



WATER-RIGHT DOCKET

Rocky Mountain National Park

Docket No: 62

1) BALLPATE WELLS #'S 1-6, 2) LILY LAKE RESERVOIR

State Water Rights Documentation

06-21-1993: letter to division of water resources from superintendent regarding case nos. 82cw125 and 84cw576, water division 1

June 21, 1993

L54
xFWD-62

Mr. Alan Berryman
Division of Water Resources
8th Avenue and 8th Street
Room 209
Greeley, Colorado 80631

Re: Case Nos. 82CW125 and 84CW576
Water Division I

Dear Mr. Berryman:

This is to provide notification that the National Park Service, on behalf of the United States of America (USA), is a joint owner of water rights associated with Tract 07-143 and water storage rights in Lily Lake Reservoir which are the source of augmentation water for the augmentation plans which are decreed in the above referenced cases. The USA acquired the above mentioned decreed water rights by means of a Donation Deed from the Conservation Fund in August of 1991. The water rights owned by the USA are delineated in the attached copy of the Donation Deed.

We request that we be notified of and included in any discussion or meetings with representatives of the State or Division Engineer's Offices concerning the schedule for releases under the above referenced augmentation plans. Any notifications should be directed to:

Dr. Ken Czarnowski
Park Hydrologist
Rocky Mountain National Park
Estes Park, CO 80517

and in addition to:

Lynn Johnson, Esquire
U.S. Department of Justice
Environment & Natural Res. Division
999 - 18th St., Suite 945
Denver, CO 80202

and in addition to:

Ralph Canaday, Esquire
Office of the Regional Solicitor
P.O. Box 25007
Denver Federal Center
Denver, CO 80225

Your cooperation with this request is appreciated.

Sincerely,

Signed

Homer L. Rouse
Superintendent

Enclosure

cc: (all w/c enc)
CRM-ROMO
SOL-Canaday
DOJ-Johnson
WRD-Williams
RMR-Wise
RMR-Young
Ray Liesman
Rex Baker

Rocky Mountain National Park
Tract 07-143

DONATION DEED

This Donation Deed, made this _____ day of August, 1991, is by and between THE CONSERVATION FUND, a Maryland Corporation, 1800 North Kent Street, Suite 1120, Arlington, Virginia 2209, DONOR, and the UNITED STATES OF AMERICA, for use and benefit of the National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225-0287, DONEE.

WHEREAS, the Act of November 29, 1989, 103 Stat. 1700, 16 U.S.C. Sec. 192b-10 authorizes the acquisition of certain lands adjacent to Rocky Mountain National Park for inclusion within said park; and

WHEREAS, The Conservation Fund has purchased some of the aforesaid lands with the intent of donating said lands to the United States of America.

NOW THEREFORE, for and in consideration of the foregoing, the mutual desire of the parties hereto to include these lands within Rocky Mountain National Park, and other good and valuable consideration, The Conservation Fund does hereby donate, grant and convey to the United States of America and its assigns, in fee simple, forever, all of those certain tracts or parcels of land described in Exhibit A hereto, together with all improvements thereon and all appurtenances thereto, and warrant generally the title to the same.

TOGETHER with the water rights and interests in water as set forth in Exhibit B hereto.

SUBJECT, however, to existing easements for public roads and highways, public utilities, railroads and pipelines, and further subject to the reservations, exceptions, covenants and agreements as set forth in Exhibits C, D, E and F hereto.

The Conservation Fund does also hereby release and quitclaim to the United States of America and its assigns, all right, title and interest of The Conservation Fund in and to any streams, alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining said land.

The Conservation Fund warrants and will forever defend title to the land and water rights conveyed herein, subject only to the matters set forth in said Exhibits C, D, E and F.

In Witness whereof, the parties hereto have caused this document to be signed in their behalf the date and year first above written.

THE CONSERVATION FUND

By: PATRICK NOONAN

Attest: DAVID SUTHERLAND

Accepted on Behalf of
THE UNITED STATES OF AMERICA

By: RICHARD YOUNG

STATE OF VIRGINIA)
) SS.
COUNTY OF ARLINGTON)

On this ____ day of August 1991, before me personally appeared _____ known to me to be _____ and _____, respectively, of The Conservation Fund, and acknowledged to me that they, being authorized so to do, executed the above Donation Deed for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

A-1

Exhibit A

(Attached to and forming part of the Donation Deed from The Conservation Fund to the United States of America.)

Parcel 1

The West 1/2 of the Southeast 1/4 of Section 10 and the West 1/2 of the Northeast 1/4 of Section 15, all in Township 4 North, Range 73 West of the Sixth Principal Meridian, Larimer County, Colorado, containing 160.00 acres, more or less.

Parcel 2

All of the East 1/2 of the Northeast 1/4 and all of the North 1/2 of the Southeast 1/4 of Section 15, a portion of the Southeast 1/4 of the Northwest 1/4 and a portion of the Southwest 1/4 of Section 14, and a portion of the Northwest 1/4 of the Northwest 1/4 of Section 23, all in Township 4 North, Range 73 West of the 6th P.M., Larimer County, Colorado, lying West of Colorado Highway No. 7 and being more particularly described as follows:

Commencing at the North 1/4 corner of said Section 15 and considering the West line of the Northeast 1/4 of said Section 15 to bear S00°46'37"E with all bearings herein relative thereto; thence S00°46'37"E 2587.39 feet to the Center 1/4 corner of said Section 15 and the POINT OF BEGINNING;

thence N89°58'11"E 1341.03 feet to the Center-East 1/16th corner of said Section 15;

thence N00°57'47"W 2588.20 feet to the East 1/16th corner between said Section 15 and Section 10, T4N, R73W of the 6th P.M.;

thence N89°56'26"E 1332.62 feet to the Northeast corner of said Section 15;

thence S01°08'02"E 2588.90 feet to the East 1/4 corner of said Section 15;

thence S84°56'31"E 1342.00 feet to the Center-West 1/16th corner of said Section 14;

thence N01°17'02"W 1289.83 feet to the Northwest 1/16th corner of said Section 14;

thence S84°44'52"E 1070.29 feet along the North line of the SE1/4 of the NW1/4 of said Section 14 to a point on the Westerly right-of-way line of Colorado Highway No. 7;

thence the following eleven courses along said Westerly right-of-way line:

thence 623.55 feet along the arc of a curve concave to the Southeast, having a delta angle of 46°37'43", a radius of 766.20 feet, and being subtended by a chord bearing S14°14'38"W 606.48 feet;

thence S09°04'57"E 270.26 feet;

thence 245.18 feet along the arc of a curve concave to the Northwest, having a delta angle of 26°51'45", a radius of 522.96 feet, and being subtended by a chord bearing S04°13'03"W 242.94 feet;

thence S17°47'14"W 1354.78 feet;

Exhibit A - Continued

thence 749.82 feet along the arc of a curve concave to the Northwest, having a delta angle of $19^{\circ}09'49''$, a radius of 2241.83 feet, and being subtended by a chord bearing $S27^{\circ}22'15''W$ 746.33 feet;
 thence $S36^{\circ}56'07''W$ 149.93 feet;
 thence 1098.26 feet along the arc of a curve concave to the Southeast, having a delta angle of $32^{\circ}06'26''$, a radius of 1959.86 feet, and being subtended by a chord bearing $S20^{\circ}56'02''W$ 1083.94 feet;
 thence $S04^{\circ}26'16''W$ 116.09 feet;
 thence 566.49 feet along the arc of a curve concave to the Northwest, having a delta angle of $62^{\circ}03'55''$, a radius of 522.96 feet, and being subtended by a chord bearing $S35^{\circ}58'36''W$ 539.20 feet;
 thence $S67^{\circ}03'57''W$ 118.21 feet;
 thence 278.72 feet along the arc of a curve concave to the Southeast, having a delta angle of $43^{\circ}21'29''$, a radius of 368.31 feet, and being subtended by a chord bearing $S45^{\circ}16'50''W$ 272.11 feet, to a point on the South line of the NW1/4 of the NW1/4 of said Section 23;

thence leaving said Westerly right-of-way line:
 thence $N85^{\circ}33'28''W$ 270.28 feet to the North 1/16th corner between said Section 23 and Section 22, T4N, R73W of the 6th P.M.;
 thence $N02^{\circ}58'02''W$ 1297.34 feet to the Northwest corner of said Section 23;
 thence $N01^{\circ}05'53''W$ 1297.04 feet to the South 1/16th corner between said Sections 14 and 15;
 thence $S89^{\circ}47'13''W$ 2689.31 feet to the Center-South 1/16th corner of said Section 15;
 thence $N00^{\circ}46'37''W$ 1293.70 feet to the POINT OF BEGINNING.

Described property contains 309.84 acres.

The Parcels of land herein described contain, in the aggregate, 469.84 acres, more or less.

B-1

Exhibit B

(Attached to and forming a part of the Donation Deed from The Conservation Fund to the United States of America.)

The Conveyed Water Rights

All water and water rights including but not limited to wells, well permits and springs used in connection with or appurtenant to the lands described as Parcel 1 in Exhibit A hereto.

Also, the following water rights appurtenant to the lands described as Parcel 2 in Exhibit A hereto:

(a) Baldpate Well No. 3, decreed by the District Court in and for Water Division No. 1, State of Colorado (the "Water Court"), in Case No. 82CW125, the source of which is groundwater tributary to Fish Creek. This well is located in the SW 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., at a point 650 feet from the South section line and 1100 feet from the West section line of said Section 14, and decreed for 25 gpm absolute for domestic, municipal (including fire protection), commercial and recreation uses, with an appropriation date of July 21, 1915.

(b) 8.32 gpm of the water rights designated as Baldpate Well No. 6, decreed by the Water Court in Case No. 84CW576 for 25 gpm conditional for domestic, municipal (including fire protection) and commercial uses, with an appropriation date of December 20, 1984, the source of which is groundwater tributary to Fish Creek. This well is located in the NE 1/4 SE 1/4 of Section 15, Township 4 North, Range 73 West, 6th P.M., 1798 feet from the South section line and 306 feet from the East section line of said Section 15.

Specifically excepted from the Property are any access or other easements across Seller's real property to the present decreed location of Baldpate Well No. 6.

The Conveyed Water Rights - Continued

(c) An undivided 28% interest in the following described absolute water storage rights:

(1) Lily Lake Reservoir, the Southerly dam abutment of which is located at a point in the SW 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the NE corner of said Section 14 bears North 45°09' East 5205 feet. This storage right was decreed by the Water Court in Case No. 80CW104 for 75.44 acre-feet absolute, for domestic, commercial, irrigation, stock watering, fire protection, recreation and fish preservation uses, with an October 20, 1913 appropriation date. The source of this reservoir is Fish Creek and spring water tributary to Fish Creek.

(2) Lily Lake Reservoir First Enlargement and Second Filling, the location of which is the same as the Lily Lake Reservoir described in subsection (c)(1) above. This water right was decreed by the Water Court in Case No. 84CW576 for 25.16 acre-feet absolute (for a total amount decreed absolute for Lily Lake Reservoir as enlarged of 100.6 acre-feet), together with the right to a second annual filling of Lily Lake Reservoir as enlarged. Such additional amounts of water were decreed for domestic, municipal (including fire protection), commercial, irrigation, stock watering, recreation and fish preservation uses, with an appropriation date of July 21, 1915 for the absolute portion, and an appropriation date of December 20, 1984 for the second filling. The source of water for Lily Lake Reservoir, including its enlargement and second filling, is Fish Creek and spring water tributary to Fish Creek.

(d) An undivided 38% interest in the rights and benefits of the plan for augmentation decreed by the Water Court in Case No. 84CW576.

C-1

Exhibit C

(Attached to and forming a part of the Donation Deed from The Conservation Fund to the United States of America.)

Also, the lands herein conveyed are subject to the following:

Parcel 1, Exhibit A

Reservations of (1) right of proprietor of any penetrating vein or lode to extract his ore; and (2) right of way for any ditches or canals constructed by authority of the United States, in U.S. Patent recorded May 23, 1914 in Book 238 at Page 341.

Parcel 2, Exhibit A

1. There is reserved from the lands hereby granted in said Patent a right of way thereon for ditches or canals constructed by the authority of the United States, in Patent to Julian S. Johnson in the Southwest Quarter of Section 14 of subject property, recorded August 9, 1915 in Book 264 at Page 303 and to Beth Campbell Snyder in the North Half of the Northwest Quarter of Section 23 of subject property, recorded November 10, 1915 in Book 264 at Page 321 and to Gordon McLeod Mace in the Southeast Quarter of the Northwest Quarter, the South Half of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter of Section 14 of subject property, recorded September 10, 1917 in Book 264 at Page 431.

2. Reservation by the United States of America of that certain telephone line and all appurtenances thereto, constructed by the United States through, over or upon the land described in Patent and the right of the United States to maintain, operate, repair or improve the same so long as needed or used by the United States as set forth in Patent to Gordon McLeod Mace recorded September 10, 1917 in Book 264 at Page 431.

3. There is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority off the United States in Patent to William James Field to the East Half of the Northeast Quarter and the North Half of the Southeast Quarter of Section 15 of subject property, recorded April 12, 1920 in Book 361 at Page 128.

4. Parcel of land as conveyed to the Board of County Commissioners by Alice G. Henry, 100 feet in width for road purposes (South St. Vrain Forest Highway) as set forth and described in Deed recorded March 2, 1937 in Book 669 at Page 473 and in Deed recorded January 26, 1937 in Book 674 at Page 2 by Irvin T. Snyder, Guilford Snyder and Irving G. Snyder.

5. Reservation by Henry C. Crowell, as Trustee under the Will of Henry Parsons Crowell, Deceased, all of the oil, gas and other minerals, and mineral rights of whatever nature or

Exceptions to Title - Continued

description in and under said lands with the exclusive right to prospect for and exploit the same and sufficient use of the surface thereof and the right to lay, maintain and operate pipelines for oil and gas and the right to erect, maintain and operate telephone and telegraph lines with the right reserved to remove any buildings, machinery, pipelines or other property erected or placed on said land in connection therewith, and reserving to the grantor, successors or assigns a right of way not to exceed one hundred feet in width across upon and through and over said lands, if same shall be necessary, or desired, in connection with this mineral reservation, such pipelines for oil and gas and such telephone and telegraph lines, and such right of way, however, not to infringe upon or interfere with any improvements upon said land without payment of a reasonable amount for any damage caused thereby, recorded November 22, 1965 in Book 1312 at Page 239, as to the following described property: The East Half of the Northeast Quarter and the North Half of the Southeast Quarter of Section 15, Township 4 North, Range 73 West of the Sixth Principal Meridian, Larimer County, Colorado.

6. Right-of-Way Easement conveyed to The Mountain States Telephone and Telegraph Company, a Colorado corporation, recorded July 15, 1977 in Book 1783 at Page 447.

D-1

Exhibit D

(Attached to and forming a part of the Donation Deed from The Conservation Fund to the United States of America.)

The lands described herein as Parcel 2, Exhibit A are further subject to the following reservations to Rex G. Baker, Jr., his successors and assigns, as set forth in that certain deed between Rex G. Baker, Jr. and The Conservation Fund dated June 15, 1989, recorded June 15, 1989, as Reception Number 89026591 in the land records of Larimer County, Colorado.

(1) a perpetual, nonexclusive easement across, in, on, over and under the Property for purposes of access to and the dredging of the Lily Lake Reservoir and Lily Lake Reservoir First Enlargement and Second Filling, more particularly described in the attached Exhibits B and C (the "Reservoir"); provided, however, that the storage capacity of the Reservoir may not be increased beyond 106.6 acre-feet;

(2) a perpetual, nonexclusive easement across the Property for purposes of operating, using and releasing water from the Reservoir to provide a source of augmentation water in accordance with terms of the decrees by the District Court in and for Water Division No. 1, State of Colorado (the "Water Court"), in Case No. 82CW125 and Seller's retained undivided 62% interest in the augmentation plan decreed in Water Court Case No. 84CW576;

(3) a perpetual, nonexclusive easement in, on, over, under and across the Property for purposes of access to the Reservoir and dam and the performance of Seller's covenants set forth in Exhibit E attached hereto, including but not limited to, repair, removal or reduction in size of the dam or reduction in size of the Reservoir; and

(4) a perpetual, nonexclusive easement across the Property for purposes of storing and making absolute the 6 acre-feet conditional water storage right decreed to the Reservoir in Water Court Case No. 84CW576.

Seller shall exercise his rights under the foregoing easements in a reasonable manner and upon reasonable notice to Purchaser. Seller will use reasonable efforts to minimize disturbance to the Property (taking into account the work being performed) and to regrade and revegetate areas disturbed by Seller.

Exhibit E

(Attached to and forming a part of the Donation Deed from The Conservation Fund to the United States of America.)

The lands described herein as Parcel 2, Exhibit A, are also subject to the following reservations of water rights to Rex G. Baker, Jr., his successors and assigns, as set forth in that certain deed between Rex G. Baker, Jr. and The Conservation Fund dated June 15, 1989, recorded June 15, 1989, as Reception Number 89026591 in the land records of Larimer County, Colorado.

(a) The following described wells decreed by the District Court in and for Water Division No. 1, State of Colorado (the "Water Court"), in Case No. 82CW125, the source of which is groundwater tributary to Fish Creek:

(1) Baldpate Well No. 1, located in the SE 1/4 SW 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., 1050 feet from the South section line and 2100 feet from the West section line of said Section 14, decreed for 9 gpm absolute for domestic, municipal (including fire protection) and commercial uses, with a February 15, 1982 appropriation date.

(2) Baldpate Well No. 2, located in the SE 1/4 SW 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., 1150 feet from the South section line and 2100 feet from the West section line of said Section 14, decreed for 10 gpm absolute for domestic, municipal (including fire protection) and commercial uses, with a March 2, 1982 appropriation date.

(b) The following described wells decreed by the Water Court in Case No. 84CW576 for 25 gpm conditional each, for domestic, municipal (including fire protection) and commercial uses, with an appropriation date of December 20, 1984, the source of which is groundwater tributary to Fish Creek:

(1) Baldpate Well No. 4, located in the SW 1/4 SW 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., 312 feet from the South section line and 266 feet from the West section line of said Section 14.

(2) Baldpate Well No. 5, located in the NW 1/4 NW 1/4 of Section 23, Township 4 North, Range 73 West, 6th P.M., 217 feet from the North section line and 711 feet from the West section line of said Section 23.

(c) 16.68 gpm of the Baldpate Well No. 6, decreed by the Water Court in Case No. 84CW576 for 25 gpm conditional for domestic, municipal (including fire protection) and commercial uses, with an appropriation date of December 20, 1984, the source of which is groundwater tributary to Fish Creek. This well is located in the NE 1/4 SE 1/4 of Section 15, Township 4 North, Range 73 West, 6th P.M., 1798 feet from the South section line and 306 feet from the East section line of said Section 15.

The Reserved Water Rights - Continued

(d) Baldpate Spring and Pipeline, located in the SW 1/4 SE 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the S 1/4 corner of said Section 14 bears South 27°05' West 1205 feet. This water right was decreed by the Water Court in Case No. 80CW105 for 1 cfs absolute, for domestic, commercial, irrigation, stock watering and fire protection uses, with an appropriation date of July 21, 1915. The source is spring water tributary to Fish Creek.

(e) An undivided 72% interest in the following water storage rights:

(1) Lily Lake Reservoir, the Southerly dam abutment of which is located at a point in the SW 1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the NE corner of said Section 14 bears North 45°09' East 5205 feet. This storage right was decreed by the Water Court in Case No. 80CW104 for 75.44 acre-feet absolute, for domestic, commercial, irrigation, stock watering, fire protection, recreation and fish preservation uses, with an October 20, 1913 appropriation date. The source of this reservoir is Fish Creek and spring water tributary to Fish Creek.

(2) Lily Lake Reservoir First Enlargement and Second Filling, the location of which is the same as the Lily Lake Reservoir described in subsection (e)(1) above. This water right was decreed by the Water Court in Case No. 84CW576 for 25.16 acre-feet absolute (for a total amount decreed absolute for Lily Lake Reservoir as enlarged of 100.6 acre-feet), together with the right to a second annual filling of Lily Lake Reservoir as enlarged. Such additional amounts of water were decreed for domestic, municipal (including fire protection), commercial, irrigation, stock watering, recreation and fish preservation uses, with an appropriation date of July 21, 1915 for the absolute portion, and an appropriation date of December 20, 1984 for the second filling. The source of water for Lily Lake Reservoir, including its enlargement and second filling, is Fish Creek and spring water tributary to Fish Creek.

(f) A 100% interest in the conditional water storage right decreed to Lily Lake Reservoir First Enlargement by the Water Court in Case No. 84CW576 for six acre-feet with an appropriation date of December 20, 1984.

(g) All right, title and interest in the decree entered by the Water Court in Case No. 82CW125, including without limitation the rights and benefits of the plan for augmentation decreed in said case.

(h) An undivided 62% interest in the rights and benefits of the plan for augmentation decreed by the Water Court in Case No. 84CW576.

Exhibit F

(Attached to and forming apart of the Donation Deed from The Conservation Fund to the United States of America.)

The lands described herein as Parcel 2, Exhibit A are also subject to the following covenants and agreements as set forth in that certain deed between Rex G. Baker, Jr. (hereinafter the "Seller") and The Conservation Fund (hereinafter the "Purchaser") dated June 15, 1989, recorded June 15, 1989, as Reception Number 89026591 in the land records of Larimer County, Colorado. By acceptance of this deed, the United States of America agrees to assume the responsibilities of the "Purchaser" herein, except that exercise of such responsibilities shall be subject to the availability of appropriated funds for such purposes.

Seller and Purchaser covenant and agree as follows:

1. Seller shall either have the dam for Lily Lake Reservoir as enlarged and refilled (the "Reservoir") declared nonjurisdictional (as defined in 2 CCR 402-1, Rule 4.A.(6)(b)) by reducing the size of or removing the dam, if necessary, or perform the work necessary to bring the dam and related facilities into compliance with any applicable state safety requirements. Seller shall maintain the dam and related facilities so that they comply with any applicable federal and state safety requirements and regulations. Seller may assign the foregoing obligations to the Baldpate Metropolitan District or any other entity of his choosing, and upon such assignment Seller shall be relieved of any liability therefor.

2. Purchaser shall cooperate with any efforts by Seller to have the dam classified by the Colorado State Engineer as nonjurisdictional, with any efforts by Seller to obtain extensions of time from the State Engineer to perform any required work on the dam or related facilities, and with any repair or maintenance activities of Seller with respect to the Reservoir and its related facilities.

3. Seller shall have the right to reduce the size of the dam or Reservoir or to remove the man-made dam altogether; provided, however, that in no event shall the retaining embankments of the Reservoir be reduced below the mean elevation above sea level of the natural lake which existed prior to construction of the dam. In connection with the engineering investigations of the dam and Reservoir currently being conducted by Seller, Seller's consultants will attempt to determine the mean elevation above sea level of the natural lake, and this determination, if made, will be used as the limit on the reduction in size of the Reservoir in the future. Any such reduction in water storage capacity shall be charged against Purchaser's undivided 28 $\frac{1}{2}$ interest in the water stored in the Reservoir. Seller shall notify Purchaser

The Covenants and Agreements - Continued

of any plans to reduce the size of the Reservoir at least 30 days before commencing such work. Purchaser may require Seller to forego the planned work only if Purchaser provides to Seller, within such 30-day period, a written document in a form reasonably acceptable to Seller releasing Seller of any further repair or maintenance obligations with respect to the dam and related facilities and assuming responsibility for all future repairs and maintenance to the dam and related facilities.

4. Neither Seller or Purchaser nor their successors or assigns may oppose any change in the location of the water rights described in Exhibits B or E except based on issues relating to actual well interference. Neither Purchaser nor its successors or assigns shall oppose any application filed by Seller or his successors or assigns to make the conditional water storage right awarded the Reservoir in Case No. 84CW576 absolute.

5. The parties shall cooperate to develop and implement such accounting as may be required to ensure that the parties are utilizing only the water stored in the Reservoir to which they are entitled.

6. Seller will seek and consider Purchaser's input regarding the schedule for release of water from the Reservoir in accordance with the decrees of the Water Court in Case Nos. 82CW125 and 84CW576; however, the manner and timing of such releases shall be determined by Seller and the State Engineer.

7. Seller's reserved water rights in the Reservoir described on Exhibit C shall be limited to use in connection with the augmentation plans decreed in Case Nos. 82CW125 and 84CW576. Releases of Seller's reserved water rights from the Reservoir shall not exceed 3.36 acre-feet annually, plus any chargeable evaporation losses. Seller hereby relinquishes and disclaims any right to use water released from the Reservoir for any purpose other than augmentation.

8. Purchaser shall be entitled to specific performance and such other remedies allowable in law and equity in the event that Seller breaches any of its obligations or covenants under this Exhibit F; provided, however, that no such action on the covenant described in paragraph 1 above may be brought until any time period set by the State Engineer for the performance of any such work has expired. Seller shall be entitled to specific performance and such other remedies available in law and equity in the event Purchaser, its successors or assigns, breaches any of its obligations or covenants under this Exhibit F.

9. All covenants, conditions and obligations contained in this Exhibit F shall be covenants running with the Property and the Reserved Water Rights, as applicable.

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO

Case No. 84CW576

13 MAY 15 10:24

RULING OF THE REFEREE AND DECREE OF THE WATER COURT

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF BALDPATE VENTURES,

IN LARIMER COUNTY

Upon investigation of the facts and upon examination of the records and files herein, the undersigned Referee, being fully advised in the premises, does hereby make the following findings and rulings in this case:

1. This matter involves an application for water rights and approval of a plan for augmentation filed with the Clerk of the Water Court, Water Division No. 1, on December 28, 1984.
2. All notices required by law have been fulfilled, and the Referee has jurisdiction over this application.
3. Statements of opposition to the application were timely filed by the Colorado Division of Wildlife and the Thompson Water Users Association. The Colorado Division of Wildlife withdrew their Statement of Opposition on May 17, 1984. The Thompson Water Users Association has consented to the entry of this ruling, and the time for filing additional statements of opposition has expired.
4. The name and address of the applicant is Baldpate Ventures, c/o Rex G. Baker, Jr., P.O. Box 2061, Estes Park, Colorado, 80517.
5. Applicant is the owner of the following described water rights to be augmented:
 - (a) The following described wells decreed by the District Court in and for Water Division No. 1, State of Colorado (the "Water Court"), in Case No. 82CW125, the source of which is groundwater tributary to Fish Creek:
 - (1) Baldpate Well No. 1, located in the SE1/4 SW1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., 1050 feet from the South section line and 2100 feet from the West section line of said Section 14, decreed for 9 gpm absolute for domestic, municipal (including fire protection) and commercial uses, with a February 15, 1982 appropriation date.

84CW576
Baldpate Ventures

(2) Baldpate Well No. 2, located in the SE1/4 SW1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., 1150 feet from the South section line and 2100 feet from the West section line of said Section 14, decreed for 10 gpm absolute for domestic, municipal (including fire protection) and commercial uses, with a March 2, 1982 appropriation date.

(3) Baldpate Well No. 3, located in the SW1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., at a point 650 feet from the South section line and 1100 feet from the West section line of said Section 14, decreed for 25 gpm absolute for domestic, municipal (including fire protection), commercial and recreation uses, with an appropriation date of July 21, 1915.

(b) The following described wells, claimed for 25 gpm conditional each, for domestic, municipal (including fire protection) and commercial uses, with an appropriation date of December 20, 1984, which is the date each of these wells were staked in the field, the source of which is groundwater tributary to Fish Creek:

(1) Baldpate Well No. 4, located in the SW1/4 SW1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., 312 feet from the South section line and 266 feet from the West section line of said Section 14.

(2) Baldpate Well No. 5, located in the NW1/4 NW1/4 of Section 23, Township 4 North, Range 73 West, 6th P.M., 217 feet from the North section line and 711 feet from the West section line of said Section 23.

(3) Baldpate Well No. 6, located in the NE1/4 SE1/4 of Section 15, Township 4 North, Range 73 West, 6th P.M., 1798 feet from the South section line and 306 feet from the East section line of said Section 15.

Applications for permits to construct the Baldpate Wells Nos. 4, 5 and 6 have been filed with the State Engineer's Office and are currently pending.

(c) Baldpate Spring and Pipeline, located in the SW1/4 SE1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the S1/4 corner of said Section 14 bears South 27° 05' West 1205 feet. This water right was decreed by the Water Court in Case No. 80CW105 for 1 cfs absolute, for domestic, commercial, irrigation, stock watering and fire protection uses, with an appropriation date of July 21, 1915. The source is spring water tributary to Fish Creek.

84CW576
Baldpate Ventures

6. To augment the water rights described in paragraph 5 above, applicant is the owner of and proposes to utilize the following described water rights:

(a) Lily Lake Reservoir, the Southerly dam abutment of which is located at a point in the SW1/4 of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the NE corner of said Section 14 bears North 45° 09' East 5205 feet. This storage right was decreed by the Water Court in Case No. 80CW104 for 75.44 acre-feet absolute, for domestic, commercial, irrigation, stock watering, fire protection, recreation and fish preservation uses, with an October 20, 1913 appropriation date. The source of this reservoir is Fish Creek and spring water tributary to Fish Creek.

(b) Lily Lake Reservoir First Enlargement and Second Filling, the location of which is the same as the Lily Lake Reservoir described above. The amount claimed as a first enlargement is 25.16 acre-feet absolute and 6 acre-feet conditional, and by this application applicant seeks the right to a second annual filling of Lily Lake Reservoir as enlarged. Such additional amounts of water are claimed for domestic, municipal (including fire protection), commercial, irrigation, stock watering, recreation and fish preservation uses, with an appropriation date of July 21, 1915 for the absolute portion, which is the date the reservoir was constructed to a total of 100.6 acre-feet and water applied to a beneficial use, and an appropriation date of December 20, 1984 for the conditional portion and second filling, which is the date field work was performed to determine the extent to which the reservoir could be further enlarged and refilled. The source of water for Lily Lake Reservoir, including its enlargement and second filling, is Fish Creek and spring water tributary to Fish Creek. It should be noted that the requested enlargement for the absolute portion is to conform the decreed amount with the actual capacity of the existing Lily Lake Reservoir, and that the requested enlargement for the conditional portion will be accomplished by deepening the existing reservoir. In both instances, there has been no increase and will be no increase in the current dam height or width, or in the surface area of the existing reservoir.

7. By the subject application, applicant seeks to adjudicate the water rights for the Baldpate Wells Nos. 4, 5 and 6, more particularly described in paragraphs 5(b)(1), (2) and (3) above, and the Lily Lake Reservoir First Enlargement and Second Filling, more particularly described in paragraph 6(b) above. The Referee finds that all prerequisites to obtaining a decree for these water rights have been met, and that applicant should be granted water rights for the Baldpate Wells Nos. 4, 5 and 6, and the Lily Lake Reservoir First Enlargement and Second Filling as described herein; provided, however, that water shall not be impounded in Lily Lake Reservoir under the foregoing First

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Baldpate Ventures

Enlargement and Second Filling water rights unless entitled to do so by virtue of the priority herein awarded, or pursuant to the operation of a lawful augmentation plan or exchange.

8. By the subject application, applicant further seeks approval of a plan for augmentation to permit the out-of-priority use of the water rights more particularly described in paragraph 5 above in connection with a development known as Baldpate. This development will be located on approximately 427 acres of land in portions of Sections 14, 15 and 23, Township 4 North, Range 73 West, 6th P.M., Larimer County, Colorado. At full build out, the Baldpate development will consist of single family residences, guest houses, hotel units and ancillary commercial and support facilities requiring a total of approximately 68 acre-feet of water per year. As all of this water will be used for in-house purposes and will be treated by a planned central wastewater treatment system, approximately 5% or 3.4 acre-feet of the development's total water requirements will be consumptively used.

9. To augment and balance any out-of-priority depletions resulting from the use of water in connection with the Baldpate development, applicant will release a corresponding amount of water from Lily Lake Reservoir as enlarged, up to a maximum of 3.4 acre-feet per year, plus chargeable evaporation losses as set forth in paragraph 10 below. The precise timing and amount of releases from Lily Lake Reservoir shall be subject to administration by the Division Engineer for Water Division No. 1, and may be based upon the information contained in the reports provided for in paragraph 11(b) below. For purposes of administering the subject plan for augmentation, it shall be assumed that the pumping of water from the wells described in paragraphs 5(a) and (b) above (collectively the "Baldpate Wells") causes an immediate 5% depletion to the surface flow of Fish Creek.

10. In Case No. 82CW125 the Water Court decreed that 80% of the surface area of Lily Lake Reservoir was a natural lake prior to dam construction. Therefore, in determining the extent of chargeable evaporation losses for Lily Lake Reservoir, the Water Court held that credit shall be given for and applicant shall not be required to replace evaporation losses from that 80% of the reservoir which was a natural lake. Moreover, the Water Court further held that applicant may not be charged for evaporation losses from the non-natural portion of Lily Lake Reservoir during such periods the reservoir is in priority.

Accordingly, the Referee finds that chargeable evaporation losses in connection with the subject plan for augmentation shall be limited to the evaporation losses from the non-natural portion of Lily Lake Reservoir when the reservoir is out-of-priority. To the extent such chargeable evaporation losses are replaced in connection with the augmentation plan decreed in Case No. 82CW125, they need not be replaced in connection with the subject plan for augmentation. Furthermore,

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Baldpate Ventures

as there has been no increase and will be no increase in the reservoir surface area by virtue of the requested enlargement of Lily Lake Reservoir, such enlargement will not increase the chargeable evaporation losses.

11. To ensure the operation of the plan for augmentation, applicant shall:

(a) Install and maintain such measuring devices as may reasonably be required by the Division Engineer to verify the amount of water in Lily Lake Reservoir, and that the amount of augmentation water released from Lily Lake Reservoir equals the out-of-priority depletions resulting from the proposed use of water in connection with the Baldpate development.

(b) File quarterly reports with, and in a form acceptable to, the Division Engineer which set forth the total diversions from the Baldpate Wells and Spring during the prior quarter, anticipated diversions from the Baldpate Wells and Spring during the following quarter, the water level in Lily Lake Reservoir on the last day of the prior quarterly period, and the volume of water corresponding to that level. In addition, applicant shall furnish the Division Engineer with an evaporation chart of Lily Lake Reservoir to assist in calculating chargeable evaporation losses from this facility.

(c) Prohibit the irrigation use of water from the Baldpate Wells, and limit the irrigation use of water from the Baldpate Spring and Lily Lake Reservoir to those periods when said water rights are in priority or to water stored in priority.

(d) Form a homeowners association, metropolitan district or other similar entity which shall be responsible for and capable of ensuring compliance with all obligations inherent in the implementation of the subject augmentation plan insofar as it relates to the residential/non-commercial aspects of the Baldpate development.

12. In the event applicant requires supplemental or replacement wells to provide an adequate water supply for the Baldpate development as defined in paragraph 8, such wells may be incorporated in the plan for augmentation subject to the same terms and conditions provided for herein.

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Baldpate Ventures

13. By the implementation of the above-described augmentation plan, the Referee finds that the Baldpate Wells and Spring may be utilized as the water supply for the Baldpate development without adversely affecting any vested water rights or decreed conditional water rights, and without the necessity of curtailing the withdrawal of water from the Baldpate Wells and Spring in times of shortage. However, out-of-priority diversions from these water rights may only be made when augmentation water is released from Lily Lake Reservoir at the direction of the Division Engineer in satisfaction of depletions determined in accordance with this plan.

The Referee does therefore order that the application for water rights for the Baldpate Wells Nos. 4, 5 and 6, more particularly described in paragraph 5(b) above, the application for water rights for the Lily Lake Reservoir First Enlargement and Second Filling, more particularly described in paragraph 6(b) above, and the plan for augmentation more particularly described herein should be and hereby are granted and approved.

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The Referee does further order that well permits for the Baldpate Wells Nos. 4, 5 and 6 be issued by the State Engineer, and that an application for quadrennial finding of reasonable diligence for the conditional water rights decreed herein shall be filed in MAY of 1990 and in MAY of every ~~fourth~~ calendar year thereafter so long as the applicant desires to maintain said conditional water rights, or until a determination has been made that said water rights have become absolute by reason of the completion of the respective appropriations.

It is accordingly ORDERED that this ruling shall be filed with the Water Clerk, subject to judicial review pursuant to C.R.S. 1973, 37-92-304, as amended.

It is further ORDERED that a copy of this ruling shall be filed with the Division Engineer for Water Division No. 1 and the State Engineer.

Done at the City of Greeley, Colorado this 15th day of May, 1986.

BY THE REFEREE


Water Referee
Water Division No. 1
State of Colorado

CW576
Baldpate Ventures

No protest was filed in this matter. Accordingly, the foregoing ruling is confirmed and approved, and is made the Judgment and Decree of this Court; provided, however, that the plan for augmentation shall be subject to reconsideration by this Court on the general question of injury to the vested water rights of others for a period of ten years from the date water is first diverted from the Baldpate Wells and applicant submits the first quarterly report in accordance with the terms of paragraph 11(b) above.

Dated June 19, 1986


Water Judge
Water Division No. 1
State of Colorado

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO

Case No. 82CW125

RULING OF THE REFEREE AND DECREE OF THE WATER COURT
CLERK

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF REX G. BAKER,
JR., IN LARIMER COUNTY

Upon investigation of the facts and upon examination of the records and files herein, the undersigned Referee, being fully advised in the premises, does hereby make the following findings and rulings in this case:

1. This matter involves an application for water rights and approval of a plan for augmentation filed with the Clerk of the Water Court, Water Division No. 1, on April 29, 1982.
2. All notices required by law have been fulfilled, and the Referee has jurisdiction over this application.
3. Statements of opposition to the application were timely filed by the State Engineer and the Thompson Water Users Association. Both of these objectors have consented to the entry of this ruling, and the time for filing additional statements of opposition has expired.
4. The name and address of the applicant is Rex G. Baker, Jr., Baldpate Estates, P. O. Box 2778, Estes Park, Colorado 80517.
5. Applicant is the owner of the following described water rights to be augmented:
 - (a) Baldpate Well No. 1, located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West, 6th P.M., 1050 feet from the South section line and 2100 feet from the West section line of said Section 14. The amount claimed is 9 gpm absolute for domestic, municipal (including fire protection), and commercial uses, with a February 15, 1982 appropriation date, which is the date a test hole for this well was completed. The source of the well is groundwater tributary to Fish Creek.
 - (b) Baldpate Well No. 2, located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West, 6th P.M., 1150 feet from the South section line and 2100 feet from the West section line of said Section 14. The amount claimed is 10

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Baker

gpm absolute for domestic, municipal (including fire protection), and commercial uses, with a March 2, 1982 appropriation date, which is the date a test hole for this well was completed. The source of this well is groundwater tributary to Fish Creek.

(c) Baldpate Well No. 3, located in the SW $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West, 6th P.M., at a point 650 feet from the South section line and 1100 feet from the West section line of said Section 14. The amount claimed is 25 gpm absolute for domestic, municipal (including fire protection), commercial, and recreation uses, with an appropriation date of July 21, 1915, which is the date water was being applied to a beneficial use from this well. The source of this well is groundwater tributary to Fish Creek.

(d) Baldpate Spring and Pipeline (the "Baldpate Spring"), located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the S $\frac{1}{4}$ corner of said Section 14 bears South 37° 05' West 1205 feet. This water right was decreed in the District Court in and for Water Division No. 1, Case No. 80CW105, for 1 cfs absolute for domestic, commercial, irrigation, stock watering and fire protection uses, with an appropriation date of July 21, 1915. The source is spring water tributary to Fish Creek.

6. Applications for permits to construct the Baldpate Wells Nos. 1 and 2 were filed with the State Engineer's office on April 28, 1982, and a late registration statement was filed for the Baldpate Well No. 3. All are currently pending. Since over six months have elapsed since these permit applications were filed with the State Engineer, the Referee may rule on this matter pursuant to C.R.S. 1973, § 37-92-302(2).

7. To augment the water rights described in paragraph 5 above, applicant is the owner of and proposes to utilize Lily Lake Reservoir, the Southerly dam abutment of which is located at a point in the SW $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the NE corner of said Section 14 bears North 45° 09' East 5205 feet. This storage right was decreed in the District Court in and for Water Division No. 1, Case No. 80CW104, for 75.44 acre feet absolute for domestic, commercial, irrigation, stock watering, fire protection, recreation and fish preservation uses, with an October 20, 1913 appropriation date. The source of this reservoir is spring water tributary to Fish Creek. Lily Lake Reservoir has been historically used for domestic, commercial and recreation purposes in connection with a resort lodge and associated restaurant, the stock watering of some 40 horses, and the irrigation of approximately 5 acres of hay. This historic use has resulted in an estimated annual consumption of more than 6 acre feet per year.

8. By the subject application, applicant seeks to adjudicate the water rights for the Baldpate Wells Nos. 1, 2 and 3, more particularly described in paragraphs 5(a), (b) and (c) above. The Referee finds that all prerequisites to obtaining a decree for these wells have been met, and that applicant should be granted water rights for the Baldpate Wells Nos. 1, 2 and 3 as described herein.

9. By the subject application, applicant further seeks approval of a plan for augmentation to permit the out-of-priority use of the Baldpate Wells and Spring in connection with a residential development known as the Baldpate Estates. This development will be situated on approximately 74 acres of land located in portions of Sections 14 and 23, Township 4 North, Range 73 West, 6th P.M., Larimer County, Colorado, and will consist of 18 single family residential units and a 100 seat restaurant.

10. The total water requirements of the Baldpate development will average 12.6 acre feet per year. This is based on an average domestic water demand of 7 acre feet per year which assumes an average occupancy of 3.5 people per unit, a per capita water use of 100 gallons per day, and year round occupancy. In addition, approximately 5.6 acre feet will be required annually for the proposed 100 seat restaurant which assumes a water usage of 50 gallons per day per seat. As wastewater treatment will be by means of individual septic systems or a central treatment facility, the maximum rate of domestic and commercial consumption will be 10%. Therefore, the total consumptive use of water in connection with the Baldpate development will be no greater than 1.26 acre feet per year.

11. To augment and balance any out-of-priority depletions resulting from the use of the Baldpate Wells and Spring in connection with the Baldpate Estates, applicant will release a corresponding amount of water from Lily Lake Reservoir, up to a maximum of 1.26 acre feet per year, plus chargeable evaporation losses set forth in paragraph 12 below. The precise timing and amount of releases from Lily Lake Reservoir shall be subject to administration by the Division Engineer for Water Division No. 1.

12. Prior to dam construction, 80% of the surface area of the present Lily Lake Reservoir was a natural lake. Therefore, in determining the extent of chargeable evaporation losses in connection with the subject plan for augmentation, credit shall be given for and applicant shall not be required to replace evaporation losses from that 80% of the reservoir which was a natural lake. Moreover, applicant will not be charged for evaporation losses from the non-natural portion of Lily Lake Reservoir during such periods the reservoir is in priority. Accordingly, the Referee finds that in connection with the subject plan for augmentation chargeable evaporation losses shall be limited to

the evaporation losses from the non-natural portion of Lily Lake Reservoir when the reservoir is out-of-priority.

13. To ensure the operation of the plan for augmentation, applicant shall:

(a) Install and maintain such measuring devices as may reasonably be required by the Division Engineer to verify the amount of water in Lily Lake Reservoir, and that the amount of augmentation water released from Lily Lake Reservoir equals the out-of-priority depletions resulting from the proposed use of water in connection with the Baldpate Estates.

(b) File quarterly reports with, and in a form acceptable to, the Division Engineer which set forth the total diversions from the Baldpate Wells and Spring during the prior quarter, anticipated diversions from the Baldpate Wells and Spring during the following quarter, the water level in Lily Lake Reservoir on the last day of the prior quarterly period, and the volume of water corresponding to that level. In addition, applicant shall furnish the Division Engineer with an evaporation chart of Lily Lake Reservoir to assist in calculating chargeable evaporation losses from this facility.

(c) Prohibit totally consumptive septic systems in connection with the Baldpate development.

(d) Prohibit the irrigation use of water from the Baldpate Wells, and limit the irrigation use of water from the Baldpate Spring and Lily Lake Reservoir to those periods when said water rights are in priority or to water stored in priority.

(e) Form a homeowners association or other similar entity which shall be responsible for and capable of ensuring compliance with all obligations inherent in the implementation of the subject augmentation plan insofar as it relates to the residential/non-commercial aspects of the Baldpate development.

14. In the event applicant requires supplemental or replacement wells to provide an adequate water supply for the Baldpate Estates as defined in paragraphs 9 and 10, such wells may be incorporated in the plan for augmentation subject to the same terms and conditions provided for herein; provided, however, that applicant obtains the requisite replacement or supplemental well permit and a change of water right for any supplemental well.

15. By the implementation of the above-described augmentation plan, the Referee finds that the Baldpate Wells and Spring

Case No. 82CW125
Baker

may be utilized as the water supply for the Baldpate Estates without adversely affecting any vested water rights or decreed conditional water rights, and without the necessity of curtailing the withdrawal of water from the Baldpate Wells and Spring in times of shortage. However, out-of-priority diversions from these water rights may only be made when augmentation water is released from Lily Lake Reservoir at the direction of the Division Engineer in satisfaction of depletions determined in accordance with this plan.

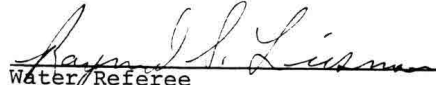
The Referee does therefore order that the application for water rights for the Baldpate Wells Nos. 1, 2 and 3, more particularly described in paragraph 5 above, and the plan for augmentation more particularly described herein should be and hereby are granted and approved. The Referee does further order that well permits for the Baldpate Wells Nos. 1, 2 and 3 be issued by the State Engineer.

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

It is further ORDERED that a copy of this ruling shall be filed with the Division Engineer for Water Division No. 1 and the State Engineer.

Done at the City of Greeley, Colorado this 28th day of
September, 1983.

BY THE REFEREE:


Water Referee
Water Division No. 1
State of Colorado

No protest was filed in this matter. Accordingly, the foregoing ruling is confirmed and approved, and is made the Judgment and Decree of this Court; provided, however, that the plan for augmentation shall be subject to reconsideration by this Court on the general question of injury to the vested water rights of others for a period of five years from the date water is first

Case No. 82CW125
Baker

diverted from the Baldpate Wells and applicant submits the first quarterly report in accordance with the terms of paragraph 13(b) above.

Dated Nov 2 1983

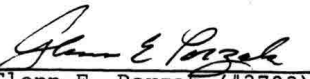

Water Judge
Water Division No. 1
State of Colorado

The undersigned hereby consent to the entry of the above Ruling of Referee and Judgment and Decree of the Court:

FOR THE ATTORNEY GENERAL

HOLME ROBERTS & OWEN


Steven J. Shupe (#12523)
Attorneys for the State Engineer
1525 Sherman Street, 3rd Floor
Denver, CO 80203


Glenn E. Porzak (#2793)
Attorneys for Applicant
1700 Broadway, Suite 1800
Denver, CO 80290

No objection to entry of the above Ruling and Decree
FISCHER, BROWN, HUDDLESON & GUNN


Attorneys for Thompson Water Users
Association
P. O. Drawer "J"
Fort Collins, CO 80522

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 1

STATE OF COLORADO

Case No. 80 CW105

FILED IN DISTRICT COURT

FEB 10 P 1:40

1ST DIST. WATER COURT
WELD COUNTY COLO.

IN THE MATTER OF THE APPLICATION	)	
FOR WATER RIGHTS OF	)	FINDINGS AND RULING
	)	OF THE REFEREE
MRS. TOMMIE JEAN MACE	)	AND DECREE OF
	)	THE WATER COURT
IN LARIMER COUNTY	)	

THIS CLAIM, having been filed with the Water Clerk, Water Division No. 1, on April 30, 1980 and the Referee being fully advised in the premises, does hereby find:

All notices required by law of the filing of this application have been fulfilled, and the Referee has jurisdiction of this application.

No statement of opposition to said application has been filed, and the time for filing such statement has expired.

All matters contained in the application having been reviewed, and testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein,

IT IS HEREBY THE RULING OF THE WATER REFEREE:

1. The name and address of the claimant:

Mrs. Tommie Jean Mace
c/o Glenn E. Porzak
Holme Roberts & Owen
1700 Broadway, Suite 1800
Denver, Colorado 80290

2. The name of the structure:

Baldpate Spring and Pipeline

3. The legal description of the structure:

At a point located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West of the 6th P.M., Larimer County, whence the S $\frac{1}{4}$ Corner of said Section 14 bears S 37°05' West 1205 feet. Water first flows in a natural channel for approximately 1000 feet in a NW direction thence into a 6" pipeline first continuing NW then turning NE for approximately 214 feet South.

4. The source of water:

Spring water tributary to Fish Creek

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Page 2
Mace

5. The date of appropriation:

July 21, 1915

6. The amount of water:

1.0 cubic feet per second

7. The use of the water:

Domestic and commercial for hotel and cabins for approximately 200 people and also a restaurant which serves approximately 400 persons per day and for a gift shop. Irrigation of 5 acres of hay, stockwater for approximately 40 horses, and fire protection.

8. The priority herein awarded said Baldpate Spring and Pipeline was filed in the Water Court in the year of 1980 and shall be administered as having been filed in that year; and shall be junior to all priorities filed in previous years. As between all rights, filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.

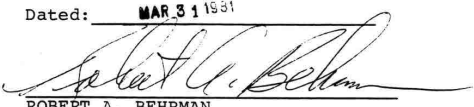
DATED this 10th day of February, 1981.

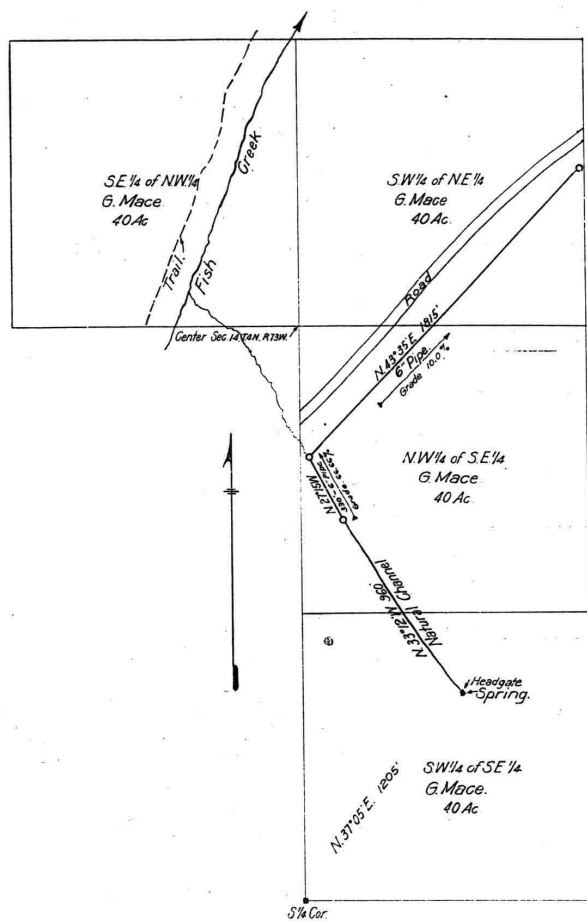

RAYMOND S. LIESMAN
Water Referee
Division No. 1

THE COURT DOTH FIND: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: MAR 31 1981


ROBERT A. BEHRMAN
Water Judge
Division No. 1
State of Colorado



Reported men by those present. That the undersigned ChaseEbee claimant whose postoffice address is Estes Park, Colorado has caused to be located The Baldpate Spring and Pipe Line as hereinafter mentioned, has made these several statements relative thereto and filed the same in compliance with the laws of the State of Colorado. The accompanying map which shows the location of said pipe line, forms a part of this filing.

First: The headgate is located at a spring from which it derives its supply of water, whence the south 1/4 corner of section 14, T4N, R33W, of the 6th Principal Meridian bears N37°05'E 1205 feet.

Second: The length of said pipe line is 2145 feet. The diameter of the pipe is 6 inches, Grade 108. Third: The carrying capacity of said pipe line is 1 cubic foot per second of flow, for which claim is hereby made for domestic and irrigation purposes.

Fourth: The estimated cost is \$5000.
Fifth: Work was commenced by survey on the 22nd day of July, A.D. 1915.

Chas. E. Meacham
Claimant

11283

DIV. 1
STATE OF COLO.

IN THE DISTRICT COURT IN AND FOR

NOV 25 PM 4:51

WATER DIVISION NO. 1

STATE OF COLORADO

OFFICE OF
WATER CLERK

Case No. 80 CW104

IN THE MATTER OF THE APPLICATION	)	
FOR WATER RIGHTS OF	)	FINDINGS AND RULING
	)	OF THE REFEREE
MRS TOMMIE JEAN MACE	)	AND DECREE OF
	)	THE WATER COURT
IN LARIMER COUNTY	)	

THIS CLAIM, having been filed with the Water Clerk, Water Division No. 1, on April 30, 1980 and the Referee being fully advised in the premises, does hereby find:

All notices required by law of the filing of this application have been fulfilled, and the Referee has jurisdiction of this application.

No statement of opposition to said application has been filed, and the time for filing such statement has expired.

All matters contained in the application having been reviewed, and testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein, IT IS HEREBY THE RULING OF THE WATER REFEREE:

1. The name and address of the claimant:

Mrs. Tommie Jean Mace
c/o Glenn E. Porzak
Holme Roberts & Owen
1700 Broadway, Suite 1800
Denver, Colorado 80290

2. The name of the structure:

Lily Lake Reservoir

3. The legal description of the structure : "

The southerly abutment of the dam is located at a point in the SW $\frac{1}{4}$ of Section 14, Township 4 North, Range 73 West, 6th P.M., Larimer County, whence the NE Corner of said Section 14 bears N 45°09' E 5205 feet.

4. The source of water:

Spring water tributary to Fish Creek.

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Page 2
Mace

5. The date of appropriation:

October 20, 1913

6. The amount of water:

75.44 acre feet

7. The use of the water:

Domestic and commercial for hotel and cabins for approximately 200 people. Also a restaurant which serves approximately 400 persons per day and gift shop. Irrigation of approximately 5 acres of hay, stockwater for approximately 40 horses, fire protection, recreational and fish preservation all for Baldpate Inn Resort in conjunction with other waters.

8. The priority herein awarded said Lily Lake Reservoir was filed in the Water Court in the year of 1980 and shall be administered as having been filed in that year; and shall be junior to all priorities filed in previous years. As between all rights, filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.

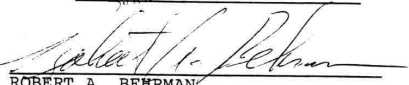
DATED this 25th day of November, 1980.


RAYMOND S. LIESMAN
Water Referee
Division No. 1

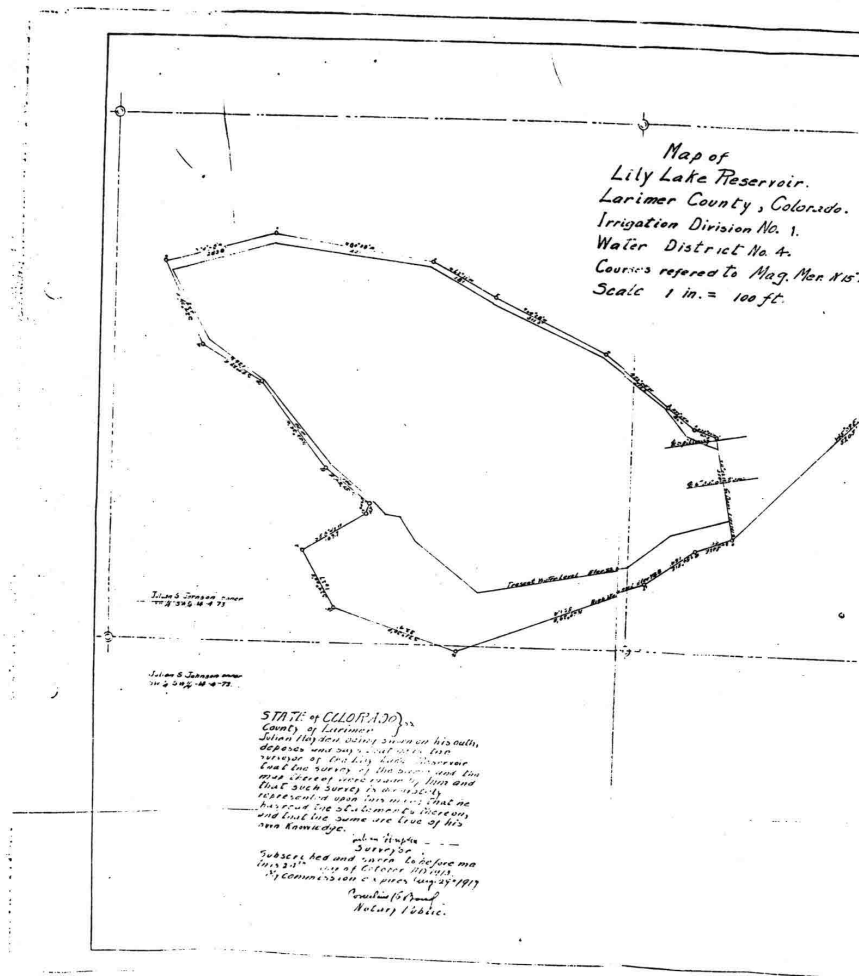
THE COURT DOTH FIND: NO PROTEST WAS FILED IN THIS MATTER.

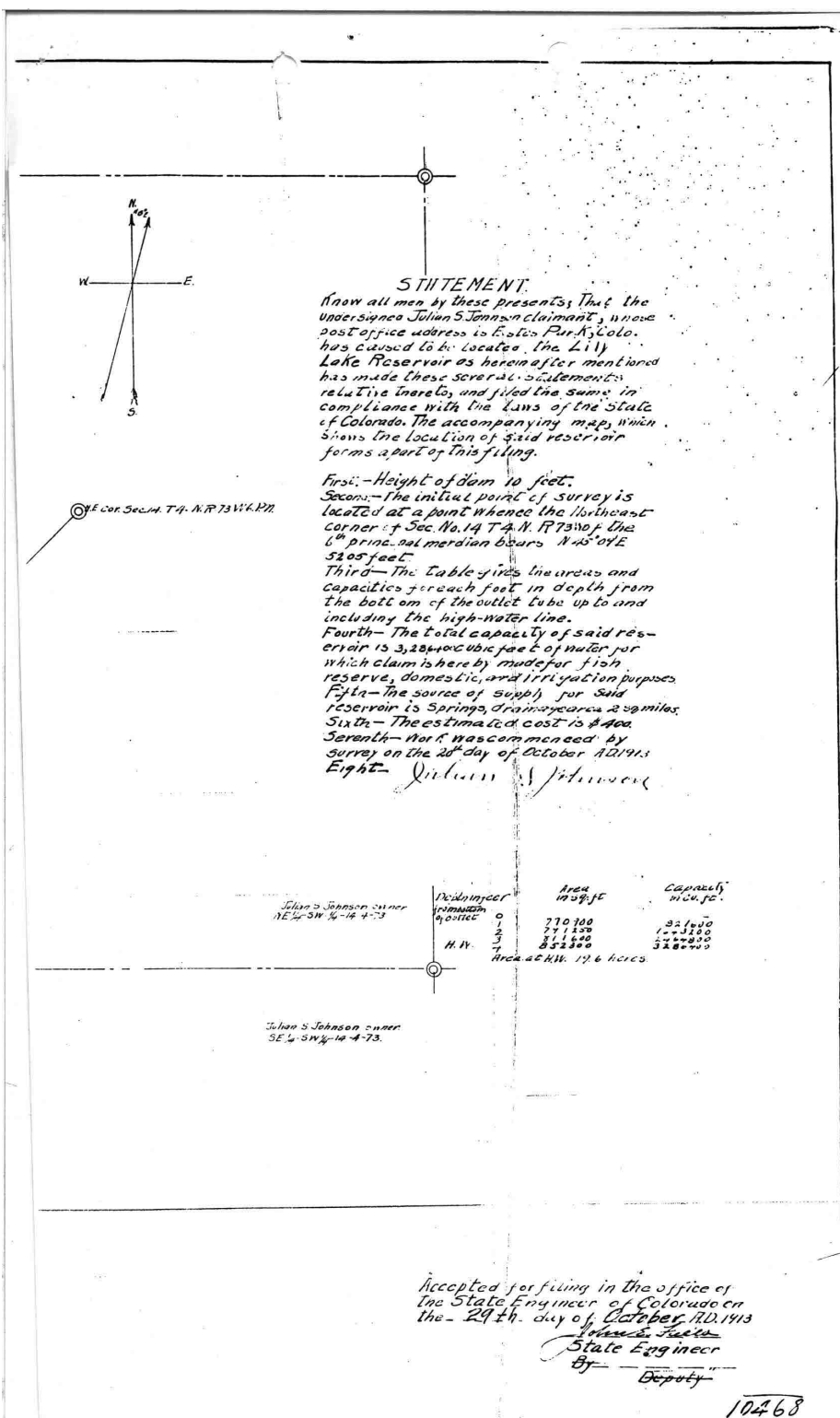
THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: JAN 16 1981


ROBERT A. BEHRMAN
Water Judge
Division No. 1
State of Colorado

JAN 16 1981







United States Department of the Interior

NATIONAL PARK SERVICE
Rocky Mountain National Park
Estes Park, Colorado 80517

IN REPLY REFER TO:
L54

Signed
August 15, 1994

Mr. Rex G. Baker, Jr.
1910 Windham Drive
Estes Park, Colorado 80517

Dear Mr. Baker:

We were pleased to learn from your recent message that you were able to secure water from other sources to replace the approximately 15 acre-feet of water that would have been removed from Lily Lake. Your sensitivity of and concern for the natural values of Rocky Mountain National Park are very much appreciated.

By your actions, the existing level of Lily Lake will be maintained for at least another season. The real "winners" will be the visitors to the park and the fish and other aquatic life that depend on maintenance of Lily Lake at present levels. To help secure these gains, I have asked Ken Czarnowski of my staff to work with your legal counsel to explore means whereby the park can assist in maintaining the present level of Lily Lake on a permanent basis.

Thank you again for resolving this issue in a manner that protects and preserves those special values found in Rocky Mountain National Park.

Homer L. Rouse
Superintendent

bcc:
Alan Berryman
Don Brazelton
Glenn Porzak
Williams, WRD
Wise, RMR

NATIONAL PARK SERVICE
WATER RESOURCES DIVISION
FORT COLLINS, COLORADO

DATE: June 8, 1989

FROM
NAME: Owen Williams

GROUP: WRD-WRB

TO
NAME: Jim Thompson

GROUP: _____

CITY, STATE: ROMO

MAIL CODE: _____

OFFICE PHONE: 586-2371 FTS

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SENATOR WALLOP

Questions to the National Park Service regarding S. 737, Rocky Mountain National Park expansion.

- 1) Lily Lake is fully appropriated under Colorado Water Law. What are these rights? What is the extent, quantity, and purpose of these rights? Are there any conditions as to place of use, purpose of use, or point of diversion?

Response: A brief discussion of the project is in order before the question can be answered. The Conservation Fund has contracted for the purchase of property and water rights forming a portion of Baldpate Estates. Baldpate Estates is in Larimer County adjacent to Rocky Mountain National Park and consists of two parcels lying east and west of State Highway 7. The portion of Baldpate Estates that is under contract is on the west side of the highway and includes Lily Lake. It is anticipated that this 309-acre parcel will eventually be donated by The Conservation Fund to the National Park Service to form an addition to Rocky Mountain National Park. This donation is contingent upon the enlargement of the boundaries of Rocky Mountain National Park to include the acquired property.

Baldpate Estates is currently owned by entities controlled by Mr. Rex G. Baker, Jr. (Bald Pate Ventures). These entities will retain ownership of the portion of the property lying east of State Highway 7. Mr. Baker has obtained preliminary approval of the subdivision of all of Baldpate Estates into numerous single and multi-family residential lots.

Lily Lake is a natural lake that had, in its natural state, a capacity of approximately 75 acre feet. The lake was modified in 1913 by the construction of a dam to increase the capacity to approximately 100 acre feet. If free to do so, the Park Service would prefer to breach the dam and return the lake to its natural level. However, the dam will remain under the terms of the contract.

Mr. Baker and the related entities are also the owners of various water rights associated with Lily Lake and the Baldpate Estates property. These water rights are described as follows:

1. Lily Lake Reservoir -- Decreed in Case No. 80CW104, Water Division No. 1, for 75.44 acre feet absolute, for domestic, commercial, irrigation, stock watering, fire protection, recreation, and fish preservation purposes, with an appropriation date of October 20, 1913.
2. Lily Lake Reservoir First Enlargement and Second Filling -- Decreed in Case No. 84CW576, Water Division No. 1, for 25.16 acre feet absolute and 6 acre feet conditional, for domestic, municipal (including fire protection), commercial, irrigation, stock watering, recreation, and fish preservation purposes, with an appropriation date of July 21, 1915, for the absolute portion and December 20, 1984, for the conditional portion and second filling.
3. Baldpate Spring and Pipeline -- Decreed in Case No. 80CW103, Water Division No. 1, for 1 c.f.s. absolute, for domestic, commercial,

irrigation, stock watering, and fire protection purposes, with an appropriation date of July 21, 1913.

4. Baldpate Well No. 1 -- Decreed in Case No. 82CW125, Water Division No. 1, for 9 g.p.m. absolute, for domestic, municipal (including fire protection), and commercial purposes, with an appropriation date of February 15, 1982.

5. Baldpate Well No. 2 -- Decreed in Case No. 82CW125, Water Division No. 1, for 10 g.p.m. absolute, for domestic, municipal (including fire protection), and commercial purposes, with an appropriation date of March 2, 1982.

6. Baldpate Well No. 3 -- Decreed in Case No. 82CW125, Water Division No. 1, for 25 g.p.m. absolute, for domestic, municipal (including fire protection), commercial, and recreation purposes, with an appropriation date of July 21, 1913.

7. Baldpate Well Nos. 4, 5, and 6 -- Decreed in Case No. 84CW576, Water Division No. 1, each for 25 g.p.m. conditional, for domestic, municipal (including fire protection), and commercial purposes, with appropriation dates of December 20, 1984.

In addition to the above-described water rights, there are two adjudicated augmentation plans associated with the Baldpate Estates property. The first of these, which was decreed in Case No. 82CW125, covers only a few large single family lots platted for development on the east side of the property. The second augmentation plan, decreed in Case No. 84CW576, was designed to provide water for development on both sides of the property, including the property to be acquired by The Conservation Fund.

The division of water rights associated with the Baldpate Estates property is extensively addressed in the purchase contract between The Conservation Fund and Mr. Rex G. Baker, Jr. The goal in drafting this portion of the purchase contract was to obtain for The Conservation Fund the portion of the water rights fairly allocable to the portion of the property being acquired, considering the development plans for both sides of the highway and the fair market value price negotiated with the owner. Pursuant to this agreement, The Conservation Fund will acquire:

1. An undivided 28 percent interest in Lily Lake Reservoir and Lily Lake Reservoir First Enlargement and Second Filing.
2. Baldpate Well No. 3.
3. A portion (8.32 g.p.m) of the water right associated with Baldpate Well No. 6.
4. An undivided 38 percent interest in the augmentation plan decreed in Case No. 84CW576.

Mr. Baker will retain the remaining water rights associated with the Baldpate property.

All maintenance, operational, and rehabilitation responsibility for the dam associated with Lily Lake Reservoir remains with Mr. Baker. Mr. Baker will reserve access easements to the dam and reservoir in order to accomplish these obligations, but must exercise his rights under these easements in a reasonable manner and minimize disturbance to the property. Mr. Baker has the right to reduce the dam, resulting in a reduction of the storage capacity of the reservoir, so long as the lake level does not fall below the natural level. Should Mr. Baker decide to do this, any reduction in storage capacity will reduce the water rights associated with the west side of the property. Mr. Baker has the right to dredge the lake to increase its storage capacity, however, the capacity may not be increased beyond 106.6 acre feet, the sum total of all rights decreed to the lake. Mr. Baker's water rights in the lake may only be used in connection with the decreed augmentation plans, and releases under these plans may not exceed 3.36 acre feet annually.

2) Are these rights being acquired by the Conservation Fund?

Response: A portion of these rights (approximately 28 percent) are being acquired by The Conservation Fund as described in the response to first question.

3) Are these rights going to be transferred to the National Park Service?

Response: It is intended by The Conservation Fund that the portion of water rights acquired by the Fund will be transferred to the National Park Service.

4) Will the State of Colorado agree to such a transfer?

Response: The State of Colorado has no approval authority over the transfer of water rights ownership from one owner to another, unless changes of use or point of diversion are involved. However, there is no reason to believe that the State of Colorado would have any objection.

5) Does the National Park Service plan to exercise those rights?

Response: The National Park Service does plan to exercise its portion of the water rights.

6) Under Colorado law, would a failure to use these water rights lead to abandonment? Could the rights be lost, and if so, would the rights be made available for subsequent appropriation? What would the National Park Service position be with respect to any subsequent appropriation?

Response: Under Colorado law, a failure to use these water rights could lead to abandonment. However, since the water right is essentially a storage right, the period under which water rights would have to be exercised is much longer. Abandonment is more difficult to prove than in the case of wells or in-stream flows and diversions. Because Lily Lake is a natural lake in addition to containing reservoir storage, the lake would have to be drained should the water rights be lost through abandonment. The National Park Service intention to exercise the water right would be through the use of decreed wells and the required releases from the reservoir.

7) Who owns the impoundment structure?

8) Will the structure continue to be privately owned?

Response to questions 7 and 8: The Conservation Fund will acquire the impoundment structure. However, the responsibility for maintenance and operation of the structure will remain with Baldpate Ventures, as explained in the response to the first question.

9) Upon transfer of the property to the National Park Service, will the structure be within the exterior boundaries of the Park?

Response: Upon transfer of the property to the National Park Service, the structure will be within the exterior boundaries of the Park.

10) If the structure is within the exterior boundaries, what would be the impact on the owner's ability to make modifications to the structure in the future? Could the structure be enlarged, and if so, what would be the position of the National Park Service?

Response: Under the purchase agreement, Bald Pate Ventures will be required to make any necessary modifications to the structure in the future as might be required for safety or operations. The structure cannot be enlarged under this agreement; however, storage capacity could be increased up to the decreed amount through dredging.

11) What are the purposes of the structure? Could the purposes be expanded (i.e., hydro, irrigation, etc.)?

Response: The purposes of the structure will be limited to augmentation in those water rights remaining with Bald Pate Ventures. The Conservation Fund portion of the rights are not limited.

12) Absent the transfer, who would have jurisdiction on changes to the structure or the purposes for its existence?

a) What is the effect of including the structure within the Park boundaries on that process?

b) Will the Secretary of Interior have to approve any changes?

Response: The State Water Court, Division No. 1 would have jurisdiction over purposes and uses. Including the structure within the Park boundaries would have no effect on that process. The Secretary of Interior would have responsibility for safety inspections and would have to approve any changes that could lead to Federal liability.

13) What is the condition of the structure?

Response: A number of studies by private consulting firms and the State Engineers Office have indicated what work needs to be done to receive State approval. This work is now being performed and the condition of the dam is satisfactory.

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- 14) Will the Federal Government assume any responsibility for safety and inspection as a result of this transfer?

Response: The responsibility for keeping the dam in compliance with safety regulations is that of Bald Pate Ventures. The Federal Government does assume responsibility for joint inspections of dams within the park regardless of ownership.

- 15) Currently, are there any federal loans or other programs applicable to the structure?

Response: The title search has disclosed no Federal loans or other Federal programs applicable to the structure.

- 16) Who owns the Lake bed?

Response: This is an arguable, legal question because the navigability of the lake has never been determined. However, the natural lake would periodically dry up. The water is shallow even within impoundment and no boating activity has existed. There is no reason to believe that the lake would be considered navigable, and, therefore, the lake bed would be owned by Bald Pate Ventures, would be acquired by The Conservation Fund, and would ultimately be owned by the National Park Service.

- 17) If the Lake bed is owned by the State of Colorado, what jurisdiction would the National Park Service have to regulate activities on the surface of the Lake?

Response: Because we believe the lake bed will be owned by The Conservation Fund and ultimately the National Park Service, the activities on the surface of the lake would be managed by the National Park Service under proprietary jurisdiction.

- 18) What water rights from the Lake will be retained by non-federal interest after transfer?

Response: Approximately 78 percent of the water rights from the lake will be retained by Bald Pate Ventures, the present owner. This is explained in detail in the response to the first question. The purposes of these water rights will be for augmentation of streamflows from Fish Creek as directed by the State.

- 19) What access is necessary for any non-federal interest for the use of those rights? Does the National Park Service have any problems with such access?

Response: The purchase agreement grants an access easement to Bald Pate Ventures for the purpose of exercising the use of the water rights and for the purposes of repair and maintenance of the impoundment structure. This provision was negotiated with the concurrence of the National Park Service. The National Park Service did not feel that it was appropriate for the Federal Government to operate and maintain a dam whose purpose was to serve a subdivision outside the park, and those responsibilities should remain with the subdivision owners, i.e., Bald Pate Ventures.

- 20) Upon completion of the transfer, how does the National Park Service plan to manage these lands? What specifically is the Service going to do with this property? Does the acquisition of these properties present any management problems? Will such an acquisition lead to proposals and/or requirement for additional lands?

Response: Upon completion of the transfer, the National Park Service will prepare a planning document to determine specific land uses and locations. The uses will most likely include access to existing trails, construction of additional trails, trailhead parking, picnicking, and fishing. The acquisition of this property will actually eliminate some management problems that would have been created if the property were developed. In addition, access to portions of the park where access was previously difficult will now be provided. The acquisition of this property stands on its own merits and does not imply additional acquisitions. However, the acquisition does connect the park to a 600-acre isolated Forest Service tract that will require joint Forest Service/National Park Service planning and consultation to achieve efficient management.

- 21) How does the National Park Service view the proposed development which will take place adjacent to the new Park boundaries?

Response: The remaining portion of the Baldpate development will be on the opposite side of the road and downslope and will not affect the aesthetic concerns, wildlife habitat, and migration routes or access that were significant concerns and problems for the park in the portion to be acquired.

- 22) Are there any other lands proposed for development adjacent to the Park? How does the Service intend to deal with those areas?

Response: About 40 percent of the lands adjacent to the park boundary are private lands. Approximately 50 percent of these lands have been developed, and the remainder is undeveloped. Both zoning and tax structure promote the development of these lands, and it is probable that the remaining 50 percent will be developed. In addition to working with county and local planning and zoning entities, the park is working with a local land trust, which in turn is working with landowners to protect access, wildlife, and aesthetic values without changes in the park boundary. Boundary changes would be proposed only in the case of needs for National Park Service activities or public use needs that can be met in no other ways. The National Park Service will, however, have to develop a position regarding lands that have park values that are offered in donation. We anticipate there will be occasions where this will arise, as it has several times in the past. The National Park Service presently reacts to problems or opportunities on a case-by-case basis, and a study of the entire east boundary is needed.

Docket Information

Number of Documents in Docket 44

Documents Dated from 11/25/1980 to 8/15/1994

Docket Compiled: 6/9/2011