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COLORADO WATER COURT REPORTS

WATER COURT DIVISION 1

APPLICATION FOR A CHANGE IN WATER RIGHTS INCLUDING APPROPRIATIVE RIGHTS OF SUBSTITUTION AND EXCHANGE IN PARK, CLEAR CREEK, LARIMER, WELD, JEFFERSON, GILPIN, AND ADAMS COUNTIES. Case No. 96CW1117 (Water Division 1, Dec. 31, 1996) Co-Applicants: Coors Brewing Company (Atty. Jack F. Ross); City of Thornton (Atty. Michael D. White and David C. Taussig); City of Golden (Atty. Glen E. Porzak).

1. Historical Setting

The City of Thornton and Coors Brewing Company, entered into an agreement dated May 23, 1988. The primary purpose of the agreement between the two parties was for the City of Thornton to deliver 2,500 af of water to Coors beginning in the year 2000 and perpetually thereafter. The parties modified the original contract on December 23, 1996. The modification provides for the elimination of certain risks to Coors consisting mostly of the assumption by the City of Thornton to replace all return flows otherwise lost to the Clear Creek and South Platte system. Coors, as consideration for the modification, agreed to reduce the 2,500 af delivery to 2,100 af and provide the City of Thornton with 600 af of fully consumable water.

On the same date as the original Coors-Thornton agreement, Coors Brewing Company entered into an agreement with the City of Golden. The primary purpose of this agreement was to grant the City of Golden an option for the right to receive up to 900 af of the Thornton delivery. The City of Golden, upon exercising the option, would have the right to first use of the delivery with the right to reuse, successive use, and disposition of such water retained by Coors or Thornton depending upon payment of return flow obligations.

2. First Claim: Change of Thornton Water Rights

Originally, the proposed water to be delivered by the City of Thornton to Coors and to Golden was decreed for irrigation, but the use was changed in three previous court proceedings. Thus, City of Thornton, City of Golden, and Coors Brewing Company ("Co-Applicants") seek approval to permit the City of Thornton to exercise the changed water rights for different uses as originally decreed and at different locations from the original locations. The specified water rights are as follows:

(a) Water Rights Decreed to Farmers High Line Canal ("FHLC"): Approximately 15.5% of the water rights decreed to FHLC as modified in Case No. 87CW334.

(b) Water Rights Decreed to the Church Ditch: Approximately 7% of the water rights decreed to Church ditch as modified in Case No. 89CW132.

(c) Water Rights Decreed to Farmers Reservoir and Irrigation Company ("FRICO"): Approximately 13.73% of the water decreed to the Croke Canal and Standley Lake of the Farmers Reservoir and Irrigation Company as modified in Case No. 89CW132.

3. Second Claim: Conditional Appropriative Right for FRICO Bookover Exchange

The City of Thornton also seeks judicial approval of the book-over exchanges in Standley Lake under terms and conditions previously approved by FRICO April 2, 1987. The City of Thornton seeks to accomplish this by having the rate of flow which normally would be diverted into the Croke canal and Standley Lake reduced to be made available to Coors or the City of Golden. At times when the rate of flow exceeds the City of Thornton's interest, the City shall exchange other water in its account in Standley Lake to mitigate the reduction.

4. Third Claim: Appropriative Right of Exchange on Clear Creek

The appropriative rights of exchange for which judicial approval is sought will be used at such times as Coors chooses not to take delivery from the City of Thornton. The third claim is predicated upon the proposed changes to the water rights in the first claim for relief.

5. Fourth Claim: Use of Coors' Fully Consumable Water by Thornton

The Applicants seek to facilitate the modified agreement between Coors and the City of Thornton. The Applicants seek judicial confirmation of the right to use the natural streams and watercourses of the State of Colorado to facilitate the delivery of the 600 af of fully consumable water from Coors to the City of Thornton.

6. The Fifth Claim: Appropriative Rights of Exchange and Changes (Golden)

The City of Golden seeks to change the uses and places of use decreed by the 900 af option to include municipal uses within the City of Golden.

7. Opposition

Statements of Opposition were filed by the following: Harold D. Simpson (State Engineer) and Richard L. Stenzel (Division 1 Engineer); Farmers Highline Canal and Reservoir Company; Lower Clear Creek Ditch Company; Centennial Water and Sanitation District; City of Aurora; City of Black Hawk; The Agricultural Ditch and Reservoir

Company and The Golden Canal and Reservoir Company; Public Service Company of Colorado; City of Northglenn and Church Ditch Company; Colorado Water Conservation Board; City of Englewood; The Water Supply and Storage Company and The Jackson Ditch Company; The Consolidated Mutual Water Company; City of Arvada; The Colorado Agricultural Ditch Company; and, The Central Colorado Water Conservancy District and the Ground Water Management Sub-district of the Central Colorado Water Conservancy District.

Generally, the opposition claims that the Co-Applicants' proposed action will either injure their decreed direct flow and/or will result in the depletion of return flows to Clear Creek, Ralston Creek, and/or the South Platte System. Several of the opposing parties claim that the Co-Applicants' action will either modify existing contractual obligations with respect to diversion facilities, or will expand such obligations, thereby increasing the costs of such facilities. The last general complaint is that the Co-Applicants' proposed action would harm historical flows or water rights held to preserve the natural environment.

The case is set for ruling before the referee on March 3, 1998.

John McCall