



CITY COUNCIL

WORKSHOP AND REGULAR MEETING AGENDA

March 23, 2022
6:00 PM
202 Railroad Avenue, Rifle, CO

6:00 PM - Special Meeting

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Executive Session**
 - 4.a. Executive Session** for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding the City's water rights.
- 5. Adjournment**



Agenda Item #4.a.

Agenda Item Name:

Executive Session for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding the City's water rights.

Presenter:

Jim Neu

Item Description:

Conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding the City's water rights.

Recommended Action:

N/A

Fiscal Impact:

N/A

Operational Impact:

N/A

Prior Board Motions:

N/A

Background Information:

See attached report

Executive Summary:

See attached report

Notification Requirements:

N/A

Prepared By:

Misty Williams, City Clerk

Attachments:

1. 20220323-Water Rights Report

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March 17, 2022

Mayor Ed Green
City Council
City of Rifle
P.O. Box 1908
Rifle, CO 81650

Re: Comprehensive Water Rights Report for City of Rifle

Dear Mayor Green and City Council:

Shortly after the turn of the last century, the City of Rifle began providing municipal water service to its residents and businesses. The original water service for the City was made possible when the City acquired an interest in the Starke Ditch which diverts off of Beaver Creek on the south side of the Colorado River. After a prolonged court fight, the City won the right to divert the Starke Ditch higher up on Beaver Creek at an elevation that would allow for gravity flow to the Taughenbaugh Mesa water treatment plant. From there treated water was piped to City users. Over time, the Beaver Creek water supply was unable to meet the City's water needs. Eventually a Colorado River water supply was acquired by the City with treatment at the Graham Mesa plant. In order to meet the City's current water needs and to plan for future growth, the City constructed a new state of the art water treatment plant in 2017 with the Colorado River being its exclusive source of supply. The Taughenbaugh Mesa and Graham Mesa water treatment plants have been decommissioned.

This report discusses the water rights that provide the legal water supply for the City of Rifle. The report also articulates the growth that can be facilitated with the City's existing water rights and explains certain challenges that the City faces in maintaining its legal water supply.

This report (including exhibits) and the Water Master Plan prepared by Schmueser Gordon Meyer dated December 2006 (on file with the City), constitutes an update to the Water Supply Plan adopted by the City in 2009 and updated in 2014 in conformance with House Bill 08-1141 (C.R.S. § 29-20-304) and C.R.S. § 30-28-133(3)(c) and (d).

SCOPE OF EVALUATION AND REPORT LIMITATIONS

- A.** This report addresses the legal sufficiency and reliability of the City's water rights as the same are associated with existing water diversion and supply structures.
- B.** This report does not constitute an opinion regarding title to the City's water rights. However, in the course of our review, we did not discover any facts or circumstances which would give rise to title concerns. An evaluation of the title to water rights is recommended prior to the transfer of any new water rights to the City.
- C.** We are familiar with the City's water diversion facilities, but no recent physical inspection of the facilities was conducted for this report.
- D.** We met and discussed the City's diversion facilities and current water rights and related issues discussed in this report with Michael Erion of Resource Engineering (the City's water resource engineer).
- E.** We have not investigated any issues relating to water quality or the potential impact of water quality laws and regulations.
- F.** Use of water in the Colorado River in the area of Rifle continues to be subject to potential restrictions due to the Endangered Species Act associated with the native Colorado River endangered fish species. Colorado River water uses and Endangered Species Act compliance is addressed in a river-wide "Recovery Program" which has both enacted programs to benefit the endangered fish and established limits on future consumptive uses of Colorado River water. "Critical habitat" has been designated by the U.S. Fish and Wildlife Service in a reach of the Colorado River which extends from the Utah state line upstream to the Highway 13 bridge over the Colorado River. The City's Colorado River Intake diversion structure (which is used to supply the new water treatment plant) is located upstream from that "critical habitat." This report assumes that the Recovery Program's objectives can be met without any further restrictions on the use of water from the Colorado River.
- G.** The evaluation of when water rights are expected to be in priority is based upon historical streamflows and water diversion records. Fluctuations in precipitation experienced within the Colorado River Basin could change the evaluation and modify the conclusions about the amount of growth that can be sustained with the City's existing water rights and contract augmentation water supplies.
- H.** This report is intended for use by the City of Rifle only, and not for the use or reliance of any third party.

INTRODUCTION TO COLORADO WATER LAW

Pursuant to the Colorado Constitution, the people of the State own all of the water in Colorado. With certain exceptions which are not relevant to the City's circumstances, mere land ownership does not give the landowner any right to water under or through that property. Instead, the Colorado Constitution provides that water users can acquire a right to divert water for beneficial use. This is referred to as a "water right."

Colorado adheres to the "doctrine of prior appropriation." Under this legal doctrine, water rights are created by intent to place water to beneficial use, action to implement that intent (usually the location or construction of diversion facilities or the filing of a water court application), and actual beneficial use of water. For a water right to be enforceable against other water rights, it must be decreed by the water court.

The priority of a water right is extremely important. In times of scarcity, Colorado allocates water based upon the rule "first in time, first in right." That means that the older a water right is, it has priority to receive water when more junior water rights are "called out." The Colorado River and the side tributaries that flow through Rifle and the surrounding area are "over appropriated." This means that at certain times of year there is more demand for water in a creek or river than there is available water supply. In such situations, more senior water rights place a "call" and junior water rights are curtailed. Water supplies are particularly limited in the months of July, August and September when mountain snowpack has melted and agricultural irrigation demands are high.

Colorado adheres to the doctrine of maximum utilization of water – so that limited supplies can meet the water needs of the most people. As part of creating flexibility in allocating limited water resources, the legislature created the legal concept called an augmentation plan. An augmentation plan allows certain junior water rights to divert out-of-priority so long as replacement water supplies are made available to prevent injury to senior water rights. There are two primary sources of replacement (or augmentation) water supplies: (a) water stored in a reservoir that is released to offset out-of-priority diversions from a junior water right and (b) consumptive use credits that relate to "drying up" historically irrigated lands and transferring the consumptive use associated with the irrigation to a new use (such as municipal use). The City of Rifle has the ability to utilize both reservoir water supplies and consumptive use credits to allow its junior water rights to divert in times of shortage.

Water rights are either "absolute" or "conditional." An absolute water right is a water right that has been applied to beneficial use which has subsequently been confirmed by the water court. Once a water right has been made absolute, no further water court action is necessary to keep the water right viable so long as it continues to be applied to beneficial use consistent with the terms of its original decree. A conditional water right represents the existence of an intent to beneficially use water at some point in the future that has been adjudicated by the water court. For conditional water rights to remain viable after they are initially decreed, the owner must apply to the water court every six years and demonstrate "diligence" – that is, continued actions and intent to apply the water to the decreed beneficial use within a reasonable period of time. Findings of diligence allow the conditional

right to retain its original priority date and gives the owner an additional six years to implement the conditional water right.

RIFLE'S MUNICIPAL WATER RIGHTS

The City of Rifle owns several water rights that are used to provide water service to the City's customers. This report breaks the City's water rights into three categories. The first category is those water rights that are diverted into Rifle's treatment plant for use in the City's treated water system. The second category is those water rights that are used outside of the City's treated water system – primarily for raw water irrigation purposes. The third category is those water rights used at the Rifle Mountain Park.

I. Water Rights Used in City's Treated Water System

The City owns several valuable water rights that allow for diversions of water into the Rifle treated water system. The City's primary water rights are associated with the Colorado River Intake. The Colorado River Intake currently provides water to the City's water treatment plant. The City no longer diverts water from Beaver Creek for use in the Taughenbaugh Mesa water treatment plant. The City plans to file an application with the Water Court to allow it to divert its Beaver Creek water rights at the Colorado River Intake.

A. Colorado River Intake.

The City's major diversion structure is the Colorado River Intake facility located on the north side of the River east of Highway 13. This facility was brought online in the early 2000s and it utilizes a former gravel pit pond to provide a water reservoir to balance out diversion needs. The intake has an actual current pumping diversion capacity of 8.13 c.f.s., which provides up to 16.1 AF of raw water per day. The water diverted at the Intake is delivered to and treated at the City's Water Treatment Plant. The maximum finished drinking water output is approximately 4.4 MGD or 13.1 AF per day. The City plans to install a fourth pump at the Colorado River Intake and increase the pumping capacity to 16.6 c.f.s., which would allow the Treatment Plant to produce 6 to 8 MGD of finished drinking water in the future.

The water rights tabulated below are divertible at the Colorado River Intake.

Structure	Source	Case Number	Diligence Decrees	Adj. Date	Appro. Date	Amount	Use
Excelsior Ditch	Colorado River	CA103 CA 1071 CA 2601 W-3389 04CW193	N/A	05/11/1889	11/05/1883	1.6 c.f.s. absolute	municipal

Structure	Source	Case Number	Diligence Decrees	Adj. Date	Appro. Date	Amount	Use
Rifle Pipeline	Colorado River	CA 3322 CA 3344 W-3388 04CW193	N/A	08/15/1940	10/01/1939	1.0 c.f.s. absolute	municipal
Rifle Pipeline	Colorado River	CA 4004 W-3388 04CW193	N/A	09/05/1952	02/05/1949	7.5 c.f.s. absolute	municipal
Rifle Pipeline	Colorado River	CA 4004 W-3388 04CW193	W-728 W-728-77 80CW203 84CW156 88CW194 94CW293 01CW104 07CW193 14CW3056 20CW3125	09/05/1952	02/05/1949	7.5 c.f.s. conditional	municipal
Starke Ditch 1 st Enlarge	Colorado River	CA 4954 81CW193 04CW193	N/A	07/09/1965	06/01/1936	1.0 c.f.s. absolute	municipal

Colo. River Intake 1 st Enlarge	Colorado River	81CW437 04CW193	86CW96 90CW92 96CW228 03CW006 10CW114 04CW193 17CW3028	12/31/1982	12/16/1981	23.1 c.f.s. conditional	municipal *
Rifle Pond	Colorado River	04CW193 14CW3015		12/31/2004	12/18/2002	26.3 acre feet (annual) absolute	Evaporation recreation fishery

The water rights that divert at the Colorado River Intake are currently capable of diverting

* The Decree in CA 4004, for the more senior Rifle Pipeline Right with a 1949 priority date for 7.5 c.f.s. absolute, lists the decreed municipal uses as “domestic purposes, fire protection and general municipal purposes.” The Decree in 81CW437, for the more junior Colorado River Intake 1st Enlargement with a 1981 priority date for 23.1 c.f.s. conditional, lists the decreed municipal uses as “all municipal uses, including irrigation, domestic, manufacturing, commercial, industrial, mechanical, fire protection, power generation, fish and wildlife propagation, recreation, [and] storage for system balance.” The Decree in 04CW193 did not modify the uses for either right.

without implementing the City's augmentation plan. The Excelsior Ditch is one of the water rights owned by the City that is senior to the Colorado River Compact. The Compact, which was signed in 1922, is an interstate agreement that allocated unappropriated water from the Colorado River system among each of the participating states: the Upper Basin states of Colorado, New Mexico, Utah and Wyoming; and the Lower Basin states of Arizona, California and Nevada. Under the Compact, both the Upper Basin states and the Lower Basin states have the right of beneficial use of 7.5 million acre feet of water from the Colorado River and its tributaries. The Compact became effective upon approval by the United States Congress in 1929 in the Boulder Canyon Project Act, 43 U.S.C. § 617-1, and has the force and effect of an act of Congress. The Colorado River Compact places the risk of insufficient water to meet the rights of use on the Upper Basin states. Thus, in the event that over a rolling 10 year period an average of 7.5 million acre feet of water has not been made available to the Lower Basin, the prospect of a "compact call" against the Upper Basin occurs (a situation where water uses in the Upper Basin would be curtailed so that water could flow to the Lower Basin states). The Compact's implementing documents exempt from a compact call a state's water rights that were "perfected" (beneficially used) prior to November 24, 1922, the date that the Colorado River Compact was signed. Thus, in the event of a compact call, the City's diversions under the Excelsior Ditch would continue to occur without augmentation.

In addition to curtailment of water rights by a compact call, there are times of the year that portions of the City's water rights are junior to other senior Colorado River water rights and therefore subject to being called out. Fortunately, after the Excelsior Ditch, the next two water rights that the City relies on at the Colorado River Intake – the Rifle Pipeline water rights adjudicated in 1940 and 1952 – are protected by the Green Mountain Reservoir Historic User Pool. The U.S. Bureau of Reclamation's "Historical Users' Pool," or "HUP," is a portion of the 100,000 acre-foot "power pool," or "West Slope pool," that is stored in Green Mountain Reservoir. Green Mountain Reservoir is located on the Blue River, an upstream tributary of the Colorado River. Green Mountain Reservoir was constructed by the Federal government as part of the Colorado-Big Thompson Project (which diverts water from the Colorado River basin to Northeastern Colorado. The HUP was established in "Senate Document 80" as a means of compensating West Slope water users for Colorado River water supplies diverted to the Front Range. The HUP operates by releasing water from Green Mountain Reservoir to supply certain West Slope water uses and prevent them from being called out. This water supply is free to the City. To qualify, a water right must have been placed to beneficial use by 1977. For qualifying water rights, the Bureau of Reclamation releases water from Green Mountain (as long as it is available) and the Division of Water Resources does not enforce a call against the benefitted water rights. There is a risk that the water supply available under the HUP might not be available in its full amount under changed hydrological scenarios or if the Green Mountain Reservoir dam was constrained (e.g., if the dam is being rebuilt). In that circumstance, the City would need to utilize augmentation supplies from other sources at times that the Town's Rifle Pipeline water rights were not in priority.

The City of Rifle also owns several water rights on the Colorado River that have not yet been placed to beneficial use (therefore they remain conditional) that can facilitate future growth. These water rights include the Rifle Pipeline (decreed for 7.5 c.f.s. conditional) and the Colorado River Intake 1st Enlargement (decreed for 23.1 c.f.s. conditional). Between these two conditional water

rights the City possesses substantial additional ability to divert water from the Colorado River for municipal water purposes. Both of these water rights are junior to calling rights on the Colorado River and, under their own priority, would not provide a full summer water supply. Both water rights qualify to be covered under the City's augmentation plan discussed below.

B. Beaver Creek System.

The City also owns water rights associated with facilities that previously diverted water from Beaver Creek and treated water at the Taughenbaugh Mesa treatment plant. These rights are listed in the table below.

Structure	Source	Case Number	Adj. Date	Appro. Date	Amount(s)	Use
Starke Ditch	Beaver Creek	CA 89 CA 1205 CA 3050 79CW91	05/05/188 8	03/30/188 3	1.0 c.f.s. absolute	municipal
Starke Ditch 1 st Enlarge Pipeline	Beaver Creek	CA 4954 81CW17 3	07/09/196 5	06/01/193 6	1.0 c.f.s. absolute	municipal

One of the reasons the City constructed the new water treatment plant was the physical water supply limitation on Beaver Creek and the limited amount of water that could be treated at the Taughenbaugh Mesa plant. This stream consistently lacks sufficient water to meet water demands throughout much of the year. While the City's original Starke Ditch water right is relatively senior (and senior to the Colorado River Compact), there often is not sufficient water supply in the creek to allow the City to divert the full decreed amount of water. The City is working on an application to change the point of diversion for the senior Beaver Creek right from the Starke Ditch to the Colorado River intake so that the water can be used in the City's new water treatment plant. However, diversions at the new point of diversion will be limited to the amount of water that would have been legally and physically available at the original point of diversion (the Starke Ditch). Therefore, the City should maintain ownership of the measuring device at the existing point of diversion on Beaver Creek and the measuring station should remain operational to accurately account for the water that would have been available at the Starke Ditch.

The City's Beaver Creek water use has historically been governed by a set of complex and interlocking agreements. This included an agreement from 1905 with several water users along Beaver Creek that was done in conjunction with obtaining the City's decreed ability to use the Starke Ditch water right for municipal purposes. In 2017, in connection with the cessation of operations at the Taughenbaugh Mesa plant, the City entered into a settlement agreement with this group of Beaver Creek water users that had historically been taking raw water from the City's pipeline at a rate of approximately 500 gallons per day. The settlement agreement allowed Beaver Creek water users to continue to receive water through the pipeline in anticipation of the City's application to change the

point of diversion for the Starke Ditch rights and to resolve drinking water issues identified by the State of Colorado. The Beaver Creek water users agreed to form a private entity to own, manage, maintain, repair, and replace the pipeline and manage the delivery of water. The City contributed a one-time amount of \$50,000 towards the operation, maintenance, and repair of the pipeline. The City agreed to convey the Beaver Creek diversion structure and pipeline, certain easements, and the first 0.1 c.f.s of the Starke Ditch Priority No. 18 water right to the Beaver Creek water users and the private entity. The settlement agreement provided that the City would maintain ownership of the measuring device located at the Starke Ditch point of diversion on Beaver Creek to ensure compliance with the agreement. The City also agreed to lease an additional 15 gallons per minute of water from the Starke Ditch right to be used as carriage water (because the pipeline is not pressurized) between November 15 and April 14 each year. Thus, the amount of water that the City will be able to divert under the changed point of diversion for the Starke Ditch right will be reduced by 0.1 c.f.s., plus 15 g.p.m. from November 15 to April 14.

C. City's Plan for Augmentation

As discussed above, a junior water right can continue to divert water despite a call from a senior water right by having a plan for augmentation adjudicated by the water court that makes replacement water supplies available to meet senior calls. In the early 1980s, the City adjudicated a water court decree in Case No. 83CW110 that approved a plan for augmentation. The plan for augmentation contemplates that, together with other water rights owned by the City, the City can legally divert water to supply the municipal requirements of a population of approximately 14,100 persons. The plan was later amended in Case No. 93CW332 to make minor corrections in the description of the amounts of the City's ownership in certain water rights. Copies of both decrees are attached as Exhibit A.

The City's augmentation plan primarily uses "consumptive use credits" associated with the dry up of land historically irrigated by ditches on Rifle Creek to provide replacement water supplies to the Colorado River. Under the plan, a portion of various senior water rights on Rifle Creek will divert less water into their ditches (due to the dry up of lands described in the augmentation plan). This water will then be allowed to flow down Rifle Creek and into the Colorado River to make up for depletions in the City's municipal water system attributed to diversions under junior water rights. The augmentation plan also uses a portion of the City's contracts for storage in Ruedi Reservoir. Together, these sources can be made available to allow the City's junior water rights to divert water into the municipal water system at times when there is a senior call on the Colorado River.

Resource Engineering provided a report analyzing the population that can be served utilizing the City's water rights and plan for augmentation together with the remaining portion of the City's Ruedi Reservoir contracts that have not been incorporated into the plan for augmentation. The report (attached as Exhibit B) is premised upon a call scenario of 159 days. Based upon a standard equivalent residential unit assumption and the City's current demand per capita, the Resource Engineering report estimates that the City can serve a population in excess of 26,000 people. In 2011, the City acquired an additional 200 acre-foot contract for water in Ruedi Reservoir (50 acre-feet more than was contemplated in the final paragraph of the Resource Engineering report). Thus, using the assumptions

in the Resource Engineering report, the City can conservatively serve a population of over 26,000 people.

The assumption on the population that can be served with the City's water rights assumes that the City will not acquire any additional water rights as lands are annexed and developed in Rifle. The Rifle Municipal Code contemplates that new developments must dedicate to the City water rights to offset their use of the City's water resources. In some situations, the City accepts a "fee in lieu" of water right dedication. These fees can be used to purchase water rights that may come available for purchase. As the City grows, the City should aggressively require dedication of water rights to add to its water rights portfolio. This will allow the population that the City can serve with water to be extended beyond the 26,000 people described above.

The City's augmentation plan should be updated to include the additional 200 acre-feet of contract water in Ruedi Reservoir acquired in 2011, as well as the additional shares of the Loesch & Crann Ditch Company (Last Chance Ditch) not included in or obtained after the plan for augmentation. These ditch shares are listed below in Section IV, "Additional Water Rights Owned by the City."

II. City's Water Rights Used for Raw Water Irrigation

The City of Rifle owns several water rights that are (or can be in the future) used for raw water irrigation. In certain situations, raw water irrigation can be financially advantageous to the City as opposed to irrigating from the treated water system. The City has two areas that are irrigated with raw water.

A. Deerfield Park Irrigation System.

The City has developed a raw water irrigation system for this park. The rights associated with that system are listed below.

Structure	Source	Case Number	Adj. Date	Appro. Date	Amount(s)	Use
Wisdom Ditch Priority No. 73	Rifle Creek	93CW333	05/11/1889	04/01/1883	1.07 c.f.s. absolute	irrigation
Wisdom Ditch Priority No. 91	Rifle Creek	93CW333	05/11/1889	02/26/1887	0.07 c.f.s. absolute	irrigation
Deerfield Park Irr. Pump	Rifle Creek	83CW146	12/31/1983	11/04/1982	0.46 c.f.s. absolute	irrigation

When Deerfield Park was originally developed, it was irrigated using a pump in Rifle Creek (the Deerfield Park Irrigation Pump). As the park expanded, a pond was constructed in the park into

which Wisdom Ditch water is diverted and then pumped into the irrigation system. The Wisdom Ditch water rights owned by the City were acquired from various developers. These water rights were included in the City's plan for augmentation. As such, to the degree a portion of the Wisdom Ditch water rights are used for raw water irrigation at Deerfield Park, a portion of the consumptive use is not available to the augmentation plan. At the current time, this does not pose a problem to the City.

The Deerfield Park pond acts as an irrigation regulation structure. Arguably, the evaporative losses from this pond are exempt from administration. However, at some point in the future additional water features may be developed at Deerfield Park or the area of raw water irrigation may be expanded. At that time, the City should undertake an augmentation plan for the park, the pond and associated water uses.

B. Cemetery System.

The City has a separate raw water irrigation system to supply the City's cemetery. The rights associated with that system are listed below.

Structure	Source	Case Number	Adj. Date	Appro. Date	Amount(s)	Use
Rifle Creek Canyon Ditch Pri. 54	Rifle Creek	CA103 83CW110	05/11/1889	02/15/1886	0.15 c.f.s. absolute	irrigation
Vetter Ditch Pri. 73	Rifle Creek	CA 103 CA 1775 83CW110	05/11/1889	05/16/1886	0.15 c.f.s. absolute	irrigation

The raw water irrigation system that provides water to the cemetery also irrigates a few acres of nearby park land. Water is derived from the Rifle Creek Canyon Ditch and placed in settling tanks located near the Homestead development. The water is then piped to the cemetery where it is able to irrigate lands under gravity pressure. Further expansion of this raw water irrigation system would require a water court approval.

C. Centennial Park System.

The City uses raw water from Rifle Creek to irrigate portions of Centennial Park. This is accomplished, in part, by a pump that has been installed in the headgate structure for the Pioneer Ditch. Pioneer Ditch water is diverted for irrigation use along Rifle Creek. The area of Centennial Park irrigated by the Pioneer Ditch is technically not part of the Pioneer Ditch historically irrigated area. However, a portion of the Pioneer Ditch water right was changed in the City's augmentation plan to augment depletions (including irrigation) within the City's service area. As such, use of this water can be deemed consistent with the City's augmentation plan.

III. City's Water Rights for Rifle Mountain Park

The City provides a domestic water supply at the Mountain Park from an “exempt” ground water well. The well permitted as No. 174228 was drilled and completed in 1994 and can legally supply up to 15 g.p.m. for drinking water purposes up to one-third (1/3) of an acre foot (108,600 gallons) per year. An exempt well means that diversions from this well are exempt from administration under the priority system.

Originally, the community building in Rifle Mountain Park was served by the Rifle Creek Pipeline No. 2, which was adjudicated for 0.2 c.f.s. for domestic, fire protection and municipal purposes in 1952 in Civil Action No. 404. However, for health reasons, the City terminated the use of the spring and switched to the well referred to in the preceding paragraph.

The City was an opposer in water court to a case filed by the Colorado Division of Parks and Wildlife (“CDPW”) where CDPW sought water rights for its fish hatchery with origins on the Rifle Mountain Park property. The City was concerned that the diversion of water on City property could have a negative impact on the park and its water resources. The City and CDPW entered into a stipulation agreement in 2014 under which CDPW agreed to locate collection facilities and infrastructure on the City's property in a manner that would limit visual impacts and surface disturbances. The water court approved CDPW's application in 2015.

IV. Additional Water Rights Owned by City

Subsequent to the adjudication of the City's augmentation plan in the 1980s, the City acquired additional irrigation water rights, which are listed below in order of their seniority. In addition, the next table below lists additional unchanged rights in the Loesch and Crann Ditch Company.

Structure	Source	Case No.	Adj. Date	Appro. Date	Amount	Use
Rifle Creek Canyon 2 nd Enlarg. Priority	Rifle Creek	CA103	05/11/1889	11/15/1886	0.35 c.f.s.	Irrigation
Rifle Creek Canyon 2 nd Enlarg. Priority No. 80 Priority No. 80 Priority No. 54/80	Rifle Creek Promontory Homestead Arabian Heights/Pastures/North Pastures	CA103	05/11/1889	11/15/1886	0.75 c.f.s. .29 c.f.s. .16 c.f.s.* .40 c.f.s.	Irrigation
Grand Tunnel Ditch Priority No. 82	Rifle Creek	CA103	05/11/1889	12/01/1886	.583 c.f.s.**	Irrigation

* The City actually received .35 c.f.s. but holds .19 c.f.s. in trust for the HOA to irrigate portions of the Homestead PUD.

** 0.29 c.f.s. is leased to the Forest Service as described herein.

The City owns water rights associated with the Loesch & Crann Ditch Company. Water rights in the Last Chance Ditch are represented by shares in this Company. Some of the City's rights have been included in the augmentation plan and others have not been changed to support municipal use.

	Date Acquired	No. of Shares	How They Were Obtained	Stock Certificate No.
THE FOLLOWING SHARES WERE DEDICATED TO THE PLAN FOR AUGMENTATION				
1	10/29/78	37	Transferred by Carmack Drilling Co. (they owned 43 shares)	159
2	2/6/80	3	Transferred by Fattor.	203
3	4/3/81	0.85	Transferred by Manuppella.	Unknown*
SUBTOTAL		40.85	See Plan for Augmentation in 83CW110	
SHARES NOT INCLUDED OR OBTAINED AFTER PLAN FOR AUGMENTATION				
4	4/12/82	2	Transferred by Centennial Gardens	196
5	5/22/86	2	Transferred by John Powers	213
6	7/20/88	7	Transferred by RVSMMD	226
7	12/22/95	43	Transferred by Billingsley with the Rifle Business Park	272
SUBTOTAL		54		

TOTAL	94.85		
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* There is a notation on Stock Certificate 100 that the City owns this amount; certificates are not issued for less than one share.

The City's ownership of these water rights is a valuable asset. However, Colorado law promotes water rights being used and penalizes water rights that are not placed to beneficial use. If a water right is not used for a substantial period of time, it can be deemed "abandoned." More important to the City, when an irrigation water right is changed to another use (particularly municipal), the value of the water right is the amount of historic consumptive use that is quantified. This is an average of the consumptive use made over specific ten-year periods of the water right being diverted. When determining the average consumptive use, the state requires that for each year a water right is not used during the representative period a zero is inserted which reduces the amount of the water right that can be changed. As a result, there is a strong incentive for a water right owner to either place the water right to use (or lease it to someone who can) or to undertake a legal change case fixing the consumptive use available for a change.

As noted in the tables above (and discussed in more detail below), the City has attempted to lease some of its currently unused water rights to third parties. For the water rights that have not been incorporated into the City's augmentation plan, it may be in Rifle's best interest to undertake a water court application in the near future that quantifies the consumptive use and incorporates the water rights into the City's augmentation plan. The first step would be to have Resource Engineering review historical aerial photos of where the applicable water rights irrigated and determine approximate historic consumptive use amounts associated with each water right.

V. Leases of City Water Rights.

The City has leased certain of its water rights to third parties for their use at various facilities. This is in the City's best interest because it keeps the applicable water rights in use and provides the City with minor compensation. Those leases are summarized below.

1. **Rifle Gap Land Company (Golf Course Lease).** The City and Rifle Gap Land Company (the Golf Course) had a series of long-term leases from 1988 to 2019 to lease portions of the City's Rifle Creek Canyon Ditch rights (0.05 c.f.s. of the Priority No. 73 right and 0.35 c.f.s. of the Priority No. 80 right or 50.8 acre feet of historic consumptive use) to the Golf Course for irrigation. In 2019, the City terminated the long-term lease and has entered into annual lease arrangements with the Golf Course that must be renewed each year. The most recent lease terminated in October 2021 at the end of the irrigation season, and the City will need to execute a new lease with the Golf Course for the 2022 irrigation season. The golf course makes a lease payment to the City each year.
2. **Forest Service Lease.** The City and the Department of Agriculture, Forest Service are parties to a letter agreement dated May 14, 1999 providing for lease by the City to the Forest Service of 0.29 c.f.s. of the Grand Tunnel Ditch Priority No. 82 water right.

The water is to be used by the Forest Service for irrigation of approximately five acres of lawn and landscaping at the Rifle District Ranger facility. The agreement is in effect until terminated by either party, and either party may in its sole discretion terminate by giving sixty days notice. The Forest Service is required to pay the City annually \$100.00 plus the amount of the Company's annual assessment for the 0.29 c.f.s. The \$100.00/year charge is to escalate 5% annually.

3. **Rimrock Lease Back.** The City is a party to an Agreement dated September 17, 1986 with Cherry Creek National Bank providing for a 99-year lease by the City to the Bank of 2.8 c.f.s. of Grand Tunnel Ditch rights. The rights are 1.37 c.f.s. of Priority No. 82 and 1.43 c.f.s. of Priority No. 100. That transaction was a product of the Bank's foreclosure of a deed of trust on the Rimrock property and water rights. The Agreement limits the use of the water to that property for not more than 15 residences. The Bank agreed to pay the City \$1.00 per year and to pay all of the ditch assessments levied on the water rights by the Grand Tunnel Ditch Company. The agreement also addresses the "EQR" water rights dedication credit for the Rimrock property. At the time of annexation of the balance of the Rimrock property, discussions resulted in a consensus between the developer and City staff that a portion of the Grand Tunnel Ditch Water should be used to irrigate open space and parks. The amount of such irrigation is unknown but will take historic consumptive use credits from the City's augmentation plan.
4. **Co-Generation Plant.** The City has a Water Service Agreement, dated September 30, 1986 and subsequently amended on January 10, 1989, with Co-generation Technology and Development Company ("CTDC") to provided treated water supply up to 329 acre feet annually for the CTDC project. The Agreement is perpetual, subject to the CTDC's right to "terminate in part" upon one year's written notice to the City, and the City's right to terminate if CTDC fails to make agreed payments within 90 days after the City notifies CTDC of default for nonpayment. "Terminate in part" means reducing the quantity of water supply. Substantial termination by CTDC is not likely because it agreed that, notwithstanding termination by CTDC or the City, it will not use any other water supply for the CTDC property. The co-generation plan is used periodically during the summer to meet peak electricity demands.

The City should continue to seek additional third parties who have the ability to use certain of the City's water rights consistent with the underlying decrees. These rights include the Rifle Creek Canyon Ditch and the Loesch and Crann Ditch company shares. Leasing this water will prevent an argument that the consumptive use associated with these water rights has been diminished by non-use.

VI. Recent and Upcoming Water Court Cases

Page 15

In 2020, the City filed a diligence application for its Rifle Pipe Line water right in Case No. 2020CW3125. As discussed above, diligence must be demonstrated to the water court for conditional water rights every six years. The water court issued its decree in July 2021 making a finding of reasonable diligence and continuing that conditional right, in the amount of 7.5 c.f.s, for another six years. The next diligence application will need to be filed in July 2027.

In November 2023, Rifle will file an application for reasonable diligence for the conditional portion of the Colorado River Intake Enlargement. The most recent finding of diligence for this right was issued by the Water Court in Case No. 17CW3028, and the City has a conditional amount of 23.1 c.f.s. with a 1981 appropriation date. Given the substantial investments that the City has made in its water system, we anticipate that the water court will again issue a finding of diligence and the conditional right will continue for an additional six years.

CONCLUSION

As a general matter, the City of Rifle has a strong, stable water rights portfolio capable of providing water users with a reliable supply. The City has positioned itself to grow through the acquisition of supplies in Ruedi Reservoir and the adjudication of the City's augmentation plan. As additional properties annex and develop within the City, dedication of new water rights is imperative to ensure that the City maintains adequate water rights to meet future demands. In the near term, the City should continue to lease excess water rights to facilitate continued use. We recommend that the City (1) update its augmentation plan to include the additional contract for Ruedi Reservoir water and (2) quantify the historic consumptive use credits associated with Loesch & Crann Ditch Company listed in Section IV, above, as "not included or obtained after the plan for augmentation" and include those credits in the updated augmentation plan. We also recommend that the City file a change application with the water court to transfer the point of diversion for the Beaver Creek rights to the Colorado River Intake to facilitate the use of that water in the City's new water treatment plant.

Very truly yours,

KARP NEU HANLON, P.C.

Michael J. Sawyer

MJS:
Enclosures

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 83CW110

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

THE CITY OF RIFLE, COLORADO, in Garfield County

THIS MATTER, having come on for consideration by: the Water Court; the Applicant, City of Rifle, Colorado, by and through its counsel Leavenworth, Lochhead & Milwid, P.C.; Objector Union Oil Company of California by and through its counsel Moses, Wittemyer, Harrison & Woodruff, P.C.; MMB Associates, Inc. by and through its counsel Carpenter & Klatskin, P.C.; Objector Rifle Land Associates, Ltd. by and through its counsel Hill and Robbins; Objector Vail Valley Consolidated Water District by and through its counsel Calkins, Kramer, Grimshaw & Harring; the Colorado State Engineer, Division of Water Resources by and through the Colorado Attorney General's office; and Messrs. J. Cleveland Gentry and W. F. Clough by and through its counsel Charles Stoddard, Esq.; and all Objectors and parties having either withdrawn their opposition herein or acknowledging their consent to the Application being granted upon certain conditions as herein set forth; and the Court having considered the evidence and having examined the records and files herein, and being now fully advised in the premises, hereby finds, concludes, and decrees as follows:

I. FINDINGS OF FACT

A. GENERAL

1. An application for Change of Water Rights and Approval of Plan for Augmentation was filed by the Applicant on April 28, 1983.

2. Adequate notice, as provided by law, was given of the pendency of said proceedings.

3. Statements of Opposition were timely filed here by Union Oil Company of California, MMB Associates, Inc., Rifle Land Associates, Ltd., the Colorado State Engineer Division of Water Resources, W. F. Clough, J. Cleveland Gentry, and John W. Savage.

4. No further statements of opposition have been filed in this proceeding, and the period for such filings expired June 30, 1983.

5. The Statement of Opposition filed by John W. Savage was withdrawn pursuant to a Motion to Withdraw Statement of Opposition dated September 30, 1983.

6. Entry of appearance was timely filed herein by entrant Vail Valley Consolidated Water District.

7. Each of the parties who have filed their entries of appearance or statements of opposition and who are presently involved in these proceedings, have entered into Stipulations with the Applicant.

8. The Court has jurisdiction over the subject matter of the proceedings and over all who have standing to appear as parties, whether they have appeared or not.

9. The Application filed herein was referred to the Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court on May 24, 1983, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Rights Determination and Administration Acts of 1969. It appearing to the Referee from the files and records of said Application that statements of opposition had been filed in this case, the Referee determined in his discretion not to make ruling as provided by C.R.S., §37-92-303(1), and therefore, ordered on July 22, 1983, that the case be re-referred to the Water Judge of Water Division No. 5.

B. OPERATION OF AUGMENTATION PLAN

10. The City of Rifle is located at the confluence of Rifle Creek and the Colorado River, having a present population of approximately 5,000 persons. At full development of all presently approved housing projects, the City of Rifle will have a permanent population of 14,100. Historical delivery and consumption records for Rifle indicate an average annual water delivery demand for domestic, commercial and all other beneficial municipal purposes of 247 gallons per capita per day (247 gpcd). This figure has been adjusted for non-residential water deliveries by Rifle, and will reduce as the population increases to account for fixed, non-residential water deliveries. Rifle's treated water production serves all inhabitants within the municipal limits, together with contract deliveries to water users outside of municipal limits, including deliveries to domestic uses connected to the wastewater treatment facilities operated by Rifle Village South Metropolitan District.

11. Non-irrigation treated water return flow is generated from in-city users and returned to the Colorado River at the point marked (1) on Exhibit A attached hereto, which is the location of the outfall of the Rifle Wastewater Treatment Facility. This location is approximately one mile downstream from the confluence of Rifle Creek and the Colorado River.

Return flow generated from treated water deliveries to uses not serviced by either the Rifle or Rifle Village South Wastewater Treatment Plants are returned to the Rifle Creek and/or Colorado River drainage at or near the confluence of Rifle and Colorado Rivers.

12. Applicant is the owner of the following decreed water rights and conditional water rights in the Colorado River Basin, which are involved as augmenting water rights herein:

TABLE I

RIFLE'S AUGMENTING WATER RIGHTS

<u>NAME</u>	<u>DECREED AMT.(cfs)</u>	<u>AMT.(cfs) OWNED</u>	<u>ADJUD. DATE</u>	<u>APPROP DATE</u>	<u>SOURCE</u>
(a) Vetter No. 73*	0.75	0.208	5/11/1889	5/16/1886	Rifle
(b) Grand Tunnel 3rd Enlg.	12.00	3.263	5/11/1889	12/1/1886	Rifle
(c) Grand Tunnel 4th Enlg.	4.00	1.482	5/11/1889	4/1/1887	Rifle
(d) Wisdom No. 7	4.00	1.700	5/11/1889	4/1/1883	Rifle
(e) Wisdom 1st Enlg.	1.00	0.500	5/11/1889	2/26/1887	Rifle
(f) Pioneer No. 1	5.00	0.895	5/11/1889	5/10/1882	Rifle
(g) Squier No. 10	0.50	0.500	5/11/1889	5/23/1883	Rifle
(h) Squier 1st Enlg.	0.70	0.700	5/11/1889	4/14/1887	Rifle
(i) Rifle Creek Canyon 1st Enlg.	4.00	0.15	5/11/1889	2/15/1886	Rifle
(j) Rifle Crk Canyon 2nd Enlg.	16.00	0.35	5/11/1889	11/15/1886	Rifle
(k) Raynard No. 107	7.00	1.00	5/11/1889	4/25/1887	Rifle
(l) Last Chance No. 73	50.00	0.823**	5/5/1888	3/23/1887	Colo.

* As transferred in Case No. 273, Garfield County District Court.

** Applicant has included 40.85 of its shares of a total of 2,724 issued and outstanding shares of the Loesch-Crann a/k/a Last Chance Ditch Company, a Colorado mutual ditch company. Applicant has entered into an Agreement with said ditch company which entitles Applicant to utilize the water attributable to Applicant's shares herein.

13. Additionally, Applicant has negotiated a final contract draft with the United States Bureau of Reclamation for 750 acre-feet of storage water in the Ruedi Reservoir. Ruedi Reservoir, a component of the Fryingpan-Arkansas Project was originally decreed for 140,697.3 acre-feet in Civil Action No. 4613, Garfield County District Court, on June 29, 1958, which an appropriation date of June 23, 1957 for hydroelectric generation, irrigation, municipal, domestic, industrial, piscatorial

and stock watering uses. Subsequently, in Case No. W-789-76, the amount of water decreed for Ruedi Reservoir was reduced to 101,369 acre-feet. The contract will be executed upon resolution of the Endangered Species Act issues; the Applicant has passed a Resolution of Intent to Execute said contract.

Applicant further is a beneficiary of releases from Green Mountain Reservoir pursuant to Senate Document No. 80, 75th Cong. 1st Sess., the Operating Principles of Green Mountain Reservoir and the Operating Policy for Green Mountain Reservoir published December 22, 1983 in the Federal Register, Vol. 48, No. 247. Green Mountain Reservoir was original decreed for 154,645 acre-feet in Civil Action No. 74, Summit County District Court, on March 10, 1952, with an appropriation date of August 1, 1935, for municipal, domestic, industrial and all other beneficial purposes. In accordance with the Operating Policy published December 22, 1983, when the administration of water under the Colorado priority system would result in curtailment, in whole or in part, of a water right for irrigation or domestic uses within western Colorado, which water right was perfected by use on or before October 15, 1977, water will be released, without charge, from the Green Mountain Reservoir "100,000 acre-foot power pool" to the extent necessary to permit diversions to the full amount of said decrees.

Accordingly, Applicant shall be permitted to utilize its contract water in Ruedi Reservoir and/or its Green Mountain Reservoir beneficiary entitlement as augmentation water sources in addition to those water rights set forth in Table I, supra.

14. Applicant's historic irrigation direct flow water rights described in Table I, supra, have historically depleted the Colorado River system and, by cessation of historical irrigation, will provide consumptive use credit in the following amounts:

TABLE II

TOTAL HISTORIC DEPLETION CREDIT
(values in acre-feet)

	<u>RCCD</u>	<u>GTD</u>	<u>Wisdom</u>	<u>Pioneer</u>	<u>Squier</u>	<u>Last Chance</u> ¹	<u>Totals</u>
Apr	1.6	2.2	11.0	1.3	0.6	4.4	21.1
May	9.1	41.1	29.8	10.0	5.7	9.9	105.6
Jun	9.5	57.8	39.4	11.3	3.4	13.7	135.1
Jul	9.8	46.3	40.1	9.2	4.5	13.3	123.2
Aug	9.2	40.2	39.3	8.0	0.5	11.4	108.6
Sep	7.7	27.6	29.1	2.0	1.3	8.4	76.1
Oct	3.8	11.8	20.4	1.7	0.0	5.5	43.2
Nov	0.1	0.0	3.5	0.0	0.0	0.0	3.6
	50.8	227.0	212.6	43.5	16.0	66.6	616.5

¹Total Loesch-Crann Ditch shares - 40.85.

15. By withdrawing land historically irrigated by the water rights owned by the City of Rifle from irrigation, certain historic return flows which may have returned to the Rifle Creek and Colorado River systems after the historic irrigation season will cease. To prevent injury to owners of vested and decreed conditional water rights occasioned by the loss of historic irrigation return flows, the Applicant shall replace the loss of historic ground water delayed return flows (totalling the maximum for each ditch listed in Table III below) from Applicant's Ruedi Reservoir contract and entitlement, and not Applicant's interest in the direct flow water rights set forth in Table I.

TABLE III

TOTAL HISTORIC RETURN FLOW OBLIGATION
(values in acre-feet)

	<u>RCCD</u>	<u>GTD</u>	<u>Wisdom</u>	<u>Pioneer</u>	<u>Squier</u>	<u>Last Chance</u>	<u>Totals</u>
Jan	0.0	1.0	1.4	0.9	0.0	2.6	5.9
Feb	0.0	0.9	1.0	0.6	0.0	2.1	4.6
Mar	0.0	0.7	0.8	0.5	0.0	1.9	3.9
Oct	0.0	0.0	0.0	0.0	0.8	0.0	0.8
Nov	0.0	2.1	0.0	2.0	0.1	3.6	7.8
Dec	0.0	1.6	2.9	2.7	0.1	3.2	10.5
	0.0	6.3	6.1	6.7	1.0	13.4	33.5

Said releases shall be made in the foregoing amounts and times if there is a valid call on the Colorado River mainstem at the confluence of Rifle Creek and the Colorado River by a water right senior to the Application dated April 28, 1983.

16. At times when Applicant's historic direct flow irrigation water rights set forth in Table I, supra (or any portion of them), are utilized for augmentation purposes herein, a portion of the Applicant's water rights shall continue to be diverted through the relevant ditch headgate to mitigate any ditch transmission and evaporation losses occasioned by cessation of diversion of Applicant's water rights to the ditch structure. The remainder of Applicant's water rights may be by-passed at the headgate of the relevant ditch, resulting in a dry-up of acreage historically irrigated for consumptive credit in the maximum amounts set forth in Table II, supra. Irrigation ditch operation under the plan for augmentation shall be as set forth below in Table IV.

TABLE IV

IRRIGATION DITCH OPERATION UNDER AUGMENTATION PLAN

	Total Water Rights (cfs)	Rifle Priority	Total to ^a Rifle's Priority (cfs)	Rifle Share (cfs)	15% for Ditch Loss (cfs)	Amount Passed by the Headgate (cfs)	Remaining ^b Diversion (cfs)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Squire ^c	1.2	10 & 104	1.2	1.2	N/A	1.2	N/A
Pioneer	8.9	1	5.0	0.895	0.134	0.761	4.239
Wisdom	8.6	7	4.0	1.7	0.255	1.445	2.555
		91	5.0	2.2	0.33	1.87	3.13
Rifle Creek Canyon	46.2	73	11.3	0.05	0.0075	0.0425	11.2575
		80	26.7	0.4 ^d	0.06	0.34	26.36
Grand Tunnel	26.508	82	19.208	3.2627	0.4894	2.7733	16.4347
		100	23.208	4.7447	0.7117	4.0330	19.175
Last Chance	50	73	50	0.823	0.082 ^e	0.741	49.259

^a Cumulative rights in ditch through the priority in (2).

^b The total diversion in the ditch through the priority in (2).

^c Rifle owns full interest in Squier Ditch; diversions to be discontinued.

^d Total owned is 0.7 cfs; 0.3 cfs will remain in ditch for use at cemetery.

^e 10 percent to be left in Last Chance Ditch.

17. Applicant shall, by April 1 of each year, designate on a form map similar to Exhibit B attached hereto, which tracts of land will be dried up for that particular irrigation season. Said designation shall be made to the Division No. 5 engineer. Once a tract has been dried up in any year, it shall remain out of irrigation and shall not be irrigated with the water rights

set forth on Table I except upon application to and approval by the water court; provided that irrigation of such tracts from the City's municipal water system shall be permitted pursuant to this decree. Exhibit B shows the tracts which have already been permanently removed from irrigation.

18. On or before April 1 of each year, Applicant will provide the Division Engineer with estimates of the expected accounting for the upcoming including the data set forth in Paragraph 22 and an indication that sufficient dry-up credit and Ruedi Reservoir water will be available to satisfy depletions attributable to out-of-priority diversions and historic return flow obligations.

19. As described in paragraph 13, supra, Applicant shall be required, whenever there is a call senior to the priority date of this decree, to release from Ruedi Reservoir, pursuant to contract, in the amounts expressed in Table III, supra, for any augmenting water rights for which a depletion credit is being taken for that year as determined by Exhibit B. In accordance with paragraph 15, supra, Applicant shall be permitted to augment any out-of-priority diversions by the water rights described in Table V, infra, from either: the consumptive use credits expressed in Table II, supra, for which a dry-up credit has been taken for that year as determined by Exhibit B; or Applicant's Ruedi Reservoir contract water; or any combination thereof, at Applicant's discretion. In addition to any quantity of water released from Ruedi Reservoir an amount of water equal to transit losses between the augmentation reservoir and the City of Rifle shall be required to be released; this amount shall be determined by the Division Engineer, Water Division No. 5.

TABLE V

RIFLE'S MUNICIPAL WATER RIGHTS

<u>NAME</u>	<u>DECREED AMT.(cfs)</u>	<u>AMT.(cfs) OWNED</u>	<u>ADJUD. DATE</u>	<u>APPROP DATE</u>	<u>SOURCE</u>
(a) Town of Rifle Pump and Pipeline (D10/D15)	1.0	1.0	8/15/1940	10/1/1939	Colorado
(b) Town of Rifle Pump and Pipeline (No. 258)	15.0	15.0	9/5/1952	2/5/1949	Colorado
(c) Excelsior (No.16)	2.0	1.6	5/11/1889	11/5/1883	Colorado or Rifle
(d) Starke No. 18	1.0	1.0	5/5/1888	3/26/1884	Beaver
(e) Rifle Town Intake Pipeline (D241)	1.0	1.0	7/9/1965	6/1/1936	Colorado or Beaver
(f) Town of Rifle Pump and Pipeline	23.1	23.1	12/31/1981	12/16/1981	Colorado

20. During periods when credits are expressed in Table II, supra, because of cessation of historical irrigation as determined by Exhibit B for any year, Applicant shall be entitled to such consumptive use credit. Rifle shall utilize such credit for additional augmentation water needs in the future, for storage or for disposition to other water uses as Rifle deems advisable, provided however, that any augmentation water credit shall not be used or stored directly or indirectly at locations or for purposes other than provided in this decretal order, except after proper application to the Water Court and entry of a separate decree providing for such different locations and use.

21. Rifle's 0.15 c.f.s. interest in the water right described as Water Right (i), Column 1, Table I, supra, and 0.15 c.f.s. interest in the water right described as Water Right (a), Column 1, Table I, supra, will be changed in place of use to irrigate the Rifle Cemetery, the location of which is described on Exhibit "C" attached hereto and incorporated herein. The subject water right shall be continued to be diverted and carried through the Rifle Creek Canyon Ditch.

22. The following accounting process shall be established for the operation of this plan for augmentation:

- (a) The total Rifle municipal diversions ("t") will be tabulated as well as out-of-priority municipal diversions

("x"). The out-of-priority diversions will be determined by deducting diversions attributable to the senior Excelsior Ditch water right, (Water Right No. (c), Table V, supra), the Starke Ditch water right, (Water Right No. (d), Table V, supra), and any diversions which although subject to curtailment under the priority doctrine, are not out of priority due to releases from Green Mountain Reservoir pursuant to Senate Document No. 80 (see paragraph 13, supra). The ratio of out-of-priority diversions to the total diversions will be expressed as x/t . Depletions attributable to Rifle's out-of-priority diversions ("dx") are computed as the difference between the total diversions and return flows multiplied by x/t as follows: $dx=(x/t)(t-rf)$.

(b) Total of return flows ("rf") attributable to Rifle's water system shall be determined by measuring treatment plant effluent discharges ("ss") and estimating non-sewered return flows ("nsr"). Non-sewered return flows are determined as follows:

(i) Deliveries to water users not serviced by the Rifle Wastewater Treatment Plant. These deliveries are estimated at the present time to be 7% of all treated water deliveries. This value shall be determined annually based upon the prior year's records. The consumptive use of these deliveries is considered to be 100%.

(ii) Deliveries for household uses in areas serviced by Rifle Wastewater Treatment Plant are computed as the sewage treatment plant effluent divided by 0.95. This assumes an inside consumptive use of 5% of treated in-house deliveries.

(iii) The remainder of deliveries to users within the service area for the Rifle Wastewater Treatment Plant goes to the irrigation of parks, open space, lawns and gardens. The consumptive use of this irrigation use is 90% with 10% being return flow.

23. If the plan for augmentation is operating and administered in accordance with the above-detailed description, it will have the effect of replacing water to the Rifle Creek and the Colorado Stream systems and their successor streams at the time and in the place and in the amount of the depletions caused by the City of Rifle's use of water. As a result, the water rights set forth in Table V, supra, which would otherwise be considered to junior for year round municipal operation may be utilized without adversely affecting any owner of or person entitled to use vested water rights or conditional decreed water rights in the Colorado River stream system.

II. CONCLUSIONS OF LAW

24. The plan for augmentation and change of water rights set forth herein is one contemplated by law and meets the statutory criteria of a plan for augmentation set forth in C.R.S., §37-92-103(9). The Applicant is entitled to a decree approving the plan for augmentation and change of water rights set forth above.

25. A change of water rights and operation of the plan for augmentation filed herein will cause unappropriated water to be available for the Applicant to divert the water rights described in Table V, supra; the availability of new sources of water to the stream will permit diversions through said structures without injuriously affecting owners of or persons entitled to use water under vested water rights or decreed conditional water rights, including objectors herein, provided said structures are operated in accordance with the plan for augmentation and change of water rights involved herein.

26. The water rights described in Table I, supra, shall not be deemed abandoned pursuant to the commitment of said water rights within the plan for augmentation involved herein. Said water shall be considered to be in trust within said plan for augmentation.

27. This decree constitutes a portion of the law required to be enforced by the State Engineer and Division Engineer within the meaning of C.R.S., §37-92-202(2), §37-92-301 and §37-92-501(1). The State Engineer shall lawfully be required under the terms of this decree, to administer the plan for augmentation in the manner set forth herein, and not to curtail diversions in times of shortage through said structures, the depletions for which are compensated by the operation of the plan for augmentation and change of water rights herein improved. The Division Engineer shall lawfully curtail diversions through said structures included herein if they or other features of this plan for augmentation are being operated or used in violation of the terms of this decree.

III. JUDGMENT AND DECREE

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

1. The aforementioned Findings of Fact and Conclusions of Law are hereby fully incorporated into this decree.

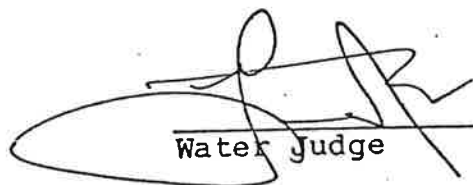
2. Applicant's plan for augmentation and change of water rights as set forth above are hereby approved, and it is hereby ORDERED that the structures herein involved shall be operated in accordance with this decree, without state administrative curtailment for the benefit of senior appropriations, so long as the terms and conditions herein set forth are fully adhered to throughout the operation of this plan for augmentation.

3. Applicant and successors and assigns shall be permitted to continue to utilize each of the water rights owned by the City of Rifle as set forth in Table I, either in trust for the operation of this plan, or in their historical manner.

4. It is hereby ORDERED that a copy of this decree shall be filed with the State Engineer and Division Engineer for Water Division No. 5.

5. The approval of this change of water rights and plan for augmentation shall be subject to reconsideration by the water judge on the question of injury to the vested rights of others during any hearing commencing in the 2 calendar years succeeding the year in which this decision is rendered. The Court further finds that the period for reconsideration is adequate under the facts and circumstances of this case, including, without limitation, the nature and source of the augmentation water.

DATED this 30th day of June, 1986.


Water Judge

Copy of the foregoing mailed to all

✓ Record — Water

✓ and

✓ July 9, 1986

Nancy Bailey

Deputy Clerk, Water Div. No. 5

Calvin George Carpenter

EXHIBITS TO CASE NO. 83CW110
CITY OF RIFLE
PLAN FOR AUGMENTATION

Exhibit A - Location of City of Rifle Waste Water Treatment Plant

Exhibit B - Commitment of Historically Irrigated Parcels

Exhibit C - Location of Rifle Cemetery

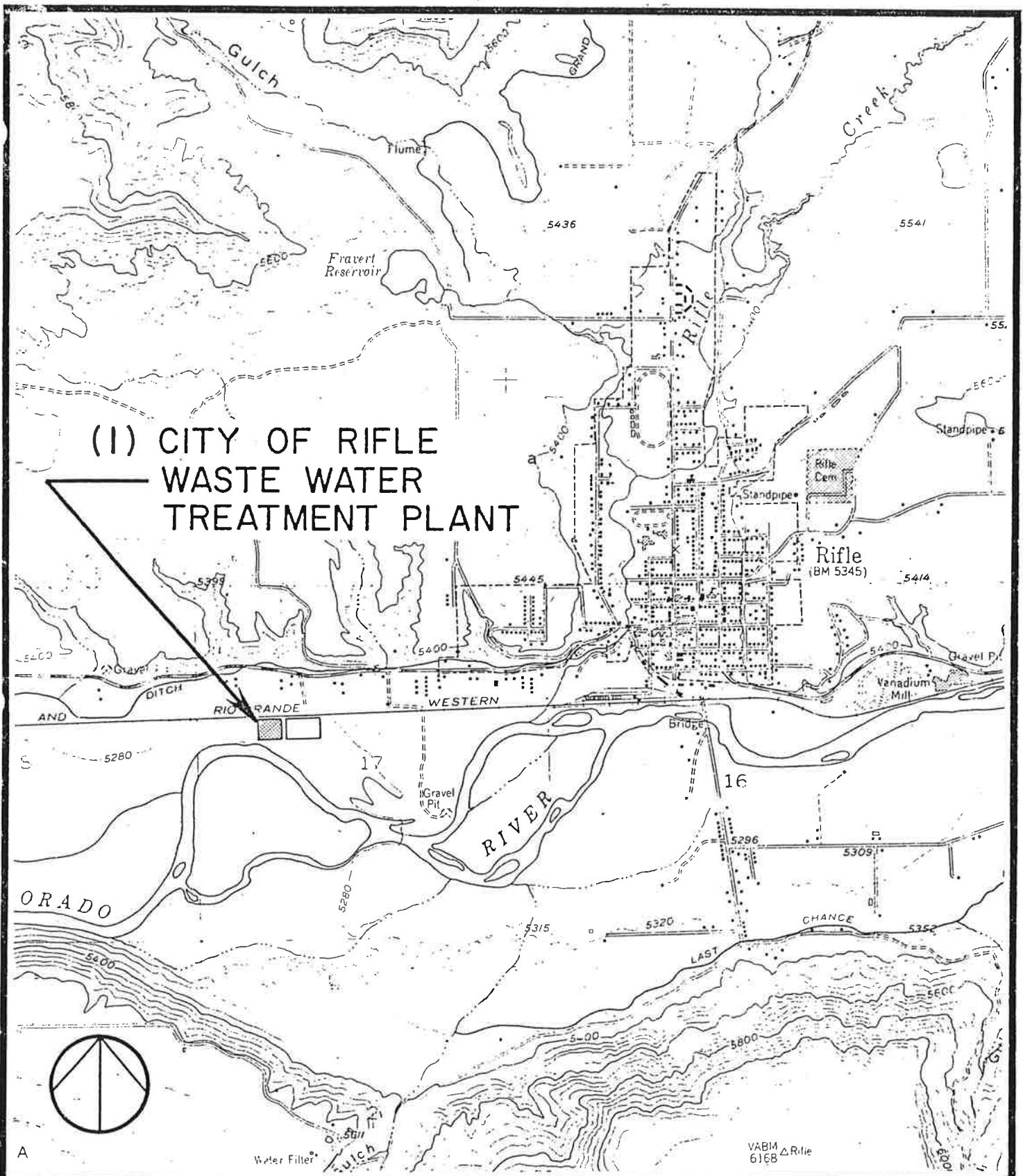


EXHIBIT A
LOCATION OF
CITY OF RIFLE
WASTE WATER
TREATMENT PLANT

SCALE 1:24,000

T.6S R.93W



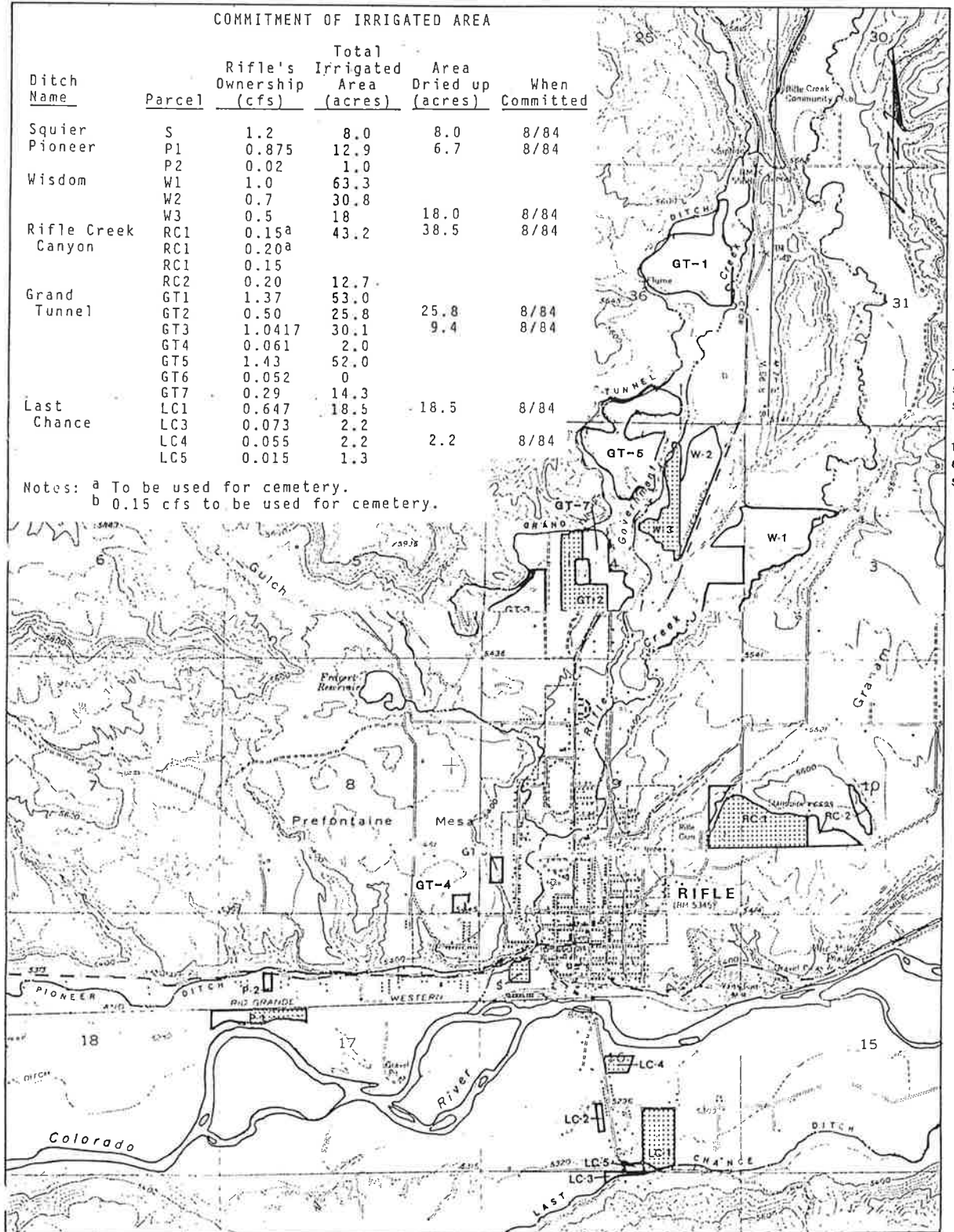
Leonard Rice Consulting Water Engineers, Inc.
615 RIFOL JULY 1984

COMMITMENT OF IRRIGATED AREA

Ditch Name	Parcel	Rifle's Ownership (cfs)	Total Irrigated Area (acres)	Area Dried up (acres)	When Committed
Squier	S	1.2	8.0	8.0	8/84
Pioneer	P1	0.875	12.9	6.7	8/84
	P2	0.02	1.0		
Wisdom	W1	1.0	63.3		
	W2	0.7	30.8		
	W3	0.5	18	18.0	8/84
Rifle Creek Canyon	RC1	0.15 ^a	43.2	38.5	8/84
	RC1	0.20 ^a			
	RC2	0.15			
Grand Tunnel	GT1	0.20	12.7		
	GT2	1.37	53.0		
	GT3	0.50	25.8	25.8	8/84
	GT4	1.0417	30.1	9.4	8/84
	GT5	0.061	2.0		
	GT6	1.43	52.0		
	GT7	0.052	0		
Last Chance	LC1	0.29	14.3		
	LC1	0.647	18.5	18.5	8/84
	LC3	0.073	2.2		
	LC4	0.055	2.2	2.2	8/84
	LC5	0.015	1.3		

Notes: a To be used for cemetery.

b 0.15 cfs to be used for cemetery.



LEGEND



Historic irrigated area
dried up and committed
to Augmentation Plan
CASE No. 83CW110

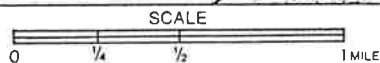
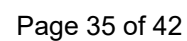


EXHIBIT B
COMMITMENT OF
HISTORICALLY IRRIGATED
PARCELS



Leonard Rice Consulting Water Engineers, Inc.



DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 93CW332

SEP 9 1994

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

CITY OF RIFLE, COLORADO, in Garfield County, Colorado

The above-entitled Application was filed on December 31, 1993. This matter was referred to the Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court in accordance with the provisions of Article 9 of Title 37, Colorado Revised Statutes, 1973, known as the Water Rights Determination and Administration Act of 1969.

The undersigned Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having become fully advised with respect to the subject matter in the Application, does hereby make the Findings of Fact, Determinations of Law, and Ruling of the Referee in this matter.

FINDINGS OF FACT

1. The name and address of the Applicant is City of Rifle, Colorado, c/o City Manager, P. O. Box 1908, Rifle, Colorado 81650 (hereinafter "Rifle"), c/o Leavenworth & Caloia, P.C. 1011 Grand Avenue, P. O. Drawer 2030, Glenwood Springs, Colorado 81602.
2. Timely and adequate notice of the filing of this Application was given as required by law. A Statement of Opposition was filed by Silt Water Conservancy District. The time for filing such statements has expired.
3. The Applicant has applied for amendments to the decrees in Case Nos. 83CW110 and 90CW140, as set forth below, which amendments are adopted, pursuant to the terms of this decree:
 - A. Table I on Page 4 of the Findings of Fact, Conclusions of Law and Judgment and Decree dated June 30, 1986, Case No. 83CW110, attached hereto, is amended to state that:
 - 1) The City of Rifle owns 0.2 c.f.s. of the Vetter Ditch, Priority No. 73; and
 - 2) The transfer of 0.2 c.f.s. of the Vetter Ditch to the Rifle Creek Canyon

Ditch occurred in Civil Actions No. 1775, Garfield County District Court, pursuant to the decree dated May 1, 1915.

AMENDED TABLE I					
RIFLE'S AUGMENTING WATER RIGHTS					
Name	Decreed Amount (cfs)	Amount Owned (cfs)	Adjudication Date	Appropriation Date	Source
Vetter No. 73*	0.75	0.20	5/11/1889	5/16/1886	Rifle
Grand Tunnel 3rd Enlargement	12.00	3.263	5/11/1889	12/1/1886	Rifle
Grand Tunnel 4th Enlargement	4.00	1.482	5/11/1889	4/1/1887	Rifle
Wisdom No. 7	4.00	1.700	5/11/1889	4/1/1883	Rifle
Wisdom 1st Enlargement	1.00	0.50	5/11/1889	2/26/1887	Rifle
Pioneer No. 1	5.00	0.895	5/11/1889	5/10/1882	Rifle
Squire No. 10	0.50	0.50	5/11/1889	5/23/1883	Rifle
Squire 1st Enlargement	0.70	0.70	5/11/1889	4/14/1887	Rifle
Rifle Creek Canyon 1st Enlg.	4.00	0.15	5/11/1889	2/15/1886	Rifle
Rifle Creek Canyon 2nd Enlg.	16.00	0.35	5/11/1889	11/15/1886	Rifle
Raynard No. 107	7.00	1.00	5/11/1889	4/25/1887	Rifle
Last Chance No. 73	50.00	0.823**	5/5/1888	3/23/1887	Colo.
* As transferred in Case No. 1775, Garfield County District Court. ** Applicant has included 40.85 of its shares of a total of 2,724 issued and outstanding shares of the Loesch-Crann a/k/a Last Chance Ditch Company, a Colorado mutual ditch company. Applicant has entered into an Agreement with said ditch company which entitles Applicant to utilize the water attributable to Applicant's shares herein.					

B. Table IV on Page 7 of the Findings of Fact, Conclusions of Law and Judgment and Decree dated June 30, 1986, Case No. 83CW110, attached hereto, is hereby amended to reflect that:

- 1) Column 4 (Rifle Share) is the cumulative ownership of Rifle and is so corrected by Footnote (a).

AMENDED TABLE IV

IRRIGATION DITCH OPERATION UNDER AUGMENTATION PLAN

	Total Water Rights (cfs)	Rifle Priority	Total to(a) Rifle's Priority (cfs)	Rifle Share(a) (cfs)	15% for Ditch Loss (cfs)	Amount Passed by Headgate (cfs)	Remaining(b) Diversion (cfs)
	(1)	(2)	(3)	(4)	(5)	(6)	
Squire (c)	1.2	10 & 104	1.2	1.2	N/A	1.2	N/A
Pioneer	8.9	1	5.0	0.895	0.134	0.761	4.239
Wisdom	8.6	7 91 (Total)	4.0 5.0	1.7 0.5 2.2	0.255 0.33	1.445 1.87	2.555 3.13
Rifle Creek Canyon	46.2	73 80 (Total)	11.3 26.7	0.05 (#73) 0.35 (#80) 0.40 (d)	0.0075 0.06	0.0425 0.34	11.2575 26.36
Grand Tunnel	26.508	82 100 (Total)	19.208 23.208	3.2627 1.482 4.7447	0.4894 0.7117	2.7733 4.0330	16.4347 19.175
Last Chance	50	73	50	0.823	0.082(e)	0.741	49.259
(a) Amount of each priority and total given as shown in (2). (b) The total diversion in the ditch through the priority in (2). (c) Rifle owns full interest in Squire Ditch; diversions to be discontinued. (d) 0.3 cfs (.15 cfs Priority #54 and .15 cfs Priority #73) will remain in ditch for use at cemetery. Total amount owned, including 0.3 cfs at cemetery, is 0.7 cfs. (e) 10 percent to be left in Last Chance Ditch.							

C. The final decrees entered in Case Nos. 83CW110 and 90CW140 are hereby amended to reflect that:

The 50.8 acre-feet of historic consumptive use associated with Rifle's ownership of water in the Rifle Creek Canyon Ditch is based upon 29.98 acres (17.28 acres associated with Parcel RC-1 and 12.7 acres associated with Parcel RC-2) and 1.69 acre-feet per acre consumptive use. The 50.8 acre-feet is associated with 0.05 c.f.s. of Priority No. 73 and 0.35 c.f.s. of Priority No. 80, both of which are committed to the augmentation plan in Case No. 83CW110, and does not include the 0.30 c.f.s. used to irrigate the cemetery.

4. The statements in the Application are true.

CONCLUSIONS OF LAW

5. The Application to amend and to correct clerical errors is contemplated by law. C.R.S. §37-92-304(10).

RULING OF THE REFEREE

6. The foregoing Findings of Fact and Conclusions of Law are incorporated as if fully set forth herein.

7. The Application is granted. The decrees in Case Nos. 83CW110 and 90CW140 are hereby amended as set forth herein.

8. It is accordingly ORDERED that this Ruling shall be filed with the Water Clerk subject to judicial review.

9. It is further ORDERED that this Ruling shall be filed with the appropriate Division Engineer and State Engineer.

10. It is further ORDERED that a copy of this Ruling and the decree entered in this case is to be placed in the files in Case Nos. 83CW110 and 90CW140 for future reference.

Dated this 9th day of September, 1994.

BY THE REFEREE:

[Signature]
Water Referee, Water Division No. 5

Copy of the foregoing ^{sent} mailed to all
of record - Water
Engineer - and
State Engineer - Date 9-19-94
Nancy Barclay
Deputy Clerk, Water Div. No. 5
P.O. Box 9-28-94 Balcomb
Caloria
Balcomb

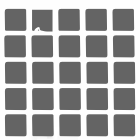
JUDGMENT AND DECREE

No protest was filed to this Ruling of the Referee. The foregoing Ruling is confirmed and approved and is made the Judgment and Decree of this Court.

Dated this 19th day of October, 1994.

[Signature]
Water Judge

Copy of the foregoing mailed to all
of record -
Balcomb
State Engineer - Date 10/25/94
Nancy Barclay
Deputy Clerk, Water Div. No. 5
P.O. Box 9-28-94 Balcomb
Caloria
Balcomb



RESOURCE

ENGINEERING INC.

Loyal Leavenworth, Esq.
Leavenworth & Karp, P.C.
PO Box 2030
Glenwood Springs CO 81602

May 4, 2009

RE: City of Rifle – H.B. 1141 Water Rights Review and Analysis

Dear Lee:

At your request, Resource Engineering, Inc. (RESOURCE) has reviewed and updated the City of Rifle water rights portfolio and analyzed the ability to serve the existing and future residents of the City. The review and analysis was based on the water court decrees for the City's municipal rights, the City's decreed augmentation plans, water rights reports prepared by Leavenworth & Karp, P.C., water usage data supplied by the City, and files maintained by RESOURCE. This report was prepared in support of fulfilling the requirements of Colorado House Bill 08-1141 (CRS § 29-20-304) and CRS § 30-28-133(3) (c) and (d).

WATER RIGHTS

The City's water rights portfolio includes direct flow municipal rights, senior irrigation rights used for non potable irrigation, senior irrigation water rights changed to augmentation uses and included in a plan for augmentation of out-of-priority municipal diversions, and storage water in Ruedi Reservoir available by contract with the U.S. Bureau of Reclamation. A detailed description of the City's water rights is provided in a letter report prepared by Leavenworth & Karp, P.C. titled, City of Rifle Comprehensive Water Rights Report dated May 4, 2009. The attached Figure 1 shows the original and changed points of diversion for the City's water rights.

The primary direct diversion municipal rights are the Excelsior Ditch and the Rifle Pipeline for the Colorado River Diversion and the Starke Ditch for the Beaver Creek Diversion. The Excelsior Ditch provides 1.6 cfs of senior diversion potential and the Rifle Pipeline provides 7.5 cfs of diversion that, although junior to the Cameo Call, is protected against a call by the Green Mountain Reservoir Historic Users Pool (see Leavenworth report). The Starke Ditch provides 1.0 cfs of diversion potential on Beaver Creek. However, the flow of Beaver Creek in the late summer and in dry years limits the actual diversion. For this report we have assumed 1 cfs diversion from April through June, 0.75 cfs in March and July, and 0.5 cfs from August through February.

The augmentation water supply includes senior rights changed for augmentation of out-of-priority junior municipal diversions and Ruedi Reservoir contract water. A plan for augmentation using the changed senior water rights was decreed in Case No. 83CW110 and amended in 93CW332. The plan provides for up to 616.5 acre feet of consumptive use credits available from April through November. There is also an obligation to replace the loss of 33.5 acre feet delayed irrigation return flows in October through March. The City currently has Contract No. 009D6C0042 with the Bureau of Reclamation for 350 acre feet of water. This water is subject to a transit loss (assumed at 5% for this report) administered by the Division of Water Resources. 33.5 acre feet of

EXHIBIT

B

the Ruedi Reservoir water is needed for the delayed return flows and 26.3 acre feet is committed to evaporation losses for the Rifle Intake pond decreed in 04CW193. The amount of Ruedi Reservoir water available for augmentation of potable diversions is 272.7 acre feet. This is calculated as 350 minus 17.5 (5% transit loss), minus 33.5 (delayed return flows), and minus 26.3 (evaporation).

A portion of the senior rights identified in Case No. 83CW110 are used for non potable irrigation in Deerfield Park (Wisdom Ditch), Centennial Park (Pioneer Ditch), and the Cemetery (Rifle Creek Canon Ditch and Vetter Ditch). Davidson Park is proposed to be irrigated with raw water from Rifle Creek Canon Ditch.

WATER DEMAND

The current water demand for the City is approximately 713 million gallons (2187 acre feet). The winter demand is approximately 33.5 million gallons per month and the peak summer monthly demand is 110 million gallons. The pattern of use generally follows the pattern for an Equivalent Residential Unit (EQR) as shown on the attached Table 1. Each EQR is estimated to require 0.74 acre feet (242,000 gallons) per year including 350 gallons per day for in-house use (3.5 people) for a total of .39 acre feet and 0.35 acre feet (114,000 gallons) for irrigation of 5,000 square feet of lawn and garden area. This equates to 190 gallons per capita per day (gpcd) which is close to the 198 gpcd determined by Schmueser Gordon Meyer (SGM) in the 2008 Water Conservation Plan.

Residential water demand comprises approximately 70 percent of the total demand based on the 2008 SGM report. It is estimated that during the irrigation season, residential water demand is 80 percent of the use.

ANALYSIS OF PHYSICAL AND LEGAL SUPPLY

The analysis of physical and legal supply looks at available water from the Colorado River and Beaver Creek system based on a year round water rights call and a 159 day water rights call. In 2002, the driest year of record, the call was on for only 141 days. In recent water court proceedings, the Division Engineer has recommended using an extended call scenario that included every day the lower Colorado River call (Cameo Call) has ever been on. This scenario includes 14 days in April, 7 days in May, 15 days in June and July through October.

The current augmentation supply available from 83CW110 is shown on the attached Table 2. The irrigated acres associated with the water rights used for augmentation in 83CW110 are shown on the attached Figure 2. The total potential diversion supply from all sources is shown on Table 3 for a year around call and Table 4 for a 159 day water rights call. The allowable diversion from the augmentation sources in 83CW110 and Ruedi Reservoir water is based on an irrigation use with 75 percent irrigation efficiency in accordance with the accounting methodology outlined in 83CW110. The diversion potential from 83CW110 is 567.1 acre feet and from Ruedi Reservoir water is 363.6 acre feet. The use of the Ruedi Reservoir water in Table 3 and Table 4 was determined based on maximizing the available water supply to meet the peak summer demands. Due to the "bell curve" nature of the monthly water demand and the relatively large base

May 4, 2009

flow available from the senior direct flow rights, there is no significant difference in the ability to serve a certain population during a 159 day call and a year around call. In other words, the winter diversions are met by the 10.1 cfs available at the Colorado River Intake and the Beaver Creek Supply and the irrigation season calls are augmented under both scenarios.

The monthly available water supply was divided by the standard EQR demand for each month to determine the number of EQR that could be served by the City's current water right portfolio and use of these rights. The EQR number was multiplied by 3.5 people per EQR and multiplied by 80 percent residential use to determine the population served. Based on this approach, the current water rights portfolio could serve a population of approximately 25,100 people. A review of the 2008 actual monthly water demand pattern shows a close relationship to the standard EQR pattern shown on Table 1, except in August. People appear to irrigate about the same in August as in July, even though the lawn requires less water. Table 5 uses a projection of the 2008 water demand with an estimated population of 8,700 people (City of Rifle staff estimate). Based on this approach and adjusting the Ruedi Reservoir water to optimize supply, the current water rights portfolio could serve approximately 24,200 people.

The City could increase its ability to serve by acquiring additional Ruedi Reservoir water to meet the peak summer demand. If the City increased the contract storage to 500 acre feet (150 AF additional) the amount available for augmenting potable water diversions would be 415.2 acre feet. This is calculated as 500 minus 25 (5% transit loss), minus 33.5 (delayed return flows), and minus 26.3 (evaporation). The allowable diversion by the City would be 553.6 acre feet (415.2 divided by 0.75). If 150 acre feet of additional Ruedi Reservoir water were acquired the City could serve an additional 1,800 people for both the EQR pattern method (26,900 shown on Table 6) and the 2008 demand method (26,000 shown on Table 7).

Please call if you have any problems or need additional information.

Sincerely,

RESOURCE ENGINEERING, INC.


Michael J. Erion, P.E.
Water Resources Engineer



MJE/mmm
341-13.3

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