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COLORADO WATER RIGHTS APPLICATIONS

WATER COURT DIVISION 1

APPLICATION FROM TOWN OF GEORGETOWN FOR A CHANGE OF USE OF WATER RIGHT, AND A PLAN FOR AUGMENTATION INCLUDING EXCHANGE, IN CLEAR CREEK COUNTY. Case No. 98CW439 (Water Division 1, Dec. 1998). Applicant: Town of Georgetown (Atty. Cynthia F. Covell)

1. Application

The Town of Georgetown's ("Applicant") water supply has historically come from the Georgetown Ditch and Reservoir, an 1866 water right that is subject to call during the irrigation season. Georgetown seeks a consistent and reliable water supply for its customers. Applicant plans to accomplish this by contracting to purchase 1½ shares of Farmers Highline Canal and Reservoir Company, and change the use from irrigation to irrigation, municipal, augmentation, replacement, and exchange.

Georgetown also seeks to use depletion credits from its Farmers Highline shares to augment Georgetown's out of priority municipal depletions, and to divert those depletion credits by exchange to Georgetown Municipal Intake, Georgetown Reservoir, and Georgetown Lake. The Municipal Intake is allocated 1.14 c.f.s. from October 1st to May 1st, and 3.0 c.f.s. from May 1st to October 1st, pursuant to the 1866 Georgetown Ditch water right, decreed in Case No. CA41340, on October 9, 1914. Georgetown Reservoir, included in the 1866 decree, has a capacity of .286 acre-feet. Georgetown Lake is an on-channel reservoir, the subject of a companion application by Georgetown for a junior priority storage right.

The Georgetown Farmers Highline shares were historically used to irrigate 12.7 acres of land in Jefferson County, Colorado, the "Wardle Property." Since 1970 the water has been consistently used to irrigate the Wardle Property for growing hay. Ralston Creek received irrigation return flows from the Wardle Property. The Wardle Property has been permanently removed from irrigation by the Georgetown Farmers Highline shares.

Applicant proposes to divert water from its 1866 Georgetown Ditch and Reservoir right for municipal uses when such water is legally and physically available. Georgetown seeks to augment its out of priority municipal depletions by using depletion credits available from its Farmers Highline shares. Releases of water stored in Georgetown Lake may also be used to augment out of priority municipal depletions, if that right is decreed.

When the Farmers Highline Canal is flowing, Georgetown's shares will be diverted in priority at the Farmers Highline headgate in Golden, Colorado, and released into Clear Creek from an augmentation station located above Ralston Creek. These releases comply with depletion factors computed by Georgetown's water engineer. Remaining depletion credits may be released directly into Clear Creek to augment out of priority depletions from the Georgetown municipal water system, or as necessary from waters stored in Georgetown Lake or Reservoir. Applicant will prepare and submit the necessary records to account for its use of water and depletion credits from the Farmers Highline shares.

Georgetown's proposed exchange of depletion credits from its Farmers Highline shares to Georgetown Lake, the municipal intake, and Georgetown Reservoir, will have an appropriation date of December 21, 1998. Notably, this priority is eleven days junior to an application filed by Golden, which seeks an appropriation on Clear Creek for recreational boating purposes. The exchange reach is from the Farmers Highline Canal headgate up Clear Creek to Georgetown Lake and up South Clear Creek to Georgetown municipal intake, and Georgetown Reservoir. The exchange will be operated only in priority and is not to exceed 1 c.f.s. The maximum amount of water from the Georgetown Farmers Highline shares used or stored by exchange will not exceed 25 ½ acre-feet annually.

2. Opposition

Twelve statements of opposition were filed. Objecting are: The Farmers Reservoir and Irrigation Company, City of Thornton, City of Westminster, City of Golden, Farmers' Highline Canal and Reservoir Company, City of Arvada, The Agricultural Ditch and Reservoir Company, The Golden Canal and Reservoir Company, The Consolidated Mutual Water Company, Harold D. Simpson and Richard L. Stenzel, Public Service Company of Colorado, City of Northglenn, and Coors Brewing Company.

Objectors claim the proposed change in use and plan for augmentation may adversely affect the vested rights of water users in Clear Creek, Farmers Highline Canal, and the South Platte River. They seek to hold Georgetown to a standard of strict proof to show no injury to these rights, and that the proposed use and plan for augmentation will not expand the historic use of the water rights at issue, nor alter the priority of those rights.

Objectors request that Georgetown be held to a showing of strict proof that it is capable of fulfilling the requirements of the "can and will" doctrine, and that applicants are able to show that the water rights described have not been wholly or partially abandoned. They also request that Georgetown show by what method its proposed change in use and plan for augmentation will be administered by the State Engineer.

Additional objections stem from the lack of specificity in George-

town's application. The opposition asks that if the Applicant is claiming to use any municipal effluent return flows for augmentation or exchange, appropriate wastewater treatment standards and accounting procedures be specified to prevent injury or loss of water quality to downstream users. Resulting injury could change the regimen of Clear Creek administration, causing calls at times when there have historically been none. They request sufficient conditions be imposed to prevent such occurrences.

Chip Cutler

APPLICATION FOR SURFACE WATER RIGHTS. Case No. 98CW448 (Water Division 1, December 10, 1998) Applicant: City of Golden (Atty. Porzak Browning & Johnson).

1. Application

The City of Golden ("Golden" or "Applicant") seeks confirmation of absolute water rights on Clear Creek for eight separate existing structures which constitute the City of Golden White Water Course ("Course"); approval of additional conditional water rights for the same eight structures during the months of May, June, July; and approval of conditional water rights for ten additional structures which Golden plans to construct to extend the course.

The existing Course is located in the NW1/4 of the NE1/4 of section 33, T.3 S., R. 70 W. of the 6th P.M., Jefferson County, Colorado. The structures within the Course begin with a rock deflector designed to control, concentrate, and direct stream flow for the beneficial uses of boating, piscatorial, and general recreation, and include seven dams following the rock deflector.

The extension of the Course for which Golden seeks conditional water rights will consist of approximately ten additional dams designed to control, concentrate, and direct the stream flow for the beneficial uses of boating; piscatorial; and general recreation. The extension will be distributed within the channel of Clear Creek immediately below Structure 8 (the last dam in the existing Course), extending the Course approximately 2,750 feet within the channel, terminating at a point in the SW1/4 of the SW1/4 of section 27, T. 3 S., R.70 W of the 6th P.M., approximately 1,300 feet north of the south section line and 800 feet east of the west section line, in Jefferson County.

The Applicant seeks confirmation of absolute water rights initiated November 15, 1996, by the formation of intent to appropriate coupled with actions that manifested such intent sufficient to put third parties on notice, including, but not limited to, the City of Golden's approval of the Course and appropriation of money for the construction of the Course structures. The Applicant claims absolute water rights in the following amounts as measured in cubic feet per second ("cfs") at the Clear Creek at Golden U.S.G.S. stream gauge: January – 101; February