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FILED IN  
DISTRICT COURT  
JUL 26 1996  
WELD COUNTY, COLO.

DISTRICT COURT, WATER DIVISION 1, COLORADO

RECEIVED

CASE NO. 94CW268

AUG 01 1996

WATER RESOURCES  
STATE ENGINEER  
COLO

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE  
WATER COURT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF LAKEVIEW VILLAGE,  
INC., THE CITY OF BOULDER, AND THE COLORADO WATER CONSERVATION  
BOARD,

IN BOULDER AND WELD COUNTIES

THIS CLAIM, comes before the Court upon the filing of an Application of Lakeview Village, Inc. ("Lakeview Village"), City of Boulder ("Boulder"), and Colorado Water Conservation Board ("CWCB"), Lakeview Village, Boulder and CWCB being referred to collectively as "Applicants"), for approval of a plan for augmentation, including change of water rights and for adjudication of exchange, on December 29, 1994. The Court, having considered the pleadings, the files herein, and the evidence presented, and being fully advised in the premises, hereby enters the following Findings of Fact, Conclusions of Law, Judgment and Decree:

FINDINGS OF FACT

1. The names, addresses and telephone numbers of Applicants are:

Lakeview Village, Inc.  
c/o Joshua Samuel  
1615 Pearl Street  
Boulder, Colorado 80302  
(303) 449-0153

Colorado Water Conservation  
Board  
c/o Executive Director  
Daries C. Lile  
1313 Sherman Street, Room 721  
Denver, Colorado 80203

City of Boulder  
c/o Carol Ellinghouse  
P. O. Box 791  
Boulder, Colorado 80306  
(303) 441-3200

2. All notices required by law regarding the filing of this Application have been fulfilled, and the Court has jurisdiction over this Application and all parties, irrespective of whether they have appeared.

3. Statements of Opposition have been filed on behalf of the City of Lafayette and the Water Users Association of District No. 6 ("District 6"), respectively, within the time required for filing such statements.

4. Booth Land and Livestock Company filed a Motion to Intervene and a Statement of Opposition on September 1, 1995, alleging that the Application would result in injury to its McCormick Seepage Ditch water right. The Court entered an Order Granting Motion to Intervene on October 27, 1995.

5. Lakeview Village is the owner of the Lakeview Reservoir No. 1 and the Lakeview Reservoir No. 2. The Reservoirs are more particularly described as follows:

a. Lakeview Reservoir No. 1 is located on an unnamed tributary of St. Vrain Creek. The drop outlet structure for the Reservoir is located in the SW 1/4 of the NE 1/4 of Section 13, Township 2 North, Range 68 West of the 6th P.M., Weld County, Colorado, at a point approximately 1,064 feet South of the North line and 2,459 feet West of the East line of said Section 13.

b. Lakeview Reservoir No. 2 is constructed on and between two unnamed tributaries of St. Vrain Creek. The drop outlet structure for the Reservoir is located in the NW 1/4 of the NE 1/4 of Section 13, Township 2 North, Range 68 West of the 6th P.M., Weld County, Colorado, at a point approximately 948 feet South of the North line and 2,315 feet West of the East line of said Section 13.

6. The sources of water for the Lakeview Reservoir Nos. 1 and 2 are two unnamed tributaries of St. Vrain Creek and surface water from unnamed springs originating on the Lakeview subdivision property located in the NE 1/4 of Section 13, Township 2 North, Range 68 West, 6th P.M., Weld County, Colorado.

7. The Lakeview Reservoirs were conditionally decreed in Case No. 85CW443 entered on August 29, 1986, and were made absolute in Case No. 92CW045, entered on September 24, 1992, in the amount of 40 acre feet for Lakeview Reservoir No. 1 and 55 acre feet for Lakeview Reservoir No. 2. The date of appropriation for both structures is January 31, 1985. No other water rights are diverted from the Reservoirs.

8. Lakeview Village utilizes the Lakeview Reservoir Nos. 1 and 2 for recreational purposes. In order to maintain a constant water level in each Reservoir, including replacing evaporation losses from the open water surfaces of each structure, Lakeview

Village seeks approval of a plan for augmentation using water leased from Boulder. The maximum water surface area of the Lakeview Reservoir No. 1 is 13 acres. The maximum water surface area of the Lakeview Reservoir No. 2 is 13.6 acres. Evaporation losses from both Reservoirs have been estimated by Lakeview Village to average approximately 53 acre feet between April 1 and October 31 of each year.

9. The water to be used for augmentation and exchange purposes will be provided from a portion of the following water rights, each of which have Boulder Creek as their source of supply:

a. Anderson Ditch: 9.5833 shares (2.23 cfs) of the Anderson Ditch. The Anderson Ditch is owned and operated by the New Anderson Ditch Company, a mutual ditch company with 100 shares. The Anderson Ditch was decreed a water right for 25.0 cfs for irrigation use, with an appropriation date of October 1, 1860, by the District Court in and for Boulder County on June 2, 1882.

b. Farmers Ditch: 90% of 24.602 shares (12.17 cfs) of the Farmers Ditch. The Farmers Ditch is owned and operated by the Farmers Ditch Company, a mutual ditch company with 100 shares. The Farmers Ditch was decreed a water right for 73.29 cfs for irrigation use, with an appropriation date of October 1, 1862, by the District Court in and for Boulder County on June 2, 1882.

c. Harden Ditch: 1.8 cfs of the Harden Ditch. The Harden Ditch was decreed a water right for 21 cfs for irrigation use, with an appropriation date of June 1, 1862, by the District Court in and for Boulder County on June 2, 1882.

d. McCarty Ditch: 295 shares (0.643 cfs) of the McCarty Ditch. The McCarty Ditch is owned and operated by the McCarty Ditch Company, with 666.5 shares of stock authorized. The McCarty Ditch was decreed a water right for 5 cfs for irrigation use, with an appropriation date of June 1, 1862, by the District Court in and for Boulder County on June 2, 1882.

e. Smith and Goss Ditch: 83.25 shares (0.451 cfs) of the Smith and Goss Ditch. The Smith and Goss Ditch is owned and operated by the Smith and Goss Ditch Company, with 218.375 shares of stock outstanding. The Smith and Goss Ditch was decreed a water right for 44.3 cfs for irrigation use, with an appropriation date of November 15, 1859, by the District Court in and for Boulder County on June 2, 1882.

10. The water rights described in Paragraph No. 8 are owned by the CWCB, subject to the retention of certain rights by Boulder, including the right of reuse under certain conditions. The water rights were conveyed to the CWCB by Boulder pursuant to an Agreement between the CWCB and Boulder dated July 20, 1990 and recorded August 27, 1990 at Reception No. 01060612, Boulder County real estate records; and a First Addendum to Agreement between the CWCB and Boulder dated December 14, 1990 and recorded December 17, 1990 at Reception No. 01078866, Boulder County real estate records. Boulder's right to reuse the water rights is also conditioned by an agreement between Boulder and District 6, dated October 6, 1995, (District 6 Agreement").

11. The water rights described in Paragraph No. 8 were the subject of previous decrees entered by the District Court, Water Division No. 1, on May 31, 1989 in Case Nos. W-7569, W-7570 and W-8520-77, and December 20, 1993 in Case No. 90CW193. The decrees approved use of the water for municipal and instream flow purposes. The decree in Case No. 90CW193 also approved a second use of the reusable portion of the water after it has first been used by the CWCB for instream flow purposes. The reuse approved was specifically limited to irrigation of lands served by specified ditches which divert water from Boulder Creek downstream from "Segment C" as defined in Paragraph No. 13, herein.

12. Lakeview Village is the lessee of 100 acre feet of water annually from Boulder during the months of April through October ("the leased water"). The leased water is water that is available to Boulder or its lessees after the first use of the water rights described in paragraph 8 above for instream flow purposes by the CWCB. The lease between Lakeview Village and Boulder provides for delivery during the months of June, July and August, of up to 57 acre feet of water available to Boulder for reuse after its first use for instream flow purposes. The lease is for a period of twenty years (or until August 15, 2014). The delivery of the water is subject to the following monthly volumetric limitations:

<u>Month</u>	<u>Volume in Acre Feet</u>
June	12
July	23
August	22

The lease also provides for the delivery of up to 41 acre feet of water during the months of April, May, September and October, for a period of five years (or until August 15, 1999), with the ability to extend the term an additional five years if the water is not then needed by Boulder. The delivery of the water is subject to the following monthly volumetric limitations:

<u>Month</u>	<u>Volume in Acre Feet</u>
April	8
May	10
September	19
October	6

The maximum rate of delivery of the leased water is 0.5 of a cubic foot per second. A copy of the Lease between Boulder and Lakeview Village is attached as Exhibit "A."

13. Lakeview Village, the CWCB and Boulder seek approval to change the use of 100 acre feet of water available to Boulder for lease to Lakeview Village after its first use for instream flow purposes by the CWCB. The water will be exchanged to, or provide augmentation for out-of-priority depletions to maintain water levels, including losses from evaporation, from the Lakeview Reservoir Nos. 1 and 2.

14. Lakeview Village's use of the water leased from Boulder will be downstream of the instream flow reach of Boulder Creek referenced as "Segment C" in the Decree entered in Case No. 90CW193, and more particularly described as follows:

That segment of Boulder Creek in Boulder County from a point immediately below the discharge of Public Service Company of Colorado's hydroelectric plant at Orodell in the NE 1/4, SW 1/4, Section 34, Township 1 North, Range 71 West of the 6th P.M., to the 75th Street Bridge near the center of Section 13, Township 1 North, Range 70 West of the 6th P.M.

Water leased to Lakeview Village by Boulder will be delivered in Boulder Creek at or near the intersection of Boulder Creek and 75th Street at a point in Section 13, Township 1 North, Range 70 West of the 6th P.M., approximately 950 feet from the West Section line and 1,700 feet from the South Section line of said Section 13, which is the location of Boulder's wastewater treatment plant outfall. From this point, the leased water will be conveyed in Boulder Creek and St. Vrain Creek to the confluence of St. Vrain Creek and unnamed tributaries of St. Vrain Creek in Section 36, Township 3 North, Range 68 West, 6th P.M. The leased water will then be exchanged up the unnamed tributaries to the locations of the Lakeview Village Reservoir Nos. 1 and 2.

15. The plan for augmentation and the exchange shall be operated by Lakeview Village only during the period of April through October of each year, and only when water is available for lease from Boulder. The maximum volume of water available for augmentation and exchange use each year shall be 100 acre feet, as

further limited by the monthly volumetric limitations stated in Paragraph No. 11, supra. The maximum rate of exchange shall be 0.5 of a cubic foot per second. The appropriation date for the exchange shall be August 15, 1994.

16. The plan for augmentation and exchange shall be subject to the following terms and conditions:

a. One or more of the water rights which are described in Paragraph No. 8 must be in priority, and must be available for use by the CWCB in accordance with the limitations contained in Part IV of the Decree entered in Case No. 90CW193.

b. Only water which is actually used by the CWCB in accordance with the Decree in Case No. 90CW193, and is physically delivered to the terminus of "Segment C," shall be available for use by Lakeview Village for the purposes herein described, pursuant to its lease with Boulder. Such usage by the CWCB must be in accordance with the limitations contained in Part IV of the Decree entered in Case No. 90CW193, specifically including but not limited to those conditions contained in Paragraph No. 4.14 of said Decree.

c. The amount of water potentially available for delivery to Lakeview Village, as Boulder's lessee, shall be determined on a daily basis by applying the following percentage factors for the appropriate month to the amount of water left undiverted or released for instream flow use from the water described in Paragraph No. 4, supra, pursuant to Part IV of the Decree entered in Case No. 90CW193, after adjustment for any stream losses assessed by the State water administration officials:

<u>Month</u>	<u>Percentage Factor</u>
April	21%
May	39%
June	48%
July	53%
August	48%
September	34%
October	17%

d. In order for Lakeview Village to receive credit for the leased water, Boulder and the CWCB must be in compliance with the water accounting requirements contained in the Decree entered in Case No. 90CW193.

e. Water conveyed in Boulder Creek and/or St. Vrain Creek by Lakeview Village shall be subject to diversion and use by other water users pursuant to plans for augmentation,

exchanges and plans of substitute supply approved by the Water Court or the State Engineer; provided that such use does not diminish Lakeview Village's ability to lawfully operate its plan for augmentation or exchange.

f. Approval of the plan for augmentation shall automatically terminate upon the expiration of leases or other arrangements with Boulder, granting Lakeview Village the right to use the water rights described herein.

g. The 100 acre feet of water leased to Lakeview Village which is the subject of this decree shall be counted against Boulder's "Municipal Reuse Water" under the District 6 Agreement.

#### CONCLUSIONS OF LAW

17. The application herein is one contemplated by law and the Court has exclusive jurisdiction over the subject matter of this proceeding. Section 37-92-203, C.R.S.

18. The application herein was filed with the Water Clerk in accordance with the provisions of Section 37-92-302(1)(a), C.R.S.

19. Timely and adequate notice of the filing and the contents of the application herein was given in the manner provided by law, and this Court has jurisdiction over all persons or entities affected hereby, whether they have appeared or not. Section 37-92-302, C.R.S.

20. Timely statements of opposition were filed as indicated in Paragraph 3 hereof. The time for filing additional statements of opposition has expired. Section 37-92-302(1)(c). C.R.S.

21. The change of water rights and plan for augmentation, including exchange, will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right, if administered in accordance with the terms and conditions of this decree. Sections 37-92-305(3) and (8), C.R.S.

#### JUDGMENT AND DECREE

22. Each of the foregoing Findings of Fact and Conclusions of Law is incorporated herein as if set out in full.

23. The Application for Approval of Plan for Augmentation, Including Change of Water Rights, and for Adjudication of Exchange filed on behalf of Lakeview Village, Inc., City of Boulder, and

Colorado Water Conservation Board is granted, subject to the terms and conditions set forth herein.

24. Cut-of-priority depletions shall be allowed from Lakeview Reservoir Nos. 1 and 2 only to the extent that augmentation water is provided to make up such depletions. The State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights. At times when the exchange is not operating and the Lakeview Reservoir Nos. 1 and 2 are not in priority, all inflow of water into the Reservoirs from any source, shall be removed by Lakeview Village by draining, pumping or other means, and released into the nearest natural watercourse or below the Reservoirs, and not utilized by Lakeview Village, and the headgates to the Reservoirs shall remain closed and no water shall be allowed to flow into the Reservoirs or used by Lakeview Village.

25. Lakeview Village shall install and maintain appropriate meters, measuring and recording devices as may be reasonably required by the State water administration officials to administer the delivery of the water leased by Boulder to Lakeview Village, the operation of the Lakeview Village Reservoir Nos. 1 and 2 and the operation of the plan for augmentation and exchange described herein. Using the accounting forms approved for use in connection with the Decree in Case No. 90CW193, Boulder shall maintain a daily summary of the amount of those water rights described in Paragraph No. 2, *supra*, which are left undiverted for instream flow use by the CWCB and delivered to the terminus of Segment C. Boulder shall also maintain a daily accounting of the amount of the water that is available for reuse downstream of the terminus of Segment C, as well as the volume of water delivered to Lakeview Village and the rate the leased water is delivered. Lakeview Village shall account for all of the water it leases from Boulder and seeks to deliver to the confluence of St. Vrain Creek and the unnamed tributaries of St. Vrain Creek described in Paragraph No. 13, *supra*. Lakeview Village shall also maintain records of diversions, storage, consumption and releases of water from the Lakeview Village Reservoir Nos. 1 and 2. All such records shall be provided to the State water administration officials on a monthly basis, or as otherwise requested by the officials. Copies shall be provided to the Opposers upon request and upon payment of reasonable copying charges.

26. Booth Land and Livestock Company has asserted that operation of the plan for augmentation and exchange will cause injury to its water rights. To prevent such injury, when there is insufficient water in the unnamed tributary on which the Lakeview Reservoirs are located to satisfy downstream senior water rights also located on the unnamed tributary, to the extent such senior



water rights are in priority, Lakeview Village shall pass such water as necessary to satisfy such senior water rights. When a call is in effect which is senior to water rights located on the unnamed tributary, but junior to the leased water, Lakeview Village shall be allowed to augment losses from the Lakeview Reservoirs by operating its exchange, subject to all of the terms, conditions and provisions contained in this Decree. When Booth's McCormick Seepage Ditch water right is out of priority but Lakeview Village's plan for augmentation and exchange are in priority, Lakeview Village may operate its exchange only when there is a live stream one hundred feet (100') below Booth's headgate for the McCormick Seepage Ditch.

27. Lakeview Village shall notify the State water administration officials at least forty-eight hours prior to operating the exchange described herein.

28. Any stream losses in Boulder Creek and St. Vrain Creek associated with the conveyance of water leased from Boulder from the terminus of "Segment C" to the location of the unnamed tributaries on St. Vrain Creek as described in Paragraph No. 13, supra, which are assessed by the State water administration officials, shall be borne by Lakeview Village.

29. The uses decreed in Case No. 90CW193 shall remain unaffected and Lakeview Village's utilization of up to 100 acre feet of water leased from Boulder will be an alternate use for the irrigation use previously decreed in Case No. 90CW193, not in substitution for the rights previously decreed. Boulder and the CWCB shall remain subject to the terms, conditions and requirements set out in the Decree entered in Case No. 90CW193.

30. The Court hereby approves the stipulated terms and conditions described herein as an agreement between Applicants and the Opposers which shall be administered as terms and conditions of this decree. However, such terms and conditions shall not be construed as legal precedent in other Water Court cases involving the water rights described in Paragraph No. 8, supra, and none of said terms and conditions shall be asserted under the doctrine of collateral estoppel in other actions involving the parties who have appeared herein.

31. Lakeview Village shall notify the Court, the State water administration officials and the Opposers, in writing, no later than thirty days after any portion of the lease with Boulder expires, or the lease is modified or amended.

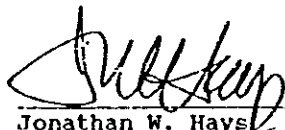
32. Lakeview Village is decreed a conditional appropriative right of substitute supply and exchange pursuant to §37-80-120 and

§37-92-302(1)(a), 15 C.R.S., (1990), for the exchange described in Paragraph Nos. 13 and 14, *supra*. The priority awarded herein for the exchange was filed in 1994 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 this ruling.

33. It is also ordered that the conditional water right herein awarded to the exchange is hereby continued in full force and effect until July, 2002. If Lakeview Village desires to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before July, 2002, or a showing made on or before such date that the conditional water right has become an absolute water right by reason of the completion of the appropriation.

34. Pursuant to the provisions contained in §37-92-304(6), 15 C.R.S., (1990), this Case shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to other water rights, for a period of eight years from the date of this decree.

DATED this 20th day of July, 1996.



Jonathan W. Hays  
Water Judge  
Water Division No. 1