WATER-RIGHT DOCKET

Rocky Mountain National Park

Docket No: 62

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

State Water Rights Documentation

08-01-2013: Letter to Peter A. Fahmy, U.S. Department of the Interior, Office of Solicitor from David L. Nettles, P.E., Division Engi

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

David L. Nettles, P.E.
Division Engineer

August 1, 2013

Peter A. Fahmy
U.S. Department of the Interior
Office of the Solicitor
Division of Parks and Wildlife
Branch of the National Parks
Lakewood, Colorado Unit
P.O. Box 25287
Denver, CO 80225-0287

Re: Water Rights Held by the National Park Service at Lily Lake (WDID 0403600)
Water Division 1, District 4

Dear Peter:

This letter is in response to your May 7, 2013 letter regarding the above referenced subject. Your letter basically requests a written opinion from the Colorado Division of Water Resources related to natural lakes and any requirements that a water right be obtained for such natural lakes.

In Colorado, in the absence of a diversion, the waters of a natural lake may only be appropriated by the Colorado Water Conservation Board ("CWCB"). *See, e.g.,* Section 37-92-102(3), C.R.S. Otherwise, in order to obtain a vested water right to water in a natural lake, the water must be removed from its natural course or location or controlled in its natural location by means of a control structure. Such structures could include a ditch, canal, flume, reservoir, bypass, pipeline, conduit, pump or other structure or device. The water also must be beneficially used. In the absence of a court order or any contractual commitments to the contrary, an entity with a natural lake on its property does not require a decreed water right for the natural lake and does not need to augment natural depletions from the lake. Such an entity also cannot properly obtain a water right for the natural lake water in the absence of an intent to divert or control such water for a beneficial use. However, such an entity might work cooperatively with the CWCB so that the CWCB could appropriate some or all of the natural lake water without a diversion for the purpose of preserving the natural environment to a reasonable degree. Such an appropriation may protect the appropriated water from future diversion for other beneficial uses.

In the case of Lily Lake, if the reservoir dam controls the natural lake in its natural location and beneficial uses of the water are occurring, then the Park Service may need to augment any out-of-priority depletions attributable to the control of the natural lake water. If the reservoir dam does not control the natural lake in its natural location, then the Park Service cannot appropriate a water right to the natural lake in the absence of any diversion or control of the natural lake water for a beneficial use. If an augmentation plan is required, the Park Service may seek to adjudicate a water right for Lily Lake,

Water Division 1 • Greeley
810 9th Street, Suite 200 • Greeley, CO 80631 • Phone: 970-352-8712 • Fax: 970-392-1816
http://water.state.co.us

but is not required to do so by Colorado law, notwithstanding any court orders, contractual obligations or other law to the contrary. However, if an augmentation plan is required it must be sufficient to replace any out-of-priority depletions in time, location and amount as necessary to prevent injury to vested water rights.

Please contact me if you have any questions about this letter.

Regards,

David L. Nettles, P.E.
Division Engineer

DLN:dln\Lily_Lake_Right_Letter_20130801.docx

Cc: Estes Valley Land Trust

ec: Jason Smith, Water Commissioner
Mike Hein, Assistant Division Engineer
Kevin Rein, Deputy State Engineer

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
DIVISION OF PARKS AND WILDLIFE
BRANCH OF NATIONAL PARKS
LAKEWOOD, COLORADO UNIT
POST OFFICE BOX 25287
DENVER, CO 80225-0287
TELE. (303) 969-2848
FAX (303) 987-6737
May 7, 2013

David Nettles, Division Engineer
Water Division No. 1
810 9th Street, Suite 200
Greeley, CO 80631

Re: Water Rights Held by the National Park Service at Lily Lake

Dear Dave:

On November 29, 2012, the superintendent of Rocky Mountain National Park, Vaughn Baker, received a copy of a letter that was sent by the Estes Valley Land Trust (Trust) to the U.S. Department of Justice, which is attached as "Attachment A". In the letter, the Trust alleges that the National Park Service (NPS) must have an adjudicated storage water right for that portion of the contents of Lily Lake that is equivalent to the amount of water that captured by the lake in its natural state prior to the construction of the dam in 1915. The Trust's allegation is based upon advice rendered by a local water rights attorney, Glenn Porzak.

In response to the afore-mentioned letter, Vaughn Baker and I, along with other park staff, met with representatives of the Trust on January 10, 2013, to discuss the water rights held by the NPS at Lily Lake and the letter's allegation. Based upon my legal opinion, the NPS took the position that where the owner of a natural lake does not withdraw water from the lake there is no requirement in Colorado case law or statutes that the owner must possess an adjudicated storage water right equivalent to the volume of the natural lake. At the request of the Trust, the NPS sent a letter to the Trust setting forth its position on this matter, a copy of which is attached as "Attachment B". In this letter, my telephonic conversation with you regarding the Trust's allegation is referenced in footnote five (5).

Despite the cogent written explanation provided by the NPS, the Trust has insisted that the NPS obtain a written opinion from the Colorado Division of Water Resources regarding the issue of whether an adjudicated storage water right is necessary for water that is captured by a natural lake and that is not withdrawn for beneficial use. Given the afore-mentioned absence of any

dispositive case law or statutes addressing this issue, the NPS respectfully requests that the Colorado Division of Water Resources address this issue by way of an advisory memorandum opinion directed both to the Trust and the NPS that is confined to the particular facts and circumstances associated with Lily Lake. Thank you for your consideration of this request and please contact me at your convenience if you have any questions or concerns regarding this letter and/or the accompanying attachments.

Cordially yours,

Peter A. Fahmy
Attorney-Advisor

Attachments

cc: Vaughn Baker (Superintendent, Rocky Mountain National Park)
Larry Gamble (Chief of Planning and Compliance, Rocky Mountain National Park)
James DuBois (Attorney, U.S. Department of Justice)
Dana Jacobsen, (Assistant Regional Solicitor, Rocky Mountain Region)
Bill Hansen (Chief, Water Rights Branch – NPS Water Resources Div.)
Mary Kay Watry (Biologist, Rocky Mountain National Park)



ESTES VALLEY LAND TRUST
PRESERVING OPEN SPACE FOR FUTURE GENERATIONS

MAIL: P.O. Box 663
OFFICE: 1191 WOODSTOCK DR., SUITE 5
ESTES PARK, COLORADO 80517
(970) 577-6837
EVLT@EVLANDTRUST.ORG

ACCREDITED

November 29, 2012

Via email: james.dubois@usdoj.gov
James J. DuBois
U.S. Department of Justice
Environmental and Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202

RE: Lily Lake, Rocky Mountain National Park

Dear Mr. DuBois:

On behalf of the Estes Valley Land Trust, I am writing to inform you that we believe the United States has violated the terms of its purchase agreement with the Land Trust and others, and the Judgment on Stipulation for Compensation and Final Judgment in U.S. District Court, Civil Action No. 00-K-752 dated June 1, 2000 ("Final Judgment"). As described in paragraph 14 of the Final Judgment, the United States is legally bound to maintain the water rights decreed to Lily Lake. Specifically, the Final Judgment states at paragraph 14:

> "As part of the just compensation paid to Defendant Estes Valley Land Trust, Plaintiff United States has agreed to include the water rights, easements, structures and appurtenances that are subject of the within condemnation acquired from Defendant Estes Valley Land Trust within the boundaries of Rocky Mountain National Park and will permanently hold and retain the water rights, easements, structures and appurtenances that are the subject of the within condemnation as part of Rocky Mountain National Park and/or its successor, and will not sever or dispose of the water rights, easements, structures, and appurtenances that are the subject of the within condemnation separately from Rocky Mountain National Park, unless so directed by congressional act." (emphasis added)

The requirement that the United States permanently "hold and retain the water rights" was a significant part of the "just compensation" for the Lily Lake acquisition, a "friendly condemnation" that required the National Park Service to pay only $135,000 of the $315,000 total price for the Lily Lake water rights. It is important to remember that Estes Valley Land Trust, supported by contributions from Great Outdoors Colorado, Town of Estes Park, Larimer County, Rocky Mountain National Park Associates, and several Tahosa Valley landowners, paid

Attachment A

a substantial portion of the consideration for the purchase of Lily Lake and the related water rights. See the attached Justice Department letter, press release and annual report confirming all of the above.

At the time of the Lily Lake augmentation, the following water rights were decreed to Lily Lake:

(a) Lily Lake Reservoir. 75.44 acre-feet decreed absolute by the Division No. 1 Water Court in Case No. 80CW104 for domestic, commercial, irrigation, stockwater, fire protection, recreation, and fish preservation with an appropriation date of October 20, 1913, with an adjudication year of 1980.

(b) Lily Lake Reservoir, First Enlargement. 31.16 acre-feet of which 25.16 acre-feet was decreed absolute and 6.0 acre-feet was decreed conditional by the Division No. 1 Water Court in Case No. 84CW576 for domestic, municipal, commercial, irrigation, stockwater, fire protection, recreation, and fish preservation with an appropriation date of July 21, 1915 for the absolute portion, which is the date the reservoir was constructed to a total of 100.60 acre-feet, and an appropriation date of December 20, 1984 for the conditional portion, with an adjudication year of 1984.

(c) Second Filling of the Lily Lake Reservoir and its First Enlargement. 106.60 acre-feet was conditionally decreed by the Division No. 1 Water Court in Case No. 84CW576, as a refill right for domestic, municipal, commercial, irrigation, stockwater, fire protection, recreation, and fish preservation with an appropriation date of December 20, 1984 for the conditional portion, with an adjudication year of 1984.

These are the water rights that created the value and influenced the terms of the total purchase price.

However, the United States violated its obligation when it "voluntarily relinquish[ed] all of the water rights decreed to Lily Lake in Case No. 84CW576, and all but 34.31 acre-feet of the Lily Lake Reservoir storage right decreed in Case No. 80CW104 for 75.44 acre-feet" in Case No. 02CW82, Water Division No. 1. Accordingly, the United States abandoned 41.13 acre-feet of the 75.44 acre-foot water right decreed in Case No. 80CW104, as well as the decreed First Enlargement of 31.16 acre-feet and the 106.60 acre-foot second-fill water rights decreed in Case No. 84CW576. This is confirmed by the attached Structure Summary Report of the Office of the Colorado State Engineer. Therefore, while the United States agreed to permanently hold and retain the water rights for Lily Lake, only 34.13 acre-feet of the 106.60 acre-feet remains of the Lily Lake decreed water rights. This is far less than the actual capacity of the Lake.

The United States can remedy this violation if it appropriates new water rights for Lily Lake and augments the out-of-priority storage and evaporation losses with its Colorado-Big Thompson Project (C-BT) water. We understand that the United States has the right to at least 3 cfs of C-BT water pursuant to Article 24 of the 1938 contract between the United States and the Northern Colorado Water Conservancy District, as is referenced in the decree in Case No. 02CW82.

Representatives of Estes Valley Land Trust would like to meet with you at your earliest convenience to discuss a resolution of this situation. Please contact the undersigned at 970.586.2767 or by email at ken@jkoldham.com to arrange a meeting.

Very truly yours,

Kenneth R. Oldham
Vice President

cc: Vaughn Baker, Superintendent, Rocky Mountain National Park
Stephen D. Taylor, Assistant United States Attorney
Glenn E. Porzak
Karen L. Henderson

57356

U.S. Department of Justice

Thomas L. Strickland
United States Attorney
District of Colorado
Civil Division

Stephen D. Taylor
Assistant United States Attorney

Byron G. Rogers Federal Office Building
Suite 1100, Drawer 3608
1961 Stout Street
Denver, Colorado 80294

(303) 844-3885
(FAX) 844-0098

April 14, 2000

Kenneth Oldham, Esq.
Estes Valley Land Trust
P.O. Box 1465
Estes Park, CO 80517

Re: Lily Lake

United States v. Water Rights, Easements, etc.
Civil Action No. 00-K-752

Dear Ken:

Pursuant to our conversations and in furtherance of the resolution of this matter, this letter is a recognition that as part of the "just compensation" that the United States has agreed to pay to the Estes Valley Land Trust is the commitment by the United States that the United States will include the rights and interests acquired from the Estes Valley Land Trust within the boundaries of Rocky Mountain National Park; will permanently hold and retain the rights and interests as part of Rocky Mountain National Park and/or its successor; and will not sever or dispose of the rights and interests separately from Rocky Mountain National Park, unless so directed by congressional act.

It is also agreed that the Judgment on Stipulation for Compensation and Final Judgment shall contain language setting forth the above commitment.

Thank you for your assistance in this matter.

Sincerely,

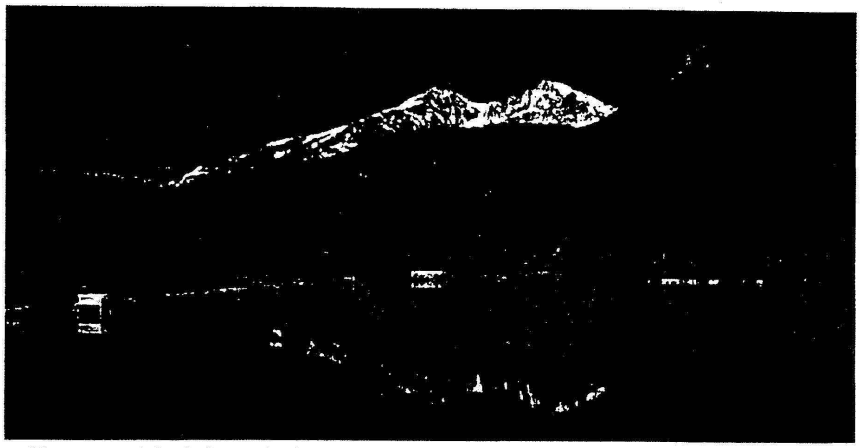
STEPHEN D. TAYLOR
Assistant United States Attorney

SDT:sdt

Lily Lake at Rocky Mountain National Park

The United States Attorney's Office for the District of Colorado filed a "friendly" condemnation action in order to obtain the water rights and a dam located in and around Lily Lake in the Rocky Mountain National Park. This agreement will save the waters from Lily Lake from possible private development, and assure public access and use of the lake. The lake is located approximately 6 miles south of Estes Park and is surrounded by a 7,000 foot wheelchair-accessible trail. Lily Lake is one of only two wheelchair-accessible lakes in the Rocky Mountain National Park.

The "friendly" condemnation action was the result of a creative partnership between the Rocky Mountain National Park, the Estes Valley Land Trust, the Rocky Mountain National Park Associates, and several other conservation groups and individuals.



The scenic Lily Lake at Rocky Mountain National Park is pictured above. The U.S. Attorney's Office filed a "friendly" condemnation action in order to protect water rights and a wheelchair-accessible trail.

In January, 2000, the Estes Valley Land Trust purchased the Lily Lake water rights and dam from a private owner for $315,000 to secure water rights for public use and preservation. In addition to the Estes Valley Land Trust, major funding for the water rights and dam purchase was provided by the Rocky Mountain National Park Associates, Great Outdoors Colorado (which administers the Colorado Lottery revenues), the Town of Estes Park, Larimer County Parks and Open Lands, the Tahosa Valley Landowners Association, and several individuals. The Estes Valley Land Trust then sold the water rights and dam to the United States for $135,000.

This creative partnership was a great example of the federal government working with citizen groups, conservation organizations, and state and local governments to accomplish objectives beyond the reach of the individual entities and to preserve a precious resource for future generations.

Annual Report, Fiscal Year 2000, U.S. Department of Justice
United States Attorney - District of Colorado
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U.S. Department of Justice

Thomas L. Strickland

United States Attorney
District of Colorado

Byron G. Rogers Federal Office Building
Suite 1200, Drawer 3615
1961 Stout Street
Denver, Colorado 80294

(303) 454-0100
(FAX) 454-0405

FOR IMMEDIATE RELEASE
April 12, 2000

Thomas L. Strickland, United States Attorney for the District of Colorado, today announced the filing in U.S. District Court in Denver of a "friendly" condemnation action for the water rights and a dam located in and around Lily Lake in the Rocky Mountain National Park. The condemnation will save the waters of Lily Lake from possible private development and assure public access and use of Lily Lake.

Lily Lake is located in the Rocky Mountain National Park, approximately 6 miles south of Estes Park. A 7,000 foot wheelchair-accessible trail surrounds Lily Lake with a scenic spur trail on Lily Mountain. Lily Lake is one of only two wheelchair accessible lakes in the Rocky Mountain National Park.

The "friendly" condemnation action is the result of a creative partnership between the Rocky Mountain National Park, the Estes Valley Land Trust, the Rocky Mountain National Park Associates, and several other conservation groups and individuals. Pursuant to an agreement with the Estes Valley Land Trust, which currently owns the soon to be condemned property, the United States will pay $135,000 for the Lily Lake water rights and dam for inclusion in the national park.

United States Attorney Thomas Strickland said, "This 'friendly' condemnation will benefit the citizens of Colorado and the nation by preserving a precious resource for future generations. This project is a great example of the federal government working with citizen groups, conservation organizations, and state and local governments to accomplish objectives beyond the reach of the individual entities."

Randy Jones, Superintendent of the Rocky Mountain National Park, said, "Rocky Mountain National Park is moving closer to full protection of scenic Lily Lake. We have worked closely with the Estes Park community and the conservation groups to add the Lily Lake water rights and dam to the Park to ensure the protection of this valuable nature resource. We appreciate their efforts and their commitment."

In January of this year, the Estes Valley Land Trust purchased the Lily Lake water rights and dam from a private owner for $315,000 to secure water rights for public use and preservation. In addition to the Estes Valley Land Trust, major funding for the water rights and dam purchase was provided by the Rocky Mountain National Park Associates, Great Outdoors Colorado (which administers the Colorado lottery revenues), the Town of Estes Park, Larimer County Parks and Open Lands, the Tahosa Valley Landowners Association, and several individuals.

United States Attorney Strickland also expressed his thanks to Ken Oldham of the Estes Valley Land Trust and Randy Jones of Rocky Mountain National Park for their efforts in this project.

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** TOTAL PAGE.002 **

State of Colorado

Structure Summary Report

HydroBase

Structure Name: LILY LAKE RES **Water District:** 4 **Structure ID Number:** 3600

Source: BIG THOMPSON RIVER

Location:	Q10	Q40	Q160	Section	Twnshp	Range	PM
	SW	NE	SW	14	4N	73W	S

Distance From Section Lines: From N/S Line: From E/W Line:

UTM Coordinates (NAD 83): Northing (UTM y): 4462075 Easting (UTM x): 454300.9 Spotted from PLSS distances from section lines

Latitude/Longitude (decimal degrees): 40.307935 -105.537792

Water Rights Summary: Total Decreed Rate(s) (CFS): Absolute: 0.0000 Conditional: 0.0000 --- AP/EX 0.0940

Total Decreed Volume(s) (AF): Absolute: 34.3100 Conditional: 0.0000 AP/EX 0.0000

Water Rights -- Transactions

Case Number	Adjudication Date	Appropriation Date	Administration Number	Order Number	Priority Number	Decreed Amount	Adjudication Type	Uses	Action Comment
02CW0082	1980-12-31	1913-10-20	47481.23303	0		41.1300 AF	S,AB	1356789	RELINQUISHED 12/27/04
80CW0104	1980-12-31	1913-10-20	47481.23303	0		75.4400 AF	S	1356789	
02CW0082	1984-12-31	1915-06-21	48942.23912	0		25.1600 AF	S,C,AB	12356789	RELINQUISHED 12/27 04
84CW0576	1984-12-31	1915-06-21	48942.23912	0		25.1600 AF	S,C	12356789	
02CW0082	1984-12-31	1984-12-20	49297.00000	0		6.0000 AF	S C AB	12356789	RELINQUISHED 12/27/04
84CW0576	1984-12-31	1984-12-20	49297.00000	0		106.6000 AF	S	12356789	
84CW0576	1984-12-31	1984-12-20	49297.00000	0		6.0000 AF	S,C	12356789	
99CW0087	1984-12-31	1984-12-20	49297.00000	0		106.6000 AF	S AB	12356789	ABAN 10/17/2007 RELINQUISHED 12/27/04 02CW0082
02CW0082	2002-12-31	2002-04-22	55629.00000	0		0.0940 C	S,EX	134568P	EXCH OF CBT WTR

Water Rights -- Net Amounts

Adjudication Date	Appropriation Date	Administration Number	Order Number	Priority/Case Number	Rate (CFS) Absolute	Conditional	AP/EX	Volume (Acre-Feet) Absolute	Conditional	AP/EX
1980-12-31	1913-10-20	47481.23303	0	80CW0104				34.3100	0	0
2002-12-31	2002-04-22	55629.00000	0	02CW0082	0	0	0.0940			

Irrigated Acres Summary -- Totals From Various Sources

No data available for this report

GIS Total (Acres): Reported:

Diversion Comments Total (Acres): Reported:

Structure Total (Acres): Reported:

Irrigated Acres From GIS Data

Year	Land Use	Acres Flood	Acres Furrow	Acres Sprinkler	Acres Drip	Acres Groundwater	Acres Total

No data available for this report

Diversion Summary in Acre-Feet - Total Water Through Structure

Year	FDU	LDU	DWC	Maxq & Day	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Total

No data available for this report

Minimum

Maximum

Average

Notes: The average considers all years with diversion records, even if no water is diverted.
The above summary lists total monthly diversions.
* = Infrequent Diversion Record. All other values are derived from daily records.
Average values include infrequent data if infrequent data are the only data for the year.

United States Department of the Interior

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

IN REPLY REFER TO:
L54 (ROMO)

FEB 2 8 2013

Jim Broomfield, President
Estes Valley Land Trust Board of Directors
P.O. Box 663
Estes Park, CO 80517

Subject: Water Rights Held by the National Park Service at Lily Lake

Dear Jim:

At our meeting on January 10, 2013, you requested clarification regarding the status of water rights held by the National Park Service (NPS) at Lily Lake. In 2003, the NPS obtained a decree[1] authorizing the use of park-owned water from the Colorado-Big Thompson Project (Project) to replace the out-of-priority storage of water to maintain a consistent lake level at Lily Lake. Replacement is required by the state water administration officials due to the relatively junior status of the park-owned water storage rights.[2] Prior to the park's acquisition of those rights, such replacement required the installation and operation of a large pump located on the dam, which disturbed the visiting public's enjoyment of the lake and its surroundings. This practice also had the effect of lowering the level of the lake and exposing mudflats along its periphery. The NPS is now able to replace the required volume of water through the delivery of Project water at Lake Estes. Replacement has stabilized water levels at the lake by eliminating the need to physically withdraw water from the lake, which the NPS believes is also the desire of the Estes Valley Land Trust.

The amount of water that the NPS is required to replace annually is dictated by the afore-mentioned decree, which determined that the storage of water in the lake had been limited due to dam safety regulations and that "only 34.31 acre-feet of storage decreed absolute in Case Nos. 80CW104 and 84CW576, Colorado Water Division No. 1, was actually utilized by the Park Service's predecessor in interest."[3] Two other findings of fact contained in the decree were that "Lily Lake was the enlargement of a natural lake, which had a storage capacity of 39 acre-feet" and that "the water storage right decreed in Case No. 80CW104 [was used] to the extent of 34.31 acre-feet stored in excess of the natural lake levels."[4]

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[1] See "Finding and Ruling of the Referee and Judgment and Decree of the Water Court" – Case No. 2002CW82, Water Division No. 1 (December 27, 2004)

[2] Oldest water rights downstream of the park date from the 1870's, while the park's water storage rights date from 1915.

[3] This finding effectively determined that the remaining storage rights had been abandoned by the prior owner of the lake's water rights and not by the NPS.

[4] See paragraph 12A of the decree. State water administration officials do not require a water right for water that is stored in a natural lake and not withdrawn for consumptive beneficial use.

Attachment B

Colorado law does not require a water storage right for a natural lake,[5] which is confirmed by the absence of any such requirement in the attached "Summary of Consultation", dated August 31, 2002, for Case No. 02CW082 from the Division Engineer for Water Division No. 1 to counsel for the NPS. Furthermore, it should be noted that although Mr. Glenn Porzak, the attorney for the NPS's predecessors' interest, did obtain a water right decree in Case No. 80CW104 for the entire volume of Lily Lake at the time (75.44 acre-feet), the decree contemplated the diversion of stored water from the lake for the following beneficial uses:

> Domestic and commercial for hotel and cabins [the Baldpate Inn] 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, * * *

Thus, Mr. Porzak's client's consumptive water use from the lake, unlike the NPS's non-consumptive use, clearly required a storage water right pursuant to state law. Therefore, the voluntary relinquishment by the NPS of that portion of the storage water right attributable to the natural lake has effectively negated any possibility that water could be withdrawn from the natural portion of the lake for consumptive use. Clearly the actions of the NPS in managing the water rights acquired through its efforts, in concert with those of the Estes Valley Land Trust and others, have served to guarantee that the waters of Lily Lake shall remain undisturbed in perpetuity for enjoyment of the American public.

Thank you for your continuing interest and assistance in preserving the unique natural resources of the Estes Valley and Rocky Mountain National Park.

Sincerely,

Vaughn Baker

Vaughn Baker
Superintendent

Attachment

cc: Larry Gamble (Chief of Planning and Compliance, Rocky Mountain National Park)
James DuBois (U.S. Department of Justice)
Bill Hansen (Chief, Water Rights Branch – NPS Water Resources Div.)
Mary Kay Watry (Biologist, Rocky Mountain National Park)
Peter Fahmy (Office of the Solicitor, Branch of National Parks)

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[5] Personal communication from Peter Fahmy, water rights attorney, Branch of National Park – Office of Solicitor (February 22, 2013). On February 21, 2013, Mr. Fahmy spoke to Dave Nettles, the Division Engineer for Water Division No. 1, who assured him that there is no legal requirement for a water right for storage in a natural lake so long as water is not being diverted from the lake for consumptive use. Mr. Nettles was unaware of any statutes or case law that address this particular matter.

STATE OF COLORADO

WATER DIVISION ONE
OFFICE OF THE STATE ENGINEER
Division of Water Resources
Department of Natural Resources
810 9th Street, Suite 200
Greeley, Colorado 80631
Phone (970) 352-8712
FAX (970) 392-1816
www.water.state.co.us

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SEP 04 2002
STATE ENGINEER
COLO

Bill Owens
Governor
Greg E. Walcher
Executive Director
Hal D. Simpson, PE
State Engineer
Richard L. Stenvel
Division Engineer

August 31, 2002

SUMMARY OF CONSULTATION HELD August 22, 2002

CASE NO. 02CW082, The United States of America-Rocky Mountain National Park, Larimer County

APRIL 2002 RESUME

The applicants are seeking approval of a Plan for Augmentation by exchange for the Baldpate Well No. 2 with permit no. 28701-F, Baldpate Inn Well Nos. 1-052179-F and 2-051742-FR and Lily Lake Reservoir. The plan is to exchange CBT water on a one-for-one basis to replace evaporation from Lily Lake and withdrawals fro the wells. The claimed exchange date is April 22, 2002 at a maximum rate of 0.151 cfs up to 56.91 acre-feet per year. The exchange reach is from the confluence of Fish Creek and the Big Thompson River upstream on Fish Creek to Lily Lake and the wells.

Please provide a written response to the following concerns to Water Court, P.O. Box 2038, Greeley, Colorado 80632. If there are questions regarding this letter, telephone Raymond Liesman at (970) 351-7300 Ext. 4598.

1. Provide the Court with evidence to support the claimed exchange amount.

2. Unless they are within 100 feet of the stream, this exchange must not be allowed to operate directly to wells, but rather to the uppermost point on the stream where the depletions resulting from pumping the well impact the stream.

3. Water may only be exchanged to the extent that there is a continuous live stream between all of the exchange from and exchange to points.

4. Provide evidence to the Court that this plan of exchange can be operated without injury to existing water rights in time, location or amount.

5. This exchange may only be operated with the prior approval of the Water Commissioner or Division Engineer and may be subject to transit loss charges if necessary to prevent injury to other water rights.

6. If not already in place, properly maintained measuring devices, acceptable to the Division Engineer or Water Commissioner may be required for the administration of this water right.

7. This water right, if granted, will be subject to administration. As such, the applicant may be required to report the amounts and dates of water diversion under this right to the local Water Commissioner on at least an annual basis.

8. What is the amount of lake evaporative loss to be replaced?

CRS 1973, 37-92-302(4), SIGNED INTO LAW MAY 17, 1988, PROVIDES THAT THE APPLICANT OR THE APPLICANT'S ATTORNEY SHALL MAIL OR DELIVER A COPY OF THIS CONSULTATION TO ALL PARTIES OF RECORD WHO FILED A STATEMENT OF OPPOSITION TO THIS APPLICATION, IF ANY THE STATUTE ALSO REQUIRES THAT THE APPLICANT OR HIS ATTORNEY SHALL FILE A CERTIFICATE OF MAILING WITH THE WATER CLERK OF DIVISION 1 IF THIS SUMMARY OF CONSULTATION IS MAILED TO OPPOSING PARTIES.

David L Nettles for
Richard L. Stenzel, P E.
Division Engineer

RLS DLN/lrk

xc Hal D Simpson, State Engineer
Fred Renner, Water Commissioner

United States Department of the Interior

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

IN REPLY REFER TO:
L54 (ROMO)

FEB 2 8 2013

Jim Broomfield, President
Estes Valley Land Trust Board of Directors
P.O. Box 663
Estes Park, CO 80517

Subject: Water Rights Held by the National Park Service at Lily Lake

Dear Jim:

At our meeting on January 10, 2013, you requested clarification regarding the status of water rights held by the National Park Service (NPS) at Lily Lake. In 2003, the NPS obtained a decree[1] authorizing the use of park-owned water from the Colorado-Big Thompson Project (Project) to replace the out-of-priority storage of water to maintain a consistent lake level at Lily Lake. Replacement is required by the state water administration officials due to the relatively junior status of the park-owned water storage rights.[2] Prior to the park's acquisition of those rights, such replacement required the installation and operation of a large pump located on the dam, which disturbed the visiting public's enjoyment of the lake and its surroundings. This practice also had the effect of lowering the level of the lake and exposing mudflats along its periphery. The NPS is now able to replace the required volume of water through the delivery of Project water at Lake Estes. Replacement has stabilized water levels at the lake by eliminating the need to physically withdraw water from the lake, which the NPS believes is also the desire of the Estes Valley Land Trust.

The amount of water that the NPS is required to replace annually is dictated by the afore-mentioned decree, which determined that the storage of water in the lake had been limited due to dam safety regulations and that "only 34.31 acre-feet of storage decreed absolute in Case Nos. 80CW104 and 84CW576, Colorado Water Division No. 1, was actually utilized by the Park Service's predecessor in interest."[3] Two other findings of fact contained in the decree were that "Lily Lake was the enlargement of a natural lake, which had a storage capacity of 39 acre-feet" and that "the water storage right decreed in Case No. 80CW104 [was used] to the extent of 34.31 acre-feet stored in excess of the natural lake levels."[4]

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[1] See "Finding and Ruling of the Referee and Judgment and Decree of the Water Court" – Case No. 2002CW82, Water Division No. 1 (December 27, 2004)

[2] Oldest water rights downstream of the park date from the 1870's, while the park's water storage rights date from 1915.

[3] This finding effectively determined that the remaining storage rights had been abandoned by the prior owner of the lake's water rights and not by the NPS.

[4] See paragraph 12A of the decree. State water administration officials do not require a water right for water that is stored in a natural lake and not withdrawn for consumptive beneficial use.

Colorado law does not require a water storage right for a natural lake,[5] which is confirmed by the absence of any such requirement in the attached "Summary of Consultation", dated August 31, 2002, for Case No. 02CW082 from the Division Engineer for Water Division No. 1 to counsel for the NPS. Furthermore, it should be noted that although Mr. Glenn Porzak, the attorney for the NPS's predecessors' interest, did obtain a water right decree in Case No. 80CW104 for the entire volume of Lily Lake at the time (75.44 acre-feet), the decree contemplated the diversion of stored water from the lake for the following beneficial uses:

> Domestic and commercial for hotel and cabins [the Baldpate Inn] 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, * * *

Thus, Mr. Porzak's client's consumptive water use from the lake, unlike the NPS's non-consumptive use, clearly required a storage water right pursuant to state law. Therefore, the voluntary relinquishment by the NPS of that portion of the storage water right attributable to the natural lake has effectively negated any possibility that water could be withdrawn from the natural portion of the lake for consumptive use. Clearly the actions of the NPS in managing the water rights acquired through its efforts, in concert with those of the Estes Valley Land Trust and others, have served to guarantee that the waters of Lily Lake shall remain undisturbed in perpetuity for enjoyment of the American public.

Thank you for your continuing interest and assistance in preserving the unique natural resources of the Estes Valley and Rocky Mountain National Park.

Sincerely,

Vaughn Baker

Vaughn Baker
Superintendent

Attachment

cc: Larry Gamble (Chief of Planning and Compliance, Rocky Mountain National Park)
James DuBois (U.S. Department of Justice)
Bill Hansen (Chief, Water Rights Branch – NPS Water Resources Div.)
Mary Kay Watry (Biologist, Rocky Mountain National Park)
Peter Fahmy (Office of the Solicitor, Branch of National Parks)

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[5] Personal communication from Peter Fahmy, water rights attorney, Branch of National Park – Office of Solicitor (February 22, 2013). On February 21, 2013, Mr. Fahmy spoke to Dave Nettles, the Division Engineer for Water Division No. 1, who assured him that there is no legal requirement for a water right for storage in a natural lake so long as water is not being diverted from the lake for consumptive use. Mr. Nettles was unaware of any statutes or case law that address this particular matter.

STATE OF COLORADO

WATER DIVISION ONE
OFFICE OF THE STATE ENGINEER
Division of Water Resources
Department of Natural Resources
810 9th Street, Suite 200
Greeley, Colorado 80631
Phone (970) 352-8712
FAX (970) 392-1816
www.waterstate.co.us

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WATER RES. LAB
STATE OF COLO
FORT

Bill Owens
Governor
Greg E. Walcher
Executive Director
Hal D. Simpson, PE
State Engineer
Richard L. Stervel
Division Engineer

August 31, 2002

SUMMARY OF CONSULTATION HELD August 22, 2002

CASE NO. 02CW082, The United States of America-Rocky Mountain National Park, Larimer County

APRIL 2002 RESUME

The applicants are seeking approval of a Plan for Augmentation by exchange for the Baldpate Well No. 2 with permit no. 28701-F, Baldpate Inn Well Nos. 1-052179-F and 2-051742-FR and Lily Lake Reservoir. The plan is to exchange CBT water on a one-for-one basis to replace evaporation from Lily Lake and withdrawals fro the wells. The claimed exchange date is April 22, 2002 at a maximum rate of 0.151 cfs up to 56.91 acre-feet per year. The exchange reach is from the confluence of Fish Creek and the Big Thompson River upstream on Fish Creek to Lily Lake and the wells.

Please provide a written response to the following concerns to Water Court, P.O. Box 2038, Greeley, Colorado 80632. If there are questions regarding this letter, telephone Raymond Liesman at (970) 351-7300 Ext. 4598.

1. Provide the Court with evidence to support the claimed exchange amount.

2. Unless they are within 100 feet of the stream, this exchange must not be allowed to operate directly to wells, but rather to the uppermost point on the stream where the depletions resulting from pumping the well impact the stream.

3. Water may only be exchanged to the extent that there is a continuous live stream between all of the exchange from and exchange to points.

4. Provide evidence to the Court that this plan of exchange can be operated without injury to existing water rights in time, location or amount.

5. This exchange may only be operated with the prior approval of the Water Commissioner or Division Engineer and may be subject to transit loss charges if necessary to prevent injury to other water rights.

6. If not already in place, properly maintained measuring devices, acceptable to the Division Engineer or Water Commissioner may be required for the administration of this water right.

7. This water right, if granted, will be subject to administration. As such, the applicant may be required to report the amounts and dates of water diversion under this right to the local Water Commissioner on at least an annual basis.

8. What is the amount of lake evaporative loss to be replaced?

CRS 1973, 37-92-302(4), SIGNED INTO LAW MAY 17, 1988, PROVIDES THAT THE APPLICANT OR THE APPLICANT'S ATTORNEY SHALL MAIL OR DELIVER A COPY OF THIS CONSULTATION TO ALL PARTIES OF RECORD WHO FILED A STATEMENT OF OPPOSITION TO THIS APPLICATION, IF ANY THE STATUTE ALSO REQUIRES THAT THE APPLICANT OR HIS ATTORNEY SHALL FILE A CERTIFICATE OF MAILING WITH THE WATER CLERK OF DIVISION 1 IF THIS SUMMARY OF CONSULTATION IS MAILED TO OPPOSING PARTIES.

David L Nettles for
Richard L Stenzel, P E.
Division Engineer

RLS DLN/lrk

xc Hal D Simpson, State Engineer
Fred Renner, Water Commissioner



ESTES VALLEY LAND TRUST
PRESERVING OPEN SPACE FOR FUTURE GENERATIONS

MAIL: P.O. Box 663
OFFICE: 1191 WOODSTOCK DR., SUITE 5
ESTES PARK, COLORADO 80517
(970) 577-6837
EVLT@EVLANDTRUST.ORG

November 29, 2012

Via email: james.dubois@usdoj.gov
James J. DuBois
U.S. Department of Justice
Environmental and Natural Resources Division
999 18th St., Suite 945
Denver, CO 80202

RE: Lily Lake, Rocky Mountain National Park

Dear Mr. DuBois:

On behalf of the Estes Valley Land Trust, I am writing to inform you that we believe the United States has violated the terms of its purchase agreement with the Land Trust and others, and the Judgment on Stipulation for Compensation and Final Judgment in U.S. District Court, Civil Action No. 00-K-752 dated June 1, 2000 ("Final Judgment"). As described in paragraph 14 of the Final Judgment, the United States is legally bound to maintain the water rights decreed to Lily Lake. Specifically, the Final Judgment states at paragraph 14:

> "As part of the just compensation paid to Defendant Estes Valley Land Trust, Plaintiff United States has agreed to include the water rights, easements, structures and appurtenances that are subject of the within condemnation acquired from Defendant Estes Valley Land Trust within the boundaries of Rocky Mountain National Park and will permanently hold and retain the water rights, easements, structures and appurtenances that are the subject of the within condemnation as part of Rocky Mountain National Park and/or its successor, and will not sever or dispose of the water rights, easements, structures, and appurtenances that are the subject of the within condemnation separately from Rocky Mountain National Park, unless so directed by congressional act." (emphasis added)

The requirement that the United States permanently "hold and retain the water rights" was a significant part of the "just compensation" for the Lily Lake acquisition, a "friendly condemnation" that required the National Park Service to pay only $135,000 of the $315,000 total price for the Lily Lake water rights. It is important to remember that Estes Valley Land Trust, supported by contributions from Great Outdoors Colorado, Town of Estes Park, Larimer County, Rocky Mountain National Park Associates, and several Tahosa Valley landowners, paid

a substantial portion of the consideration for the purchase of Lily Lake and the related water rights. See the attached Justice Department letter, press release and annual report confirming all of the above.

At the time of the Lily Lake augmentation, the following water rights were decreed to Lily Lake:

(a) Lily Lake Reservoir. 75.44 acre-feet decreed absolute by the Division No. 1 Water Court in Case No. 80CW104 for domestic, commercial, irrigation, stockwater, fire protection, recreation, and fish preservation with an appropriation date of October 20, 1913, with an adjudication year of 1980.

(b) Lily Lake Reservoir, First Enlargement. 31.16 acre-feet of which 25.16 acre-feet was decreed absolute and 6.0 acre-feet was decreed conditional by the Division No. 1 Water Court in Case No. 84CW576 for domestic, municipal, commercial, irrigation, stockwater, fire protection, recreation, and fish preservation with an appropriation date of July 21, 1915 for the absolute portion, which is the date the reservoir was constructed to a total of 100.60 acre-feet, and an appropriation date of December 20, 1984 for the conditional portion, with an adjudication year of 1984.

(c) Second Filling of the Lily Lake Reservoir and its First Enlargement. 106.60 acre-feet was conditionally decreed by the Division No. 1 Water Court in Case No. 84CW576, as a refill right for domestic, municipal, commercial, irrigation, stockwater, fire protection, recreation, and fish preservation with an appropriation date of December 20, 1984 for the conditional portion, with an adjudication year of 1984.

These are the water rights that created the value and influenced the terms of the total purchase price.

However, the United States violated its obligation when it "voluntarily relinquish[ed] all of the water rights decreed to Lily Lake in Case No. 84CW576, and all but 34.31 acre-feet of the Lily Lake Reservoir storage right decreed in Case No. 80CW104 for 75.44 acre-feet" in Case No. 02CW82, Water Division No. 1. Accordingly, the United States abandoned 41.13 acre-feet of the 75.44 acre-foot water right decreed in Case No. 80CW104, as well as the decreed First Enlargement of 31.16 acre-feet and the 106.60 acre-foot second-fill water rights decreed in Case No. 84CW576. This is confirmed by the attached Structure Summary Report of the Office of the Colorado State Engineer. Therefore, while the United States agreed to permanently hold and retain the water rights for Lily Lake, only 34.13 acre-feet of the 106.60 acre-feet remains of the Lily Lake decreed water rights. This is far less than the actual capacity of the Lake.

The United States can remedy this violation if it appropriates new water rights for Lily Lake and augments the out-of-priority storage and evaporation losses with its Colorado-Big Thompson Project (C-BT) water. We understand that the United States has the right to at least 3 cfs of C-BT water pursuant to Article 24 of the 1938 contract between the United States and the Northern Colorado Water Conservancy District, as is referenced in the decree in Case No. 02CW82.

Representatives of Estes Valley Land Trust would like to meet with you at your earliest convenience to discuss a resolution of this situation. Please contact the undersigned at 970.586.2767 or by email at ken@jkoldham.com to arrange a meeting.

Very truly yours,

Kenneth R. Oldham
Vice President

cc: Vaughn Baker, Superintendent, Rocky Mountain National Park
Stephen D. Taylor, Assistant United States Attorney
Glenn E. Porzak
Karen L. Henderson

57356

U.S. Department of Justice

Environment and Natural Resources Division

KJH: ls
Linda Shumard, Legal Support Assistant
General Litigation Section
999 18th Street, North Tower, Suite 945
Denver, Colorado 80202

Telephone (303) 312-7307
Facsimile (303) 312-7379

January 3, 2005

Peter Fahmy Esq.
U.S. Department of Interior
755 Parfet St., #151
Lakewood, CO 80215

Re: Water Division 1
Case No. 02CW82

Dear Mr. Fahmy:

Enclosed please find a copy of the fully executed **Decree** in the above-referenced case.

Should you have any questions please feel free to contact me. Thank you.

Sincerely,

Linda Shumard
Legal Support Assistant

Enclosure
cc: Bill Hansen, NPS

DISTRICT COURT, WATER DIVISION 1, COLORADO 901 Ninth Avenue, Greeley, CO 80631 (970) 351-7300	FILED IN DISTRICT COURT DEC 03 '04 WELD COUNTY, COLO.
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA – ROCKY MOUNTAIN NATIONAL PARK IN LARIMER COUNTY, COLORADO	COURT USE ONLY
Attorney for Applicant United States of America James J. DuBois, #13206 U.S. Department of Justice Environment and Natural Resource Division 999 18th St., Suite 945 Denver, CO 80202 Phone: (303) 312-7341 FAX: (303) 312-7379 james.dubois@usdoj.gov	Case Number: **2002CW082** Water Division No. 1

FINDINGS AND RULING OF THE REFEREE AND JUDGMENT AND DECREE OF THE WATER COURT

THIS MATTER has come before the Water Referee on an Application for Approval of a Plan for Augmentation and an Appropriative Right of Exchange filed by the Applicant, United States of America, and the Referee, having reviewed the Application and the other pleadings in this case, having considered the comments of the Division Engineer, and now being fully advised with respect to this matter, enters the following Findings and Ruling of the Referee:

I. FINDINGS

1. A properly verified Application was filed in this matter by the United States of America on April 30, 2002. Timely and adequate notice of the Application was given in the manner provided by statute. See § 37-92-302, 10 C.R.S. (1999).

The name and address of the Applicant are:

United States of America,
United States Department of the Interior
National Park Service
Rocky Mountain National Park
Estes Park, CO 80517
Phone: (970) 586-1206

2. The application in this matter requested approval of a plan for augmentation by exchange. The plan for augmentation described in the application has been withdrawn by the United States. This decree only confirms an appropriative right of exchange.

3. Statements of opposition were filed in this case by: Northern Colorado Water Conservancy District, City of Boulder, and Central Colorado Water Conservancy District and the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District. The time for filing additional statements has expired.

4. Timely and adequate notice of the filing and contents of the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over the subject matter of this proceeding and over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared. See § 37-92-302, 10 C.R.S. (1999).

5. The Division Engineer issued his Summary of Consultation dated August 31, 2002, which was duly served upon all parties on September 5, 2002. The Referee has given the Summary of Consultation due consideration.

6. Neither the land nor the water which is the subject of this application is located within the boundaries of any designated ground water basin.

7. Name of structures to which water will be exchanged:

Baldpate Well No. 2 (decreed in Case No. 82CW125; permit no. 28701-F)

Baldpate Inn Well No. 1 (permit no. 052179-F)

Baldpate Inn Well No. 2 (permit no. 051742-F-R)

Lily Lake Reservoir (decreed in Case No. 80CW104)

9. Previous decree of water rights to be used by exchange:

   A. Date entered: October 12, 1955, and supplemented by a decree dated April 16, 1964.
   B. Case No.: Consolidated Case Nos. 2782, 5016 and 5017.
      Court: United States District Court for Colorado.
   C. Type of water right: Transmountain from the Colorado River.
   D. Legal description of points of diversion or place of storage: Numerous points of diversion and places of storage in Colorado River basin.
   E. Source: Colorado River via Alva Adams Tunnel
   F. Amount: The various direct flow and storage water rights associated with the Colorado-Big Thompson Project transported through the Alva Adams Tunnel and decreed in Consolidated Civil Nos. 2782, 5016, and 5017.
   G. Appropriation: August 1, 1935
   H. Decreed use: Irrigation, sanitary, domestic, power, industrial, fisheries, and recreation.

10. The water rights used by exchange are imported transmountain water rights which are part of the Colorado-Big Thompson ("C-BT") Project. The United States acquired water rights for the C-BT Project in a United States District Court action in the nature of a quiet title suit, and the decrees were entered on October 12, 1955, and supplemented by a decree dated April 16, 1964. Those water rights are subject to the 1938 contract between the United States and the Northern Colorado Water Conservancy District.

Article 24 of the 1938 contract between the United States and the Northern Colorado Water Conservancy District states:

> There is hereby understood and agreed that the United States shall have the right to permit the release of a sufficient amount of water made available by the project works, without charge to the National Park Service, not to exceed a total of three second-feet of water at Granby Reservoir pumping plant No. 1 or other points on the project works, said releases to be made to permit the use in Rocky Mountain National Park of a like amount of water for irrigation, culinary, domestic, or related purposes; provided that additional project water shall be released at the same points without charge to permit the use of additional water if needed for culinary, domestic, or related uses in said park; and provided further that the United States through the National Park Service may make, without objection by the District, such additional non-consumptive uses of water as it deems necessary so long as such use does not render the water unavailable to the project, allowing for slight consumptive loss unavoidably incident to such non-consumptive uses.

11. Pursuant to a Memorandum of Understanding and Agreement among the National Park Service, the United States Bureau of Reclamation ("Reclamation") and the Northern Colorado Water Conservancy District ("District"), the District and Reclamation have agreed to release C-BT Project water for the exchanges described herein, provided said water is charged against and deducted from the 3.0 c.f.s. referenced in Article 24.

12. The water to be used by exchange is pumped from Granby Reservoir pumping plant No. 1 to Shadow Mountain Lake, thence flows by gravity into Grand Lake and is diverted through the Alva B. Adams Tunnel to Water Division No. 1.

13. Pursuant to this decree, and at the request of the Division Engineer or Water Commissioner, C-BT Project water to be provided for this exchange will be released by Reclamation from C-BT Project facilities to the Big Thompson River, and diverted by exchange on a one-for-one basis by 1) storage of water in Lily Lake above the natural lake level; 2) withdrawal of water from Baldpate Well No. 2; and 3) withdrawal of water from Baldpate Inn Well Nos. 1 and 2.

14. The combined maximum rate of exchange of C-BT Project water for all diversions will be limited to 0.151 c.f.s. up to 56.91 acre-feet per year through the following structures in the following amounts:

    A. Lily Lake: Lily Lake is an enlargement of a natural lake, which had a storage capacity of 39 acre-feet, that lies within Rocky Mountain National Park. Lily Lake is located in section 14, Township 4 North, Range 73 West, 6thPrincipal Meridian. The lake's decreed storage capacity is 100.6 acre-feet, but the lake level is maintained at 73.31 acre-feet in order to comply with dam safety regulations. A drop inlet spillway is situated near the dam to maintain the lake's level at this capacity. Otherwise, no releases are made from the lake. Inflow to the lake is only diverted and stored pursuant to the water storage right decreed in Case No. 80CW104 to the extent of 34.31 acre-feet stored in excess of natural lake levels. For purposes of exchange, it is assumed that this volume will be diverted and stored over a period of 180 days at a rate of 0.094 c.f.s.; therefore, C-BT Project water will be exchanged for water stored in Lily Lake at a rate of 0.094 c.f.s. up to a maximum annual volume of 34.31 acre-feet.

    B. Ground water withdrawals from Baldpate Inn Well Nos. 1 and 2: Baldpate Inn Well No. 1 is located in the NW¼ of the SW¼ of Section 14, Township 4 North, Range 73 West of the 6th Principal Meridian, 2,010 feet from the South section line and 2,480 feet from the West section line of said Section 14. Baldpate Inn Well No. 2 is located in the NW¼ of the SW¼ of Section 14, Township 4 North, Range 73 West of the 6th Principal Meridian, 2,030 feet from the South section

line and 2,480 feet from the West section line of said Section 14. The simultaneous maximum permitted ground water withdrawal for these wells is currently limited to 15 g.p.m. or 0.033 c.f.s. up to 10 acre-feet per year. C-BT Project water will be diverted by exchange from Baldpate Inn Well Nos. 1 and 2 at a maximum rate of 0.033 c.f.s. up to a maximum annual volume of 10 acre-feet per year. The United States, as successor-in-interest to Rex G. Baker, Jr. is obligated to facilitate the use of water in connection with the Baldpate Inn. This exchange is intended to meet that obligation.

C. Ground water withdrawals from Baldpate Well No. 2: Baldpate Well No. 2 is located in the SE¼ of the SW¼ of Section 14, Township 4 North, Range 73 West of the 6th Principal Meridian, 1,150 feet from the South section line and 2,100 feet from the West section line of said Section 14. The maximum decreed and permitted ground water withdrawal rate for Baldpate Well No. 2 is 10 g.p.m. or 0.022 c.f.s. C-BT Project water will be diverted by exchange from Baldpate Well No. 2 at a maximum rate of 0.022 c.f.s. up to a maximum annual volume of 12.6 acre-feet per year.

15. The reach of stream affected by the exchange described herein is the reach of Fish Creek from its confluence with the Big Thompson River upstream to the Lily Lake dam in the NE¼ SW¼ Section 14,Section 14, Township 4 North, Range 73 West of the 6th Principal Meridian. The exchange appropriation date shall be April 22, 2002, the date of the agreement between the National Park Service, Reclamation, and the District regarding the use of Article 24 water in this appropriative right of exchange.

16. Baldpate Well No. 2 (permit no. 28701-F), Baldpate Inn Well No. 1 and Baldpate Inn Well No. 2 (permit nos. 052179-F and 051742-F-R) are located more than 100 feet from Fish Creek. The uppermost point on Fish Creek that is affected by the pumping of these wells is the Lily Lake Reservoir dam located in NE¼ SW¼ of Section 14, Township 4 North, Range 73 West, 6th Principal Meridian. The exchange described herein operates to the uppermost point on Fish Creek where these effects occur.

17. Applicant has initiated an appropriative right of exchange by the formation of an intent to appropriate, completion of engineering studies, and exchange of water to the structures described in paragraph 8 herein.

18. Water may be exchanged only to the extent that there is a continuous live stream in Fish Creek between its confluence with the Big Thompson River and Lily Lake.

19. The lake level in Lily Lake is maintained at 73.31 acre-feet in order to comply with dam safety regulations. Because of the limitation on the lake level, only 34.31 acre-feet of storage decreed absolute in Case Nos. 80CW104 and 84CW576, Colorado Water Division No. 1, was actually utilized by the Park Service's predecessor in interest. Moreover, the water right for 34.31 acre-feet of storage decreed in Case No. 80CW104 is regularly subject to calls from downstream water rights on the Big Thompson River which interfere with the Park Service's management goals for Lily Lake. Therefore, in settlement of the disputed claims herein, and in order to facilitate the appropriative right of exchange described and decreed herein, the Park Service agrees to voluntarily relinquish all of the water rights decreed to Lily Lake in Case No. 84CW576, and all but 34.31 acre-feet of the Lily Lake Reservoir storage right decreed in Case No. 80CW104 for 75.44 acre-feet (said 34.31 acre-feet being equal to 73.31 acre-feet minus the natural lake's storage capacity of 39 acre-feet).

20. The appropriative right of exchange described above are capable of administration by state water officials.

21. The exchange described herein may only be operated with the prior approval of the Water Commissioner or Division Engineer and may be subject to transit loss charges if necessary to prevent injury to other water rights.

II. RULING OF THE REFEREE

It is hereby the Ruling of the Referee that the foregoing Findings are incorporated in this Ruling by this reference and are to be considered a part of the decretal portion of this decree as though set forth in full, and that the amended Application is hereby granted, subject to the terms and conditions set forth in this Ruling.

22. The Applicant is hereby awarded the appropriative right of exchange described in paragraphs 13, 14 and 15 above.

23. Applicant will account for its diversion, storage, use, and exchange of water and report this information to the Division Engineer utilizing accounting forms as may be reasonably acceptable to the Division Engineer.

24. The State and Division Engineers shall administer the water rights and appropriative rights of exchange as set forth herein and not curtail diversions by any of the water diversion and storage facilities described herein as long as such diversions or storage occur in accordance with this Decree.

25. The appropriative right of exchange approved herein was filed with the Water Court in the year 2002, and the appropriative right of exchange shall be administered as having been filed in that year and shall be junior to all priorities awarded based upon applications filed in previous years. As between all rights filed for adjudication in the same calendar year, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of the ruling.

26. The users of the water rights described in paragraph 8 shall install and maintain such gauges and other measuring devices as required by the Division Engineer.

27. A copy of this Ruling shall be filed with the appropriate Division Engineer and with the State Engineer.

Dated this 3RD of DECEMBER, 2004.

Lori J. Coulter
Water Referee

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

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

Dated this ___ of DEC 27 2004, 2004.

Hon. Roger A. Klein
Water Judge
Water Division No. 1

DRAFT

DISTRICT COURT, WATER DIVISION 1, COLORADO 901 Ninth Avenue, Greeley, CO 80631 970-3517300	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA – ROCKY MOUNTAIN NATIONAL PARK IN LARIMAR COUNTY, COLORADO	▲ COURT USE ONLY ▲ Case Number: _____
Attorney for Applicant United States of America Lynn A. Johnson, #15394 U.S. Department of Justice Environment and Natural Resource Division 999 18th St., Suite 945 Denver, CO 80202 Phone: (303) 312-7315 FAX: (303) 312-7331	Water Court

RULING OF THE REFEREE AND DECREE OF THE WATER COURT

THIS MATTER, having come before the Water Referee upon the application of the United States and the Referee having considered the pleadings, the evidence, stipulations of the parties, and comments of the Division Engineer, and otherwise being fully advised, hereby finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant is the United States of America, whose mailing address is c/o Department of Justice, 999 18th Street, Suite 945, Denver, Colorado 80202.

2. The application herein was filed with the Water Clerk, Water Division No. 1 on XXXXXXXXXXXXX.

3. Notice of the application was timely given in the manner required by law, and the Court has jurisdiction over the subject matter of the application and over all persons and property affected hereby, irrespective of whether those persons or

owners of property have appeared. The time for filing statements of opposition has expired.

4. A timely statement of opposition was filed by XXXXXXXXXXXXXXXXXXX. XXXXXXXXX has stipulated to entry of a decree.

5. The Division Engineer issued his Summary of Consultation dated XXXXXXXXX, which was duly served on all parties on XXXXXXXXXXXXX. The Referee has given the Summary of Consultation due consideration.

6. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

7. Applicant seeks a decree approving a plan for augmentation by exchange in order to replace out-of-priority depletions associated with the pumping of Baldpate Wells No. 1 and 2, and the storage and evaporation of water in Lily Lake Reservoir.

PLAN OF AUGMENTATION BY EXCHANGE

8. Structures being augmented by exchange:

Baldpate Well No. 1 (decreed by Case No. 82CW125)

a. Legal description of point of diversion: 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.

b. Amount: decreed for 9 gallons per minute absolute.

c. Beneficial use: domestic, municipal (including fire protection) and commercial uses.

Baldpate Well No. 2 (decreed by Case No. 82CW125)

a. Legal description of point of diversion: 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.

b. Amount: decreed for 10 gallons per minute.

c. Beneficial use: domestic, municipal (including fire protection) and commercial uses.

Lily Lake Reservoir (decreed by Case No. 80CW104)

a. Legal description of point of diversion: 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. The source is Fish Creek and springs tributary to Fish Creek.

b. Amount: 75.44 acre-feet absolute.

c. Beneficial use: domestic, commercial, irrigation, stock watering, fire protection, recreation and fish preservation.

Lily Lake Reservoir First Enlargement and Second Filling (decreed by Case No. 84CW576)

a. Legal description of point of diversion: same as above.

b. Amount: 25.16 acre-feet absolute (for a total amount decreed absolute of 100.6 acre-feet), together with the right to a second annual filling of Lily Lake Reservoir as enlarged.

c. Beneficial use: domestic, municipal (including fire protection), commercial, irrigation, stock watering, recreation and fish preservation uses.

9. Water rights used in the plan for augmentation by exchange to augment the structures cited above will be the water made available to Rocky Mountain National Park from the Colorado-Big Thompson Project ("Project") pursuant to Article 24 of the Repayment Contract entered into on July 5, 1938 between the United States of America and the Northern Colorado Water Conservancy District.

a. Article 24 provides:

There is hereby understood and agreed that the United States shall have the right to permit the release of a sufficient amount of water made available by the project works, without charge to the National Park Service, not to exceed a total of three second-feet of water at Granby Reservoir pumping plant No. 1 or other points on the project works, said releases to be made to permit the use in Rocky Mountain National Park of a like amount of water for irrigation, culinary, domestic, or related purposes; provided that additional project water shall be released at the same points without charge to permit the use of additional water if needed for culinary, domestic, or related uses in said park; and provided

further that the United States through the National Park Service may make, without objection by the District, such additional non-consumptive uses of water as it deems necessary so long as such use does not render the water unavailable to the project, allowing for slight consumptive loss unavoidably incident to such non-consumptive uses.

b. Appropriation date: August 1, 1935.

c. Adjudication dates: October 12, 1955 and April 16, 1964 in the Consolidated Civil Cases Nos. 2782, 5016 and 5017.

d. Source: Colorado River and its tributaries transported through the Alva B. Adams Tunnel.

e. Legal description of points of diversion and places of storage: Willow Creek, Granby and Shadow Mountain Reservoirs, Grand Lake, Willow Creek Feeder Canal and Granby Pump Canal, transported to the east slope through the Alva B. Adams Tunnel.

f. Decreed use: All of the purposes described in the Repayment Contract dated July 5, 1938. The water provided to the United States for use in Rocky Mountain National Park is for the uses described in Article 24 of the Repayment Contract.

10. Water from the water rights described in Paragraph 9 above will be provided by exchange to replace the amount of out-of-priority depletions from the above cited structures on a two for one basis (i.e., two acre-feet of replacement water for each acre-foot of depletion) by release at Lake Estes into the Big Thompson River.

a. Amount of water augmented by exchange: 7.5 acre-feet per year.[1]

b. Dates of appropriation for the exchange:

Baldpate Well No. 1:

Appropriation Date: Feb. 15, 1982
Decree Date: Apr. 28, 1982

Baldpate Well No. 2:

Appropriation Date: March 2, 1982
Decree Date: Apr. 28, 1982

[1] Affidavit of Richard Stenzel, Division Engineer for Water Division One, State Division of Water Resources, August 14, 1998.

Lily Lake Reservoir:

Appropriation Date: Oct. 20, 1913
Decree Date: Apr. 30, 1980

Lily Lake Reservoir First Enlargement and Second Filling:

Appropriation Date: July 21, 1915
Decree Date: Dec. 20, 1984

c. How right of exchange was initiated and perfected: By approval of a Temporary Supply Plan by the State Engineer.

RULING OF THE REFEREE

11. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

12. The plan for augmentation by exchange described in the Findings of Fact and Conclusions of Law as set forth above is hereby confirmed and granted:

a. Structures being augmented by the exchange:

Baldpate Well No. 1 (decreed by Case No. 82CW125)

Baldpate Well No. 2 (decreed by Case No. 82CW125)

Lily Lake Reservoir (decreed by Case No. 80CW104)

Lily Lake First Enlargement and Second Filling (decreed by Case No. 84CW576)

b. Exchange Appropriation Dates:

Baldpate Well No. 1:

Appropriation Date: Feb. 15, 1982
Decree Date: Apr. 28, 1982

Baldpate Well No. 2:

Appropriation Date: March 2, 1982
Decree Date: Apr. 28, 1982

Lily Lake Reservoir:

Appropriation Date: Oct. 20, 1913
Decree Date: Apr. 30, 1980

Lily Lake Reservoir First Enlargement and Second Filling:

Appropriation Date: July 21, 1915
Decree Date: Dec. 20, 1984

c. Amount:

Baldpate Well No. 1: 9 g.p.m. (decreed amount)

Baldpate Well No. 2: 10 g.p.m. (decreed amount)

Lily Lake Reservoir: 75.44 acre-feet (decreed amount)

Lily Lake First Enlargement and Second Filling: 25.16 acre-feet (decreed amount)

Total estimated amount of water to be augmented: 7.5 acre-feet per year (1998 estimate of Division Engineer for Water Division 1)

d. Beneficial Use: Irrigation, culinary, domestic, or related park purposes

e. Water rights used in the plan for augmentation by exchange: As described in Paragraph 9 above

13. The Division Engineer shall not curtail the pumping of Baldpate Wells No. 1 and 2 nor curtail out-of-priority storage and evaporation when said structures are operating under the plan for augmentation decreed herein.

14. The pumping of water through Baldpate Wells No. 1 and 2 and the plan for augmentation by exchange decreed herein shall be administered by the State or Division Engineer in accordance with applicable state statutes and decrees. Water will be released from Lake Estes into the Big Thompson River to account for water pumped through Baldpate Wells No. 1 and 2 and to account for out-of priority storage and evaporation associated with Lily Lake Reservoir. Approximately 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, applicant shall not be required to replace evaporation losses from that 80% of the reservoir that was a natural lake. Moreover, applicant shall not be charged for evaporation losses from the non-natural portion of Lily Lake Reservoir during such periods that 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. Applicant shall install, maintain and operate such water measurement devices and recording devices as are deemed necessary by the Division Engineer to administer the exchange in a form and manner approved by the Division Engineer. Applicant shall keep records and make reports as reasonably requested by the Division Engineer.

15. In the event a call is placed on the Baldpate Wells No. 1 and 2 and Lily Lake Reservoir by water rights holders on Fish Creek due to Applicant's out-of-priority uses, Applicant will pump water from Lily Lake into Fish Creek in such amounts and at such times as to meet the call.

16. The plan for augmentation by exchange approved herein was filed with the Water Court in the year 2001, and the exchange portion of the plan shall be administered as having been filed in that year and shall be junior to all priorities awarded based upon applications filed in previous years. As between all rights filed for adjudication in the same calendar year, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of entry of the ruling.

17. A copy of this Ruling shall be filed with the appropriate Division Engineer and with the State Engineer.

18. This Ruling shall be filed with the Water Clerk, subject to judicial review.

Dated this _____ day of _____, 2002

BY THE REFEREE:

_____
Water Referee
Water Division No. 1

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

Dated this _____ day of _____, 2002.

_____
JONATHAN W. HAYS
Water Judge
Water Division No. 1

U.S. Department of Justice

Thomas L. Strickland
United States Attorney
District of Colorado
Civil Division

Stephen D. Taylor
Assistant United States Attorney

Byron G. Rogers Federal Office Building
Suite 1100, Drawer 3608
1961 Stout Street
Denver, Colorado 80294

(303) 844-3885
(FAX) 844-0098

April 14, 2000

Kenneth Oldham, Esq.
Estes Valley Land Trust
P.O. Box 1465
Estes Park, CO 80517

Re: Lily Lake

United States v. Water Rights, Easements, etc.
Civil Action No. 00-K-752

Dear Ken:

Pursuant to our conversations and in furtherance of the resolution of this matter, this letter is a recognition that as part of the "just compensation" that the United States has agreed to pay to the Estes Valley Land Trust is the commitment by the United States that the United States will include the rights and interests acquired from the Estes Valley Land Trust within the boundaries of Rocky Mountain National Park; will permanently hold and retain the rights and interests as part of Rocky Mountain National Park and/or its successor; and will not sever or dispose of the rights and interests separately from Rocky Mountain National Park, unless so directed by congressional act.

It is also agreed that the Judgment on Stipulation for Compensation and Final Judgment shall contain language setting forth the above commitment.

Thank you for your assistance in this matter.

Sincerely,

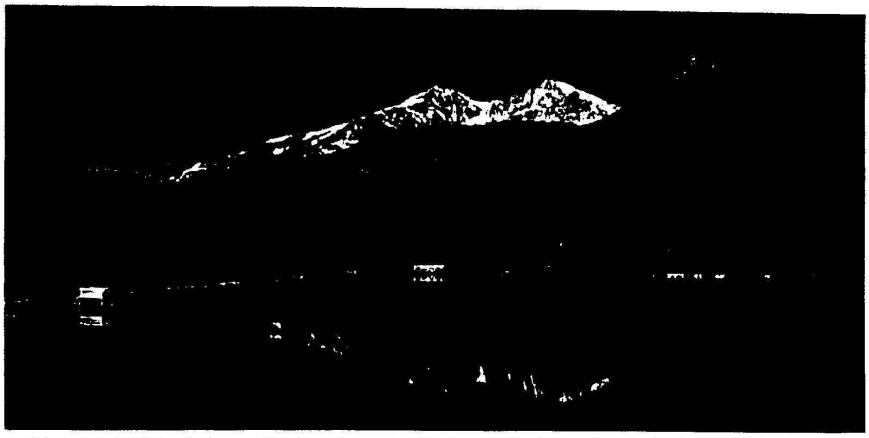
STEPHEN D. TAYLOR
Assistant United States Attorney

SDT:sdt

Lily Lake at Rocky Mountain National Park

The United States Attorney's Office for the District of Colorado filed a "friendly" condemnation action in order to obtain the water rights and a dam located in and around Lily Lake in the Rocky Mountain National Park. This agreement will save the waters from Lily Lake from possible private development, and assure public access and use of the lake. The lake is located approximately 6 miles south of Estes Park and is surrounded by a 7,000 foot wheelchair-accessible trail. Lily Lake is one of only two wheelchair-accessible lakes in the Rocky Mountain National Park.

The "friendly" condemnation action was the result of a creative partnership between the Rocky Mountain National Park, the Estes Valley Land Trust, the Rocky Mountain National Park Associates, and several other conservation groups and individuals.



The scenic Lily Lake at Rocky Mountain National Park is pictured above. The U.S. Attorney's Office filed a "friendly" condemnation action in order to protect water rights and a wheelchair-accessible trail.

In January, 2000, the Estes Valley Land Trust purchased the Lily Lake water rights and dam from a private owner for $315,000 to secure water rights for public use and preservation. In addition to the Estes Valley Land Trust, major funding for the water rights and dam purchase was provided by the Rocky Mountain National Park Associates, Great Outdoors Colorado (which administers the Colorado lottery revenues), the Town of Estes Park, Larimer County Parks and Open Lands, the Tahosa Valley Landowners Association, and several individuals. The Estes Valley Land Trust then sold the water rights and dam to the United States for $135,000.

This creative partnership was a great example of the federal government working with citizen groups, conservation organizations, and state and local governments to accomplish objectives beyond the reach of the individual entities and to preserve a precious resource for future generations.

Annual Report, Fiscal Year 2000, U.S. Department of Justice
United States Attorney - District of Colorado
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U.S. Department of Justice

Thomas L. Strickland

United States Attorney
District of Colorado

Byron G. Rogers Federal Office Building
Suite 1200, Denver 80S
1961 Stout Street
Denver, Colorado 80294

(303) 844-3400
(FAX) 844-0722

FOR IMMEDIATE RELEASE
April 12, 2000

Thomas L. Strickland, United States Attorney for the District of Colorado, today announced the filing in U.S. District Court in Denver of a "friendly" condemnation action for the water rights and a dam located in and around Lily Lake in the Rocky Mountain National Park. The condemnation will save the waters of Lily Lake from possible private development and assure public access and use of Lily Lake.

Lily Lake is located in the Rocky Mountain National Park, approximately 6 miles south of Estes Park. A 7,000 foot wheelchair-accessible trail surrounds Lily Lake with a scenic spur trail on Lily Mountain. Lily Lake is one of only two wheelchair accessible lakes in the Rocky Mountain National Park.

The "friendly" condemnation action is the result of a creative partnership between the Rocky Mountain National Park, the Estes Valley Land Trust, the Rocky Mountain National Park Associates, and several other conservation groups and individuals. Pursuant to an agreement with the Estes Valley Land Trust, which currently owns the soon to be condemned property, the United States will pay $135,000 for the Lily Lake water rights and dam for inclusion in the national park.

United States Attorney Thomas Strickland said, "This 'friendly' condemnation will benefit the citizens of Colorado and the nation by preserving a precious resource for future generations. This project is a great example of the federal government working with citizen groups, conservation organizations, and state and local governments to accomplish objectives beyond the reach of the individual entities."

Randy Jones, Superintendent of the Rocky Mountain National Park, said, "Rocky Mountain National Park is moving closer to full protection of scenic Lily Lake. We have worked closely with the Estes Park community and the conservation groups to add the Lily Lake water rights and dam to the Park to ensure the protection of this valuable nature resource. We appreciate their efforts and their commitment."

In January of this year, the Estes Valley Land Trust purchased the Lily Lake water rights and dam from a private owner for $315,000 to secure water rights for public use and preservation. In addition to the Estes Valley Land Trust, major funding for the water rights and dam purchase was provided by the Rocky Mountain National Park Associates, Great Outdoors Colorado (which administers the Colorado lottery revenues), the Town of Estes Park, Larimer County Parks and Open Lands, the Tahosa Valley Landowners Association, and several individuals.

United States Attorney Strickland also expressed his thanks to Ken Oldham of the Estes Valley Land Trust and Randy Jones of Rocky Mountain National Park for their efforts in this project.

###

** TOTAL PAGE.002 **

Structure Summary Report

State of Colorado

HydroBase

Structure Name: LILY LAKE RES **Water District:** 4 **Structure ID Number:** 3600

Source: BIG THOMPSON RIVER

Location:	Q10	Q40	Q160	Section	Twnshp	Range	PM
	SW	NE	SW	14	4N	73W	6

Distance From Section Lines: From N/S Line: From E/W Line:

UTM Coordinates (NAD 83): Northing (UTM y): 4462075 Easting (UTM x): 454300.9 Spotted from PLSS distances from section lines

Latitude/Longitude (decimal degrees): 40.307935 -105.537792

Water Rights Summary						
Total Decreed Rate(s) (CFS):	Absolute:	0.0000	Conditional:	0.0000	AP/EX:	0.0940
Total Decreed Volume(s) (AF):	Absolute:	34.3100	Conditional:	0.0000	AP/EX:	0.0000

Water Rights -- Transactions

Case Number	Adjudication Date	Appropriation Date	Administration Number	Order Number	Priority Number	Decreed Amount	Adjudication Type	Uses	Action Comment
02CW0082	1980-12-31	1913-10-20	47481.23303	0		41.1300 AF	S,AB	1356789	RELINQUISHED 12/27/04
80CW0104	1980-12-31	1913-10-20	47481.23303	0		75.4400 AF	S	1356789	
02CW0082	1984-12-31	1915-06-21	48942.23912	0		25.1600 AF	S,C,AB	12356789	RELINQUISHED 12/27 04
84CW0576	1984-12-31	1915-06-21	48942.23912	0		25.1600 AF	S,C	12356789	
02CW0082	1984-12-31	1984-12-20	49297.00000	0		6.0000 AF	S C AB	12356789	RELINQUISHED 12/27/04
84CW0576	1984-12-31	1984-12-20	49297.00000	0		106.6000 AF	S	12356789	
84CW0576	1984-12-31	1984-12-20	49297.00000	0		6.0000 AF	S,C	12356789	
99CW0087	1984-12-31	1984-12-20	49297.00000	0		106.6000 AF	S AB	12356789	ABAN 10/17/2007 RELINQUISHED 12/27/04 02CW0082
02CW0082	2002-12-31	2002-04-22	55629.00000	0		0.0940 C	S,EX	134568P	EXCH OF CBT WTR

Water Rights -- Net Amounts

Adjudication Date	Appropriation Date	Administration Number	Order Number	Priority/Case Number	Rate (CFS) Absolute	Conditional	AP/EX	Volume (Acre-Feet) Absolute	Conditional	AP/EX
1980-12-31	1913-10-20	47481.23303	0	80CW0104				34.3100	0	0
2002-12-31	2002-04-22	55629.00000	0	02CW0082	0	0	0.0940			

Irrigated Acres Summary -- Totals From Various Sources

GIS Total (Acres): Reported:

No data available for this report

Diversion Comments Total (Acres): Reported:

Structure Total (Acres): Reported:

Irrigated Acres From GIS Data

Year	Land Use	Acres Flood	Acres Furrow	Acres Sprinkler	Acres Drip	Acres Groundwater	Acres Total

No data available for this report

Diversion Summary in Acre-Feet - Total Water Through Structure

Year	FDU	LDU	DWC	Maxq & Day	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Total

No data available for this report

Minimum:

Maximum:

Average:

Notes
The average considers all years with diversion records, even if no water is diverted.
The above summary lists total monthly diversions.
* = Infrequent Diversion Record. All other values are derived from daily records.
Average values include infrequent data if infrequent data are the only data for the year.

United States Department of the Interior

OFFICE OF THE SOLICITOR
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO. 80215
TELE. (303) 231-5353
FAX (303) 231-5363

October 29, 2001

Robert Trout, Esq.
Trout, Witwer, and Freeman, P.C.
1120 Lincoln Street, Suite 1600
Denver, CO 80203-2141

Re: Proposed Plan for Augmentation of Lily Lake Water Rights

Dear Mr. Trout:

As you may be aware, the National Park Service ("NPS") has acquired all of the water rights associated with Lily Lake, which was recently incorporated into Rocky Mountain National Park. These acquired water rights are junior to water rights downstream on Fish Creek and the Big Thompson River. Due to the fact that the lake is not equipped with outlet works capable to releasing specified volumes of water, the only existing method of releasing water to replace water that is stored and/or evaporated out-of-priority is to use a portable gasoline-powered water pump. This method has proven to be both disruptive to visitors to the lake as well as physically cumbersome.

In order to maximize the environmental and recreational values of the lake, NPS intends to maintain the water level of Lily Lake at a relatively constant elevation. Therefore, NPS has determined that the most efficient and environmentally-sound means of meeting its replacement obligation to senior water rights on the Big Thompson River would be through the exchange of Colorado-Big Thompson Project ("CBT") water allocated to NPS pursuant to Article 24 of the 1938 Contract between the United States and the Northern Colorado Water Conservancy District ("District") to offset out-of-priority depletions. Thus, NPS wishes to solicit the concurrence of the District to this proposed use of Article 24 CBT water.

Given the requirement that the historic pattern of return flows associated with the initial use of CBT water be maintained, NPS would propose to exchange Article 24 CBT water on a 2-for-1 basis; i.e., the release of 2 acre-feet of Article 24 CBT water at Lake Estes to replace each acre-foot of out-of-priority depletion at Lily Lake. With regard to the senior water rights on Fish Creek, our research indicates that there has never been a call placed on Fish Creek by senior rights holders. Nevertheless, in the event of such a call, NPS will agree to pump water out of Lily Lake into Fish Creek at such times and in such amounts as needed to meet the call.

As it is our hope that we can reach an agreement on the use of CBT water by NPS for this proposed plan and on the form and substance of a decree for the plan, I have enclosed for your review and consideration a draft of an application for a Plan for Augmentation by Exchange, along with a proposed Decree. If you have any questions or concerns regarding this letter and/or the accompanying enclosures, please contact me at (303) 231-5353, ext. 222.

Cordially yours,

Peter Fahmy
Water Rights Attorney

Enclosures

cc: William Brown (Water Rights Attorney for the Baldpate Inn)
Lynn Johnson (Senior Attorney, Department of Justice, Environment & Natural Resources Division)
Randy Jones (Superintendent, Rocky Mountain National Park)
Ken Czarnowski (Chief, Resources, Rocky Mountain National Park)
Chuck Pettee (Chief, NPS Water Rights Branch)

DRAFT

DISTRICT COURT, WATER DIVISION 1, COLORADO 901 Ninth Avenue, Greeley, CO 80631 970-3517300	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA – ROCKY MOUNTAIN NATIONAL PARK IN LARIMAR COUNTY, COLORADO	▲ COURT USE ONLY ▲ Case Number: _____
Attorney for Applicant United States of America Lynn A. Johnson, #15394 U.S. Department of Justice Environment and Natural Resource Division 999 18th St., Suite 945 Denver, CO 80202 Phone: (303) 312-7315 FAX: (303) 312-7331	Water Court

APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION BY EXCHANGE

1. Name, address, and the telephone number of applicant:

   U.S. Department of Justice
   Environment and Natural Resource Division
   999 18th St., Suite 945
   Denver, CO 80202
   Phone: (303) 312-7315
   FAX: (303) 312-7331

2. Name of structures to be augmented:

   Baldpate Well No. 1 (decreed by Case No. 82CW125)

   Baldpate Well No. 2 (decreed by Case No. 82CW125)

   Lily Lake Reservoir (decreed by Case No. 80CW104)

Lily Lake Reservoir First Enlargement and Second Filling (decreed by Case No. 84CW576)

3. Previous decree of water rights to be used for augmentation:

A. Date entered: July 5, 1938
B. Case No.: Contract between United States and Northern Colorado Water Conservancy District, Article 24
C. Court:
D. Type of water right: Transmountain from the Colorado River
E. Legal description of points of diversion or place of storage: Initial point of diversion is on the east slope in Alva B. Adams Tunnel
F. Source: Colorado River via Adams Tunnel
G. Amount: Article 24 water is limited to 3 cubic feet per second (approximately 2172 acre-feet annually at constant diversion). This exchange will involve approximately 15 acre-feet annually.
H. Appropriation:
I. Decreed use: Irrigation, culinary, domestic, and exchange

4. Historic Use:

The United States acquired water rights for the Colorado-Big Thompson Project in a Federal District Court action in the nature of a quiet title suit, and the decrees were entered on October 12, 1955, and supplemented by a decree dated April 16, 1964.

Water rights to be used for exchange purposes by the National Park Service are owned by the United States as referenced in Article 24 of the 1938 Contract between the United States and the Northern Colorado Water Conservancy District.

Article 24 states:

> There is hereby understood and agreed that the United States shall have the right to permit the release of a sufficient amount of water made available by the project works, without charge to the National Park Service, not to exceed a total of three second-feet of water at Granby Reservoir pumping plant No. 1 or other points on the project works, said releases to be made to permit the use in Rocky Mountain National Park of a like amount of water for irrigation, culinary, domestic, or related purposes; provided that additional project water shall be released at the same points without charge to permit the use of additional water if needed for culinary, domestic, or related uses in said park; and provided further that the United States through the National Park Service may make, without objection by the District, such additional non-consumptive uses of

water as it deems necessary so long as such use does not render the water unavailable to the project, allowing for slight consumptive loss unavoidably incident to such non-consumptive uses.

Water is pumped from Granby Reservoir pumping plant No. 1 to Shadow Mountain Lake, thence to Grand Lake diverted through the Alva B. Adams Tunnel to Water Division No. 1.

5. Statement of plan for augmentation by exchange, covering all applicable matters under CRS 37-92-103(9), 302(1)(2) and 305(8). Give full details of plan, including a description of all water rights to be established or changed by the plan.

The United States proposes to deliver Article 24 water to Lake Estes in amounts and at times to compensate for out-of-priority storage, out-of-priority diversion, and out-of-priority evaporation associated with the storage of water at Lily Lake and the pumping of water through Baldpate Well Nos. 1 and 2.

See attached Plan for Augmentation by Exchange for more specific description (Exhibit A).

6. Name and address of owner of land on which structure is located:

United States of America
National Park Service
Rocky Mountain National Park
Estes Park, CO 80517

SUBMITTED this ____ day of _____, 2001.

JOHN C. CRUDEN
Acting Assistant Attorney General
JOHN W. SUTHERS
United States Attorney

_____
LYNN A. JOHNSON, #15394
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7315

STATE OF COLORADO

COUNTY OF LARIMER

I, Kenneth Czarnowski, state under oath that I have read this application and verify its contents to the best of my knowledge and belief.

_____
Kenneth Czarnowski, Hydrologist (for Applicant)

Subscribed under oath before me on _____, 2001.

My commission expires: _____

_____
Notary Public

EXHIBIT A

Plan for Augmentation by Exchange for Lily Lake and the
Baldpate Well Nos. 1 and 2 in Rocky Mountain National Park

1. Location

Lily Lake is located in Section 14 of Township 4 North, Range 73 West, of the 6th Principal Meridian. The lake is just inside the eastern Park boundary on Highway 7, approximately six miles south of Estes Park.

2. Drainage

Created by spring discharge and snowmelt, Lily Lake constitutes the headwaters of Fish Creek, which flows northward into Lake Estes. Lake Estes impounds the Big Thompson River, which then flows eastward from Lake Estes to the South Platte.

3. Water Rights

The United States owns the following water rights in or near Lily Lake.

a) Baldpate Well No. 1, decreed by the Water Court for 9 gpm absolute for domestic, municipal, fire protection, and commercial uses. The source is ground water tributary to Fish Creek with an appropriation date of February 15, 1982.

b) Baldpate Well No. 2, decreed by the Water Court for 10 gpm absolute for domestic, municipal, fire protection, and commercial uses. The source is ground water tributary to Fish Creek, with a March 2, 1982 appropriation date.

c) A 100% interest in the following described absolute storage rights:

1) Lily Lake Reservoir storage right decreed by the Water Court in Case No. 80CW104 for 75.44 acre-feet, for domestic, commercial, irrigation, stock watering, fire protection, recreation, and fish preservation. The priority date is 1980. The source of this reservoir is Fish Creek, and spring water tributary to Fish Creek.

2) Lily Lake Reservoir First Enlargement and Second Filling storage right decreed by the Water Court in Case No. 84CW576 for 25.16 acre-feet absolute (for a total amount decreed 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. These additional amounts were decreed for domestic, municipal, fire protection, commercial, irrigation, stock watering, recreation, and fish preservation uses. The priority date is 1984.

The source of the reservoir is Fish Creek and spring water tributary to Fish Creek.

d) A 100% interest in the rights and benefits of the plans for augmentation decreed by the Water Court in Case Nos. 82CW125 and 84CW576.

4. Source of Augmentation Water

Water rights to be used for exchange purposes by the National Park Service are owned by the United States as referenced in Article 24 of the 1938 Contract between the United States and the Northern Colorado Water Conservancy District. Article 24 states:

> There is hereby understood and agreed that the United States shall have the right to permit the release of a sufficient amount of water made available by the project woks, without charge to the National Park Service, not to exceed a total of three second-feet of water at Granby Reservoir pumping plant No. 1 or other points on the project works, said releases to be made to permit the use in Rocky Mountain National Park of a like amount of water for irrigation, culinary, domestic or related purposes; provided that additional project water shall be released at the same points without charge to permit the use of additional water if needed for culinary, domestic or related uses in said park; and provided further that the United States through the National Park Service may make, without objection by the District, such additional non-consumptive uses of water as it deems necessary so long as such use does not render the water unavailable to the project, allowing for slight consumptive loss unavoidably incident to such non-consumptive uses.

The United States acquired the project water rights in a Federal District Court action in the nature of a quiet title suit, and the decrees were entered on October 12, 1955, and supplemented by a decree dated April 16, 1964. A total of 3.0 cfs of foreign water is available for use, a portion of which will be made available as exchange water for Lily Lake. This water will be made available at Lake Estes or at another point on the system as determined by the Water Commissioner. Water will be released simultaneously with use or in aggregate as requested by the Water Commissioner.

5. Engineering Report

Lily Lake is an enlargement of a natural lake that lies within Rocky Mountain National Park. The lake's decreed capacity is 100.6 acre-feet, but the lake level is maintained at 73.3 acre-feet in order to comply with dam safety regulations. A drop inlet spillway is situated near the dam to maintain the lake's level at this capacity. When filled to decreed capacity, the lake's surface area is approximately 18 acres.

Spring discharge and snowmelt are the main sources of water for Lily Lake. The lake is situated at the headwaters of Fish Creek, and overflow from the lake provides the majority of the initial flow of creek. Fish Creek flows northward approximately six miles before entering Lake Estes. Lily Lake's water rights are junior to rights on both Fish Creek and the Big Thompson River; consequently, the lake's rights are subject to senior calls from those sources.

6. Out-of-Priority Use

There are three potential uses of water at Lily Lake that may require augmentation by NPS with Article 24 water: (1) out-of -priority storage at Lily Lake, (2) out-of-priority evaporation at Lily Lake, and (3) out-of-priority consumptive uses associated with ground water withdrawals from Baldpate Well Nos. 1 and 2.

(1) Out-of-Priority Storage: An August 1997 appraisal ("Lily Lake Appraisal") of the Lily Lake water rights concluded that the Lily Lake storage right would be in priority a minimum of once every five years.[1] In order to maintain the lake at a constant level, as NPS desires to do, NPS, in those years in which the lake is not in priority, may store water on an out-of-priority basis. Such out-of-priority storage will require augmentation.

(2) Out-of-Priority Evaporation: Storage of water will generate some amount of evaporative loss. Such loss is effectively a consumptive use and it will require augmentation. In accordance with the Water Court's rulings in Case Nos. 82CW125 and 84 CW576, approximately 80% of the lake's surface area is considered to be a natural lake. Consequently, NPS will be responsible for evaporative losses from 20% of the lake's surface area.

(3) Out-of-Priority Consumptive Use: At present, Baldpate Inn continues to pump from Baldpate Well Nos. 1 and 2. When such pumping is out-of-priority, augmentation will be necessary.

In 1998, Richard Stenzel, the Division Engineer for Water Division One, estimated the amount of water needed to offset out-of-priority storage at Lily Lake, out-of-priority evaporation from the lake, and out-of-priority consumptive uses associated with ground water withdrawals from the Baldpate Wells Nos. 1 and 2.[2] Mr. Stenzel estimated this amount to be 7.5 acre-feet per year.

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[1] Lily Lake Appraisal, August 1997. Prepared by Helton & Williamsen, P.C. and Peterson Appraisal Company. p. 6.

[2] Affidavit of Richard Stenzel, Division Engineer for Water Division One, State Division of Water Resources, August 14, 1998.

7. Potential Injury to Downstream Water Right Users

As stated, there are three out-of-priority uses of water at Lily Lake that have the potential to injure downstream water users. Such injury could manifest itself in senior water rights holders on either Fish Creek or the Big Thompson River, but the likelihood of injury to Fish Creek rights holders is very remote.

First, there has never been a call placed on Lily Lake by Fish Creek rights holders. According to the records maintained by the Colorado Division of Water Resources, there are approximately 34 water right holders on Fish Creek downstream from the lake, most of which are senior in priority to the Lily Lake rights. Though the water rights to Lily Lake are subject to call from senior rights holders on Fish Creek, the records indicate that there has not been a call on placed on Lily Lake by seniors on Fish Creek.[3]

Second, any call that would affect Lily Lake would be much more likely to come from seniors on the Big Thompson. The rights holders on Fish Creek are on continuous call from senior rights holders on the Big Thompson. Consequently, the Fish Creek rights holders could place a call on Lily Lake only if all the senior rights holders on the Big Thompson were satisfied and their call lifted from Fish Creek. As part of the Lily Lake Appraisal, the appraiser contacted Donald Brazelton, the Water Commissioner for District 4, Division 1, to develop an understanding of the Lily Lake's operation. Through Mr. Brazelton, it was determined that it would be the priorities on the Big Thompson, rather than Fish Creek, that might place a call on Lily Lake.[4] Any call placed on Lily Lake by Big Thompson seniors could be met by exchanging Article 24 water at Lake Estes, pursuant to this augmentation plan.

8. Augmentation by Exchange

In order to compensate for these out-of-priority uses, NPS will provide Article 24 water to Lake Estes on a two-for-one basis (two acre-feet of augmentation water for each acre-foot of estimated loss). Such water will be provided at times and in amounts as directed by the Water Commissioner, when NPS use, storage, or evaporation of water is not in priority.

As discussed above, the possibility of a call from senior rights holders on Fish Creek is remote. Consequently, NPS will deliver the Article 24 water to Lake Estes, where any injury to seniors on the Big Thompson River can be prevented. In the rare event that a call is placed on Fish Creek due to NPS's out-of-priority uses at Lily Lake, NPS will allow outflow of water from Lily Lake into Fish Creek in such amounts and at such times as to meet the call.

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[3] Personal Conversation, Don Brazelton, Water Commissioner, District 4, Division 1, July 10, 2001.
[4] Lily Lake Appraisal, p. 5.

9. Proposed Monthly Accounting Form

Accounting will be completed monthly and provided to the State Engineer's Office on request. A form suitable to the State Engineer's Office will be used.

10. Metering Devices

Metering devices will be installed at locations suitable to the State Engineer's Office to measure water diversion and use at Lily Lake.

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: _____

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°09'49", a radius of 2241.83 feet, and being subtended by a chord bearing S27° 22'15"W 746.33 feet;
thence S36°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°06'26, a radius of 1959.86 feet, and being subtended by a chord bearing S20° 56'02"W 1083.94 feet;
thence S04°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°03'55", a radius of 522.96 feet, and being subtended by a chord bearing S35° 58'36"W 539.20 feet;
thence S67°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°21'29", a radius of 368.31 feet, and being subtended by a chord bearing S45° 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°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°58'02"W 1297.34 feet to the Northwest corner of said Section 23;
thence N01°05'53"W 1297.04 feet to the South 1/16th corner between said Sections 14 and 15;
thence S89°47'13"W 2689.31 feet to the Center-South 1/16th corner of said Section 15;
thence N00°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.

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 ground water 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.

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.

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% 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

86 MAY 15 AM: 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.

(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.

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

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,

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.

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.

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~~ 1992 and in MAY of every ~~fourth~~ fifth 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

Raymond J. Lissman
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

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...LO.
83 SEP 28 PM 12:08
...ATER CLERK

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

Case No. 82CW125

RULING OF THE REFEREE AND DECREE OF THE WATER COURT

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 SE¼ SW¼ 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 SE¼ SW¼ 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

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 SW¼ 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 SW¼ SE¼ of Section 14, Township 4 North, Range 73 West, 6th P.M., whence the S¼ 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 SW¼ 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

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

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

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

HOLME ROBERTS & OWEN

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

02-10-1981: findings and ruling of the decree of water court for case no. 80 cw105

FILED IN DISTRICT COURT

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 1

STATE OF COLORADO

Case No. 80 CW105

81 FEB 10 P1:48

1ST DIST. WATER COURT
WELD COUNTY COLO.

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF	)	FINDINGS AND RULING OF THE REFEREE AND DECREE OF THE WATER COURT
MRS. TOMMIE JEAN MACE	)	
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 SW¼SE¼ of Section 14, Township 4 North, Range 73 West of the 6th P.M., Larimer County, whence the S¼ 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

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
RAYMOND S. LIESMAN
Water Referee
Division No. 1

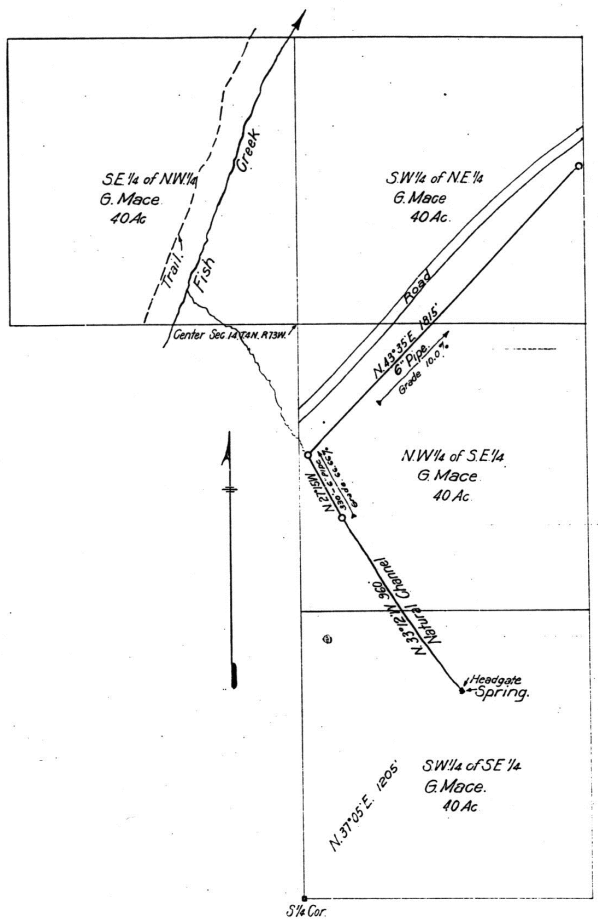
THE COURT DOTH FIND: NO PROTEST WAS FILED IN THIS MATTER.

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

00-00-0000: map



Know all men by these present: That the undersigned Chas.E.Mace. 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 ¼ Corner of Section 14, T. 4 N., R 73 W. of the 6th Principal Meridian bears N. 37° 05' E 1205 feet.

Second: The length of said pipe line is 2145 feet The diameter of the pipe is 6 inches. Grade 10%.

Third: The carrying capacity of said pipe line is 1 cubic foot per second of time, for which claim is hereby made for domestic and irrigation purposes.

Fourth: The estimated cost is $500.00

Fifth: Work was commenced by survey on the 21st day of July A.D. 1915.

Chas. E. Mace.
Claimant

11283

11-25-1980: findings and ruling of the referee and decree of the water court in case no. 80 cw104

DIV. 1
STATE OF COLO.

IN THE DISTRICT COURT IN AND FOR 80 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 AND DECREE OF THE WATER COURT
MRS TOMMIE JEAN MACE	)	
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 SW¼ 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.

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.

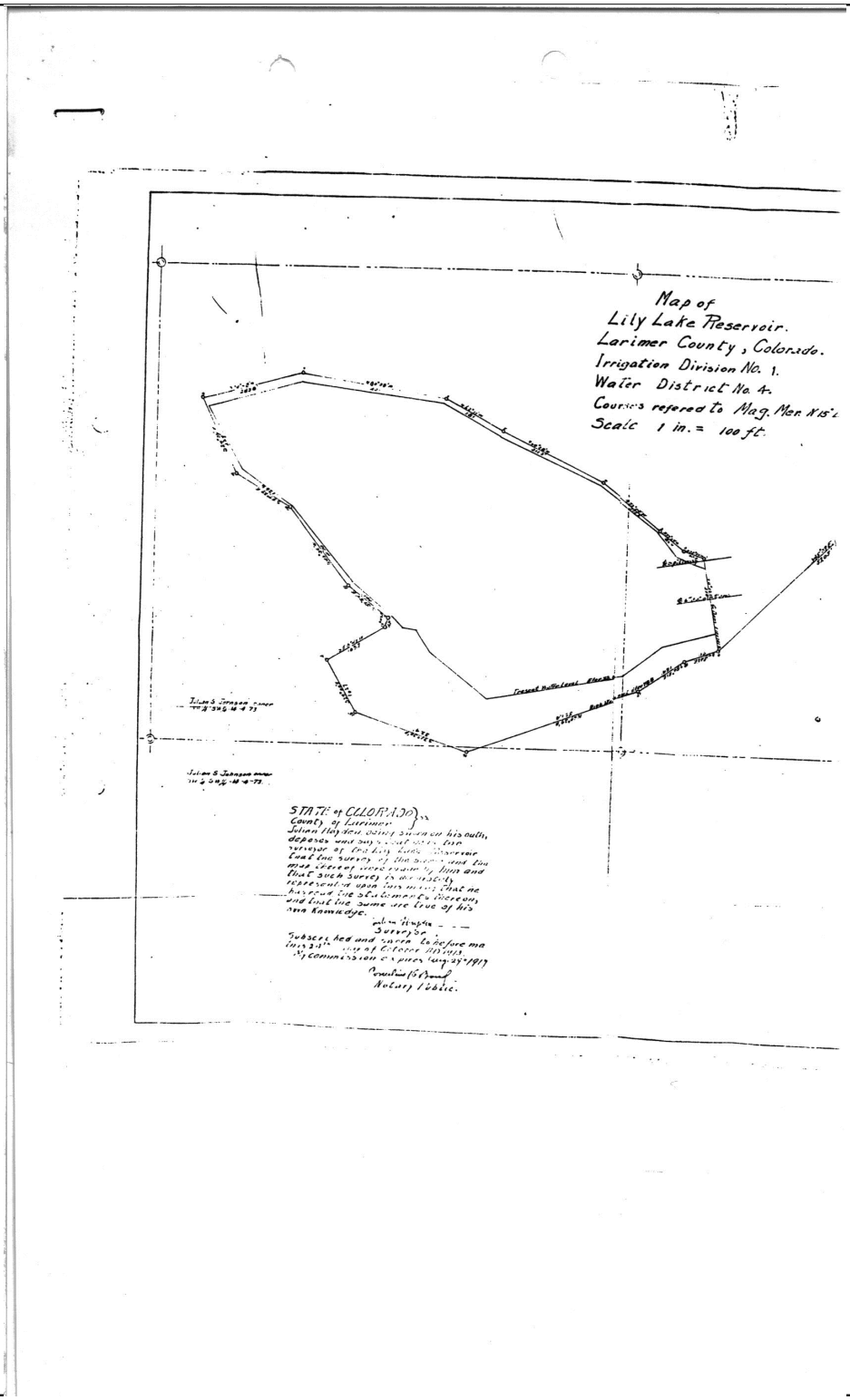
THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: JAN 16 1981

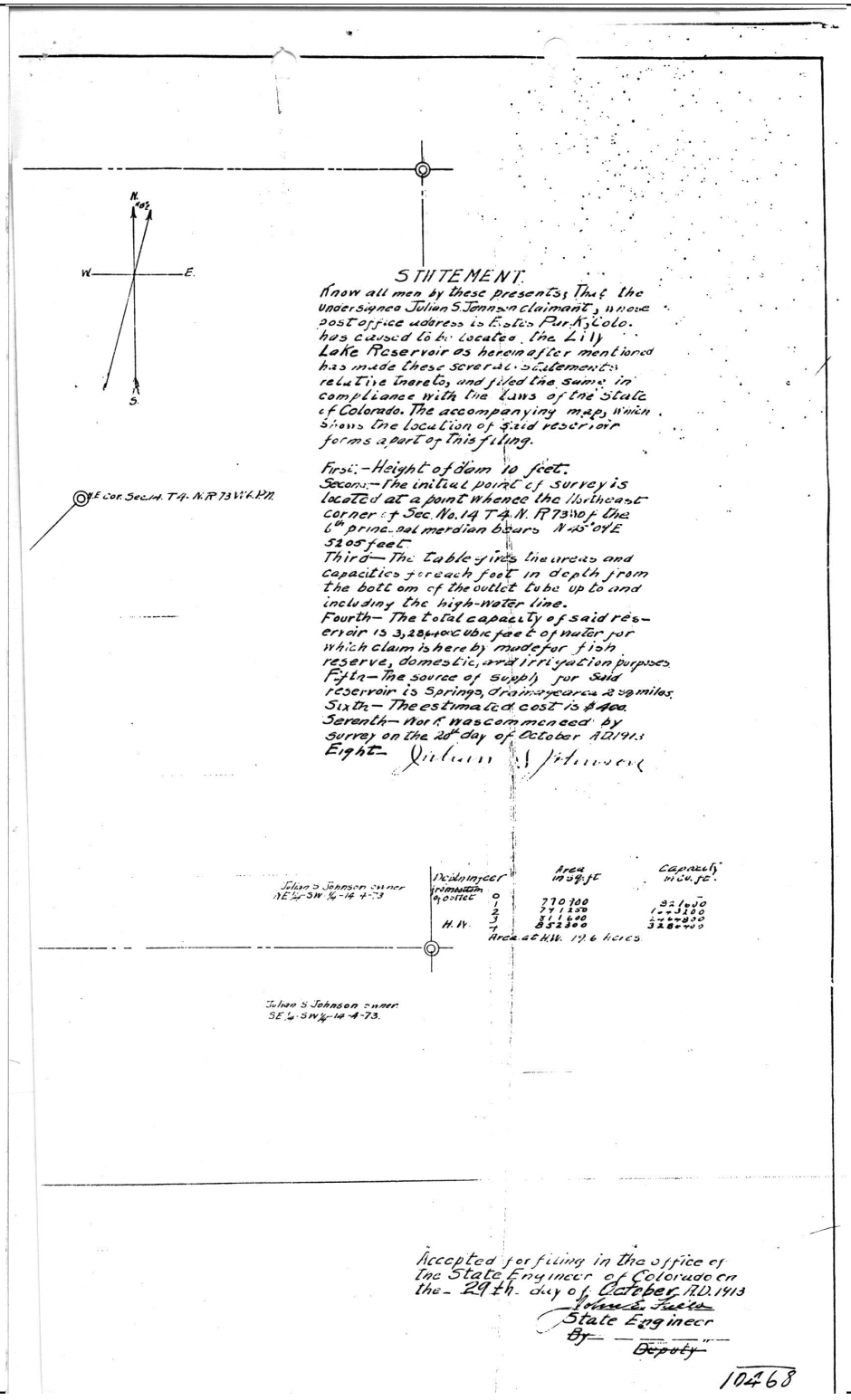
ROBERT A. BEHRMAN
Water Judge
Division No. 1
State of Colorado

JAN 16 1981

00-00-0000: map of lily lake reservoir



00-00-0000: map of lily lake reservoir, page 2cont



Other Supporting Information

08-15-1994: letter from superintendent regarding securing water from other sources to replace water removed form lily lake

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

CITY, STATE: ROMO MAIL CODE: _____

OFFICE PHONE: 586-2371 FTS

FAX NUMBER: ~~586-2371~~ 586-4702 FTS VERIFICATION: _____ FTS

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET):

SPECIAL INSTRUCTIONS:

Telecopier Verification telephone number in Fort Collins: (303) 221-5341
FTS (none)

Telefax telephone number in Fort Collins (3M EMT 9165): (303) 221-5341
FTS (none)

Receipt verified by: _____ Date: _____ Time: _____

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 is 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 Filing -- 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 filing.

3. Baldpate Spring and Pipeline -- Decreed in Case No. 80CW105, 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, 1915.

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.

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 96

Documents Dated from 11/25/1980 to 4/14/2014

Docket Compiled: 12/4/2015