

District Court, Water Division No. 1 State of Colorado 901 Ninth Ave. Greeley, CO 80631 (970) 351-7300	FILED Document CO Weld County District Court 19th JD Filing Date: May 11 2006 2:27PM MDT Filing ID: 11262292 Review Clerk: Connie S Koppes
CONCERNING APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION OF GREEN BROTHERS, INC.  IN MORGAN COUNTY	Court Use Only
Jeffrey J. Kahn – No. 6894 Mark D. Detsky – No. 35276 Bernard, Lyons, Gaddis & Kahn, P.C. Attorneys for Applicant Green Brothers, Inc. P.O. Box 978 Longmont, CO 80502-0978 Telephone: (303) 776-9900 Email: <a href="mailto:jkahn@blglaw.com">jkahn@blglaw.com</a> ; <a href="mailto:mdetsky@blglaw.com">mdetsky@blglaw.com</a>	Case No. 2000CW185  Water Division No. 1
<p style="text-align: center;"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT</b></p>	

THIS MATTER, having come as a result of the application for water rights of Green Brothers, Inc., and the Referee having considered the pleadings, the evidence, the stipulations of the parties, and the comments of the Division Engineer as applicable, does find and hereby enter this ruling:

**FINDINGS OF FACT**

**1. Applicant:**

Green Brothers, Inc.  
 P.O. Box 858  
 Fort Morgan, CO 80701  
 970-867-2404

**2. Filing Dates:** The application was filed on October 12, 2000 and amended on July 29, 2004.

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**3. Jurisdiction:** Timely and adequate notice of these proceedings has been given in the manner required by law. The time for filing statements of opposition and for seeking leave to intervene has expired. The Court has jurisdiction *in rem* over the subject matter and over all persons who have standing to appear herein whether or not they have appeared. None of the lands, wells or water rights involved in this application is within the boundaries of any designated ground water basin.

**4. Statements of Opposition:** The application was amended in July 2004. Statements of opposition were timely filed by the Lower South Platte Water Conservancy District; the Central Colorado Water Conservancy District and the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District; Jackson Lake Reservoir and Irrigation Company; Fort Morgan Reservoir and Irrigation Company; and Irrigationists Association, Water District 1. No additional statements of opposition have been filed.

**5. Stipulations:** The following Opposers have stipulated to the entry of this proposed decree:

- a. Fort Morgan Reservoir and Irrigation Company
- b. Jackson Lake Reservoir and Irrigation Company
- c. Irrigationists Association, Water District 1
- d. Central Colorado Water Conservancy District and its Groundwater Management Subdistrict

The Lower South Platte Water Conservancy District withdrew its statement of opposition by the Order of the Court dated March 27, 2006.

**6. Claims for Relief:** Applicant seeks to adjudicate a plan for augmentation for the Green Bros. Gravel Pit MLRD No. M-95-030 ("Gravel Pit") which involves certain reservoir shares and recharge credits in order that the depletions from its mining operation may be augmented.

**7. Structure to be Augmented:**

a. **Name:** Green Bros. No. 2 Gravel Pit MLRD No. M-95-030 ("Green Bros. No. 2 Gravel Pit").

b. **Legal Description:** W½ of the SE¼ of Section 33, Township 4 North, Range 57 West, of the 6<sup>th</sup> P.M., Morgan County, Colorado.

c. **Well Permit:** A Gravel Pit Well Application for Green Bros. No 2 Gravel Pit was received by the Division of Water Resources on October 12, 2000 and is awaiting augmentation approval in order to be approved.

**8. Water Rights to be Used for Augmentation:**

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a. **Fort Morgan Reservoir and Irrigation Company:** By Agreement dated July 12, 2004 and recorded in the real property records of Morgan County, Colorado at reception number 822016, Applicant may exchange the yield of its Jackson Lake share for up to 6.7 acre-feet per year of recharge credits obtained by Fort Morgan Reservoir and Irrigation Company ("Fort Morgan") pursuant to the decree entered in Case No. W-2692 on April 22, 1995, as amended and modified by the District Court for Water Division No. 1. Applicant will dedicate the recharge credits from Fort Morgan to replace the out-of-priority depletions from its sand and gravel operation.

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b. **Jackson Lake:** Applicant owns one share, certificate no. 1462, of Jackson Lake Reservoir and Irrigation Company ("Jackson Lake"). Decrees were entered for the Jackson Lake Reservoir and Irrigation Company in Civil Action No. 2142 and Civil Action No. 16704 for the Jackson Lake Reservoir. When necessary, Applicant will dedicate augmentation releases from Jackson Reservoir to the extent that recharge credits from Fort Morgan are not available to replace the out-of-priority depletions.

c. **Right to add additional sources.** The Applicant may acquire additional sources of augmentation water and amend this decree to so include in this paragraph, following the filing and publication of an application to amend. Additional sources of water identified in an application to amend may be used to replace depletions beyond those allowed by this decree.

**9. Description of Operation and Plan for Augmentation:** The Applicant intends to operate a sand and gravel mine in Morgan County, near the South Platte River. The operation of the mine will result in the exposure of ground water to the atmosphere from the gravel pond created by the gravel mining and the removal of mine material holding ground water. Applicant expects the operation of the Gravel Pit will result in the following depletions shown on a monthly basis (year shown is that of highest depletions):

Table 3.4-1  
Summary of Green Bros., Inc. 00CW185

Year	2014												Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Net Evaporation after Precipitation (in)	2.4	1.6	2.4	3.6	4.1	5.6	5.7	5.7	4.1	3.0	1.7	1.4	40.3
Area of Exposed Groundwater	4.93	5	5.05	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	61
Area-feet of evaporation from site	0.6	0.7	1.0	1.7	1.8	2.4	2.4	2.3	1.7	1.3	0.7	0.6	17.0
Material Removed (tons)	2083	2083	2083	2083	0	0	0	0	0	0	0	0	8322
Water Loss from Material Removal (a-f)	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Vegetation Credit over Effective Precipitation (in)	0.6	0.0	0.0	1.4	2.6	5.3	6.7	5.6	3.1	1.6	0.0	0.0	28.2
Area of Vegetation Removed (acres)	4.93	5	5.05	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	61
Net Vegetation Credit (a-f)	0.0	0.0	0.0	0.6	1.1	2.2	2.8	2.4	1.3	0.7	0.0	0.0	11.2
Depletion to Groundwater (a-f)	0.63	0.73	1.04	1.03	0.65	0.14	0.00	0.00	0.41	0.60	0.74	0.58	6.8
Logged Depletion to River (a-f)	-0.19	-0.63	-0.87	-0.9	-0.74	-0.38	-0.19	-0.12	-0.3	-0.49	-0.61	-0.58	-6.4
Credit from FMRIC (a-f)	0.59	0.43	0.87	0.9	0.74	0.38	0.19	0.12	0.3	0.49	0.61	0.58	6.4
Net Affect (a-f)	0	0	0	0	0	0	0	0	0	0	0	0	0

At full development, the Gravel Pit will result in the depletions shown above. The operation of the Gravel Pit will be phased in and will be limited to the exposed water surface of 5.1 acres. If this decree is amended pursuant to ¶18(c), above, the Applicant will be entitled to an increase in the surface acreage of the mine corresponding to the amount of additional available augmentation water to replace additional depletions. The Applicant will report depletions on a monthly basis and replace those depletions that are out-of-priority with the recharge credits obtained from the Fort Morgan (FMRIC in the table above) as decreed in Case No. W-2692, as amended.

**10. Use of Jackson Lake share as Augmentation Source.** If and to the extent recharge credits are not available from Fort Morgan in a particular year, Applicant shall use water attributed to its one share of Jackson Lake to replace out-of-priority depletions on a monthly basis. Before the Jackson Lake share is first used, the procedure for use of the Jackson Lake share shall be approved by Fort Morgan, Jackson Lake and the Water Commissioner. If the one share of Jackson Lake is used as an augmentation source, Applicant shall receive augmentation credit for 42% of the water released and measured at the outlet of Jackson Lake. This is the same percentage of credit obtained by Fort Morgan in Case No. W-2692. This credit percentage shall not bind any applicant or objector in future applications involving this or any other share(s) of Jackson Lake.

**11. Replacement.** Applicant shall be under no obligation to replace depletions when there is no call on the South Platte downstream of the location of the Green Bros. No. 2 Gravel Pit or when the call on the South Platte River downstream of the location of the Green Bros. No. 2 Gravel Pit is junior to October 12, 2000, the filing date of this plan for augmentation. For purposes of

this matter only and not to be construed as precedent in subsequent matters, the term "call" as used in this paragraph means a demand, recorded or unrecorded, by a senior priority for the curtailment of diversions by junior, upstream priorities in order that water be made available to the calling senior to satisfy the need for water of its senior priorities.

**12. Finding of No Injury:** Pursuant to the provisions of § 37-92-305(8), the Referee has considered the depletions from Applicant's use and proposed use of water, in quantity and in time, the amount and timing of the augmentation water which will be provided by the Applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right. The Referee finds that so long as the terms and conditions specified herein are imposed, the plan is sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water and the Court finds that the plan for augmentation may be operated as described herein without material injury to the vested water rights of others.

### **CONCLUSIONS OF LAW**

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

**14. Filing:** The application herein was filed with the Water Clerk in accordance with the provisions of Section 37-92-102(1)(a), C.R.S.

**15. Notice:** Timely and adequate notice of this filing and of the contents of the application 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.

**16. No Injury:** The plan for augmentation described herein is contemplated by law and, if operated and administered in accordance with the Findings of Fact and Decree herein, will not injuriously affect any owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

### **JUDGMENT AND DECREE**

17. **Incorporation by Reference:** The Findings of Fact and Conclusions of Law enumerated above are incorporated herein as if set out in full.

18. **Approval of Plan for Augmentation:** The plan for augmentation as described in the preceding Findings of Fact is hereby approved.

19. **Well Permit:** Within 30 days of being supplied with a copy of this decree, the State Engineer shall issue a well permit for the Green Bros. No. 2 Gravel Pit consistent with terms and conditions of this decree.

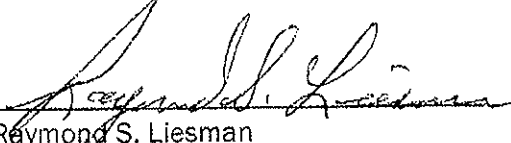
20. **Accounting:** The Applicant is required to maintain a proper accounting of depletions and augmentation, and provide such accounting to the Division Engineer on at least an annual basis or as necessary for the proper administration of this plan to prevent injury to other water rights. Calculation of depletions from exposure of water to the atmosphere and the timing of those depletions to the South Platte River will be performed in accordance with the procedures used in Applicant's Engineering Report for the Approval of a Plan for Augmentation in Case No. 00CW185, dated November 2005.

21. **Retained jurisdiction:** Pursuant to 37-92-304(6), C.R.S., the approval of this application as provided herein shall be subject to reconsideration by the Water Judge on the question of injury to the vested rights of others upon the filing of a petition by any of the parties appearing in this case for a period of three years from the date this plan for augmentation is first operated and accounting submitted. The petition shall set forth with particularity the specific injury alleged; together with proposed decretal language that the petitioner contends would remedy the alleged injury that is the basis for the petition. The party lodging the petition shall have the burden of going forward to establish the prima facie injury alleged in the petition. If the Court finds those facts to be established, Applicant shall bear the burden of proving (a) that any modification sought by Applicant will avoid injury to other appropriators, or (b) that any modification sought by Objectors is not required to avoid injury to other appropriators, or (c) that any term or condition proposed by Applicant in response to any Objector's petition avoids injury to other appropriators.

22. **No precedent:** The computation of the phreatophyte credit taken by the Applicant in the depletion calculations for the augmentation plan decreed herein are unique to the facts and circumstances of this case and shall not serve as precedent in future cases.

23. **Filing with State and Division Engineers:** A copy of this judgment and decree shall be filed with the State Engineer and the Division Engineer.

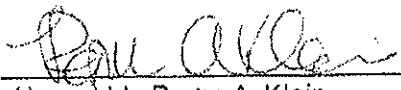
BY THE REFEREE

  
Raymond S. Liesman  
Water Referee  
Water Division No. 1

THE COURT FINDS THAT NO PROTEST HAS BEEN FILED IN THIS MATTER. THE COURT  
HEREBY CONFIRMS THE FOREGOING RULING OF THE REFEREE, AND ENTERS THE SAME  
AS THE JUDGMENT AND DECREE OF THIS COURT.

DATED: JUN 02 2006

BY THE COURT:

  
Honorable Roger A. Klein  
Water Judge  
Water Division No. 1  
State of Colorado