



Gold Hill Mill – File No. M-1994-117, Colorado Milling Company, LLC

2 messages

Clark G. Edwards <clark.edwards@hbcboulder.com>
To: "Lennberg - DNR, Patrick" <patrick.lennberg@state.co.us>

Fri, Feb 24, 2023 at 8:55 AM

Dear Mr. Lennberg:

Please see the attached comments submitted on behalf of Left Hand Ditch Company.

Regards,

CLARK G. EDWARDS, Attorney at Law

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LHDC - LETTER PATRICK LENNBERG, BUREAU OF RECLAMATION (W1734160x9C613).docx
1585K

patrick.lennberg@state.co.us <patrick.lennberg@state.co.us>
To: clark.edwards@hbcboulder.com, clark.edwards@hbcboulder.com

Fri, Feb 24, 2023 at 9:03 AM

Your message

To: clark.edwards@hbcboulder.com
Subject: Gold Hill Mill – File No. M-1994-117, Colorado Milling Company, LLC
Sent: 2/24/23, 8:55:43 AM MST

was read on 2/24/23, 9:03:59 AM MST

HutchinsonBlackandCookLLC
Attorneys at Law

Clark G. Edwards
clark.edwards@hbcboulder.com

February 24, 2023

VIA U.S. MAIL

Patrick Lennberg
Environmental Protection Specialist
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Re: Gold Hill Mill – File No. M-1994-117, Colorado Milling Company, LLC
Permit Conversion Application (CN-1)
Conversion from a 110(2) limited impact to a 110(d) designated mining operation
permit

Dear Mr. Lennberg:

I represent Left Hand Ditch Company (“LHDC”) and submit these comments and objections to the above-referenced Conversion Application by Colorado Milling Company, LLC.

Water Court Decree 85CW117

Appendix C-3 of the conversion application includes a “Water Rights Summary” that purports to include a copy of the 1985 water court change decree allowing for the change of 20 shares of LHDC from irrigation to mining, milling, and storage uses with diversion at alternate points on Left Hand Creek above the historic service area of LHDC. I could not see that the 1985 decree was included as part of C-3, so I have attached the decree, 85CW117, to this letter for your reference.

Determination of Return Flows

Paragraph 34 of the Decree provides for two alternative scenarios for determining the amount of water to be diverted from Left Hand Creek for milling and mining operations. The intent of Paragraph 34 is to account for consumptive use of water withdrawn from Left Hand Creek and the LHDC system. Consumptive use will occur through water retained in concentrates produced by the mill and evaporation from the tailing pond.

Under the first scenario, described in Paragraph 34 of the Decree, if the milling and mining operations are not subject to significant amounts of seepage, (*i.e.*, any water not lost by retainage in concentrates or by evaporative losses will be stored on the milling site), then there will be no



return flows to Left Hand Creek – and the diversions from Left Hand Creek on account of the 20 shares will be limited to 0.70 times the pro rate yield for LHDC shares.

Under the second scenario, which presumes significant seepage loss and return flows to Left Hand Creek, the full pro rata yield will be diverted from Left Hand Creek for milling and mining operations.

Neither the Decree nor the Conversion Application sets forth the process for determining whether significant seepage will occur from the milling and mining activities and whether any return flows will reach Left Hand Creek. Furthermore, the milling and mining activities are located in the upper reaches of the Four Mile Creek Watershed – so it is quite possible that return flows, if any, do not reach Left Hand Creek at all.

Consequently, it is the request from LHDC that all evaluations of yield from the 20 LHDC shares be based on the premise that the 20 LHDC shares are not subject to significant seepage and resulting return flows to Left Hand Creek, thereby limited yield of those shares to 0.70 times the pro rata yield for LHDC shares.

Water Quality Issues

LHDC is concerned about water quality impacts from mining and milling operations. Any Surface runoff or seepage for milling and mining activities in the Left Hand Creek watershed will degrade water quality of LHDC. LHDC derives over 90% of its water from Left Hand Creek and provides water for hundreds of agricultural users throughout its system in Boulder County. In addition, LHDC provides water from Left Hand Creek to Left Hand Water District for consumption by its municipal customers. Any heavy minerals or other hazardous contaminants introduced into the Left Hand Creek watershed will harm LHDC and its users.

Dry Up Covenant

Paragraph 35 of the Decree requires dry-up of the 20-acre property historically irrigated by the 20 LHDC shares adjudicated in the Decree. Some or all of those 20 acres continue to be irrigated despite the requirements of the dry-up covenant.

Yours very truly,



Clark G. Edwards

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO

CASE NO. 85CW117

FILED IN DISTRICT COURT

85 OCT 2 P 1: 52

FINDINGS AND RULING OF THE REFEREE AND DECREE OF THE WATER COURT
BOULDER COUNTY COLO.

CONCERNING THE APPLICATION FOR WATER RIGHTS OF MARK A. STEEN IN
BOULDER COUNTY

THIS MATTER, having come on for consideration upon the Application of Mark A. Steen for a change of water right, and the Referee being fully advised in the premises does hereby find:

FINDINGS OF FACT

1. The Application in this matter for change of water right was filed with the Water Clerk, Water Division No. 1 on April 30, 1985. Applicant's address is: POB 1523, Longmont, CO 80501.

2. All notices required by law of the filing of the Application have been fulfilled. The water rights involved are outside the boundaries of any designated groundwater basins. The Referee has jurisdiction over this matter and over all parties affected hereby, whether they have appeared or not.

3. Timely Statements of Opposition were filed by the Left Hand Ditch Company and the St. Vrain and Left Hand Water Conservancy District. No other Statements of Opposition have been filed and the time for filing such Statements has expired.

4. All matters contained in the Application have been reviewed, testimony has been taken where such testimony is necessary and corrections have been made as indicated by the evidence.

5. Applicant has under option to purchase 20 shares of the 16,800 outstanding shares of stock in the Left Hand Ditch Company. Ownership of said stock entitles Applicant to a pro rata share of the water available to the following water rights:

A. Priority rights to irrigation water from Left Hand Creek and James Creek for direct irrigation in the amount of 283.62 cubic feet of water per second, with decrees granted to various ditches taking water from Left Hand Creek which were built by community ditches and by individuals, with priorities numbered 1 to 31, dated from September 1, 1860 to May 3, 1879. (Decrees entered December 2, 1882, in District Court, Boulder County, Colorado.)

B. Priority No. 15-1/2, dated June 1, 1863, for 40.77 cubic feet of water per second for direct irrigation purposes out of the South St. Vrain Creek. (Decree entered June 2, 1882, in District Court, Boulder County, Colorado.)

C. Priority No. 41, dated June 1, 1870, for first enlargement for an additional amount of 685.23 cubic feet of water per second for direct irrigation purposes out of the South St. Vrain Creek. (Decree entered June 2, 1882, in District Court, Boulder County, Colorado.)

D. The Left Hand Park Reservoir, located in the Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of Section 9, and in the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of Section 10, Township 1 North, Range 73 West, Boulder County, Colorado:

Priority No. 28, New Series, as of date August 5, 1891, for filling right of water for storage or reservoir purposes, out of Left Hand Creek in the amount of 8,070,026 cubic feet, or 185.2 acre feet. (Decree entered March 13, 1907, in District Court, Boulder County, Colorado.)

E. The Gold Lake Reservoir, located on the Keystone Placer Mining Claim in Sections 3 and 4, Township 1 North, and in Sections 33 and 34, Township 2 North, All in Range 72 West, Boulder County, Colorado:

Priority No. 6, New Series, as of date September 1, 1879, for water for storage and reservoir purposes out of the South St. Vrain Creek and James Creek, to the capacity of 15,419,360 cubic feet or 354 acre feet, to cover 31.43 acres of land. (Decree entered March 13, 1907, in District Court, Boulder County, Colorado.)

Priority No. 54, New Series, for a second right to water for storage and reservoir purposes also out of the South St. Vrain Creek and James Creek to fill Gold Lake, as of date May 18, 1904, for an additional 3,550,483 cubic feet of water, or 82 acre feet. (Decree entered March 13, 1907, in District Court, Boulder County, Colorado.)

F. Allens Lake Reservoir, located on the South Half of the Northeast Quarter (S 1/2 NE 1/4) and the North Half of the Southeast Quarter (N 1/2 SE 1/4) of Section 13, Township 2 North, Range 71 West, Boulder County, Colorado:

Priority No. 19A, 3rd Series, for 134.2 acre feet,
Priority No. 22, 3rd Series, for 569.5 acre feet,
Priority No. 23C, 3rd Series, for 134.2 acre feet
(refill) and Priority No. 23W, 3rd Series, for 569.5
acre feet (refill), all awarded by decree entered July
3, 1951, in District Court, Boulder County, Colorado.

G. The Lake Isabelle Reservoir (also spelled Lake Isabel Reservoir) situated in the West Half of the Northwest Quarter (W 1/2 NW 1/4) of Section 7, Township 1 North, Range 73 West, and in the South Half of the Northeast Quarter (S 1/2 NE 1/4) and the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) and the North Half of the Southeast Quarter (N 1/2 SE 1/4) of Section 12, Township 1 North, Range 74 West, Boulder County, Colorado:

Priority No. 7, New Series, for water for storage and reservoir purposes out of the South St. Vrain Creek, to fill Lake Isabelle, a natural lake, to be taken out by means of a tunnel, which priority is of date September 15, 1907, for a total capacity of 35,274,888 cubic feet, or 809.8 acre feet, as set forth in decree granted January 9, 1935.

6. The historic use of water in the Left Hand Ditch Company system has been for irrigation, domestic, and stock watering purposes. During the irrigation season, The Left Hand Ditch Company takes virtually all the water in Left Hand Creek, except at times of extreme flood.

7. The subject 20 shares have historically been utilized for the irrigation of lands located in the SE 1/4 of Section 26, Township 2 North, Range 70 West, 6th P.M. in Boulder County.

8. Applicant intends to change the use of said water rights represented by the subject 20 shares to mining, milling, commercial and storage in addition to the historic uses in the Left Hand Ditch Company system listed above.

9. Applicant's mining and milling operations will be located on patented mining claims owned by Applicant in Sections 6 and 7, Township 1 North, Range 71 West, Section 31, Township 2 North, Range 71 West, and Sections 1, 2, 12 and 13, Township 1 North, Range 72 West, 6th P.M. in Boulder County.

10. The applicant's operations will utilize a gravity and flotation concentration mill wherein the majority of the water will be recycled. The operations will initially be capable of processing 50 tons of ore per day on a year round basis, and that capacity may be expanded in the future.

11. Water requirements for the applicant's milling operations are projected to be four tons of water per ton of ore. The mill will recycle as much water as possible, either directly or after water treatment.

12. Consumptive use of water will only occur as a result of water retained in the concentrates produced by the mill, and evaporation from a tailings pond with a projected surface area of two acres. The following formula shall be utilized to calculate consumptive use from the concentrates:

Tons of Ore Processed x $\frac{1}{8}$ x 0.10 x 0.000735 = acre
feet of water retained in the concentrates.

This formula is based upon assumptions that one ton of concentrates will be obtained for every eight tons of ore processed, and that the water retained within the concentrates will be 10% by weight. 0.000735 is the amount of water, in acre feet, in a ton of water. The following formula shall be utilized to calculate the annual consumptive use due to evaporation from the tailings pond:

Surface acres x 2 feet = evaporation from tailings pond
(acre feet).

This formula assumes that two feet of water will evaporate from each surface acre of water each year. Pursuant to these formulas, the total consumptive use is estimated to be 4.17 acre feet per year for the proposed 50 ton per day mill operating year round, 24 hours per day. Applicant reserves the right to minimize or prevent evaporation from the tailings ponds in the future.

13. Applicant may increase the capacity of said operations. Water usage shall be calculated pursuant to the formulas in paragraph 12 (E) for any such increases.

14. Diversions made by the Left Hand Ditch Company in a dry year have been approximately 0.74 acre feet per share with an annual depletion to the South Platte River System of approximately 0.52 acre feet per share. Diversions and depletions were about twice as much in years of above average precipitation. Therefore, the Applicant's pro rata share of historic diversions based upon said 20 shares in a dry year is approximately 14.8 acre feet per year with historic stream depletions of 10.4 acre feet per year. In a wet year, Applicant's pro rata share of historic diversions is approximately 32.18 acre feet per year with stream depletions of 22.53 acre feet per year.

15. Applicant intends to divert the water associated with said 20 shares at an alternate point of diversion located on the south bank of Left Hand Creek at a point whence the Southeast corner of Section 2, Township 1 North, Range 72 West, 6th P.M. bears S 34° 45'E, a distance of 1,590 feet, Boulder County.

16. Diversions at this alternate point of diversion will be made at a maximum rate of 50 gpm and only during the historic irrigation season of the Left Hand Ditch Company (April 1 to October 31). Applicant intends to store this water in presently unused underground mine workings owned by Applicant located in Section 12, Township 1 North, Range 72 West, 6th P.M., Boulder County.

17. The Applicant intends to divert water at the alternate point of diversion under one of the two following alternatives:

A. If the underground mine workings referenced in Paragraph 16 are not subject to significant amounts of seepage loss, as anticipated, Applicant intends to divert only the historic stream depletions associated with the said 20 shares. Under this alternative, that amount of water historically diverted but not consumed will be left in the stream. Applicant shall be entitled to divert a minimum of 10.4 acre feet per year. A formula which may be used to determine the total amount of water which Applicant may divert including the 10.4 acre feet minimum in any one year under this alternative is as follows: 0.70 times the number of Left Hand shares owned by Applicant times the amount of water actually diverted per share by the Left Hand Ditch Company. If Applicant elects to use this formula, he will have a duty to see that diversions under the Left Hand Ditch Company system are measured on a monthly basis and reported to the Division Engineer for use in the application of the formula. Since all diversions under this alternative will be historic stream depletions, Applicant may use, reuse, successively use, or dispose of all such water to extinction.

B. If the underground mine workings are subject to significant amounts of seepage loss, applicant intends to divert his full pro rata share of diversions at the alternate point of diversion. Any and all return flows from the milling operations will be adequately treated, and all seepage and return flows will return to Left Hand Creek. Under this alternative, no more than 70% of the amount diverted shall be consumed by Applicant.

18. The lands historically irrigated by said 20 shares will no longer be irrigated by said shares. (See Exhibit A.)

19. Applicant reserves the right to lease any excess water to the Left Hand Ditch Company or third parties until needed for the subject mining operations. Said water will be made available through the Left Hand Ditch Company's present points of diversion.

20. Applicant will install a continuous recording measuring device at the alternate point of diversion and will provide necessary access as required by the Left Hand Ditch Company and the water officials of the State.

21. Applicant will remain a shareholder in the Left Hand Ditch Company and pay all shareholder assessments on his 20 shares in the future.

22. No material injury to vested water rights will occur by virtue of this change of water rights.

CONCLUSIONS OF LAW

23. The Application in this matter was filed with the Water Clerk, Water Division No. 1, pursuant to C.R.S. § 37-92-302, on April 30, 1985.

24. Statements of Opposition were filed by the parties listed in paragraph 3. As is specified in C.R.S. § 37-92-302(1)(c), the time for filing additional statements of opposition has expired.

25. The change of water right proposed by Applicant is one contemplated by law and if administered in accordance with this decree, will permit the diversion of the subject Left Hand Ditch water at Applicant's alternate point of diversion for use in Applicant's mining and milling operations. The change of water right will not injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional right. C.R.S. § 37-92-305.

26. The State Engineer and his agents may lawfully be required to administer this change of water right in the matter set forth herein.

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

27. The change of water right proposed by the Applicant is approved.

28. Each of the findings of fact and conclusions of law are incorporated by reference herein and are to be considered a part of the decretal portion hereof as though set out in full.

29. The type of use of the water associated with Applicant's 20 shares in the Left Hand Ditch Company shall be changed to mining, milling, and all uses incidental thereto including storage, in addition to the historic uses in the Left Hand Ditch Company system.

30. The place of use of the water associated with Applicant's 20 shares in the Left Hand Ditch Company shall be changed to Applicant's mining and milling operations located on patented mining claims owned by Applicant in Sections 6 and 7, Township 1 North, Range 71 West, Section 31, Township 2 North, Range 71 West, and Sections 1, 2, 12 and 13, Township 1 North, Range 71 West, 6th P.M. in Boulder County, subject to paragraph 36 hereof.

31. The point of diversion of the water associated with Applicant's 20 shares in the Left Hand Ditch Company shall include an alternate point of diversion located on the south bank of Left Hand Creek at point whence the Southeast corner of Section 2, Township 1 North, Range 72 West, 6th P.M., bears S 34° 45' E, a distance of 1,590 feet, Boulder County.

32. Applicant shall be entitled to divert his pro rata share of water at this alternate point of diversion at a maximum rate of 50 g.p.m. and only during the historic irrigation season of the Left Hand Ditch Company (April 1 to October 31). Applicant shall be entitled to store this water in presently unused underground mine workings owned by Applicant located in Section 12, Township 1 North, Range 72 West, 6th P.M., Boulder County.

33. The consumptive use associated with Applicant's mining and milling operations shall be calculated in accordance with paragraph 12 of this decree.

34. The Applicant is entitled to divert water at the alternate point of diversion under one of the two following alternatives:

A. If the underground mine workings referenced in Paragraph 16 are not subject to significant amounts of seepage loss, as anticipated, Applicant intends to divert only the historic stream depletions associated with the said 20 shares. Under this alternative, that amount of water historically diverted but not consumed will be left in the stream. Applicant shall be entitled to divert a minimum of 10.4 acre feet per year. A formula which may be used to determine the total amount of water which Applicant may divert including the 10.4 acre feet minimum in any one year under this alternative is as follows: 0.70 times the number of Left Hand shares owned by Applicant times the amount of water actually diverted per share by the Left Hand Ditch Company. If Applicant elects to use this formula, he will have a duty to see that diversions under the Left Hand Ditch Company system are measured on a monthly basis and reported to the Division Engineer for use in the application of the formula. Since all diversions under this alternative will be historic stream depletions, Applicant may use, reuse, successively use, or dispose of all such water to extinction.

B. If the underground mine workings are subject to significant amounts of seepage loss, applicant intends to divert his full pro rata share of diversions at the alternate point of diversion. Any and all return flows from the mining and milling operations will be adequately treated, and all seepage and return flows will return to Left Hand Creek. Under this alternative, no more than 70% of the amount diverted shall be consumed by Applicant.

35. The lands historically irrigated by said twenty shares shall no longer be irrigated by said shares. (See Exhibit A.)


36. Applicant shall be entitled to lease any excess water to the Left Hand Ditch Company or third parties until needed for the subject mining operations. Said water shall be made available through the Left Hand Ditch Company present points of diversions.

37. Applicant shall install a continuous recording measuring device at the alternate point of diversion and shall provide necessary access as required by the Left Hand Ditch Company and the water officials of the State.

38. Applicant shall remain a shareholder in the Left Hand Ditch Company and pay all shareholder assessments on his 20 shares in the future.

39. This matter shall be subject to the continuing jurisdiction of the court on the question of injury to vested water rights of the Objectors in this matter for a period of three years from the date of entry of this decree. If any Objector wishes to invoke this continuing jurisdiction, said Objector shall file a petition with the court with notice to all other parties alleging the specific grounds and extent of the injury claimed.

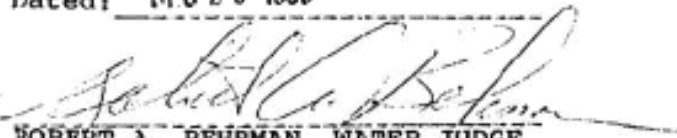
Dated this 2nd day of October, 1985.


RAYMOND S. LIESMAN
Water Referee
Water 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: DEC 26 1985


ROBERT A. BEHRMAN, WATER JUDGE
Water Division No. 1
State of Colorado

APPROVED AS TO FORM AND SUBSTANCE:

VRANESH AND RAISCH

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ATTORNEYS FOR CLAIMANT

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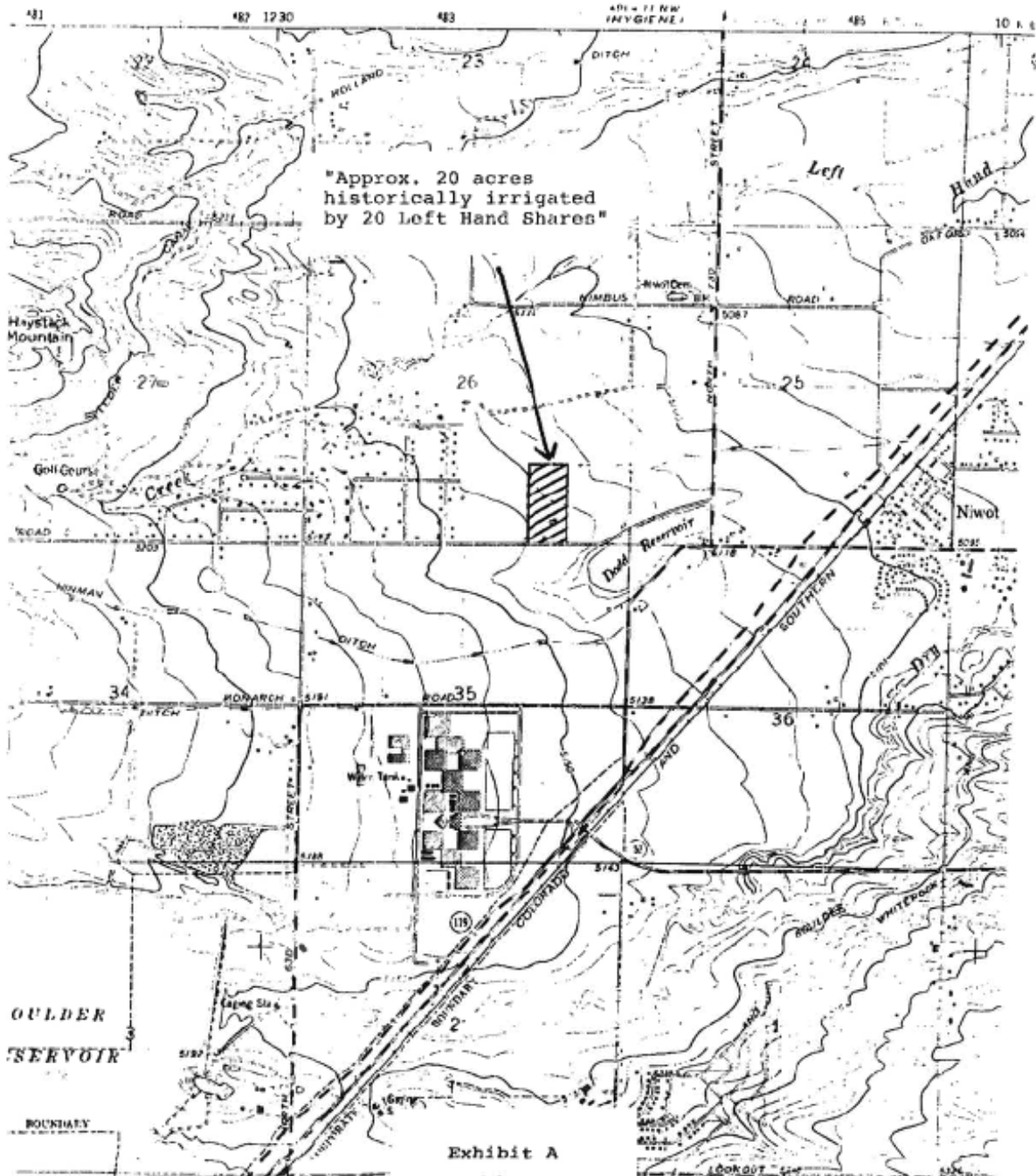
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GRANT, BERNARD and LYONS

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ATTORNEYS FOR ST. VRAIN
AND LEFT HAND WATER
CONSERVANCY DISTRICT



Mark A. Steen

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ATTORNEYS FOR ST. VRAIN
AND LEFT HAND WATER
CONSERVANCY DISTRICT

Mark A. Steen

