

WTR98FPR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: WATER DECREE

NAME OF AGENCY OR CONTRACTOR: DISTRICT COURT, WATER DIVISION 4, COLORADO

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: FLOWING PARK RESERVOIR,  
CASE NO. 96CW271

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1998


EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

**GRIMSHAW & HARRING**

A PROFESSIONAL CORPORATION  
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CC: *T GARY F*  
  
*Colly*

Wayne B. Schroeder  
(303) 839-3810

May 4, 1998

Gregory O. Trainor  
Utilities Manager  
City of Grand Junction  
250 North 5th Street  
Grand Junction, Colorado 81501

RE: Application of City of Grand Junction, Case No. 96CW271, Water Division 4  
(Flowing Park Reservoir)

Dear Greg:

It does not appear from our file that I have sent a signed decree to you. One is enclosed for your file. Judge Brown entered it October 24, 1997. It a change of water right for Flowing Park Reservoir to add the irrigation of lands within the City of Grand Junction's service area in the Kannah Creek Basin to the previously decreed use and place of use of the 782.17 A.F., which has been and may continue to be used in Grand Junction. Our file for this application will now be closed.

A copy has also been sent to Tom Zancanella.

Sincerely,

GRIMSHAW & HARRING

*Wayne*

Wayne B. Schroeder

WBS/lag  
cc: Tom Zancanella (w/encl.)  
Dan E. Wilson  
7884.134

**DATE OF MAILING**

1 9-26-97

Filed in The District Court  
Water Division Four

DISTRICT COURT, WATER DIVISION 4, COLORADO

2 1997

CASE NO. 96CW271

Kay Phillips, Clerk

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**FINDINGS AND RULING OF REFEREE AND JUDGMENT AND DECREE**

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**CONCERNING THE APPLICATION FOR CHANGE OF WATER RIGHTS OF THE CITY OF GRAND JUNCTION, IN MESA COUNTY, COLORADO**

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Applicant, City of Grand Junction, 250 North 5th Street, Grand Junction, Colorado 81501, by its attorney, Wayne B. Schroeder, Grimshaw & Harring, P.C., 1700 Lincoln Street, Suite 3800, Denver, Colorado 80203, requests a change of water right by application filed December 23, 1996.

**FINDINGS OF FACT**

1. All notices required by law of the filing of this application have been given. The water referee has jurisdiction of this case. The time for filing statements of opposition has expired. One statement of opposition was timely filed by Purdy Mesa Livestock Water Co.
2. Name and address of applicant:  

City of Grand Junction  
Attn: Gregory O. Trainor, Utilities Manager  
250 North 5th Street  
Grand Junction, Colorado 81501-2668,  
Telephone: (970) 244-1568
3. Decreed name of reservoir for which change is sought.
  - A. Flowing Park Reservoir
4. From previous decree:
  - A. Flowing Park Reservoir, Reservoir No. 71, was decreed by the Mesa County District Court, Water District No. 42, on July 25, 1941, in Case No. 5812.
  - B. Legal description of reservoir: The initial point of survey of the said reservoir is situated at a point whence the southeast corner of Section 34, Township 12 South, Range 96 West of the 6th P.M., in said Water District No. 42, bears north

71° 56' East a distance of 355 feet.

- C. Sources: Sheep Creek and "melting snow and water and seepage from lands lying above the reservoir," per the decree in Case No. 5812.
- D. Appropriation date: November 27, 1911.
- E. Amount: 782.17 A.F.
- F. Historic Use:
  - (1) The water has been carried through the reservoir outlet into Kannah Creek and thence into the waterworks system of the City of Grand Junction, where it has been used for all municipal purposes.
  - (2) Some of the water was used historically to irrigate lands within Kannah Creek Basin.
- 5. Proposed change: The applicant seeks to add the irrigation of lands within the Kannah Creek Basin in Water Division 4 to the decreed use and place of use of the 782.17 A.F. in Water Division 5.
- 6. Names and address of owner of land on which structure is located:

United States Forest Service  
764 Horizon Drive  
Grand Junction, Colorado 81506.
- 7. The reservoir was permitted on April 17, 1908, under the Act of May 11, 1898, and the Act of March 3, 1891 (Montrose 03594).

#### RULING

- 8. Appropriators from the Colorado River have no vested right to the continuation of importation of foreign water which the City of Grand Junction has brought from the Gunnison River Basin in Water Division 4 to the Colorado River Basin in Water Division 5. See City of Denver v. Fulton Irrigating Ditch Co., 179 Colo. 47, 53, 506 P.2d 144, 150 (1972)(citing Brighton Ditch Co. v. City of Englewood, 124 Colo. 366, 377, 237 P.2d 116, 122 (1951)). As a matter of law, no injury to appropriators from the Colorado

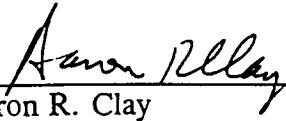
River can result from the requested change of water rights. See Fulton and Brighton Ditch Co., supra.

9. Applicant is hereby granted a change of water right to add the irrigation of lands within the City of Grand Junction's service area in the Kannah Creek Basin to the decreed use and place of use of the 782.17 A.F., subject, however, to the term and condition in the next paragraph.
10. Applicant will not use water from Flowing Park Reservoir for irrigation purposes to the extent such use would interfere with Applicant's ability to supply water for municipal, household, domestic and related purposes from the Applicant's raw water system to its customers and users (including without limitation Objector Purdy Mesa Livestock Water Company) under any existing agreements or water use policies.
11. Applicant shall notify this Court of any change in mailing address. Upon the sale or other transfer of this 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 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.

12. The Court shall retain jurisdiction over this case for a period of two years to reconsider the question of injury to the vested and conditional rights of others.

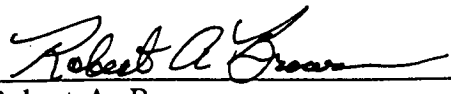
Dated this 26<sup>th</sup> day of September, 1997.

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

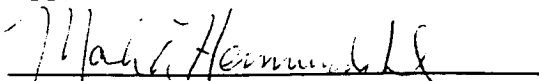
### JUDGMENT AND DECREE

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 this 24<sup>th</sup> day of October, 1997.

  
\_\_\_\_\_  
Robert A. Brown  
Water Judge  
Water Division

Approved as to form:

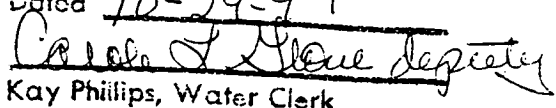
  
\_\_\_\_\_  
Mark A. Hermundstad  
Williams, Turner & Holmes, P.C.  
200 N. 6th Street  
Grand Junction, Colorado 81501  
(970) 242-6262

Attorneys for Purdy Mesa Livestock  
Water Co.

  
\_\_\_\_\_  
Wayne B. Schroeder  
Grimshaw & Haring, P.C.  
1700 Lincoln Street, # 3800  
Denver, Colorado 80203  
(303) 839-3800

Attorneys for City of Grand Junction

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

Dated 10-29-97  
  
\_\_\_\_\_  
Kay Phillips, Water Clerk