

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

CONSOLIDATED CASES

IN THE MATTER OF THE ADJUDICATION  
OF PRIORITIES OF WATER RIGHTS IN  
WATER DISTRICT NO. 36 FOR PURPOSES  
OF IRRIGATION

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

CIVIL NO. 5016

IN THE MATTER OF THE ADJUDICATION OF  
PRIORITIES OF WATER RIGHTS IN WATER  
DISTRICT NO. 36 FOR PURPOSES OTHER  
THAN IRRIGATION

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

CIVIL NO. 5017

FINAL JUDGMENT

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 Judgment 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 ORDERED, ADJUDGED AND DECREED

AS FOLLOWS:

1. The United States of America shall have a priority date of August 1, 1935, for the Colorado-Big Thompson Project in the Blue River and its tributaries for 1726 c.f.s. direct-flow right for the generation of electricity at the Green Mountain Powerplant; it shall have a storage right to impound and store annually with the priority aforesaid in the amount of 154,645 acre-feet with the right to refill in the amount of 6,316 acre-feet in Green Mountain Reservoir for the purpose of generating electrical energy at the Green Mountain Powerplant and for the purposes hereafter set forth in the quoted excerpts from Senate Document No. 80, 75th Congress, 1st Session, all in accordance with the Findings of Fact and Conclusions of Law entered in these consolidated cases. The Green Mountain Reservoir and Powerplant and the structures comprising the other units of the Colorado-Big Thompson Project are described with particularity in those Findings of Fact and Conclusions of Law under the heading of "General Physical Description", that description being incorporated into this Judgment and by reference made a part hereof as fully as set forth in its entirety. 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 there-

after 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 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."

2. 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            788 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; subject nevertheless to the right of the parties to this Judgment to contest the conditional decrees on the grounds that the City and County of Denver has failed from and after the date of this Judgment 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 were fully described in the decrees entered in Water District No. 36, Civil Action No. 1895-1899.~~ 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 Judgment by reference and made a part hereof as fully as though they were set forth in full herein.

3. 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. as said rights are affected by the decree changing their point of diversion; 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 sub-paragraphs b. and c. last above; the 1929 priority rights mentioned in sub-paragraph 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 will be made solely for municipal purposes as defined in the "Stipulation", as amended; subject nevertheless to the right of the parties to this Judgment to contest the conditional decrees on the grounds that the City of Colorado Springs has failed from and after the date of this Judgment 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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment shall constitute a final determination of the priorities between the United States of America, the City and County of Denver and the City of Colorado Springs, 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 and for the purposes as herein provided, and in accordance with the provisions hereof.

CIVIL ACTION NO. 5016

In Civil Action No. 5016 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be allowed to flow into the Elliott Creek Feeder Canal, No. 267-1, from said Elliott Creek, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction Priority No. 341-1, 90 cubic feet of water per second of time, relating back to and dating from August 1, 1935.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is hereby awarded to the Green Mountain Reservoir, No. 4A, and that there be allowed to flow into said reservoir from Elliott Creek and the Blue River, under and by virtue of original construction, Reservoir Priority No. 4A for 154,645 acre-feet, together with the right to refill in the additional amount of 6,316 acre-feet, with priority date of August 1, 1935, for beneficial purposes for irrigation.

CIVIL ACTION NO. 5017

As to Civil Action No. 5017 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be allowed to flow into the Elliott Creek Feeder Canal No. 110A, from said Elliott Creek, for beneficial purposes other than irrigation for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, Priority No. 122A, 90 cubic feet of water per second of time, relating back to and dating from the first day of August, A. D. 1935.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is hereby awarded to the Green Mountain Reservoir No. 72A and that there be allowed to flow into said reservoir from Elliott Creek and the Blue River, under and by virtue of original construction, Reservoir Priority No. 74A for 154,645 acre-feet, together with the right to refill in the additional amount of 6,316 acre-feet, with priority date of August 1, 1935, for beneficial purposes other than irrigation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be allowed to flow into the Green Mountain Hydroelectric Plant, No. 110B, under and by virtue of appropriation by original construction, Priority No. 122B, 1,726 cubic feet of water per second of time from the Blue River for the generation of electrical energy, with priority right relating back to and dating from August 1, 1935.

CIVIL ACTION NUMBERED 5016 and 5017

As to Civil Action No. 5016 and as to Civil Action No. 5017 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of water specified in the priorities awarded to the Elliott Creek Feeder Canal as a direct-flow right and the amount awarded to the Green Mountain Reservoir as a storage right in Civil Action No. 5016 and in Civil Action No. 5017 in this court shall not be for duplicate quantities of water, but the priority rights so awarded are for multiple purposes and for the same volume of water.

The physical description of Green Mountain Reservoir, powerplant, and Elliott Creek Feeder Canal set forth in the Findings of Fact, supra, are incorporated in these decretal orders by reference.

All general provisions of the adjudication decrees

of the District Court of Summit County, Colorado, entered March 10, 1952, shall be deemed a part of and apply to the water rights decreed hereby.

~~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, be and the same are hereby culated, and the respective parties and their successors or assigns are forever enjoined and restrained from asserting or claiming against each other any different priorities than those specified in this Final Judgment.~~

If the Stipulation as amended or any part of it should at any time be declared invalid, the finality of the Final Judgment respecting the priorities of the parties to these consolidated cases will in no way be affected by such a determination, 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 Judgment.

DATED this 12<sup>th</sup> day of October, 1955.

William Lee Knoos  
WILLIAM LEE KNOOS  
District Judge