

DISTRICT COURT, WATER DIVISION 2, STATE OF COLORADO

Case No. 90CW18

RULING OF REFEREE

Filed in the office of the
Clerk, District Court Water
Division No. 2, State of
Colorado

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:
GRAND WEST PROPERTIES, INC.
IN LAKE COUNTY

JUN 20 1990

Mansell R. Lewis

Clerk

Pursuant to Order of Referral filed and entered in the above case on February 28, 1990, the undersigned having investigated the matter of the Application on file herein, hereby makes the following findings and rulings thereon:

FINDINGS OF FACT

1. That the said Application was filed on February 28, 1990.
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 April 1990; that one such Statement of Opposition has been filed by Jeris A. Danielson, State Engineer, and Steven J. Witte, Division Engineer, Water Division 2.
3. That the original Applicant, Edward J. Cichowitz, Jr., has formed a development corporation known as "Grand West Properties, Inc.", which corporation has taken title to the augmentation water to be utilized in this plan for augmentation and will take title to the development land. Therefore, Grand West Properties, Inc. should be and is hereby substituted as Applicant

in this case since the corporation is now the real party in interest.

4. That this Application is for approval of a plan for augmentation for a recreational vehicle and campground park and a single-family residence development located adjacent to the City of Leadville, Lake County, Colorado. The development will be provided its water source from single-family residence wells and commercial/municipal type wells all to be drilled and put into service over a period of time on the development land. All water uses are to be augmented by means of three shares of common stock in the Twin Lakes Reservoir and Canal Company.

5. That the property upon which the wells will be located and augmented is an approximate 760 acres of land located in Lake County, Colorado, the legal description of which is as follows: All being in Township 9 South, Range 80 West of the 6th P.M., Lake County Colorado.

Section 16: NE $\frac{1}{4}$ SE $\frac{1}{4}$; NE $\frac{1}{4}$ except S $\frac{1}{2}$ SW $\frac{1}{4}$ thereof.

Section 15: N $\frac{1}{2}$ except NE $\frac{1}{4}$ NE $\frac{1}{4}$; NW $\frac{1}{4}$, SW $\frac{1}{4}$.

Section 14: N $\frac{1}{2}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ except NW $\frac{1}{4}$ thereof; W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$; that portion of NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying South and West of US Highway 24.

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

6. That all wells will withdraw water from tributary ground water sources which are in the alluvial plain of the East Fork

Arkansas River, said river running through a substantial portion of the property and tributary to the Arkansas River.

7. That the proposed uses of water to be augmented and calculations for the augmentation requirements for those wells are as follows:

A. In-house use only for single-family residences, computed on the basis of 3.5 persons per single-family residence, 80 gallons of water per person per day usage, and a 10 percent consumptive use component from septic leach field sewage disposal of a non-evaporative nature. The annual consumptive use for a year-round single-family residence, therefore, would be 0.0314 acre feet. Two horses are to allocated to each single-family residence site, and water demands for horses can be added to those for in-house uses, the sum of which may be expressed as a combined unit value for year-round single-family residence use units. Based on 10 gallons per horse per day and assuming a 100 percent consumptive use component, a 0.011 acre feet per year augmentation requirement is found for each horse. The total augmentation requirement, therefore, for each year-round residence is 0.0534 acre feet per year per unit.

B. Vacation single-family residence units are assumed to be identical to year-round single-family units with respect to all water demands, including two horses per unit, with adjustments for 120 day occupancy. Adjusting the year-round consumptive use component on a ratio for 120 day use provides an annual augmentation factor of 0.0176 acre feet per year per unit.

C. Recreational vehicles are temporary residences at various recreational vehicle sites within the campground facility. The use from recreational vehicles is calculated at 100 gallons per day for a 120-day season. Disposal from the recreational vehicles will be by way of an RV dump site which utilizes the same septic leach field sewage type disposal as do the single-family residences, and which would, therefore, allow for a 10 percent consumptive use component. Consumptive use, therefore, from a recreational vehicle occupying a recreational vehicle space for the entire 120-day period would be 0.0037 acre feet per year.

D. Bathhouse and laundry facility(ies) may be located upon the property together with a central commercial building for administering the campground and providing ancillary services to patrons of the park. The bathhouse/laundry facility(ies) will consist of rest rooms, a laundry, and shower room. Utilizing approved demands from other augmentation plans, a daily use of 600 gallons per day is assumed. Though the RV site is to be used only 120 days out of the year, the bathhouse/laundry and commercial facility may be used for a longer period. Therefore, a 365-day use assumption has been used. Based on a 10 percent consumptive use factor from disposal through non-evaporative septic leach field systems, a consumptive use component of 0.0672 acre feet per such facility per year is obtained.

8. That based on the unit consumptive use values set forth in the previous finding, the specific augmentation parameters formulated for this augmentation plan and consistent with the

terms and conditions of this ruling can be set forth in the following consumptive use formula:

$$Q = 0.0534 A + 0.0183 B + 0.0037 C + 0.0672 D$$

Where:

Q = consumptive use in acre feet per year (cannot exceed 3.0 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

9. That the Applicant is hereby allowed to service a flexible number of units of each of the above consumptive use components, provided that cumulative uses of all consumptive use components associated with Applicant's property does not exceed the replacement water decreed as available herein.

10. That an annual consumptive use accounting report will be provided to the Division Engineer by November 30 of each year. This accounting report shall set forth the total diversions of water from the augmented structures, an identification of each of the numbers of consumptive use components and projected augmentation demands for the following year, all substantially in accordance with the form attached to this ruling as Exhibit "A" and to be approved by the Division Engineer. Applicant agrees that at the point the Division Engineer reviews the Applicant's annual report and determines pursuant to the parameters of this decree, that the replacement water is insufficient for any further

development, then Applicant, his agent, assigns and successors in interest shall cease further development under this decree. After receiving such notice from the Division or State Engineers, Applicant, his agents, assigns and successors in interest agree that should any further development occur which allows for depletions in excess of the replacement water available under this plan for augmentation, this further development shall be adequate grounds for injunctive relief against them and they will not protest such relief. The Applicant, his agents, assigns and successors in interest agree to pay all reasonable attorneys' fees and court associated costs in connection with such injunctive proceedings.

11. That the Applicant owns three shares of common capital stock in the Twin Lakes Reservoir and Canal Company, Stock Certificate No. 8096, entitling the Applicant to approximately 1.1 acre feet of water per annum, per share, with 1.0 acre feet of that water being Transmountain water protected under the water decrees owned by said reservoir company, and which amount of water may be used for replacement purposes contemplated herein. Utilization of these three shares of capital stock for augmentation would be as follows:

(A) The Applicants will augment their wells and replace depletions to the Arkansas River stream system with water from Twin Lakes Reservoir, either by direct flow or releases from storage. Such releases will be made at the order of the Water Commissioner of Water District

11, Water Division 2, as authorized by the Division Engineer;

(B) Applicants by this decree hereby dedicate to the Division Engineer, Water Division 2, Twin Lakes Reservoir and Canal Company Stock Certificate No. 8096 owned by them in said company and authorize the Division Engineer to augment the stream flow for the water consumed by this plan at his discretion;

(C) Applicants shall remain jointly and severally liable for any assessments or charges imposed by the Twin Lakes Reservoir and Canal Company on its shareholders.

12. That the wells contemplated herein are hereby augmented and shall be allowed a flow rate of 15 gpm. They shall be allowed all uses commensurate with those uses decreed herein, to wit, household use only, horse watering and commercial and campground uses. The wells shall be allowed to appropriate sufficient ground water, the consumptive use of which shall not exceed the amount of replacement water available in that year as represented by three shares of Twin Lakes Reservoir and Canal Company water.

13. That sewage disposal systems from each of the single-family residences used upon the Applicant's property shall be of the non-evapotransporative septic leach field type construction below the root zone of ordinary plants.

14. That if the plan for augmentation herein described 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, places and in the amounts of depletion caused by the Applicant's use of water. As a result, the underground water to be diverted by Applicants at their well sites which might otherwise be considered as appropriated and unavailable for use will be available for appropriation without adversely effecting vested water rights or conditionally decreed water rights in the Arkansas River and its tributaries.

15. That application, approval, denial or evidence of six months inaction on well permits for each of the single-family residence lots and RV sites are not necessary at this time since wells will be constructed and put into service over a period of time per Cache La Poudre Water Users Association v. Glacier View Meadows, 191 Colo. 53, 550 P.2d 288 (Colo. 1976). All wells will be drilled pursuant to permits evaluated under C.R.S. 37-90-137.

16. That in order to comply with C.R.S. 37-92-304(6), the following findings are made:

A. The historic use to which the water rights herein used for augmentation are put is that it is Transmountain Water of the Twin Lakes Reservoir and Canal Company used for direct flow and storage purposes for irrigation, domestic, commercial, industrial, municipal and all beneficial uses.

B. The proposed future use of said rights involved is for household use only, livestock and commercial/campground purposes.

C. Other findings relevant to the question of reconsideration of injury of vested water rights are none.

17. 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 five years after the date of the decree herein, upon the filing of a pleading by any person claiming injury, which period is necessary or desirable to preclude or remedy such injury.

18. That covenants should be created to run with the land which will incorporate by reference this water augmentation plan ruling and will set forth limitations on usage of water. The covenants shall specify the limitation on the usage of water and sewage disposal limits as indicated in Paragraphs 7 and 8 hereof. The covenants shall be recorded in Lake County prior to any sales of lots to individual homeowners. The covenants shall be enforceable by any objector hereto, and any property owners association created as a result of the subdivision, and their successors and assigns by separate and independent action to enforce the covenants, said action to be commenced in Lake County District Court. Any such party bringing an action to enforce the covenants shall be entitled to all costs and reasonable attorney's fees incurred in enforcing the covenants to implement and administer this plan for augmentation.

19. That the following terms and conditions will be deemed necessary for the operation of this plan of augmentation:

A. That the total number of year-round single-family residences and vacation single-family residences shall not exceed 50.

B. That this plan for augmentation shall not become effective nor any well permit issued under this plan for augmentation until Applicant has submitted to the Court evidence of title to the land upon which the well is to be located within the approximate 760 acre area of augmentation.

20. That on June 4, 1990, a Stipulation for Withdrawal of the Statement of Opposition from the State Engineer and the Division Engineer was submitted to the Court.

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

IT IS THEREFORE ORDERED AS FOLLOWS: That 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.
P. O. Box 957
Leadville, CO 80461

IT IS FURTHER ORDERED that the award made herein is hereby made subject to reconsideration by the Water Judge on the question of injury to the vested rights of others for five years after the date of the Decree herein upon 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 AS FOLLOWS:

1. The Applicant shall administer this plan of augmentation in accordance with the State Engineer's directions and the decree of this Court and comply with this plan of augmentation by doing the following:

A. Installation of a water meter upon each of the Applicant's wells.

B. Dedicating to the Division Engineer Twin Lakes Reservoir and Canal Company Stock Certificate No. 8096.

C. Recording with the Lake County Clerk and Recorder's office the restrictive covenants which incorporate this augmentation plan specifying the limitations on use set forth in this plan.

D. Applicant shall file a copy of each well permit when granted with the Water Court in this case to show location of each point of diversion and compliance with the augmentation plan.

E. Applicant shall file his deed(s) to the augmented property with the Court with copies to the State Engineer and Division Engineer by an endorsement of an Exhibit.

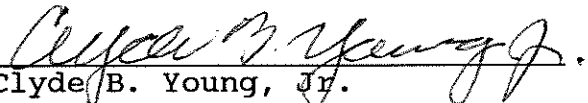
2. The State Engineer in discharge of his responsibility shall recognize the existence and operation of this plan for augmentation herein approved and shall evaluate well permits in accordance with C.R.S. 37-90-137 and the findings of this plan. Each permit shall incorporate by reference this ruling.

IT IS FURTHER ORDERED that Applicant shall file reports at least annually in accordance with Paragraph 10 hereof and shall install and maintain such water measurement devices, recording devices, content gauges, inlet and outlet measurement and recording devices as the case may be as are deemed essential by the office of the State Engineer and Division Engineer, and the same shall be installed and operated in accordance with instructions from said offices.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statuted.

Dated and filed with the Water Court this 20th day of June, A.D., 1990.

BY THE REFEREE:


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

Filed in the office of the
Clerk, District Court Water
Division No. 2, State of
Colorado

JUN 20 1990

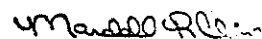


EXHIBIT "A"

GRAND WEST PROPERTIES
P.O. Box 957
Leadville, CO 80461
(719) 486-0702

Annual Augmentation Plan Accounting Form for Case No. 90CW18

Projections for Year _____ By _____

UNITS AND ACRE FEET OF CONSUMPTIVE USE (AFCU):

	Previous Year <u>Computed CU</u>	Projected <u>Year</u>
	<u>Units AFCU</u>	<u>Units AFCU</u>
Single Family Residence: (Units x .0524 = AFCU)	_____	_____
Vacation Residences: (Units x .0183 = AFCU)	_____	_____
Recreational Vehicle Spaces: (Units x .0037 = AFCU)	_____	_____
Bathhouse/Laundry Facilities: (Units x .0672 = AFCU)	_____	_____
TOTALS FOR YEAR:	_____	_____

AUGMENTATION WATER:

Total Number of Twin Lakes Shares: _____
Twin Lakes Reservoir and Canal Company
Stock Certificate Number: 8096
(1 share = 1 AFCU)

NOTE: NEITHER THE PROJECTED NOR COMPUTED CONSUMPTIVE USE (AFCU) SHALL EXCEED AMOUNT OF AUGMENTATION WATER AVAILABLE (TWIN LAKES SHARES)

THIS FORM SHOULD BE MAILED TO:

DIVISION ENGINEER
P.O. Box 5728
Pueblo, CO 81003

Filed in the office of the
Clerk, District Court Water
Division No. 2, State of
Colorado

JUN 20 1990

Mansel R. Line

Clerk