITY OF GRAND JUNCTION, COLORADO

[VOLUME II - 28 THROUGH 56]

28. BAUER DITCH ENLARGEMENTS.
- A. Original decree - Bauer Ditch Enlarged - decree date 6/1/16.
  - B. Original decree - Bauer Ditch Enlargement - decree date 7/25/41.
29. BOLEN, ANDERSON & JACOBS DITCH ENLARGED.
- A. Original decree dated 7/25/1941.
30. LAURENT DITCH ENLARGED.
- A. Original decree dated 7/25/1941.
31. LAURENT DITCH ENLARGEMENT.
- A. Original decree dated 7/25/1941.
32. LAURENT DITCH - SECOND ENLARGEMENT.
- A. Original decree dated 7/25/1941.
33. JUDGMENT - CIVIL CASE NO. 15487 - MESA COUNTY DISTRICT COURT.
- A. Permits 10.97 c.f.s. of the earliest decrees on the North Fork to be diverted alternately at the headgates of the City Ditch or the Bauer Ditch - also changes the use of water for those decrees to municipal and irrigation. Applies to all decrees issued for North Fork ditches in the decree of 1888.
34. JUDGMENT - CIVIL CASE NO. 16632.
- A. Restricts storage of North Fork direct flow decrees in the Hallenbeck (Purdy Mesa Reservoir).
35. THE PURDY MESA NO. 2 RESERVOIR AND PURDY MESA SPRING.
- A. Conditional decree - Case No. 82CW13, dated 7/9/82.
  - B. Determination of diligence due July 1992.

NORTH FORK OF KANNAH CREEK -- STORAGE RIGHTS

36. ANDERSON RESERVOIR NO. 6.
- A. Original decree of February 20, 1959.
37. BOLEN RESERVOIR.
- A. Original decree of July 25, 1941.
38. BOLEN RESERVOIR ENLARGEMENT.
- A. Original decree of February 20, 1959.
39. BOLEN, ANDERSON AND JACOBS NO. 2.
- A. Original decree of July 25, 1941.

- 40. BOLEN, ANDERSON AND JACOBS RESERVOIR NO. 2 ENLARGEMENT.
  - A. Original decree of February 20, 1959.
- 41. LAURENT RESERVOIR (abandoned 1991).
- 42. REEDER RESERVOIR.
  - A. Original decree of June 1, 1916 - 400 a.f.
  - B. Ruling in Case No. 85CW198 dated 5/12/86.
  - C. Stipulation re: Case No. 85CW198.
  - D. Diligence ruling Case No. 90CW49.

WHITEWATER CREEK DRAINAGE - DIRECT FLOW

- 43. DECREE OF FEBRUARY 7, 1890. THIS DECREE AWARDS THE FOLLOWING WATER RIGHTS TO THE FOLLOWING NAMED DITCHES:
  - A. Brandon Ditch (transfer from Ewers Ditch) - .53 c.f.s. absolute.
  - B. Brandon Ditch (transferred from Pioneer of Whitewater Ditch) 3.55 c.f.s. conditional.
  - C. Orchard Mesa Ditch - .36 c.f.s. absolute.
  - D. Gulch Ditch - .36 c.f.s. absolute.
  - E. Order making 3.55 c.f.s. absolute.
- 44. BRANDON DITCH ENLARGED - 3.80 c.f.s.
  - A. Decree dated 7/21/59.
- 45. BRANDON DITCH SECOND ENLARGEMENT - 24.80 c.f.s.
- 46. SOMERVILLE WELLS NO. 1 AND 2.
- 47. BRANDOAN DITCH - SECOND ENLARGEMENT - GRAND JUNCTION APPLICATION.
  - A. Original ruling - Case No. 85CW199 - dated 5/12/86.
  - B. Ruling extending original decree - Case No. 90CW50 - dated 1/24/91 .

WHITEWATER CREEK - STORAGE RIGHTS

- 48. SOMERVILLE RESERVOIR.
  - A. Original decree - 837 a.f.
- 49. A.D.A. RESERVOIR AND SUPPLY DITCH (abandoned).
- 50. GUILD RESERVOIRS NO. 1 & 2.
  - A. Original decree for reservoir and filling right.
- 51. CLIFF LAKE RESERVOIR.
  - A. Original decree 95.57 a.f.
  - B. Change of Water Right - 08/17/92.

GUNNISON RIVER DIVERSIONS

52. GRAND JUNCTION - GUNNISON RIVER PIPELINE.

- A. Original decree - Case No. 8303 - dated July 21, 1959 - 120 c.f.s. conditional.
- B. Ruling of Referee dated October 30, 1978 - awarding 18.6 c.f.s. absolute and continuing the conditional status of the remainder of the decree.
- C. Referee's ruling of October 31, 1974 - making 6.8 c.f.s. absolute and continuing the remainder of the conditional decree.

53. REDLANDS TAILRACE PUMP STATION.

- A. Original conditional decree - W-3683.
- B. Diligence ruling of 12/9/87 - diligence due August 1991.

COLORADO RIVER DIVERSIONS

54. COLORADO RIVER.

- A. Original decree - Grand Junction - Colorado River Pipeline - Case No. 8303 - dated July 21, 1959 - Mesa County District Court - 120 c.f.s. conditional.
- B. Conveyance of 20 c.f.s. to Clifton Water District.
- C. Conveyance of 20 c.f.s. to Water Development Company.
- D. Change of point of diversion - Case No. W-3532 - authorizes four alternate points of diversion re: Grand Junction - Clifton interests in Grand Junction - Colorado River Pipeline.
- E. Change of point of diversion - relating to Water Development Company.
- F. Ruling in Case No. 79CW22 - dated July 31, 1979 making 12.38 c.f.s. absolute.
- G. Diligence ruling 9/9/82 - Case No. 82CW131.
- H. Ruling in Case No. 85CW37 - makes absolute additional 6.19 c.f.s.
- I. Ruling of Referee entered in Case No. 86CW146 extending diligence of conditional portion to May 1990 (now May 1992).

55. GRAND VALLEY IRRIGATION COMPANY.

- A. Ruling of Water Court - changing manner of use of certain shares of Grand Valley Irrigation Co. stock owned by Clifton and Grand Junction - Case No. 85CW235.

56. GRAND JUNCTION - 22 ROAD PUMP STATION.

- A. Original conditional decree dated 8/31/79.
- B. Diligence ruling 12/9/87 - diligence due August 1991.

28-A



DITCH NO. 3 WATER FILE KANNAH CREEK - North Fork  
No. 118 THE BAUER DITCH ENLARGED Priority No. 6  
Claimed by Robert T. Anderson

Said ditch derives its supply of water from the North Fork of Kannah Creek; and its headgate is identical with that of the Bauer ditch. Said ditch as enlarged, has a capacity of 18.7 cubic feet of water per second of time.

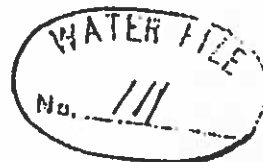
Work on said Enlargement was commenced on March 25, 1910, and was prosecuted with reasonable diligence, to completion.

The water appropriated by means of this ditch is for the irrigation of land, and is a high water right which supplements Priority No. 5, calling for 1.96 cubic feet of water per second out of said stream, which is also a high water right, in the irrigation of 244 acres of land, all of which has, with reasonable diligence, been so actually irrigated. The flow of such supplemental water, one year with another, continued only from ten to twenty-five days; and because of such limited period of flow, the duty of such water is found and determined to be in the ratio or proportion of .054 of a cubic foot of water per second per one acre of land;

WHEREFORE: IT IS ORDERED AND DECREED that there be allowed to flow into said ditch, as the SIXTH PRIORITY out of said stream, for the use of the parties entitled thereto, 13.176 of cubic feet of water per second -

PROVIDED HOWEVER, that the water so allowed to flow shall not exceed the ratio or proportion of .054 of a cubic foot per second, per acre of land, for the land therewith irrigated.

28-B



THE BAUER DITCH ENLARGEMENT

DITCH NO. 467

Priority No. 648 Do.

THE COURT FINDS:

That in this proceeding said ditch is numbered 467, and it is entitled to Household domestic and Stockwatering Priority No. 648 in common with The Laurent Ditch Enlargement.

That the claimants thereof are Walter L. Anderson, Frank E. Anderson, William F. Krohn and Gertrude Krohn, the post office address of each of whom is Whitewater, Colorado, and Everett H. Munro, whose post office address is Grand Junction, Colorado.

That said ditch is used in connection with the Reeder Reservoir, and the Laurent Ditch Enlargement for the irrigation of claimants' lands and for household domestic and stockwatering purposes; that certain priorities have been heretofore awarded to said ditches and reservoir in the decree dated June 1, 1916, and the decree of July 25, 1941, for irrigation purposes only, and that no priority has ever been awarded to any part of said ditch and reservoir system for household domestic or stockwatering purposes.

That the petition filed herein also includes the said Laurent Ditch Enlargement and the Reeder Reservoir, and alleges the interests of the claimants in said ditches and reservoir as follows:

Walter L. Anderson, Frank E. Anderson, William F. Krohn and Gertrude Krohn jointly own an undivided one-half interest in the Reeder Reservoir, and a like interest in the Laurent Ditch before its enlargement, and the entire interest in the enlargement of the Laurent Ditch, and the entire interest in the Bauer Ditch and its Enlargement;

That Everett H. Munro owns an undivided one-half interest in the Reeder Reservoir and in the Laurent Ditch before

its enlargement.

The Court is not finding or decreeing such interests, but is merely setting out the claims for future information, since it would appear that claimant Munro is interested only indirectly, if at all, in any water diverted by the Bauer Ditch Enlargement for any purpose.

That said Bauer Ditch Enlargement diverts its supply of water from the North Fork of Kannah Creek, in Water District No. 42.

That its headgate is located at a point on the right bank of said creek whence the NE corner of Sec. 25, Twp. 12 S., R. 98 W., 6th P. M. bears S. 26° 32' W. 895 feet.

That in decree of date June 1, 1916 said Bauer Ditch was awarded two priorities, one for 1.96 second feet of water, and one for 13.176 second feet of water.

And the Court Further Finds from the evidence of claimant Anderson, that said water has been used for domestic, household and stock water purposes ever since said decree was entered, both during the irrigation season and throughout the non-irrigation season. Such use taking place both direct from said ditch prior to its discharge into the Reeder Reservoir, and from the distribution ditches below the reservoir; and that such use is necessary for the operation of their respective ranches.

That it appears from the petition filed herein, claimants are requesting an award of 1.96 second feet of water the Bauer and Laurent Ditches as enlarged for domestic uses, with priority date March 23, 1910, and "to enlarge and extend the decree heretofore entered so as to include and extend the uses of the water therein for domestic and livestock purposes, as well as all other legitimate uses for purposes other than irrigation for the full period of twelve months in each year."

As for the request for an enlarged use, or change in the

character of use, of a previously decreed priority, the Court is of the opinion that it is not authorized in an adjudication proceeding to grant such request; that this is analogous to a change in point of diversion, for which there is a special statutory provision and procedure. And such request is therefore denied.

The Court does Find, however, that there is an inherent right to satisfy domestic and stockwater requirements out of an existing irrigation decree to the extent that the exercise of such right does not in any manner or way enlarge the diversion thereunder from the stream, either by increasing diversion, or causing, or continuing diversion at any time or times when such diversion is not necessary to accomplish the purpose for which said decreed priority was awarded; and to that extent said right is hereby confirmed without the necessity of an independent and separate decree.

The Court Further Finds from the evidence, that while the petition requests an award of 1.96 second feet of water for domestic, household and stockwater purposes during the non-irrigation season, at such times as that amount of water was being diverted it was used both for such purposes and to assist in filling the Heeder Reservoir as part of claimants' irrigation system. In the opinion of the Court 1.00 second foot of water is sufficient to be decreed for non-irrigation and non-storage purposes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said Equer Ditch Enlargement, from said North Fork of Kennah Creek, for domestic, household and stockwater purposes during the non-irrigation season and at such time or times as claimants do not require and are not using irrigation water through said ditch during the irrigation

season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and beneficial use as aforesaid, as Priority No. 648, so much water as will flow therein as now constructed, not to exceed 1.00 cubic foot per second of time, as of Historic Date June 1, 1916, and Decreed Date July 25, 1941. PROVIDED that when said ditch is used in conjunction with the Laurent Ditch Enlargement for diversion of domestic and stockwater under said Priority No. 648, the combined simultaneous diversion shall not exceed 1.00 cubic foot of water per second of time.





195

COAL CREEK

BOLEN, ANDERSON & JACOB DITCH ENLARGED

Ditch No. 205

Priority No. 537

That said ditch is entitled to Priority No. 537, and is claimed by Robert W. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the irrigation of land, taking its supply of water from Coal Creek, a tributary of Kannah Creek, in Water District No. 42. The headgate is located on the right bank of Coal Creek, whence the South Quarter Corner of Section 1, Township 12 South, Range 97 West of the 6th P.M. bears South 7° West 1185 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of appropriation by original construction and Priority No. 537, 19.8 cubic feet of water per second of time, with Priority date of September 12, 1922.

IT IS FURTHER ADJUDGED AND DECREED that the said Bolen, Anderson and Jacob Ditch Enlarged, the Laurent Ditch Enlarged and the Laurent Ditch Second Enlargement, all taking water from Kannah Creek and tributaries thereof, which collectively constitute a complete and unified system for the irrigation of 1100 acres of land belonging to the said claimants, although the combined amount of the decrees for said ditches is 58.40 cubic feet per second of time, are confined to a total of 23.87 cubic feet of water per second of time from or through any or all of the said ditches, and no more, for the irrigation of the said 1100 acres of land.

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DECREE DATE: 7-25-41



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NORTH FORK OF KANNAH CREEK

THE LAURENT DITCH ENLARGED

Ditch No. 372

Priority No. 510

That said ditch is entitled to Priority No. 510, and is claimed by Robert T. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the irrigation of land, taking its supply of water from the North Fork of Kannah Creek, a tributary of Kannah Creek, in said Water District No. 42. The headgate is located on the right bank of the North Fork of Kannah Creek, whence the West Quarter Corner of Section 19, Township 12 South, Range 97 West of the 6th P.M. bears South 72° West 35 chains.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of appropriation by original construction and Priority No. 510, 15.32 cubic feet of water per second of time, with Priority date of March 31, 1919.

IT IS HEREBY FURTHER ADJUDGED AND DECREED that the said The Laurent Ditch Enlarged, the Bolen, Anderson & Jacob Ditch Enlarged and the Laurent Ditch Second Enlargement, all taking water from Kannah Creek and tributaries thereof, which collectively constitute a complete and unified system for the irrigation of 1100 acres of land belonging to the said claimants, although the combined amount of the decrees for said ditches is 53.40 cubic feet per second of time, are confined to a total of 28.37 cubic feet of water per second of time from or through any or all of the said ditches, and no more, for the irrigation of the said 1100 acres of land.

272 #30

Decree Date: 7-25-4#

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V. 111

THE LAURENT DITCH ENLARGEMENT

DITCH NO. 466

Priority No. 648 Do.

THE COURT FINDS:

That in this proceeding said ditch is numbered 466, and it is entitled to Household domestic and Stockwatering Priority No. 648.

That the claimants thereof are Walter L. Anderson, Frank E. Anderson, William F. Krohn and Gertrude Krohn, the post office address of each of whom is Whitewater, Colorado; and Everett H. Munro, whose post office address is Grand Junction, Colorado.

That said ditch is used in connection with the Reeder Reservoir, and the Bauer Ditch for the irrigation of claimants' lands and for household domestic and stockwatering purposes; that certain priorities have been heretofore awarded to said ditches and reservoir in the decree dated June 1, 1916, and in the decree of July 25, 1941, for irrigation purposes only, and that no priority has ever been awarded to said ditch and reservoir system for household domestic or stockwatering purposes.

That the petition filed herein also includes the said Bauer Ditch Enlargement and the Reeder Reservoir, and alleges the interests of the claimants in said ditches and reservoir as follows:

Walter L. Anderson, Frank E. Anderson, William F. Krohn and Gertrude Krohn jointly own an undivided one-half interest in the Reeder Reservoir, and a like interest in the Laurent Ditch before its enlargement, and the entire interest in the enlargement of the Laurent Ditch, and the entire interest in the Bauer Ditch and its Enlargement;

That Everett H. Monroe owns an undivided one-half interest in the Reeder Reservoir and in the Laurent Ditch before its enlargement.

The Court is not finding or decreeing such interests, but is merely setting out the claims for future reference.

That said Laurent Ditch and Enlargement diverts its supply of water from the North Fork of Kannah Creek, in Water District No. 42.

That its headgate is located at a point on the right bank of said creek whence the  $W\frac{1}{4}$  corner of Sec. 19, Twp. 12 S., R. 97 W., 6th P. M. bears S. 72° W. 35 chains.

That in decree of July 25, 1941 said ditch was awarded priority No. 510 for 15.32 second feet of water.

Also in decree of June 1, 1916, said Bauer Ditch was awarded two priorities, one for 1.96 second feet of water, and one for 13.176 second feet of water.

And the Court further Finds from the evidence and statement of claim that in Decree of date June 1, 1916, wherein the said Reeder Reservoir was awarded priority to 179.7 acre feet of water, the source of supply is given as The Laurent Ditch and the Bauer Ditch, which apparently establishes the fact that the Laurent Ditch was in existence and diverting water as early as June 1, 1916, though the date of its irrigation priority is March 13, 1919.

And the Court Further Finds from the evidence of claimant Anderson, that said water has been used for domestic, household and stock water purposes ever since the decrees were entered, both during the irrigation season and throughout the non-irrigation season, such use taking place both direct from said ditches prior to their discharge into the Reeder Reservoir, and from the distribution ditches below the reservoir; and that such use is necessary for the operation of their respective ranches.

That it appears from the petition filed herein, claimants are requesting an award of 1.96 second feet of water through the Laurent and Bauer Ditches for domestic uses, with priority date March 23, 1910, and "to enlarge and extend the decrees heretofore

entered so as to include and extend the uses of the water therein for domestic and livestock purposes, as well as all other legitimate uses for purposes other than irrigation for the full period of twelve months in each year."

As for the request for an enlarged use, or change in the character of use, of a previously decreed priority, the Court is of the opinion that it is not authorized in an adjudication proceeding to grant such request; that this is analogous to a change in point of diversion, for which there is a special statutory procedure, and such request is therefore denied.

The Court does Find however that there is an inherent right to satisfy domestic and stockwater requirements out of an existing irrigation decree to the extent that the exercise of such right does not in any manner or way enlarge the diversion thereunder from the stream, either by increasing diversion, or causing, or continuing diversion at any time or times when such diversion is not necessary to accomplish the purpose for which said decreed priority was awarded; and to that extent said right is hereby confirmed without the necessity of an independent and separate decree.

The Court Further Finds that, while the petition requests an award of 1.96 second feet of water for domestic household and stockwater purposes during the non-irrigation season, the evidence shows that at such times as that amount of water was being diverted it was used both for such purposes and to assist in filling the Reeder Reservoir as part of claimants' irrigation system. In the opinion of the Court 1.00 second foot of water is sufficient to be decreed for non-irrigation and non-storage purposes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT, subject to the several limitations in the preamble to this decree

expressed, there be allowed to flow in said Laurent Ditch Enlargement, from said North Fork of Kannah Creek, for domestic and stockwater purposes during the non-irrigation season and at such time or times as claimants do not require and are not using irrigation water through said ditch during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and beneficial use as aforesaid, as Priority No. 648, so much water as will flow therein as now constructed, not to exceed 1.00 cubic foot per second of time, as of Historic Date June 1, 1916, and Decreed Date July 25, 1941. PROVIDED that when said ditch is used in conjunction with the Bauer Ditch Enlargement for diversion of domestic and stockwater under said Priority No. 648, the combined simultaneous diversion shall not exceed 1.00 cubic foot of water per second of time.





156

THE NORTH FORK OF KANNAH CREEK

THE LAURENT DITCH SECOND ENLARGEMENT

Ditch No. 372

Priority No. 528

That said ditch is entitled to Priority No. 528, and is claimed by Robert F. Anderson, Walter L. Anderson and Frank L. Anderson and is used for the irrigation of land, taking its supply of water from the North Fork of Kannah Creek, a tributary of Kannah Creek, in Water District No. 42. The headgate is located on the right bank of the North Fork of Kannah Creek, whence the West Quarter Corner of Section 19, Township 12 South, Range 97 West 6th P.M. bears South 72° 0' West 35 chains.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of appropriation by original construction and Priority No. 528, 18.4 cubic feet of water per second of time, with Priority date of June 2, 1931.

IT IS FURTHER ADJUDGED AND DECREED that the said The Laurent Ditch Second Enlargement, the Laurent Ditch Enlarged and the Eolen, Anderson and Jacob Ditch Enlarged, all taking water from Kannah Creek and tributaries thereof, which collectively constitute a complete and unified system for the irrigation of 1100 acres of land belonging to the said claimants, although the combined amount of the decrees for said ditches is 53.40 cubic feet per second of time, are confined to a total of 53.57 cubic feet of water per second of time from or through any or all of the said ditches, and no more, for the irrigation of the said 1100 acres of land.

15-72

Decree Ditch 7-25-41

#32  
2-7-41



Certified to be a full, true and correct copy of original in my custody.  
Dated \_\_\_\_\_  
\_\_\_\_\_  
Clerk  
Deputy

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO

061

Civil Action 15487

THE APPLICATION OF THE CITY OF  
GRAND JUNCTION, COLORADO, A  
MUNICIPAL CORPORATION, TO CHANGE  
THE POINTS OF DIVERSION AND THE  
MANNER OF USE OF CERTAIN WATER  
RIGHTS IN WATER DISTRICT No. 42,  
MESA COUNTY, COLORADO.

J U D G M E N T

THIS MATTER came on for trial on hearings held July 11, 1967, January 9, 1968, January 29, 1968 and February 15, 1968. The Petitioner appearing by Dufford, Ruland, Uhrleub and Williams, and the Protestor appearing in person and by his attorney William G. Waldeck, Esquire, and the Court having considered all of the testimony and the briefs of counsel and being fully advised in the premises, THE COURT DOETH FIND:

FINDINGS

1. That the testimony of the witnesses Clifford Jex and Walter Anderson are diametrically opposed to the testimony of the Protestor and of his son Charles V. Hallenbeck, Jr. as to whether or not there is material return flow water to the North Fork of Kannah Creek as a result of the use up to 10.97 c.f.s. of water on the property herein referred to by the arguments of counsel as the Anderson Ranch. Such return flow or its substitute equivalent (direct flow by-pass of the head gates of the Petitioner under the limited decree of July 11, 1967 when Petitioner can not utilize the whole per centage of the direct flow up to 10.97 c.f.s. of the North Fork for municipal purposes only) is essential to the Protestor's case to establish injury from Petitioner's requested relief.

062

2. That the Court accepts Walter Anderson's



063  
testimony as the truth of the matter as to no return flow  
based upon his intimate sixty four years experience in  
personally operating the water system for the Anderson  
Ranch or for a short number of years where he only obser-  
ved such operation. His total lack of grounds for bias  
plus his personal intimate knowledge and continued obser-  
vations combined with his demeanor on the witness stand  
was most impressive to the Court. The detailed profession-  
al engineering study of Mr. Jox is fully corroborative to the  
effect that no water user on North Fork or on Kannah Creek  
could be injured by Petitioner's requested relief.

3. Lastly in the matter of return flow, it is  
uncontroverted that substantially all of the water used on  
the Anderson Ranch for reservoir filling and for stock  
water and a large part of the irrigation water on the  
Anderson Ranch crops, as used by the North Fork appropri-  
ors since the 1888 Decree is used on portions of the Ranch  
where the geographical lay of the land causes any drainage  
to be away from the North Fork stream bed. It rather goes  
into the Whitewater Creek watershed or as the witness  
Anderson put it "into the desert" and is of no possible  
use to the Kannah Creek users.

064  
4. That 100% of 10.97 c.f.s. has been used, when  
available, 100% of the year on the Anderson Ranch property  
since the dates of appropriation of the combined ditches  
Bolen No. 2, Hentschel, Seegar and Bedford, Bolen No. 1,  
and Bauer. Evidence of cloudburst flood water and high  
snow melt run off occasionally by passing the head gates  
of the Petitioner and its predecessors so as to reach the  
confluence with Kannah Creek becomes immaterial because  
such by pass never occurred at a time when 10.97 c.f.s.



065  
g (combined direct flow plus flood or run off) or less, was  
being diverted by Petitioner or its predecessors. This is  
corroborated by Protestor's own testimony that the City  
Ditch could carry 15 to 20 c.f.s. of water and the combined  
head gates of the Petitioner to serve Anderson Ranch had  
to have a capacity of 10.97 c.f.s. or more to support their  
individual decrees. Any such head gate by-pass appears to  
have been momentary and not due to any lack of diligence  
by Petitioner or its predecessors to alleviate such un-  
avoidable interruption in their diversions of water. Such  
head gate by-pass has been so insignificant historically as  
to have interested no junior appropriators on Kannah Creek  
in asking for its continuance to fill their rights. This  
is substantiated by the testimony of Henry Holland and all  
other witnesses except the Protestor.

5. With the return flow issue disposed of, the  
Protestor's only theory is that he will pick up some benefit  
from Petitioner's inability to use the whole of the North  
Fork direct flow rights at all times for municipal uses.

0106  
{ This becomes immaterial because municipal use is 100%  
consumptive as it effects Protestor and when not used for  
municipal purposes but used on the Anderson Ranch then  
Protestor is in no different position now compared to the  
conditions under the 1888 Decree. The Court must consider  
the Petitioner's request for relief as a whole at this time  
and is not bound to accept the July 11, 1967 Decree as a  
limitation after considering the whole of the evidence.  
The last of Protestor's theories rests solely on administrat-  
ion of the limited relief afforded by the July 11, 1967  
Decree.



COMMISSIONERS

067

1. That Protestor's claim of injury in the first instance is totally dependent upon return flow to the North Fork as a result of the operation of the Anderson Ranch by the Petitioner. Any extent to which the irrigation rights are changed to municipal purposes, which are 100% consumptive, cannot improve or hinder Protestor's claim where Protestor's only theory of injury rests on a decree limited solely to municipal uses only, solely for the purpose of establishing injury, when no injury has resulted from the uses for irrigation historically.

2. There being no injury to Protestor or other appropriator, the Petitioner may alternate uses and may use as formerly the water when it is not needed for municipal uses.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petitioner may change its point of diversion for the full 10.97 c.f.s. of direct flow water from the North Fork of Kanash Creek alternately to either the Bauer Ditch head gate described as being;

054

At a point on the right or west bank of the North Fork of Kanash Creek, which point is North  $26^{\circ} 03'$  East a distance of 890.5 feet from the SE corner of Section 24, Township 12 South, Range 98 West of the 6th P. M., Mesa County, Colorado,

or to the City Ditch head gate described as being;

On the East or left bank of the North Fork of Kanash Creek, South  $32^{\circ} 54'$  West 2358.8 feet from the SE corner of Section 24, Township 12 South, Range 98 West, 6th P.M., Mesa County, Colorado,

and may alternate use of the water between municipal use and the former uses to which said 10.97 c.f.s. of water were decreed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the

Protector take nothing by his claim and that costs of

640  
this proceeding be awarded to the petitioner.

Done in Court at New York this 11th day of March, 1963.

John M. F. La  
Judge







11

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO  
Civil Action No. 16632

THE CITY OF GRAND JUNCTION,  
COLORADO, a Municipal  
corporation, and STADELMAN  
HEREFORD RANCH, INC.,  
a corporation,  
  
Plaintiffs,  
  
vs.  
  
C. V. HALLENBECK, THE  
JUNIATA RESERVOIR ENLARGED,  
INC., A corporation, and  
JUNIATA RESERVOIR COMPANY,  
a corporation,  
  
Defendants.

FINDINGS  
CONCLUSIONS  
AND  
JUDGMENT

*H. H. C.*

FILED  
IN THE DISTRICT COURT  
COUNTY OF MESA, COLORADO  
APR 1 - 1970  
*[Signature]*  
CLERK

*U.S. 109*

*X*

*1430-026*

*#24*



and John Grounds have all entered appearances and consented to the jurisdiction of the Court as to equitable relief concerning The Juniata Reservoir Enlarged, Inc.

Each issue will be treated separately with Findings and Conclusions.

I

Findings as to filling rights of Hallenbeck Reservoir:

1. The City runs water to Hallenbeck Reservoir in filling its storage decree through Highline Ditch, Juniata Ditch, Juniata Ditch First Enlargement and Juniata Enlarged Reservoir as a conduit for <sup>decree 77: 77: 8, 8/24/10</sup> 863.097 a.f. of water. The City runs North Fork direct flow water through the North Fork Ditch and paramount decree direct flow water from Kannah Creek through the bypass pipeline, all into Hallenbeck Reservoir. The City sometimes runs mountain top storage from reservoirs both on North Fork and Kannah Creek down to Hallenbeck Reservoir for further transmission to the City customers below the microstrainer. The microstrainer is fed by a pipeline, being the only outlet facility used from Hallenbeck Reservoir.

2. The past practice of the City has been to use Hallenbeck Reservoir to accommodate all the above varieties of water in different and comingled manner. The proof fails to show in any way that the City has kept records which can be examined to label the various types and volumes of water in Hallenbeck Reservoir at any one time. Nor has Hallenbeck kept such records. The water on occasion has been conveyed through Hallenbeck Reservoir as a conduit with the discharge to the microstrainer being at the same rate as the inflow to Hallenbeck Reservoir from North Fork Ditch or the by pass pipeline. Again the water has been temporarily stored in Hallenbeck Reservoir which was used as a regulation basin for periods no longer than 24 hours. Again Hallenbeck Reservoir has been

used for lengthier storage of days or months.

3. By its storage decree Hallenbeck Reservoir is in a depression tributary to North Fork of Kannah Creek. Use of Hallenbeck Reservoir at the time of its construction and decree was for traditional agricultural purposes by filling in the spring run off and storage until needed in late summer for crops.

4. The evidence proved that the level of Hallenbeck Reservoir oftentimes rises when it is not receiving water from its decreed filling ditch rights. There was no proof to show that the rising level of Hallenbeck Reservoir in 1967, 1968 and 1969 was either due to storage of direct flow water, or to transfer down stream of upstream storage, or to free water in 1969 not called for by any others. Mr. Wing testified at the 6-9-67 hearing that the North Fork Ditch ran both 1.5 c.f.s. of direct flow and Bolen and other reservoir storage. Also he stated that through the by pass pipeline came both paramount decree direct flow and Carson Lake and other reservoir storage. The Court viewed the recorder on the by pass pipeline and Mr. Wing's testimony revealed a recorder on North Fork Ditch. No readings were introduced by either party to show the precise source which filled or partially filled Hallenbeck Reservoir in a particular year. Hallenbeck at the 4-19-68 hearing testified that Hallenbeck Reservoir historically filled in winter from excess water in Kannah Creek though its decree Exhibit I doesn't so indicate.

## II

Conclusions as to filling of Hallenbeck Reservoir

1. Hallenbeck Reservoir is the usual reservoir with a filling right for <sup>decreed N.M.E. 8/3/41</sup> storage of 363.097 a.f. It can have but one fill per year and when it spills it must cease storage

in favor of junior appropriators, including Juniata Enlarged Reservoir and others, *Holbrook v. Ft. Lyon*, 34 Colo. 174, 269 Pac. 574 (1928), *Windsor Reservoir v. Lake*, 44 Colo. 214, 98 Pac. 729 (1908).

2. It is necessary that waters of different decrees in Hallenbeck Reservoir be separately accounted for as they are governed by different rules of law. It is incumbent on the City to operate its recorders so that water officials can differentiate and turn water from the City to junior priorities when pertinent.

3. In addition to the filling right, the City may use Hallenbeck Reservoir as a conduit, with equal inflow and outflow in time and volume, from its Kannah Creek diversions under any of its direct flow decrees in order to transport the water to the microstrainer, see *Denver v. Northern Colo.*, 130 Colo. 375 at page 388, headnote 8, 276 P. 2d 992 at page 999, headnote 6 (1954). Likewise, with North Fork direct flow water. The only limitation in this conduit use is the amount in the combined direct flow decrees and the size of the flow-line through the microstrainer below Hallenbeck Reservoir. This use of Hallenbeck Reservoir is precisely similar to uses of Dillon Reservoir in *Denver v. Northern Colo.*, *Supra*. There Denver as claimant received a direct flow decree as limited by the size of its ditch, being in fact a large tunnel. Denver was denied the right to ever temporarily store a part of its requested direct flow (in excess of the size of its ditch or tunnel of 788 c.f.s.) in the Dillon Reservoir which it wanted to use as a regulating basin. When the City has'nt use for its full flow decrees or a pipeline large enough to receive it, then the excess water can not be stored in Hallenbeck Reservoir, see *Greeley v. Farmers*, 53 Colo. 462, 146 Pac. 247

(1915) and Handy Ditch v. Greeley, 86 Colo. 197, 280 Pac. 481 (1929).

4. This Court agrees that water once diverted for a beneficial use under a priority becomes a possession, under Brighton v. Englewood, 124 Colo. 366, 237 P. 2d 116 (1951). The City can not have a beneficial use within Hallenbeck Reservoir, both for a full storage right and for use as a regulating basin for direct flow additional water at exactly the same time, Denver v. Northern Colo. 130 Colo. 375, 276 P. 2d 992 (1954). Water decreed for direct flow can not be stored when a junior priority could use it, Handy Ditch v. Greeley, 86 Colo. 197, 280 Pac. 481 (1929). The level of Hallenbeck Reservoir can not be allowed to rise from storage of direct flow decrees, other than its decreed filling right once per year. It should be enjoined from such practice of the past from either Kannah Creek or North Fork. Under the Decree of No. 15487 it can beneficially use North Fork water alternately elsewhere. The water officials are charged with preventing diversions of direct flow for storage except for the one decreed reservoir fill per year. Violations should be dealt with appropriately under the penalty statutes.

5. Decreed storage in mountain top reservoirs, once captured, becomes a City possession. When there is a space open in Hallenbeck Reservoir, the City may move this possession downstream into Hallenbeck Reservoir and thereby use Hallenbeck Reservoir as a regulating basin or for long term retention. This is not a charge against the annual filling right of Hallenbeck Reservoir. Note that this was expressly not an issue in Denver v. Northern Colo., 130 Colo. 375, at page 388, 276 P. 2d 992, at at page 999 (1954). It is incumbent on the City to account for such uses of Hallenbeck Reservoir

by appropriate record keeping.

6. Whether Hallenbeck Reservoir be classed as an "on channel" or an "off channel" reservoir should make no difference. It has some "off channel" characteristics, but where it has an annual filling right and on top of that it is used as a regulating basin for direct flow decrees it violates the same rules as for an "on channel" reservoir like Dillon Reservoir did in *Denver v. Northern Colo.*, *Supra.* *Seven Lakes v. New Loveland*, 40 Colo. 382, 93 Pac. 485 (1907) seems to aid the City, but as an authority it has not been followed since 1914 and appears distinguishable because of the specific finding of no increased burden on the stream or is inferentially overruled by many later cases, such as *Denver v. Northern Colo.*, *Supra.*

### III

#### Findings as to Corporate Deadlock

1. The Articles of Incorporation, Exhibit W, and the bylaws, Exhibit VIII of Juniata Reservoir Enlarged, Inc., are its governing documents with particular reference to Articles II and VII of the former and Sections V, VI, XI, XIV, XIX, XXII, XXIII, XXIV, and XXV of the latter.

2. The minutes, Exhibit VII, reflect that on 6-4-63 the 3 directors elected were Hallenbeck, John Raber and Wilbur Raber. There was no election of directors or officers in the only 1964 meeting on 6-6-64. Again in 1965 and 1966 the minutes do not reflect any attempt to elect a new board of directors or officers.

3. 1-3-67 John Grounds, a stockholder, gave a proxy to the City Manager or his designees. The proxy, page 44 of Exhibit VII, allows the Manager to vote all Ground's shares or "for any purposes which I (Grounds) might personally vote or

or exercise rights with respect to said shares." 3-1-67 Wilbur Raber resigned as director of Juniata Reservoir Enlarged, Inc. The proxy and resignation are in the minutes by the meeting of 3-13-67, designated as an annual meeting of the corporation stockholders. Juniata Ditch Co. and Juniata Ditch 1st Enlargement met jointly with the corporation the same date. More than a majority of corporate stock was represented, Section XIX, and Ground's proxy was recognized as presented by the City. The minutes recite all stockholders of all 3 entities present, recognizing the Raber proxy also, though not incorporated in the minutes yet. Without the Raber proxy a majority of stock was still present. Wilbur Raber's resignation was formally accepted. Hallenbeck was elected President, Ragan, Secretary-Treasurer, and Gray, Vice President. At that time all assessments were paid.

4. Before the meeting of 6-30-67 the Raber proxy appears in the minutes containing the same language as the Ground's proxy. June 27, 1967 the City made demand by letter, Exhibit VII page 50, for election of directors and officers at the meeting of 6-30-67.

5. The meeting of 6-30-67 failed to elect a third director from nominations made. The minutes expressly recognize the officers elected 3-13-67. Hallenbeck and Gray are referred to in the capacity of directors. Hallenbeck at the trial several times admitted that Gray was elected a director, though he was not consistent in that. The bylaws had not yet been found to be studied by either side and no one proposed for the third directorship was eligible under the terms of the bylaws. The first two meetings of 1967 show confusion between the 3 entities and their common operation, Juniata Reservoir Enlarged, Inc., Juniata Ditch Co., and Juniata Ditch First



Enlargement. However, this was the adopted method of operation consistently from 1963 till 1967. At this meeting a tie vote occurred on whether to complete Juniata Enlarged Reservoir.

6. The meeting of 9-23-67 and notice thereof showed for the first time that the bylaws had been found and some compliance with them as to notice is apparent. A quorum of directors (regardless of recognizing Gray as a director) did not attend the 9-23-67 meeting. A majority of the stock was not represented at the meeting.

7. No meetings were held in 1968.

8. Before the 3-15-69 meeting the Hallenbeck proxies show up in the minutes. No directors or officers were elected as a tie vote occurred. A special meeting or a continuation meeting was held 4-26-69 or 4-28-69 as the minutes vary. Assessments were considered but failed from a tie vote.

9. Meetings were attempted 4-28-69, 5-29-69 and 6-17-69. At the 4-28-69 meeting the President, acting alone, appointed directors to fill purported vacancies. Neither a majority of outstanding stock at any of these meetings nor was a quorum of directors present if Mr. Gray was a director.

10. Hallenbeck has many historical, family and financial ties to Purdy Mesa, though he physically resides consistently in Delta County where he votes, owns property, and licenses his car. Gray resides in the City of Grand Junction whose water system distributes water from Juniata Enlarged Reservoir.

11. Juniata Reservoir Enlarged, Inc. is not insolvent and its bills have been paid except sums due to Hallenbeck for work done on raising the dam for Juniata Enlarged Reservoir, roadwork, etc. Disputes arise periodically between City and Hallenbeck over distribution of water from Juniata Enlarged

Reservoir, though these distributions have not been fully stymied.

#### IV

##### Conclusions as to Corporate Deadlock.

1. The 1963 election of directors was valid. Though directors' terms are 1 year, Section XX, the Court concludes that under Section V officers must be directors and that officers do hold over till successors are elected. Therefore, Hallenbeck, Wilbur Raber and John Raber remained directors at least through 1966.

2. The Grounds and Raber proxies are of broad enough language to allow the proxy holder the right to act on the board of directors as Grounds and Raber could have done. Mr. Gray's election as vice president of Juniata Reservoir Enlarged, Inc. on 3-13-67 was also his election to the board of directors, Section V of bylaws. This was recognized by Hallenbeck in his testimony at the trial, and by the minutes of the next meeting on 6-30-67. Likewise, Hallenbeck's election was valid. Mr. Ragan's election was not valid as he was not a stockholder of Juniata Reservoir Enlarged, Inc., Section XXII. Ragan was not recognized as a director at the next meeting of 6-30-67. Wilbur Raber's resignation was present but not required since it was an annual meeting and election of directors was in order, Section XX.

3. At the 9-23-67 meeting no business could be conducted since there was no quorum of directors, Section XIV. Since there was no 1968 meeting, Hallenbeck and Gray, as directors and officers, were held over in their positions, Section V.

4. In 1969 at the March 15 meeting no directors were elected because of the tie vote, and Hallenbeck and Gray

held over, If Gray were not a director, there would have been no quorum to conduct directors' business, Section XIV. The assessments attempted could not be valid, Section XXIII, since the meeting was after April 1 and director action only could make assessments.

5. At the 4-28-69 meeting Hallenbeck could not validly act alone as he had no quorum of directors to do business, Section XIV, see Paxton v. Heron, 41 Colo. 147, 92 Pac. 15 (1907). Nor was a majority of outstanding stock represented at the meeting, Section XIX. The appointment of directors on 4-28-69 being invalid, the actions of the directors on 6-17-69 and 5-29-69 were invalid.

6. There is no abuse apparent to the needs of the corporation in ruling that both Hallenbeck and Gray are eligible for directorships. It is noteworthy that no significant corporate action was taken after 1-3-67 at any time in which Gray's vote as a director was critical, when it is remembered that otherwise Hallenbeck alone could not act since a quorum was absent.

7. The minutes and testimony is replete with examples of tie votes, invalid corporate action and the need for a break in the deadlock of corporate business, and particularly, to elect the third member to the board of directors after John Haber resigned. Valid assessments are necessary and the status of Hallenbeck's money claims against the corporation needs clarifying. With director approval there is no breach of a fiduciary obligation for Hallenbeck to have performed work for the corporation or become its creditor, Section VI.

8. The Court concludes that it must interfere to appoint a third member of the directors or a general receiver, but that the least equitable jurisdiction interference is

best, Eureka v. McGowan, 72 Colo. 402, 212 Pac. 521 (1922).  
With the hoped for clarification of past corporate acts given  
in this opinion, a temporary third director may be sufficient  
to solve the ills.

v

Findings on estoppel as to the uses of Hallenbeck  
Reservoir.

1. Reference is made in this Court's denial of  
injunction order of 6-16-67 to possible estoppel concerning  
certain uses of Hallenbeck Reservoir. This Court finds that  
Hallenbeck, personally, and the other owners of Juniata En-  
larged Reservoir full well knew the City was using Hallenbeck  
Reservoir as a regulating basin for direct flow waters - see  
minutes of meeting of meeting of 6-8-64 and again 4-16-65  
and that in 1964 it was negotiated between City and Hallenbeck.  
Between dates of construction of the bypass pipeline and North  
Fork Ditch as late as 1960 and until 1964, there is no evidence  
of Hallenbeck's position toward acquiescence in City use of  
Hallenbeck Reservoir.

2. Exhibit T, however, is quite revealing of Hallen-  
beck's unfair and inconsistent positions. Page 5 of the letter  
of 1-17-53 shows Hallenbeck's attitude in trying to induce the  
City to purchase Hallenbeck Reservoir and in 1954 his induc-  
ment worked. Therein he urged City that Hallenbeck Reservoir  
could be used by City to "temporarily hold that portion of the  
City's direct flow not required by the City at a time when the  
full flow is not required by the City." Hallenbeck's attitude  
obviously changed when the shoe got on the other foot and cou-  
ld legally complain in this suit of his previously recommended  
action.

## VI

Conclusions on estoppel as to the uses of Hallenbeck Reservoir.

1. Though Hallenbeck should personally be estopped from complaining of any improper temporary storage of direct flow water by City in Hallenbeck Reservoir, the other parties and corporations, and particularly, the water officials can not be so estopped on the facts in this case. They must enforce the water laws regardless of Hallenbeck's individual estoppel.

## VII

Findings re: Stock Water Decree

1. The 665 a.f. of the last absolute Decree to Juniata Enlarged Reservoir was designated for winter stock water and domestic uses. Extensive Exhibits were introduced on the testimony given in the adjudication proceeding. Hallenbeck, Raber and Crosswhite all testified in the 1960 hearings. Hallenbeck testified that the water was used for irrigation. Raber extensively testified that it was winter stock water up to 665 a.f. Crosswhite testified that it was for stock and irrigation water being used outside the Kannah Creek basin in Whitewater Creek.

2. After the Decree, there is evidence of the stock water use and for hold over stock water. Stock water runs never reached 665 a.f. in a given year after the Decree and amounts were held over. No concerted effort was made and placed in evidence to show a separated and cumulative accounting to stockholders for calls on this part of the Decree. Crosswhite's part of the water passed to Grounds and then to the City through transfers of Juniata Reservoir Enlarged, Inc. stock or by option and proxies thereon.



3. The bylaws of Juniata Reservoir Enlarged, Inc., Section XXIV, state that the stock represents water rights and that transfer of the stock carries all water rights represented. Section XXV provides available water may be drawn from the reservoir pro rata with stock owned.

#### VIII

##### Conclusions re: Stock Water Decree

1. The testimony of the claimants became merged in the Decree for 665 a.f. domestic and winter stock water. City's reliance on *Arnold v. Roup*, 61 Colo. 316, 157 Pac. 206 (1916) is improperly placed considering that the Court's restriction on "change" which may injuriously affect others, page 325, and on "use" to claimant's necessities for irrigation, page 326. Hallenbeck's assertion that *Westminster v. Church*, Colo. , 445 P. 2d 52 (1968) has no relevancy is also improper. This Court concludes that that case is controlling here. Westminster, a municipality, purchased storage rights from prior irrigation users. Westminster changed the character of use to municipal and the trial Court tried to restrict the use as historically used for irrigation. The Supreme Court in its latest pronouncement in this area reversed the trial court and held storage rights could not be limited to historical use. The Supreme Court described it as one of several cases where municipalities purchase agricultural water rights intending to devote same to domestic and municipal purposes. It holds the direct flow rights are restricted and the storage rights are not. In the Westminster case junior priorities were contesting and failed, for stronger reason here a co-owner would fail.

2. Hallenbeck's assertion that ownership of stock does not control the water is refuted by the express provis

of the bylaws noted in the findings. The officers of the corporation made the shares alienable and had to foresee such possibilities. Historically as to Crosswhite, 1/4 of the water was not to be used on Purdy Mesa but in Whitewater Creek basin and without a return flow to Kannah Creek. This Court does not know how this water was transmitted to Whitewater Creek, but the adjudicating court was satisfied it was used there.

3. Where Hallenbeck's position for need for 665 a.f. of stock water rests on historical use not in the year of diversion from the stream but for hold over insurance against a drought year, this Court has serious doubt that use under the decree is based upon a beneficial use.

#### IX

Findings and Conclusions as to hold over storage.

1. As to "hold over" procedures the Court finds the issue moot as the Juniata Reservoir Enlarged filled in 1969 and all parties agree no hold over can apply after the reservoir fills. As to future policy, the parties can apparently agree as shown by the briefs. The proviso on agreement in paragraph 4, page 19 of Hallenbeck's brief is filled when the measured winter stock water runs of the past have not exceeded his one-half of the 665 a.f. 331 a.f. was run in the winter of 1968 - 1969, and 308 a.f. run in winter of 1967 - 1968. If hold over water is in fact held over (when the reservoir doesn't fill) it must be accounted for cumulatively between the owners from one complete fill of the reservoir to the next.

IT IS THEREFORE ORDERED, ADJUDGED AND DECIDED:

1. That the City be enjoined from storage of any direct flow decreed water in Hallenbeck Reservoir except



as decreed for its one filling right.

2. That the City may use Hallenbeck Reservoir as space permits as a regulating basin or as a storage facility for water previously stored in its upstream reservoirs.

3. That the City may use Hallenbeck Reservoir as a conduit for its direct flow decrees, outflow and inflow must be equal in time and volume.

4. That the actions of Juniata Reservoir Enlarged, Inc. at the meetings of 9-~~23~~<sup>28</sup>-67, 4-28-69, 5-29-69 and 6-17-69 were invalid.

5. That the existing directors on the last date of trial were C. V. Hallenbeck and Richard Gray, with the third directorship vacant.

6. That the corporate deadlock, existing since 3-15-67, imperiling the property rights of all stockholders as to water distributions and completion of corporate purposes, requires an equitable order to break such deadlock.

7. The City may use its share of the 665 a.f. of Juniata Enlarged Reservoir winter stock water decree for beneficial municipal purposes as between the parties.

IT IS FURTHER ORDERED that the costs of this action be borne by each side as expended by them.

Done in open court this 1st day of April, 1970.

BY THE COURT:

  
Judge

35-A

DATE OF MAILING

7-9-82

Filed in The District Court  
Water Division Four

JUL 9 1982

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4

STATE OF COLORADO

Case No. 82CW13

Kay Phillips, Clerk \_\_\_\_\_

IN THE MATTER OF THE APPLICATION )	
FOR WATER RIGHTS OF THE CITY OF )	
GRAND JUNCTION COLORADO: IN THE )	RULING OF WATER REFEREE
GUNNISON RIVER OR ITS TRIBUTARIES: )	
IN MESA COUNTY )	

The applicant, The City of Grand Junction, Colorado c/o their attorney, D. J. Dufford, P. O. Box 2188, Grand Junction, Colorado 81502, requests the right to use and store surface water for irrigation, stock watering, recreation, municipal and other beneficial purposes. Filed: January 28, 1982.

No opposition has been filed.

FINDING OF FACT

The name of the structures involved in this Application are the Purdy Mesa No. 2 Reservoir and Purdy Mesa Spring.

The source of water for the Reservoir and direct flow Application is a small spring located approximately North 780 feet and West 4 feet from the SE corner of Section 25, Township 2 South, Range 2 East of the 6th P.M. †

The location of the dam and the reservoir for which Application is made, is located in the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 25, Township 2 South, Range 2 East of the 6th P.M. †

The Reservoir has a capacity of 2.5 acre feet of water and has been and/or will be used by the City for irrigation, stock watering, recreation, municipal and other beneficial purposes. The water emanating from the Purdy Mesa Spring when not used for filling the Reservoir is or will be used on a direct flow basis for the same purposes. The flow of the Spring is .2 c.f.s. The City and its predecessors in interest have used the water impounded in the Purdy Mesa No. 2 Reservoir and the supply from Purdy Mesa Spring for irrigation and stock watering purposes since on or prior to June 1, 1955.

The City has not, as of the date of this Application, used the water impounded in the Reservoir or produced by the Spring for purposes other than irrigation and livestock watering purposes. Therefore, a conditional decree is requested for other uses claimed in this Application.

1430 - 37

35-A

R U L I N G

IT IS THE RULING OF THE REFEREE that water has been appropriated, stored and used beneficially and that the PURDY MESA NO. 2 RESERVOIR is APPROVED AND GRANTED AN ABSOLUTE DECREE, not to exceed 2.5 acre feet of water for irrigation and stock watering purposes, with an appropriation date of June 1, 1955 AND FURTHER, that the PURDY MESA SPRING is APPROVED AND GRANTED AN ABSOLUTE DECREE for the use and benefit of the parties lawfully entitled thereto, for an amount of water not to exceed .20 c.f.s. for irrigation and stock watering purposes, with an appropriation date of June 1, 1955 AND FURTHER, that both of the above, in the same amounts, are APPROVED AND GRANTED CONDITIONAL DECREES for the use and benefit of the parties lawfully entitled thereto, for additional uses as may be determined and quantified later; namely, recreation, municipal and other beneficial purposes by the City.


Conditioned upon the proof of quantified use for those purposes, within the amount as above described, or a portion thereof, in a manner prescribed by law.


During the month of July 1986, and every four years thereafter, until the right is decreed final, the owner or user thereof, if he desires to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court.

DATED 7-9-82

E. L. WILSON

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

  
Water Referee, Division No. 4

Dated: 7-30-82  
  
Water Judge

25-B

DATE OF MAILING

12-19-86

Filed in The District Court  
Water Division Four

DEC 19 1986

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

CASE NO. 86CW103 (Ref. 82CW13)

Kay Phillips, Clerk

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FINDINGS AND RULING OF REFEREE AND DECREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

CITY OF GRAND JUNCTION

In the GUNNISON River, MESA County, Colorado.

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Applicant, City of Grand Junction, by their attorney, D. J. Dufford, P.O. Box 2188, Grand Junction, Colorado 81502, requests a Quadrennial Finding of Reasonable Diligence by Application filed July 30, 1986.

FINDINGS OF FACT

1. All notices required by law of the filing of this Application have been given. The Referee has jurisdiction of this case. The time for filing of statements of opposition has expired and no such statements have been filed.

2. Applicant requests a finding of reasonable diligence in the completion of the conditional water right for the PURDY MESA NO. 2 RESERVOIR AND PURDY MESA SPRING as follows: The source of water for the Reservoir and direct flow application is a small spring located approximately North 780 feet and West 4 feet from the SE corner of the NW1/4 SE1/4 of Section 25, Township 2 South, Range 2 East of the Ute Meridian. The location of the dam and the reservoir for which application is made is located in the NW1/4 SE1/4 of Section 25, Township 2 South, Range 2 East of the Ute Meridian. The Reservoir and Spring are tributary to the Gunnison River, as decreed in case 82CW13 on May 13, 1983. In support of this request, Applicant states that survey work and the installation of a wier have been completed. The Court finds that the statements are true, and that this activity constitutes reasonable diligence in the completion of the diversion.

RULING

The conditional water rights decreed for 2.5 acre feet to the PURDY MESA NO. 2 RESERVOIR and .20 c.f.s. to the PURDY MESA SPRING, identified above, are HEREBY CONTINUED, in full force and effect.

35.6

Prior to or during the month of July, 1990, and every four years thereafter until the conditional right is decreed absolutely, the owner or user thereof, if it is desired to maintain the same, shall file an application for quadrennial finding of reasonable diligence with this Court. Applicant shall notify this Court of any change in mailing address. Upon the sale or other transfer of this conditional right, the transferee shall file with this Court a notice of transfer which shall state:

- (1) The title and case number of this case;
- (2) The description of the water right transferred;
- (3) The name of the transferor;
- (4) The name and mailing address of the transferee.

Applicant shall notify any transferee of the requirements of this paragraph.

Dated this 19<sup>th</sup> day of December, 1986.

No protest was filed in this matter. The foregoing ruling is pronounced and approved, and is made the judgment and Decree of this court.

Aaron R. Clay  
Aaron R. Clay  
Water Referee  
Division 4

Dated: 1-9-87  
Robert A. Brown  
Water Judge

Mailed-A Copy of this Document to all parties in this case.

Dated 1-13-87  
T.P.  
Kay Phillips, Water Clerk





WATER FILE  
No. 114

THE ANDERSON RESERVOIR NO. 6.

RESERVOIR NO. 123

Priority No. 688.

THE COURT FINDS:

That in this proceeding said reservoir is numbered 123, and it is entitled to Priority No. 688.

That the claimants thereof are Walter L. Anderson, Frank E. Anderson, William F. Krohn and Gertrude Krohn, the post office address of each of whom is Whitewater, Colorado.

That it is a reservoir for the storage of water for supplemental irrigation on about 1500 acres of land belonging to claimants.

That it derives its supply of water from the North Fork of Kannah Creek, in Water District No. 42. Called Coal Creek in plat

That the initial point of survey of said reservoir is located at a point whence the NE corner of Sec. 11, Twp. 12 S., R. 97 W., 6th P. M. bears N. 51° 31' E. 2520 feet.,

That the height of the dam to said reservoir is 17.5 feet. Depth of water stored, from the bottom of the outlet, is 12 feet, and the total storage capacity is 57.32 acre feet.

And the Court Further Finds from the evidence that work of construction on said reservoir was begun by survey on October 5, 1928, at the same time survey was made of Anderson Reservoir No. 2, that some work was done thereon shortly thereafter, that the balance of the dirt work was done in 1938, and the dam and outlet was entirely completed in 1944, at approximately the same time Anderson Reservoir No. 2 was completed; That said reservoirs Numbers 2 and 6, are located on the same small watershed, were surveyed at the same time and completed with about equal diligence, and in the Court's opinion should have equal right to the waters available for storage. That the storage capacity of said Reservoir No. 6, as completed, is 57.32 acre feet.

And the Court further Finds that claimants have some 1500 acres of irrigated and irrigable land under said reservoir upon which they can and have used this stored water; that claimants also have other water rights, but with the full amount of water they receive therefrom they are still unable to properly irrigate all of said land; and it further appears said water is also used for domestic and stock watering purposes.

In the opinion of the Court, under all the circumstances, considering the extent of of claimants' irrigation system, they have exercised sufficient diligence to justify the application of the doctrine of relation, and establish the historic Priority date of this storage right as of the date of the initiation of work thereon, October 5, 1928.

However, the Court Further Finds from the files in this case that, on January 3, 1956, a second claim statement was filed for said reservoir by the City of Grand Junction, Colorado, setting forth the same claim, but a little more fully describing the source of supply from Coal Creek through the B A & J Feeder Ditch, locating the headgate thereof as being on the right bank of said Coal Creek at a point whence the  $W\frac{1}{4}$  corner of Sec. 12, Twp. 12 S., R. 97 W. <sup>6th</sup> P. M. bears S.  $82^{\circ} 57'$  W. 2863 feet, and alleging the capacity of said ditch to be 43.8 second feet of water.

Under which statement of claim evidence was introduced showing that in the fall of 1955 the original claimants sold said reservoir to the City of Grand Junction, and said city now uses the water stored therein to supplement its supply for domestic and other municipal uses in and adjacent to Grand Junction.

In the Court's opinion it does not have authority in an adjudication proceeding to approve or confirm a change in the character of use of water, at least as of the date its former use entitled it, -in this case October 5, 1928. And if the Court is to award priority as of that date, it will be on the basis of an irri-

gation right; and in the court's opinion will require an independent action to affect a change in character of use, since such change might adversely affect vested rights on that particular watershed. If, in order to save expense of change of use suit, claimants should choose to sacrifice its earlier priority right as established by irrigation proof, it would be restricted to a priority date as of the time of acquisition from the former claimants and conversion of use from irrigation to municipal purposes. And on the assumption that claimant will want to maintain its early priority date, the Court is making the award on an irrigation basis.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir from North Fork of Kannah Creek drainage, including such tributaries as the said B A & J Feeder Ditch taps and intercepts, for irrigation, domestic and stockwatering purposes, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, storage and beneficial use, and as Priority No. 688, so much water as can be stored therein as now constructed, not to exceed 57.32 acre feet, as of Historic Date October 5, 1928, and Decreed Date July 25, 1941. PROVIDED, that said priority is of equal date and right to the waters available from said sources as Priority No. 687 to the Anderson Reservoir No. 2.





308

NORTH FORK OF KANNAH CREEK

BOLEEN RESERVOIR

Reservoir No. 70

Reservoir Priority No. 75

That said Reservoir is entitled to Priority No. 75, and is claimed by Robert T. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the storage of water for irrigation purposes and the source of supply is the North Fork of Kannah Creek, from which water is conveyed through a supply ditch into said Reservoir, the headgate of such supply ditch being located on the right bank of North Fork of Kannah Creek, at a point whence the north quarter corner of Section 11, Township 12 South, Range 97 West of the 6th Principal Meridian bears north 52° 30' West 400 feet. Said reservoir is located in portions of Sections 2, 3, 10 and 11, Township 12 South, Range 97 West of the 6th Principal Meridian, in Water District No. 42.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said source of supply for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction and Priority No. 75, 383.3 acre feet of water, of which 177.5 acre feet is absolute and the balance conditional that said reservoir be completed with reasonable diligence, and water stored therein and used for irrigation purposes, within a reasonable time, to the extent of 383.3 acre feet, with Priority date of November 25, 1911.

15-105

#37

Decree Date: 7-25-41





THE BOLEN RESERVOIR ENLARGEMENT.

RESERVOIR NO. 189

Priority No. 816.

THE COURT FINDS:

That in this proceeding said reservoir is numbered 189, and it is entitled to Priority No. 816.

That the claimants thereof are Walter L. Anderson, Frank E. Anderson, William F. Krohn and Gertrude Krohn, whose post office address is Whitewater, Colorado.

That at the time of filing petition herein, and introduction of evidence thereon said reservoir and enlargement were used in conjunction with other reservoirs and water rights belonging to claimants, for the irrigation of approximately 1220 acres of land.

That it derives its supply of water from the North Fork of Kannah Creek, and a tributary thereof, and surrounding drainage.

That the initial point of survey of said reservoir is located at a point whence the N $\frac{1}{4}$  corner of Sec. 10, Twp. 12 S., R. 97 W., 6th P. M. bears N. 52° 30' W. 2613 feet, in Water District No. 42.

That the total height of the dam under enlarged construction is 18 feet, being an increase of 10 feet over and above the original construction thereof, That the total storage capacity after enlargement is 535.74 acre feet.

That the supply of water for said reservoir from said North Fork of Kannah Creek is carried through a ditch, the head-gate of which is located on the right bank of said creek at a point whence the N $\frac{1}{4}$  corner of Sec. 11, Twp. 12 S., R. 97 W., 6th P. M. bears N. 52° 30' W. 400 feet; that said ditch is 2310 feet long, 9 feet wide on top, 5 feet wide on the bottom, 1 foot deep, with a grade of 2 feet per 1000 feet, and carrying capacity of 10.92 second feet of water.

And the Court Further Finds from the evidence and the adjudication records that said reservoir as originally constructed

438

was awarded in decree of date June 25, 1941, Priority No. 75 for 383.3 acre feet of water, of which 177.5 acre feet were absolute, and the balance, or 205.8 were conditional.

And the Court Further Finds that said claimants, on or about September 15, 1949 began the construction of an enlargement of said reservoir, which enlargement was diligently completed, and that when completed the total capacity of said reservoir was 535.74 acre feet, or an increased capacity over and above said absolute and conditional priority of 152.44 acre feet. That said reservoir as enlarged was filled to capacity in both 1952 and 1953, and used for irrigation purposes on claimants' lands, consisting of approximately 1220 acres.

And the Court Further Finds from the evidence that while claimants have other reservoirs and water rights which are used for irrigation on this same acreage, that all the water obtainable therefrom is insufficient to properly irrigate said acreage, and each year when they can obtain it they rent additional water for such purpose.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir from said North Fork of Kannah Creek, and surrounding drainage, for the use aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by enlarged construction, storage and beneficial use, and Priority No. 816, so much water as can be stored therein as now constructed, over and above said prior absolute and conditional award, not to exceed 152.44 acre feet, as of priority date September 15, 1949.





WATER FILE  
297

NORTH FORK KANNAH CREEK

BOLEN, ANDERSON AND JACOB RESERVOIR NO. 2

Reservoir No. 59

Priority No. 62

That said reservoir is entitled to Priority No. 62, and is claimed by Robert T. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the storage of water for irrigation purposes, and situate in Water District No. 42. Said reservoir is located in Section 11, Township 12 South, Range 97 West of the 6th P.M., Mesa County, Colorado, and derives its supply of water from the North Fork of Kannah Creek.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said source of supply, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of said appropriation by original construction and Priority No. 62, 11.1 acre feet of water, with Priority date of November 12, 1911.

5-102

#39

407  
DECEDE DATE: 7.25.41  
~~2-20-59~~





THE BOLEN, ANDERSON & JACOBS  
RESERVOIR NO. 2 ENLARGEMENT.

RESERVOIR NO. 186,

Priority No. 813.

THE COURT FINDS:

That in this proceeding said reservoir is numbered 186, and it is entitled to Priority No. 813.

That the present claimant thereof is the City of Grand Junction, Colorado.

That said reservoir and Enlargement is now used to supply water for all municipal purposes to the inhabitants of the City of Grand Junction, Colorado, and areas adjacent thereto, as well as for manufacturing and other industrial purposes.

That it derived its supply of water at the time of construction from drainage adjacent to the North Fork of Kannah Creek; That following construction, the then claimants of said reservoir and enlargement constructed a ditch known as the B A & J Feeder Ditch, with headgate on Coal Creek, a tributary of Kannah Creek, to be used when necessary as a supplementary supply for filling said reservoir and enlargement, as well as Anderson Reservoir No. 6.

That said reservoir and enlargement is located in Section 11, Twp. 12 S., R. 97 W., 6th P. M. For a more detailed description of initial point of survey, reference is made to the Plat and statement on file.

And the Court Further Finds, that the original claimants of said reservoir and enlargement were Walter L. Anderson, Frank E. Anderson, William P. Krohn and Gertrude Krohn. And that under original construction said reservoir was awarded in decree of this court dated July 25, 1941 priority No. 62, for 11.1 acre feet of water, for irrigation purposes. The height of the dam under original construction being 8 feet, and the capacity of the reservoir 11.1 acre feet.

And the Court Further Finds that said claimants on or

40

about July 1, 1949 began the construction of an enlargement of said reservoir, which enlargement was diligently completed to an increased capacity of 281.90 acre feet, with the dam at 18 feet in height. That construction thereof was completed on or before October 1, 1949.

And the Court Further Finds from the evidence that subsequent to completion said reservoir was surveyed, and the surveyor in his testimony gives the initial point of survey as being located at a point whence the S $\frac{1}{4}$  corner of Sec. 11, Twp. 12 S., R. 97 W., 6th P. M. bears S. 0° 45' E. 1435 feet.

And it further appears that subsequent to completion, each year when water was available from the source above mentioned, which according to the evidence includes "The Bolen, Anderson & Jacob ditches that come from Deep Creek, which is a drainage of the Main Kannah Creek, and it picks up a tributary of Skunk Creek, and also Coal Creek,"- said reservoir as enlarged has been filled to capacity and used, in connection with other water, for the irrigation of approximately 1220 acres of land belonging to said claimants. That all the water rights belonging to claimants is insufficient to properly water said acreage, and each year when they can obtain it they rent additional water for such purpose.

And the Court Finds the above, -which is in the testimony of said claimants under Statement of Claim for said reservoir enlargement filed with the Court ~~February~~ September 22, 1953, -sufficiently establishes the basis for an irrigation decree to date from the initiation of construction thereof, or July 1, 1949.

However, the Court Further Finds from the files in this matter, that on January 3, 1956, a second claim statement was filed for said reservoir enlargement by the City of Grand Junction, Colorado, setting forth the same claim, but a little more fully describing the source of supply from Coal Creek through the B A & J Feeder Ditch, locating the headgate thereof as being on the right

bank of said coal Creek at a point whence the  $W\frac{1}{4}$  corner of Sec. 12, Twp. 12 S., R. 97 W., 6th P. M. bears S.  $82^{\circ} 57'$  W. 2863 feet, and alleging the capacity of said ditch to be 43.8 cubic feet of water per second of time.

Under which statement of claim evidence was introduced showing that in the fall of 1955 the said original claimants of said reservoir and enlargement sold the same to The City of Grand Junction, and that the City of Grand Junction uses said reservoir and enlargement to supplement its water supply for domestic and other municipal uses in and adjacent to the City of Grand Junction.

In the Court's opinion it does not have authority in an adjudication proceeding to approve or confirm a change in the character of use of water, at least as of the date its former use entitled it, in this case July 1, 1949; And if the Court is to award priority as of that date, it will be on the basis of an irrigation right, and in the Court's opinion will require an independent action to effect a change in character of use, since such change might adversely affect vested rights on that particular watershed. If, in order to save expense of change of use suit, claimant should choose to sacrifice its earlier priority right as established by irrigation proof, it would be restricted to a priority date as of the time of acquisition from the former claimants and conversion of use from irrigation to municipal purposes. And on the assumption that claimant will want to maintain its early priority date, the Court is making the award on an irrigation basis.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir from said adjacent drainage and tributaries to the North Fork of Kannah Creek, for the use aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by enlarged construction, storage and beneficial use, and as Priority No. 813, so much additional water as can be stored therein as enlarged, not to exceed 281.90 acre feet, as of Priority Date July 1, 1949.





WATER FILE  
No. 300

NORTH FORK KANNAH CREEK

LAURENT RESERVOIR

Reservoir No. 63

Priority No. 66

That said reservoir is entitled to Priority No. 66, and is claimed by Jim Davis, and is used for the storage of water for irrigation purposes and is situate in Water District No. 42. The said reservoir is located in the South Half of Section 10, Township 12 South, Range 97 West of the 6th Principal Meridian, and is more definitely shown in plat and statement filed in the office of the State Engineer and also in the office of the County Clerk and Recorder of Mesa County, Colorado, as Water File No. 665 therein. The source of supply is a branch of the North Fork of Kannah Creek, and melting snows and rains from surrounding watersheds.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said sources of supply, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, 47.9 acre feet of water, with Priority date of November 16, 1911.

15-103

#41  
#12

Decree Date: 7-25-41

42-A

KANNAH CREEK - NORTH FORK WATER SHED.

RESERVOIR NO. 1

THE REEDER RESERVOIR

PRIORITY NO. 1

Claimed by Joseph A. Laurent and Robert T. Anderson.



Said reservoir is located in Sections 13 and 24, in Township 2 south, range 2 east, of the Ute Meridian, and it derives its supply of water from the North Fork of Kannah Creek, through the following named ditches: The Enlargement of the Seger & Bedford Ditch, the headgate of which is located at a point on the right bank of the North Fork of Kannah Creek, whence the northeast corner of Section 25, in township 12 south, range 98 west of the 6th P. M. bears North 18 degrees 20 minutes east, 1125 feet; The Laurent Ditch, the headgate of which is located at a point on the right bank of the North Fork of Kannah Creek, whence the west one-fourth corner of Section 19, in Township 12 South, range 97 west, of the 6th Principal Meridian, bears South 72 degrees west, 35 chains; and The Bauer Ditch Enlarged, the headgate of which is located at a point on the right bank of the North Fork of Kannah Creek, whence the northeast corner of Section 25, in Township 12 south, range 98 west, of the 6th P. M. bears south 26 degrees 32 minutes west, 895 feet.

Said reservoir has an area of 16.2 acres, and a capacity of 179.7 acre feet.

The water so impounded in said reservoir is drawn therefrom thru two outlet ditches, owned, respectively by claimants, and is used to supplement other priorities, in the irrigation of some 600 acres of land, in the ratio of .018 of a cubic foot per acre, all of which has been, with reasonable diligence, so irrigated.

Work commenced on said reservoir on December 18, 1889 and was prosecuted with reasonable diligence to completion.

260

# 42-A

Decree Date: 6-1-1916

WHEREFORE: IT IS ORDERED AND DECREED that said reservoir is entitled to be filled, ~~once each and every year,~~ to its maximum capacity of 179.7 acre feet, as Reservoir Priority No. 1 out of the North Fork of Kannah Creek Water Shed, for the use of the parties entitled thereto.

~~PROVIDED HOWEVER: That such filling shall only be made when the water of said stream is not needed for direct or immediate irrigation; and~~

4  
PROVIDED ~~HOWEVER~~: that the water so impounded and used shall not, together with the water of said creek directly appropriated, in the aggregate, exceed the ratio of .018 of a cubic foot per second, per acre of land, for the land irrigated therewith.

27-41



42-B

MAY 12 1986

DATE OF MAILING

5-12-86

Key Phillips, Clerk

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO  
CASE NO. 85CW-198

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FINDINGS AND RULING OF THE REFEREE AND DECREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS  
OF:

City of Grand Junction, Mesa County, Gunnison River  
Drainage.

---

Applicant City of Grand Junction, by and through its  
attorney, D.J. Dufford, P. O. Box 2188, Grand Junction, CO  
81502, by Application filed August 9, 1985, requests  
conditional water rights for the storage of water.

FINDINGS OF FACT

1. All notices required by law of the filing of this  
application have been given.
2. The Referee has jurisdiction of this case.
3. The time for filing of statements of opposition has  
expired and statements have been filed by Roy L. Anderson,  
Allen Leisten and Thomas W. Matthews and Judith K. Matthews.
4. Applicant is constructing a dam called Reeder  
Reservoir Enlarged located as follows: The intersection of  
the center line of the axis of the proposed enlarged dam  
with the channel of an unnamed drainage channel is located  
at a point from which the Northwest corner of Section 26,  
Township 12 South, Range 98 West, of the 6th P.M. bears  
North 25°30' East a distance of 4,060 feet. The reservoir  
will be filled with water from the North Fork of Kannah  
Creek, by diversion through the Bauer Ditch. Applicant  
requests a decree for the storage of 700 acre feet of water,  
for all municipal purposes, industrial uses, irrigation,  
augmentation purposes, power generation and all other  
beneficial uses.

\*The Headgate of the Bauer Ditch is at a point from which the  
Northeast Corner of Section 25, Township 12 South, Range 98  
West, 6th p.m. bears South 26 30' West 895 Feet.

42-B

### RULING

Applicant is granted a CONDITIONAL DECREE for the total storage of 700 acre feet for all municipal purposes, industrial uses, irrigation, augmentation purposes, power generation and all other beneficial uses. Said water will be stored in REEDER RESERVOIR ENLARGED which is located as above referenced. Applicant may store the water pursuant to an appropriation date of June 7, 1984, adjudication date of December 31, 1985.

Any time when the Applicant is diverting water from the North Fork of Kannah Creek for the purpose of storing that water in the Reeder Reservoir Enlarged, the applicant will cause 1.0 cfs of water to bypass the headgate of the filling ditch for the Reeder Reservoir Enlarged, so that 1.0 cfs of water will flow in the North Fork of Kannah Creek past the headgate of the diversion facility for the Reeder Reservoir Enlarged. If at any time the amount of natural flow in the North Fork of Kannah Creek is less than 1.0 cfs, then the Applicant will not divert water from the North Fork for the purposes of filling the Reeder Reservoir Enlarged.

Prior to or during the month of May, 1990 and every four years thereafter, until the conditional right is decreed absolutely, the owner or user thereof, if it is desired to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court. Upon the sale or other transfer of this conditional water right, the transferee shall file with this Court a notice of transfer which shall state:

- (1) The title and case number of this case;
- (2) The description of the conditional water right transferred;
- (3) The name of the transferor;
- (4) The name and mailing address of the transferee.

Applicant shall notify any transferee of the requirements of this paragraph.

The owner of this conditional water right shall notify the Clerk of this Court of any change in mailing address.

Dated this 12<sup>th</sup> day of May, 1986.

Aaron R. Clay  
Aaron R. Clay  
Water Referee  
Division No. 4

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: 6-4-86  
Robert E. Brown  
Water Judge

Mailed-A Copy of this Document to all parties in this case.

Dated 6-4-86  
SW  
Kay Phillips, Water Clerk

42.C



STIPULATION

CONCERNING THE APPLICATION OF CITY OF GRAND JUNCTION FOR A WATER RIGHT IN MESA COUNTY, COLORADO

The City of Grand Junction ("Applicant") and the Objectors, Allen Leisten and Brenda Leisten, Thomas W. Matthews and Judith K. Matthews, and Roy L. Anderson, stipulate as follows:

A. Any time when the Applicant is diverting water from the North Fork of Kannah Creek for the purpose of storing that water in the Reeder Reservoir Enlarged, the Applicant will cause 1.0 c.f.s. of water to bypass the headgate of the filling ditch for the Reeder Reservoir Enlarged, so that 1.0 c.f.s. of water will flow in the North Fork of Kannah Creek past the headgate of the diversion facility for the Reeder Reservoir Enlarged. If at any time, the amount of natural flow in the North Fork of Kannah is less than 1.0 c.f.s., then the Applicant will not divert water from the North Fork for the purposes of filling the Reeder Reservoir Enlarged.

B. Upon filing of this Stipulation the Statements of Opposition filed by Objectors shall be considered withdrawn.

C. A copy of this Stipulation shall be set forth within any Decree entered herein or attached as an exhibit thereto.

Dated this 20<sup>th</sup> day of April, 1986.

WILLIAMS, TURNER & HOLMES, P.C.

DUFFORD, WALDECK, RULAND, & MILBURN

By Anthony W. Williams  
Anthony W. Williams, #1587  
Attorneys for Objectors  
200 N. 6th St - P. O. Box 338  
Grand Junction, CO 81502  
(303) 242-6262

By D. J. Dufford  
D. J. Dufford, #2913  
Attorneys for Applicants  
900 Valley Federal Plaza  
P. O. Box 2188  
Grand Junction, CO 81502  
(303) 242-4614

#42-C

42-D

DATE OF MAILING

Jan 24, 1991

Filed in The District Court  
Water Division No. 4

JAN 24 1991

Key Phillips, Clerk

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

CASE NO. 90CW49 (Ref. 85CW198)

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FINDINGS AND RULING OF REFEREE AND DECREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

CITY OF GRAND JUNCTION, COLORADO

In the GUNNISON River, MESA County, Colorado.

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Applicant, CITY OF GRAND JUNCTION, COLORADO, 250 North 5th Street, Grand Junction, Colorado 81501, by their attorney, D. J. DUFFORD, OF DUFFORD, WALDECK, MILBURN AND KROHN, P.O. Box 2188, Grand Junction, Colorado 81502 requests a Quadrennial Finding of Reasonable Diligence by Application filed May 24, 1990.

FINDINGS OF FACT

1. All notices required by law of the filing of this Application have been given. The Referee has jurisdiction of this case. The time for filing of statements of opposition has expired and no such statements have been filed.

2. Applicant requests a finding of reasonable diligence in the completion of the conditional water right for the REEDER RESERVOIR ENLARGED, located at a point as follows: The intersection of the center line of the access of the proposed dam is located at a point from which the Northwest corner of Section 26, Township 12 South, Range 96 West, 6th P.M. bears North 25°30' East a distance of 4060 feet, which is tributary to Kannah Creek and the Gunnison River, as decreed in case 85CW198 on May 12, 1986. In support of this request, Applicant states that diligence consists of engineering studies related to the reservoir. The Court finds that the statements are true, and that this activity constitutes reasonable diligence in the completion of the diversion.

RULING

The conditional water rights decreed for 700 a.f. to the REEDER RESERVOIR ENLARGED, identified above, for municipal, industrial, irrigation, augmentation and power generation purposes, are HEREBY CONTINUED, in full force and effect.

Prior to or during the month of February, 1997, and every six years thereafter until the conditional right is decreed absolutely, the owner or user thereof, if it is desired to maintain the same, shall file an application for finding of reasonable diligence with this Court. Applicant shall notify this Court of any change in mailing address. Upon the sale or other transfer of this conditional right, the transferee shall file with this Court a notice of transfer which shall state:

- (1) The title and case number of this case;
- (2) The description of the water right transferred;
- (3) The name of the transferor;
- (4) The name and mailing address of the transferee.

Applicant shall notify any transferee of the requirements of this paragraph.

Dated this 24th day of January, 1991.

No protest was filed in this matter. The foregoing ruling is confirmed and approved, and is made the judgment and Decree of this court.

Aaron R. Clay  
Aaron R. Clay  
Water Referee  
Division 4

Noted: 2-27-91  
Robert A. Brown  
Water Judge

Mailed-A Copy of this Document to all parties in this case.

Dated Feb 28, 1991  
Kay Phillips  
Kay Phillips, Water Clerk  
Deputy



State of Colorado }  
Mesa County } 55

In the District Court of  
the 7<sup>th</sup> Judicial District of the  
State of Colorado, sitting in and for  
the County of Mesa.

In the matter of the adju-  
dication of Priorities of water } Decretal Order  
rights in Water District No. 42 }

Now on this 7<sup>th</sup> day of February  
A. D. 1890, this matter coming on to be  
heard and adjudicated upon the report  
of A. P. Cook <sup>Esq.</sup> herein heretofore appointed  
referee by order of Court duly made  
and entered of record July 25<sup>th</sup> A. D. 1888,  
and to whom this matter was referred by  
said order for the purpose of making find-  
ings of facts and a decretal order upon  
the evidence taken before A. P. Cook <sup>Esq.</sup>  
herein heretofore appointed referee in  
this matter, as well upon the several  
findings, under the instructions of said  
Court, as upon the evidence taken by  
and before said referee in said cause,  
and the several depositions in said cause  
filed, and the Court being satisfied from  
the several returns of notices, certificates  
publication, affidavits and certificates  
said referee A. P. Cook <sup>Esq.</sup> that the said test-  
imony is true and up and above the



findings herein returned have been  
severally made was taken upon due  
and lawful notice in all respects accor-  
ding to the provisions of the statute in  
such case made and provided, and the  
rules and several orders of this Court in that  
behalf, in this cause made and entered;  
and further that the notice of the time set for  
filing exceptions to said report and findings,  
and for the final hearing thereof and of this  
cause, have been duly served on all the  
parties entitled to notice under the order of  
this Court in that behalf entered, in manner  
and form as required, and further that all  
interested in this matter and entitled to notice  
in any stage of the proceedings herein, have  
at all times been notified according to law  
and the order of this Court; and the reports  
of the said referee H. P. Cook together with  
the returns of notices, affidavits, lists and  
findings, being found in due form,  
and the Court having now herein in open  
court heard all parties, and their attor-  
neys so far as they desired to be heard  
touching all and singular the several  
matters herein; and the Court being  
fully advised in the premises, it is hereby  
ordered and adjudged by the Court that  
the several findings of the said referee  
H. P. Cook in respect to each ditch in said  
findings mentioned, as found in the return  
thereof in the certain books and marked  
Book No. DUBO be and they



are hereby approved and confirmed and that they be and they are hereby, deemed and held in all respects as the findings of the court in this matter. And it is further ordered and adjudged and decreed by the court in respect to all and singular the said findings of said referee last aforesaid and to each and every Ditch in said report mentioned, as in the several paragraphs herein after set forth, subject however, to the following next mentioned provisions, to wit:—

1<sup>st</sup> No part of this decree shall in any case be taken, deemed, or held to, in any manner affect or impair the right of any person to the use of the waters of the public streams of the state of Colorado, situated within the limits of said Water District No. 42 for domestic purposes, but the right to the use of such waters by the person lawfully entitled thereto, for the purposes aforesaid shall be and remain inviolate.

2<sup>nd</sup> No part of this decree shall in any case be taken, deemed or held to confirm impair or in any manner affect any claim of right or property held or claimed by any person, association or corporation in or to any ditch, or any part thereof or the land or any part thereof on which any such ditch may be situated, or the land held or claimed as the right of way for any of the same, or any interest, right or claim of property whatever in or



relating to any of them

3<sup>rd</sup> No part of this decree shall in any case be taken, deemed or held as affecting in any manner any question or claim of right between the owners or claimants of any such ditch as between each other, whether as part owners, or shareholders therein, or as stockholders in any corporation or joint stock company, claiming or to claim the same or any part thereof. Nor shall it affect the rights interests or claims of any consumers of water for irrigation, whether as part owner, lessee, shareholder or stockholder in any corporation, owning or controlling the same, or as purchaser therefrom; as against the rights, interests or claims of any other person or persons interested or claiming interest or right in or to such ditch, as owner, lessee or part owner thereof, or as shareholder or stockholder, in any corporation claiming the same, or as purchaser of water therefrom - neither shall it affect any claim of priority made or resisted as between part users of water for irrigation, from the same ditch as to such water.

4<sup>th</sup> This decree shall not affect any claim interest or right of any person or corporation as to the right of property in any ditch on the ground on which the same may be situated, or any question which may



the stockholders of any such corporation, or between them and the state, people or any party upon the dissolution of such corporation by expiration of its charter or otherwise, as to any appropriation of water or rights secured by condemnation proceeding or otherwise during its legal existence.

5<sup>th</sup> - No part of this decree shall affect in any way any right claim or interest now or hereafter held or claimed to any appropriation of water made after the closing of testimony touching the construction or enlargements of the ditch by means of which such appropriation may have been made.

6<sup>th</sup> - That throughout Water District No. 42,  $2^{88}$  Cubic feet per second of time is hereby adjudged and decreed to be sufficient in amount to properly and practically irrigate one hundred and sixty acres of land, and nothing in this decree shall be taken or held to grant to any tract or parcel of land water to any greater amount than in said ratio and proportion.

7<sup>th</sup> - That the priority is hereby established and granted, and the uses of the respective amounts of water hereby adjudged and decreed are restricted, and said water is only allowed to flow into said ditches in said ratio and proportion as the



Lands under said ditches respectively shall be brought under practical cultivation and irrigation, i. e. tilled, meadow or good pasture land. And provided that the said lands under said ditches respectively shall be so brought under such cultivation, and the said proportionate amount of water used thereon, by the parties lawfully entitled thereto with due diligence. And provided further, that no water diverted by any of said ditches shall be used for any but a beneficial use upon the lands, and none of it shall be permitted in any manner to run to waste, and any and all excessive use of water is hereby prohibited.

8<sup>th</sup> — Nothing in this decree shall be taken, held or deemed to grant or permit the diversion at any time of any of the waters of any stream in said Water District through any ditch, pipe and except such as shall be at the time of diversion, actually applied to some beneficial use upon the lands of the persons lawfully entitled to the use of water therefrom.

Subject to these several last mentioned eight provisions, it is further, as to the said several ditches and the several appropriations of water by means of them respectively, or decreed, adjudged and decreed as follows, to wit:

# Whitewater Creek

## The Ewers Ditch.

That the said Ditch is entitled to Priority No. 1 and is claimed by Robert D. Dail. It takes its water from Whitewater Creek and its headgate is situated on North side Whitewater Creek 5 rods SE corner of NW 1 Sec 11 T28 R2E Ute P.M.

and it is adjudged and decreed that there be permitted to flow into the said Ditch from the stream aforesaid for the use of the party lawfully entitled thereto under and by virtue of the appropriation and Priority No. 1, 53 cubic feet of water per second of time.

## The Brandon Ditch.

That the said Ditch is entitled to Priority No. 2 and is claimed by George A. Birt and Edward Fleak. It is supplied from Whitewater and its headgate is located at a point on the North side of Whitewater Creek 10 or 12 miles from the mouth opposite a large sand stone bluff.

And it is adjudged and decreed that there be allowed to flow into the said Ditch from the stream aforesaid for the use and benefit of the parties lawfully entitled thereto under and by virtue of the appropriation and Priority No. 2, 1.65 cubic feet of water per second of time.



Provided that there shall not be permitted to flow into said Ditch from the stream aforesaid, to exceed 36 cubic feet of water per second of time until such time as said party shall increase his cultivated meadow and pasture lands thereunder to more than 20 acres and then the increase in the amount so permitted to flow into said Ditch shall only be in the ratio and proportion of 72 cu. ft. of water per second of time for each 40 acres of such additional lands.

And Provided further that said increase of such additional lands and the use thereon of the said proportionate additional amounts of water therefor, be made by said parties within a reasonable time.

No 4

The Cochran Mesa Ditch

That the said Ditch is entitled to Priority No 4. That it is claimed by Cora Caswell & B. Day and Mary C. Cuscutt, It is supplied from White water Creek and the headgate is situated 1.1 miles from the mouth of White water Creek at the headgate of the Brandon Ditch whence a cedar tree 17 ft in diameter bears N 32° 30' East 52 ft.

And it is hereby adjudged and decreed that there be permitted to flow into the said Ditch from the stream aforesaid for the use and benefit of the parties legally entitled thereto under and by

virtue of the appropriation and Priority.  
To 4. 7.81 cubic feet of water per second  
of time.

Provided that there shall not be  
permitted to flow into said Ditch from  
said Stream to exceed 34 cubic feet of water  
per second of time until such time as said  
party shall have increased their cul-  
tivated meadow and pasture lands  
thereunder to more than 20 acres  
and then the increase in the amount so  
permitted to flow into said Ditch shall  
only be in the ratio and proportion of  
.72 cubic feet of water per second of time for  
each 40 acres of such additional lands.

And provided further that said  
increase of such additional lands and  
the use thereon of the said proportionate  
additional amounts of water appropri-  
ated therefor is made by said parties  
within a reasonable time.

To 5  
The River View ditch  
that said ditch is entitled to Priority  
it is claimed by J.R. Snyder and  
Oscar G. Gentry and the break gate is lo-  
cated at a point on the north bank of White-  
water Creek, whence the NW corner of the SW 1/4  
of the SW 1/4 of sec 5 T 2 S R 2 E bears S 71° W 573 ft  
Var. 15° E.

And it is adjudged and decreed that  
there is permitted to flow into the  
said ditch from the stream aforesaid.



for the use and benefit of the parties lawfully entitled thereto under and by virtue of the appropriation and Priority No. 5, 4.62 cubic feet of water per second of time.

Provided that there shall not be permitted to flow into said ditch from said creek to exceed 72 cubic feet of water per second of time until such time as said parties shall increase their cultivated meadow and pasture lands thereunder to more than 40 acres and then the increase in the amount so permitted to flow into said ditch shall only be in the ratio and proportion of 72 cubic feet of water per second of time for each 40 acres of such additional lands.

And provided further that said increase of such additional lands and the use thereon of the said proportionate additional amount of water appropriated therefor is made by said parties with reasonable diligence.

No. 6

The Gulch Ditch

Said ditch is entitled to Priority No. 6 is claimed by Mass. Baster. It is supplied from White Water Creek and the head gate is located 1 mile East of the east line Sec. 24 S R 22 E T11 N.

It is adjudged and decreed that there be allowed to flow into



White water falls near N. 67° E

And it is adjudged and decreed that there be permitted to flow into said ~~stream~~ Ditch from the stream above said former use and benefit of the parties now full entitled thereto under and by virtue of the appropriation and Priority No 3 3.50 cubic feet of water per second of time.

Provided that there shall not be permitted to flow into said Ditch from said stream to exceed .45 cubic feet of water per second of time until such time as such parties shall increase their cultivated, meadow and pasture land thereunder more than 25 acres, and then the increase in the amount so permitted to flow into said Ditch shall only be in the ratio and proportion of .72 cubic ft. of water per second of time for each 40 acres of such additional lands.

And provided further that such increase of such additional lands and the use thereon of the said proportionate additional amount of water appropriated thereto be made by said parties with reasonable diligence.



JOHN MOFFETT  
RECORDS  
1917

said Ditch from said Stream, for the use and benefit of the parties lawfully entitled thereto under and by virtue of the appropriation and Priorities No 6, of 3 cubic feet of water per acre.

Provided that there shall not be less than 3 cubic feet of water per acre per second time until such time as said party shall increase his cultivated, meadow and pasture land hereunder to more than 20 acres and then the increase in the amount so permitted to flow into said Ditch shall only be in the ratio and proportion of 1 cubic foot of water per second time to each 40 acres of such additional lands.

~~success~~ and provided further that said increase of such additional lands and the use thereof to the said appropriation shall not be subject to water appropriation hereunder made by said parties with reasonable diligence.

No. 5

The Pioneer 7 1/2 mile water Ditch from said Ditch is entitled to priority No 3 is claimed by Wm R. Pickett and T. J. P. Pickett. It is supplied from White water creek and the headgate is located at a point on the right or north bank of Whitewater, whence

Priority No 2. 0.2 cubic feet of water  
per second of time

No 3.

The Glen Ditch.

Said ditch is entitled to priority  
No 3. and is claimed by John W. No. 1.  
John W. No. 1. and Samuel Higgins.  
It is supplied from Plateau Creek and  
its head gate is located near the NW corner  
of NE of Sec 35 T<sup>9</sup>S R<sup>9</sup>W 6 P.M.

And it is hereby adjudged and  
decreed that there be permitted to flow into  
said ditch from the creek aforesaid for the  
use and benefit of the parties law-  
fully entitled thereto under and  
by virtue of the appropriation and  
Priority No 3. 0.53 cubic feet of water  
per second of time.

No 4.

The Atkinson Ditch

Said ditch is entitled to Priority  
No 4. and is claimed by Samuel Higgins  
John W. No. 1. and John F. Williams.  
It is supplied from Plateau Creek and  
the head gate is situated about 80 rods  
NE of the NE. corner of section 34 T<sup>9</sup>S R<sup>9</sup>W  
6 P.M.

And it is hereby adjudged and  
decreed that there be permitted to flow  
into said ditch from the stream aforesaid  
for the use and benefit of the parties



## Plateau Creek

That the several ditches drawing their supply of water from Plateau Creek be and the same are hereby numbered according to the dates of their respective construction and said dates are hereby determined and decreed to be as follows:

- |       |   |                  |
|-------|---|------------------|
| No. 1 | The Dunlap No. 1 Ditch                          | March 1883       |
| " 2   | The Enlargement & Extension Dunlap No. 1 Ditch  | May 1885         |
| " 3   | The Glen Ditch                                  | April 1887       |
| " 4   | The Atkinson Ditch                              | May 1888         |
| " 5   | The Parkison Ditch                              | September 1 1888 |
| " 6   | The Blackman, Dunlap & Clark Ditch              | September 6 1888 |
| " 7   | The Atkinson Enlargement Ditch                  | September 1888   |
| " 8   | The Enlargement of the Blackman, Dunlap & Clark | October 15 1889  |

## Whitewater Creek

That the several ditches drawing their supply of water from Whitewater Creek be and the same are hereby numbered according to the dates of their respective construction and said dates are hereby determined and decreed to be as follows:

- |       |                                 |                |
|-------|---------------------------------|----------------|
| No. 1 | The Pioneer of Whitewater Ditch | August 1882    |
| " 2   | The Owens Ditch                 | June 1883      |
| " 3   | The Brandon Ditch               | July 1883      |
| " 4   | The Orchard Mesa Ditch          | October 9 1886 |
| " 5   | The River View Ditch            | October 1886   |
| " 6   | The Tule Ditch                  | October 1887   |

That the several ditches drawing their supply of water from the various streams herein after set forth be and the same are hereby numbered according to the dates of their respective construction

and said dates are hereby determined  
and decreed to be as follows:

Beaver Creek

No. 1 The Kanaga & Roberts Ditch August 22, 1880

Buzzard Creek, North Fork

No. 1 The Hawxhurst Ditch January 2, 1883

" 2 The Dunlap Ditch April 1884

No. 1 The Cym Creek Ditch May 15 1886

No. 2 The Atwill Ditch September 19, 1888

Chiquita Dolores

No. 1 The Chiquita Ditch December 1885

East Creek

No. 1 The East Creek Ditch April 1882

" 2 The Anderson Ditch May 15, 1883

" 3 The Unawcep Ditch April 1, 1884

Loba Creek, East Fork

No. 1 The Loba No. 1, No. 2, No. 3 Ditch 1884

Loba Creek

No. 1 The Loba No. 4 Ditch 1884

Lemmer Creek

No. 1 The Oakland Ditch June 10 - 1888

Rapid Creek

No. 1 The Grapevine Ditch December 8, 1884

" 2 The Rapid Creek Ditch January 20, 1887

" 3 The Crawford Ditch November 29, 1888

" 4 The Arnoldson Ditch December 5 - 1888

Tenderfoot Creek

No. 1 The Tenderfoot Ditch April 1882

Willow Creek

No. 1 The Willow Creek Ditch May 1884

And the several appropriations  
of water for said ditches, drawing there

42E

W H I T E W A T E R   C R E E K

DITCH NO. 3

143  
PRIORITY No. 2/3

THE BRANDON DITCH

THE RIGHT OF JAMES NELSON, AS OWNER OF PRIORITIES ONE AND THREE, OUT OF WHITEWATER CREEK, HERETOFORE DECREED TO THE EWERS DITCH AND THE PIONEER OF WHITEWATER DITCH RESPECTIVELY, TO HAVE THE WATER OF SAID PRIORITIES CONVEYED THRU THE BRANDON DITCH, BEING DITCH NO. THREE, CARRYING PRIORITY NO. TWO, OUT OF SAID STREAM.



WHEREAS, on the 7th day of February, 1890, this court decreed to the Ewers Ditch, (Being Ditch No. 2) .53 of a cubic foot of water per second, as Priority No. One, out of Whitewater Creek; and

WHEREAS, on said 7th day of February, 1890, this court also decreed to the Pioneer of Whitewater Ditch (being Ditch No. 1) 3.55 cubic feet of water per second, as Priority No. Three, out of Whitewater Creek -

CONDITIONAL HOWEVER; That no more than .45 of a cubic foot of water per second be allowed so to flow until the cultivated, meadow and pasture land under said ditch, had been increased to more than 25 acres; and

FURTHER CONDITIONAL: That such increase should not exceed the ~~ratio~~ or proportion of .72 of a cubic foot of water per second, for each forty acres of such additional land; and

STILL FURTHER CONDITIONAL: That such increase of land and the use thereon of such proportional increase of water, should be made with reasonable diligence; and

WHEREAS: On the 14th day of March, 1913, this Court, on the application of James Nelson, as owner of said decreed Priority rights, made an order changing the point of diversion of the water of said Priorities One and Three, respectively, from said Ewers Ditch and said Pioneer of Whitewater Ditch, to The Brandon Ditch, the headgate of which was, at the time of the making of said order, and still is, located at a point on the right bank of Whitewater Creek, whence the East one-quarter corner of Section Fourteen, in Township Twelve South, Range Ninety-Eight West of the Sixth Principal Meridian, bears South sixty-one degrees two minutes west, 15,220 feet.

NOW THEREFORE: It appearing to the court that said James Nelson is still the sole and absolute owner of said Priorities One and Three, and that, with reasonable diligence, since the rendition of said decree, on the 7th day of February, 1890, conditionally decreeing to the Pioneer of Whitewater Ditch, 3.55 cubic feet of water per second, as aforesaid, the cultivated and irrigated land under said ditch, has been increased to two hundred and fifty acres, all of which, ever since the making of said order, has been irrigated with the waters of said Priorities One and Three, conveyed thru said Brandon Ditch, the capacity of which is sufficient to carry both said priorities in addition to its own decreed Priority No. Two:

WHEREFORE, IT IS ORDERED AND DECREED that the conditional part of said decree of the 7th day of February, 1890, to said Pioneer of Whitewater Ditch, be, and it hereby is made absolute; and that there be allowed to flow into said Brandon Ditch, as FIRST PRIORITY out of Whitewater Creek, .53 of a cubic foot of water per second; and that there be allowed to flow into said Brandon Ditch, as THIRD PRIORITY out of Whitewater Creek, 3.55 cubic feet of water per second.

3/13

for the use of the parties entitled thereto,

PROVIDED HOWEVER, that the water so allowed to flow into said ditch shall not exceed the ratio or proportion of .72 of a cubic foot of water per second, per forty acres, for the land irrigated therewith.

6-10



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Handwritten text, possibly a list or notes, mostly illegible due to fading.

44

*Civil Action*  
13368

BRANDON DITCH ENLARGED

Ditch No. \_\_\_\_\_

Priority No. 955 RECEIVED

FEB 25 1991

THE COURT FINDS:

That the claimants are Richard D. Somerville, William S. Somerville, Whitewater, Colorado, represented by Anthony W. Williams, Esquire.

The original appropriation for said ditch was by construction and use on January 1, 1900, and is an enlargement of an existing ditch known as the Brandon Ditch also sometimes referred to as the Brandoan Ditch.

That the source of supply for said ditch is Whitewater Creek, tributary to the Gunnison River.

That the headgate and point of diversion for said water is on the right bank of Whitewater Creek at a point whence the North Quarter corner of Section 8, Township 12 South, Range 97 West, bears North 62°30' West 500 feet.

That the carrying capacity of said ditch before enlargement was 5.8 c.f.s. and with this enlargement the carrying capacity is now 13.4 c.f.s.

That said ditch is used for irrigation purposes only in the amount of 3.8 c.f.s. This amount of 3.8 c.f.s. is in addition to any amounts previously adjudicated to said ditch.

That the Priority date for this 3.8 c.f.s. is July 21, 1959.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That subject to the limitations in the preamble to this decree, that there be allowed to flow in the Brandon Ditch Enlarged also known as the Brandoan Ditch Enlarged, Priority No. 955, from Whitewater Creek, 3.8 c.f.s of water for irrigation purposes, appropriation date January 1, 1900 and decreed dated, July 21, 1959; in addition to the appropriations for the Brandon Ditch prior to enlargement thereof.

#44



BRANDON DITCH SECOND ENLARGEMENT

Ditch No. \_\_\_\_\_

Priority No. 991

THE COURT FINDS:

That the claimants are Richard D. Somerville and William K. Somerville of Whitewater, Colorado, represented by Anthony W. Williams, Esquire.

That the original appropriation for said ditch is by construction and use under date of April 15, 1940.

That the source of supply for said ditch is Whitewater Creek, tributary to the Gunnison River.

That the headgate for said ditch is located at a point on the right bank of Whitewater Creek whence the North 1/4 corner of Section 8, Township 12 South, Range 97 West, 6th P.M., Mesa County, Colorado, bears North 62°30' West 500 feet.

That the carrying capacity for said ditch represents an enlargement from 13.4 c.f.s. to 50 c.f.s.

That said ditch is used for irrigation purposes only in the amount of 24.8 c.f.s. This amount in addition to the appropriation for Brandon Ditch Enlarged, Priority No. 955 of this decree.

That the Priority date for said ditch is July 21, 1959.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That subject to the limitations in the preamble to this decree that there be allowed to flow in Brandon Ditch Second Enlargement, Priority No. 991, from Whitewater Creek, 24.8 c.f.s of water for irrigation purposes; appropriation date, April 15, 1940 and decreed date, July 21, 1959, in addition to the other waters decreed to said ditch.



42

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4

STATE OF COLORADO

Case No. W-177

IN THE MATTER OF THE APPLICATION FOR WATER	)	
RIGHTS OF RICHARD D. SOMERVILLE, IN THE	)	
GUNNISON RIVER: TRIBUTARY INVOLVED: WHITEWATER	)	RULING OF WATER REFEREE
CREEK, IN MESA COUNTY.	)	

The applicant, Richard D. Somerville, Whitewater, Colorado, requests an underground water right on two wells.

FINDING OF FACT

The two wells described below are in the Whitewater Creek drainage, a tributary to the Gunnison River in Mesa County, Water District # 42.

Somerville Well # 1 is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, Township 2 South Range 2 East of the Ute Prime Meridian. State Permit # 22584 is 80 feet deep with a discharge of 100 g.p.m., which is hereby claimed with appropriation date of December 1, 1964.

Somerville Well # 2 is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, Township 2 South, Range 2 East Ute Prime Meridian. State Permit # 22164 is 60 feet deep with a discharge of 200 g.p.m. which is hereby claimed with an appropriation date of November 1, 1964.

The water from the above wells is used for domestic and stock watering purposes on the "Somerville Home Ranch".

R U L I N G

IT IS THE RULING OF THE REFEREE that the statements made in the application are true, that the water above described has been applied to beneficial use and that Somerville Well # 1 is APPROVED AND GRANTED an ABSOLUTE DECREE for 100 g.p.m. dated June 3, 1970, and historic date of December 1, 1964,

AND Somerville Well # 2 is APPROVED AND GRANTED an ABSOLUTE DECREE to 200 g.p.m., dated June 3, 1970, and historic date of November 1, 1964.

DATED 11-5-70

ELRA L. WILSON

*Elra L. Wilson*  
Water Referee - Division No. 4

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: March 23, 1971  
Paul Galbraith  
Water Judge



47-A

MAY 12 1986

Kay Phillips, Clerk \_\_\_\_\_

DATE OF MAILING

5-12-86

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

CASE NO. 85CW-199

FINDINGS AND RULING OF THE REFEREE AND DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

City of Grand Junction, Mesa County, Gunnison River Drainage.

Applicant City of Grand Junction, by and through its attorney, D.J. Dufford, P. O. Box 2188, Grand Junction, CO 81502, by Application filed August 9, 1985, request conditional water rights.

FINDINGS OF FACT

1. All notices required by law of the filing of this application have been given.

2. The Referee has jurisdiction of this case.

3. The time for filing of statements of opposition has expired and opposition has been filed by Midwest Resources, Inc., c/o: Imark Industries, Inc., P. O. Box 245, Geneseo, Illinois 61254.

4. Applicant requests a Conditional Decree for 15 cfs of water from the Brandoan Ditch (sometimes known as the Brandon Ditch) whose source is Brandoan Ditch, tributary to Whitewater Creek, tributary to the Gunnison River, with a point of diversion located at a point from which the quarter corner brass cap marker between Sections 8 and 5 in Township 12 South, Range 97 West of the 6th P.M. bears North 62°30' West a distance of 500 feet. The Ditch runs in a Southwest direction.

5. Applicant has begun an appropriation of 15 cfs of water at the point of diversion referenced above and has shown intent to apply the water to the beneficial use of reservoir storage, for filling and refilling storage facilities controlled by the City of Grand Junction, and for

47-A

municipal, industrial, irrigation, power generation, augmentation purposes, and all other beneficial uses.

RULING

The Applicant is GRANTED CONDITIONAL water rights for 15 cfs of water for reservoir storage, for filling and refilling storage facilities controlled by the City of Grand Junction, and for municipal, industrial, irrigation, power generation, augmentation purposes, and all other beneficial uses to the BRANDOAN DITCH.

The water right granted shall be junior to all valid existing rights of Objector Midwest Resources, Inc., including without limitation:

1. 3.8 cfs from the Brandon (or Brandoan) Ditch Enlarged with an appropriation date of June 1, 1900 and a decree date of July 21, 1959;

b. 24.8 cfs from the Brandon (or Brandoan) Ditch Second Enlargement with an appropriation date of April 15, 1940, and a decree date of July 21, 1959.

with an appropriation date of June 6, 1985, adjudication date of December 31, 1985.

2. Applicant obtains through this decree no rights in the Brandon Ditch, Brandon Ditch Enlarged or Brandon Ditch Second Enlargement structures themselves nor any access rights thereto. Any such rights must be acquired by purchase or condemnation through a separate proceeding.

Prior to or during the month of May, 1990 and every four years thereafter until the conditional decree is absolute, the owner or user thereof, if it is desired to maintain the same, shall file with this Court an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court. Upon the sale or other transfer of this conditional water right, the transferee shall file with this Court a notice of transfer which shall state:

(1) The title and case number of this case;

(2) The description of the conditional water right transferred;

(3) The name of the transferor;

(4) The name and mailing address of the transferee.

Applicant shall notify any transferee of the requirements of this paragraph.

The owner of this conditional water right shall notify the Clerk of this Court of any change in mailing address.

Dated this 12<sup>th</sup> day of May, 1986.

Aaron R. Clay

Aaron R. Clay  
Water Referee  
Division No. 4

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: 6-4-86  
Robert A. Brown  
Water Judge

Mailed-A Copy of this Document to  
all parties in this case.

Dated 6-4-86

SW  
Kay Phillips, Water Clerk

47-B



DATE OF MAILING

Jan 24, 1991

FILED IN THE DISTRICT COURT  
WATER DIVISION NO. 4

JAN 24 1991

Key: [unclear]

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

CASE NO. 90CW50 (Ref. 85CW199)

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FINDINGS AND RULING OF REFEREE AND DECREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

CITY OF GRAND JUNCTION, COLORADO

In the GUNNISON River, MESA County, Colorado.

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Applicant, CITY OF GRAND JUNCTION, COLORADO, 250 North 5th Street, Grand Junction, Colorado 81501, by their attorney D.J. DUFFORD, of DUFFORD, WALDECK, MILBURN and KROHN, requests a Quadrennial Finding of Reasonable Diligence by Application filed May 24, 1990.

FINDINGS OF FACT

1. All notices required by law of the filing of this Application have been given. The Referee has jurisdiction of this case. The time for filing of statements of opposition has expired and no such statements have been filed.

2. Applicant requests a finding of reasonable diligence in the completion of the conditional water right for the SECOND ENLARGEMENT OF THE BRANDON DITCH, located as follows: Headgate is located at a point from which the quarter corner brass cap marker between Sections 8 and 5 in Township 12 South, Range 97 West, 6th P.M. bears North 62°30' West a distance of 500 Feet, which is tributary to Whitewater Creek and the Gunnison River, as decreed in case 85CW199 on May 12, 1986. In support of this request, Applicant states that diligence consists of survey of a pipeline route for the Reservoir. The Court finds that the statements are true, and that this activity constitutes reasonable diligence in the completion of the diversion.

RULING

The conditional water rights decreed for 15 c.f.s. to the SECOND ENLARGEMENT OF THE BRANDON DITCH, identified above, for filling and refilling storage facilities controlled by applicant and for municipal, industrial, irrigation power generation, augmentation purposes and all other beneficial uses, are HEREBY CONTINUED, in full force and effect.

Prior to or during the month of February and every six years thereafter until the conditional right is decreed absolutely, the owner or user thereof, if it is desired to maintain the same, shall file an application for finding of reasonable diligence with this Court. Applicant shall notify this Court of any change in mailing address. Upon the sale or other transfer of this conditional right, the transferee shall file with this Court a notice of transfer which shall state:

- (1) The title and case number of this case;
- (2) The description of the water right transferred;
- (3) The name of the transferor;
- (4) The name and mailing address of the transferee.

Applicant shall notify any transferee of the requirements of this paragraph.

Dated this 24th day of January, 1991.

No protest was filed in this matter. The foregoing ruling is confirmed and approved, and is made the judgment and Decree of this court.

Aaron R. Clay  
Aaron R. Clay  
Water Referee  
Division 4

Attest: 2-27-91  
Robert A. Brown  
Water Judge

Mailed-A Copy of this Document to all parties in this case.

Dated Feb 28, 1991  
Dale Campbell  
Kay Phillips, Water Clerk  
Dap 04



SOMERVILLE RESERVOIR NO. 1

Reservoir No. \_\_\_\_\_

Priority No. 998

THE COURT FINDS:

That the claimants are Richard D. Somerville, and William K. Somerville of Whitewater, Colorado, represented by Anthony W. Williams, Esquire.

That the original appropriation was commenced by survey July 19, 1945.

That the source of supply for said reservoir is Whitewater Creek, a tributary to the Gunnison River.

That the initial point of survey for said reservoir is at a point whence the Southwest corner of Section 35, Township 11 South, Range 97 West, 6th P.M., Mesa County, Colorado, bears North  $87^{\circ}2'$  West 949.8 feet.

That the storage capacity of said reservoir shall be 837 a.f.

That the said reservoir when constructed will be used for supplemental irrigation water and since not yet constructed has not been put to a beneficial use.

That said reservoir is entitled to a conditional decree Priority date of July 21, 1959.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That subject to the limitations in the preamble to this decree, that as a conditional decree, there be allowed to be stored in Somerville Reservoir No. 1, from Whitewater Creek for supplemental irrigation purposes, Priority No. 998; appropriation date, July 19, 1945 and decreed date, July 21, 1959, 837 a.f. of water.





W H I T E W A T E R   C R E E K

DITCH NO. 7

PRIORITY NO. 7

A. D. A. RESERVOIR & SUPPLY DITCH

Claimed by H. B. Ennor, Sara P. Ennor,  
James H. Cosgrove, Annie C'Boyle and  
Lula Margaret C'Boyle.



The A. D. A. Reservoir and its Supply and Outlet Ditches comprise one entire system for the irrigation of some 600 acres of land, 200 acres of which have been by it irrigated.

The source of supply is Whitewater Creek, thru the Supply Ditch, the headgate of which is located at a point on the left bank of Whitewater Creek, whence the Northwest corner of Section Twelve, in Township two south, range two east, Ute Meridian, bears North five degrees nine minutes east, 4154 feet.

Said reservoir is located in the corner of Sections Eleven, Twelve, Thirteen and Fourteen, township two south, range two east, Ute Meridian, and is planned, with its dam at a height of forty feet above the bottom of the outlet tube, to have an area of 2,678,290 square feet, and a capacity of 47,669,460 cubic feet. As at present constructed the dam is twenty feet above the bottom of the Outlet Tube, the area is 1,058,000 square feet and the capacity 16,046,000 cubic feet.

From its headgate, the Supply Ditch runs southwesterly 2000 feet, and empties into the reservoir, and has a capacity of 112 cubic feet per second.

From the reservoir the Outlet Ditch runs northwesterly 2730 feet to the lands of claimants, and its capacity is 80 cubic feet per second.

Decree Date: 3/21/16-1-1916 #49

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Said reservoir is filled at times when the water of said stream is not needed for direct irrigation. When the natural flow of said stream is sufficient the water thereof is used for direct irrigation, using the reservoir as the intermediate carrier between the supply and the outlet ditches, and when the natural flow of the stream fails, the reservoir water is released.

Work was commenced on said system October 17, 1907, and prosecuted with reasonable diligence, to completion.

The water diverted from said ~~reservoir~~<sup>stream</sup> and conveyed through said ditches is applied to the irrigation of land, and its duty is in the ratio or proportion of .018 cubic feet per acre/

There is so situated as to be susceptible of profitable irrigation, with water so diverted and conveyed, 600 acres, two hundred acres of which have been, with reasonable diligence, with water so directly diverted and applied, as well as with the water so stored, actually irrigated.

WHEREFORE: IT IS ORDERED AND DECREED that said reservoir be allowed to be filled once each and every year, to its utmost capacity of 47,669,460 cubic feet, as the ~~SECOND~~<sup>FIRST</sup> RESERVOIR PRIORITY out of Whitewater Creek, and its watershed;

PROVIDED HOWEVER, that such filling shall be made ONLY when the water of said stream is not needed for the immediate or direct irrigation of land; and

PROVIDED FURTHER; that no more than 16,046,000 cubic feet of water be allowed to be so annually stored in said reservoir except upon condition that its capacity in excess of said 16,046,000 cubic feet be increased and such increase applied to the use aforesaid, with reasonable diligence; and

315

IT IS FURTHER ORDERED AND DECREED that there be allowed to flow into said Supply Ditch, as the SEVENTH <sup>Pitch</sup> PRIORITY out of said Whitewater Creek, 10.8 cubic feet of water per second, for direct or immediate irrigation;

PROVIDED HOWEVER, that the flow of said water shall not exceed 3.6 cubic feet per second till the land thereunder shall have, with reasonable diligence, been increased to more than two hundred acres; and

PROVIDED FURTHER: That the water so permitted to be stored for future use and to be so diverted for direct or immediate use, shall not, in the aggregate, exceed the ratio of .018 of a cubic foot of water per second, per one acre, for all of the land therewith irrigated.

57-6



WHITewater, SPRING & SINK CREEKS.

THE GUILD RESERVOIR AND DITCHES NOS.

1 and 2, and OUTLET DITCH and the GUILD DITCH.

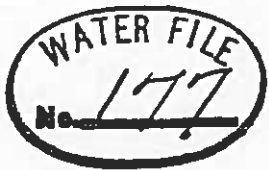
Ditch No. 2	Out of Whitewater Creek	Priority No. 2
" " 1	Out of Sink Creek	" " 1
" " 1	Out of Spring Creek	" " 1

RESERVOIR

Reservoir No. 2	In Whitewater Creek Watershed	Priority No. 2
Reservoir No. 1	In Sink Creek Watershed	" " 1

A. D. Guild, Claimant.

ABSTRACT AND DIGEST OF EVIDENCE.



These several ditches and reservoirs comprise one entire and complete system, for the irrigation of 440 acres of land, situated in Sections 22 and 27, Township 1, South, Range 2 East, of the Ute Meridian.

It appears that a filing was made May 21, 1892, on The Lake Park Reservoir and Ditches Nos. 1 and 2 and Outlet Ditch, the reservoir located in the Southwest Quarter of the Southwest Quarter of Section 36, in Township 1 South, and the Northwest Quarter of the Northwest Quarter of Section 1, in Township 2 South, all in Range 2 East, of the Ute Meridian; and that a dam was built four feet high and four hundred feet long, and that ditches Nos. 1 and 2 and the Outlet Ditch; and that the claimant is the present owner of whatever rights exist by virtue of such filing and work, who, accordingly, claims his right as of that date; but since there is no proof whatever as to when said work was done, nor that any beneficial use was ever made of any water by means thereof, a priority right as of that date cannot be allowed.

A 50

Decree Date: 6-1-1916



May 14, 1909, this claimant filed on an Enlargement of said reservoir, and since said date, has, with reasonable diligence, prosecuted the work to its present stage of completion; and, contemporaneous with his initiation of said reservoir's enlargement right, and as supplementary thereof and as a part of his entire system, said Guild conceived of appropriating the waters of what he calls Spring Creek.

The Court Therefore Finds that the Guild reservoir is located in the Southwest Quarter of the Southwest Quarter of Section 36, in Township 1 South, and the Northwest Quarter of the Northwest Quarter of Section 1, in Township 2 South, all in Range 2 East, of the Ute Meridian, and that said reservoir and ditches, together with the Guild Ditch, out of Spring Creek, comprise one entire system.

Said reservoir derives its supply of water from Sink and Whitewater Creeks, by means of inlet ditches Numbered respectively One and Two.

The Headgate of said Ditch No. 1 is located at a point on the left bank of Sink Creek, whence the South one-fourth corner of Section 36, in Township 1 South, Range 2 East, of the Ute Meridian, bears South 57° 2' West, 1646 feet.

The Headgate of Ditch No. 2 is located at a point on the right bank of Orchard Mesa Irrigating Ditch, through which it derives its supply of water from Whitewater Creek, whence said quarter corner bears North 64° 34' West, 1263 feet.

From their headgates said ditches extend, respectively, in a southwesterly and northwesterly direction to their point of juncture, in the bed of a dry wash, in the Southeast Quarter of the Northwest Quarter of said Section 36, from which point said wash conveys the water in a westerly direction, to said reservoir. Each of said Ditches and said Wash having ample capacity to carry all the water here claimed.

From said reservoir, an outlet ditch of ample capacity conveys the water in a northwesterly direction to the lands of claimant. Said system, as well as being used for the storage of water for future use, is used for the direct appropriation of water from either or both of said streams.

Said reservoir has a dam fifteen feet high and eight hundred feet long, an area of ten acres and a capacity of 3,600,000 cubic feet; and when completed the dam will be twenty-five feet high and twelve hundred feet long, and the area twenty acres, with a capacity of 5,799,263 cubic feet.

The headgate of said Guild Ditch is located at a point on the left bank of a small stream, fed by springs, which, for convenience, is called Spring Creek, whence the Southeast corner of Section 27, Township 1 South, Range 2 East, of the Ute Meridian, bears South, 36° East, 1710 feet; and from said headgate, said ditch takes a general westerly direction, to said lands of claimant, and throughout, said ditch has a capacity of 15.36 cubic feet of water per second.

Work was commenced on said system on May 14, 1909, and prosecuted to its present stage of completion, with reasonable diligence.

The water so appropriated is applied to the irrigation of land, in the ratio or proportion of .012 of a cubic foot per second, per one acre of land.

The land susceptible of being irrigated by means of said system is four hundred and forty acres, of which sixty acres have already been so irrigated, with reasonable diligence.

WHEREFORE; IT IS ORDERED AND DECREED that said reservoir is entitled to be filled to its said capacity of 5,799,263 cubic feet, once each and every year, with water diverted from either or both of said streams, in the manner aforesaid, as the SECOND RESERVOIR PRIORITY out of Whitewater Creek Watershed, and as the FIRST RESERVOIR PRIORITY out of Sink Creek Watershed.



PROVIDED HOWEVER, that no more than 3,800,000 cubic feet of water shall be annually impounded in said reservoir until its capacity shall have been, with reasonable diligence, increased to more than that quantity; and

IT IS FURTHER ORDERED AND DECREED that water be allowed to flow into each of said ditches, for direct or immediate irrigation, as follows: Into said Ditch No. 1, as the FIRST PRIORITY cut of Sink Creek, 7.92 cubic feet per second; and into said Ditch No. 2, as the EIGHTH DITCH PRIORITY out of Whitewater Creek, 7.92 cubic feet per second; and into said Guild Ditch, as the FIRST PRIORITY out of said Spring Creek, 7.92 cubic feet per second; for the use of the parties entitled thereto;

PROVIDED HOWEVER, That the water so allowed to flow for direct or immediate irrigation shall not exceed 1.08 cubic feet per second, from either or all of said sources, until the owners or beneficiaries of said system shall have, with reasonable diligence, increased their cultivated, meadow and pasture land thereunder to more than sixty acres; and

PROVIDED FURTHER, That the water so allowed to be impounded for future irrigation, and to flow for direct or immediate irrigation, shall not, in the aggregate, exceed the ratio of .018 of a cubic foot per second, per one acre of land.

51-A

CLIFF LAKE RESERVOIR

Reservoir No. \_\_\_\_\_

Priority No. 953

THE COURT FINDS:

That the name of the claimants, Richard D. Somerville and William K. Somerville, Whitewater, Colorado, represented by Anthony W. Williams, Esquire.

That said reservoir was used for storage commencing May 14, 1892 through actual construction.

That the source of supply for said reservoir is Reservoir Creek, which is tributary to Whitewater Creek, in turn tributary to the Gunnison River.

That the point of survey for said reservoir is a point whence the Southeast corner of Section 5, Township 12 South, Range 97 West, 6th P.M., Mesa County, Colorado, bears South 36°35' East 2468 feet, and the reservoir is located in the South Half of said Section 5, Mesa County, Colorado.

That the capacity of said reservoir is 95.57 acre feet.

That said reservoir is used for irrigation purposes only and is entitled to a Priority date of July 21, 1959.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That subject to the limitations in the preamble to this decree, there be allowed to be stored in Cliff Lake Reservoir, from Reservoir Creek, for irrigation purposes, Priority No. 953, with appropriation date May 14, 1892, 95.57 acre feet of water under decree date of July 21, 1959.

51-B



RECEIVED

AUG 18 1992



State of Colorado  
SEVENTH JUDICIAL DISTRICT

District Administrator  
Montrose County  
Courthouse  
Montrose, CO 81402  
Telephone 249-9676

Combined Courts:

Delta County  
Fifth & Palmer  
Delta, CO 81416  
Telephone 874-4416

Gunnison County  
Courthouse Bldg.  
Gunnison, CO 81230  
Telephone 641-3500

Hinsdale County  
P. O. Box 245  
Lake City, CO 81235  
Telephone 944-2227

Montrose County  
P. O. Box 368  
Montrose, CO 81402  
Telephone 249-9676

Montrose County  
Associate Court  
P. O. Box 76  
Nucla, CO 81424  
Telephone 864-7373

Ouray County  
P. O. Box 643  
Ouray, CO 81427  
Telephone 325-4405

San Miguel County  
P. O. Box 919  
Telluride, CO 81435  
Telephone 728-3891

Water Division Clerk  
P. O. Box 368  
Montrose, CO 81402  
Telephone 249-9676

Probation Department:

Montrose Office  
P. O. Box 1307  
Montrose, CO 81402  
Telephone 249-8622

Delta Office  
Courthouse, Room 305  
Fifth and Palmer  
Delta, CO 81416  
Telephone 874-3704

Gunnison Office  
Gunnison County  
Courthouse  
200 East Virginia Ave.  
Gunnison, CO 81230  
Telephone 641-0695

Dear Sir or Maam,

RE: Ruling of Water Referee

Enclosed herein please find a copy of Ruling of Water Referee, please check it carefully.

The law allows twenty days after the date of mailing, August 17, 1992, within which a party may file a protest.

In the absence of any protest, the Water Judge will enter a judgment and decree in approximately 20 days, or may reverse and remand any ruling which he deems contrary to law, or may modify same. As soon as this is entered, you will receive a copy of the Judgment and Decree also.

Thanking you,

Yours very truly,

Deputy Water Clerk  
Division No. 4

IF DECREE IS CONDITIONAL,  
PLEASE KEEP A TICKLER FILE  
AS TO WHEN IT IS DUE FOR A  
DILIGENCE FINDING.

Thank You -

CERTIFICATE OF MAILING:

I certify that I handed a true and correct copy of Ruling of Referee to the Division Engineer, Montrose County Courthouse, Montrose, Colorado.

I certify that I mailed by certified mail, postage prepaid, a true and correct copy of Ruling of Referee to the State Engineer, 1313 Sherman Street, Room 818, Denver, Colorado 80203, and also to all parties of the case.

Deputy Water Clerk

Dated: August 17, 1992

DATE OF MAILING

8-17-92

Filed in The District Court  
Water Division Four

DISTRICT COURT, WATER DIVISION NO. 4, STATE OF COLORADO

AUG 17 1992

Case No. 91CW10

Kay Phillips, Clerk

---

STIPULATED RULING

---

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

CITY OF GRAND JUNCTION  
IN THE GUNNISON RIVER, GUNNISON COUNTY, COLORADO

---

The Referee, having reviewed the files, and being fully advised rules as follows:

FINDINGS OF FACT

1. Applicant, the City of Grand Junction, Colorado, filed its Second Amended Application for Change of Water Right on November 19, 1991.
2. The decreed name of structure for which change is sought is Cliff Lake Reservoir.
3. By decree of the District Court of Mesa County, Colorado entered on June 1, 1916 in Civil Action No. 2635, the Cliff Lake Reservoir was awarded the right to store 70.8 acre feet of water with appropriation date of September 1, 1894. in addition, by decree of the District Court of Mesa County, Colorado dated July 21, 1959 in Civil Action No. 13368, the Cliff Lake Reservoir was awarded the right to store 95.57 acre feet of water with appropriation date of May 14, 1892 and a priority date of July 21, 1959.
4. The Cliff Lake Reservoir is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, Township 12 South, Range 97 West, 6th P.M.
5. The source of water for the Cliff Lake Reservoir is from drainage and flood waters emanating in the Whitewater Creek Drainage area.
6. The appropriation date, amount and other information relating to the decree, case number and court are stated in Paragraph 3 above.
7. Water impounded in the Cliff Lake Reservoir is used for irrigation of lands located within Sections 19, 20, and 25 through 35, inclusive, all in Township 11 South, Range 97 West, and in

Section 14, Township 12 South, Range 98 West, 6th P.M. Water impounded in the Cliff Lake Reservoir has been used by the Applicant and its predecessors in interest for irrigation of those lands since on or before May 14, 1892, and will continue to be used on the same lands as have been historically irrigated with this right.

8. Proposed change:

8.1 Applicant requests the right to change 70.8 acre feet of the water rights decreed to the Cliff Lake Reservoir in Civil Action No. 2635 on June 1, 1916 to the facility known as the Somerville Reservoir. Both of these reservoirs are located in the Whitewater Creek drainage area.

8.2 By decree of the District Court of Mesa County, Colorado dated July 21, 1955, the Somerville Reservoir was awarded the right to store 837 acre feet of water for irrigation, stock water and other beneficial purposes, with appropriation date of July 19, 1945.

8.3 The total capacity of the Somerville Reservoir at the spillway elevation is 973.8 acre feet. There is ample space for storage of water in the Somerville Reservoir to accommodate the water decreed to the Cliff Lake Reservoir, without increasing the elevation of the spillway, or making any other modifications to the Somerville Reservoir.

8.4 The Somerville Reservoir is located in the South half of Section 35, Township 11 South, Range 97 West, 6th P.M. and in the NW $\frac{1}{4}$  of Section 2, Township 12 South, Range 97 West, 6th P.M.

8.5 Applicant will abandon all amounts decreed to Cliff Lake Reservoir in excess of 70.8 acre feet of water.

9. Name and address of owner of land on which structures are located:

9.1 The Cliff Lake Reservoir is located on land owned by the United States within the boundaries of the Grand Mesa National Forest. Its address is: U.S. Forest Service, Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

9.2 The Somerville Reservoir is located on land owned by the City of Grand Junction. Its address is: Grand Junction City Hall, 250 North 5th Street, Grand Junction, Colorado 81501.

9.3 The water rights which are the subject matter of this Application are owned and claimed by the Applicant.

10. Statements of Opposition were timely filed by William D. Loring and Janet S. Loring (Objectors Loring), and Joseph A. Lumbardy and Mozelle Lumbardy (Objectors Lumbardy).

11. No injury will result to other water rights based on the following terms and conditions to which Applicant and Objectors have stipulated and agreed:

11.1 Objectors, on the signing of this Ruling are deemed to have withdrawn their Statements of Opposition to Applicant's Second Amended Application and consent to this Stipulated Ruling as set forth in the Stipulation annexed hereto as Exhibit A.

11.2 The 70.8 acre feet transferred will be stored in its original priority, with an appropriation date of September 1, 1894, and original adjudication date of July 22, 1912.

11.3 The City of Grand Junction (the City) will apply for a storage right of 66 acre feet (the New 66 Acre Foot Storage Right) in the Somerville Reservoir. The City agrees to store this water and deliver it as provided below.

11.4 The amount stored under the City's New 66 Acre Foot Storage Right is to be divided as follows: One-third to the City, one-third to Objectors Loring, and one-third to Objectors Lumbardy.

11.5 Objectors Loring and Lumbardy agree not to oppose the City's application for the New 66 Acre Foot Storage Right.

11.6 Should the New 66 Acre Foot Storage Right fail to fill completely, the shortage is to be shared pro-rata among the City, Objectors Loring and Objectors Lumbardy.

11.7 Releases as measured at the outlet of the Somerville Reservoir of the amounts stored for Objectors are to be made in amounts not less than 1.0 c.f.s. Under normal conditions the water stored for Objectors Lumbardy and Objectors Loring is to be used over a consecutive number of days until their respective portions of water stored pursuant to this Stipulated Ruling is exhausted. However, flexibility is contemplated for naturally occurring conditions such as wet weather where the continued flow of water would constitute waste. The parties agree to work cooperatively in this matter.

11.8 Annual fee for operation and maintenance of their portion of the New 66 Acre Foot Storage Right is \$1.00 per acre foot or \$22 for Objectors Lumbardy and \$22 for Objectors Loring.

11.9 Releases of the New 66 Acre Foot Storage Right may be taken at any time after June 15, and before October 1 in any year.

11.10 Accounting of the New 66 Acre Foot Storage Right will be on an annual basis. No claims for amounts in excess of each parties' pro-rata annual share can be made. That is, if a party should fail to use their share, the unused portion could not be added to the amount to be delivered the following year. Shortages also cannot be carried over and collected in a year when more water is available. If the City fails to deliver water as required herein because of administrative or accounting problems, the City agrees to make Objectors whole in the same year in which the shortages due to such problems occur.

11.11 Water stored for Objectors shall be used for agricultural purposes. Should Objectors wish to change the type or place of use of the water stored for them, they agree to file a change proceeding in water court.

11.12 Objectors' rights under this Stipulated Ruling may be transferred consistent with applicable laws.

11.13 The obligations and benefits of this Stipulated Ruling are binding on the successors and assigns of the parties in this case.

Dated this 17<sup>th</sup> day of August, 1992.

BY THE COURT:

Aaron R. Clay  
Aaron Clay, Water Referee

APPROVED AS TO FORM AND CONTENT:

Gregory O. Trainor  
Gregory O. Trainor  
Authorized Representative for  
The City of Grand Junction, CO

OBJECTORS:

William D. Loring  
William D. Loring

Janet S. Loring  
Janet S. Loring

Joseph A. Lumbardy  
Joseph A. Lumbardy

Mozelle Lumbardy  
Mozelle Lumbardy



AUG 13 1992,

DISTRICT COURT, WATER DIVISION NO. 4, STATE OF COLORADO  
Case No. 91CW10

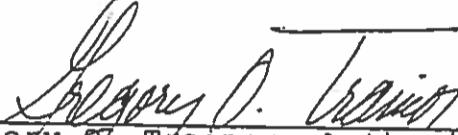
Kay Phillips, Clerk

STIPULATION

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

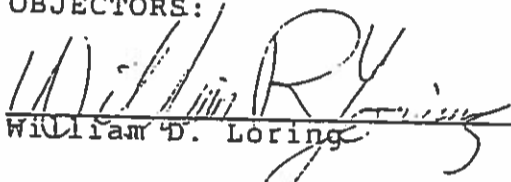
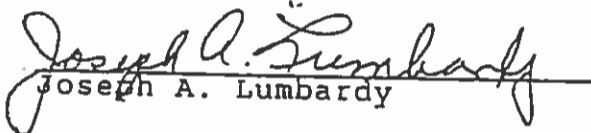
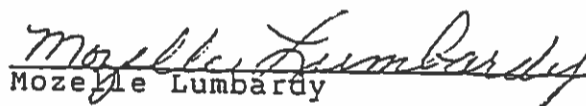
CITY OF GRAND JUNCTION  
IN THE GUNNISON RIVER, GUNNISON COUNTY, COLORADO

The undersigned hereby stipulate and agree to the proposed Stipulated Ruling annexed hereto as Exhibit A and all of the terms and conditions contained therein.



Gregory D. Trainor, Authorized  
Representative for Applicant, City  
of Grand Junction, Colorado

OBJECTORS:

  
William D. Loring  
Janet S. Loring  
Joseph A. Lumbardy  
Mozele Lumbardy

POWER OF ATTORNEY

(LIMITED)

KNOW ALL MEN BY THESE PRESENTS, that I, William D. Loring, of the                      County of Mesa, State of Colorado, reposing special trust and confidence in William R. Loring, of the                      County of Mesa, State of Colorado, have made, constituted and appointed, and by these presents do make, constitute and appoint the said William R. Loring my true and lawful attorney to act for me and in my name, place and stead, and for my sole use and benefit, with full power and authority to do and perform each and every act necessary, as fully as I might do if personally present, to accomplish and complete the

following act or transaction to wit:

Execute any and all documentation to effectuate a stipulated ruling and adjudication in Case No. 91 CW 10, District Court, Water Division No. 4, State of Colorado, concerning the Application for Water Rights of: City of Grand Junction, In the Gunnison River, Gunnison County, Colorado

\*This Power of Attorney shall not be affected by disability of the principal.

~~\*This Power of Attorney shall become ineffective upon the disability of the principal.~~

\*This Power of Attorney shall automatically expire by its own terms upon completion of the limited purpose set forth above.

EXECUTED this 7th day of July, 19 92.

William D. Loring  
Principal

STATE OF COLORADO  
County of MESA

ss.

The foregoing instrument was acknowledged before me this 7th day of July, 19 92, by William D. Loring, the Principal.

Witness my hand and official seal.

Ann L. Landis  
Notary

My Commission expires July 4, 1994

\*Strike according to fact.

William R. Loring  
Specimen Signature of Agent (Attorney)

POWER OF ATTORNEY

(LIMITED)

KNOW ALL MEN BY THESE PRESENTS, that I, Janet S. Loring, of the                      County of Mesa, State of Colorado, reposing special trust and confidence in Adele V. Loring, of the                      County of Mesa, State of Colorado, have made, constituted and appointed, and by these presents do make, constitute and appoint the said Adele V. Loring my true and lawful attorney to act for me and in my name, place and stead, and for my sole use and benefit, with full power and authority to do and perform each and every act necessary, as fully as I might do if personally present, to accomplish and complete the following act or transaction to wit:

Execute any and all documentation to effectuate a stipulated ruling and adjudication in Case No. 91 CW 10, District Court, Water Division No. 4, State of Colorado, concerning the Application for Water Rights of: City of Grand Junction, In the Gunnison River, Gunnison County, Colorado

\*This Power of Attorney shall not be affected by disability of the principal.

~~\*This Power of Attorney shall become effective upon the disability of the principal.~~

\*This Power of Attorney shall automatically expire by its own terms upon completion of the limited purpose set forth above.

EXECUTED this 7th day of July, 19 92.

Janet S. Loring  
Janet S. Loring <sup>Principal</sup>

STATE OF COLORADO  
County of MESA

ss.

The foregoing instrument was acknowledged before me this 7th day of July, 19 92, by Janet S. Loring, the Principal.

Witness my hand and official seal.

Janet S. Landeis  
Notary

My commission expires February 4, 1994

\*Strike according to fact.

Adele V. Loring  
Specimen Signature of Agent (Attorney)

S2-A

Water File  
No. 166

THE GRAND JUNCTION-GUNNISON RIVER PIPELINE

DITCH, OR PIPELINE, NO. 597

Priority No. 949, CONDITIONAL.

THE COURT FINDS:

That in this proceeding said ditch, or pipeline, is number 597, and it is entitled to Conditional Priority No. 949.

That the claimant thereof is the City of Grand Junction, Colorado, with address Grand Junction, Colorado.

That it is to be a pipeline for use for domestic, municipal and industrial purposes.

That it will derive its supply of water from the Gunnison River, in Water District No. 42.

That the headgate for said diversion is located at a point on the east bank of said Gunnison River, whence the N $\frac{1}{4}$  corner of Sec. 35, Twp. 1 S., R. 1 W., Ute Meridian, bears N. 10° 13' E. 1843.53.

That said pipeline is proposed to consist of 2 parallel lines 3153.2 feet long, one 30 inches in diameter and one 48 inches in diameter, with a capacity of 120.00 cubic feet of water per second of time.

And the Court Further Finds from the evidence that work of construction was begun on said pipeline by survey on January 22, 1957, pursuant to the policy of said claimant adopted several years previous thereto to develop potential future water supplies for the long range requirements of the City of Grand Junction. That such long range requirements are naturally indefinite. However, an intensive study over a period of years of the growth potential of the City, indicates that, by reason of the probable development of the shale oil industry in the immediate future on a scale of great magnitude, and the associated and allied industries it would induce, that a population in the immediate vicinity of Grand Junction of anywhere from 150,000 to twice that might be

#52-A



reasonably expected. That to protect such probable future water requirements, the City has caused this survey to be made, and plat and statement thereof to be filed in the office of the State Engineer of Colorado on March 8, 1957.

That said diversion would be made by means of a pumping plant installed at the point of said diversion, on a sump below a filtration plant to be installed below the Redlands Water and Power Company dam.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be permitted to flow in said pipeline from said Gunnison River, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and beneficial use, and as Conditional Priority No. 949, so much water as will flow therein as proposed to be constructed, not to exceed 120.00 cubic feet per second of time, as of priority date January 22, 1957. CONDITIONED, however, upon the completion of said proposed pipeline, and the diversion of said water therethrough, and application thereof to beneficial use, as aforesaid, within the time and in the manner provided by law.

S2-B

1430  
056

IN THE DISTRICT COURT IN AND FOR  
WATER DIVISION NO. 4

FILED  
IN THE DISTRICT COURT  
WATER DISTRICT #4

STATE OF COLORADO

OCT 30 1978

Case No. W-130(78)  
file # W-639

*Kay Phillips*  
DEPUTY  
WATER CLERK

IN THE MATTER OF THE APPLICATION FOR)  
WATER RIGHTS OF THE CITY OF GRAND )  
JUNCTION, COLORADO, IN THE GUNNISON )  
RIVER OR ITS TRIBUTARIES; TRIBUTARY )  
INVOLVED: GUNNISON RIVER PIPELINE, )  
IN MESA COUNTY. )

RULING OF WATER REFEREE

The applicant, the City of Grand Junction, Colorado, a municipal corporation, c/o its attorney, D. J. Dufford, Dufford, Williams and Milburn, 537 Rood Avenue, P.O. Box 2188, Grand Junction, Colorado 81501, requests a finding of reasonable diligence on the Gunnison River Pipeline, Conditional Priority No. 949, in old Water District No. 42. Date of filing: May 31, 1978.

No opposition has been filed.

FINDING OF FACT

The name of the structure with respect to which this application is filed is the GRAND JUNCTION-GUNNISON RIVER PIPELINE.

The headgate for diversion is located on the west bank of the Gunnison River from which the pipeline derives its supply of water, at a point from which the North Quarter Corner of Section 35, Township 1 South, Range 1 West, Ute Meridian, bears North 10°13' East a distance of 1,843.53 feet.

The carrying capacity of the entire pipeline system, when completed, will be 120 cubic feet of water per second of time and will consist of one or more parallel pipelines, all of which will be ten or more inches in diameter. The length of the pipeline or pipelines will be about 3,153.2 feet.

A filing map and statement of the pipeline was approved and filed with the State Engineer of Colorado on March 8, 1957.

In Civil Proceeding No. 8303, a supplemental adjudication proceeding conducted in the District Court of Mesa County, Colorado, the District Court of Mesa County awarded to the Grand Junction-Gunnison River Pipeline a conditional decree with Priority No. 949.

The city is a municipal corporation which owns and operates a municipal water supply and distribution system for the benefit of the inhabitants of the City and some areas outside the city of Grand Junction. The city is experiencing a steady growth in population and industry which presently use, or will use, water supplied from the city's domestic and industrial water supply system.

By ruling dated October 31, 1974, the Water Referee for Water Division No. 4 determined that the City was entitled to an absolute decree for 6.8 c.f.s. with priority date of March 8, 1957. In the same ruling, the City was directed to file additional an application for reasonable diligence in July, 1978.

Since July 1, 1977, the City has increased the diversion capacity of the pump station and related facility for the Grand Junction-Gunnison River Pipeline to the extent that the pump station will now divert 18.6 c.f.s.

#52-B

Since July 1, 1977, the city has expended the sum of \$61,978.97, to increase the pumping capacity of its pump station and related facilities on the Gunnison River.

As a result of the expenditures referred to in the preceding paragraph and the increased capacity of its pumping plant and transmission works on the Gunnison River, the City is entitled to an absolute decree for an additional 11.8 c.f.s. and also entitled to a determination that the remainder of its conditional priority be continued in good standing for an additional period of time.

Therefore, the City requests the Court to determine that it is entitled to an absolute priority of 11.8 c.f.s. and a finding that the City is proceeding with diligence to perfect the remainder of the water right involved in this application.


R U L I N G

IT IS THE RULING OF THE REFEREE that reasonable diligence has been shown and that a portion of the Conditional Decree, Priority No. 949 has been completed and that said priority is APPROVED and GRANTED an ABSOLUTE DECREE not to exceed 11.8 c.f.s. of water for domestic, industrial and other municipal purposes as of its original priority date March 8, 1957 and FURTHER that the balance of the water contained in said decree is to be continued on CONDITIONAL STATUS.

During the month of October, 1982, and every four years thereafter until the right is decreed final, the owner or user thereof, if he desires to maintain the same, shall file an Application for Quadrennial Finding of Reasonable Diligence with the Water Clerk of this Court.

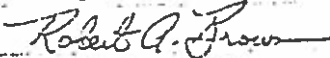
DATED 10-30-78

E. L. WILSON

  
Water Referee, Division No. 4

To prevent any delay in this matter,  
the following finding is published  
and the court is to be notified  
of any change in this matter.

11-30-78







*130 + 131*

IN THE DISTRICT COURT IN AND FOR:

WATER DIVISION NO. 4

STATE OF COLORADO

Case No. W-130(74)

IN THE MATTER OF THE APPLICATION FOR WATER )  
RIGHTS OF THE CITY OF GRAND JUNCTION, )  
COLORADO, IN THE GUNNISON RIVER OR ITS )  
TRIBUTARIES; TRIBUTARY INVOLVED: GUNNISON ) RULING OF REFEREE  
RIVER PIPELINE, IN THE COUNTY OF MESA )

The applicant, the City of Grand Junction, Colorado, a municipal corporation, c/o its attorney, D. J. Dufford, Dufford, Williams and Milburn, 537 Road Avenue, P. O. Box 2188, Grand Junction, Colorado 81501, requests a finding of reasonable diligence on the Gunnison River Pipeline, Conditional Priority No. 949, in old Water District No. 42. Filed May 31, 1974.

FINDING OF FACT

The name of the structure with respect to which this application is filed is the Grand Junction-Gunnison River Pipeline.

The headgate for diversion is located on the west bank of the Gunnison River from which the pipeline derives its supply of water, at a point from which the North Quarter Corner of Section 35, Township 1 South, Range 1 West, Ute Meridian, bears North 10° 13' East a distance of 1843.53 feet.

The carrying capacity of the entire pipeline system, when completed, will be 120 cubic feet of water per second of time and will consist of one or more parallel pipelines, all of which will be ten or more inches in diameter. The length of the pipeline or pipelines will be about 3,153.2 feet.

A filing map and statement of the pipeline was approved and filed with the State Engineer of Colorado on March 8, 1957.

In Civil Proceeding No. 8303 a supplemental adjudication proceeding conducted in the District Court of Mesa County, Colorado, the District Court of Mesa County awarded to the Grand Junction-Gunnison River Pipeline a conditional decree with Priority No. 949.

The city is a municipal corporation which owns and operates a municipal water supply and distribution system for the benefit of the inhabitants of the City and some areas outside the city of Grand Junction. The city is experiencing a steady growth in population and industry which presently use, or will use, water supplied from the city's domestic and industrial water supply system.

In connection with the enlargement and growth of its supply and distribution system, the city, during the past six years, has constructed water systems improvements in the amount of 2.2 million dollars. These improvements include a new 16-million gallon per day water treatment plant, two 10-million gallon steel potable water reservoirs, a new 24-inch diameter transmission main from the new treatment plant across the Colorado River to the city, a 7-million gallon per day raw water pumping station and cleaning and cement mortar lining of one of the two transmission lines from the city's raw water supply in the Kanabeh Creek area and other water feeder mains within the city, all of which is in process. The raw water supply obtained from Kanabeh Creek and the Gunnison River.

During the past two-year period, the city has installed two electric pumps at the site of the pipeline on the Gunnison River. Through these pumps, the city has diverted 6.8 cubic feet of water per second of time, which water has been piped from the pumping plant on the Gunnison River to the city's water treatment facility, where it has been processed and used beneficially

#52.C



for domestic, industrial and other municipal uses. The city diverted water from the Gunnison River through the pumping system described above on or prior to March 1, 1974.

The city will periodically or constantly, as required, divert not less than 6.9 cubic feet of water per second of time from the Gunnison River through the pumping facilities and pipeline installations referred to above.

The city expended in excess of \$230,000.00 to install the pumping system and pipelines which are now installed at the point of diversion on the Gunnison River.

No opposition has been filed.

R U L I N G

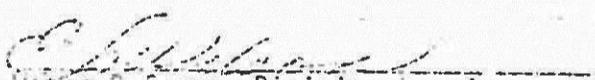
IT IS THE RULING OF THE REFEREE that reasonable diligence has been shown and that a portion of the conditional decree has been satisfied, and that the Gunnison River Pipeline Conditional Priority No. 949, is APPROVED AND GRANTED an ABSOLUTE DECREE not to exceed 6.8 c.f.s. of water for domestic, industrial and other municipal purposes, as of date of March 8, 1957;

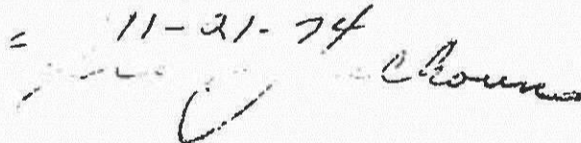
AND FURTHER, that the balance of the water contained in said decree is to be continued on conditional status.

During the month of July, 1978, and every four years thereafter until the right is decreed final, the owner or user thereof, if it desires to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the Water Clerk of this Court.

DATED Oct. 31, 1974

E. L. WILSON

  
Water Referee, Division No. 4

11-21-74  




IN THE DISTRICT COURT IN AND

FOR WATER DIVISION NO. 5

STATE OF COLORADO

Application No. W-3683

IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF )  
THE CITY OF GRAND JUNCTION, COLORADO ) RULING OF REFEREE  
IN THE COLORADO RIVER )  
IN MESA COUNTY )

The above entitled application was filed on December 30, 1977, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, and again, after Stipulation, on January 24, 1979, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Rights Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true. The statement of Opposition has been effectively withdrawn as the result of a Stipulation between the parties involved; and the Referee has made no determination as to the Statement of Opposition.
2. The name of the structure is Grand Junction-Redlands Tailrace Pump Station.
3. The name of the claimant and address is City of Grand Junction, Colorado; Fifth Street and Road Avenue; Grand Junction, Colorado.
4. The source of the water is the tailrace of the Redlands Power Plant. The water originates in the Gunnison River and is tributary to the Colorado River through the Redlands Water and Power Company Canal.
5. The *date* of initiation of appropriation is June 1, 1977.
6. The point of diversion is located in the NE ¼ SE ¼ of Section 16, T. 1 S., R. 1 W., Ute Meridian, at a point South 471.51 feet, thence S. 81°14'38" E. 1,539.59 feet from the Center of said Section 16.
7. The use of the water is municipal, irrigation, industrial and replacement.
8. The amount of water claimed is 50.0 cubic feet of water per second of time, conditional.
9. The water has not yet been diverted and has not been applied to beneficial use.

10. On February 23, 1978, a Statement of Opposition was filed by the Ute Water Conservancy District. As a result, on March 21, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.
11. On January 12, 1979, the Applicant, City of Grand Junction, and the Opposer, Ute Water Conservancy District filed, in Water Court for Water Division No. 5, the following Stipulation and Agreement.
  - A. The City hereby subordinates its claims under its applications filed with the Court designated as Case No. ~~w~~3681 and Case No. ~~w~~3682 to the claim of Ute for the water right claimed in Case No. ~~w~~3708.
  - B. Subject to approval of the Court and upon disposition of any other protests filed, Cases Numbered ~~w~~3681, ~~w~~3682, ~~w~~3683 and ~~w~~3708 will be returned by the Court to the Water Referee for disposition in compliance with this Stipulation.
  - C. When the Water Referee or the Court issues rulings with respect to the Cases Numbered ~~w~~3681 and ~~w~~3682, the claims of the City in such Cases will be made subject to a provision that the City's right to divert water under priorities issued in Cases ~~w~~3681 and ~~w~~3682 will be subordinate to Ute's right to divert water under the priority granted Ute in Case No. ~~w~~3708, irrespective of the Basin Rank numbers assigned in each of such cases. However, in each case, the City will (subject to approval of the Water Referee and the Court) retain and be granted the appropriation dates requested by it in its applications filed in Cases Numbered ~~w~~3681, ~~w~~3682. It is the intention of the parties to this Stipulation that the water rights claimed in Cases Numbered ~~w~~3681, ~~w~~3682 and ~~w~~3708 will be granted as though no protest or objection had been filed by Ute in Cases ~~w~~3681 and ~~w~~3682, except that the right of Ute to divert water under the priority granted it in Case No. ~~w~~3708 will be superior in all respects, to the rights of the City to divert water under the priorities granted it in Cases Numbered ~~w~~3681 and ~~w~~3682.
  - D. Ute will immediately withdraw its protest and objection to the application of the City under its application designated as Case No. ~~w~~3683 and consent that Case No. ~~w~~3683 may be re-referred to the Water Referee and assigned an appropriation date and Basin Rank number as though no protest to that application had been filed by Ute.
  - E. Ute and the City will execute such additional documents as may be requested by the Water Referee or the Water Court to enable the Referee or the Court to grant the applications to which this Stipulation applies, in accordance with the terms and conditions of this Stipulation.

As a result of the Stipulation and agreement, on January 24, 1979, the application was again referred by the Water Judge for Water Division No. 5 to the Water Referee.

The Referee hereby approves the terms and conditions of the Stipulation as set forth in paragraph 11 above, and incorporates said Stipulation into this Ruling of Referee.

The Referee does therefore conclude that the above entitled application should be granted and that 50.0 cubic feet of water per second of time with appropriation date of June 1, 1977, are hereby awarded conditionally to the Grand Junction-Redlands Tailrace Pump Station for municipal irrigation, industrial and replacement purposes, provided always that said



50.0 cubic feet of water per second of time is on the condition that said quantity of water be applied to a beneficial use within a reasonable time; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and further subject to the terms and conditions of the Stipulation as set forth in paragraph 11 above.

Application for a Quadrennial Finding of Reasonable Diligence shall be filed in August of 1983 and in August of every fourth calendar year thereafter so long as claimant desires to maintain this conditional water right or until a determination has been made that this conditional water right has become an absolute water right by reason of the completion of the appropriation.

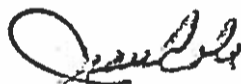
It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304 C.R.S. 1973.

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

Done at the City of Glenwood Springs, Colorado, this 3<sup>rd</sup> day of

August, 1979.

BY THE REFEREE:



Water Referee  
Water Division No. 5  
State of Colorado

53-B



DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

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Application No. 87CW192

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RULING OF REFEREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO, IN THE COLORADO RIVER, IN MESA COUNTY

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The above entitled Application was filed on August 27, 1987, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 10th day of September, 1987, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true and having become fully advised with respect to the subject matter of the Application does hereby make the following determination and Ruling as the Referee in this matter, to wit:

1. The statements in the Application are true.
2. The name of the structure is Grand Junction - Redlands Tailrace Pump Station.
3. The name and address of the Claimant: City of Grand Junction; 250 North Fifth Street; Grand Junction, Colorado 81501.
4. The source of the water is the tailrace of the Redlands Power Plant. The water originates in the Gunnison River and is tributary to the Colorado River through the Redlands Water and Power Company Canal.
5. The point of diversion is located in the NE1/4SE1/4 of Section 16, T. 1 S., R. 1 W., Ute Meridian, at a point S. 471.51 feet, thence S. 81°14'38" E. 1539.59 feet from the center of said Section 16.
6. On August 31, 1979, in Case No. W-3683, the Water Referee for Water Division No. 5 awarded to Grand Junction - Redlands Tailrace Pump Station, a conditional water right for 50.0 cubic feet of water per second of time, to be used for municipal, irrigation, industrial, and replacement purposes, with appropriation date of June 1, 1977. The Claimant was directed to file an Application for Quadrennial Finding of Reasonable Diligence in the development of this conditional water right in August of 1983 to maintain said conditional water right in full force and effect. This Ruling of Referee was confirmed and made a Decree of the Court on October 14, 1979.

During the intervening years, at timely intervals as required by statute, the Claimant has shown to the Court that reasonable diligence has been exercised in the development of this conditional water right, and the Court has ruled in Case No. 83CN234 that said water right be continued in full force and effect.

7. On August 27, 1987, the Claimant filed in Water Court for Water Division No. 5, an Application for Quadrennial Finding of Reasonable Diligence in the development of this conditional water right.

In support of this Application, the Claimant has submitted a detailed outline of the work performed and the expenditures made during the last quadrennial diligence period toward the development of this conditional water right.

The Referee, having examined the information submitted by the Applicant, and having completed the investigations necessary to make a determination in this matter, does find that the Claimant has shown reasonable diligence in the development of the proposed appropriation of the 50.0 cubic feet of water per second of time conditionally awarded to the Grand Junction - Redlands Tailrace Pump Station; and therefore concludes that the above entitled Application should be granted, and the conditional water right be continued in full force and effect.

Application for a Quadrennial Finding of Reasonable Diligence shall be filed in August of 1991 and in August of every fourth calendar year thereafter so long as the Claimant desires to maintain this conditional water right or until a determination has been made that this conditional water right has become an absolute water right by reason of the completion of the appropriation.

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 December 9, 1987

BY THE REFEREE:

Ray D. Walker

Water Referee  
Water Division No. 5  
State of Colorado

Div. Engineer  
11-9-87  
Nancy Busby

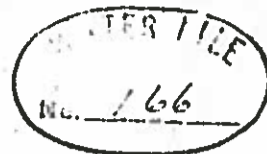
No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court.

Dated January 6, 1988

[Signature]  
Water Judge

1-7-88  
Nancy Busby

54-A



THE GRAND JUNCTION, COLORADO RIVER PIPELINE

DITCH, OR PIPELINE, NO. 543

Priority No. 787,  
CONDITIONAL.

THE COURT FINDS:

That in this proceeding said ditch, or pipeline, is number 543, and it is entitled to Conditional Priority No. 787.

That the Claimant thereof is The City of Grand Junction, Colorado, with address Grand Junction, Colorado.

That it is to be a pipeline for use for domestic, municipal and industrial purposes.

That it will derive its supply of water from the Colorado River, in Water District No. 42.

That its headgate, or diversion point, is located on the west bank of the Colorado River at a point whence the SE corner of Sec. 2, Twp. 11 S., R. 98 W., 6th P. M. bears S. 56° 15' W. 7051.80 feet.

That it will consist of two parallel steel pipelines, one 30 inches in diameter, and one 48 inches in diameter, and 56880.6 feet long, with a total carrying capacity of 120.00 cubic feet of water per second of time.

And the Court Further Finds from the evidence that on or about February 17, 1947 claimant employed the firm of J. R. Tipton & Associates, engineers to make a survey and study of the water supply of the City of Grand Junction both for the immediate future and for long range requirements. At which time the long range project settled upon consisted of a pipeline up the Colorado River with diversion point below the Colbran Project as then projected, on Plateau Creek. That the City did proceed with, and perfect, its short range survey on Kannah Creek watershed, holding the long range project in abeyance for the time being, but in no way abandoning it. However, subsequent to said said survey and report, the proposed Colbran Project was

authorized, but only a limited amount of water would be available for the city from that source, and the City of Grand Junction is so located that the development of the shale oil industry, as seems probable now, would likely result in an increase in its population to at least 150,000, and that a large and stable supply of water should be arranged for at the earliest possible time.

And it further appears that in the early nineteen fifties claimant employed Clifford Jex, a registered engineer, to make a further survey of water possibilities, and in 1954 he submitted his report to the City, which was submitted partly on the Tipton Survey, and partly a deviation therefrom to divert water from the Colorado River, instead of Plateau Creek. Said report showing that for about 9 months of the year there was at least 120.00 second feet of unappropriated water in said river available at the proposed intake of the above described pipelines which claimant could secure, and that by means of some added storage above that quantity of water could be made available throughout the year. And that that amount of water would be sufficient to provide for a population of around 150,000 people.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be permitted to flow in said pipeline from said Colorado River, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and beneficial use, and as Conditional Priority No. 787, so much water as will flow therein as proposed to be constructed, not to exceed 120.00 cubic feet per second of time, as of Priority Date February 17, 1947. CONDITIONED, however, upon the completion of said proposed pipeline, and the diversion of said water therethrough, and application thereof to beneficial use, as aforesaid, within the time and in the manner provided by law.

54-B



CONVEYANCE OF WATER RIGHT

THE CITY OF GRAND JUNCTION, COLORADO, a Municipal Corporation, "Grantor," in consideration of Ten Dollars and other consideration, sells, conveys and transfers to CLIFTON WATER DISTRICT, a quasi-municipal corporation, "Grantee," the following described water and water rights located in Mesa County, Colorado:

The right to divert twenty (20) cubic feet of water per second of time out of the Colorado River under Conditional Priority - Index No. 2957, with a date of priority of February 17, 1947 (Priority No. 787, Conditional), awarded by the District Court of Mesa County in Civil Action 8303, (a Supplemental Adjudication proceeding pertaining to water rights in former Colorado Water District No. 42) to the Grand Junction-Colorado River Pipe Line, which water right is now designated as Basin Rank No. 2957, in Water Division No. 5, pursuant to the tabulation dated October, 1974, prepared by the Office of the State Engineer of Colorado.

Priority No. 787, Conditional, referred to above was awarded to the Grand Junction-Colorado River Pipe Line out of the Colorado River for a total of one hundred twenty (120) cubic feet of water per second of time of which twenty (20) cubic feet of water per second of time has been conveyed by Grantor to Water Development Co.

The remainder of such water, i.e. eighty (80) cubic feet of water per second of time is reserved and retained by Grantor.

Priority of use between the parties, their successors and assigns, of the one hundred (100) cubic feet of water per second affected by this conveyance shall be as follows:

1. The first 3,000,000 gallons of water diverted - Grantee
2. The next 4,000,000 gallons of water diverted - Grantor
3. The next 9,927,200 gallons of water diverted - Grantee
4. Then the balance of such water right diverted - Grantor

Grantor warrants title to the water right herein conveyed against all persons and corporations claiming, by, through or under Grantor.

Grantor executed this instrument on the 21 day of September, 1977.

THE CITY OF GRAND JUNCTION, COLORADO

By James P. Wyszcki  
City Manager

ATTEST:

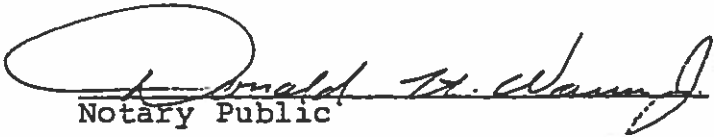
Theresa J. Martinez  
Deputy City Clerk

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF MESA     )

The foregoing instrument was acknowledged before me  
this 22 day of September, 1977 by James E.  
Wysocki as City Manager and Theresa F. Martinez  
Deputy  
as City Clerk of The City of Grand Junction, Colorado.

Witness my hand and official seal.

My commission expires: April 9, 1979

  
Notary Public

54-c

CONVEYANCE OF WATER RIGHT

THE CITY OF GRAND JUNCTION, COLORADO, a Municipal Corporation, "Grantor", in consideration of Ten Dollars and other consideration, sells, conveys and transfers to WATER DEVELOPMENT CO., a Joint Venture, "Grantee", the following described water and water rights located in Mesa County, Colorado:

The right to divert Twenty (20) cubic feet of water per second of time out of the Colorado River under Priority No. 787, Conditional, awarded by the District Court of Mesa County in Civil Action #303, (a Supplemental Adjudication proceeding pertaining to water rights in former Colorado Water District No. 42) to the Grand Junction-Colorado River River Pipe Line, which water right is now designated as Basin Rank No. 3964, in Water Division No. 5, pursuant to the tapulation dated 10-74, prepared by the Office of the State Engineer of Colorado.

Priority No. 787, Conditional, referred to above was awarded to the Grand Junction-Colorado River Pipe Line out of the Colorado River for a total of One Hundred Twenty (120) cubic feet of water per second of time. The remainder of such water i.e. One Hundred (100) cubic feet of water per second of time is reserved and retained by Grantor.

Grantor warrants title to the water right herein conveyed against all persons and corporations claiming, by, through or under Grantor.

Grantor executed this instrument on the 23 day of February, 1976.

THE CITY OF GRAND JUNCTION, COLORADO

By Harvey M. Rose  
Harvey M. Rose, City Manager

ATTEST:  
Neva B. Lockhart  
Neva B. Lockhart, City Clerk

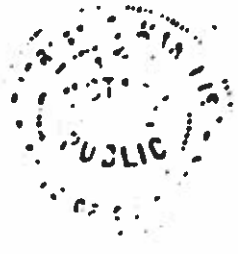
STATE OF COLORADO)  
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 23 day of February, 1976, by Harvey M. Rose, City Manager, and Neva B. Lockhart, City Clerk of The City of Grand Junction, Colorado.

Witness my hand and official seal.

My commission expires June 13 1979.

Charles E. Martiny  
Notary Public



252151

MAR 1 1976 Time 8:30 Book 1060 Page 481 #1102881

54-D

IN THE DISTRICT COURT IN AND  
 FOR WATER DIVISION NO. 5  
 STATE OF COLORADO  
 Application No. W-3532

FILED  
 IN WATER COURT  
 Division No. 5  
 MAR 2 2 1978  
 STATE OF COLORADO  
*(Signature)*  
 WATER CLERK  
 BY DEPUTY

IN THE MATTER OF THE APPLICATION )  
 FOR WATER RIGHTS OF THE CITY OF GRAND )  
 JUNCTION, COLORADO, AND THE CLIFTON )  
 WATER DISTRICT )  
 IN THE COLORADO RIVER )  
 IN MESA COUNTY )

RULING OF REFEREE

The above entitled application was filed on October 20, 1977, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 7th day of November, 1977, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Rights Determination and Administration Act of 1969

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the structure is the Grand Junction Colorado River Pipeline.
3. The name of the claimant and address is The City of Grand Junction Colorado; 250 North 5th Street; Grand Junction, Colorado, and *The Clifton Water District, 137 3rd Street, Clifton, Colorado 81520*
4. The source of the water is the Colorado River.
5. The point of diversion of the Grand Junction Colorado River Pipeline, as decreed in Civil Action No. 8303, is located on the West bank of the Colorado River at a point whence the Southeast Corner of Section 2, T.11S., R.98W. of the 6th P.M., bears S. 56°15' W. 7,051.80 feet. (This description is in error in that the bearing should be S. 56°15' E.)
6. The proposed new alternate points of diversion are described as follows:
  - (a) Diversion Point No 2 is located on the right bank of the Colorado River at a point whence the Northeast Corner of Section 3, T.1S., R.2E., Ute Meridian, bears N. 13°18' E. 1,800 feet.
  - (b) Diversion Point No. 3 is located on the right bank of the Colorado River at a point whence the Northeast Corner of Section 3, T.1S., R.2E, Ute Meridian, bears N. 43°33' E. 3,400 feet.
  - (c) Diversion Point No. 4 is located on the right bank of the Colorado River at a point whence the Southwest Corner of Section 7, T.1S., R.2E., Ute Meridian, bears West 1,439.46 feet.

7. On July 25, 1959, in Civil Action No. 8303, the Mesa County District Court awarded to the Grand Junction Colorado River Pipeline, Structure No. 543, Priority No. 787, a conditional water right for 120.0 cubic feet of water per second of time, to be used for domestic, municipal and industrial purposes, with appropriation date of February 17, 1947.



The applicants herein are the owners of 100.0 cubic feet of water per second of time of the above water right, of which the City of Grand Junction owns 80% and the Clifton Water District owns 20%.

8. During the intervening years, at timely intervals, the Court has found that the claimant has exercised reasonable diligence in the development of this conditional water right, and has ordered that it be continued in full force and effect.

9. On October 20, 1977, the claimants filed, in Water Court for Water Division No. 5, an application for change of water right in which it is requested that the points of diversion designated as Diversion Point No. 2, Diversion Point No. 3 and Diversion Point No. 4, as described in paragraph 6 above, together with the original point of diversion as described in paragraph 5 above, all be used as alternate points of diversion for the 100.0 cubic feet of water per second of time previously awarded to the Grand Junction-Colorado River Pipeline, and owned by the applicants herein.

In support of this request it is stated that in order to efficiently utilize the water right in the City's municipal distribution system and the District's distribution system, the applicants must divert water through one or more of the above described points of diversion. However, the applicants do not intend to divert through any or all of the points of diversion more than a total of 100 cubic feet of water per second of time at any given time.

The Referee does therefore conclude that the above entitled application should be granted, and the points of diversion designated as Diversion Point No. 2, Diversion Point No. 3, and Diversion Point No. 4, as described in paragraph 6 above, together with the original point of diversion as described in paragraph 5 above, may be used as alternate points of diversion for 100.0 cubic feet of water per second of time previously awarded to the Grand Junction-Colorado River Pipeline, and which is now owned by the applicants herein.

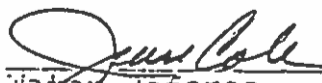
It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304 C.R.S. 1973.

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

Done at the City of Glenwood Springs, Colorado, this 22<sup>nd</sup> day of

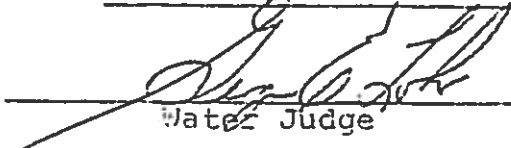
MARCH, 1978.

BY THE REFEREE:

  
Water Referee  
Water Division No. 5  
State of Colorado

SEE NEXT PAGE

No protest was filed in this matter, and accordingly the foregoing ruling is confirmed and approved, and is made the Judgment and Decree of this Court; provided, however, that the approval of this change of water right shall be subject to reconsideration by the Water Judge on the question of injury to the vested rights of others during any hearing commencing in the two calendar years succeeding the year in which this decision is rendered.

Dated 5/5/78  
  
Water Judge

54-E

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008

IN THE DISTRICT COURT IN AND  
FOR WATER DIVISION NO. 5  
STATE OF COLORADO  
Application No. W-2915

FILED  
IN WATER COURT  
Division No. 5  
OCT 2 1977  
STATE OF COLORADO  
*Edward W. Kelly*  
WATER CLERK  
BY DEPUTY

IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF )  
WATER DEVELOPMENT COMPANY )  
IN THE COLORADO RIVER )  
MESA COUNTY )

RULING OF REFEREE

The above entitled application was filed on March 10, 1976, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 7th day of April, 1976, and again, after withdrawal of statement of oppositor, on Jan 22, 1977, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Rights Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application, and statement of opposition, are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true. The applicant and the objector have filed a stipulation and the statement of opposition has been withdrawn; the Referee has therefore made no determination concerning the statement of opposition.
2. The names of the structures involved are: The Grand Junction, Colorado River Pipeline, the J. T. Pearce Ditch, and the W. A. Skelton Ditch.
3. The name of the claimant and address is Water Development Company; c/o P. C. Klingsmith, Esq.; 110 East Virginia Avenue; Gunnison, Colorado.
4. The source of the water is the Colorado River.
5. (a) The point of diversion of the Grand Junction, Colorado River Pipeline, as decreed, is located on the West bank of the Colorado River at a point whence the Southeast Corner of Section 2, T.11S., R.98W. of the 6th P.M. bears S.56°15'W. 7,051.80 feet.  
(b) The common point of diversion of the J. T. Pearce Ditch and the W. A. Skelton Ditch is located on the Southerly bank of the Colorado River at a point whence the North Quarter Corner of Section 21, T.6S., R.93W. of the 6th P.M. bears S.79°05' E. 4,071.9 feet.
6. On July 25, 1959, in Civil Action No. 8303, the Mesa County District Court awarded to the Grand Junction Colorado River Pipeline Structure No. 543, Priority No. 787, a conditional water right for 120.00 cubic feet of water per second of time, to be used for domestic, municipal and industrial purposes, with appropriation date of February 17, 1947. The applicant herein is now the owner of 20.0 c.f.s. of this conditional water right.
7. On March 10, 1976, the applicant filed, in Water Court for Water Division No. 5, an application for change of water right in which it is requested that the point of diversion of 20 cubic feet of water per second of time of that previously awarded conditionally to the Grand Junction Colorado River Pipeline, be changed from the point of diversion of the Grand Junction Colorado River Pipeline, as decreed, and as described in paragraph 5(a) above, to the common point of diversion of the J. T. Pearce Ditch and the W. A. Skelton Ditch, as described in paragraph 5(b) above.

In support of this request it is stated that the existing headgate of the J. T. Pearce Ditch and the W. A. Skelton Ditch are owned by S. W. Anderson

and Lola Marie Anderson, with whom the applicant herein has the joint right of use of said headgate and ditches. The applicant herein will use the water transferred for the purposes stated in the conditional decree as described in paragraph 6 above.

8. On May 28, 1976, a statement of opposition was filed by the Union Oil Company of California as follows:

A. The Application for Quadrennial Finding of Reasonable Diligence in this case should not be granted, or should be granted only upon certain conditions for the following reasons:

(a) The Objector is the owner of water rights in the Colorado River Watershed, both senior and junior to the water right claimed by the applicant in The Grand Junction, Colorado River Pipeline.

(b) The change sought by the applicant if granted will constitute a new water right not contemplated or intended in the decreed conditional water right in Civil Action No. 8303 of the District Court of Mesa County in former Water District No. 42.

(c) The granting of the change requested herein will injuriously affect the water rights of the objector.

(d) The application is contradictory to the decree entered in Civil Action No. 8303 of the District Court of Mesa County, Colorado in that the Court in said action found that a large and stable supply of water should be arranged for the City of Grand Junction, Colorado because of the probable development of the shale oil industry in the area. The failure to use the water for the purposes established in said decree constitutes an abandonment of the conditional water right granted. The very act of moving the right to a new location and changing it to a different use not contemplated by the Court at the time the decree was entered creates the presumption that the original owner has abandoned the water right and the project for which it was originally planned.

(e) Objector has a vested right in the continuation of the stream condition of the Colorado River as such existed at the time of the appropriation by the Objector or its predecessors, and the granting of the applicant's claim would materially injure and damage and adversely affect such vested rights.

B. Due to the lack of information contained in said application, Objector is unable to determine whether further objections may be necessary, or to set forth specific conditions which are necessary to prevent injury to its water rights. Objector therefore reserves the right to raise further objections at a later time when adequate information is available.

As a result of the statement of opposition, on June 24, 1976, the application was re-referred by the Referee to the Water Judge for Water Division No. 5.

9. On June 13, 1977, the applicant and the opposer filed a stipulation and agreement as follows:

(a) Water Development Company agrees to deliver at its new point of diversion, described as follows: a point on the Southerly bank of the Colorado River, whence the North Quarter Corner of Section 21, Township 6 South, Range 93 West of the 6th Principal Meridian bears South 79°05' East 4,071.9 feet, into the Colorado River for the use and benefit of the Objector, Union Oil Company of California, 5 c.f.s. out of the 20 c.f.s. sought to be transferred herein.

(b) Union Oil Company of California, upon the execution of the Assignment of said 5. c.f.s. agrees to withdraw its Statement of Opposition filed herein and to permit this matter to be determined as a non-contested matter.

(c) Union Oil Company of California further agrees not to object to any use under the proposed application by Water Development Company of the remaining 15 c.f.s. at other points of diversion on the Colorado River upstream from the point of diversion of Union Oil Company of California's pumping pipeline decree in the vicinity of Grand Valley Colorado.

(d) Water Development Company contemplates a subsequent transfer of

5 c.f.s. of the Grand Junction Colorado Pipeline No. 543, Old Water District 42. Union agrees not to oppose such change or changes to a point or points above the point of diversion of Union's pipeline.

As a result of the stipulation, the statement of opposition was withdrawn permitting the application to proceed on an uncontested basis, and on June 22, 1977, the application was again referred to the Referee for investigation and ruling.

The Referee does therefore conclude that the above entitled application should be granted and that the point of diversion of 20.0 cubic feet of water per second of time previously awarded conditionally to the Grand Junction Colorado River Pipeline, as decreed, and as described in paragraph 5(a) above, be changed to the common point of diversion of the J. T. Pearce Ditch and the W. A. Smelton Ditch, as described in paragraph 5(b) above, subject, however, to the terms and conditions of the stipulation as shown in paragraph 9 above.

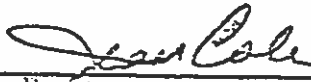
No vested rights of others will be adversely affected by this change in point of diversion.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304 C.R.S. 1973.

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

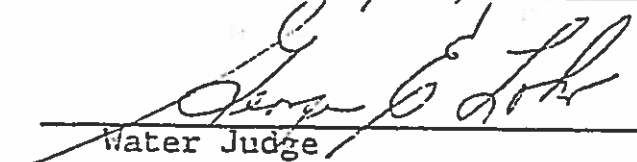
Done at the City of Glenwood Springs, Colorado, this 27<sup>th</sup> day of OCTOBER, 1977.

BY THE REFEREE:

  
\_\_\_\_\_  
Water Referee  
Water Division No. 5  
State of Colorado

No protest was filed in this matter, and accordingly the foregoing ruling is confirmed and approved, and is made the Judgment and Decree of this Court; provided however, that the approval of this change of water right shall be subject to reconsideration by the Water Judge on the question of injury to the vested rights of others during any hearing commencing in the two calendar years succeeding the year in which this decision is rendered.

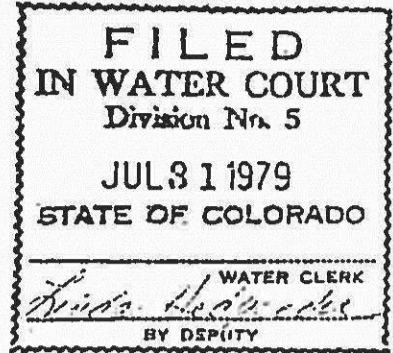
Dated February 23, 1978

  
\_\_\_\_\_  
Water Judge



54-F

IN THE DISTRICT COURT IN AND  
FOR WATER DIVISION NO. 5  
STATE OF COLORADO  
Application No. 79CW22



IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF THE CITY OF )  
GRAND JUNCTION, AND THE CLIFTON )  
WATER DISTRICT )  
IN THE COLORADO RIVER )  
IN MESA COUNTY. )

RULING OF REFEREE

The above entitled application was filed on February 3, 1979, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 16th day of February, 1979, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the structure is Grand Junction - Colorado River Pipeline.
3. The names and addresses of the claimants are:

The City of Grand Junction  
250 North Fifth Street  
Grand Junction, Colorado

Clifton Water District  
137 Third Street  
P O Box 100  
Grand Junction, Colorado.

4. The source of the water is the Colorado River.
5. (a) The point of diversion of the Grand Junction - Colorado River Pipeline, as decreed in Civil Action No. 8303, is located on the West bank of the Colorado River at a point whence the Southeast Corner of Section 2, T. 11 S., R. 93 W. of the 6th P.M. bears S. 50°15' W. 7,051 feet. This description is obviously in error.  
(b) In Case No. W-3532, the Water Court for Water Division No. 5 established 3 additional alternate points of diversion described as follows:



(1) Diversion Point No. 2 is located on the right bank of the Colorado River at a point whence the Northeast Corner of Section 3, T. 1 S., R. 2 E., Ute Meridian, bears N. 13°13' E. 1800 feet.

(2) Diversion Point No. 3 is located on the right bank of the Colorado River at a point whence the Northeast Corner of Section 3, T. 1 S., R. 2 E., Ute Meridian, bears N. 43°33' E. 3400 feet.

(3) Diversion Point No. 4 is located on the right bank of the Colorado River at a point whence the Southwest Corner of Section 7, T. 1 S., R. 2 E., Ute Meridian, bears West 1439.46 feet.

6. On July 21, 1959, in Civil Action No. 8303, the Mesa County District Court awarded to the Grand Junction - Colorado River Pipeline, structure No. 543, Priority No. 787, a conditional water right for 120 cubic feet of water per second of time, to be used for domestic, municipal and industrial purposes, with appropriation date of February 17, 1947.
7. Subsequently, at regular intervals required by statute, the Court has found that the claimant has exercised reasonable diligence in the development of the conditional water right, and it has been continued in full force and effect.
8. On February 23, 1976, the City conveyed 20 c.f.s. of the subject water right to Water Development Company. By Case No. W-2915, in this Court, the transferee, Water Development Company, was permitted to change the point of diversion of 20 c.f.s. to the vicinity of Pifle, Colorado.
9. By deed dated September 21, 1977, the City of Grand Junction conveyed 20.0 cubic feet of water per second of time of the subject water right to the Clifton Water District.
10. As a result of these conveyances, the City of Grand Junction is now the owner of 30.0 cubic feet of water per second of time, and the Clifton Water District is the owner of 20.0 cubic feet of water per second of time in the water right which is the subject of this application.
11. On February 6, 1979, the applicants filed, in Water Court for Water Division No. 5, an application to make absolute a conditional water right, in which it is requested that 12.30 cubic feet of water per second of time of that water previously awarded to the Grand Junction - Colorado River Pipeline under Priority No. 787, be made absolute and unconditional by reason of the diversion and application of that amount of water to beneficial use.

In support of this request, the following information was submitted by the applicant:

Since commencement of construction, the Applicants have completed construction of treatment facilities which enable the City and the District to divert water and apply a portion of the water right described above to beneficial use.

In connection with construction of the treatment facilities noted above, the City and the District expended \$2,234,982.81, of which \$1,550,539.14 was expended by the District and \$684,333.67 was expended by the City.

By reason of the above facilities, Applicants have diverted and put to beneficial use 12.30 c.f.s. of which the District has diverted and applied to beneficial use 6.19 c.f.s. and the City has diverted and applied to beneficial use 6.19 c.f.s.



As a result of the diversions and application to use as specified above, the Applicants are entitled to have an absolute award and decree for 12.38 c.f.s. of the water conditionally awarded to the Grand Junction - Colorado River Pipeline.

The Referee does therefore conclude that the above entitled application should be granted and that 12.38 cubic feet of water per second of time of the water previously awarded conditionally to the Grand Junction - Colorado River Pipeline under Priority No. 787, are hereby made absolute and unconditional.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304, C.R.S. 1973.

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

Done at the City of Glenwood Springs, Colorado, this 31<sup>st</sup> day of July, 1979.

BY THE REFEREE:

*Jean Cole*

Water Referee  
Water Division No. 5  
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: 12/7/79  
*Ray J. Loh*  
CLERK OF COURT

54-6

SEP - 9 1982

IN THE DISTRICT COURT IN AND  
FOR WATER DIVISION NO. 5  
STATE OF COLORADO

MARIE TALAMAS, CLERK

Application No. 82CW131

IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION )  
AND THE CLIFTON WATER DISTRICT ) RULING OF REFEREE  
IN THE COLORADO RIVER )  
IN MESA COUNTY )

The above entitled application was filed on May 28, 1982, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 10th day of June, 1982, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true.
2. The name of the structure is Grand Junction-Colorado River Pipeline.
3. The names and addresses of the applicants are: City of Grand Junction; 250 North 5th Street; Grand Junction, Colorado, 81501; Clifton Water District; 137 3rd Street; P.O. Box 100; Grand Junction, Colorado, 81501.
4. The source of the water is the Colorado River.
5. The point of diversion is located on the West bank of the Colorado River at a point whence the Southeast Corner of Section 2, T. 11 S., R. 98 W. of the 6th P.M. bears S. 56°15' W. 7,051.80 feet.
6. On July 21, 1959, in Civil Action No. 8303, the Mesa County District Court awarded to the Grand Junction-Colorado River Pipeline, Structure No. 543, Priority No. 787, a conditional water right for 120 cubic feet of water per second of time, to be used for domestic, municipal and industrial purposes, with appropriation date of February 17, 1947.
7. During the intervening years, at timely intervals as required by statute, the claimant has shown to the court that reasonable diligence has been exercised in the development of this conditional water right, and the court has ruled that said water right be continued in full force and effect.
8. On February 23, 1976, the City conveyed 20 c.f.s. of the subject Water Right to Water Development Company. By Case No. W-2915 in this Court, the transferee, Water Development Company, was permitted to change the point of diversion of 20 c.f.s. to the vicinity of Rifle, Colorado.
9. By deed dated September 21, 1977, the City conveyed 20 c.f.s. of the Subject Water Right to the Clifton Water District.

216



10. As a result of the above conveyances, the City is now the owner and claimant of 80 c.f.s. and the District is the owner and claimant of 20 c.f.s. in the water right which is the subject matter of this Application.

11. On July 31, 1979 in Case No. 79CW22, the Water Referee awarded an absolute and unconditional decree for 12.38 cubic feet of water per second of time for the Grand Junction-Colorado River Pipeline under priority No. 787.

12. On May 28, 1982, as directed by the court in the last previous Finding of Reasonable Diligence, the claimant filed, in Water Court for Water Division No. 5, an application for Quadrennial Finding of Reasonable Diligence in the development of this conditional water right.

In support of this application, the claimant has submitted a detailed outline of this work performed and the expenditures made during the last Quadrennial Diligence period toward the development of this conditional water right.

The Referee, having examined the information submitted by the applicant, and having completed the investigations necessary to make a determination in this matter, does find that the claimant has shown Reasonable Diligence in the development of the proposed appropriation of the water remaining conditionally awarded to the Grand Junction-Colorado River Pipeline; and therefore concludes that the above entitled application should be granted, and the conditional water right be continued in full force and effect.


Application for a Quadrennial Finding of Reasonable Diligence shall be filed in May of 1986 and in May of every fourth calendar year thereafter so long as the claimant desires to maintain this conditional water right or until a determination has been made that this conditional water right has become an absolute water right by reason of the completion of the appropriation.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304 CRS 1973.

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

Done at the City of Glenwood Springs, Colorado, this 9<sup>th</sup> day of SEPTEMBER, 1982.

BY THE REFEREE:

  
Water Referee  
Water Division No. 5  
State of Colorado

54-H

85-  
148-

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

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Application No. 85CW37

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RULING OF REFEREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO AND THE CLIFTON WATER DISTRICT, IN THE COLORADO RIVER, IN MESA COUNTY

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The above entitled Application was filed on February 14, 1985, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 29th day of March, 1985, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true and having become fully advised with respect to the subject matter of the Application does hereby make the following determination and Ruling as the Referee in this matter, to-wit:

1. The statements in the Application are true.
2. The name of the structure is Grand Junction - Colorado River Pipeline.
3. The names and addresses of the Applicants are:

City of Grand Junction  
250 North 5th Street  
Grand Junction, Colorado 81501

Clifton Water District  
137 Third Street  
P. O. Box 100  
Clifton, Colorado 81520

4. The source of the water is the Colorado River.
5. The point of diversion of the Grand Junction-Colorado River Pipeline, as decreed in Civil Action No. 8303, is located on the West bank of the Colorado River at a point whence the Southeast Corner of Section 2, T.11 S., R. 98 W. of the 6th P.M. bears S. 56°15' W. 7,051.80 feet.
6. In Case No. W-3532, alternate points of diversion were established for the Grand Junction-Colorado River Pipeline at the following locations:

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(a) Diversion Point No. 2 is located on the right bank of the Colorado River at a point whence the Northeast Corner of Section 3, T. 1 S., R. 2 E., Ute Meridian, bears N.  $13^{\circ}18'$  E. 1,800 feet. This is also the point of diversion of the Grand Valley Canal.

(b) Diversion Point No. 3 is located on the right bank of the Colorado River at a point whence the Northeast Corner of Section 3, T. 1 S., R. 2 E., Ute Meridian bears N.  $43^{\circ}33'$  E. 3,400 feet.

(c) Diversion Point No. 4 is located on the right bank of the Colorado River at a point whence the Southwest Corner of Section 7, T. 1 S., R. 2 E., Ute Meridian bears West 1,439.46 feet.

7. On July 21, 1959, in Civil Action No. 8303, the Mesa County District Court awarded to the Grand Junction-Colorado River Pipeline, Structure No. 543, Priority No. 787, a conditional water right for 120 cubic feet of water per second of time, to be used for domestic, municipal and industrial purposes, with appropriation date of February 17, 1947.

8. During the intervening years, at timely intervals as required by statute, the Claimant has shown to the Court that reasonable diligence has been exercised in the development of this conditional water right, and the Court has ruled that said water right be continued in full force and effect.

9. On February 23, 1976, the City conveyed 20 c.f.s. of the subject water right to Water Development Company. By Case No. W-2915 in this Court, the transferee, Water Development Company, was permitted to change the point of diversion of 20 c.,f.s. to the vicinity of Rifle, Colorado.

10. By Deed dated September 21, 1977, the City conveyed 20 c.f.s. of the subject water right to the Clifton Water District.

11. On July 31, 1979, in Case No. 79CW22, the Water Referee awarded an absolute and unconditional decree for 12.38 cubic feet of water per second of time for the Grand Junction-Colorado River Pipeline under Priority No. 787.

12. On February 14, 1985, the Claimants filed, in Water Court for Water Division No. 5, an Application to Make Water Right Absolute in Part, in which it is requested that an additional 6.19 cubic feet of water per second of time of the Grand Junction-Colorado River Pipeline be made absolute and unconditional.

In support of this request it is stated that a total of 18.75 cubic feet of water per second of time have been transported to the Clifton Water Treatment Plant via Diversion Point No. 2, of which the Clifton Water District

↑  
WRONG

(III)  
Grand Junction, Colorado and 85CW37  
the Clifton Water District  
Ruling of Referee  
Page No. 3

has beneficially used within its boundaries 11.61 c.f.s. and the City of Grand Junction has beneficially used 6.96 c.f.s.

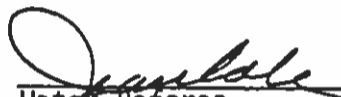
The Referee does therefore conclude that the above-entitled Application should be granted and that an additional 6.19 cubic feet of water per second of time of the water previously awarded conditionally to the Grand Junction-Colorado River Pipeline should be and hereby are made absolute and unconditional.

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.

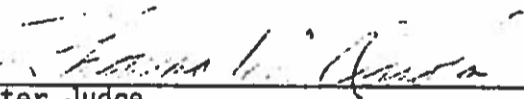
Dated OCTOBER 30, 1985

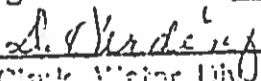
BY THE REFEREE:

  
\_\_\_\_\_  
Water Referee  
Water Division No. 5  
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 November 2, 1985

  
\_\_\_\_\_  
Water Judge

Copy of the foregoing mailed to all  
members of record—Water  
Division—Div. Engineer—and  
State Engineer—Date 10-31-85  
  
\_\_\_\_\_  
Deputy Clerk, Water Div. No. 5.  
Order - 12-2-85

54-I



DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

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Application No. 86CW146

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RULING OF REFEREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION AND THE CLIFTON WATER DISTRICT, IN THE COLORADO RIVER, IN MESA COUNTY

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The above entitled Application was filed on May 30, 1986, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 9th day of June, 1986, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true and having become fully advised with respect to the subject matter of the Application does hereby make the following determination and Ruling as the Referee in this matter, to-wit:

1. The statements in the Application are true.
2. The name of the structure is Grand Junction-Colorado River Pipeline.
3. The name and address of the Claimant: City of Grand Junction; 250 North 5th Street; Grand Junction, Colorado 81501; Clifton Water District; 137 3rd Street; P. O. Box 100; Grand Junction, Colorado 81501.
4. The source of the water is the Colorado River.
5. The point of diversion is located on the West bank of the Colorado River at a point whence the Southeast Corner of Section 2, T. 11 S., R. 98 W. of the 6th P.M. bears S. 56°15' W. 7,051.80 feet.
6. On July 21, 1959, in Civil Action No. 8303, the Mesa County District Court awarded to the Grand Junction-Colorado River Pipeline, Structure No. 543, Priority No. 787, a conditional water right for 120 cubic-feet of water per second of time, to be used for domestic, municipal and industrial purposes, with appropriation date of February 17, 1947.
7. During the intervening years, at timely intervals as required by statute, the Claimant has shown to the court that reasonable diligence has been exercised in the development of this conditional water right, and the court has ruled that said water right be continued in full force and effect.
8. On February 23, 1976, the City conveyed 20 c.f.s. of the subject Water Right to Water Development Company. By Case No. W-2915 in this Court, the transferee, Water Development Company, was permitted to change the point of diversion of 20 c.f.s. to the vicinity of Rifle, Colorado.

54-I

9. By deed dated September 21, 1977, the City conveyed 20 c.f.s. of the Subject Water Right to the Clifton Water District.

10. As a result of the above conveyances, the City is now the owner and claimant of 80 c.f.s. and the District is the owner and claimant of 20 c.f.s. in the water right which is the subject matter of this Application.

11. On July 31, 1979 in Case No. 79CW22, the Water Referee awarded an absolute and unconditional decree for 12.38 cubic feet of water per second of time for the Grand Junction-Colorado River Pipeline under priority No. 787.

12. On May 30, 1986, as directed by the court in the last previous Finding of Reasonable Diligence, the Claimant filed, in Water Court for Water Division No. 5, an application for Quadrennial Finding of Reasonable Diligence in the development of this conditional water right.

In support of this application, the Claimant has submitted a detailed outline of this work performed and the expenditures made during the last Quadrennial Diligence period toward the development of this conditional water right.

The Referee, having examined the information submitted by the Applicant, and having completed the investigations necessary to make a determination in this matter, does find that the Claimant has shown Reasonable Diligence in the development of the proposed appropriation of the water remaining conditionally awarded to the Grand Junction-Colorado River Pipeline; and therefore concludes that the above entitled application should be granted, and the conditional water right be continued in full force and effect.

Application for a Quadrennial Finding of Reasonable Diligence shall be filed in May of 1990 and in May of every fourth calendar year thereafter so long as Claimant desires to maintain this conditional water right or until a determination has been made that this conditional water right has become an absolute water right by reason of the completion of the appropriation.

It is accordingly ORDERED that this Ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304 C.R.S. 1973.

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

Dated August 15, 1986

BY THE REFEREE:

Copy of the foregoing <sup>sent</sup> mailed to all  
Division of record Water  
Division Water Div. Engineer and  
State Engineer Date August 19, 1986  
NANCY BAILEY

[Signature]  
Water Referee  
Water Division No. 5  
State of Colorado

[Signature]  
Water Div. No. 5



DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 85 CW 235

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ORDER FOR SUMMARY JUDGMENT

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CLIFTON  
WATER DISTRICT AND THE CITY OF GRAND JUNCTION

IN THE COLORADO RIVER OR ITS TRIBUTARIES

IN MESA COUNTY

---

This matter has come before the Court on the Motion of Applicants Clifton Water District and the City of Grand Junction for summary judgment. The Court, having reviewed the file in this action and the stipulations executed by the parties, grants that motion.

It is therefore ordered that summary judgment shall be and hereby is entered in favor of Applicants Clifton Water District and the City of Grand Junction and that the proposed Judgment and Decree submitted by the Applicants concurrently with the Motion for Summary Judgment shall become, upon execution by the Court, the Judgment and Decree in this matter.

Dated this 11<sup>th</sup> day of <sup>December</sup>~~November~~, 1989.

BY THE COURT:

Thomas W. Ossola

Thomas Ossola, Water Judge

12-12-89  
NANCY BILLY

5-17

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 85 CW 235

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JUDGMENT AND DECREE FOR CHANGE OF WATER RIGHT

---

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CLIFTON  
WATER DISTRICT AND THE CITY OF GRAND JUNCTION

IN THE COLORADO RIVER OR ITS TRIBUTARIES

IN MESA COUNTY

---

The Court, having considered the Stipulation executed by Applicants and by all Objectors, and the Stipulation executed by Applicants and Objectors Pitkin County and the City of Aspen, and having reviewed the court file, enters the following Decree.

1. Application. The Application for Change of Water Rights was filed by Applicants, Clifton Water District and the City of Grand Junction, on September 20, 1985.

2. Jurisdiction. All notices required by law have been given, and such notices are adequate under applicable statutes. The Application for Change of Water Rights is one contemplated by statute and this Court has jurisdiction over the subject matter of this action and over the parties.

3. Objectors. Statements of Opposition to the Application were filed by the following:

Silt Water Conservancy District  
c/o Scott Balcomb  
Delaney & Balcomb, P.C.  
P.O. Drawer 790  
Glenwood Springs, CO 81602

Ute Water Conservancy District  
c/o Scott Balcomb  
Delaney & Balcomb, P.C.  
P.O. Drawer 790  
Glenwood Springs, CO 81602

Mobil Oil Corporation  
c/o Scott Balcomb  
Delaney & Balcomb, P.C.  
P.O. Drawer 790  
Glenwood Springs, CO 81602

No other Statements of Opposition were filed. The time for filing such statements or motions to intervene have now expired.

4. Ownership of Stock. Applicant, Clifton Water District, ("Clifton") is the owner of 1,101 shares of the capital stock of the Grand Valley Irrigation Company ("GVIC") and Applicant, The City of Grand of Junction, ("City") is the owner of 200 shares of the capital stock of GVIC.

5. Water Right.

5.1 The water right to which the change relates (the "Water Right") is owned by GVIC for the benefit of its shareholders and is Priority No. 1 and Basin Rank No. 1814 for 520.81 cfs, with an appropriation date of August 22, 1882 and a Decree date of July 22, 1912. The source of the Water Right is the Colorado River.

5.2 The headgate of the Grand Valley Canal through which the Water Right is diverted is located at a point on the right bank of the Colorado River about 1,420 feet South of the Northeast Corner of Section 3, Township 1 South, Range 2 West of the Ute Meridian, under a ledge of rock, the decreed point of diversion for the Grand Valley Canal.

5.3 The Water Right was originally decreed for irrigation purposes and the application in this action requests a change of use for Applicants' proportionate share of the Water Right from irrigation to irrigation, municipal, industrial and other municipal purposes.

6. Stipulation between Applicants and all Objectors. The Objectors have stipulated that the change in use of the Water Right requested by Applicants concerning their proportionate share of the Water Right will not injure the water rights owned by Objectors, if the change is subject to the limitations and conditions contained in this Decree and the Stipulation.

The Stipulation between Applicants and all Objectors includes the following provisions:

(a) All diversions by Clifton and Grand Junction pursuant to the GVIC shares that are the subject of this case shall be through the headgate leading to the intake canal of the Clifton water treatment plant and shall be made only during the historic irrigation season, April through October.

(b) Diversions by Clifton and Grand Junction under the 1301 shares of GVIC which are the subject of this action shall be limited to the following monthly and annual volumes:



<u>MONTH</u>	<u>VOLUME (acre-feet)</u>
April	100
May	351
June	550
July	630
August	556
September	339
October	92
Total Annual diversions	<u>2618</u>

(c) Under the bylaws of the GVIC, the amount of water deliverable at the lateral headgates from the main Grand Valley Canal under each share of GVIC stock is fixed at 0.4 Colorado Miner's Inch (0.0104 cfs). Therefore, subject to the limits of the preceding paragraph, Applicants' 1301 shares entitle them to delivery of 13.53 cfs at the intake canal of the Clifton water treatment plant. The amount of water which the Grand Valley Canal is entitled to call for and divert shall be reduced by the difference (in cfs) between (1) Applicant's actual rate of diversions at the intake canal of the Clifton water treatment plant at the time of the call (as limited by the preceding paragraph), and (2) the 13.53 cfs total amount of water otherwise deliverable under the Applicants' 1301 GVIC shares.

(d) The reduction of the amount of water which the Grand Valley Canal is entitled to call for must be measured at the headgate of the Grand Valley Canal and shall not be made up in any manner through the use or operation of the Orchard Mesa Irrigation District's "check". However, no reduction in diversion for the Grand Valley Canal shall be required unless there is a call placed on the Colorado River for the Grand Valley Canal.

(e) Clifton and Grand Junction shall not be entitled to reuse or successively use the water diverted under their GVIC shares.

(f) Applicants shall implement record keeping and accounting measures approved by the Division Engineer and the parties to account for the following:

- (1) The daily rate of diversion at the Clifton water treatment plant intake canal and monthly volumes of diversion;
- (2) The daily diversion rate and call of the Grand Valley Canal throughout each irrigation season; and
- (3) The reduction in the Grand Valley Canal call calculated pursuant to paragraph 6(c).

Copies of these accounting records shall be furnished to the Division Engineer and the parties upon reasonable request.

(g) Applicants shall institute a procedure, in cooperation with the GVIC, for informing the Division Engineer of the reduction in call calculated in accordance with paragraph 6(b). Applicants shall be responsible for reimbursing GVIC for any reasonable increased administrative or carriage costs incurred by GVIC as a result of this Stipulation.

(h) None of the terms of this Stipulation shall be considered as a limitation on Applicants' rights to divert and utilize water rights other than those involved in this action.

(i) The Stipulation of the parties constitutes a settlement of disputed claims and shall not be construed as an admission by Applicants that the use of any portion of the water rights represented by its GVIC shares would injure the water rights of any Objector in this action, or as an admission by Applicants of the facts supporting any other basis for objection raised by the Objectors. Nor shall the terms of the Stipulation be construed as a waiver of the Objectors' right to assert in any future proceeding that different conditions are necessary to protect their water rights from injury due to a proposed change of water rights; nor shall the terms of the Stipulation be construed as a waiver of Objectors' rights in any future proceeding to raise any issue regarding the uses of the GVIC water rights and the operation of its facilities.

(j) The Stipulation shall be effective upon its approval by the parties and the court. The parties shall thereafter remain parties to this proceeding and shall be entitled to comment on all proposed decrees or proposed limitations and conditions to prevent injury submitted by Applicants to the court. The parties consent to a decree which contains limitations and conditions different from those provided in the Stipulation so long as they are not less restrictive and are not otherwise inconsistent with the Stipulation.

7. Additional Stipulation between Applicants and the City of Aspen and Board of County Commissioners of Pitkin County. An additional stipulation between Applicants and Objectors City of Aspen and Board of County Commissioners of Pitkin County ("Supplemental Stipulation") states Applicants' position that the change requested would not cause injury to the water rights of those objectors, and states the basis for those objectors' contention that injury would result from the change. The Supplemental Stipulation further provided that the terms of the Stipulation between all objectors and the Applicants were deemed

sufficient to prevent injury to Pitkin County and City of Aspen in view of the continuing jurisdiction of the court and barring evidence to the contrary indicated by operational practice.

8. Injury. Based on the stipulations in this case and on the pleadings contained in the Court's file, the Court finds that no injury will result if Applicants' proportionate share of the Water Right is changed from irrigation to irrigation, municipal, industrial and other municipal purposes subject to the terms and conditions contained in the Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. The Court hereby approves the stipulations filed in this action as terms and conditions to prevent injury to the water rights of Objectors.

B. The Application for Change of Water Rights, more particularly described in paragraph 5 above, is hereby granted, subject to the terms of the stipulations between the parties as more particularly stated in paragraphs 6 and 7 above.

C. Pursuant to the terms of Section 37-92-304(6), C.R.S., this Decree shall be subject to reconsideration by this Court on the question of injury to the vested rights of others during any hearing commencing in the five calendar years succeeding the entry of this Judgment and Decree.

D. It is further ordered that this Judgment and Decree shall be filed with the water clerk and shall become effective upon such filing. A copy of this Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Dated this 11<sup>th</sup> day of December, 1989.

BY THE COURT:

Thomas W. Ossola  
Thomas W. Ossola, Water Judge

Copy of the foregoing mailed to:  
Counsel of record - Water  
Water Div. Engineer - and  
State Engineer - Date 12-17-89  
NANCY BAILEY

56-A

IN THE DISTRICT COURT IN AND

FOR WATER DIVISION NO. 5

STATE OF COLORADO

Application No. W-3681

IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF )  
THE CITY OF GRAND JUNCTION, COLORADO )  
IN THE COLORADO RIVER )  
IN MESA COUNTY )

RULING OF REFEREE

The above entitled application was filed on December 30, 1977, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 13th day of January, 1978, and again, after stipulation, on January 24, 1979, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the application are true and having become fully advised with respect to the subject matter of the application does hereby make the following determination and ruling as the Referee in this matter, to-wit:

1. The statements in the application are true. The statement of Opposition has been effectively withdrawn as the result of a Stipulation between the parties involved, and the Referee has made no determination as to the Statement of Opposition.
2. The name of the structure is Grand Junction 22 Road Pump and Diversion Station.
3. The name of the claimant and address is; The City of Grand Junction, Colorado; 5th and Road Avenue; Grand Junction, Colorado.
4. The source of the water is the Colorado River and discharges from waste and other treatment facilities operated by the applicant.
5. The point of diversion is located in the NW 1/4 SW 1/4 of Section 36, T. 1 N., R. 2 W. Ute Meridian, at a point 3803.14 feet South and 3,147.52 feet West of the Northeast Corner of said Section 36.
6. The use of the water is irrigation, municipal, domestic, and replacement and exchange.
7. The date of initiation of appropriation is July 1, 1976.
8. The amount of water claimed is 40.0 cubic feet of water per second of time, conditional.
9. The water has not yet been diverted and has not been applied to beneficial use.

10. On February 23, 1978, a Statement of Opposition was filed by the Ute Water Conservancy District. As a result, on March 21, 1978, the application was re-referred by the Water Referee to the Water Judge for Water Division No. 5.

11. On January 12, 1979, the Applicant City of Grand Junction, and the Opposer Ute Water Conservancy District filed, in Water Court for Water Division No. 5, the following Stipulation and Agreement:

- A. The City hereby subordinates its claims under its applications filed with the Court designated as Case No. 3681 and Case No. 3682 to the claim of Ute for the Water right claimed in case No. 3708.
- B. Subject to approval of the Court and upon disposition of any other protests filed, Cases Numbered 3681, 3682, 3683 and 3708 will be returned by the Court to the Water Referee for disposition in compliance with this Stipulation.
- C. When the Water Referee or the Court issues rulings with respect to the Cases Numbered 3681 and 3682, the claims of the City in such Cases will be made subject to a provision that the City's right to divert water under priorities issued in Cases 3681 and 3682 will be subordinate to Ute's right to divert water under the priority granted Ute in Case No. 3708, irrespective of the Basin Rank numbers assigned in each of such cases. However, in each case, the City will (subject to approval of the Water Referee and the Court) retain and be granted the appropriation dates requested by it in its applications filed in Cases Numbered 3681 and 3682. It is the intention of the parties to this Stipulation that the water rights claimed in Cases Numbered 3681, 3682 and 3708 will be granted as though no protest or objection had been filed by Ute in Cases 3681 and 3682, except that the right of Ute to divert water under the priority granted it in Case No. 3708 will be superior, in all respects, to the rights of the city to divert water under the priorities granted it in Cases Numbered 3681 and 3682.
- D. Ute will immediately withdraw its protest and objection to the application of the City under its application designated as Case No. 3683 and consent that Case No. 3683 may be re-referred to the Water Referee and assigned an appropriation date and Basin Rank number as though no protest to that application had been filed by Ute.
- E. Ute and the City will execute such additional documents as may be requested by the Water Referee or the Water Court to enable the referee or the Court to grant the applications to which this Stipulation applies, in accordance with the terms and conditions of this Stipulation.

As a result of the stipulation and agreement, on January 24, 1979, the application was again referred by the Water Judge for Water Division No. 5 to the Water Referee.

12- The Referee hereby approves the terms and conditions of the Stipulation as set forth in paragraph 11 above, and incorporates said stipulation into this Ruling of the Referee.

The Referee does therefore conclude that the above entitled application should be granted in part and that 40.9 cubic feet of water per second of time with appropriation date of July 1, 1976, are hereby awarded



conditionally to the Grand Junction 22 Road Pump and Diversion Station for irrigation, municipal, domestic, and replacement and exchange, provided always that said 40.0 cubic feet of water per second of time is on the condition that said quantity of water be applied to a beneficial use within a reasonable time; subject, however, to all earlier priority rights of others and to the integration and tabulation by the Division Engineer of such priorities and changes of rights in accordance with law, and further subject to the terms and conditions of the Stipulation as set forth in paragraph 11 above. The water right granted herein to the Grand Junction 22 Road Pump and Diversion Station is subordinate to the water right granted to the Carver Ranch Pipeline which Application is pending before this Water Court, *in Case No. W-3708.*


Application for a Quadrennial Finding of Reasonable Diligence shall be filed in August of 1983 and in August of every fourth calendar year thereafter so long as claimant desires to maintain this conditional water right or until a determination has been made that this conditional water right has become an absolute water right by reason of the completion of the appropriate

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk and shall become effective upon such filing, subject to Judicial review pursuant to Section 37-92-304 C.R.S. 1973.

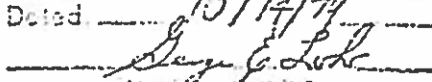
It is further ORDERED that a copy of this ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Done at the City of Glenwood Springs, Colorado, this 31<sup>st</sup> day of August, 1979.

BY THE REFEREE:

  
Water Referee  
Water Division No. 5  
State of Colorado

No protest was filed in this matter.  
The foregoing ruling is confirmed  
and approved, and it shall be the  
Judgment of this Water Court.

Dated 10/14/74  
  
Water Referee

SL-B

Application No. 37CW191

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RULING OF REFEREE

---

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO, IN THE COLORADO RIVER, IN MESA COUNTY

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The above entitled Application was filed on August 27, 1987, and was referred to the undersigned as Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on the 10th day of September, 1987, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969.

And the undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true and having become fully advised with respect to the subject matter of the Application does hereby make the following determination and Ruling as the Referee in this matter, to wit:

1. The statements in the Application are true.
2. The name of the structure is Grand Junction 22 Road Pump and Diversion Station.
3. The name and address of the Claimant: City of Grand Junction, Colorado; 250 North Fifth Street; Grand Junction, Colorado 81501.
4. The source of the water is the Colorado River and discharges from waste and other treatment facilities operated by the Applicant.
5. The point of diversion is located in the NW1/4SW1/4 of Sec. 36, T. 1 N., R. 2 W. Ute Meridian, at a point 3803.14 feet S. and 3147.52 feet W. of the NE Corner of said Sec. 36.
6. On August 31, 1979, in Case No. W-3681, the Water Referee for Water Division No. 5 awarded to Grand Junction 22 Road Pump and Diversion Station, a conditional water right for 40.0 cubic feet of water per second of time, to be used for irrigation, municipal, domestic, and replacement and exchange purposes, with appropriation date of July 1, 1976. The Claimant was directed to file an Application for Quadrennial Finding of Reasonable Diligence in the development of this conditional water right in August of 1983 to maintain said conditional water right in full force and effect. This Ruling of Referee was confirmed and made a Decree of Court on October 14, 1979.
7. On August 27, 1987, the Applicant filed in Water Court for Water Division No. 5 an Application to Make Absolute part of a conditional water right in which it is requested that 1.5 c.f.s. of the 40.0 c.f.s. previously awarded conditionally to Grand Junction Road 22 Pump and Diversion Station be made absolute and unconditional for irrigation purposes. The Applicant, also, requests a Quadrennial Finding of Reasonable Diligence in the development of the remaining 40.0 c.f.s. for said decreed uses.

54 B

(VIII-1987)

City of Grand Junction 87CW191

Ruling of Referee

Page 2

In support of this request, the Applicant states that 1.5 c.f.s. has been pumped to the City's Nursery, and the Claimant has submitted a detailed outline of the work performed and the expenditures made during the last quadrennial diligence period toward the development of this conditional water right.

The Referee finds that 1.5 c.f.s. of the 40.0 c.f.s. previously awarded conditionally to Grand Junction Road 22 Pump and Diversion Station has become an absolute water right for irrigation purposes by reason of completion of the appropriation.

Also, the Referee, having examined the information submitted by the Applicant, and having completed the investigations necessary to make a determination in this matter, does find that the Claimant has shown reasonable diligence in the development of the remaining proposed appropriation of the 40.0 c.f.s. of time conditionally awarded to Grand Junction Road 22 Pump and Diversion Station; and therefore concludes that the above entitled Application should be granted, and the conditional water right be continued in full force and effect.

Application for a Quadrennial Finding of Reasonable Diligence shall be filed in August of 1991 and in August of every fourth calendar year thereafter so long as the Claimant desires to maintain this conditional water right or until a determination has been made that this conditional water right has become an absolute water right by reason of the completion of the appropriation.

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 December 9, 1987

BY THE REFEREE:

Copy of the foregoing mailed to all  
Council of record by state  
Div. Engineer

12-9-87  
*Nancy Bailey*

*Ray D. White*  
Water Referee  
Water Division No. 5  
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 January 1, 1988

1-7-88  
*Nancy Bailey*

*[Signature]*  
Water Judge

*File*

DUFFORD, WALDECK, MILBURN & KROHN

ATTORNEYS AT LAW

900 VALLEY FEDERAL PLAZA

P. O. BOX 2188

GRAND JUNCTION, COLORADO 81502-2188

TELEPHONE (303) 242-4614

TELECOPIER (303) 243-7738

October 29, 1991

D. J. DUFFORD  
OF COUNSEL

WILLIAM G. WALDECK  
OF COUNSEL

BETTY C. BECHTEL  
WILLIAM H. T. FREY  
ELIZABETH K. JORDAN  
WILLIAM M. KANE  
RICHARD H. KROHN  
LAIRD T. MILBURN  
LINDA E. WHITE

STEPHAN B. SCHWEISSING



HAND DELIVERY

Gregory O. Trainor  
City of Grand Junction  
250 North 5th Street  
Grand Junction, CO 81501

Re: Water Right Decrees of the City of Grand Junction

Dear Greg:

Enclosed are two decrees to add to the notebooks (Vol. 1 & 2) we prepared for you which are a compilation of all the water rights owned by the City of Grand Junction. They are:

1. Findings, Conclusions and Judgment dated April 1, 1970 pertaining to the Hallenbeck Reservoir. This has been added as Item No. 16-B.
2. Order dated June 1, 1916 for 70.8 a.f. of water awarded to the Cliff Lake Reservoir. This has been added as Item No. 51-B.

If you have any questions about this, please don't hesitate to call me.

Sincerely,

*Carol Graves Hill*  
Carol Graves-Hill, Secretary to  
D. J. DUFFORD

Enclosure

RESERVOIR CREEK WATER SHED

RESERVOIR NO. 1

PRIORITY NO.

CLIFF LAKE RESERVOIR

Claimed by James Nelson.

Said reservoir is located on the Northwest quarter of the Southeast quarter of Section 5, in Township 12 south, of range 97 west, of the 6th principal meridian. Its area is ten acres, and its capacity is 70.8 acre feet.

Work was commenced on said reservoir on September 1st, 1894, and was prosecuted with reasonable diligence to completion.

Said reservoir derives its supply of water from the water shed of Reservoir Creek.

The water impounded in said reservoir is drawn off through an outlet ditch about one half mile in length and emptied into Whitewater Creek, out of which it is diverted and used to supplement other priority water in the irrigation of several hundred acres, of land, in the ratio of .018 of a cubic foot per second, per acre of land, all of which land has been, with reasonable diligence, so irrigated.

WHEREFORE IT IS ORDERED AND DECREED that said reservoir is entitled to be filled to its maximum capacity of 70.8 acre feet, as RESERVOIR PRIORITY NO. ONE within Reservoir Creek Water shed;

PROVIDED: That the water so impounded and used shall not, together with other priority water, in the aggregate, exceed the ratio of .018 of a cubic foot per second, per acre of land, for the land therewith irrigated.

DONE IN OPEN COURT THIS FIRST DAY OF JUNE A. D. 1916

Thomas J. Black

JUDGE

*Note This page is  
in place*



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IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO  
Civil Action No. 16632

THE CITY OF GRAND JUNCTION,  
COLORADO, a Municipal  
corporation, and STADELMAN  
HEREFORD RANCH, INC.,  
a corporation,  
  
Plaintiffs,  
  
vs.  
  
C. V. HALLENBECK, THE  
JUNIATA RESERVOIR ENLARGED,  
INC., a corporation, and  
JUNIATA RESERVOIR COMPANY,  
a corporation,  
  
Defendants.

FINDINGS  
CONCLUSIONS  
AND  
JUDGMENT

This matter came on for trial first, June 9, 1967, again on two dates in 1968, and last on July 1 and 2, 1969 with briefs and appearances submitted until the eleventh of September. The stadelman Hereford Ranch, Inc., a corporation, appeared but its issues on damages were deferred. The City of Grand Junction, a municipal corporation, hereinafter referred to as City, appeared by its agents and the firm of Dufford, Ruland & Williams, its attorneys. The defendant, Clyde Hallenbeck, was dismissed from the suit. The defendant C. V. Hallenbeck, hereinafter referred to by his last name, appeared in person and by his attorney, William G. Waldeck, Esq. The Juniata Reservoir Enlarged, Inc., a corporation, and The Juniata Reservoir Company, a corporation, were joined but did not participate in the trial. John P. Raber, Katheryn J. Raber, Wilbur J. Raber, Winfred K. Raber

and John Grounds have all entered appearances and consented to the jurisdiction of the Court as to equitable relief concerning The Juniata Reservoir Enlarged, Inc.

Each issue will be treated separately with Findings and Conclusions.

I

Findings as to filling rights of Hallenbeck Reservoir:

1. The City runs water to Hallenbeck Reservoir in filling its storage decree through Highline Ditch, Juniata Ditch, Juniata Ditch First Enlargement and Juniata Enlarged Reservoir as a conduit for <sup>decree N. N. E. 8/24/10</sup> 863.097 a.f. of water. The City runs North Fork direct flow water through the North Fork Ditch and paramount decree direct flow water from Kannah Creek through the bypass pipeline, all into Hallenbeck Reservoir. The City sometimes runs mountain top storage from reservoirs both on North Fork and Kannah Creek down to Hallenbeck Reservoir for further transmission to the City customers below the microstrainer. The microstrainer is fed by a pipeline, being the only outlet facility used from Hallenbeck Reservoir.

2. The past practice of the City has been to use Hallenbeck Reservoir to accommodate all the above varieties of water in different and comingled manner. The proof fails to show in any way that the City has kept records which can be examined to label the various types and volumes of water in Hallenbeck Reservoir at any one time. Nor has Hallenbeck kept such records. The water on occasion has been conveyed through Hallenbeck Reservoir as a conduit with the discharge to the microstrainer being at the same rate as the inflow to Hallenbeck Reservoir from North Fork Ditch or the by pass pipeline. Again the water has been temporarily stored in Hallenbeck Reservoir which was used as a regulation basin for periods no longer than 24 hours. Again Hallenbeck Reservoir has been

used for lengthier storage of days or months.

3. By its storage decree Hallenbeck Reservoir is in a depression tributary to North Fork of Kannah Creek. Use of Hallenbeck Reservoir at the time of its construction and decree was for traditional agricultural purposes by filling in the spring run off and storage until needed in late summer for crops.

4. The evidence proved that the level of Hallenbeck Reservoir oftentimes rises when it is not receiving water from its decreed filling ditch rights. There was no proof to show that the rising level of Hallenbeck Reservoir in 1967, 1968 and 1969 was either due to storage of direct flow water, or to transfer down stream of upstream storage, or to free water in 1969 not called for by any others. Mr. Wing testified at the 6-9-67 hearing that the North Fork Ditch ran both 1.5 c.f.s. of direct flow and Bolen and other reservoir storage. Also he stated that through the by pass pipeline came both paramount decree direct flow and Carson Lake and other reservoir storage. The Court viewed the recorder on the by pass pipeline and Mr. Wing's testimony revealed a recorder on North Fork Ditch. No readings were introduced by either party to show the precise source which filled or partially filled Hallenbeck Reservoir in a particular year. Hallenbeck at the 4-19-68 hearing testified that Hallenbeck Reservoir historically filled in winter from excess water in Kannah Creek though its decree Exhibit I doesn't so indicate.

## II

### Conclusions as to filling of Hallenbeck Reservoir

1. Hallenbeck Reservoir is the usual reservoir with a filling right for <sup>decreed 7/11/60</sup> storage of 863.097 a.f. It can have but one fill per year and when it spills it must cease storage

in favor of junior appropriators, including Juniata Enlarged Reservoir and others, *Holbrook v. Ft. Lyon*, 84 Colo. 174, 269 Pac. 574 (1928), *Windsor Reservoir v. Lake*, 44 Colo. 214, 98 Pac. 729 (1908).

2. It is necessary that waters of different decrees in Hallenbeck Reservoir be separately accounted for as they are governed by different rules of law. It is incumbent on the City to operate its recorders so that water officials can differentiate and turn water from the City to junior priorities when pertinent.

3. In addition to the filling right, the City may use Hallenbeck Reservoir as a conduit, with equal inflow and outflow in time and volume, from its Kannah Creek diversions under any of its direct flow decrees in order to transport the water to the microstrainer, see *Denver v. Northern Colo.*, 130 Colo. 375 at page 388, headnote 8, 276 P. 2d 992 at page 999, headnote 6 (1954). Likewise, with North Fork direct flow water. The only limitation in this conduit use is the amount in the combined direct flow decrees and the size of the flow-line through the microstrainer below Hallenbeck Reservoir. This use of Hallenbeck Reservoir is precisely similar to uses of Dillon Reservoir in *Denver v. Northern Colo.*, *Supra*. There Denver as claimant received a direct flow decree as limited by the size of its ditch, being in fact a large tunnel. Denver was denied the right to ever temporarily store a part of its requested direct flow (in excess of the size of its ditch or tunnel of 788 c.f.s.) in the Dillon Reservoir which it wanted to use as a regulating basin. When the City has'nt use for its full flow decrees or a pipeline large enough to receive it, then the excess water can not be stored in Hallenbeck Reservoir, see *Greeley v. Farmers*, 58 Colo. 462, 146 Pac. 247

(1915) and Handy Ditch v. Greeley, 86 Colo. 197, 280 Pac. 481 (1929).

4. This Court agrees that water once diverted for a beneficial use under a priority becomes a possession, under Brighton v. Englewood, 124 Colo. 366, 237 P. 2d 116 (1951). The City can not have a beneficial use within Hallenbeck Reservoir, both for a full storage right and for use as a regulating basin for direct flow additional water at exactly the same time, Denver v. Northern Colo. 130 Colo. 375, 276 P. 2d 992 (1954). Water decreed for direct flow can not be stored when a junior priority could use it, Handy Ditch v. Greeley, 86 Colo. 197, 280 Pac. 481 (1929). The level of Hallenbeck Reservoir can not be allowed to rise from storage of direct flow decrees, other than its decreed filling right once per year. It should be enjoined from such practice of the past from either Kannah Creek or North Fork. Under the Decree of No. 15487 it can beneficially use North Fork water alternately elsewhere. The water officials are charged with preventing diversions of direct flow for storage except for the one decreed reservoir fill per year. Violations should be dealt with appropriately under the penalty statutes.

5. Decreed storage in mountain top reservoirs, once captured, becomes a City possession. When there is a space open in Hallenbeck Reservoir, the City may move this possession downstream into Hallenbeck Reservoir and thereby use Hallenbeck Reservoir as a regulating basin or for long term retention. This is not a charge against the annual filling right of Hallenbeck Reservoir. Note that this was expressly not an issue in Denver v. Northern Colo., 130 Colo. 375, at page 388, 276 P. 2d 992, at at page 999 (1954). It is incumbent on the City to account for such uses of Hallenbeck Reservoir

by appropriate record keeping.

6. Whether Hallenbeck Reservoir be classed as an "on channel" or an "off channel" reservoir should make no difference. It has some "off channel" characteristics, but where it has an annual filling right and on top of that it is used as a regulating basin for direct flow decrees it violates the same rules as for an "on channel" reservoir like Dillon Reservoir did in *Denver v. Northern Colo.*, *Supra*. *Seven Lakes v. New Loveland*, 40 Colo. 382, 93 Pac. 485 (1907) seems to aid the City, but as an authority it has not been followed since 1914 and appears distinguishable because of the specific finding of no increased burden on the stream or is inferentially overruled by many later cases, such as *Denver v. Northern Colo.*, *Supra*.

### III

#### Findings as to Corporate Deadlock

1. The Articles of Incorporation, Exhibit W, and the bylaws, Exhibit VIII of Juniata Reservoir Enlarged, Inc., are its governing documents with particular reference to Articles II and VII of the former and Sections V, VI, XI, XIV, XIX, XXII, XXIII, XXIV, and XXV of the latter.

2. The minutes, Exhibit VII, reflect that on 6-4-63 the 3 directors elected were Hallenbeck, John Raber and Wilbur Raber. There was no election of directors or officers in the only 1964 meeting on 6-6-64. Again in 1965 and 1966 the minutes do not reflect any attempt to elect a new board of directors or officers.

3. 1-3-67 John Grounds, a stockholder, gave a proxy to the City Manager or his designees. The proxy, page 44 of Exhibit VII, allows the Manager to vote all Ground's shares or "for any purposes which I (Grounds) might personally vote or



or exercise rights with respect to said shares." 3-4-67 Wilbur Raber resigned as director of Juniata Reservoir Enlarged, Inc. The proxy and resignation are in the minutes by the meeting of 3-13-67, designated as an annual meeting of the corporation stockholders. Juniata Ditch Co. and Juniata Ditch 1st Enlargement met jointly with the corporation the same date. More than a majority of corporate stock was represented, Section XIX, and Ground's proxy was recognized as presented by the City. The minutes recite all stockholders of all 3 entities present, recognizing the Raber proxy also, though not incorporated in the minutes yet. Without the Raber proxy a majority of stock was still present. Wilbur Raber's resignation was formally accepted. Hallenbeck was elected President, Ragan, Secretary-Treasurer, and Gray, Vice President. At that time all assessments were paid.

4. Before the meeting of 6-30-67 the Raber proxy appears in the minutes containing the same language as the Ground's proxy. June 27, 1967 the City made demand by letter, Exhibit VII page 50, for election of directors and officers at the meeting of 6-30-67.

5. The meeting of 6-30-67 failed to elect a third director from nominations made. The minutes expressly recognize the officers elected 3-13-67. Hallenbeck and Gray are referred to in the capacity of directors. Hallenbeck at the trial several times admitted that Gray was elected a director, though he was not consistent in that. The bylaws had not yet been found to be studied by either side and no one proposed for the third directorship was eligible under the terms of the bylaws. The first two meetings of 1967 show confusion between the 3 entities and their common operation, Juniata Reservoir Enlarged, Inc., Juniata Ditch Co., and Juniata Ditch First

Enlargement. However, this was the adopted method of operation consistently from 1963 till 1967. At this meeting a tie vote occurred on whether to complete Juniata Enlarged Reservoir.

6. The meeting of 9-23-67 and notice thereof showed for the first time that the bylaws had been found and some compliance with them as to notice is apparent. A quorum of directors (regardless of recognizing Gray as a director) did not attend the 9-23-67 meeting. A majority of the stock was not represented at the meeting.

7. No meetings were held in 1968.

8. Before the 3-15-69 meeting the Hallenbeck proxies show up in the minutes. No directors or officers were elected as a tie vote occurred. A special meeting or a continuation meeting was held 4-26-69 or 4-28-69 as the minutes vary. Assessments were considered but failed from a tie vote.

9. Meetings were attempted 4-28-69, 5-29-69 and 6-17-69. At the 4-28-69 meeting the President, acting alone, appointed directors to fill purported vacancies. Neither a majority of outstanding stock at any of these meetings nor was a quorum of directors present if Mr. Gray was a director.

10. Hallenbeck has many historical, family and financial ties to Purdy Mesa, though he physically resides consistently in Delta County where he votes, owns property, and licenses his car. Gray resides in the City of Grand Junction whose water system distributes water from Juniata Enlarged Reservoir.

11. Juniata Reservoir Enlarged, Inc. is not insolvent and its bills have been paid except sums due to Hallenbeck for work done on raising the dam for Juniata Enlarged Reservoir, roadwork, etc. Disputes arise periodically between City and Hallenbeck over distribution of water from Juniata Enlarged

Reservoir, though these distributions have not been fully stymied.

#### IV

##### Conclusions as to Corporate Deadlock.

1. The 1963 election of directors was valid. Though directors' terms are 1 year, Section XX, the Court concludes that under Section V officers must be directors and that officers do hold over till successors are elected. Therefore, Hallenbeck, Wilbur Raber and John Raber remained directors at least through 1966.

2. The Grounds and Raber proxies are of broad enough language to allow the proxy holder the right to act on the board of directors as Grounds and Raber could have done. Mr. Gray's election as vice president of Juniata Reservoir Enlarged, Inc. on 3-13-67 was also his election to the board of directors, Section V of bylaws. This was recognized by Hallenbeck in his testimony at the trial, and by the minutes of the next meeting on 6-30-67. Likewise, Hallenbeck's election was valid. Mr. Ragan's election was not valid as he was not a stockholder of Juniata Reservoir Enlarged, Inc., Section XXII. Ragan was not recognized as a director at the next meeting of 6-30-67. Wilbur Raber's resignation was present but not required since it was an annual meeting and election of directors was in order, Section XX.

3. At the 9-23-67 meeting no business could be conducted since there was no quorum of directors, Section XIV. Since there was no 1968 meeting, Hallenbeck and Gray, as directors and officers, were held over in their positions, Section V.

4. In 1969 at the March 15 meeting no directors were elected because of the tie vote, and Hallenbeck and Gray

held over, If Gray were not a director, there would have been no quorum to conduct directors' business, Section XIV. The assessments attempted could not be valid, Section XXIII, since the meeting was after April 1 and director action only could make assessments.

5. At the 4-28-69 meeting Hallenbeck could not validly act alone as he had no quorum of directors to do business, Section XIV, see Paxton v. Heron, 41 Colo. 147, 92 Pac. 15 (1907). Nor was a majority of outstanding stock represented at the meeting, Section XIX. The appointment of directors on 4-28-69 being invalid, the actions of the directors on 6-17-69 and 5-29-69 were invalid.

6. There is no abuse apparent to the needs of the corporation in ruling that both Hallenbeck and Gray are eligible for directorships. It is noteworthy that no significant corporate action was taken after 1-3-67 at any time in which Gray's vote as a director was critical, when it is remembered that otherwise Hallenbeck alone could not act since a quorum was absent.

7. The minutes and testimony is replete with examples of tie votes, invalid corporate action and the need for a break in the deadlock of corporate business, and particularly, to elect the third member to the board of directors after John Raber resigned. Valid assessments are necessary and the status of Hallenbeck's money claims against the corporation needs clarifying. With director approval there is no breach of a fiduciary obligation for Hallenbeck to have performed work for the corporation or become its creditor, Section VI.

8. The Court concludes that it must interfere to appoint a third member of the directors or a general receiver, but that the least equitable jurisdiction interference is

best, Eureka v. McGowan, 72 Colo. 402, 212 Pac. 521 (1922).

With the hoped for clarification of past corporate acts given in this opinion, a temporary third director may be sufficient to solve the ills.

V

Findings on estoppel as to the uses of Hallenbeck Reservoir.

1. Reference is made in this Court's denial of injunction order of 6-16-67 to possible estoppel concerning certain uses of Hallenbeck Reservoir. This Court finds that Hallenbeck, personally, and the other owners of Juniata Enlarged Reservoir full well knew the City was using Hallenbeck Reservoir as a regulating basin for direct flow waters - see minutes of meeting of meeting of 6-8-64 and again 4-16-65 and that in 1964 it was negotiated between City and Hallenbeck. Between dates of construction of the bypass pipeline and North Fork Ditch as late as 1960 and until 1964, there is no evidence of Hallenbeck's position toward acquiescence in City use of Hallenbeck Reservoir.

2. Exhibit T, however, is quite revealing of Hallenbeck's unfair and inconsistent positions. Page 5 of the letter of 1-17-53 shows Hallenbeck's attitude in trying to induce the City to purchase Hallenbeck Reservoir and in 1954 his inducement worked. Therein he urged City that Hallenbeck Reservoir could be used by City to "temporarily hold that portion of the City's direct flow not required by the City at a time when the full flow is not required by the City." Hallenbeck's attitude obviously changed when the shoe got on the other foot and could legally complain in this suit of his previously recommended action.

## VI

Conclusions on estoppel as to the uses of Hallenbeck Reservoir.

1. Though Hallenbeck should personally be estopped from complaining of any improper temporary storage of direct flow water by City in Hallenbeck Reservoir, the other parties and corporations, and particularly, the water officials can not be so estopped on the facts in this case. They must enforce the water laws regardless of Hallenbeck's individual estoppel.

## VII

Findings re: Stock Water Decree

1. The 665 a.f. of the last absolute Decree to Juniata Enlarged Reservoir was designated for winter stock water and domestic uses. Extensive Exhibits were introduced on the testimony given in the adjudication proceeding. Hallenbeck, Raber and Crosswhite all testified in the 1960 hearings. Hallenbeck testified that the water was used for irrigation. Raber extensively testified that it was winter stock water up to 665 a.f. Crosswhite testified that it was for stock and irrigation water being used outside the Kannah Creek basin in Whitewater Creek.

2. After the Decree, there is evidence of the stock water use and for hold over stock water. Stock water runs never reached 665 a.f. in a given year after the Decree and amounts were held over. No concerted effort was made and placed in evidence to show a separated and cumulative accounting to stockholders for calls on this part of the Decree. Crosswhite's part of the water passed to Grounds and then to the City through transfers of Juniata Reservoir Enlarged, Inc. stock or by options and proxies thereon.



3. The bylaws of Juniata Reservoir Enlarged, Inc., Section XXIV, state that the stock represents water rights and that transfer of the stock carries all water rights represented. Section XXV provides available water may be drawn from the reservoir pro rata with stock owned.

#### VIII

##### Conclusions re: Stock Water Decree

1. The testimony of the claimants became merged in the Decree for 665 a.f. domestic and winter stock water. City's reliance on Arnold v. Roup, 61 Colo. 316, 157 Pac. 206 (1916) is improperly placed considering that the Court's restriction on "change" which may injuriously affect others, page 325, and on "use" to claimant's necessities for irrigation, page 326. Hallenbeck's assertion that Westminster v. Church, Colo. , 445 P. 2d 52 (1968) has no relevancy is also improper. This Court concludes that that case is controlling here. Westminster, a municipality, purchased storage rights from prior irrigation users. Westminster changed the character of use to municipal and the trial Court tried to restrict the use as historically used for irrigation. The Supreme Court in its latest pronouncement in this area reversed the trial court and held storage rights could not be limited to historical use. The Supreme Court described it as one of several cases where municipalities purchase agricultural water rights intending to devote same to domestic and municipal purposes. It holds the direct flow rights are restricted and the storage rights are not. In the Westminster case junior priorities were contesting and failed, for stronger reason here a co-owner would fail.

2. Hallenbeck's assertion that ownership of stock does not control the water is refuted by the express provisions

of the bylaws noted in the findings. The owners of the corporation made the shares alienable and had to foresee such possibilities. Historically as to Crosswhite, 1/4 of the water was not to be used on Purdy Mesa but in Whitewater Creek basin and without a return flow to Kannah Creek. This Court does not know how this water was transmitted to Whitewater Creek, but the adjudicating court was satisfied it was used there.

3. Where Hallenbeck's position for need for 665 a.f. of stock water rests on historical use not in the year of diversion from the stream but for hold over insurance against a drought year, this Court has serious doubt that use under the decree is based upon a beneficial use.

#### IX

Findings and Conclusions as to hold over storage.

1. As to "hold over" procedures the Court finds the issue moot as the Juniata Reservoir Enlarged filled in 1969 and all parties agree no hold over can apply after the reservoir fills. As to future policy, the parties can apparently agree as shown by the briefs. The proviso on agreement in paragraph 4, page 19 of Hallenbeck's brief is filled when the measured winter stock water runs of the past have not exceeded his one-half of the 665 a.f. 331 a.f. was run in the winter of 1968 - 1969, and 308 a.f. run in winter of 1967 - 1968. If hold over water is in fact held over (when the reservoir doesn't fill) it must be accounted for cumulatively between the owners from one complete fill of the reservoir to the next.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the City be enjoined from storage of any direct flow decreed water in Hallenbeck Reservoir except

as decreed for its one filling right.

2. That the City may use Hallenbeck Reservoir as space permits as a regulating basin or as a storage facility for water previously stored in its upstream reservoirs.

3. That the City may use Hallenbeck Reservoir as a conduit for its direct flow decrees, outflow and inflow must be equal in time and volume.

4. That the actions of Juniata Reservoir Enlarged, Inc. at the meetings of 9-~~28~~<sup>28</sup>-67, <sup>M.M.E. 2/21/70</sup> 4-28-69, 5-29-69 and 6-17-69 were invalid.

5. That the existing directors on the last date of trial were C. V. Hallenbeck and Richard Gray, with the third directorship vacant.

6. That the corporate deadlock, existing since 3-15-67, imperiling the property rights of all stockholders as to water distributions and completion of corporate purposes, requires an equitable order to break such deadlock.

7. The City may use its share of the 665 a.f. of Juniata Enlarged Reservoir winter stock water decree for beneficial municipal purposes as between the parties.

IT IS FURTHER ORDERED that the costs of this action be borne by each side as expended by them.

Done in open court this 1st day of April, 1970.

BY THE COURT:

  
Judge

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO

Civil Action No. 16632

THE CITY OF GRAND JUNCTION, )  
COLORADO, a Municipal corpor- )  
ation, and STADELMAN HEREFORD )  
RANCH, INC., a corporation, )

Plaintiffs, )

vs. )

C. V. HALLENBECK, THE JUNIATA )  
RESERVOIR ENLARGED, INC., A )  
corporation, and JUNIATA RESERVOIR )  
COMPANY, a corporation, )

Defendants, )

**FILED**  
IN DISTRICT COURT  
MESA COUNTY, COLORADO  
APR 7 - 1970

MOTION FOR *Ben O. Fisher*  
CLERK

EXTENSION OF TIME

Defendant, C. V. Hallenbeck, respectfully moves the Court for an extension of time in which to file a Motion or Motions to amend or modify the Findings, Conclusions and Judgment entered herein or for a new trial and as grounds therefor, Defendant respectfully submits to the Court that his attorney of record in the case, due to numerous prior commitments, will be unable to study and analyze said Findings, Conclusions and Judgment in sufficient time to file a Motion or Motions of the type indicated within the time provided by the Rules of Civil Procedure.

DATED this 6th day of April, 1970.

*William G. Waldeck*  
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C. V. Hallenbeck

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