

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA v. NORTHERN COLORADO WATER CONSERVANCY DISTRICT, et al.,)	<u>CONSOLIDATED CASES</u>
)	CIVIL NO. 2782
IN THE MATTER OF THE ADJUDICATION OF PRIORITIES OF WATER RIGHTS IN WATER DISTRICT NO. 36 FOR PURPOSES OF IRRIGATION)	CIVIL NO. 5016
PETITIONERS: THE COLORADO RIVER WATER CONSERVATION DISTRICT, THE GRAND VALLEY WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, PALISADE IRRIGA- TION DISTRICT AND GRAND VALLEY IRRIGA- TION COMPANY)	
IN THE MATTER OF THE ADJUDICATION OF PRIORITIES OF WATER RIGHTS IN WATER DISTRICT NO. 36 FOR PURPOSES OTHER THAN IRRIGATION)	CIVIL NO. 5017
PETITIONERS: THE COLORADO RIVER WATER CONSERVATION DISTRICT, THE GRAND VALLEY WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, PALISADE IRRIGA- TION DISTRICT AND GRAND VALLEY IRRIGA- TION COMPANY)	

FINAL DECREE

This matter having come on for trial, both oral and documentary evidence having been adduced by the United States of America in support of its claimed rights to the use of water for the Colorado-Big Thompson Project in the Colorado River and its tributaries, including the Blue River and its tributaries, with a priority date of August 1, 1935 and the parties named in this Final Decree having expressly stipulated and agreed that the United States of America is entitled to have a priority date of August 1, 1935, and the City and County of Denver and the City of Colorado Springs having adduced evidence showing their priorities as herein provided, all as set forth in the Findings of Fact and Conclusions of

law, which have been duly entered:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED
AND DECREED THAT:

1. The United States of America shall have a priority date of August 1, 1935, for the Colorado-Big Thompson Project from the Colorado River for these units of that Project:

Alva B. Adams Tunnel - Direct Diversion Right	- 550 c.f.s.
Granby Reservoir - Storage Right	543,758 acre-feet
Granby Pump Canal - Direct Diversion Right	- 1,100 c.f.s.
Willow Creek Reservoir - Storage Right	- 10,653 acre-feet
Willow Creek Feeder Canal - Direct Diversion Right	- 400 c.f.s.
Shadow Mountain and Grand Lakes - Storage Right	19,669 acre-feet

all situated in Grand County, State of Colorado;

Lake Estes - Storage Right	3,368 acre-feet
Horsetooth Reservoir - Storage Right	- 153,252 acre-feet
Carter Lake Reservoir - Storage Right	- 112,830 acre-feet

situated in Larimer County, State of Colorado;

together with such other rights to the use of water with the priority date of August 1, 1935, to utilize, divert and store water from the Colorado River and its tributaries in such quantities and for such purposes, all as more specifically set forth under the heading of "General Physical Description" contained in the Findings of Fact and Conclusions of Law duly entered by this Court in these consolidated cases and upon which this Final Decree is predicated.

2. The United States of America shall have a priority date of August 1, 1935, for the Colorado-Big Thompson Project from the Blue River and its tributaries

for 1726 second feet direct-flow right for the generation of electrical power at the Green Mountain Powerplant; a storage right with the priority aforesaid in the amount of 154,645 acre feet with the right to refill to the extent of an additional 6,316 acre-feet, all as set forth in the Findings of Fact and Conclusions of Law entered in these consolidated cases.

The United States of America shall operate the Colorado-Big Thompson Project and all of its units to which this Final Decree pertains in conformity with the hereafter set forth provisions of Senate Document No. 80, 75th Congress, 1st Session, and the "Stipulation" dated October 5, 1955, as amended and filed in this Court, which are set forth in the Findings of Fact and Conclusions of Law and by this reference incorporated herein as if fully set forth. The provisions of Senate Document 80, 75th Congress, 1st Session, prescribing the manner in which the Secretary of the Interior will operate the Colorado-Big Thompson Project are as follows:

"MANNER OF OPERATION OF PROJECT FACILITIES
AND AUXILIARY FEATURES.

"The construction and operation of this project will change the regimen of the Colorado River below the Granby Reservoir. The project contemplates the maximum conservation and use of the waters of the Colorado River, and involves all of the construction features heretofore listed. In addition thereto certain supplemental construction will be necessary. This will be for the primary purpose of preserving insofar as possible the rights and interests dependent on this water, which exist on both slopes of the Continental

Divide in Colorado. The project, therefore, must be operated in such a manner as to most nearly effect the following primary purposes:

"1. To preserve the vested and future rights in irrigation.

"2. To preserve the fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and the Rocky Mountain National Park.

"3. To preserve the present surface elevations of the water in Grand Lake and to prevent a variation in these elevations greater than their normal fluctuation.

"4. To so conserve and make use of these waters for irrigation, power, industrial development, and other purposes, as to create the greatest benefits.

"5. To maintain conditions of river flow for the benefit of domestic and sanitary uses of this water.

"In order to accomplish these purposes the project should be operated by an unprejudiced agency in a fair and efficient manner, equitable to all parties having interests therein, and in conformity with the following particular stipulations:

"(a) The Green Mountain Reservoir, or similar facilities, shall be constructed and maintained on the Colorado River above the present site of the diversion dam of the Shoshone power plant, above Glenwood Springs, Colo., with a capacity of 152,000 acre-feet of water, with a reasonable expectancy that it will fill annually. Of said capacity, 52,000 acre-feet of water stored therein shall be available as replacement in western Colorado, of the water which would be usable there if not withheld or diverted by said project; 100,000 acre-feet shall be used for power purposes; and all of said stored waters shall be released under the conditions

and limitations hereinafter set forth.

"(b) Whenever the flow in the Colorado River at the present site of said Shoshone diversion dam is less than 1,250 cubic feet per second, there shall, upon demand of the authorized irrigation division engineer or other State authority having charge of the distribution of the waters of this stream, be released from said reservoir as a part of said 52,000 acre-feet, the amount necessary with other waters available, to fill the vested appropriations of water up to the amount concurrently being diverted or withheld from such vested appropriations by the project for diversion to the eastern slope.

"(c) Said 100,000 acre-feet shall be stored primarily for power purposes, and the water released shall be available, without charge, to supply existing irrigation and domestic appropriations of water, including the Grand Valley reclamation project, to supply all losses chargeable in the delivery of said 52,000 acre-feet of water, and for future use for domestic purposes and in the irrigation of lands thereafter to be brought under cultivation in western Colorado. It shall be released within the period from April 15 to October 15 of each year as required to supply a sufficient quantity to maintain the specified flow of 1,250 cubic feet per second of water at the present site of said Shoshone diversion dam, provided this amount is not supplied from the 52,000 acre-feet heretofore specified. Water not required for the above purposes shall also be available for disposal to agencies for the development of the shale oil or other industries.

"(d) The cost of construction and perpetual operation and maintenance of said reservoir or reservoirs shall

be a charge against the project and shall be paid from revenues collected from this project as may be provided in contracts between the Secretary of the Interior and the beneficiaries of the project in eastern Colorado, and any other contracting parties.

"(e) In the event said reservoir or reservoirs are not maintained with a capacity of 52,000 acre-feet, the Secretary of the Interior should withhold the diversion of water from the western to the eastern slope of Colorado until such storage capacity is made available.

"(f) The Secretary of the Interior shall have the option to require the transfer to the United States of any and all rights initiated or acquired by the appropriation or use of water through the works of the project in eastern Colorado, at any time: Provided, however, that the title so taken shall be subject to a beneficial use of such water as may be provided in the repayment contract or contracts; and the rights to store water to the extent of said 152,000 acre-feet shall be initiated, acquired, and held by the appropriate authorities for use in western Colorado, for replacement of water diverted to the eastern slope, and for other purposes contemplated for this project.

"(g) The Secretary of the Interior shall operate this project in accordance with the following stipulations as to priorities of water use as between the parties claiming or using project water and within the limits of his legal authority. Said 52,000 acre-feet of replacement storage in Green Mountain or other reservoirs shall be considered to have a date of priority for the storage and use of replacement water earlier than that of the priorities for the water

diverted or stored for delivery to the eastern slope.

The 100,000 acre-feet of storage in said reservoir shall be considered to have the same date of priority of appropriation as that for water diverted or stored for transmountain diversion.

"(h) Said Green Mountain Reservoir, or such other replacement reservoirs as provided in paragraph (a) herein, as are planned as a part of the project, shall be constructed at the same time as the other parts of the project and shall be completed before any water is diverted to the eastern slope of the Continental Divide by means of said project.

"(i) Inasmuch as the State of Colorado has ratified the Colorado River Compact, and inasmuch as the construction of this project is to be undertaken by the United States, the project, its operation, maintenance, and use must be subject to the provisions of said Colorado River Compact of November 24, 1922 (42 Stat. 171), and of section 13 of the Boulder Canyon Project Act, dated December 21, 1928 (45 Stat. 1057-1064). Notwithstanding the relative priorities specified in paragraph (g) herein, if an obligation is created under said compact to augment the supply of water from the State of Colorado to satisfy the provisions of said compact, the diversion for the benefit of the eastern slope shall be discontinued in advance of any western slope appropriations.

"(j) An adequate system, as determined by the Secretary of the Interior, shall be provided for the irrigation of the lands in the vicinity of Kremmling, now irrigated by either natural or artificial means, and the installation

made therefor shall be a part of this project. The rights to the use of water for the irrigation of these lands shall be considered to have a date of priority earlier than that of the rights to the use of water to be diverted through the works of this project to the eastern slope. This system shall be designed and built in a manner requiring the least possible continuing annual expense for operation and maintenance but the cost thereof shall not exceed \$300,000; and said system shall be provided and in operation before any water is stored for transmountain diversion. In addition, the Secretary shall protect, add to, or improve the source of supply of domestic waters for the municipalities of Kremmling and Hot Sulphur Springs in the manner and to the extent which he may determine to be necessary to provide a source of supply not less than that now available for these municipalities. The cost of these features shall be included in the total project cost.

"(k) To compensate Grand County for the loss of taxes through the transfer of property to the United States for the construction of this project, \$100,000 shall be paid to said Grand County. This payment shall be made in 10 annual installments of \$10,000 each, commencing upon the date when 10 percent of the total property in Grand County required for said project has been removed from taxation.

"(l) The project and all of its features shall be operated in a manner determined by the Secretary of the Interior as necessary to provide the water to preserve at all times that section of the Colorado River between the reservoir to be constructed near Granby and the mouth of the Fraser River as a live stream, and also to insure an adequate

supply for irrigation, for sanitary purposes, for the preservation of scenic attractions, and for the preservation of fish life. The determination of the need for and the amount and times of release of water from Granby Reservoir to accomplish these purposes shall be made by the Secretary of the Interior, whose findings shall be final.

"In order to facilitate compliance with the stipulation in paragraphs (j), (k), and (l) hereof a representative may be selected and designated by the interests dependent thereon in Grand County, Colo., and when so designated he will be recognized as the official spokesman of said interests in all matters dealing with project operations affecting Grand County.

"The principles and provisions expressed in these stipulations have been approved by the Western Colorado Protective Association, representing interests in western Colorado, and the Northern Colorado Water Users Association as evidenced by the letters hereto attached."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City and County of Denver, the City of Colorado Springs, and the City of Englewood shall have rights to the use of water in the Colorado River and its tributaries, and in the Blue River and its tributaries, with the priorities and in the quantities as follows:

1. The City and County of Denver shall have the following priorities:

RIGHTS TO THE USE OF WATER IN THE BLUE RIVER

a. Montezuma Tunnel	6-24-46	738 Sec. Ft.
b. Dillon Reservoir	6-24-46	252,678 Acre-feet.

Provided, however, that diversions pursuant to a. and b. above will be made solely for municipal purposes as defined in said "Stipulation", as amended; subject nevertheless to the right of the parties to this Decree to contest the conditional decrees on the grounds that the City and County of Denver has failed from and after the date of this Decree to prosecute its claims with due diligence.

The rights to the use of water of the City and County of Denver in the Blue River are more fully described in the decrees entered in Water District No. 36, Civil Actions No. 1805 and 1806. Insofar as they describe the rights to the use of water adjudicated to the City and County of Denver those decrees are incorporated into this Decree by reference and made a part hereof as fully as though they were set forth in full herein.

2. The City of Colorado Springs shall have the following priorities in the Blue River:

a. Continental-Hoosier Diversion System, August 5, 1929, a final decreed right of 77 c.f.s.; 10 c.f.s. conditionally decreed.

b. Continental-Hoosier Diversion System, May 13, 1948, 400 c.f.s.

c. Continental-Hoosier Diversion System, May 13, 1948, total storage, 5,306 acre-feet.

Reference is here made to the Stipulation, as amended, and hereinabove set forth, which, with the exception herein noted, pertains only to the Colorado Springs 1948 rights described in subparagraphs b, and c. last above; the 1929 priority rights mentioned in subparagraph a. last above apply and are pertinent only for the purpose of

computing the division of water between Denver and Colorado Springs as provided in paragraph 7(a) of said Stipulation.

Provided, however, that those diversions described in subparagraphs a, b and c above will be made solely for municipal purposes as defined in said "Stipulation", as amended; subject nevertheless to the right of the parties to this Final Decree to contest the conditional decrees on the grounds that the City of Colorado Springs has failed from and after the date of this Final Decree to prosecute its claims with due diligence.

The rights to the use of water of the City of Colorado Springs are more fully described in the decrees entered in Water District No. 36 in connection with the aforesaid rights and those descriptions are incorporated herein and made a part hereof as though they were set forth in full.

3. The City of Englewood shall have a right to divert up to 19,500 acre-feet of water annually from the sources and by means hereafter described with a priority date of July 2, 1932: provided, however, that such diversion shall not be exercised by the City of Englewood when the natural flow of the Colorado River is less than 1,250 c.f.s. at the Shoshone diversion dam, and required to fill vested rights, and its right to divert shall at all times be subject to diminution to the extent necessary to fill all senior rights and shall not be exercised at any time so as to interfere with any uses of water by the United States in connection with the Colorado-Big Thompson Project or in carrying out any part of the "Manner of Operation of Project Facilities and Auxiliary Features", contained in Senate Document 80, 75th Congress, 1st Session. The City of

Englewood in connection with its right to divert as herein set forth shall have the right to construct replacement reservoirs to the extent required to meet all senior rights with which its diversions may be in conflict: Subject, nevertheless, to the approval of the Secretary of the Interior of any proposal thus to provide replacement storage.

The rights to divert by the City of Englewood are as follows:

a. Hamilton-Cabin Creek Ditch:

70 c.f.s. having as its source Hamilton Creek and all intermediate drainage channels or slopes between Hamilton Creek and North Ranch Creek, including Cabin Creek, Little Cabin Creek and all named and unnamed streams but not from North Ranch Creek itself.

b. Extension and Enlargement of Hamilton-Cabin Creek Ditch:

25 c.f.s. having as its source Meadow Creek and intermediate drainage channels or slopes between said Meadow Creek and Hamilton Creek, including Trail Creek and Hurd Creek, and any and all unnamed and other named streams but not from Hamilton Creek itself.

c. Cabin Creek Reservoir, 4,250 acre-feet with its source Cabin Creek.

d. Meadow Creek Reservoir, 5,100 acre-feet with its source Meadow Creek.

Provided, however, that the rights to the use of water herein recognized in the City of Englewood may be diverted only for municipal purposes, ~~as defined in said "Stipulation", as amended;~~ subject nevertheless to the right

of all parties to this Final Decree to contest the conditional decrees on the grounds that the City of Englewood has failed after the date of this Final Decree to prosecute its claims with due diligence.

4. The City of Englewood will transfer to the United States all of its rights to the use of water previously claimed by the City of Englewood as follows: In Ranch Creek Reservoir of July 15, 1933, for 478,079,187 cubic feet annually, source of water from Ranch Creek and Hurd Creek; in the Enlargement of Ranch Creek Reservoir, with a priority date of October 1, 1933, for 483,858,406 cubic feet annually, the source of water, Ranch Creek, Hurd Creek, Meadow Creek and Fraser River; and from the Fraser River in the Fraser Ditch with a priority date of October 1, 1933, for 30 c.f.s.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City and County of Denver has the following rights to the use of water in the South Platte River, the Fraser River and the Williams Fork River and their respective tributaries, identified by priority dates and designation as follows, including both conditional and final decrees:

DIRECT RIGHTS:

<u>Name</u>	<u>Priority Dates</u>
Platte Canon Ditch	7-30-1861
Nevada Ditch	8-30-1861
Platte Canon Ditch	12-30-1863
Platte Canon Ditch	12-30-1864
Nevada Ditch	12-30-1865
*Borden Ditch	5- 1-1866
City Rights	12-20-1870
City Rights	12-31-1874

City Ditch	(11-28-1860)
	(11- 1-1873)
	(3- 7-1882)
*Weed Ditch #42	5- 1-1875
City Right	9-10-1878
**High Line Canal	1-18-1879
*1/2 Weed Ditch #102	6- 1-1879
City Right	6-30-1880
*Love & Rayner Ditch	5- 8-1881
* 1/2 Little Channel Ditch	5- 1-1882
* Island Ditch	5-20-1885
City Right	10- 1-1889
City Right	9- 1-1892
City Right	5- 1-1899
City Right	12- 6-1910
Cherry Creek Galleries	5- 1-1887

Harriman Ditch:
Undivided one-half:

Turkey Creek	4-16-1868
Bear Creek	3-15-1869
Bear Creek	5- 1-1871
Bear Creek	3- 1-1882

Entire:

Bear Creek	12- 5-1889
Bear Creek	12- 5-1889
Turkey Creek	2- 1-1890
Turkey Creek	2- 1-1890
Bear Creek	8-15-1892
Bear Creek	8-15-1892
Turkey Creek	8-15-1892
Turkey Creek	8-15-1892

South Boulder Diversion Conduit 1-1-1930
Moffat Tunnel Diversion Unit 7-4-1921
Williams Fork Diversion Unit 7-4-1921

Storage Rights:

<u>Name</u>	<u>Date</u>
Antero Reservoir	10-8-1907
11-Mile Canon Reservoir	7-10-1926
Lake Cheesman	(6-27-1889 (9-24-1893
Platte Canon Reservoir	9- 5-1902
Marston Lake	4- 1-1911
Soda Lakes	2-11-1898
Ralston Reservoir	(1-1-1930 (10-31-1932
Reservoir No. 22	(7- 4-1921 (5-10-1945
*** Williams Fork Reservoir	11-10-1935
Two Forks Reservoir (To the extent the same is to be filled from the South Platte River.)	(1-18-1905 (5- 1-1926
Grant Reservoir	
Strontia Reservoir	
Esterbrook Reservoir	
Vasquez Reservoir	(7-4-1921 (7-7-1926
Steeleman Reservoir	9-22-1937
St. Louis Reservoir	7- 4-1921
*Divertible only from April 15 to August 10, inclusive.	
**City Right in High Line Canal is variable and intermittent.	
***Subject to limitation herein provided in Paragraph 4(c) of Stipulation set forth in the Findings of Fact respecting the Parshall Unit of the Cliffs Divide Project and the right to contest said decree because of the failure of the City and County of Denver to exercise due diligence.	

The right is reserved to the parties to this

litigation to contest the conditional decrees on the grounds that the City and County of Denver has failed from the date of this Final Decree to prosecute its claims with due diligence, provided further that the conditional decree to the Williams Fork Reservoir may be contested for failure to exercise due diligence at any time, subject to any applicable statutes of limitation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Decree shall constitute a final determination of the priorities between the United States of America, the City and County of Denver, the City of Colorado Springs and the City of Englewood, their successors in interest and assigns, and they and each of them, as against every other one, are hereby adjudged to be the owners of the rights to the use of water hereinabove set forth and are entitled and allowed to divert and utilize from the Colorado River and its tributaries, including the Blue River, in the amounts, for the purposes as herein provided, and in accordance with the provisions hereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the titles to the rights to the use of water of the respective parties, the United States of America, the City and County of Denver and the City of Colorado Springs and the City of Englewood, be and the same are hereby quieted, and the respective parties and their successors or assigns are forever enjoined and restrained from asserting or claiming as against each other any different priorities than those specified in this Final Decree.

The Final Decree and Final Judgment in these consolidated cases shall not affect in any way the issues presented

or raised by the intervenors, or any of them, in Civil
Action No. 2782.

~~This Final Decree does not determine the question
of whether or not there should be imposed in the decree re-
lating to the Colorado-Big Thompson Project a limitation on
the maximum diversion through the Alva B. Adams Tunnel in
any year or series of years, and if there is a limitation,
the amount thereof. Said question without affecting the
finality of this Decree is reserved for future determination
upon motion of any of the parties asking such determination.~~

see
1957
Supplemental
order

If the stipulation, as amended, or any part of it
should at any time be declared invalid, the finality of the
Final Decree respecting the priorities of the parties to these
consolidated cases will in no way be affected by such a deter-
mination, reserving the right of the City and County of Denver
and the City of Colorado Springs to move for the resolution
of the question saved as set forth in paragraph 12 of the
Stipulation, as amended, or to take such other steps as may
be saved to said cities under said paragraph 12.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
this Court retains continuing jurisdiction for the purpose of
effectuating the objectives of this Final Decree.

see
1957
supp
order

DATED this 12 day of October, 1955.

William Lee Knous

WILLIAM LEE KNOUS
District Judge.