



WATER-RIGHT DOCKET

Rocky Mountain National Park

Docket No: 72

FEDERAL RESERVED WATER RIGHTS (WD-5)

State Water Rights Documentation

10-11-2000: Civil Action No. 1768, Response to Motion regarding ROMO Reserved Water Rights

cc: Andy

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

CIVIL ACTION NO. 1768

COLORADO RIVER WATER CONSERVATION DISTRICT'S RESPONSE TO MOTION
FOR PARTIAL ENTRY OF FINAL JUDGMENT AND STIPULATION AND ORDER
ENTERING PARTIAL FINAL JUDGMENT AND APPROVING A STIPULATION AMONG
PARTIES

IN THE MATTER OF THE UNITED STATES OF AMERICA FOR RESERVED WATER
RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN GRAND COUNTY.

COMES NOW Opposer the Colorado River Water Conservation District and hereby consents
to the Motion for Partial Entry of Final Judgment and Stipulation of the United States of America,
State of Colorado, and City and County of Denver and the Order Entering Partial Final Judgment
and Approving a Stipulation Among Parties.

Respectfully submitted this 11th day of October 2000.

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WATER CONSERVATION DISTRICT

District Court, W. D. #5
Civil Action No. 1768
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing COLORADO RIVER WATER CONSERVATION DISTRICT'S RESPONSE TO UNITED STATES OF AMERICA'S MOTION FOR PARTIAL ENTRY OF FINAL JUDGMENT AND STIPULATION AND ORDER ENTERING PARTIAL FINAL JUDGMENT AND APPROVING A STIPULATION AMONG PARTIES was placed in the United States Mail, postage prepaid on this _____ day of October 2000 and addressed to the following:

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DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

CIVIL ACTION NO. 1768

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR
RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN GRAND
COUNTY.

FINAL DECREE

IN THE MATTER OF THE APPLICATION	)	Water Division No. 4
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-425 through
STATES OF AMERICA,	)	W-438
IN THE MATTER OF THE APPLICATION	)	Water Division No. 5
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-467 and
STATES OF AMERICA,	)	W-469
IN THE MATTER OF THE APPLICATION	)	Water Division No. 6
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-85 and W-86
STATES OF AMERICA,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Summit County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 2371
PURPOSES IN WATER DISTRICT NO. 36,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Eagle County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1529
PURPOSES IN WATER DISTRICT NO. 37,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Grand County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1768
PURPOSES IN WATER DISTRICT NO. 51,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Eagle County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1548
PURPOSES IN WATER DISTRICT NO. 52,	)	
IRRIGATION DIVISION NO. 5,	)	

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

UNITED STATES RESERVED
RIGHT APPURTENANT TO
ROCKY MOUNTAIN NATIONAL PARK
WATER DIVISION NO. 5

NATURE OF DECREE: Absolute.

SOURCE: All water found within or touching the reserved lands which were transferred to Rocky Mountain National Park as described below.

PLACE OF USE: On lands within Rocky Mountain National Park, as described with greater specificity below.

PRIORITY DATE: As described below. The United States is entitled to its true priority date and shall not be subject to the priorities of junior appropriations which have been awarded in previous adjudications or which were the subject of applications filed in previous calendar years.

GENERAL PURPOSE AND USES: Pursuant to the various enactments of Congress dealing with national parks in general and Rocky Mountain National Park in particular, the purpose of the park is to conserve and maintain in an unimpaired condition the scenic, aesthetic, natural, and historic objects of the park as well as the wildlife therein in order that the park might provide a source of recreation and enjoyment for all generations of citizens of the United States. This purpose includes the following uses of water on lands within Rocky Mountain National Park:

1. Recreational uses including, but not limited to, aesthetic uses, campground uses, visitor center uses, attendant facility uses, camper facility uses.
2. Domestic uses including, but not limited to, ranger residence uses, ranger station uses.
3. Municipal uses including, but not limited to, campground water and sewer uses, fire protection uses, concessional uses.

4. Administrative site uses including, but not limited to, park office and shop uses.
5. Agricultural and irrigation uses including, but not limited to, watering of lawns surrounding park buildings and structures, campground uses where needed to offset heavy human impact, irrigation of hay for feeding of wildlife.
6. Stock grazing and watering uses including, but not limited to, watering of horses and mules of the United States, watering of horses and mules of visitors to the national park.
7. Development, conservation, and management of resident and migratory wildlife and wildlife resources, including, but not limited to, watering uses for wildlife.
8. Fire fighting and prevention uses including, but not limited to, uses for fighting and preventing wild land or forest fires and structural fires.
9. Forest growth and management, improvement, and protection uses including, but not limited to, irrigation of forest areas impacted by heavy human use, forest protection activities necessary to maintain aesthetic and scenic values.
10. Commercial drinking and sanitary uses including, but not limited to, concession uses and attendant facility uses.
11. Watershed protection and management uses including, but not limited to, reforestation activities necessary to return the watershed to its natural condition.
12. Wilderness preservation uses.
13. Flood, soil, and erosion control uses including, but not limited to, irrigation of areas subjected to heavy human use.
14. Preservation of scenic, aesthetic, and other public value uses.
15. Fish culture, conservation, habitat protection, and management uses including, but not limited to, the

attainment of minimum stream and lake levels as are necessary to:

- (a) Insure the continued nutrition, growth, conservation, and reproduction of those species of fish which inhabited such waters on the applicable reservation dates, or those species of fish which are thereafter introduced, and
- (b) Attain and preserve the recreational, scenic, and aesthetic conditions existing on the applicable reservation dates, or to preserve those conditions which are thereafter caused to exist.

DIVERSIONS AND IMPOUNDMENTS -- ABSOLUTE:

Subject to and in accordance with the preceding and following provisions of this decree, the United States is granted absolute water rights in and for the following three current diversions and impoundments of water in Rocky Mountain National Park:

1. Water rights in and to Timber Creek, a tributary to the North Fork of the Colorado River.
 - a. Name of ditch or other structure: Timber-creek Campground Pipeline.
 - b. Legal description of each point of diversion or proposed diversion: The point of diversion of said pipeline is on the North bank of Timber Creek at a point where the West Quarter Corner of Section nineteen (19), Township five (5) north, Range seventy-five (75) West bears North sixty-four degrees fifty-two minutes (64°52') West seven hundred thirty-four (734) feet.
 - c. Description of ditch, pump or pipeline: The diversion is carried through a four (4) inch pipeline for a distance of two thousand, two hundred and sixty-four and eighty-seven one-hundredths (2,264.87) feet. The grade of said pipeline is sixty-three and six-tenths (63.6) feet per one thousand (1,000) feet and the carrying capacity is five hundred and forty-two one thousandths (0.542) cubic feet of water per second of time.

- d. Source of water: Timber Creek, a tributary of the North Fork of the Colorado River.
 - e. Priority date: January 26, 1915.
 - f. Amount of water claimed by diversion in cubic feet per second of time: 0.542 c.f.s.
 - g. Use or proposed use of the water: Domestic and public use (campground) and fire protection.
2. Water rights in and to Unnamed Creek, a tributary to the North Fork of the Colorado River.
- a. Name of ditch or other structure: Milner Pass Road Camp Pipeline.
 - b. Legal description of each point of diversion or proposed diversion: The point of diversion is located at a point on the South, or right bank of Unnamed Creek, from which it derives its supply of water, whence the northeast corner of Section one (1), Township five (5) North, Range seventy-five (75) West of the 6th Principal Meridian, bears North sixty-nine degrees, three minutes (69°03') East twenty thousand, seven hundred and fifty-two feet (20,752).
 - c. Description of ditch, pump or pipeline: A pipeline of two and one-half (2-1/2) inch diameter, with a grade of two hundred and nine (209) feet per one thousand (1,000) feet, with a carrying capacity of three-tenths (0.3) cubic feet per second of time.
 - d. Source of water: Unnamed Creek, a tributary of the North Fork of the Colorado River.
 - e. Priority date: January 26, 1915.
 - f. Amount of water claimed by diversion in cubic feet per second of time: 0.3 c.f.s.
 - g. Use or proposed use of the water: Domestic, recreational (picnic area) and fire protection purposes.

3. Water rights in and to underground water, Timber-creek Campground Well.
 - a. Legal description of location of well: A point within the NE1/4 of the SE1/4 of Section 24, T. 4 N., R. 76 W. of the 6th P.M.
 - b. Depth of Well: 75 feet.
 - c. Priority date: January 26, 1915.
 - d. Amount of water claimed in cubic feet per second of time: .055 c.f.s.
 - e. Proposed use of water: Domestic and public use (campground) and fire protection.

FUTURE DIVERSIONS -- ABSOLUTE:

1. Subject to and in accordance with the preceding and following provisions of this decree, the United States is granted absolute water rights in and for future additional diversions of water in Rocky Mountain National Park for park purposes, as those purposes are set forth in the section of this decree entitled "GENERAL PURPOSE AND USES", on lands reserved from the public domain in Rocky Mountain National Park.
2. Amount of water: Except as provided in paragraph 6 of this section, the cumulative amount of these absolute water rights shall not exceed 100 acre-feet per annum total diversion.
3. Priority date: Except as provided in paragraph 6 of this section, the priority dates for future diversions will be determined by the date on which the land where the diversion is located was reserved for park purposes, as follows, and as depicted more fully on Exhibit A to this decree, which is hereby incorporated herein:
 - a. January 26, 1915 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were "reserved and withdrawn from settlement, occupancy, or disposal

under the laws of the United States" for Rocky Mountain National Park by the Act of January 26, 1915, 16 U.S.C. 191 et seq., the metes and bounds of said lands being fully described in that Act.

- b. July 17, 1930 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since, by a PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029), they were "added to and included within the Rocky Mountain National Park, and as part of said park shall be, and are hereby subject to the provisions of the Act of August 25, 1916 (39 Stat. 535)", the legal description of said lands being fully described in the PROCLAMATION.
- c. October 26, 1974 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were added as a part of the adjustment of the boundaries of Rocky Mountain National Park by the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974). The lands added to Rocky Mountain National Park are "All of those lands lying west of the west bank of the North Fork of the Colorado River in sections 25 and 36, township 5 north, range 76 west, and in sections 1 and 12 and the east halves of sections 2 and 11, township 4 north, range 76 west."
- d. December 22, 1980 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since (1) with respect to those lands west of the Continental Divide and within the areas referred to as W-1 and IP-1 on the map entitled "Boundary Adjustments, Rocky Mountain National Park", numbered 121-80,047, dated October 1, 1979, they were transferred pursuant to Section 111(a) of the Act of December 22, 1980, 16 U.S.C. 192b-9(a), from Forest Service to National Park Service administrative jurisdiction and thereby added to the Rocky Mountain National Park; or (2) with respect to those lands "within the [area] referred to as . . . GL-3" on the

above-referenced map no. 121-80,047, they were transferred pursuant to Section 111(c) of the Act of December 22, 1980, 16 U.S.C. 192b-9(c), from Bureau of Land Management to National Park Service administrative jurisdiction and thereby added to the Rocky Mountain National Park. This decree does not award reserved water rights for those lands within the areas referred to as GL-2, GL-4, GL-5, NW1, N-3, E-4, E-6 and E-8 on the above-referenced map no. 121-80,047.

4. Except as provided in paragraph 6 of this section, prior to the diversion and use of any surface water pursuant to the absolute water rights in and for future additional diversions of water in Rocky Mountain National Park, the National Park Service shall provide the State Engineer the same information that would be required in an application for a surface water right. The United States will maintain sufficient measuring devices, record keeping, accounting and reporting to ensure compliance with this decree, and will submit a report to the State Engineer annually, or as reasonably necessary, indicating the amount of water used pursuant to these rights.
5. Prior to constructing any well for withdrawal and use of groundwater pursuant to the absolute water rights in and for future additional diversions of water in Rocky Mountain National Park, the National Park Service shall provide the State Engineer the same information required of an applicant for a permit to construct a well, whereupon, the State Engineer shall issue a permit and administer the use in accordance with the terms of this decree. The National Park Service agrees to use a licensed well driller in constructing any such well, and agrees to file a well completion report with the State Engineer upon completion of any such well. The United States will maintain sufficient measuring devices, record keeping, accounting and reporting to ensure compliance with this decree, and will submit a report to the State Engineer annually, or as reasonably necessary, indicating the amount of water used pursuant to these rights. Nothing in this decree shall be interpreted to limit the authority of the

State Engineer under § 37-92-501(1), C.R.S., to promulgate rules of general applicability for the administration of groundwater within Water Division No. 5, including groundwater subject to this decree. Nothing in this decree either confirms or denies the United States' position that it must be joined in a McCarran Amendment administration proceeding in order to obtain an order enforcing such rules against the United States.

6. Fire fighting uses: The United States is granted an absolute direct flow water right for fire fighting and prevention uses within Rocky Mountain National Park. This right is quantified as that amount of water necessary for fighting and preventing fires within the boundaries of Rocky Mountain National Park. The priority date of this right is determined by the date on which the land where water is diverted for fire fighting and prevention uses was reserved for national forest purposes (or, with respect to land that was not previously reserved for national forest purposes, the date on which the land was reserved for national park purposes). The United States will submit a report to the State Engineer annually, or as reasonably necessary, indicating the amount of water used pursuant to these rights.

DIVERSIONS -- TOTAL AMOUNT:

The total amount of water set out in the absolute decrees described above shall be the maximum and final claim of the United States for reserved right diversions in Rocky Mountain National Park pursuant to the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq.; the National Park Service Act of 1916, 16 U.S.C. 1 et seq.; the Act of February 14, 1917, 16 U.S.C. 192; the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974); the Act of December 22, 1980, 16 U.S.C. 192b-9; the PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029); any other acts of Congress or Presidential proclamations pertaining to Rocky Mountain National Park approved prior to December 31, 1999; the Organic Administration Act of 1897, 16 U.S.C. § 473 et seq.; and any other acts or Presidential proclamations pertaining in any way to the management of national forest lands transferred to Rocky Mountain National Park prior to December 31, 1999.

IN-PLACE USES -- ABSOLUTE:

1. Subject to and in accordance with the preceding and following provisions of this decree, the United States is granted absolute water rights for the attainment and maintenance of minimum stream flows and lake levels within Rocky Mountain National Park for the purposes set forth in the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq., and the National Park Service Act of 1916, 16 U.S.C. 1 et seq.
2. Amount of water: All natural waters within Rocky Mountain National Park that were unappropriated as of the dates of the reservations hereinafter set forth, including all surface and ground waters, which are to be maintained in their natural condition, subject to present and future diversions of water in Rocky Mountain National Park for park purposes, as set forth in the preceding sections of this decree.
3. Priority date: The priority dates for in-place uses will be determined by the date on which the land where the stream, spring, seep, lake, pond, groundwater or other natural water source is located was reserved for park purposes:
 - a. January 26, 1915 for waters on or within federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were "reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States" for Rocky Mountain National Park by the Act of January 26, 1915, 16 U.S.C. 191 et seq.
 - b. July 17, 1930 for waters on or within federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were added to and included within Rocky Mountain National Park by a PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029).
 - c. October 26, 1974 for waters on and within federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain

National Park since they were added as a part of the adjustment of the boundaries of Rocky Mountain National Park by the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974).

- d. December 22, 1980 for waters on and within the federal lands within Water Division No. 5 referred to as W-1, IP-1 and GL-3 on the map entitled "Boundary Adjustments, Rocky Mountain National Park", numbered 121-80,047, dated October 1, 1979, that have been continuously within the boundaries of Rocky Mountain National Park since they were added to the Rocky Mountain National Park by Sections 111(a) and 111(c) of the Act of December 22, 1980, 16 U.S.C. 192b-9. This decree does not award reserved water rights for those lands within the areas referred to as GL-2, GL-4, GL-5, NW1, N-3, E-4, E-6 and E-8 on the above-referenced map no. 121-80,047.
4. The absolute decree described above shall be the maximum and final claim of the United States for reserved rights for in-place uses in Rocky Mountain National Park pursuant to the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq.; the National Park Service Act of 1916, 16 U.S.C. 1 et seq.; the Act of February 14, 1917, 16 U.S.C. 192; the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974); the Act of December 22, 1980, 16 U.S.C. 192b-9; the PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029); any other acts of Congress or Presidential proclamations pertaining to Rocky Mountain National Park approved prior to December 31, 1999; the Organic Administration Act of 1897, 16 U.S.C. § 473 et seq.; and any other acts or Presidential proclamations pertaining in any way to the management of national forest lands transferred to Rocky Mountain National Park prior to December 31, 1999.

NO PRECEDENT:

The water rights set forth in the sections of this decree entitled "FUTURE DIVERSIONS -- ABSOLUTE" and "IN-PLACE USES -- ABSOLUTE" were quantified pursuant to stipulation. Accordingly, the parties shall not be collaterally estopped from asserting any factual or legal claims or defenses in the quantification of water rights in other cases as a result of the quantification of these rights. In addition, the parties

shall not cite those portions of this decree wherein rights were quantified by stipulation as precedent for the quantification of water rights in other cases.

STIPULATIONS:

This decree is subject to the Stipulations between the United States and the Columbine Lake Water District, the Grand Lake Metropolitan Recreation District, the Southeastern Colorado Water Conservancy District, the Town of Grand Lake, the Water Supply and Storage Company, and Estes Park Chalet, Inc., dba Grand Lake Lodge, copies of which are attached to this decree as Exhibits B, C, D, E, F and G, respectively, and are incorporated herein by this reference.

UNITED STATES
APPROPRIATIVE WATER RIGHTS
IN ROCKY MOUNTAIN NATIONAL PARK
WATER DIVISION NO. 5
(INCLUDING FORMER WATER DISTRICT 51)

NAME OF APPLICANT:

United States Park Service.

NATURE OF WATER RIGHTS AND MEANS OF DIVERSION:

The water rights in this decree include absolute direct flow water rights. As shown on the following tables, the direct flow water rights include well withdrawals and ditch and pipeline diversions.

NAME OF STRUCTURES:

As shown on the following tables in column headed "Structure."

LOCATION OF POINT OF DIVERSION, PLACE OF STORAGE, OR MINIMUM
STREAM FLOW:

As shown for each structure on the following tables under the column entitled "Location."

SOURCE:

That natural stream shown for each structure in the columns entitled "Source" on the following tables.

AMOUNT:

That amount shown for each structure in the following tables under columns entitled "Amount."

TYPE OF USE:

That type of use shown for each structure on the following tables.

PRIORITY:

That priority shown for each structure on the following tables.
The United States is entitled to its true priority date and

shall not be subject to the priorities of junior appropriations which have been awarded in previous adjudications or which were the subject of applications filed in previous calendar years.

PLACE OF USE:

On lands within Rocky Mountain National Park as shown on the following tables:

1. Rocky Mountain National Park Ditches and Pipelines:
As shown on the following table:
2. Rocky Mountain National Park Wells:
As shown on the following table:

CHANGE OF USE AND PLACE OF USE:

The United States is entitled to change the use and place of use of these absolute direct flow water rights pursuant to the procedures set forth in state law to diversions for park purposes within Rocky Mountain National Park; provided, that the cumulative amount of diversions pursuant to changes of use and place of use of these appropriative water rights shall not exceed 50 acre-feet per annum total diversion.

**ROCKY MOUNTAIN NATIONAL PARK
DITCHES AND PIPELINES -- WATER DIVISION NO. 5**

<u>Structure</u>	<u>Source</u>	<u>Location</u>	<u>Date of Appropriation</u>	<u>Amount</u>	<u>Type of Use</u>	<u>Priority Date</u>
Squeak Pipeline	Colorado R.	Located on the North bank of Squeak Creek at a point where the E1/4 Corner of Sec. 12, T5N, R76W bears N 51° 17' E 2045 feet.	6/26/30	7.75 c.f.s.	Power and Domestic purposes	8/31/30
Wheeler Ditch	Colorado R.	The headgate is located on the North bank of Wheeler Creek at a point where the North 1/4 Corner of Sec. 18, T5N, R75W bears N 37° 2' W a distance of 3265 feet.	9/20/27	1.2 c.f.s.	Irrigation and domestic purposes	8/17/28
Phantom Ditch	Colorado R.	The point of diversion is located on the South bank of Phantom Creek at a point where the N1/4 corner of Sec. 18, T5N, R75W, bears N 56° 44' W a distance of 2479 feet.	7/15/15	6.6 c.f.s.	Domestic and power generation purposes	3/28/28
Kauffman Ditch	Colorado R.	The point of diversion is located on the Northwestern bank of North Inlet Creek in the SW Corner of the SE1/4 of the NW1/4 of Sec. 34, T4N, R75W, at a point where the S1/4 Corner of Sec. 33 bears S 55° 55' W, 4806 feet.	9/19/08	3.5 c.f.s.	Irrigation	11/18/08
Grand Lake Lodge & Ranger Station Water System	Colorado R.	There are two points of diversion: 1) at a point whence the NW corner of Sec. 32, T4N, R75W, bears N 31° 12' W 1800.55 ft., 2) at a point whence the NW corner of said Sec. 32 bears N 87° 52' W 1756.34 ft.	5/30/20	0.072 c.f.s.	Domestic	8/31/55

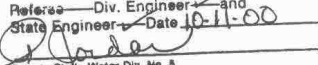
**ROCKY MOUNTAIN NATIONAL PARK
WELLS - WATER DIVISION NO. 5**

<u>Structure</u>	<u>Source</u>	<u>Location</u>	<u>Depth of well</u>	<u>Date of Appropriation</u>	<u>Amount</u>	<u>Type of Use</u>	<u>Priority Date</u>
Buena Vista Ranger Station Well	Colorado R.	Well is located in SE1/4 NW1/4 Sec. 12, T4N, R76W, of the 6th P.M., at a point where N1/4 corner of Sec. 12 bears N 10° 30' E a distance of 1710 ft.	60 ft.	6/12/50	0.022 c.f.s.	Domestic, fire Protection	6/12/50
Kawaneeschee Residence Area Well	Colorado R.	Well is located in SE1/4 SW1/4 of Sec. 12, T4N, R76W, 6th P.M., at a point where S1/4 corner of Sec. 12 bears S 37° 40' E a distance of 1410 feet.	30 ft.	12/31/39	0.022 c.f.s.	Domestic	12/31/39
Harbison Ranch Well	Colorado R.	Well is located in SW1/4 NW1/4 of Sec. 31, T4N, R75W, at a point where NW corner of Sec. 31 bears N 18° 30' W a distance of 1620 feet.	24 ft.	12/31/01	0.022 c.f.s.	Domestic, stock watering	12/31/01
Harbison Picnic Area Well	Colorado R.	Well is located in SE1/4 SE1/4 of Sec. 24, T4N, R76W, 6th P.M., at a point where the SW corner of Sec. 24 bears S 25° 30' E a distance of 740 feet.	92 ft.	10/17/62	0.056 c.f.s.	Public water	10/17/62
Phantom Valley Ranger Station Well	Colorado R.	Well is located in the NW1/4 SW1/4 of Sec. 7, T5N, R75W, 6th P.M., at a point where SW corner of Sec. 7 bears S- 3° 10' W a distance of 2020 feet.	12ft.3in.	6/31/56	0.056 c.f.s.	Domestic	6/31/56

DATED this 9th day of October, 2000.

BY THE COURT:


THOMAS W. OSSOLA
Water Judge

Copv of the foregoing mailed to all
Counsel of record—Water
Referee—Div. Engineer—and
State Engineer—Date 10-11-00

Deputy Clerk, Water Div. No. 8

Walsh for distribution

The moving party is hereby ordered
to provide a copy of this order to
all parties of record within seven (7)
days from the date of this order.
Thomas W. Ossola
Judge

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

CIVIL ACTION NO. 1768

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR
RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN GRAND
COUNTY.

**ORDER
ENTERING PARTIAL FINAL JUDGMENT AND
APPROVING A STIPULATION AMONG PARTIES**

IN THE MATTER OF THE APPLICATION	)	Water Division No. 4
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-425 through
STATES OF AMERICA,	)	W-438
IN THE MATTER OF THE APPLICATION	)	Water Division No. 5
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-467 and
STATES OF AMERICA,	)	W-469
IN THE MATTER OF THE APPLICATION	)	Water Division No. 6
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-85 and W-86
STATES OF AMERICA,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Summit County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 2371
PURPOSES IN WATER DISTRICT NO. 36,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Eagle County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1529
PURPOSES IN WATER DISTRICT NO. 37,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Grand County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1768
PURPOSES IN WATER DISTRICT NO. 51,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Eagle County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1548
PURPOSES IN WATER DISTRICT NO. 52,	)	
IRRIGATION DIVISION NO. 5,	)	

Upon consideration of the Motion for Partial Entry of Final Judgment and Stipulation filed herein by the Applicant, United States of America, and Objectors the State of Colorado and the City and County of Denver, and now being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Motion for Partial Entry of Final Judgment and Stipulation (the "Stipulation") entered into by Applicant, United States of America, and Objectors the State of Colorado and the City and County of Denver, is approved by the Court and incorporated herein.

2. Having determined that there is no just reason for delay, and that the requirements of Rule 54(b), Colo. R. Civ. P., for entry of final judgment on certain claims have been met, the decree of the water court entered in this matter on October 2, 1978, is hereby entered and reconfirmed as the final judgment in this matter insofar as it determines the United States' claims in these cases for reserved water rights for Rocky Mountain National Park and for certain other appropriative rights claimed by the United States in this action (as set forth at pages 343 through 348 of the 1978 decree), subject to the following modifications:

a. The first four paragraphs on page 262 of the 1978 decree are modified to read as follows:

NATURE OF DECREE: Absolute.

SOURCE: All water found within or touching the reserved lands which were transferred to Rocky Mountain National Park as described below.

PLACE OF USE: On lands within Rocky Mountain National Park, as described with greater specificity below.

PRIORITY DATE: As described below. The United States is entitled to its true priority date and shall not be subject to the priorities of junior appropriations which have been awarded in previous adjudications or which were the subject of applications filed in previous calendar years.

GENERAL PURPOSE AND USES: Pursuant to the various enactments of Congress dealing with national parks in general and Rocky Mountain National Park in particular, the purpose of the park is to conserve and maintain in an unimpaired condition the scenic, aesthetic, natural, and historic objects of the park as well as the wildlife therein in order that the park might provide a source of recreation and enjoyment for all generations of citizens of the United States. This purpose includes the following uses of water on lands within Rocky Mountain National Park:

b. Paragraph 10. on page 263 is modified to read as follows:

Commercial drinking and sanitary uses including, but not limited to, concession uses and attendant facility uses.

c. Paragraph 1.e. on page 265, paragraph 2.e. on page 266, and paragraph 3.c. on page 266 of the 1978 decree are in each instance modified to read as follows:

Priority date: January 26, 1915.

d. The section on pages 267 to 268 of the 1978 decree entitled "DIVERSIONS AND IMPOUNDMENTS -- CONDITIONAL" is modified to read as follows:

FUTURE DIVERSIONS -- ABSOLUTE:

1. Subject to and in accordance with the preceding and following provisions of this decree, the United States is granted absolute water rights in and for future additional diversions of water in Rocky Mountain National Park for park purposes, as those purposes are set forth in the section of this decree entitled "GENERAL PURPOSE AND USES", on lands reserved from the public domain in Rocky Mountain National Park.

2. Amount of water: Except as provided in paragraph 6 of this section, the cumulative

amount of these absolute water rights shall not exceed 100 acre-feet per annum total diversion.

3. Priority date: Except as provided in paragraph 6 of this section, the priority dates for future diversions will be determined by the date on which the land where the diversion is located was reserved for park purposes, as follows, and as depicted more fully on Exhibit A to this decree, which is hereby incorporated herein:

a. January 26, 1915 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were "reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States" for Rocky Mountain National Park by the Act of January 26, 1915, 16 U.S.C. 191 et seq., the metes and bounds of said lands being fully described in that Act.

b. July 17, 1930 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since, by a PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029), they were "added to and included within the Rocky Mountain National Park, and as part of said park shall be, and are hereby subject to the provisions of the Act of August 25, 1916 (39 Stat. 535)", the legal description of said lands being fully described in the PROCLAMATION.

c. October 26, 1974 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were added as a part of the adjustment of the boundaries of Rocky Mountain National Park by the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974). The lands added to Rocky Mountain National Park are "All of those

lands lying west of the west bank of the North Fork of the Colorado River in sections 25 and 36, township 5 north, range 76 west, and in sections 1 and 12 and the east halves of sections 2 and 11, township 4 north, range 76 west."

d. December 22, 1980 for diversions on federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since (1) with respect to those lands west of the Continental Divide and within the areas referred to as W-1 and IP-1 on the map entitled "Boundary Adjustments, Rocky Mountain National Park", numbered 121-80,047, dated October 1, 1979, they were transferred pursuant to Section 111(a) of the Act of December 22, 1980, 16 U.S.C. 192b-9(a), from Forest Service to National Park Service administrative jurisdiction and thereby added to the Rocky Mountain National Park; or (2) with respect to those lands "within the [area] referred to as . . . GL-3" on the above-referenced map no. 121-80,047, they were transferred pursuant to Section 111(c) of the Act of December 22, 1980, 16 U.S.C. 192b-9(c), from Bureau of Land Management to National Park Service administrative jurisdiction and thereby added to the Rocky Mountain National Park. This decree does not award reserved water rights for those lands within the areas referred to as GL-2, GL-4, GL-5, NW1, N-3, E-4, E-6 and E-8 on the above-referenced map no. 121-80,047.

4. Except as provided in paragraph 6 of this section, prior to the diversion and use of any surface water pursuant to the absolute water rights in and for future additional diversions of water in Rocky Mountain National Park, the National Park Service shall provide the State Engineer the same information that would be required in an application for a surface water right. The United States will maintain sufficient measuring devices, record keeping, accounting and reporting to ensure compliance

with this decree, and will submit a report to the State Engineer annually, or as reasonably necessary, indicating the amount of water used pursuant to these rights.

5. Prior to constructing any well for withdrawal and use of groundwater pursuant to the absolute water rights in and for future additional diversions of water in Rocky Mountain National Park, the National Park Service shall provide the State Engineer the same information required of an applicant for a permit to construct a well, whereupon, the State Engineer shall issue a permit and administer the use in accordance with the terms of this decree. The National Park Service agrees to use a licensed well driller in constructing any such well, and agrees to file a well completion report with the State Engineer upon completion of any such well. The United States will maintain sufficient measuring devices, record keeping, accounting and reporting to ensure compliance with this decree, and will submit a report to the State Engineer annually, or as reasonably necessary, indicating the amount of water used pursuant to these rights. Nothing in this decree shall be interpreted to limit the authority of the State Engineer under § 37-92-501(1), C.R.S., to promulgate rules of general applicability for the administration of groundwater within Water Division No. 5, including groundwater subject to this decree. Nothing in this decree either confirms or denies the United States' position that it must be joined in a McCarran Amendment administration proceeding in order to obtain an order enforcing such rules against the United States.

6. Fire fighting uses: The United States is granted an absolute direct flow water right for fire fighting and prevention uses within Rocky Mountain National Park. This right is quantified as that amount of water necessary for fighting and preventing fires within the boundaries of Rocky Mountain National Park.

The priority date of this right is determined by the date on which the land where water is diverted for fire fighting and prevention uses was reserved for national forest purposes (or, with respect to land that was not previously reserved for national forest purposes, the date on which the land was reserved for national park purposes). The United States will submit a report to the State Engineer annually, or as reasonably necessary, indicating the amount of water used pursuant to these rights.

e. The section on page 268 of the 1978 decree entitled "DIVERSIONS AND IMPOUNDMENTS -- TOTAL AMOUNT" is modified to read as follows:

DIVERSIONS -- TOTAL AMOUNT:

The total amount of water set out in the absolute decrees described above shall be the maximum and final claim of the United States for reserved right diversions in Rocky Mountain National Park pursuant to the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq.; the National Park Service Act of 1916, 16 U.S.C. 1 et seq.; the Act of February 14, 1917, 16 U.S.C. 192; the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974); the Act of December 22, 1980, 16 U.S.C. 192b-9; the PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029); any other acts of Congress or Presidential proclamations pertaining to Rocky Mountain National Park approved prior to December 31, 1999; the Organic Administration Act of 1897, 16 U.S.C. § 473 et seq.; and any other acts or Presidential proclamations pertaining in any way to the management of national forest lands transferred to Rocky Mountain National Park prior to December 31, 1999.

f. The section on pages 268 to 272 of the 1978 decree entitled "IN-PLACE USES -- CONDITIONAL" is modified to read as follows:

IN-PLACE USES -- ABSOLUTE:

1. Subject to and in accordance with the preceding and following provisions of this decree, the United States is granted absolute water rights for the attainment and maintenance of minimum stream flows and lake levels within Rocky Mountain National Park for the purposes set forth in the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq., and the National Park Service Act of 1916, 16 U.S.C. 1 et seq.

2. Amount of water: All natural waters within Rocky Mountain National Park that were unappropriated as of the dates of the reservations hereinafter set forth, including all surface and ground waters, which are to be maintained in their natural condition, subject to present and future diversions of water in Rocky Mountain National Park for park purposes, as set forth in the preceding sections of this decree.

3. Priority date: The priority dates for in-place uses will be determined by the date on which the land where the stream, spring, seep, lake, pond, groundwater or other natural water source is located was reserved for park purposes:

a. January 26, 1915 for waters on or within federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were "reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States" for Rocky Mountain National Park by the Act of January 26, 1915, 16 U.S.C. 191 et seq.

b. July 17, 1930 for waters on or within federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were added to and included within Rocky Mountain

National Park by a PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029).

c. October 26, 1974 for waters on and within federal lands within Water Division No. 5 that have been continuously within the boundaries of Rocky Mountain National Park since they were added as a part of the adjustment of the boundaries of Rocky Mountain National Park by the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974).

d. December 22, 1980 for waters on and within the federal lands within Water Division No. 5 referred to as W-1, IP-1 and GL-3 on the map entitled "Boundary Adjustments, Rocky Mountain National Park", numbered 121-80,047, dated October 1, 1979, that have been continuously within the boundaries of Rocky Mountain National Park since they were added to the Rocky Mountain National Park by Sections 111(a) and 111(c) of the Act of December 22, 1980, 16 U.S.C. 192b-9. This decree does not award reserved water rights for those lands within the areas referred to as GL-2, GL-4, GL-5, NW1, N-3, E-4, E-6 and E-8 on the above-referenced map no. 121-80,047.

4. The absolute decree described above shall be the maximum and final claim of the United States for reserved rights for in-place uses in Rocky Mountain National Park pursuant to the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq.; the National Park Service Act of 1916, 16 U.S.C. 1 et seq.; the Act of February 14, 1917, 16 U.S.C. 192; the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974); the Act of December 22, 1980, 16 U.S.C. 192b-9; the PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029); any other acts of Congress or Presidential proclamations pertaining to Rocky Mountain National Park approved prior to December 31, 1999; the Organic Administration Act of 1897, 16 U.S.C. §

473 et seq.; and any other acts or Presidential proclamations pertaining in any way to the management of national forest lands transferred to Rocky Mountain National Park prior to December 31, 1999.

g. The section on pages 262 to 272 of the 1978 decree entitled "UNITED STATES RESERVED RIGHT APPURTENANT TO ROCKY MOUNTAIN NATIONAL PARK WATER DIVISION NO. 5" is modified by adding the following paragraphs:

NO PRECEDENT:

The water rights set forth in the sections of this decree entitled "FUTURE DIVERSIONS -- ABSOLUTE" and "IN-PLACE USES -- ABSOLUTE" were quantified pursuant to stipulation. Accordingly, the parties shall not be collaterally estopped from asserting any factual or legal claims or defenses in the quantification of water rights in other cases as a result of the quantification of these rights. In addition, the parties shall not cite those portions of this decree wherein rights were quantified by stipulation as precedent for the quantification of water rights in other cases.

STIPULATIONS:

This decree is subject to the Stipulations between the United States and the Columbine Lake Water District, the Grand Lake Metropolitan Recreation District, the Southeastern Colorado Water Conservancy District, the Town of Grand Lake, the Water Supply and Storage Company, and Estes Park Chalet, Inc., dba Grand Lake Lodge, copies of which are attached to this decree as Exhibits B, C, D, E, F, and G, respectively, and are incorporated herein by this reference.

h. The section on pages 343 to 348 of the 1978 decree entitled "UNITED STATES APPROPRIATIVE WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK WATER DIVISION NO. 5 (INCLUDING FORMER WATER DISTRICT 51)" is modified by adding the following paragraph:

CHANGE OF USE AND PLACE OF USE:

The United States is entitled to change the use and place of use of these absolute direct flow water rights pursuant to the procedures set forth in state law to diversions for park purposes within Rocky Mountain National Park; provided, that the cumulative amount of diversions pursuant to changes of use and place of use of these appropriative water rights shall not exceed 50 acre-feet per annum total diversion.

3. The final decree, as entered, reconfirmed, and modified by this Order, is subject to the Stipulations between the United States and the Columbine Lake Water District, the Grand Lake Metropolitan Recreation District, the Southeastern Colorado Water Conservancy District, the Town of Grand Lake, the Water Supply and Storage Company, and Estes Park Chalet, Inc., dba Grand Lake Lodge, copies of which are attached to the final decree as Exhibits B, C, D, E, F and G, respectively, and are incorporated therein by reference.

4. The final decree, as entered, reconfirmed, and modified by this Order, shall be effective so long as the lands described above at paragraphs 2.d. and 2.f. remain within Rocky Mountain National Park; however, that in the event that such lands or any portion thereof no longer form part of Rocky Mountain National Park but remain under federal ownership, this Court retains jurisdiction to determine the continued applicability of this decree to the lands no longer forming part of Rocky Mountain National Park.

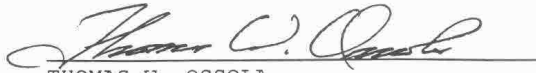
5. The Water Clerk shall serve a copy of this Order upon the parties, the Division Engineer, Water Division No. 5, and the State Engineer.

6. The water rights set forth in this Order were quantified pursuant to stipulation. Accordingly, the parties shall not be collaterally estopped from asserting any factual or legal claims or defenses in the quantification of water rights in other cases as a result of execution of this Order. In addition, the parties shall not cite this Order, or portions of the final decree modified thereby, as precedent for the quantification of water rights in other cases.

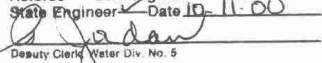
7. The final decree in this action, as entered, reconfirmed, and modified by this Order, is attached hereto.

DATED this 8th day of October, 2000.

BY THE COURT:



THOMAS W. OSSOLA
Water Judge

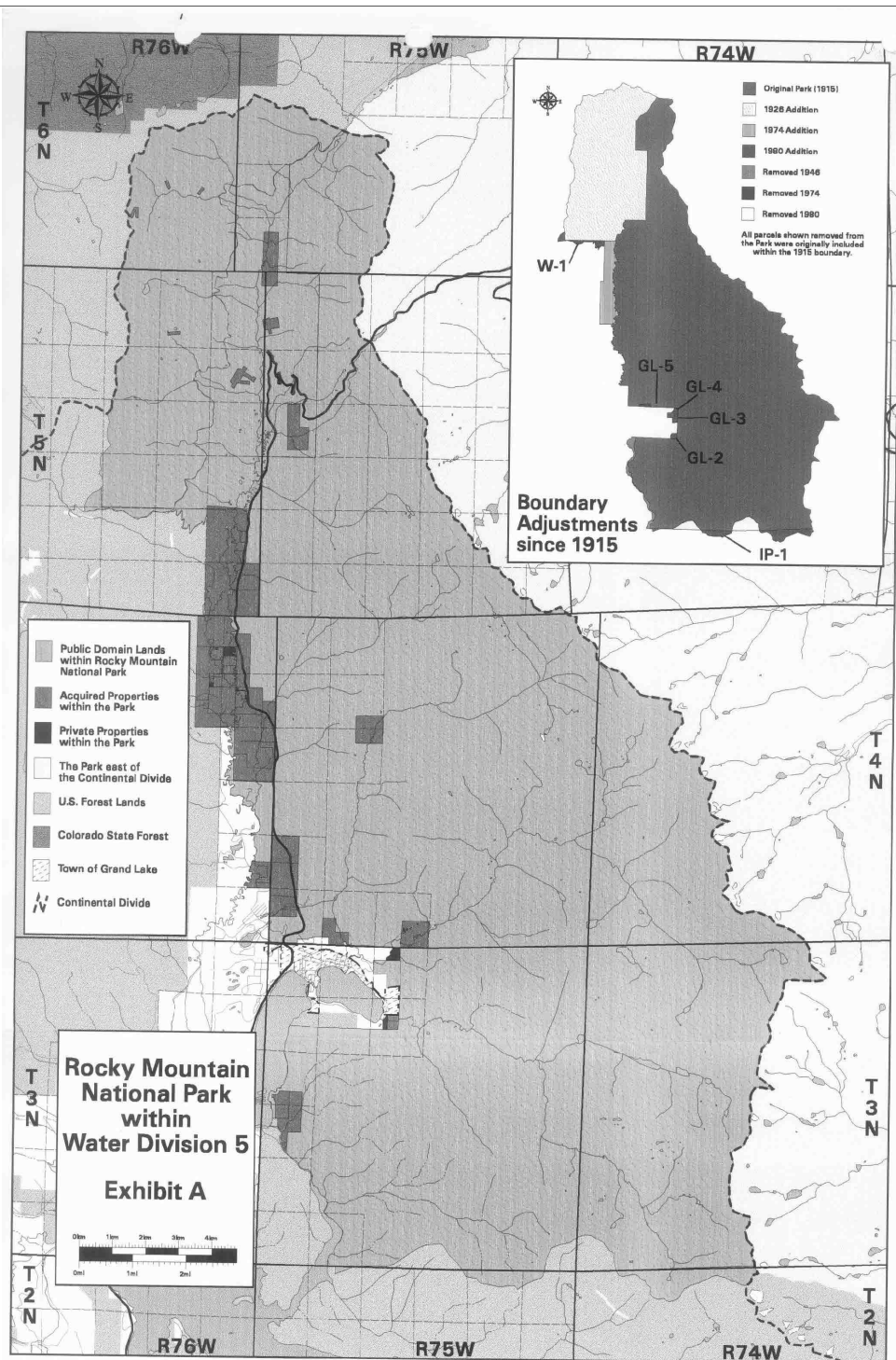
Copy of the foregoing mailed to all
Counsel of record — Water
Peter — Div. Engineer — and
State Engineer — Date 10-11-00

Deputy Clerk Water Div. No. 5

Walsh. for distribution

The moving party is hereby ordered
to provide a copy of this order to
all parties of record within seven (7)
days from the date of this order.

Thomas W. Ossola

Judge



cc Andy

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 1768

**ORDER APPROVING STIPULATION OF THE UNITED STATES OF AMERICA AND
SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT**

IN THE MATTER OF THE UNITED STATES OF AMERICA'S STATEMENT OF CLAIM IN
THE ADJUDICATION OF PRIORITIES TO THE USE OF WATER FOR ALL BENEFICIAL
PURPOSES IN WATER DISTRICT NO. 51,

GRAND COUNTY, STATE OF COLORADO.

Upon the Stipulation of the United States of America and Southeastern Colorado Water
Conservancy District, and being sufficiently advised, the Court ORDERS:

The Stipulation of the United States of America and Southeastern Colorado Water
Conservancy District is approved.

The United States will incorporate in any proposed decree in this case, and the Court will
incorporate in any decree granted in this case, provisions at least as favorable to Southeastern as
those in paragraphs 2-9 of the Stipulation. This Stipulation, or any decree incorporating its
conditions, shall not be binding on the parties in any future cases.

Southeastern need not comply with further orders or actions in this case and need not
appear for Term Days or for scheduled matters in this action, but should be mailed pleadings or
proposed decrees, and may appear to enforce the Stipulation.

Date: October 8, 2000

BY THE COURT:


THOMAS W. OSSOLA

Copy of the foregoing mailed to all
Counsel of record: Water
District: 5 and 10-16-00
Sick Engineer: 10-16-00
W. Ossola
Deputy Clerk, Water Div. No. 5

W. Ossola for distribution

The moving party is hereby ordered
to provide a copy of this order to
all parties of record within seven (7)
days from the date of this order.

Thomas W. Ossola
Judge

District Court, W. D. #5
Civil Action No. 1768
Page 3

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DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO
CIVIL ACTION NO. 1768

COPY
Original Filed 10-04-00
By [Signature]
Deputy

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR
RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN GRAND
COUNTY.

MOTION FOR PARTIAL ENTRY OF FINAL JUDGMENT AND STIPULATION

IN THE MATTER OF THE APPLICATION	)	Water Division No. 4
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-425 through
STATES OF AMERICA,	)	W-438
IN THE MATTER OF THE APPLICATION	)	Water Division No. 5
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-467 and
STATES OF AMERICA,	)	W-469
IN THE MATTER OF THE APPLICATION	)	Water Division No. 6
FOR WATER RIGHTS OF THE UNITED	)	Cases Nos. W-85 and W-86
STATES OF AMERICA,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Summit County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 2371
PURPOSES IN WATER DISTRICT NO. 36,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Eagle County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1529
PURPOSES IN WATER DISTRICT NO. 37,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Grand County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1768
PURPOSES IN WATER DISTRICT NO. 51,	)	
IRRIGATION DIVISION NO. 5,	)	
IN THE MATTER OF THE ADJUDICATION	)	District Court in and for
OF PRIORITIES TO THE RIGHT TO THE	)	Eagle County
USE OF WATER FOR ALL BENEFICIAL	)	Civil Action No. 1548
PURPOSES IN WATER DISTRICT NO. 52,	)	
IRRIGATION DIVISION NO. 5,	)	

COME NOW, Applicant the United States of America, and Objectors the State of Colorado and the City and County of Denver, by and through their respective attorneys, and move for the partial entry of final judgment in this matter, pursuant to Rule 54(b), Colo. R. Civ. P., and state as follows:

WHEREAS, on December 29, 1971, the United States of America ("United States") filed its original statement of claim in Civil Action No. 1768, In the Matter of the Adjudication of Priorities to the Right to the Use of Water for all Beneficial Uses in Water District No. 51, State of Colorado, District Court in and for Grand County, which was duly published; and

WHEREAS, on February 4, 1974, the United States filed a motion to amend the statement of claim included in Civil Action No. 1768, setting forth its claims for federal reserved water rights for Rocky Mountain National Park in more detail; and

WHEREAS, the Colorado Supreme Court consolidated Civil Action No. 1768 with other pending cases concerning water rights claims of the United States for disposition by the District Courts in and for Water Divisions 4, 5, and 6 (the "water court"), the Honorable Charles F. Stewart, J., presiding; and

WHEREAS, on October 2, 1978, the water court entered an Interlocutory Decree for the consolidated cases which granted the United States conditional and absolute reserved water rights for certain diversions, impoundments, and in-place uses in Rocky Mountain National Park, and absolute appropriative water rights for certain ditch and pipeline diversions and well withdrawals in Rocky Mountain National Park; and

WHEREAS, in United States v. City and County of Denver, 656 P.2d 1 (Colo. 1982) (Colo. S. Ct. Nos. 79SA99 & 79SA100), the Colorado Supreme Court reversed the water court's determination that priority dates of reserved water rights for Rocky Mountain National Park are based on the time of transfer from national forest status to national park status; held that the United States was entitled to water rights sufficient to meet the purposes of watershed and timber resource protection with a priority date based on the date lands within Rocky Mountain National Park were originally reserved as national forests; and held that licensees may exercise federal reserved water rights. Otherwise, the water court's decree concerning Rocky Mountain National Park was not disturbed on appeal. The Colorado Supreme Court remanded the consolidated cases to the

water court for modification of the decree and supplemental proceedings in conformity with its opinion; and

WHEREAS, by sua sponte Order dated April 18, 1986, the Colorado Supreme Court ordered that all of the claims originally assigned to Judge Stewart by administrative order dated September 17, 1976, or by any other order of the Colorado Supreme Court, including all of the issues and claims remanded in Colorado Supreme Court Case No. 79SA99 and 79SA100, be assigned to the Water Court for Water Division No. 5; and

WHEREAS, the October 2, 1978, Interlocutory Decree for these consolidated cases provided that the United States shall file a final and specific quantification of in-place uses in or before the month of December in the fifth calendar year following the year in which a final decree is entered in these cases; and

WHEREAS, before entry of the final decree in that portion of these consolidated cases pertaining to Rocky Mountain National Park (i.e., Civil Action No. 1768), the District Court for Water Division No. 1 quantified in-place uses for that portion of Rocky Mountain National Park in Water Division No. 1 as "[a]ll waters within Rocky Mountain National Park that were unappropriated as of the dates of the reservations [of national park lands]" subject to present and future consumptive uses for national park purposes, Concerning the Application for Water Rights of the United States of America for Reserved Rights in Rocky Mountain National Park in Boulder and Larimer Counties, Case No. W-8439-76 (W-8788-77) (Colo. Dist. Ct., Water Div. No. 1, Oct. 12, 1994) (decree);

NOW THEREFORE, the above-named parties stipulate and agree as follows:

1. There is no just reason for delay in entering partial entry of final judgment on the reserved rights claims of Rocky Mountain National Park in the above-entitled action, and the requirements of Rule 54(b), Colo. R. Civ. P., for entry of final judgment on certain claims have been met.
2. The only issues remaining to be resolved on these claims is the quantification of in-place uses and making conditional rights absolute, which the parties have resolved by this stipulation.
3. In light of the October 12, 1994, decree of the District Court for Water Division No. 1 and in compromise and settlement of the United States' claims in Civil Action No. 1768, the

parties agree that the United States' reserved water rights for in-place uses should be quantified as all natural waters within Rocky Mountain National Park that were unappropriated as of the dates of the reservations of national park lands, subject to present and future consumptive uses for national park purposes.

4. The water rights set forth in the attached Order Entering Partial Final Judgment and Approving a Stipulation Among Parties (Order) were quantified pursuant to stipulation. Accordingly, the parties shall not be collaterally estopped from asserting any factual or legal claims or defenses in the quantification of water rights in other cases as a result of execution of the attached Order. In addition, the parties shall not cite the attached Order, or portions of the final decree modified thereby, as precedent for the quantification of water rights in other cases.

5. The United States is entitled to its true dates of priority for the claims set forth in the attached Order, regardless of the provisions of Section 37-92-306, C.R.S.

6. Upon execution of the attached Order by the court, the final decree will constitute the final adjudication of all claims of the United States for reserved rights in Water Division No. 5 for Rocky Mountain National Park pursuant to the Rocky Mountain National Park Act of 1915, 16 U.S.C. 191 et seq.; the National Park Service Act of 1916, 16 U.S.C. 1 et seq.; the Act of February 14, 1917, 16 U.S.C. 192; the Act of October 26, 1974, Pub. L. No. 93-477, 88 Stat. 1445 (1974); the Act of December 22, 1980, 16 U.S.C. 192b-9; the PROCLAMATION by the President of the United States (No. 1917 - July 17, 1930, - 16 Stat. 3029); any other acts of Congress or Presidential proclamations pertaining to Rocky Mountain National Park approved prior to December 31, 1999; the Organic Administration Act of 1897, 16 U.S.C. § 473 et seq.; and any other acts of Congress or Presidential proclamations pertaining to national forest lands transferred to Rocky Mountain National Park prior to December 31, 1999.

7. Nothing in this Stipulation or the attached Order affects other water rights perfected by the United States pursuant to state law for beneficial uses within Rocky Mountain National Park.

8. In view of the preceding considerations and agreements, the above-named parties jointly request that the court execute the attached Order. The parties agree that no appeal shall be taken from this Order.

Entered into this 29th day of September, 2000:

THOMAS L. STRICKLAND
United States Attorney

By: 

LOIS J. SCHIFFER,
Assistant Attorney General
ANDREW F. WALCH,
Trial Attorney
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UNITED STATES OF AMERICA

THE STATE OF COLORADO

BY: 

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Senior Assistant Attorney General
Natural Resources and Environment
Section

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PATRICIA L. WELLS, NO. 10102
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CASEY S. FUNK, NO. 11638

Date: Sept 26, 2000

By:

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Denver, Colorado 80254
(303) 628-6460

ATTORNEYS FOR OPPOSER, THE CITY
AND COUNTY OF DENVER, ACTING BY
AND THROUGH ITS BOARD OF WATER
COMMISSIONERS

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO
Case No. 1768
(Reserved Rights Claims for Rocky Mountain National Park)

**STIPULATION BETWEEN THE UNITED STATES OF AMERICA AND ESTES PARK
CHALET, INC., dba GRAND LAKE LODGE**

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA
FOR RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN
GRAND COUNTY.

The United States of America ("United States") and Estes Park Chalet, Inc., doing
business as the Grand Lake Lodge (the "Lodge"), stipulate and agree as follows:

1. The Lodge hereby stipulates and agrees to not oppose entry of the Order
Entering Partial Final Judgment and Approving a Stipulation Among
Parties to which this Stipulation is attached as an exhibit.
2. Memorandum of Agreement:
 - a. The Lodge uses certain waters diverted from Tonahutu Creek pursuant
to a Memorandum of Agreement with the United States approved on
November 9, 1960, and supplemented February 7, 1961 (collectively,
"MOA"), which provided, *inter alia*, that the National Park Service agreed:

"To issue a Special Use Permit to the
[Colorado Transportation Company,
predecessor in interest to the Lodge] to
continue to use the land occupied by the
present power and water facilities and the trail
needed for access to them as long as such
facilities and trail are needed for power and
water purposes." [MOA art. 4(e)]

"To permit the use by the Company of the
maximum amount of water available under
State of Colorado Filing No. 17579 for the
present use at the Grand Lake Lodge area and
the use of such additional waters as may
subsequently become available under this

appropriation: Provided, that any right subsequently filed upon or perfected by said Company, where diversion is on land within the [Rocky Mountain National] Park, shall be in the name of the United States." [MOA art. 4(f)]

b. The MOA was ratified by the Act of August 17, 1961, Pub. L. No. 87-146, 75 Stat. 383 (1961), which provided for an exchange of land, interests in lands and improvements between the United States and the Colorado Transportation Company, provided "[t]hat all procedures and rights authorized in this Act shall be in conformity with" the MOA.

c. The water right which is used by the Lodge as a source of domestic water supply was claimed by the United States in this proceeding in a "Statement of Claim of the United States of America for the Grand Lake Lodge and Ranger Station Water System" filed on December 29, 1971. On March 6, 1973, the Water Referee, Water Division No. 5, ruled that the United States had an absolute water right for 0.072 cubic feet per second for use at the Grand Lake Lodge and Ranger Station, but declined in his discretion to determine the priority date of the right or "to rule on the question of whether a valid appropriation of water has been made by the applicant." The October 2, 1978, Interlocutory Decree in this proceeding awarded the United States an absolute direct flow right for 0.072 cubic feet per second with an August 31, 1955, priority for the Grand Lake Lodge and Ranger Station Water System. This portion of the Interlocutory Decree was not disturbed on appeal in United States v. City and County of Denver, 656 P.2d 1 (Colo. 1982), and will be confirmed in the Final Decree in this proceeding upon entry of the Order Entering Partial Final Judgment and Approving a Stipulation Among Parties.

d. The United States and the Lodge stipulate and agree that nothing in the Motion for Partial Entry of Final Judgment and Stipulation, Order Entering Partial Final Judgment and Approving a Stipulation Among Parties, Final Decree, or this Stipulation affects the relative rights and obligations of the United States and the Lodge pursuant to the MOA.

e. The United States stipulates and agrees that its obligation to permit the Lodge's use of the Grand Lake Lodge and Ranger Station Water System water right pursuant to the MOA will not in any manner be affected by the entry of a Final Decree awarding the United States reserved water rights for in-place uses in Tonahutu Creek. The United States further stipulates and agrees that any reserved water rights for in-place uses in Tonahutu Creek will be administered as if junior to the Grand Lake Lodge and Ranger Station Water System right.

3. Mitchell Ditch Right:

a. The Lodge is the owner of the Mitchell Ditch water right, decreed by the District Court for Grand County on March 18, 1915, and April 18, 1960, as Appropriation Priority No. 278 in Water District No. 51, with an appropriation date of July 29, 1893, for 1.25 c.f.s. absolute. The source of the Mitchell Ditch water right is described as the Little North Inlet of the North Inlet to Grand Lake, also known as Tonahutu Creek. The point of diversion for the Mitchell Ditch water right is described as follows:

[O]n the West bank of [Little North Inlet of the North Inlet to Grand Lake] at a point whence the South Quarter (S $\frac{1}{4}$) Corner of Section 32, Township 4 North, Range 75 West of the 6th P.M., bears South 45° East 552 feet.

b. The United States and the Lodge agree that:

i. The Mitchell Ditch right was initiated prior to the creation of Rocky Mountain National Park as well as the establishment of any National Forest reservation from which the Park was later created.

ii. The reserved rights that will be decreed in Case No. 1768 (including the reserved rights for in-place uses in Tonahutu Creek) are junior to the Lodge's 1.25 c.f.s. Mitchell Ditch water right.

iii. No decree recognizing the reserved rights of the United States on the flowing waters of streams within the Park shall be deemed to prohibit, restrict, or otherwise affect the diversions of water by the Lodge pursuant to its Mitchell Ditch water right.

4. The United States and the Lodge stipulate and agree that nothing contained in this Stipulation shall in any way relieve either party of any responsibilities and/or obligations to follow and abide by any and all applicable state and federal laws, rules, regulations, procedures, or permitting requirements with regard to the use of federal land and/or the exercise or change of water rights.

5. The Lodge will continue to be a recipient of the pleadings in this case.

6. The final decree in Case No. 1768 will be subject to this Stipulation.

Dated this 18th day of SEPTEMBER, 2000.

THOMAS L. STRICKLAND
UNITED STATES ATTORNEY

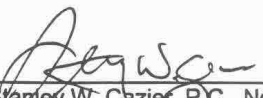
By:



Andrew F. Walch
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Environmental and Natural
Resources Division
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7316
ATTORNEYS FOR THE UNITED STATES OF
AMERICA

ESTES PARK CHALET, INC., dba GRAND LAKE
LODGE

By:



Stanley W. Cazier, P.C., No. 4648
Post Office Box 500
Granby, Colorado 80446
(970) 887-3376
ATTORNEYS FOR ESTES PARK CHALET,
INC., dba GRAND LAKE LODGE

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 1768 (Reserved Rights Claims for Rocky Mountain National Park)

STIPULATION BETWEEN COLUMBINE LAKE WATER DISTRICT AND THE UNITED STATES OF AMERICA

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA
FOR RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK,

IN GRAND COUNTY.

COMES NOW Columbine Lake Water District by and through its attorneys, Baker, Cazier and McGowan and Applicant, United States of America by its undersigned attorneys, and hereby stipulate and agree as follows:

1. Columbine Lake Water District hereby stipulates and agrees not to oppose entry of the Order Entering Partial Final Judgment and Approving a Stipulation Among Parties to which this Stipulation is attached as an exhibit.
2. Columbine Lake Water District is the owner of water rights diverted through the Harbison Ditch, specifically a decreed water right for 1.115 c.f.s with a date of appropriation of July 5, 1898, and a date of adjudication of August 3, 1911, as well as a decreed water right for 1.255 c.f.s. with a date of appropriation of November 1, 1894, and a date of adjudication of July 11, 1911.
3. The United States stipulates and agrees that Columbine Lake Water District's Harbison Ditch water rights specified in Paragraph 2 hereof are senior to any water rights that will be decreed to the United States in Case No. 1768. Nothing in this Stipulation shall affect the relative priority of Columbine Lake Water District's Harbison Ditch water rights and the water rights decreed to the United States or its predecessors in interest in proceedings other than Case No. 1768, including water rights decreed to the United States in the cases consolidated with Case No. 1768 by order of the Colorado Supreme Court.
4. Columbine Lake Water District will continue to be a recipient of the pleadings in this case.

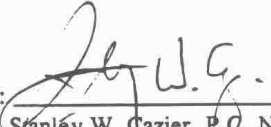
EXHIBIT B

5. The final decree in Case No. 1768 will be subject to this Stipulation.

Entered into this 22nd Day of March, 2000.

BAKER, CAZIER AND MCGOWAN

HENRY L. SOLANO
UNITED STATES ATTORNEY

BY: 

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Attorneys for Columbine Lake Water
District

BY: 

Andrew F. Walch
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Environmental and Natural Resources
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999 18th Street, Suite 945
Telephone: (303)312-7316
Attorneys for the United State of
America

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO
Case No. 1768
(Reserved Rights Claims for Rocky Mountain National Park)

STIPULATION BETWEEN THE UNITED STATES OF AMERICA AND THE TOWN OF
GRAND LAKE

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA
FOR RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN
GRAND COUNTY.

The United States of America (United States) and the Town of
Grand Lake (Town) stipulate and agree as follows:

1. The Town is the owner of the following water rights on or
tributary to Tonahutu Creek and Grand Lake.
 - a. Cairns Pipeline No. 1 water right, decreed by the
District Court, Grand County, on July 21, 1911, with
an appropriation date of November 26, 1907, for 4.406
c.f.s., conditional. Of the 4.406 conditional water
right, 3.0 c.f.s. has subsequently been made absolute,
with the remainder being abandoned. The point of
diversion for the Cairns Pipeline No. 1 water right is
described as follows:

At a point on the right bank of the Tonahutu
Creek, also known as the Little North Inlet to
Grand Lake, whence the North Quarter Corner,
Section 5, T3N, R75W, 6th P.M. bears South 55
degrees 40 minutes East 662 feet.
 - b. Grand Lake Pipeline water right, decreed by the
District Court, Grand County on October 28, 1955, nunc
pro tunc November 7, 1952, with an appropriation date
of March 15, 1945 for 6.75 c.f.s., conditional, of
which 6.0 c.f.s. has been made absolute. The point of
diversion for the Grand Lake Pipeline water right is
described as follows:

At a point on the right bank of Tonahutu Creek,
also known as Little North Inlet at a point
whence the South quarter corner, Section 32, T4N,
R75W, 6th P.M. bears South 54 degrees, 34 minutes
East a distance of 562 feet.

From its point of diversion, the Grand Lake Pipeline
runs in a general southerly direction for a distance

EXHIBIT E

of 2200 feet.

In addition, the Grand Lake well, discussed in the following paragraph has been approved as an alternate point of diversion for the Grand Lake Pipeline water right.

- c. Grand Lake Well water right, decreed by the District Court, Water Division No. 5, in Case No. 79-CW-288 on October 27, 1980 for 0.550 c.f.s., conditional. The Well was also decreed as an alternate point of diversion for the Grand Lake Pipeline water right. The source for the Grand Lake Well water right is decreed to be the alluvial aquifer tributary to Grand Lake. The location of the well is described as follows:

Section 5, T3N, R75W, 6th P.M., at a point 1830 feet East of the West line and 1550 feet South of the North line of said Section 5.

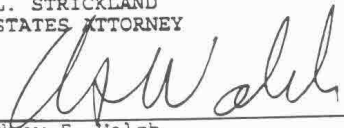
2. The Town has been diverting its water rights through the diversion structure located at the point described in Paragraph 1.b., above, as well as at the Grand Lake Well. Such water has been used by the Town to satisfy its municipal water needs.
3. The Town's point of diversion on the Tonahutu, as well as the Town's raw water treatment plant and the pipeline connecting the diversion structure to the treatment plant, are all located on a two acre parcel that was formerly a part of the Park. By Act of Congress, dated December 22, 1980 (Public Law 96-560), the two acre parcel was authorized to be conveyed from the United States to the Town. This conveyance was accomplished by deed dated July 17, 1981.
4. The United States and the Town hereby acknowledge and agree, that as a result of this conveyance, the Town's point of diversion on the Tonahutu, as well as those portions of the aquifer of Tonahutu Creek and Grand Lake from which the Grand Lake Well draws water, are located downstream from Rocky Mountain National Park ("the Park").
5. The United States intends to file a Motion for Partial Entry of Final Judgment and Stipulation in Case No. 1768, District Court, Water Division No. 5, to quantify reserved rights in those portions of the Park located within Water Division No. 5. The Town intends to enter its appearance in connection with the United States' Motion.
6. The Town hereby stipulates and agrees to not oppose entry

of the Order Entering Partial Final Judgment and Approving a Stipulation Among Parties to which this Stipulation is attached as an exhibit.

7. The United States acknowledges that the Town's Grand Lake Pipeline Water Right and its Grand Lake Well Water Right shall not be affected by any water rights awarded to the Park in Case No. 1768 because these water rights are diverted downstream from the Park.
8. The United States acknowledges that the Town's Cairns Pipeline No. 1 Water Right is senior to and shall not be affected by any reserved water rights awarded to the Park in Case No. 1768, with the exception of the reserved water right for fire fighting and prevention uses, because the Town's Cairns Pipeline No. 1 Water Right predates creation of the Park.
9. The United States and the Town acknowledge and agree that nothing contained in this Stipulation shall in any way relieve either party of any responsibilities and/or obligations to follow and abide by any and all applicable state and federal laws, rules, regulations, procedures, or permitting requirements with regard to the use of federal land and/or the exercise or change of water rights.
10. The final decree in Case No. 1768 will be subject to this Stipulation.

Dated this 20th day of March, 2000.

THOMAS L. STRICKLAND
UNITED STATES ATTORNEY

By: 

Andrew F. Walch
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Environmental and Natural
Resources Division
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ATTORNEYS FOR THE UNITED STATES OF
AMERICA

TOWN OF GRAND LAKE

By: Scotty P. Krob
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ATTORNEYS FOR TOWN OF GRAND LAKE

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO
Case No. 1768
(Reserved Rights Claims for Rocky Mountain National Park)

STIPULATION BETWEEN THE UNITED STATES OF AMERICA AND THE GRAND
LAKE METROPOLITAN RECREATION DISTRICT

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA
FOR RESERVED WATER RIGHTS IN ROCKY MOUNTAIN NATIONAL PARK IN
GRAND COUNTY.

The United States of America (United States) and the Grand Lake
Metropolitan Recreation District (District) stipulate and agree
as follows:

1. The District is the owner of the following water
rights on Tonahutu Creek:

a. Cairns No. 3 Ditch water right, decreed by the District
Court, Grand County on August 11, 1906, for 0.625 c.f.s.
from the North Inlet to Grand Lake. The point of diversion
for the Cairns No. 3 Ditch water right was subsequently
changed to a point on Tonahutu Creek in Case No. 88CW402 by
the District Court, Water Division No. 5 by decree entered
on August 2, 1990. The new point of diversion was
identified as follows:

The headgate of the Harbison Ditch located on Tonahutu
Creek at a point in Section 32, T4N, R75W, 6th P.M.,
from whence the East Quarter Corner of Section 31,
T4N, R75W bears South 31 degrees 50 minutes West,
2491.5 feet, Grand County.

This change in point of diversion was conditioned on no
injury to holders of junior water rights.

b. Harbison Ditch Conditional Water Right, decreed by the
District Court, Water Division No. 5, in Case No. 86CW362
on February 16, 1988 for 1.5 c.f.s. from and through the
headgate of the Harbison Ditch at the point on Tonahutu
Creek described in Paragraph a., above.

2. The District has been diverting its water rights
through the Harbison Ditch which is located, in part, within the
boundaries of Rocky Mountain National Park ("the Park"). The
water is used by the District primarily to irrigate its public
golf course.

EXHIBIT C

3. The United States is the owner of the following water rights on Tonahutu Creek:

a. A portion (2.765 c.f.s.) of Harbison Ditch Priority No. 1, decreed by the District Court for Grand County in 1911 with a priority date of July 15, 1893, for fish propagation purposes. The full allotment of this right can be used only from November 1 to April 15.

b. A portion (3.345 c.f.s.) of Harbison Ditch Priority No. 199, decreed by the District Court for Grand County in 1911 in Civil Action No. 183, with a priority date of July 15, 1893, for irrigation purposes between April 15 and November 1.

c. Certain unquantified reserved water rights with a priority date of January 26, 1915. This date corresponds to the date on which the Park was reserved as a National Park in 1915; additional lands were reserved and added in later years.

4. In order to finally quantify its reserved water rights within Water Division No. 5 and to make final portions of an interlocutory decree entered in 1978, the United States intends to file a Motion for Partial Entry of Final Judgment and Stipulation in Case No. 1768, District Court, Water Division No. 5, seeking to quantify reserved rights in the Park. The District intends to enter its appearance in connection with this Motion when it is filed.

5. The United States and the District desire to enter into a Stipulation to settle the District's concerns in connection with the United States' Motion in Case No. 1768 and to ensure that their respective rights to the waters of Tonahutu Creek are not in conflict.

6. Based upon the foregoing facts, the parties agree that:

a. Pursuant to 16 U.S.C. § 4601-22(b), the United States and the District agree to exchange the Harbison Ditch Conditional Water Right now owned by the District, as described in paragraph 1.b. above, and 1.5 c.f.s. of the Harbison Ditch Priority No. 199 now owned by the United States, as described in paragraph 3.b. above. This exchange will take place pursuant to an agreement which will include the following terms:

i. The discrepancy in value between the rights will be equalized through a \$34,300 payment by the District to the Secretary of the Interior, said payment to be submitted no later than March 31, 2000. Upon payment

of this sum, the exchange will be executed. All other provisions of this agreement, other than this ¶ 6.a.i., will be effective immediately upon execution by the parties hereto.

ii. The United States will continue to hold a property interest in the Harbison Ditch; however, the District will be assured use of the Harbison Ditch for conveyance of 1.5 c.f.s. of the Harbison Ditch Priority No. 199 and the 0.625 c.f.s. of Cairns No. 3 Ditch water right described in paragraph 1.a. above.

iii. The District will maintain the ditch using hand tools only, unless use of mechanized equipment is allowed in writing by the Superintendent of the Park. The District will provide the Park's Superintendent or his designee with a minimum forty-eight hours' notice prior to commencing maintenance activities within Park boundaries, except in the case of emergency maintenance activities which are necessary to repair a breach in the Harbison Ditch, in which case the District will provide notice as soon as practicable.

iv. The District will not enlarge the capacity of the Harbison Ditch beyond 3.24 c.f.s., as measured at the diversion structure on Tonahutu Creek.

v. The United States will have the right of first refusal in the event the District wishes to sell or transfer all or a portion of the water right to another party. The United States will be able to exercise this right within 90 days after receiving notice from the District that the District has received a bona fide offer to purchase the right from a third party.

b. The District agrees that:

i. It will not oppose entry of the Order Entering Partial Final Judgment and Approving a Stipulation Among Parties to which this Stipulation is attached as an exhibit, and will withdraw with prejudice its statement of opposition in Case No. 1768.

ii. It will not seek to perfect any new water rights to be diverted through the Harbison Ditch or at any other location within the Park or upstream from the Park boundary, and will not seek to change the place of diversion of any water right to Harbison Ditch or any other location within the Park or upstream from the Park boundary.

iii. It will not object to the transfer by the United States of the remaining 1.845 c.f.s. of the Harbison Ditch Priority No. 199 to in situ uses for Park purposes should the United States seek such a change in use, provided that, if changed to in situ uses, the United States' 1.845 c.f.s. of the Harbison Ditch Priority No. 199 would be administered as if junior to both the District's 1.5 c.f.s. of the Harbison Ditch Priority No. 199 and the District's Cairns No. 3 Ditch water right (notwithstanding the condition in the decree granting a change of point of diversion that junior water rights not be injured).

c. The United States agrees that:

i. The reserved rights for in-place uses in Tonahutu Creek that will be decreed in Case No. 1768 are junior to both the District's 1.5 c.f.s. of the Harbison Ditch Priority No. 199 and the District's Cairns No. 3 Ditch water right.

ii. It will not protect its reserved rights for in-place uses in Tonahutu Creek by seeking enforcement of that portion of the decree granted in Case No. 88CW402, Water Division No. 5, conditioning diversions by the District pursuant to its Cairns No. 3 Ditch water right on no injury to junior water rights.

iii. If it resumes diversions of its 1.845 c.f.s. of the Harbison Ditch Priority No. 199 through Harbison Ditch, it will only utilize that portion of the existing capacity of the Harbison Ditch that is not being utilized by the District or other users with water rights as or more senior than Harbison Ditch Priority No. 199.

d. The United States and the District acknowledge and agree that nothing contained in this Stipulation shall in any way relieve either party of any responsibilities and/or obligations to follow and abide by any and all applicable state and federal laws, rules, regulations, procedures, or permitting requirements with regard to the use of federal land, the exchange of federal property and/or the exercise or change of water rights.

e. The final decree in Case No. 1768 will be subject to this Stipulation.

Dated this 3^d day of March, 2000, 1999.

THOMAS L. STRICKLAND
UNITED STATES ATTORNEY

By: Asw Walch
Andrew F. Walch
U.S. Department of Justice
Environmental and Natural
Resources Division
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(303) 312-7300
ATTORNEYS FOR APPLICANT

GRAND LAKE METROPOLITAN RECREATION
DISTRICT

By: Scotty P. Krob
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METROPOLITAN RECREATION DISTRICT

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO
Case No. W-1768
(Reserved Rights Claims for Rocky Mountain National Park)

**STIPULATION BETWEEN THE UNITED STATES OF AMERICA AND THE
WATER SUPPLY AND STORAGE COMPANY**

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF
AMERICA FOR RESERVED WATER RIGHTS IN ROCKY MOUNTAIN
NATIONAL PARK, IN GRAND COUNTY.

The United States of America (United States) and the Water Supply and Storage
Company (Water Supply) stipulate as follows:

1. Water Supply is the owner of the Grand River Ditch and its decreed priority
for the diversion of 524.6 cubic feet of water per second of time, with appropriation date
of September 1, 1890. The waters diverted by the Ditch include the headwaters of the
Colorado River (formerly the Grand River) within Rocky Mountain National Park (Park),
in Water Division No. 5.

2. Water Supply is the owner of the Grand River Reservoir, commonly
designated as Long Draw Reservoir, and its right of storage of water to a depth of 50 feet
above the base of the outlet tube, a capacity estimated at 4201.13 acre feet, with
appropriation date of June 5, 1922; and of the right of storage in the Long Draw
Reservoir Enlargement of an additional 6,000 acre feet of water under an appropriation
with an appropriation date of December 31, 1977.

The Reservoir and its Enlargement store waters captured by the Grand River Ditch
which are transported over the Continental Divide at La Poudre Pass. The Long Draw
Reservoir and its enlargement also store water tributary to La Poudre Pass Creek, a
tributary to the Cache La Poudre River in Water Division No. 1. Water Supply holds a
right-of-way for the Grand River Ditch, granted by the Secretary of the Interior on July
12, 1907, under the provisions of the Act of March 3, 1891. On March 21, 1907, Water
Supply and Storage entered into stipulations with the United States Forest Service
regarding the operation, maintenance and other activities on the right-of-way. The
National Park Service is a successor-in-interest of the Forest Service to that agreement.
These stipulations remain in full force and effect and are attached as Exhibit A.

3. The Park was reserved as a National Park in 1915, and additional lands
were reserved and added in later years. The water right of the Grand River Ditch

EXHIBIT F

accordingly precedes the Park's creation as well as the date of any National Forest reservation from which the Park was later created.

4. When the State of Colorado ceded jurisdiction over the Park to the United States, it saved "to the people of Colorado all vested, adjudicated, appropriated, and existing water rights and rights-of-way connected therewith, including all existing domestic or irrigation conduits and ditches;" (CRS 3-1-130; Act approved February 19, 1929). The United States accepted this reservation of rights, stating in 16 U.S.C. Sec. 198:

The provisions of the Act of the Legislature of the State of Colorado approved February 19, 1929, ceding to the United States exclusive jurisdiction over the territory embraced and included within the Rocky Mountain National Park, are hereby accepted. ... saving to the people of Colorado all vested, appropriated and existing water rights and rights of way connected therewith, including all existing irrigation conduits and ditches...

5. The site of the Grand River Reservoir, or Long Draw Reservoir and its Enlargement, was originally within the boundaries of the park. The parties agree that the following extract from the findings of fact in the decree awarding the original storage right to the Reservoir accurately describes the difficulties encountered and the solutions found for its construction.

There also was difficulty in construction because for a number of years a part of the reservoir site had been within the boundaries of the Rocky Mountain National Park and reservoir construction work or any interference with the survey of the ground within said Park was prohibited by law and by action of the Secretary of the Interior. That it was necessary to have an Act of Congress passed excluding the reservoir site from the boundaries of said National Park, which was done by means of a Bill introduced December 13, 1922, in the House of Representatives, being No. 13, 385, and it transferred from said National Park to the Colorado National Forest, Sections 10 and 11 and parts of Sections 15 and 16, Township 6 North, Range 75 West of the 6th P.M., but the Bill finally failed of passage because of a lack of favorable action by the Department of the Interior. In the 1923 Session, another Bill was introduced in the 68th Congress, being House Bill No. 2713, and said Bill was passed by the House of Representatives on April 7, 1924, and by the Senate on May 23, 1924, and in June of that same year was signed by the President and became law. Thereafter in 1927 protests were filed with the General Land Office and after hearings in the summer of 1927, the protests were disallowed and the right of way was granted and following this, the permit was issued by the then Colorado National Forest Supervisor and work tending toward the construction of said reservoir was carried on continuously since the early part

of 1922 in approximately May of that year to the end that the reservoir be constructed.

The purpose of the transfer was to allow the construction of the reservoir. A copy of the transfer Act, and some legislative history concerning it are attached as Exhibit B.

6. The waters diverted by the Grand River Ditch may be either directly carried to the Poudre River by La Poudre Pass Creek, or may, with other waters tributary to the Poudre, be stored in the Grand River or Long Draw Reservoir (including its enlargement) and later be released to La Poudre Pass Creek for delivery to the Poudre River. In either event, La Poudre Pass Creek has always served and continues to serve as a conduit for all of the waters so diverted or stored. La Poudre Pass Creek, except for the lands removed from the Park by the United States Act referred to in the findings of the Decree of the Grand River Reservoir, previously cited, is within the boundaries of the Park.

Based upon the foregoing facts, the parties agree that the rights of Water Supply and those of the United States are not in conflict, and they further agree that:

1. No decree recognizing the reserved rights of the United States on or to any and all waters (including, but not limited to, all surface waters including, without limitation, streams and lakes, and all underground waters) within the Park, or touching the lands of the Park, shall be deemed to prohibit, restrict, or otherwise affect:

a. The diversions of water by the Grand River Ditch under its cited decree or the use of La Poudre Pass Creek as a conduit for the carriage of those waters.

b. The operation of Long Draw Reservoir (including its Enlargement) under its cited decrees, for the storage or release of waters produced by the Grand River Ditch under its cited decree, or under the original decree and the enlargement decree for the reservoir, and the use of La Poudre Pass Creek as a conduit for the carriage of released waters.

c. The rights and responsibilities of the United States or Water Supply with respect to the ownership, use, and maintenance of the Grand River Ditch under its original decree of right-of-way and the stipulations of March 21, 1907.

2. This stipulation and agreement is concerned only with the water rights of the parties. Nothing in this stipulation and agreement affects the ongoing rights and responsibilities of the United States or Water Supply and Storage with respect to the ownership, use, and maintenance of the Grand River Ditch under the right-of-way and agreements pertaining thereto, nor does it affect the right of the United States to object to any proposed changes in the right-of-way or the agreements pertaining thereto, or to file a

statement of opposition to any application of Water Supply to change its water rights identified in paragraphs 1 and 2 above. In the event that the United States determines that Water Supply's future method of operations relating to releases of water from Long Draw Reservoir into La Poudre Pass Creek constitutes a threat of damage to the bed and banks of La Poudre Pass Creek or to the resources of Rocky Mountain National Park, the United States reserves whatever rights it has or may have to prevent such damage, so long as its claim is based on other than the reserved water rights doctrine. Water Supply does not admit that such rights exist or that its operations can cause damage or threat of damage.

3. Any final decree entered in this case shall contain a paragraph stating:

"This Decree is subject to a stipulation between the United States and the Water Supply and Storage Company dated February 25, 2000."

Dated this 25th day of February, 2000.

THOMAS L. STRICKLAND
UNITED STATES ATTORNEY

By: Andrew F. Walch
Andrew F. Walch, No. _____
U.S. Department of Justice
Environmental and Natural Resources
Division
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7300
ATTORNEYS FOR APPLICANT

FISCHER, BROWN & GUNN, P.C.

By: William R. Fischer
William R. Fischer, No. 13222
P.O. Box Q
Fort Collins, CO 80522
(970) 407-9000
ATTORNEYS FOR WATER SUPPLY
AND STORAGE COMPANY

wrf\ws&s\united states\stip between us and ws&s for rmnp.doc

COPY

STIPULATION

Water Supply and
Storage Company

Application for Right of Way
Medicine Bow Forest Reserve

United States Department of
Agriculture, Forest Service

WHEREAS, the conduit right of way applied for by the Water Supply and Storage Company (hereinafter designated as "the Company"), as shown by a certain map filed November 16, 1904 in the United States District Land Office at Denver, Colorado, is within the Medicine Bow Forest Reserve in said State, and

WHEREAS, by an amendatory regulation of the United States Department of the Interior, approved by the Secretary of the Interior, on April 25, 1906, concerning rights of way for railroads, canals, reservoirs, etc., it is provided that:

"Whenever a right of way is located upon a forest or timberland reserve, the applicant must enter into such stipulation and execute such bond as the Secretary of Agriculture may require for the protection of such reserves," and

WHEREAS the Secretary of Agriculture requires, for the protection of the said Medicine Bow Forest Reserve, that the Company shall enter into the stipulation hereinafter set forth, and

WHEREAS, the Board of Directors of the Company has duly authorized the undersigned, as President hereof, and under the Company's seal, to execute this stipulation; proper evidence of such authorization being hereto attached and made a part hereof:

Exhibit A

NOW, THEREFORE, the Company does hereby stipulate and agree, and does bind itself, its successors and assigns as follows, to wit:

(1) Not to cut or destroy any forest reserve timber upon said right of way except that necessary to be cut or destroyed in constructing said conduit.

(2) To pay in advance, as directed, to the Special Fiscal Agent, Forest Service, Washington, D.C., for all forest reserve timber upon said right of way at the rate of \$1.50 per thousand feet, b.m. as scaled by the forest officer in charge of said reserve.

(3) To dispose of all brush and other refuse within said right of way or adjacent thereto in such manner as may be required by the forest officer in charge.

(4) To construct and maintain in good and passable condition, across said right of way, free of any charge or expense to the United States, crossings for all established roads and trails.

(5) The Company and all contractors, and others employed by the Company, shall observe such precautions against fire as the forest officer in charge shall prescribe, and shall at all times exercise the utmost care to prevent fires, and shall promptly and without charge lend all possible assistance in men and material, under the direction of the forest officer in charge, in fighting fire within said reserve.

(6) To pay the United States for any and all damage sustained by reason of use and occupation of said forest reserve

by the company, its successors and assigns, regardless of the cause and circumstances under which such damage may occur.

IN WITNESS whereof said Company has caused these presents to be executed, and its corporate seal to be hereto affixed at Fort Collins, Colorado, on this 21st day of March, A.D., 1907, by its president and Agent hereto duly authorized.

WATER SUPPLY AND STORAGE COMPANY.

/s/ By A. A. Edwards
President

(SEAL)

Attest /s/ F. B. Stark
Secretary

State of Colorado)
)ss.
County of Larimer

On this 21st day of March, one thousand nine hundred and seven, before me personally appeared F. B. Stark to me personally known, who being by me duly sworn, did depose and say: that he resides at Fort Collins, Colo. and is the secretary of the Water Supply and Storage Company, the corporation described in and which executed the foregoing stipulation and as such has custody of its records and seal; that said corporation was organized under the laws of the State of Colorado; that he knows the corporate seal of said corporation; that the corporate seal affixed to said instrument is such corporate seal and was thereto affixed by order of its Board of Directors, a duly certified copy of which order is hereto affixed; that A. A. Edwards is the President of said corporation and was duly authorized to execute said instrument on its behalf; that deponent knows the signature of said officer, and that the signature affixed to such instrument is his signature.

/s/ F. B. Stark
Signature of Deponent

Subscribed and sworn to before me on the date above written.

/s/ William T. Lawark
Notary Public

(SEAL)

My commission expires January 17, 1909.

Approved June 28, 1907

/s/ C. S. Chapman
Acting Forester

COLORADO
SUPREME COURT LIBRARY

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FRED Y. HOLLAND,
LIBRARIAN

THE STATUTES AT LARGE

OF THE

UNITED STATES OF AMERICA

FROM

DECEMBER, 1923, TO MARCH, 1925

CONCURRENT RESOLUTIONS OF THE TWO HOUSES OF CONGRESS
AND
RECENT TREATIES, CONVENTIONS, AND EXECUTIVE
PROCLAMATIONS

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOL. XLIII

IN TWO PARTS

PART 1—Public Acts and Resolutions
PART 2—Private Acts and Resolutions, Concurrent Resolutions,
Treaties, and Proclamations

PART 1

WASHINGTON
GOVERNMENT PRINTING OFFICE
1925

Exhibit B

PUBLIC LAWS.
OF THE
UNITED STATES OF AMERICA
PASSED BY THE
SIXTY-EIGHTH CONGRESS
1923-1925

252 LXXY-EIGHTH CONGRESS. SESS. CHS. 224, 225, 230, 231. 1924.

1922, under decisions of the Comptroller of the Treasury in force on that date."

Retired pay.
Vol. 42, p. 632, amended.
Pay saved on reduction of grade computed for retired pay.

Effective from July 1, 1922.

SEC. 6. That section 17 of said Act be, and the same is hereby, amended by adding to the first sentence thereof the following: "Provided, That the pay saved to an officer by section 16 of this Act or by the Act of September 14, 1922, shall be construed as the pay provided in this Act for the purpose of computing retired pay."

SEC. 7. That the provisions of this Act shall be effective from and after July 1, 1922.

Approved, May 31, 1924.

May 31, 1924.
[S. J. Res. 105.]
[Pub. Res., No. 23.]

CHAP. 225.—Joint Resolution Authorizing the President to detail an officer of the Corps of Engineers as Director of the Bureau of Engraving and Printing, and for other purposes.

Major Wallace W. Kirby, U. S. Army.
Detail of, as Director of Bureau of Engraving and Printing for six months, authorized.

R. S., sec. 1222, 1224, pp. 213, 215.
Vol. 19, p. 243.
Proviso.
To receive only Army pay, etc.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized, in his discretion, to direct Major Wallace W. Kirby to report to the Secretary of the Treasury for duty for a period of six months, and that said Major Wallace W. Kirby may, under the direction of the Secretary of the Treasury, perform the duties of Director of the Bureau of Engraving and Printing for a period not to exceed six months, notwithstanding the provisions of section 1222, Revised Statutes, and section 1224, Revised Statutes, as amended by the Act of February 28, 1877: *Provided,* That the said Major Wallace W. Kirby shall receive no emoluments by reason of the performance of said duties, but shall receive the same pay and allowances from appropriations made for the support of the Army as he would receive if he were performing military duty at the War Department.

Approved, May 31, 1924.

June 2, 1924.
[H. R. 2713.]
[Public, No. 172.]

CHAP. 230.—An Act To transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest, Colorado.

Colorado National Forest, Colo.
Tracts transferred to, from Rocky Mountain National Park.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That those portions of the following-described tracts now within the Rocky Mountain National Park be, and are hereby, transferred to the Colorado National Forest and shall hereafter be subject to all laws relating to the use and administration of the national forests: Section 10; northwest quarter of southeast quarter, southwest quarter of the northeast quarter, and the southwest quarter of section 11; northwest quarter of the northeast quarter, north half of the northwest quarter, and the southwest quarter of the northwest quarter of section 15; and the northeast quarter of section 16; township 6 north, range 75 west, sixth principal meridian.

Approved, June 2, 1924.

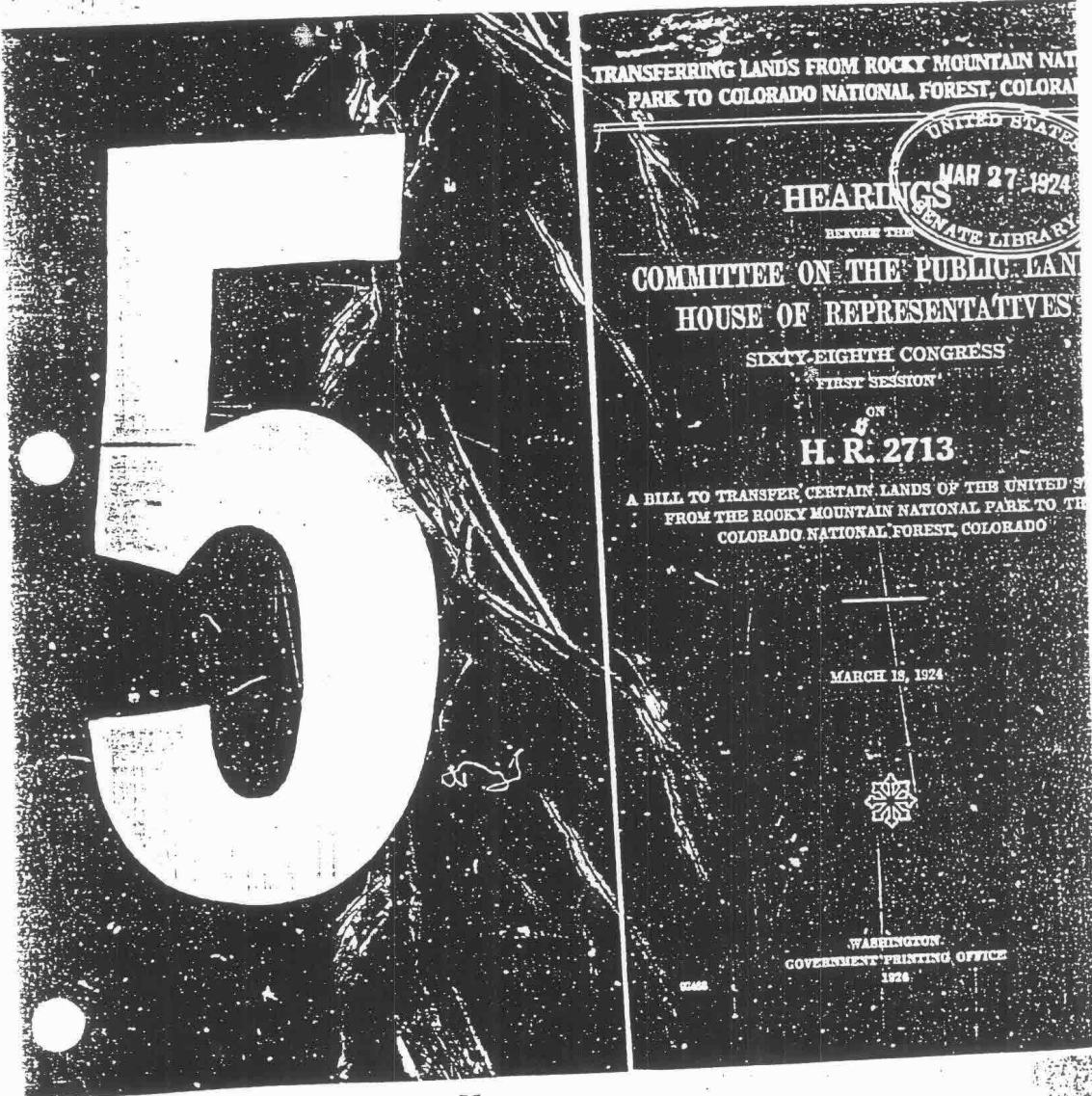
June 2, 1924.
[H. R. 2879.]
[Public, No. 173.]

CHAP. 231.—An Act To provide for the disposal of homestead allotments of deceased allottees within the Blackfeet Indian Reservation, Montana.

Blackfeet Indian Reservation, Mont.
Homestead allotments on, subject to alienation, etc., on death of allottee.
Vol. 41, p. 14.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the allotments of Blackfeet Indians designated as homesteads under section 10 of the Act of June 30, 1919 (Forty-first Statutes at Large, page 16), imposing restrictions on alienation, shall after the death of the original allottee be subject to partition, sale, issuance of

6/2/24
date signed
By President



COMMITTEE ON THE PUBLIC LANDS.

HOUSE OF REPRESENTATIVES.

SIXTY-THIRD CONGRESS, FIRST SESSION.

ADDISON T. SMITH, Idaho.
 HAYS B. WHITE, Kansas.
 WILLIAM N. VAILE, Colorado.
 DON D. COLTON, Utah.
 CHARLES L. FAUNT, Missouri.
 CHARLES E. WINTER, Wyoming.
 SCOTT LEAVITT, Montana.
 JOHN D. FREDERICKS, California.
 ARTHUR D. WILLIAMS, Idaho.
 FREDERICK C. FLEMING, Vermont.
 VICTOR L. BARNER, Wisconsin.
 WILLIAM P. JARRETT, Delegate from Hawaii.
 GEORGE A. JONES, Clerk.

11

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III

TRANSFERRING LANDS FROM ROCKY MOUNTAIN NATIONAL PARK TO COLORADO NATIONAL FOREST, COLO.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Tuesday, March 19, 1924.

The committee met at 10:45 o'clock a. m., Hon. Nicholas Sinnott (chairman) presiding. Mr. Timberlake is here this morning on his bill, H. R. 2713, and we will insert in the hearing a copy of that bill:

[H. R. 2713. Sixty-sixth Congress, first session.]
A bill to transfer certain lands of the United States from the Rocky Mountain National Forest to the Colorado National Forest, Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That those portions of the following described tracts now within the Rocky Mountain National Park and are hereby transferred to the Colorado National Forest shall hereafter be subject to all laws relating to the use and management of the national forests: Section 10; northwest quarter of section 11; northwest quarter of the northwest quarter, and the north half of the northwest quarter, and the southeast quarter of section 15; and the northwest quarter of section 16, township 6 north, range 75 west, sixth principal meridian.

Mr. ANNENBERG. Mr. Chairman, the other day, I asked that this matter be held off. If you will just wait a moment, Mr. Abernethy, till I get the record made up. I shall also insert at this point, without objection, a letter from the Secretary of Agriculture, dated December 31, 1923, and a letter from the Secretary of the Interior, dated February 8, 1924. The letters referred to follow:

DEPARTMENT OF AGRICULTURE,
Washington, December 31, 1923.

Hon. N. J. SINNOTT,
Chairman, Committee on Public Lands,
House of Representatives.

DEAR Mr. SINNOTT: Receipt is acknowledged of your request of December 18 for report upon the bill (H. R. 2713) to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest. In substance this measure proposes that the existing boundary line between the national park and the national forest be moved so that certain tracts situated within the park will be placed under national forest administration. It is understood that the land transferred embraces in part a reservoir project begun by the Water Supply and Storage Co. of Fort Collins, Colo., for which filings were made in the office of the State engineer without authority to grant a right of way for the use of this line to the company in view of the act of Congress approved March 8, 1909, providing for the sale of the Federal water power act. This act does not prohibit the use of national forest lands. If, therefore, the transfer is made, the lands would be available for use under the irrigation amendment act of March 3, 1891 (26 Stat. 1006).

TRANSFERING LANDS TO NATIONAL FOREST.

The Department of Agriculture has no objection to assuming the duties of administering the park, but since they now form a part of a national park it is suggested that the bill be referred to the Department of the Interior for report. Respectfully,

HENRY O. WALLACE, Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1924.

Hon. N. J. SISKIETT,
Chairman Committee on the Public Lands,
House of Representatives.

Mr. Data Mc SISKIETT: I have your request of December 18 last for a report on H. R. 2712, sixteenth Congress, first session, entitled "A bill to transfer certain lands of the United States from the Rocky Mountain National Park to the Canadian National Forest, Colo."

The purpose of the bill is to transfer to the Colorado National Forest about 160 acres of land lying within the Rocky Mountain National Park, but immediately on the northwest boundary line, which is desired for the construction of the Grand River Reservoir, right of way for which has been applied for by the Water Supply and Storage Co. of Colorado, and which application is now pending before the department. This company is owned entirely by the farmers whose lands are irrigated by the company's operations, and the reservoir is not desired in order to make a speculative profit by the sale of the water which is needed for the lands irrigated by the company. From the application with this request, but application for the use of the public lands was not filed with the General Land Office of the Interior Department, which would have given them a valid prior right that would have had to be recognized under the provisions of the act creating the park.

The land which would be flooded by the proposed reservoir lies partly within the park, but more than half within the Colorado National Forest, as indicated on the map accompanying this letter. The small stream across which the remaining dam would be built forms the boundary of the park at that point. This section of the park is little visited and does not carry distinctive features of unusual scenic value.

Since this measure was introduced in the Congress I have received protests from Colorado residents against the elimination of this area from the park, arguing that there are available reservoir sites beyond the park boundary which should be developed before any park land is given up for reservoir purposes. From the available in this department it appears that there are three sites at which dams to create storage could be constructed between the Grand River Reservoir and the headwaters of the company, but the capacity of the reservoir of these sites is three times the capacity required by the applicant company.

This project does not contemplate the damming of lakes or streams lying within the park, nor does it contemplate the exclusion of an area that is more valuable for park recreational purposes. It arises primarily in connection with the use of otherlands under another Federal jurisdiction adjoining the park—the division line between the two being the threat of the stream of the Cache la Poudre River. Such a river makes an oddly described natural boundary between the two jurisdictions, but nevertheless a boundary, which the department is inclined to maintain as such as a considerable area of land, and the better it is maintained, the more the park and the special interest, such developments for example as bridges and more special dams. The logical place for the boundary line in such a case is not in the midst of a stream but the enough on one side to include the whole stream with both its banks in one jurisdiction or the other. Such instances are bound to arise occasionally where natural boundaries such as streams are used or, when boundaries of national parks have been arbitrarily established by the use of section lines. It is not easy or practicable always to anticipate when national park boundaries are created and a division line that will meet every future emergency. Each case must be studied and judged on its merits. I am of opinion that as the exclusion of the small amount of park land involved for application to the Colorado National Forest will not in any appreciable

TRANSFERING LANDS TO NATIONAL FOREST.

maner injure the scenic qualities of the Rocky Mountain National Park or interfere with the value of that park for public recreational uses, the department should interpose no objection to the bill.

Very truly yours,

HENRY WALLACE.

Mr. AUGER. The other day I asked that this matter be held up in order to see how the Representatives from the State of Colorado felt about it, and in justice to the orderly procedure of the matter, I had a conference with Mr. Vail and Mr. Taylor, and also talked with Mr. Hardy, and they all were a unit that they thought the bill was all right. Mr. Vail is here and he can speak for himself.

Mr. VAIL. I think we had all talked with Mr. Toll, superintendent of the park—I know I had—he was here, and I believe he spoke to Mr. Timberlake and Mr. Hardy. Mr. Toll was familiar with this ground and assured us that it would not be a detriment to the park in the least; that this particular ground had no scenic or historic value; was not necessary as a sanctuary for wild game. It is a small area of 1,200 acres.

Mr. AUGER. Then it was said, as I understand it, of an irrigation project for farmers?

Mr. VAIL. Yes.

Mr. AUGER. Now, Mr. Taylor told me that he acquiesced in the situation.

The CHAIRMAN. Mr. Taylor, of Colorado?

Mr. AUGER. Yes; and upon that, as far as I am concerned, I have no further objection in the matter. I just thought I would see Mr. Timberlake, and, of course, I do not know about the other members of the committee, but that eliminates any objection I may have.

The CHAIRMAN. I called Judge Baker on the telephone this morning and told him that this matter would be up. He said he could not be here, but he would like to have a record made, and I understand he has not given his consent to the bill.

STATEMENT OF HON. CHARLES E. TIMBERLAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO.

Mr. TIMBERLAKE. Mr. Chairman, did you want to read into the record my statements further, as you did the other day?

The CHAIRMAN. Yes; we want all that matter—anything else that you have.

Mr. TIMBERLAKE. Well, Mr. Chairman, the objection that was reserved the other day by Judge Baker was that he desired some information to be taken at a hearing which might be used on the floor not only to convince him of the desirability of excluding this land from the park but he wanted to know how the representatives of the Park Service felt about it. The favorable report is before you from the Secretary of the Interior and the Secretary of Agriculture, both of whom agree that it should be eliminated.

Mr. AUGER. As I understand it, you want to transfer this from the Park Service to the Forestry Service?

Mr. TIMBERLAKE. Yes; it is now in the Park Service. Here are the boundaries of the park indicating on map. The map shows

TRANSFERING LANDS TO NATIONAL FOREST

license, or authorization for dams, conduits, reservoirs, power, water, transmission, or utilization of power, within the limits, as hereinafter defined, of any national park or national monument shall be granted or made without specific authority of Congress, and no such act of Congress approved June 10, 1920, entitled "An act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal certain acts of the river and harbor appropriation act, approved August 4, 1917, and for other purposes," approved June 10, 1920, as authorized, intended and new of existing national parks and national monuments by the Federal Power Commission is hereby repealed.

Approved, March 6, 1921.

This is only one of two instances that have arisen during the past three years where the excision of a portion, a small portion, of national park lands is desired for restoration to the national forest, arising primarily because of the character of the boundaries.

I have here a map showing the Rocky Mountain National Park, containing 20,000 square miles, or 24,227 acres. The gravel at present from one side of the park to the other runs from a place called Estes Park on the east side, across the Fall River flood through the center of the park to the west side. The northern part of the park is almost virgin territory.

It was planned at first in connection with this reservoir to utilize something like 640 acres of park land, but that has gradually been reduced to a minimum of 135 acres. The reservoir would lie mainly on national forest land.

The Chairman. That is national forest lands now or after the exclusion?

Mr. CAMMERER. Now. There is no predominant scenic characteristics in that section of the park that would be spoiled, and furthermore, it is not more important at the present time to have it reserved for scenic or recreational purposes, than it is for this economic purpose.

Mr. ANNENBERG. Let me ask you a question right in that connection. Has your service investigated this crowd that wants to get the reservoir up there, as to how it is to be used and who they are? As I understand it, they are some farmers who have a mutual organization there. Will you just explain how that is, if you have made that investigation?

Mr. CAMMERER. Yes, we have. It is a mutual organization of residents, mostly farmers living to the north of the park. One hundred and seventy-five belong to the organization, which is not created for speculative profit.

Mr. ANNENBERG. There are no power companies that are going to get into it as far as you know?

Mr. CAMMERER. As far as we know, the Geological Survey tell us that they do not believe it can be used for power, but it is primarily an irrigation project at the present time. Already water diversion flumes or ditches run from the one side, from the upper part of the Cache La Poudre River into the lower part of the Cache La Poudre River and feed other reservoirs below.

Mr. ANNENBERG. It is necessary to have that for those people to irrigate those lands?

Mr. CAMMERER. The showing they have made indicates that it is necessary.

TRANSFERING LANDS TO NATIONAL FOREST

is sought to be taken out of the park and placed in the Forest Service [indicating].

Mr. ANNENBERG. Still under the control of the Government? Mr. TRAMERLACE. Yes. The Forest Service is permitted under the law to grant permits for the building of reservoirs within its boundaries, while that is not true of the Park Service, and it is simply transferring it from one department of the Government which has not the right to grant the privileges of building reservoirs, to another department of the service that has that right.

Mr. CAMMERER is here representing the Park Service, and apparently to the wish expressed by Mr. Baker, I think that he should be heard briefly on this matter, and after that I desire for the record to put in an article from the storage company, which is a farmers' ditch company that desires to use this water for irrigation purposes.

Mr. CAMMERER. A mutual organization, is it not? Mr. TRAMERLACE. A mutual organization; yes. I desire to put that into the record for the use of Congress and for the benefit of Judge Baker when we are considering the bill.

I also desire to place in the record some letters from Mr. Yaffel, executive secretary of the National Parks Association, who had received, he advised me many protests regarding this bill, and I furnished him a copy of the bill, and he complimented the provisions of the bill very forcefully in a letter which I will place in the record, and also a very strong letter as to why, in his judgment, it would be unwise for any objection to be urged that this land be placed in the Forest Service where this permit can be favorably considered. I would like at this time, Mr. Chairman, to have Mr. Cammerer address you.

STATEMENT OF MR. ARNO B. CAMMERER, ACTING DIRECTOR, THE NATIONAL PARK SERVICE, INTERIOR DEPARTMENT.

Mr. CAMMERER. Mr. Chairman and gentlemen of the committee, my name is A. B. Cammerer, Assistant Director of the National Park Service, Acting Director at the present time in the absence of Director Mather, in whose stead and place I am appearing.

The necessity for this legislation—the reason it is before your committee arises under the provisions of the act of March 3, 1921, amending the Federal water power act, which prescribes that hereafter no permit, license, lease or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water and so forth, shall be granted or made without specific authority of Congress. That is the protection act for the national parks, and it became necessary, therefore, to get this case before Congress.

The act referred to follows:

[FRUSTRATION—No. 307—20th Congress.]

[S. 634.]

AN ACT To amend an act entitled "An act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal certain acts of the river and harbor appropriation act, approved August 4, 1917, and for other purposes," approved June 10, 1920.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no permit, license,

STIPULATIONS TO NATIONAL FOREST

Mr. ALBENBERRY. And they can not get the water elsewhere!
 Mr. CAMMERER. The amount of water that they need at the present time can not be supplied elsewhere below. The only storage they can find below will be three times the amount they need at the present time.
 Mr. ALBENBERRY. How many farmers will be benefitted by this?
 Mr. CAMMERER. There are 176 farmers in the organization, and I suppose it will benefit about that many farmers.
 Mr. TRIMBLE. Mr. Chairman, might I interrupt a moment? In connection with the questions asked and the statements made by Mr. Cammerer, if I might, I would like to have placed in the record at this point a letter addressed to me from this farmers' mutual storage company, giving all of the information sought to be obtained by the questions from Mr. Albenny.
 The CHAIRMAN. Without objection it will be inserted at this point. (The paper referred to follows:)

Hon. CHARLES D. TRIMBLE,
 House Office Building, Washington, D. C.
 DEAR Mr. TRIMBLE: In response to your inquiry as to H. R. 2713, now before the House, and supplementing my letter September 1, 1923, to Mr. Roger Toll of the National Forest Service, Supply & Storage Co., and as to the plans submitted in the case of the proposed reservoir, I have the honor to inform you that the Water Supply & Storage Co. is a mutual ditch company, organized under the laws of the State of Colorado and is the successor in interest of what was known as the Larimer County Ditch Co., likewise a mutual ditch company, organized about 1880. This company is the owner of an irrigation canal known as the Larimer County Canal extending in an easterly direction from a point on the Cache La Poudre River about 12 miles above Fort Collins, a distance of about 75 miles through Larimer and Weld Counties. The ditch has a carrying capacity of approximately 800 second-feet and is used for the irrigation of about 60 thousand acres of land lying thereunder. The company is also the owner of 11 storage reservoirs, which are diked during the winter and by spring floods in the river and the supply thus impounded is used to supplement the direct flow from the river. In addition, the company has constructed the Skyline Ditch, a ditch leading from one of the branches of the Larimer River and which brings water across the divide between the Larimer and Poudre Rivers, dropping its water into Chambers Lake, a reservoir belonging to the company in the channel of the headwaters of the main fork of the Poudre River, thence down the Poudre River and into our headgates. In about 1903 the company also commenced the construction of what is known locally as the Grand River system, which system consisted of a ditch for the purpose of intercepting waters from the head streams of the Grand (now Colorado) River and which included the construction of the Grand River Reservoir, locally known as Long Draw Reservoir. It is this reservoir which we are now seeking permission to construct. The construction of the Grand River Reservoir and the Skyline Ditch, and of the reservoir for use in connection with the proposed Grand River system, the Storage Company of 1903 and 1904, but through some accident no application for permits was made to the General Land Office of the United States for the construction of this reservoir at that time. Work on the ditch mentioned had been pursued each year until the company now has a ditch approximately 10 miles in length and with a carrying capacity of something over 200 second-feet and which capacity is being enlarged as rapidly as possible.

The plan was now made for the construction of the final section of the system, which is the reservoir in question. The Grand River Ditch brings water across the divide between the head streams of the Grand and Poudre Rivers, and drops its water into Chambers Lake, one of the head streams of the south fork of the Cache La Poudre River, thence down the south fork into the main Poudre at

STIPULATIONS TO NATIONAL FOREST

a point about five miles below Chambers Lake, and thence down the main Poudre to the head gates of the company. The contemplated reservoir is for the purpose of conserving the early flow of the Grand River Ditch, holding the water in the upper mountains during the flood season and until the last irrigation run, which is about September 1, then using the water so stored for the last irrigation of potatoes, sugar beets, and other root crops.

The proposed reservoir site includes a mountainous area of approximately 100 acres, and our engineer has located approximately 100 acres of flat land, which is what is now designated as the Grand River Reservoir. The site is in the extreme northwest corner of the Fort Collins National Forest, which is the extreme northwest corner of the State of Colorado. The area on the opposite side is in the national forest. The altitude of the proposed reservoir is approximately 10,000 feet and there is no road or trail as has been constructed within some 6 miles of the reservoir except a trail which has been constructed by this company for its own purposes. The proposed site is inaccessible from a standpoint of the traveler, being some 10 miles from the Fall River Road through National Park and in a country little, if ever, visited by tourists or others.

The purpose of the proposed reservoir is the conservation of the early flow of the Grand River Ditch and at a time when the flood on the Cache La Poudre is such that all of the irrigating ditches are diked without reference to desired priority, running what is locally known as fire water, which is water stored in the Skyline Reservoir for use later in the season. During the flood season, directly after the rain, from June 20 to July 20, the flood volume of the Cache La Poudre is about 20 to 30 times the normal volume of the river and is wasted so far as the valley is concerned. The same condition exists with reference to the "Skyline Ditch," and the Grand River Ditch of our company with reference to the flow of water during the flood season and we thereby lose a large number of acre-feet, which, if stored in some available basin, would greatly aid in the land irrigation.

I understand that some protest has been made by various persons who seek to prevent the severance of the lands mentioned in your bill from the park area, and the main reason, as I read the protests, is that there are other available sites for the purpose further down the Cache La Poudre River, which might be used by this company for the proposed storage. In answer to this objection I may state that there are four available sites for reservoirs proposed on the river company known by the following names:

A. The Home or Zimmerman site, located on the Home or Zimmerman site, about 12 miles below Chambers Lake, on the main river and about 7 miles below the junction of the main river with the Big South.
 B. The site known as the Elk River site, located at a point approximately 20 miles above the main river, principally directly halfway between this city and the town of Fort Collins.
 C. Slave Prairie Reservoir, located about 5 or 6 miles below Elk River site.

D. The Bellevue, which is located approximately 10 miles above Fort Collins. Referring to these sites I respectfully suggest that the Home or Zimmerman site is owned by the protestant mentioned. The property which would be submerged in such a reservoir includes a considerable amount of meadow land and a resort hotel, owned and operated by the Zimmerman estate. The preliminary survey of this site was made a number of years ago in connection with the project known as the Greeley-Poudre Irrigation District and contemplated a dam some 250 feet in height with a storage capacity in the reservoir of something like 125,000 acre-feet. I may add that the project of this reservoir abandoned this site as not being practicable for use of that system, which includes an area of about 125,000 acres.

The Elk River site mentioned is in a valuable reservoir in the section of the Elk River dam project, which is about 100 feet in height. The project of this dam project includes 100,000 acre-feet with a probable cost of construction of three quarters of a million dollars. Plans have been made and been proved on this site, and the title to the lands adjacent to the proposed dam are owned in fee simple by the Greeley-Poudre Irrigation Ditch, and it will be impossible for another company to carry out the project, even if such a project were feasible, or that water was available for storage in such a basin.

The Slave Prairie site has been immediately abandoned as impractical by the projectors of that reservoir partly on account of expenses and partly on the

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count of lack of available water. The reservoir is filled upon was of approxi-

You will notice by the capacities mentioned in the previous article for reservoir and that the expense would be from fifteen to twenty millions of dollars for the same amount of storage capacity.

In connection with the statements herein, I beg leave to refer you and the Committee on Public Lands of the House to the various statements, engineer reports, and other data presented by us to the National Park Service in connection with its report on this bill. These statements are from representative irrigators and business men throughout this section, and are all from persons of known integrity and business men throughout the section, and are all from persons of known knowledge of the situation on the ground.

If you would like to know more about this project, I can furnish copies of these various statements and reports to you.

I would be pleased to have you and the committee before whom this bill is pending keep in mind that this construction is not in any way a speculative venture, but is being undertaken by farmers who actually own and live on their land, for their own use and benefit in the conservation of water for irrigation.

The company has never had and never can have any water for sale or use by others than its own stockholders. Not all of its expenses are paid and always have been paid by means of assessments on the stock. The company has operated successfully for more than ten years and has built a system which is the pride of this valley and which is a pattern for all irrigation systems through the West. The water for the through this reservoir is placed largely to the development of the country, and the reservoir itself is a public benefit indirectly to all of the districts taking water from it and a benefit to every acre. My reason for the statement that the flow of this river is made to a great exchange which is held under the principle of the proper trustee either of the district, the water company, or the people of the valley, is that the exchange is conducted more on a credit policy and repayment from reservoirs, and is conducted among the large systems very successfully. The key to the exchange system is that this company which operates the reservoir in the valley and the mountain water from the two ditches named with reference to such exchange and the placing of part of its water far above all of the head gates in the valley will assist in the delivery of such water at the proper point when the same is required.

The company now has funds available for the purpose of this construction work, and when the reservoir is completed the system is dilated and we will be in a position to cure for all of our water supply at all times for the benefit of the stockholders.

of the stockholders.

We are very anxious to have you and the committee thoroughly understand the situation, and are more than ready at any time to furnish any information which may be required, keeping in view of all times our extreme anxiety not to be compelled to delay the construction of our project beyond the coming working season.

Very truly yours,

THE WATER SUPPLY & STORAGE CO.

Mr. CAMMERER. The letter from the Secretary of the Interior, if I might quote from it, says:

This project does not contemplate a dam in connection with lakes or streams lying within the park.

The CHAIRMAN. What is the date of that letter? Mr. QUINCY. That is dated February 8, and accompanying that letter was a map similar to the one—identical to the one that I am exhibiting here. That letter is thorough in its detail, he says:

THE NATIONAL TOLL FREE

This process does not contemplate the annexation of any land to any particular division for constitutional purposes. It affords primarily a means of facilitating the use of other land under another Federal jurisdiction adjoining the land in question. It does not contemplate the transfer of jurisdiction from one division to another, the two being the basis of the Federal structure. It does not involve a change of jurisdiction, but it does make an easily described boundary between the two jurisdictions, but it provides a boundary which becomes very difficult and inconvenient as soon as any considerable development occurs. The river is required for the purposes of either of both of the jurisdiction, and the same development for example as bridges and, more especially, dams, the same development for the boundary line in such a case is not in the nature of a natural place for the boundary line but is made to include the whole stream with both its banks in one jurisdiction or the other. Such instances are bound to arise occasionally where natural boundaries such as streams are used or where boundaries of national parks have been arbitrarily established by the use of section

Vivian Who writes that letter!

Mr. VINSON. Who writes that letter, Mr. CANNON? The Secretary of the Interior signed that letter, Mr. CANNON. The director is agreeable to the Park Service's suggestion, and the Park Service helped him prepare it. The director is agreeable to this letter. And, gentlemen, at the present time before your committee is another bill, the only other instance that has occurred since the passage of the act in 1906, in the past three years, where in the establishment of Yosemite Park an arbitrary section line was used something like the shape of this paper, and a reservation was planned on the outside, in Forest Service territory, of some 1200 to perhaps 2400 acres, in connection with this it is necessary to overflow about 1/2 acre of park land and the exclusion of about 25 acres is planned in a bill introduced by Congressman Harboer for that purpose. If that were a plan for the damming of lakes and streams without a national park, our arguments would at once be directed against it; but in these two instances we felt that it was the sensible thing to assist the people, as there is no primary use of parks affected. There are very few people going into this portion of the park, and it is hardly accessible now, and it was decided that we should interpose no objection.

In this respect

Mr. THOMAS. How much land is involved in this tract?

Mr. CAMMERER. Three hundred and forty-five acres.
Mr. VALE. More than that. The bill provides for a total of 1,200 acres. Part of that is for the protection of this reservoir site.

Mr. ARNHEIM. Let me ask you this question. Your general policy is against this transfer of lands from the Park Service to the Forest Service—that is, your general policy!

Mr. CAMMER. We think that every case has to be investigated and settled on its merits.

settled on a new method. That your general policy is against that!

М. АВЕНСТРА. Дит юд
М. Савицкий. Уев аїг.

Mr. CAMMACK. Yes, sir.
Mr. ABRAHAM. And these are the only two instances where you have deviated from that policy?

Mr. CAMMER, Yes, sir.

ALCANTARA. This case and the Yellowstone case.

Dr. ABRAMSON'S Little Case and Crib, often called "The Yellowstone," is not the Yellowstone, the Yosemite, or even the Yellowknife.

Mr. THOMAS. The purpose of this transfer, then, is to permit the possibility of building a dam and creating an irrigation reservoir?

Mr. DAVENPORT: Yes, sir.

Mr. THOMAS How much land will be covered by water if this dam is built? **ANSWER:** 100,000 acres.

Mr. CANNARA. Well, I should say about 100 acres of park lands—and reservoir are constructed. This shows the boundary slightly less than the 845 acres affected.

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line of the dam indicating on map! You see, Congressman, we have to take a little bit more land than the actual reservoir would take, in order to describe it by metes and bounds.

Mr. VINSON. I am not clear as to the acreage taken. You state 345 acres, and Mr. Valle stated here that the project calls for 1,200 acres. Mr. OAKMAN. No; the information furnished me by my office and the amount mentioned in the letter of the Secretary of the Interior is 345 acres of park lands.

The CHAMMAN. It is 345 acres in the letter of the secretary of February 8, but the land in the bill—does it figure up more than that?

Mr. VINSON. The land in the bill figures up 1,200 acres.

Mr. OAKMAN. Is that all park land or not?

Mr. VINSON. Those are the lands now within the Rocky Mountain National Park to be transferred to the Colorado National Forest.

The CHAMMAN. I figured it up 360 acres.

Mr. OAKMAN. The bill ought to be amended so as not to include more than what is recommended by the Park Service and by the Secretary of the Interior.

Mr. CHAMMAN. If that is the fact, gentlemen, that should be investigated by my office. Our records show—of course, there is the possibility of error creeping in—my records show, and the letter of the Secretary of the Interior, which I helped prepare on the basis of information given me, says 345 acres.

The CHAMMAN. Well, it figures up 1,200 acres. There is section 10. That is 640 acres; the northwest quarter of the southeast quarter is 40; the southwest quarter of the northwest quarter is 40; the southeast quarter of section 11 is 160 acres; the northwest quarter of the northeast quarter is 40 acres; the north half of the northwest quarter of section 13 is 40 acres; the southwest quarter of the northwest quarter of section 15 is 40 acres, and the northeast quarter of section 16 is 160 acres.

Mr. THOMAS. The first line of the bill limits that. It says that these portions of the following described tracts now, etc.

Mr. VINSON. Oh, yes; that is right.

Mr. THOMAS. It is only the portions of those lands transferred.

Mr. VINSON. That is correct. It is my error. It is those portions of those tracts transferred.

Mr. CHAMMAN. Yes; that is the case, Mr. Vinson.

Mr. HULL. That clears up the ambiguity.

The CHAMMAN. Well, that clears up the ambiguity.

Mr. OAKMAN. Not 1,200 acres according to your calculations?

Mr. CHAMMAN. It says those portions of the sections only.

The CHAMMAN. One thousand two hundred acres are mentioned in the bill. The Secretary says that there are 345 acres of the 1,200 acres that are within the park.

Mr. OAKMAN. You only transfer 345 acres?

Mr. CHAMMAN. Yes, sir.

Mr. OAKMAN. Well, you had better make your bill clear on that.

Mr. VINSON. It is clear. I was the only one that was not clear.

Mr. VINSON. Do I understand that there are only 345 acres of land of an overlap between the Colorado National Forest and the Rocky Mountain National Park? Is that right?

The CHAMMAN. No; there is no overlap concerned here.

Mr. VINSON. I mean, you have to use the term "overlap" to describe it.

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The CHAMMAN. But there are 345 acres, according to the Secretary's statement, of national park lands within the 1,200 acres described in the bill.

Mr. OAKMAN. Let me ask you this further question in this connection. These 345 acres of land are at the present time inaccessible by any road or anything of that kind? Is that so?

Mr. THOMAS. They are 12 miles from the nearest laid-out road, entirely inaccessible from any trail other than a trail that has been built by this irrigation company to get up into that country.

Mr. OAKMAN. Yes, sir; there is a very indifferent sort of a trail or road going up there, mainly for the purpose of serving these people in their investigation.

Mr. VINSON. From this map you have a very distinct picture of what is to be taken, and of course I presume it conforms to the language of the bill, being portions of various sections, and parts of sections, but in taking the language of the bill, how could you tell what portion of land in the Rocky Mountain National Park was to be excluded? The bill says:

That those portions of the following described tracts now within the Rocky Mountain National Park be, and are hereby, transferred to the Colorado National Forest, and shall hereafter be subject to all laws relating to the use and reclamation of the national forests.

Then, section 10—well, there is only a part of section 10.

Mr. OAKMAN. Then, those portions lying within the park to be transferred to the Forest Service.

Mr. VINSON. Of course the boundaries of the National Park prescribed by law, which is a short way of describing it, but the only other way would be by describing each piece by metes and bounds.

The CHAMMAN. I said a while ago, in reply to your question, Mr. Vinson, that there is no question of overlap. I think your use of the word "overlap" is a very happy one. I possibly did not speak my mind clearly. The park, as a matter of fact, does overlap on to these lands described in the bill.

Mr. VINSON. The word "overlap" was the only way that I can see that the bill describes the 345 acres. If it did not, you would not have any means of identifying what portion of the land set forth in this bill would really be affected.

The CHAMMAN. Yes; very clearly those portions of the park that overlap on to these lands described in the bill are to be excluded.

Mr. THOMAS. If this bill becomes a law, then, all the lands described in this bill will become lands under the jurisdiction of the Forest Service?

Mr. CHAMMAN. Yes, sir. And they would issue a permit for their use for reservoir purposes.

Mr. THOMAS. It is stated that the purpose of this transfer is to enable a cooperative farmers' organization to build a dam, for impounding water for irrigation purposes. Do you see any reason as to why that should not be done? In other words, do you see any objection to the building of a dam way up in the mountains as a detriment to the Forest Service? Isn't it an advantage for the Forest Service to have a lake up in there, rather than a detriment?

Mr. OAKMAN. To the Forest Service or the park service?

Mr. THOMAS. Well, either one. I will say the Forest Service, because these are to be forest lands.

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Mr. CAMMERER. Well, they have, I suppose, hundreds of instances like that, where they do have reservoirs, high in the mountains and I will say that in the Rocky Mountain National Park we also have a few reservoirs right now. This park was created by act of 1916, and the law creating the park prescribed that prior valid claims and shall be recognized. Of course, that happens with every park and under those prior claims, there are some reservoirs in a lot of people have acquired rights, and there are some reservoirs there. These people made their first filing in 1900, but on account of not having the money in those days they did not prosecute it.

Mr. ABERNETHY. These farmers filed before the park was ever established.

Mr. CAMMERER. Yes, sir; but that would not go into the merits of the case now, because they slept on their rights.

Mr. ABERNETHY. Why does it not go into the merits of it? I think it does.

Mr. MOONOW. This is absolutely for beneficial purposes, and in order to avoid the law existing now you have to put it into the Forest Service.

Mr. CAMMERER. Yes, sir.

Mr. MOONOW. And these farmers absolutely need this site for reservoir purposes.

Mr. CAMMERER. Yes, sir.

The CHAIRMAN. Mr. Cammerer, if you are through, I want to get before you Judge Baker's observations—or rather criticisms. His criticism is that this is a dangerous precedent; that it is an entering wedge inviting others to make application for lands within the national parks. It might be followed up with an application for the Yellowstone, another one for the Yosemite. Now, what have you to say to that position?

Mr. CAMMERER. As I said before, there are only two instances that have arisen in the past three years, and which we have specially investigated, one of them being this case and the other one in the Yosemite National Park, and both exceptions to the general rule. Now each case that would arise would have to be investigated. While I have no desire to plead the case of the proponents of the measures, in each one of these cases that we have looked into, and on which we have not reported adversely—that is, the Secretary has said, in view of these investigations and findings, he would interpose no objection to the bill—in each of these cases we have agreed that the scenic quality of the park is not going to be adversely affected, and that that area has not any higher use for recreational purposes than for the economic purposes. Neither of these cases covered reservoir sites lying within the park, but only small areas along a park boundary.

Recently before your committee we had a bill, the Sequoia extension bill. In that case the plan was to take from the Forest Service lands under the jurisdiction of the Government and place them under the administration of the National Park Service, because they had, it was agreed, a greater value for scenic and recreational purposes than they had for economic purposes. An instance arose in the past four or five years where the use of land for reservoir purposes, and within Yellowstone Park boundaries, for instance,

TRANSFERRING LAND TO NATIONAL FOREST

was proposed, where it was felt by the department (the National Park Service) and the people of the country that it was for more important for these lands to be kept inviolate for park purposes than for any economic purpose proposed or that could be proposed. No use of reservoir sites within national parks should be permitted.

Mr. ABERNETHY. I understand it, your general policy is against this very thing, but this is just the exception to the rule. Is not that so?

Mr. CAMMERER. It is not only the general policy of the Interior Department, Congressman, but it is the policy of Congress, which has ruled down by the amendment to the Federal Water Power Act in 1921.

Mr. ABERNETHY. Furthermore, you dropped something in your testimony which I think is very essential. If these farmers put those lands gone to work and laid out or filed for a place in the forest reserve to build themselves a reservoir, and on account of financial difficulties or something of that kind failed to complete it, and then Congress comes along and establishes a national park there, it looks to me that that is a good moral reason why we ought to separate this land for their benefit.

Mr. VALEZ. It seems to me it creates a substantial equity in favor of these farmers.

Mr. ABERNETHY. Absolutely, and which meets to some extent Judge Baker's objection. It is not a case where we let in some power company or some commercial set of folks to go in there and exploit the water power. I would be opposed to that; but it does seem to me this is a very meritorious situation.

Mr. CAMMERER. They filed that, Congressman, with the State, but they did not file it with the General Land Office.

Mr. ABERNETHY. That was just an error on their part, where a lot of farmers got together and simply failed, either for lack of finances or by ignorance of the law, failed to get in there in time to protect their irrigation scheme. Is that not so, Mr. Valez?

Mr. VALEZ. I think so. This case, however, should not establish a precedent for the initiation of new enterprises, because this enterprise was initiated before, as Judge Abernethy says, and to that extent at least it does not meet Judge Baker's criticism. While the application was previously made in good faith, even if not carried out, that can not constitute a precedent for starting new requests now for the withdrawal of reservoir sites.

Mr. CAMMERER. Well, of course, the law prohibits that altogether.

Mr. ABERNETHY. The policy of your department is against that, and it looks to me that that meets the proposition.

The CHAIRMAN. It is now 20 minutes of 12, Mr. Timberlake, do you desire to be heard further?

Mr. TIMBERLAKE. Mr. Chairman, I made a statement a week ago when I was here before your committee in which I said that some of the protests filed against this bill urged that this farmers cooperative company could secure valuable sites for reservoirs at other places in that locality, and the objection to that was their financial ability would not permit them to develop the sites that were sug-

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geed; and the park service, before taking action on this, requested the Geological Survey a personal examination regarding this matter, and Mr. Jones, from the Geological Survey, is here and I would like to have him make a statement to the committee along the line.

The Chairman: We will be glad to hear you, Mr. Jones. State your name and position.

STATEMENT OF MR. E. E. JONES, LAND CLASSIFICATION BRANCH, GEOLOGICAL SURVEY.

Mr. Jones. My name is E. E. Jones, member of the land classification branch of the Geological Survey, investigating irrigation and power projects.

Last summer my assignment took me along the Cache La Poudre River, a stream that flows into the South Platte, to determine as far as possible the power-site reserves along that stream, and in my work we try to investigate the conditions as we go along, so that we may be able to know definitely where the lands withdrawn lie, and to determine at the same time by the use of maps of the country, up to within, say, 350 or 400 feet above the flow line of the stream, and at points favorable where conditions appear to meet our requirements for the cost of construction of power. I make detailed examinations and surveys, that I may be able to report to the members of the board on my return to Washington, and figure out the probable cost of the construction of power sites.

During my work on the Cache la Poudre I found three reservoir sites along the forks of the stream above Fort Collins and below the lands sought by this application. These sites are what we consider very good reservoir sites indeed. They could be built at a nominal cost in cubic yards of material per acre-foot of water stored, which is the factor we use in determining the cost in dollars and cents—we use that factor. However, the smallest one of these reservoirs would contain something in the neighborhood of 25,000 acre-feet, and from that up to, as I recall, about 135,000 acre-feet for the largest.

Mr. THOMAS. How much do you figure the cost per cubic yard for construction work?

Mr. JONES. We do not figure it that way. As I explained, we figure the total cost of storage or the total number of cubic yards in a dam sufficiently high to impound the water in the quantity in which we compute it, and divide the total acre-feet stored into the yardage of the dam.

Mr. THOMAS. To get the first cost of the dam I was just interested in knowing how much you figured per cubic yard for dam construction.

Mr. JONES. Perhaps I do not make myself clear. We will say that the dam would contain 300,000 cubic yards of material to construct. To illustrate, suppose the dam would impound 100,000 acre-feet of water.

Mr. BARNER (interposing). What is an acre-foot? I am a tender-foot from Wisconsin. We do not have any acre-feet out there.

Mr. VAITE. An acre-foot is a cubic measurement. It is the amount of water which will cover an acre of ground 1 foot deep.

Mr. BARNER. An acre of ground 1 foot deep.

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Mr. VAITE. Yes. It is but a measure of the flow—it is a picture of quantity.

Mr. JONES. And in that instance we had impounded 100,000 acre-feet of water, and we would divide that into 800,000 cubic yards, showing that it requires 3 cubic yards of material to impound 1 acre-foot of water. The price of the dam could be considered any time by anybody who might be interested in construction as going to the cost of material any time you want to consider it. That is the policy adopted by the land board as perhaps being more elastic and applicable.

I may say, however, that work of that kind at this time would cost in the neighborhood of \$15 or \$18 a cubic yard under present conditions, but the quantity of water that could be stored is so largely in excess of the demands of this company, which is a cooperative company, that we have not felt justified in urging the acceptance of any proposition that I examined.

Mr. BARNER. These are outside the park limits, as I understand it.

Mr. JONES. Yes, sir.

Mr. BARNER. So your testimony is to the effect that there is no available site outside of this that could be used by these people in that what you mean to say.

Mr. JONES. Within reasonable costs.

Mr. BARNER. That is feasible?

Mr. JONES. Yes.

Mr. BARNER. In other words, they are out there with their dishes, and with no feasible site except this place that they want transferred to the Forest Service? Is that your conclusion?

Mr. JONES. Yes, sir.

Mr. VINSON. Would the use of the land sought in this bill in any way hamper or hinder the future development of reservoirs on the other three sites?

Mr. JONES. Not at all, sir.

Mr. BARNER. That is not in the park area?

Mr. JONES. No.

Mr. HILL. Are those other reservoir sites supplied by the same source of water supply?

Mr. JONES. In part. In the Cache la Poudre River, the main flow of the river for about 12 years has been about 310,000 acre-feet per annum, of which about 50,000 acre-feet is what we call a trans-mountain diversion.

Mr. BARNER. What is transmountain diversion?

Mr. JONES. Water that is drawn across from the west slope through a low divide, similar to that picture up there indicating. They will cut a ditch on the side hill and bring the water over the divide and drain it down on the other side, the same as these gentle men are doing in this case here.

Mr. THOMAS. About how much water does it take—how many acre-feet of water does it take to serve an area of irrigated land in that locality?

Mr. JONES. Less than an acre-foot at the farmer's headgate.

Mr. VINSON. Looking at the future, can you visualize any condition that might obtain in the future, that would cause the construction of this reservoir to hinder the development of that country in any way?

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part of the park, convince us that no damage will be done either to the recreational usefulness of the park, or to its purpose as a natural museum, or to any scenic features, by turning back this small area into the national forest; and that this small area will therefore attain a proper use by making possible a useful irrigation reservoir.

"Among the very large alliance of organizations throughout the country which our association is the center, there will be found many persons, young and old, who consider themselves to be in my very wide experience the most qualified of them, when they have all the facts and reasons placed before them, immediately adjust themselves to the reasonable attitude expressed in this letter. It is our part to help educate our people to a sane and rational view in order to bring about a more intelligent and better informed citizenry. In good time, there will always be the irreconcilable shall support, 'foremost' no one source, there will always be the irreconcilable and 'foremost'. No one

can help that.

Robert Sterling Yand
Hartford, Conn.
City of Hartford, Conn.

1924 JAN 29

Mr. ROBERT STEWART YARD,
Executive Secretary The National Parks Association, Washington, D. C.
MY DEAR MR. YARD: I recall with pleasure your kind letter of December

Mr. Dean M. Yano: I recall with pleasure your kind letter of December 21, 1952, complimenting me regarding my bill H. R. 18383, this being the anniversary of my present bill, H. R. 2713, copies of which I sent you in order that you might make up the name with your organization and others who perhaps were unrepresented against the passage of this bill so as to convince them that action would be done to the Post Service by the elimination of this mail piece.

"For the purpose indicated, I appeared before the Public Lands Committee to-day and, asked for a report on my bill. Judge Baker, of California, objected to this at the present time, in view of the fact protesters had been filed against favorable consideration of the bill, many of which had been withdrawn after I had explained them the nature of the bill.

It was suggested that the entire hearing would be held on the bill on March 15, and that you feel inclined to address a letter to the chairman of the Public Land Committee, Mr. Simpson, which might be placed in the record at that time on the bill. The report of the secretary was not made until after careful consideration was made and a letter from you, with the Past Service and I presume yourself, so that a letter from you, representing this large organization, would be a very great help to me before the committee.

Trusting you may find it possible to comply with my request, and with kindest personal regards, I am,
Very sincerely yours,
The Hon. J. M. McKim

DENVER, Colo., January 18, 1967.

Под редакцией В. ТИМОНОВА

DEAR MR. THUNDERBOLT: I have been asked to sign a petition against your bill which provides for the use of part of the Rocky Mountain National Park for recreation.

Of course, you know that I am bitterly opposed to anything which encroaches upon the national parks, but I do not like to sign a petition in opposition to your bill until I know just what you propose to do.

The question came up at a meeting of the Tourist Bureau a few days since. I wish you would write me or advise the Tourist Bureau so that your friends here may be able to spend wisely upon the situation. Although we are very much opposed to anything which would take away from the beauties of the Rocky Mountain National Park.

With kindest regards, I remain
Yours sincerely,
F. J. Thompson

• Adolescent Abuse

100

E. J. CAMPBELL, JR.

Journal Whorls of Robert D. Richardson

Mr. F. J. O'SHEA, }
DENVER, COLO. }
JANUARY 21, 1924

MY DEAR MR. CHAMBERLAIN: I am just in receipt of your letter of January 18. In what you advise that you had been asked to sign a petition against the bill, transferring a small tract of land from the Post Service to the Forest Service, further advising that I am aware of your opposition to anything which encourages the encroachment upon our national parks, but that you hesitated to sign the petition until you knew more of the proposition, I had in

I beg to advise, Mr. Chamberlain, that I had understood a protest had been filed against the bill which I introduced to eliminate from the Post Service a very small area of land to permit same to be transferred to the Forest Service where the law will permit. The bill will not grant permission for the building of a reservoir, which is not the case with Post Service permission.

It is thoroughly investigated and the results are made available to the public. In question is on the outer boundary of the park and inaccessible at all times to the public, as well as containing no scenic features. Upon taking it up with the Interior Department and the Park Service, they advised me that they had no objection to the transfer, as a reservoir located there would in no way affect the scenic value of the park. The favorable report from the Department of the Interior will come in the form of a letter upon a subject called "The Survey of the entire project. The Forest Service has already approved the same and agreed to its provisions.

The protest filed against this bill, if I have been correctly informed, does not arise from any other objections than from spite work on the part of some few residents in that vicinity.

Mr. Yard, for many years with the Park Service and now in charge of the National Parks Association, has written me that, in his judgment, the bill should be enacted, notwithstanding the personal objections made thereto by certain parties.

I assure you, Mr. Chamberlain, that I agree with you that no encroachment should be made upon any of our national parks that will definitely affect their scenic features. I strenuously opposed the bill permitting the building of a reservoir in Yellowstone Park upon these grounds, but I can see no valid opposition that could come from any source to the provisions of my bill. With kindest personal regards, I am,

Very sincerely yours,

Then you have as a member of this committee Mr. Vaile, a colleague of mine from Colorado, who in reply to a protest he had received, answered the same in a very illuminating way, which I believe deserves a place in your record.

(The letter referred to follows:)

JANUARY 29, 1924

Mon. HETAY A. HICKA

Equitable Building, Denver, Colo.

DEAR JUDON HICKS: I duly received your letter of the 12th instant protesting against the passage of H. R. 13855, by Mr. Timberlake, and inclosing copy of a protest signed by many prominent citizens of Denver, including many of my personal friends.

Since the receipt of this letter I have talked with Mr. Timberlake and with Mr. Toll, the superintendent of the Hockey Women's National Team, and as a result of these interviews I certainly do not feel that I can promise to vote against this bill. On the contrary, although I shall come to no definite decision until the hearings have been held by the Committee on Public Lands, I am strongly inclined toward the bill.

Mr. Timberlake, as you must know, has been a collector and enthusiastic supporter of national parks in general, and of the Rocky Mountain National Park in particular. I am sure that about a million conservationists and about as many more tourists come to this area every year to see the magnificent scenery and to enjoy the many recreational facilities which are available. I am very confident that neither of these things will be lost by anything which would be the slightest injury to the Rocky Mountain National Park. Yet Mr. Timberlake has introduced this bill, and Mr. Thompson has

TRANSFERRING LANDS TO NATIONAL FOREST.

GRANT

he is familiar with the ground in question, that in his judgment its subtraction will be no detriment to the park, and that he does not oppose this bill.

It is very easy indeed to get signatures to such a pretest as the one you have sent me. Anybody would sign it if he believed the park was in danger. I regard these signatures as being in all probability an expression of the signers' objection to a general commercializing of the park, rather than as an expression of opinion on the merits of this particular case. It is this particular case, however, which must be decided by the House of Representatives, and, in the first instance, by the House Committee on Public Lands.

I want to get out of my system some general remarks on this whole subject. Since I have been in Congress I have noted the growth of a doctrine to which I can not subscribe and which seems to me at variance with the principles on which our western country was developed—namely, the doctrine that when once the boundaries of a national park have been established they and all that they include are thenceforth to be regarded as sacred, and that no merely utilitarian purpose shall ever thereafter be served by any land or any natural resource within those boundaries. The very active and numerous proponents of this doctrine are fond of referring to the man who wants to develop power to light a city or to turn factory wheels as a "power hog," and the smallest farmer who wants to irrigate his lands is a "water hog" if his enterprise—at one time regarded as defensible or even meritorious—takes one drop of water or one acre of land within the boundaries of a national park. The fact that those boundaries were originally established in a haphazard, generous way, with no pretense of a survey of every inch of territory within them, makes no difference. Having been established, they shall never be "violated."

Now, I want to see our natural scenic beauties and our lovely vacation spots preserved in liberal abundance for the use of all the people. If land in our national parks is substantially valuable for those public purposes I shall vote to keep it for those purposes even if it is shown to be more valuable for industrial or economic or commercial purposes. But beyond that I am not willing to go. It was the use of our natural resources which developed the United States, and particularly our western country. If that development is to be stopped now, it will have to be stopped—I mean as far as I am concerned—by a showing that its continuance will interfere with a substantial public right. In other words, I do not concede the sacro-sanct character of a national park boundary merely because it exists on paper. I'm strong for "dude ranches," but I haven't yet got to the point where I despise food ranches.

And I'll say this to you, Judge: If it is going to become the definite and fixed policy of the United States that no matter how desirable the natural resources of a national park may be for necessary industrial development, no matter how insignificant their retention in the national park may be, the question is forever foreclosed by the fact that they are in the national park. Why then, I'm going to say: "Very well; I'll bow to that policy, though I don't believe in it; but while I remain in Congress no more land is going to be so locked up by my vote."

I should hate very much to be forced to vote against occasional creation of new national parks, or extension of existing ones, but it's getting to a point now where I hardly dare to vote for one.

As to this particular case—and all others which come before our Public Lands Committee—you may be assured that they will be decided on the evidence presented.

With all good wishes, I remain,
Yours faithfully,

Mr. ARERNETHY. Now, I renew my motion that the bill be favorably reported and that Mr. Vaile be authorized to report it.
(The motion was put and carried.)

The CHAIRMAN. The motion is carried, and, without objection, Mr. Vaile will report the bill. We will now adjourn until to-morrow morning at 10.30.

(Whereupon, at 12 o'clock noon, the committee adjourned until 10.30 o'clock a. m., Wednesday, March 19, 1924.)

X

COMM

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Calendar No. 491

68TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 468 }TRANSFER OF CERTAIN LANDS FROM ROCKY MOUNTAIN
NATIONAL PARK TO COLORADO NATIONAL FOREST

APRIL 24 (calendar day, APRIL 25), 1924.—Ordered to be printed

Mr. LADD, from the Committee on Public Lands and Surveys, sub-
mitted the following

REPORT

[To accompany H. R. 2713]

The Committee on Public Lands and Surveys, to whom was referred the bill (H. R. 2713) to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest, Colo., having considered the same, reports thereon favorably, without amendment, and recommends it do pass. The recommendations of the Departments of Agriculture and Interior are indicated by the reports submitted by them as follows:

DEPARTMENT OF AGRICULTURE,
December 31, 1923.Hon. N. J. SINNOTT,
*Chairman, Committee on the Public Lands,
House of Representatives.*

DEAR MR. SINNOTT: Receipt is acknowledged of your request of December 18 for report upon the bill (H. R. 2713) to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest.

In substance this measure proposes that the existing boundary line between the national park and the national forest be moved so that an area eliminated from the park will be placed under national forest administration. It is understood that the land transferred embraces in part a reservoir project begun by the Water Supply & Storage Co., of Fort Collins, Colo., for which filings were made in the office of the State engineer of Colorado in 1906. The Department of the Interior has held that it is without authority to grant a right of way for the use of this land to the company, in view of the act of Congress approved March 3, 1921, amending the Federal water power act. This act does not prohibit the use of national forest lands. If, therefore, the transfer is made the lands would be available for use under the irrigation easement act of March 3, 1891 (26 Stat. 1095).

The Department of Agriculture has no objection to assuming the duties of administering these areas, but since they now form a part of a national park it is suggested that the bill be referred to the Department of the Interior for report.

Respectfully,

HENRY C. WALLACE, *Secretary.*

2 TRANSFER OF LANDS FROM ROCKY MOUNTAIN NATIONAL PARK

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1924.Hon. N. J. SISKIYOU,
Chairman Committee on the Public Lands,
House of Representatives.

My Dear Mr. SISKIYOU: I have your request of December 18 last for a report on H. R. 2713, Sixty-eighth Congress, first session, entitled "A bill to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest, Colorado."

The purpose of the bill is to transfer to the Colorado National Forest about 345 acres of land lying within the Rocky Mountain National Park but immediately on the northwest boundary line, which is desired for the construction of the Grand River reservoir, right of way for which has been applied for by the Water Supply & Storage Co., of Colorado, and which application is now pending before the department. This company is owned entirely by the farmers whose lands are irrigated by the company's operations, and the reservoir is not desired in order to make a speculative profit by the sale of the water which is needed for the lands already under irrigation by the company. Prior to the creation of the Rocky Mountain National Park the company had filed an application with the State authorities for the water rights contemplated by the construction of this reservoir, but application for the use of the public lands was not filed with the General Land Office of the Interior Department, which would have given them a valid prior right that would have had to be recognized under the provisions of the organic act creating the park.

The land which would be flooded by the proposed reservoir lies partly within the park, but more than half of it is outside the Colorado National Forest, as indicated on the map accompanying this letter. The small stream across which the retaining dam would be built forms the boundary of the park at that point. That section of the park is little visited and does not carry distinctive features of unusual scenic value.

Since this boundary was introduced in the Congress I have received protests from Colorado residents against the elimination of this area from the park, arguing that there are available reservoir sites beyond the park boundary which could be developed before any park land is given up for reservoir purposes. From data available in this department it appears that there are three sites at which dams to create storage could be constructed between the Grand River reservoir and the head gates of the company, but the capacity of the smallest of these sites is three times the capacity required by the applicant company.

This project does not contemplate the damming of lakes or streams lying within the park, nor does it contemplate the exsion of an area that is more valuable for park recreational purposes. It arises primarily in connection with the use of other lands under another Federal jurisdiction adjoining the park, the division line between the two being the threat of the stream of the Cache la Poudre River. Such a river makes an easily described natural boundary between the two jurisdictions, but, nevertheless, a boundary which is difficult to find in the field. The logical place for the dam is on the Cache la Poudre River, but the logical place for the dam is on the Cache la Poudre River, but the logical place for the dam is on the Cache la Poudre River. Such instances are bound to arise occasionally where natural boundaries such as streams are used or where boundaries of national parks have been arbitrarily established by the use of section lines. It is not easy or practicable always to anticipate, when national park boundaries are created, such a division line that will meet every future contingency. Each case must be studied and judged on its merits. I am of the opinion that as the exsion of the small amount of park land involved for restoration to the Colorado National Forest will not in any appreciable manner injure the scenic qualities of the Rocky Mountain National Park or interfere with the value of that park for public recreation uses the department should interpose no objection to the bill.

Very truly yours,

HUNTER WONG.

Valencia

68TH CONGRESS }
1st Session }

TO QUIET TITLES TO LAND

April 21 (calendar day), April 22

Mr. LADD, from the Committee
submitted 11

R. E. P.

[To accompany

The Committee on Public Lands
referred the bill (H. R. 4137) to a
committee of the House of Representatives,
reports favorably, without amendment.
The recommendations of the Department
submitted by the report submitted by the

Hon. N. J. SISKIYOU,

Chairman Committee on the Public Lands,

H. R. 4137

My Dear Mr. SISKIYOU: I have your request of December 18 last for a report on H. R. 2713, Sixty-eighth Congress, first session, entitled "A bill to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest, Colorado."

The purpose of the bill is to transfer to the Colorado National Forest about 345 acres of land lying within the Rocky Mountain National Park but immediately on the northwest boundary line, which is desired for the construction of the Grand River reservoir, right of way for which has been applied for by the Water Supply & Storage Co., of Colorado, and which application is now pending before the department. This company is owned entirely by the farmers whose lands are irrigated by the company's operations, and the reservoir is not desired in order to make a speculative profit by the sale of the water which is needed for the lands already under irrigation by the company. Prior to the creation of the Rocky Mountain National Park the company had filed an application with the State authorities for the water rights contemplated by the construction of this reservoir, but application for the use of the public lands was not filed with the General Land Office of the Interior Department, which would have given them a valid prior right that would have had to be recognized under the provisions of the organic act creating the park.

68TH CONGRESS,
1st Session.

HOUSE OF REPRESENTATIVES.

REPORT
No. 324.

House Rpts. on Public Laws

TRANSFER OF CERTAIN LANDS FROM ROCKY MOUNTAIN
NATIONAL PARK TO COLORADO NATIONAL FOREST.

MARCH 19, 1924.—Committed to the Committee of the Whole House on the
state of the Union and ordered to be printed.

Mr. VAILE, from the Committee on the Public Lands, submitted the
following

REPORT.

[To accompany H. R. 2713.]

The Committee on the Public Lands, to whom was referred the
bill (H. R. 2713) to transfer certain lands of the United States from
the Rocky Mountain National Park to the Colorado National Forest,
Colo., having considered the same, reports the same herewith to the
House, with the recommendation that it do pass.

The bill, after the title and enacting clause, is as follows:

That those portions of the following-described tracts now within the Rocky
Mountain National Park be, and are hereby, transferred to the Colorado National
Forest and shall hereafter be subject to all laws relating to the use and administra-
tion of the national forests: Section 10; northwest quarter of southeast quarter,
southwest quarter of the northeast quarter, and the southwest quarter of sec-
tion 11; northwest quarter of the northeast quarter, north half of the northwest
quarter, and the southwest quarter of the northwest quarter of section 15;
and the northeast quarter of section 16; township 6 north, range 75 west, sixth
principal meridian.

The area involved in the proposed transfer is 345 acres. The trans-
fer of this small tract of land, which does not contain any feature of
especial scenic or historic interest, from one Federal administrative
agency to another is desired in order to permit the construction of a
farmers' reservoir on the Cache la Poudre River, the center of which
forms the north boundary of the park and the south boundary of the
national forest. No speculative interest of any kind will be served by
such construction. The reservoir site was filed upon by the farmers'
association prior to the creation of the national park, and the reservoir
when constructed will serve only the lands of the farmers composing
the mutual association. No power interest is involved in any way,
and the company is not organized to sell water, or to distribute water,
except to the farm lands of its own members.

2 TRANSFER OF LANDS FROM ROCKY MOUNTAIN NATIONAL PARK.

These purposes will more fully appear from the following reports of the Secretary of Agriculture and the Secretary of the Interior, both expressing the assent of their several departments to the proposed measure:

DEPARTMENT OF AGRICULTURE,
December 31, 1923.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

DEAR MR. SINNOTT: Receipt is acknowledged of your request of December 18 for report upon the bill (H. R. 2713) to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest. In substance this measure proposes that the existing boundary line between the national park and the national forest be moved so that an area eliminated from the park will be placed under national forest administration. It is understood that the land transferred embraces in part a reservoir project begun by the Water Supply & Storage Co., of Fort Collins, Colo., for which filings were made in the office of the State engineer of Colorado in 1906. The Department of the Interior has held that it is without authority to grant a right of way for the use of this land to the company, in view of the act of Congress approved March 3, 1921, amending the Federal water-power act. This act does not prohibit the use of national forest lands. If, therefore, the transfer is made the lands would be available for use under the irrigation easement act of March 3, 1891 (26 Stat. 1095).

The Department of Agriculture has no objection to assuming the duties of administering these areas, but since they now form a part of a national park it is suggested that the bill be referred to the Department of the Interior for report.

Respectfully,

HENRY C. WALLACE, Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1924.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: I have your request of December 18 last for a report on H. R. 2713, Sixty-eighth Congress, first session, entitled "A bill to transfer certain lands of the United States from the Rocky Mountain National Park to the Colorado National Forest, Colorado."

The purpose of the bill is to transfer to the Colorado National Forest about 345 acres of land lying within the Rocky Mountain National Park but immediately on the northwest boundary line, which is desired for the construction of the Grand River reservoir, right of way for which has been applied for by the Water Supply & Storage Co. of Colorado and which application is now pending before the department. This company is owned entirely by the farmers whose lands are irrigated by the company's operations, and the reservoir is not desired in order to make a speculative profit by the sale of the water which is needed for the lands already under irrigation by the company. Prior to the creation of the Rocky Mountain National Park the company had filed an application with the State authorities for the water rights contemplated by the construction of this reservoir, but application for the use of the public lands was not filed with the General Land Office of the Interior Department, which would have given them a valid prior right that would have had to be recognized under the provisions of the organic act creating the park.

The land which would be flooded by the proposed reservoir lies partly within the park, but more than half within the Colorado National Forest, as indicated on the map accompanying this letter. The small stream across which the retaining dam would be built forms the boundary of the park at that point. That section of the park is little visited and does not carry distinctive features of unusual scenic value.

Since this measure was introduced in the Congress I have received protests from Colorado residents against the elimination of this area from the park, arguing that there are available reservoir sites beyond the park boundary which should be developed before any park land is given up for reservoir purposes.

TRANSFER OF LANDS FROM ROCKY

From data available in this department which dams to create storage could be reservoir and the headgates of the com of these sites is three times the capacity.

This project does not contemplate within the park, nor does it contemplate valuable for park recreational purposes. the use of other lands under another F the division line between the two being t Poudre River. Such a river makes an eas the two jurisdictions, but, nevertheless, a and inconvenient as soon as any consid is required for the purposes of either or ments, for example, as bridges and, more the boundary line in such a case is not i on one side to include the whole stream, or the other. Such instances are bou boundaries such as streams are used or e been arbitrarily established by the use of cable always to anticipate, when natio division line that will meet every fut studied and judged on its merits. I am the small amount of park land involved: Forest will not in any appreciable manne Mountain National Park or interfere v recreational uses the department should

Very truly yours,

TRANSFER OF LANDS FROM ROCKY MOUNTAIN NATIONAL PARK. - 3

From data available in this department it appears that there are three sites at which dams to create storage could be constructed between the Grand River reservoir and the headgates of the company, but the capacity of the smallest of these sites is three times the capacity required by the applicant company.

This project does not contemplate the damming of lakes or streams lying within the park, nor does it contemplate the excision of an area that is more valuable for park recreational purposes. It arises primarily in connection with the use of other lands under another Federal jurisdiction adjoining the park, the division line between the two being the thread of the stream of the Cache la Poudre River. Such a river makes an easily described natural boundary between the two jurisdictions, but, nevertheless, a boundary which becomes very difficult and inconvenient as soon as any considerable development affecting the river is required for the purposes of either or both of the jurisdictions, such developments, for example, as bridges and, more especially, dams. The logical place for the boundary line in such a case is not in the midst of a stream but far enough on one side to include the whole stream, with both its banks in one jurisdiction or the other. Such instances are bound to arise occasionally where natural boundaries such as streams are used or where boundaries of national parks have been arbitrarily established by the use of section lines. It is not easy or practicable always to anticipate, when national park boundaries are created, such a division line that will meet every future contingency. Each case must be studied and judged on its merits. I am of the opinion that as the excision of the small amount of park land involved for restoration to the Colorado National Forest will not in any appreciable manner injure the scenic qualities of the Rocky Mountain National Park or interfere with the value of that park for public recreational uses the department should interpose no objection to the bill.

Very truly yours,

HUBERT WORK.

16 USCS § 181b

CONSERVATION

commissioner (now magistrate judge). Similar provisions are contained in 28 USCS §§ 631 et seq.

ROCKY MOUNTAIN NATIONAL PARK

§ 191. Establishment; reclamation project

The tract of land in the State of Colorado particularly described by and included within metes and bounds as follows, to wit: Beginning at the southeast corner of section thirty-four, township three north, range seventy-three west of the sixth principal meridian, Colorado, thence north along the section lines to the northeast corner of section three, said township; thence west to the northwest corner of said section; thence north along the section lines to the northeast corner of section sixteen, township four north, range seventy-three west; thence west to the northwest corner of said section; thence north to the northeast corner of section eight, said township; thence west along the section lines to the northwest corner of section seven, said township; thence north to the northeast corner of township four north, range seventy-four west; thence west along the first correction line north, to the southeast corner of section thirty-six, township five north, range seventy-four west; thence north along the range line to the northeast corner of the southeast quarter of the southeast quarter of section thirteen, said township; thence west to the northwest corner of the southeast quarter of the southeast quarter of section fourteen, said township; thence north to the northwest corner of the northeast quarter of the southeast quarter of section eleven, said township; thence east to the northeast corner of the northeast quarter of the southeast quarter of section twelve, said township; thence south along the range line to the southeast corner of said section; thence east along the section lines to the southeast corner of the southwest quarter of section ten, township five north, range seventy-three west; thence north to the northeast corner of the southwest quarter of said section; thence east to the southeast corner of the northeast quarter of said section; thence north to the northeast corner of the southwest quarter of section two, said township; thence north to the northeast corner of the southwest quarter of the southwest quarter of said section; thence east to the southeast corner of the northeast quarter of the southwest quarter of section one, said township; thence north along the range line to the northeast corner of section thirty-six, township seven north, range seventy-three west; thence west along the section lines to the intersection with the west bank of the Big South Cache la Poudre River in township seven north, range seventy-five west; thence southeasterly along the west bank of said river to the mouth of a tributary of said river, probably in section one, township six north, range seventy-five west; said tributary heading at La Poudre Pass in section twenty, township six north, range seventy-five west; thence southwesterly along the west bank of said tributary to its head; thence across the Continental

ROCKY MOUNTAIN NATIONAL PARK

16 USCS § 191

Divide to the headwaters of the North Fork of the Grand River, which also heads at La Poudre Pass; thence down the west bank of the North Fork of the Grand River to its intersection with the section line between sections twenty-nine and thirty, township six north, range seventy-five west; thence south along the section lines to the southeast corner of section eighteen, township five north, range seventy-five west; thence west along the section line to its intersection with the west bank of the North Fork of the Grand River; thence down the west bank of the North Fork of the Grand River to its intersection with the section line between sections twenty-five and thirty-six, township four north, range seventy-six west; thence east to the northeast corner of section thirty-six, said township; thence south along the range line to the southeast corner of said township; thence east along the township line to the northeast corner of the northwest quarter of section four, township three north, range seventy-five west; thence south to the southwest corner of the northeast quarter of section nine, said township; thence west along the quarter section line to its intersection with a creek in section seven, said township, this creek being an outlet of Grand Lake, and flowing into the North Fork of the Grand River; thence southerly along the said creek to its junction with the North Fork of the Grand River; thence southerly along the west bank of the North Fork of the Grand River to its intersection with the township line between townships two and three north; thence east along the township line to the southeast corner of section thirty-four, township three north, range seventy-three west of the sixth principal meridian, Colorado, the place of beginning, [all of said above-described tract now being included within the boundaries of the counties of Grand Boulder, and Larimer, in the State of Colorado,] is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and set apart as a public park for the benefit and enjoyment of the people of the United States, under the name of the Rocky Mountain National Park: Provided, That the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project.

(Jan. 26, 1915, ch 19, § 1, 38 Stat. 798.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The statement in this section that the tract described is now a part of certain counties in Colorado has been bracketed as obsolete.

CROSS REFERENCES

Boundaries of Rocky Mountain National Park enlarged and revised, and excluded lands transferred, 16 USCS §§ 192, 192a.

This section is referred to in 16 USCS §§ 193, 194, 197.

RESEARCH GUIDE

Am Jur:

59 Am Jur 2d, Parks, Squares, and Playgrounds § 4.

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 1768

**STIPULATION OF THE UNITED STATES OF AMERICA AND SOUTHEASTERN
COLORADO WATER CONSERVANCY DISTRICT**

IN THE MATTER OF THE UNITED STATES OF AMERICA'S STATEMENT OF CLAIM IN
THE ADJUDICATION OF PRIORITIES TO THE USE OF WATER FOR ALL BENEFICIAL
PURPOSES IN WATER DISTRICT NO. 51,

GRAND COUNTY, STATE OF COLORADO.

The United States of America (United States) and Southeastern Colorado Water
Conservancy District (southeastern) stipulate as follows:

1. The United States agrees it will incorporate in any proposed decree in this case, and the United States and Southeastern request the Court to incorporate in any decree granted in this case, provisions at least as favorable to Southeastern as the following paragraphs 2-9.
2. The Secretary of the Interior of the United States is authorized to operate the Fryingpan-Arkansas Project in accordance with the Fryingpan-Arkansas authorizing act, Public Law 87-590 (87th Cong.) As amended, the Operating Principles adopted by the State of Colorado on December 9, 1960, with amendments thereto, and other applicable law. Pursuant to said Operating Principles, Southeastern has acquired and holds title to the absolute and conditional water rights required by the Fryingpan-Arkansas Project for diversion to the Arkansas Valley, subject to the Operating Principles and Southeastern's Contract No. 5-07-70-W0086 with the United States.
3. The United States is estopped from asserting reserved water rights claims in this case that could conflict with the appropriative rights of Southeastern in the Fryingpan-Arkansas water reclamation project. United States v. City and County of Denver, 656 P.2d 1, 14 (Colo. 1982). The appropriative rights of Southeastern are not near, and will not conflict with, the United States' claims described in paragraph 5 below if the United States' claims are operated in accord with this stipulation.
4. The United States of America's Third Motion to Amend Statement of Claim in the Matter of the United States of America's Statement of Claim in the Adjudication of Priorities to the use of Water for All Beneficial Purposes in Water District No. 51, Grand County, State of Colorado (Third Motion) attaches as Exhibit 1.

EXHIBIT D

a's Third Motion to Amend Statement of Claim,
only within that part of Water Division No. 5 that
of area GL-3 as shown on Exhibit 1 thereto
ational Park--Colorado.", numbered 121-80,467
United States does not claim and will not be decreed
s, E-4, E-5, E-6, and E-8, or water for any other

ited States is not claiming and will not be decreed
cky Mountain National Park or for preservation of
onal Park, nor will it be decreed water at locations
nder Wilderness acts passed before 1998.

rt should not grant the United States a priority date
an application filed in 1998, United States v. Orlyn
ever, in reliance on the following sentence
ntered a decree in this case that provided for the
tion date of December 22, 1980, for any rights
ement of Claim. This stipulation, or any decree
ding on the parties in any future cases.

le sufficient measuring devices, record-keeping,
nce with any decree.

fects any claims asserted by the United States for
nt to the Wilderness Act or any other act in any case
t limited to, claims of water rights for wilderness
th Case No. 1768 by order of the Colorado Supreme

object to Southeastern's request for an order that
orders or actions in this case and need not appear for
action, but should be mailed pleadings or proposed
pulation.

of April, 1999.

RFIELD AND WOODS, P.C.



Stephen H. Leonhardt, #15122
Howard Holme, #1446
ona L. Dotterrer, #20595
Norwest Center, Suite 2400
0 Lincoln Street
ver, Colorado 80203
phone: (303)830-2400
simile: (303)830-1033

orneys for Objector
theastern Colorado Water Conservancy District

TED STATES OF AMERICA



Andrew F. Walch, Esq.
ronmental and Natural Resources Division
ed States Department of Justice
18th Street, Suite #945
ver, Colorado 80202
phone: (303)312-7316

neys for Applicant, United States of America

Docket Information

Number of Documents in Docket 87
Documents Dated from 2/25/2000 to 10/11/2000
Docket Compiled: 3/5/2012