

DISTRICT COURT, WATER DIVISION 2, COLORADO

Case No. 92CW67 (C/R 90CW18)

HW 10 '93 AM

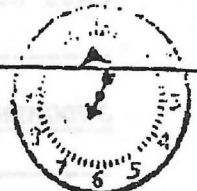
RULING OF REFEREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

GRAND WEST PROPERTIES, INC.

IN LAKE COUNTY

of the Clerk
of Division
Colorado



M. Marshall
CLERK

Pursuant to Order of Referral filed and entered in the above case on August 28, 1992, the undersigned having investigated the Matter of the Application on file herein, hereby makes the following Findings and Ruling thereon:

FINDINGS OF FACT

1. That the said Application was filed on August 28, 1992.
2. That the Water Court caused publication of said filing as provided by statute; that publication costs have been paid; that the time for filing Statements of Opposition to the Application expired on the last day of October 1992; that one such Statement of Opposition was filed by Twin Lakes Reservoir and Canal Company. The Statement of Opposition filed by the State Engineer and Division Engineer Water Division 2 in 90CW18 continues in this case.
3. That this Application is for approval of an amendment to an existing plan for augmentation approved by this Court on July 20, 1990 in Case No. 90CW18. It seeks to delete approximately 419.1 acres from the original area subject to the plan for

augmentation and it seeks to add consumptive uses for in-house use for overnight accommodation, and limited outside irrigation use of approximately one-fourth acre of lawn and garden irrigation. All such additional consumptive uses will be augmented by means of the three existing shares of common stock in the Twin Lakes Reservoir and Canal Company which have been purchased and dedicated to the Division Engineer, Water Division 2 for his administration pursuant to the decree in 90CW18 and from additional shares which may be purchased and added to the plan at a later date.

4. That the new proposed legal description for the property subject to this plan for augmentation is as follows:

LAKE COUNTY, COLORADO

The following property located in T9S, R80W, 6th P.M.

Section 16: NE $\frac{1}{4}$ except S $\frac{1}{4}$ SW $\frac{1}{4}$ and except that portion of the SE $\frac{1}{4}$ located within Grand West Tract A which is an open space preserved for Grand West Estate's filing 1, as approved and platted by the Board of County Commissioners, Lake County, Colorado and filed in the Office of the County Clerk and Recorder, Lake County on January 3, 1991, Reception No. 299999.

Section 15. All that portion in the N $\frac{1}{4}$ platted as Grand West Tract B approved by the Board of County Commissioners, Lake County, Colorado and accepted for filing in the Office of the County Clerk and Recorder, Lake County, Colorado,

January 3, 1991, Reception 300000 and that portion platted as Grand West Estate's filing No. 1 approved by the Board of County Commissioners, Lake County, Colorado and accepted for filing in the Office of the County Clerk and Recorder, Lake County, Colorado, January 3, 1991, Reception No. 299998.

Section 10: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying South and West of U S Highway 24.

5. That the proposed uses of water to be augmented by this amendment and the calculations for the augmentation requirements for those uses are as follows:

A. In-house use for overnight accommodations.

Applicant intends to provide overnight accommodations and will do so by way of construction of lodges or condominium units (multi-family units) in which each unit will contain up to three bedrooms, a kitchenette and bath facilities. The number of people using each unit, each day, and the water uses for such unit would be equivalent to a single family residence. Therefore, each three bedroom unit in the overnight accommodation facilities will have a computed annual consumptive use of 0.0314 acre feet per year as per the findings in 90CW18. The Accounting

Form will identify each three bedroom unit and provide for dedication of consumptive use equal to a single family residence for such a unit.

B. Irrigation For Lawn. Applicant wishes to utilize water for lawn and garden irrigation. For this particular geographical area and the configuration of the Applicant's property and utilizing the Blaney-Criddle formula, the Court finds an average potential consumptive use of 1.49 acre feet per year, per acre. Therefore, the Applicant shall dedicate 1.49 acre feet of consumptive use per year per acre for his proposed lawn and garden. The area of lawn and garden irrigation will be measured and included in the annual consumptive use report. Applicant may dedicate additional shares pursuant to paragraph 8 hereof for additional lawn irrigation on the basis of 1.49 acre feet per year per acre consumptive use.

6. That with the addition of these two consumptive use components, a consumptive use formula for the entire plan for augmentation currently decreed in 90CW18 and this case is as follows:

$$Q = 0.0534A + 0.0183B + 0.0037C + 0.0672D + 0.0314E + 1.49F$$

Where:

- Q = Consumptive use in acre feet per year
- A = The total number of year-round single family residences
- B = The total number of vacation residences
- C = The total number of recreational vehicle spaces
- D = The number of bathhouse/laundry/commercial facilities
- E = The total number of three bedroom living units for overnight accommodation
- F = The number of acres of lawn irrigation

7. That the Annual Consumptive Use Accounting Report provided to the Division Engineer by November 30 of each year, as more specifically set forth in Finding 10 of 90CW18, shall be modified to accommodate the two new consumptive use components approved by this plan and shall be substantially in accordance with the form attached to this Ruling as Exhibit "A" and to be approved by the Division Engineer.

8. That the Applicant shall have the right to purchase and dedicate up to 7 additional shares of the capital stock of the Twin Lakes Reservoir and Canal Company to augment the depletions caused by the consumptive use of the various components set forth in paragraph 6 hereof. Such additional shares of stock shall be dedicated before consumptive use occurs at the development site in excess of the consumptive use credits for shares of Twin Lakes stock previously dedicated to the Plan. Under no circumstances may Applicant at any point in time generate more consumptive use at the development site than its currently purchased and dedicated shares

of stock allow under this Plan. For purposes of calculating the number of shares of stock to be dedicated in order to compensate for increases in consumptive use, it shall be assumed that each share of Twin Lakes stock will result in a consumptive use credit of 0.9 acre-feet from transmountain water diverted by the Twin Lakes Reservoir and Canal Company under its decrees. However, at the time each share is actually dedicated to the Plan, the Division Engineer will determine the actual consumptive use credit to be accorded under this Plan. In addition, in no event shall the Twin Lakes Reservoir and Canal Company be required to deliver to the Applicant or to the Division Engineer for use as replacement water or augmentation supply an amount of water greater than the amount of water represented by each dedicated share's prorata interest in the water diverted by the Company. In addition, before using any additional Twin Lakes Shares in this Plan, the Applicant must comply with Finding No. 11 in 90CW18, and also, as follows:

- A. Applicant shall notify the Secretary of the Twin Lakes Reservoir and Canal Company of the dedication of additional shares of stock, and shall, within 30 days after dedicating such stock, deliver to the Secretary the stock certificates for each such share for legending as required by the Company's Bylaws.
- B. The dedication of the shares shall occur by a pleading filed with this Court and sent to the Division Engineer, entitled Notice of

Dedication of Shares of Stock. The Notice shall specify a specific share number and, verify the Applicant's ownership, or perpetual right to use said share stock for this augmentation plan; commit to Applicants continued obligation to pay all assessments on the shares to Twin Lakes Reservoir and Canal Company; and dedicate the shares to the Division Engineer Water Division 2 for his administration.

C. No later than 30 days after purchase and dedication of a share of stock under this decree the stock certificate shall be delivered to the Secretary of the Company to be legended as required by the Bylaws of the Twin Lakes Reservoir and Canal Company.

D. No share of stock of the Twin Lakes Reservoir and Canal Company that is included in this augmentation plan shall be sold or transferred, except to a designated successor to the Applicant herein that certifies to the Twin Lakes Reservoir and Canal Company that the stock, after transfer, shall continue to be held and used in accordance with the terms and conditions of this augmentation plan, without prior approval of this Court.

E. The Twin Lakes Reservoir and Canal Company is not required to make any delivery of water upon the shares of Twin Lakes Reservoir and Canal Company stock included in this augmentation plan except in accordance with the provisions of its Articles of Incorporation and Bylaws, and such delivery shall be subject to all of the restrictions incorporated within those Articles and Bylaws.

F. Jurisdiction shall be retained in this Court to approve any proposed sale or transfer of any shares of the Twin Lakes Reservoir and Canal Company stock included in this augmentation plan to any party other than a designated successor of the Applicant herein that certifies that the stock shall continue to be held and used in accordance with the terms and conditions of this augmentation plan; such jurisdiction shall be invoked by motion of the Applicant with notice to all parties and to the Twin Lakes Reservoir and Canal Company.

9. That if the amended plan for augmentation described in this Ruling of Referee and the Ruling of Referee and Decree in 90CW18, is operated and administered in accordance with the provisions hereof, under the supervision and administration of the

Division Engineer, it will have the effect of replacing water in the Arkansas River system at the time, place, and in the amounts of depletion caused by the Applicant's use of water. As a result, the underground water to be diverted by Applicant at its well sites which might otherwise might be considered as appropriated and unavailable for use will be available for appropriation without adversely affecting vested water rights or conditionally decreed water rights in the Arkansas River and its tributaries.

10. That the approval or award made herein should be and is hereby made subject to reconsideration by the Water Judge on the question of injury to the vested rights of others for three years after the date of completion of the Applicant's development as provided in this decree, upon the filing of a pleading by any person claiming injury which period is necessary or desirable to preclude or remedy such injury.

11. That Stipulation for withdrawal of the Statement of Opposition of the Twin Lakes Reservoir and Canal Company has been submitted to the Court.

12. That except as specifically modified by this Ruling, the Findings of Fact set forth in 90CW18 are hereby reaffirmed.

13. Within 90 days, Applicant will transfer to Grand West Estates Owners' Association one share of the Twin Lakes Reservoir and Canal Company stock originally dedicated in 90CW18 for use by the Homeowners' Association for replacement of depletions for the consumptive use components for single family residences as set forth in 90CW18. Applicant further agrees that it will transfer

additional consumptive use replacement credit from shares of Twin Lakes Reservoir and Canal Company stock to the Homeowners' Association as necessary should the replacement credit from the Homeowners' Association share be inadequate or the consumptive use exceed the credit that is available for such uses. The Homeowners' Association shall be responsible for the dues and assessments to the Twin Lakes Reservoir and Canal Company for the share of stock transferred to it. Applicant shall endorse a copy of the share of stock by way of pleading herein when same is issued by Twin Lakes Reservoir and Canal Company.

14. That the Applicant has furnished acceptable proof as to the claim made and is entitled to the award which follows:

IT IS THEREFORE ORDERED AS FOLLOWS:

That the amendment to the plan for augmentation as set forth in the preceding Findings of Fact, be and is hereby approved.

NAME AND ADDRESS OF APPLICANT:

Grand West Properties, Inc.
c/o Edward J. Cichowitz Jr.
P.O. Box 957
Leadville, CO 80461
(719) 749-2287

IT IS FURTHER ORDERED that the Division Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced to prevent injury to vested water rights. If the Division Engineer shall determine that the replacement credit yield from the Twin Lakes Reservoir and Canal Company shares dedicated to his administration under this plan is insufficient to replace the consumptive uses of the Applicant, Applicant shall either

dedicate additional shares under the terms hereof, or reduce depletions by a reduction in usage of one or more of the consumptive use components. These provisions are in addition to those provided for in paragraph 10 of 90CW18. In no event shall Twin Lakes Reservoir and Canal Company be obligated to deliver for Applicant's use as replacement credit to the Arkansas River an amount of water greater than is represented by each share's pro rata interest in the Company's water rights.

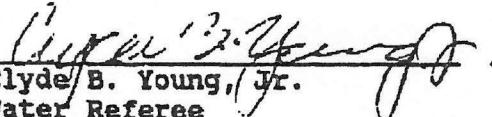
IT IS FURTHER ORDERED that except as expressly modified herein, the Findings, Orders, and Decree of this Court in Case No. 90CW18 is hereby ordered continued and in full force and effect.

IT IS FURTHER ORDERED that the award made in the amendments to this augmentation plan are hereby made subject to reconsideration by the Water Judge on the question of injury to the vested rights of others for three years after the date of completion of the Applicant's development as provided under this plan. Applicant shall give notice by way of pleading to the Court with a Certificate of Mailing to all parties of the completion of the development and that the three year retained jurisdiction period has commenced. The retained jurisdiction may be exercised the filing of a pleading by any person claiming injury which period is necessary or desirable to preclude or remedy such injury.

IT IS FURTHER ORDERED that copies of this Ruling shall be mailed as provided by statute.

Dated and filed with the Water Court this 10th day of November,
1993.

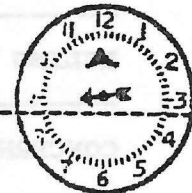
BY THE REFEREE:


Clyde B. Young, Jr.
Water Referee
Water Division 2
State of Colorado

COPY

DEC - 6 '93 AM

Filed in the County of Lake
District Court Water Division
No. 2, Section 1



DISTRICT COURT, WATER DIVISION 2, COLORADO

CASE NO. 92CW67

JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

M. M. Quinn
CLERK

GRAND WEST PROPERTIES, INC. IN LAKE County.

THE COURT FINDS That no protest has been filed to the Ruling of the Water Referee within the time provided by law, and that said Ruling should be confirmed, approved and adopted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED That the Ruling of Referee entered on November 10, 1993, be and is incorporated herein by reference and is confirmed, approved and adopted as the judgment of this Court.

Dated: December 6, 1993.

BY THE COURT:

[Signature]
JOHN R. TRACEY, WATER JUDGE

County Clerk's Note:
Document and Signatures are
copies not originals.
June Ossman, Lake County Recorder