

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO  
Case No. 83CW88

JUN 19 1989

FINDINGS OF FACT, CONCLUSIONS OF LAW AND CONSENT DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

*Russell J. Lerner*  
Clerk

THE TOWN OF BUENA VISTA, a municipal corporation of the State  
of Colorado, in Chaffee County

THIS MATTER coming on to be heard the 2nd day of  
June, 1989 by the Water Court and the Court having  
reviewed the file herein and evidence presented in behalf of  
the Applicant and the Court having further advised itself in  
the premises makes the following Findings and Ruling:

FINDINGS OF FACT

1. That the Application was filed on August 25, 1983.
2. That the Water Clerk caused publication of such filing as provided by statute; that the time for filing Statements of Opposition expired on the last day of October, 1983, and that six such statements were timely filed by St. Charles Mesa (hereinafter "St. Charles"), City of Aurora (hereinafter "Aurora"), Young Life (hereinafter "Young Life"), Colorado Water Conservation Board ("hereinafter "CWCB"), Water Development, Inc. Water Development, Inc. subsequently filed a Motion to Withdraw its Statement of Opposition.
3. The Application was, pursuant to Court Order, subsequently amended and an additional Statement of Opposition was timely filed by Public Service Company of Colorado (hereinafter "PSCO").
4. That on August 25, 1983 the Water Judge referred the Application to Wallace A. Doe, Water Referee and said Water Referee subsequently referred the case to the Water Judge.
5. That the Water Judge has been presented with this proposed Decree and finds that the same has been approved, stipulated to or Statments of Opposition agreed to be withdrawn by Applicant, Town of Buena Vista (hereinafter "BV") and all appearing Objectors, to wit: St. Charles Mesa, Aurora, Young Life, CWCB and PSCO.
6. That the Application of BV concerns a Petition to correct, change, and modify certain points of diversion of nine previously adjudicated rights of BV on Cottonwood Creek

to either correctly reflect by proper legal description the actual points of diversion of said rights or in certain instances establish alternate points of diversion and in other instances to actually change the decreed point of diversion, all as more particularly set forth hereinbelow. BV further proposes to change .1 cfs. of Buena Vista Water Works, Priority No. N1-6 to a well site located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, Township 14 S, Range 78 West of the 6th P.M.

In addition, BV desires to change the character of use of its interest in eight of the ditches involved in this Application to also include general domestic and municipal use as well as the originally decreed irrigation use. The change in character of use to be limited to the period of historical irrigation use of said water rights.

7. The water rights in issue in the within proceeding that are owned by BV are identified as follows:

| <u>Ditch</u>            | <u>Decreed Amount (cfs)</u> | <u>Appropriation Date</u> | <u>Adjudication Date</u> | <u>Ownership by Town (cfs)</u>          |
|-------------------------|-----------------------------|---------------------------|--------------------------|---|
| Leesmeagh               | 4.0                         | 11/30/1864                | 6/19/1890                | 1.833                                   |
| Thompson                | 4.0                         | 12/19/1864                | 6/19/1890                | 2.0                                     |
| Prior Right             | 2.0                         | 04/30/1866                | 6/19/1890                | 1.0                                     |
| Gorrel                  | 4.0                         | 05/31/1866                | 06/19/1890               | 2.66                                    |
| Cottonwood              | 6.0                         | 07/31/1866                | 06/19/1890               | 0.88                                    |
| Irrigating              | 13.0                        | 12/31/1872                | 06/19/1890               | 0.12                                    |
| Town                    | 4.0                         | 06/01/1880                | 07/14/1903               | 4.0 (2 cfs sought to be changed herein) |
| Supply                  | 2.0                         | 06/01/1880                | 07/14/1903               | 2.0                                     |
| Buena Vista Water Works | 10.0                        | 06/01/1883                | 09/10/1904               | 10.0                                    |
| George W. Tegeler       | 4.0                         | 5/7/1951                  | 07/09/1969               | 4.0                                     |

The above rights will hereinafter be referred to collectively as BV Water Rights and individually by the name of the Ditch alone. Notwithstanding the total decreed amount to each Ditch reference to said Ditch shall refer solely to BV's ownership and interest therein.

The BV Water Rights and the land previously and presently irrigated hereby are not within a designated ground/water basin and all have their points of diversion on Cottonwood Creek which is tributary to the Arkansas River. All of the BV water rights were decreed for irrigation, except BV Water Works which was decreed for domestic purposes.

8. That BV is a duly organized municipal corporation of the State of Colorado.

9. That BV is the owner of and entitled to the benefits of the BV Water Rights identified above.

10. That all of the six Objectors identified above have timely filed Statements of Opposition.

11. That all of the six Objectors own water rights that may or might be affected by BV's application and the identification of said rights is set forth in their respective Statements of Opposition and Trial Data Certificates and that said Objectors have standing to file their respective Statements of Oppositions to the Application of BV.

12. That the legal descriptions set forth in BV's amended application are correct with respect to BV's Water Rights presently decreed points of diversion and that the new modified or correct point of diversion of said rights is as follows:

A point whence the NE corner of Section 13, Township 14 South, Range 79 West of the 6th P.M. bears N. 32°03'33" E. 2,944.64 feet, Chaffee County, Colorado.  
(hereinafter referred to as Town Intake)

AND

SW 1/4 of the NE 1/4 and the NW 1/4 of the SE 1/4 of Section 13, Township 14 South, Range 79 West, of the 6th P.M., Chaffee County, Colorado.  
(hereinafter referred to as Infiltration Gallery)

13. That the presently decreed points of diversion (originally or as subsequently changed as herein noted) of the Cottonwood Irrigating, Prior Right and Thompson are one and the same as the Town Intake and Infiltration Gallery and that minor legal description discrepancies or variances between those appearing of record in original or transfer decrees and the legal description of the Town Intake and Infiltration Gallery set forth above are minute and not of legal significance or of present relevancy.

14. That the location of BV Well No. 1 is as follows:

A point in the NE 1/4 NE 1/4, Section 19, Township 14 South, Range 78 West of the 6th P.M. whence NE corner of said section bears N. 61°26' E. 320.2 feet.  
(hereinafter referred to as Town Well No. 1)

15. That Buena Vista Water Works have not been abandoned and the transfer of .1 cfs of the Buena Vista Water Works water right to the Town Well No. 1 will not adversely affect any water or water rights of the Objectors nor will the proposed change adversely effect the stream flow and regime of Cottonwood Creek nor the Arkansas River.

16. That in 1957 BV filed a proceeding in eminent domain to condemn 0.88 cfs of Priority No. 15 and 0.12 cfs of Priority No. 43 of Cottonwood Irrigating, Civil Action No. 4657, Chaffee County District Court and in the resultant Decree entered March 10, 1958 the Court found, inter alia:

"The Court finds that the water and water rights above described are necessary to the Town of Buena Vista, Colorado, and that it is necessary for the preservation of the public health, safety and welfare of said Town that said water rights be appropriated and taken by the Town"

and the Court in said proceeding ordered the transfer of ownership of said amounts of Cottonwood Irrigating to BV.

17. That in 1958 BV filed a proceeding in Chaffee County District Court, Civil Action No. 4738 to transfer the point of diversion of Cottonwood Irrigating and Prior Right to the Town Intake and in said proceeding the Court made specific findings with respect to Cottonwood Irrigating Ditch and Prior Right Ditch in its Decree dated November 17, 1958, as follows:

"That the Decree aforesaid of said Cottonwood Irrigating Ditch (Prior Right) still remains in full force and effect and has not been revised, set aside or modified in any respect whatsoever, and said rights thereunder to the amount of water decreed to said Cottonwood Irrigating Ditch (Prior Right) have not been abandoned, and ever since the original appropriation aforesaid have been and now are used for the purpose of irrigation of lands under said Cottonwood Irrigating Ditch (Prior Right), and in no proceedings are now pending questions in the validity of said decree."

18. That in 1966 BV filed a proceeding in Chaffee County District Court, Civil Action No. 5512 to transfer the point of diversion of Thompson to the Town Intake and in said

proceeding the Court made specific findings that "and dates from the 19th day of December, 1864, and from which date the Town of Buena Vista and its predecessors have continued and still continue to divert water through said ditch and apply the same to the uses and for the purposes as specified in said decree."

19. That since the above referred to Transfer Decrees, Civil Action No. 4738 and Civil Action No. 5512, BV has and has continued to divert at the Town Intake and Infiltration Gallery and to apply to beneficial use for municipal and domestic purposes the full decreed amount owned by BV of the Cottonwood Irrigating, Prior Right and Thompson.

20. That in the above-referred to transfer proceedings, Civil Action No. 4738 and Civil Action 5512 no Protestors or Objectors appeared to challenge or question BV's transfer of said rights and further since the date of said transfer proceeding the subject rights have not been questioned or challenged in any manner and in particular with respect to the use of these originally decreed irrigation rights for general domestic and municipal purposes. However, no request for or a notice of a change to municipal or domestic purposes was made by BV in said proceedings.

21. That said transferred rights, Cottonwood Irrigating, Prior Right and Thompson had all prior to their transfer been used historically to irrigate land located in the vicinity of Buena Vista and that these lands are shown \*generally on Exhibit A hereto attached and incorporated herein by this reference. Specifically each Ditch and the area of historic water use is as follows:

(a) Cottonwood Irrigating - A 35 acre tract located in the S $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 17, T14S, R78W, was historically irrigated by this right. The land is located next to the Town of Buena Vista and the same has been subdivided for residential development. The land is shown as Parcel E on Exhibit A attached. The Court further finds that the return flow of this right historically is tributary to the Arkansas River.

(b) Prior Right - A 26.6 acre tract located in the SW $\frac{1}{4}$  Section 17, T14S, R78W was historically irrigated by this right. The land is located west of the Town of Buena Vista and is presently undeveloped. The land is shown as Parcel C on attached Exhibit A. The Court further finds that the return flow of this right historically is tributary to the Arkansas River.

(c) Thompson - The area historically irrigated by the Thompson is located in the NE $\frac{1}{4}$  of Section 7 and the NW $\frac{1}{4}$  of Section 8, T14S, R78W, and is shown as Parcel B on attached Exhibit A. The evidence presented to the Court established

\*EXHIBIT A MAP IS FILED IN MAP CASE- Buena Vista- BV59 Reception No. 252376

that the Thompson is no longer irrigating this property and that actual use of this right has now been transferred to the Town Intake. The Court further finds that the return flow of this right historically and as presently used is tributary to Cottonwood Creek.

22. That the transferred rights, Cottonwood Irrigation, Prior Right and Thompson prior to their transfer had not been abandoned and all had been used to the extent of their decreed capacity for irrigation purposes. The Court does not make specific findings as to the actual time of use of said rights other than the fact that said rights had been and were used to the extent of their decreed amounts during the irrigation season.

23. That the Court further finds that all the lands historically irrigated by the transferred rights, Cottonwood Irrigation, Prior Right, and Thompson have been and presently are not irrigated and further that the Cottonwood Creek has benefited from said dry up notwithstanding the use of said rights at the Town Intake and Infiltration Gallery for general domestic and municipal purposes.

24. That individually and collectively the new domestic and municipal uses of BV of the subject rights has resulted in less consumptive use than was historically occasioned when these transferred rights were used on the land originally irrigated and when water was diverted from these ditches at their original points of diversion.

25. That with respect to the transferred rights, it was the intention of BV at the time of their acquisition by the Town that said rights were to be used in its municipal system for general and municipal purposes including irrigation for lawns, gardens, green space, municipal use, domestic use, fire protection use, recreational use, aesthetic use and all other general domestic and municipal uses.

26. To protect the interests of St. Charles with respect to BV's use of the transferred rights for general domestic and municipal purposes, BV has agreed to the following specific conditions and limitations:

(a) BV shall not place a call against St. Charles' water rights to wit:

Cottonwood Irrigating Priority No. 1 - 1.2 cfs  
(Appropriation 7/31/1866 - Total - 6.0 cfs) ---

Cottonwood Irrigating Priority No. 2 - 2.6 cfs  
(Appropriation 12/31/1872 - Total - 13.0 cfs)

under BV's interest in the following water rights:

Thompson - 2.0 cfs  
(Appropriation 12/19/1864 - Total - 4.0 cfs, adjud. 6/19/1890)

Prior Right - 1.0 cfs  
(Appropriation 4/30/1866 - Total - 2.0 cfs, adjud 6/19/1890)

(b) When water is physically and legally available to the priorities in Cottonwood Irrigating Ditch, St. Charles shall have the first right to such water to the extent of ownership in such priority, i.e. BV will subordinate its .88 cfs in Cottonwood Irrigating Priority No. 1 and its .12 cfs in Cottonwood Irrigating Priority No. 2 to St. Charles' 1.2 cfs interest in Cottonwood Irrigating Ditch Priority No. 1 and its 2.6 cfs interest in Cottonwood Irrigating Ditch Priority No. 2.

(c) In the event St. Charles' entitlement to water under the decree in W-4411 is curtailed as a result of losing stream conditions between the original point of diversion of Cottonwood Irrigating Ditch and St. Charles' required downstream measuring gauge all as described in findings paragraph 10 and decretal paragraph 1.A. of the decree entered by this Court in said case W-4411, BV shall curtail its diversions or otherwise provide water to make up such deficit except during the month of April, to the extent necessary to make up such deficit.

27. That BV acquired title to the Leesmeagh in July of 1974 and that the land irrigated by said Ditch is shown as Parcel A on attached Exhibit A and presently is being used to irrigate approximately 63 acres thereof. BV seeks to move this right to the Town Intake and Infiltration Gallery and to dry up said 63 acres presently and historically being irrigated by this right. The property presently irrigated and to be dried up is part of Parcel A, Exhibit A and is located in the NE $\frac{1}{2}$  of the SE $\frac{1}{2}$  of Section 7 and the NW $\frac{1}{2}$  of the SW $\frac{1}{2}$  of Section 8, T14S, R78W of the 6th P.M.

BV has agreed to dry up said 63 acres as a condition of and prior to the transfer of said right to the Town Intake and Infiltration Gallery for use for domestic and municipal purposes.

BV also seeks an alternate point of diversion for the Leesmeagh to the Town Intake and Infiltration Gallery.

Upon transfer and change pursuant to the within Decree, Buena Vista has agreed to subordinate its exercise of the Leesmeagh and Corral water rights to the 20 cfs instream flow decreed to CWCB in Case No. 79CW115 during the months of

April, May, September and October of each year as herein provided. At such times that the flow in Cottonwood Creek immediately below the town intake and infiltration gallery is less than 20 cfs, BV has agreed to limit its diversion under the Leesmeagh and Gorrel for a total from both ditches to 1.4 cfs in May and 1.4 cfs in September and has agreed not to divert any water in April and October from said Ditches.

Upon transfer and change pursuant to the within decree, and to protect the interests of St. Charles, BV has agreed on the further limitations of its diversions under the Leesmeagh and Gorrel, to wit:

The maximum rates of diversion of the total of the Leesmeagh and Gorrel shall be as follows:

|                    | Total<br><u>Leesmeagh</u> and <u>Gorrel</u> | <u>Leesmeagh</u> | <u>Gorrel</u> |
|--------------------|---|------------------|---------------|
| January - April    | Zero  | Zero             | Zero          |
| May                | 1.4 cfs                                     | 0.8 cfs          | 0.6 cfs       |
| June               | 2.0 cfs                                     | 1.1 cfs          | 0.9 cfs       |
| July               | 2.0 cfs                                     | 1.1 cfs          | 0.9 cfs       |
| August             | 1.5 cfs                                     | 0.8 cfs          | 0.7 cfs       |
| September          | 1.4 cfs                                     | 0.8 cfs          | 0.6 cfs       |
| October - December | Zero  | Zero             | Zero          |

28. BV acquired title to the Gorrel on July 1, 1976 together with approximately 120 acres, approximately 48 of which were irrigated by the Gorrel. The land historically irrigated by the Gorrel is shown as Parcel D on the attached Exhibit A and is located in Section 13, T14S, R79W of the 6th P.M. Water from the Gorrel is presently being diverted from the already decreed alternate point of diversion and BV has long operated a hydraulically connected infiltration gallery which underlies the Gorrel meadow which intercepts subsurface return flow from irrigation on the Gorrel meadow. Infiltration galleries are situated on the north side of the channel of Cottonwood Creek adjacent to the Town Intake.

BV has agreed to dry up all or a portion of the Gorrel meadow as a condition for using the Gorrel for general domestic and municipal purposes. The historic irrigation diversion rate of the Gorrel is 1.30 cfs or 0.027 cfs per acre based on the 48 acres historically irrigated. Upon transfer and change of the Gorrel pursuant to this decree the maximum diversion rates given in paragraph 27 shall be proportionally reduced for each acre of the 48 acres that remains irrigated or has not dried up. The maximum rate of diversion for irrigation shall be reduced by 0.027 cfs for each acre not dried up. After said land has been withdrawn from irrigation, it shall thereafter not be irrigated by the Gorrel.



BV seeks an alternate point of diversion for the Gorrel to the Town Intake and Infiltration Gallery.

Buena Vista has agreed with respect to the Gorrel to the diversion limitation set forth in the proceeding paragraph, paragraph No. 27.

With respect to the Leesmeagh and Gorrel BV has further agreed to limit the use of said rights to the service area shown on Exhibit B attached - Buena Vista Service Area.

In order to obtain credit for dry-up of Leesmeagh or Gorrel acreage, BV shall construct an observation well of two inch PVC pipe at the lowest point of any tract for which dry-up is claimed (in conformity to standard engineering practice) and shall show that the water table is kept four (4) feet below ground surface or deeper.

Notwithstanding the provisions of this Decree relating to permanent dry-up of the Leesmeagh and Gorrel acreage, BV shall be allowed to provide water and water service for municipal purposes only through its municipal system to such areas.

29. BV owns by original appropriation the Town, which Ditch historically irrigated a significant portion of the E½ of the Town of Buena Vista which land is shown as Parcel F on attached Exhibit A.

The land historically irrigated by this Ditch has been taken out of irrigation and generally has been developed for residential purposes with outside lawn irrigation now coming from distributions from the municipal system rather than from ditches and laterals stemming from the headgate of the Town.

BV seeks a change of point of diversion of 2 cfs of the Town to the Town Intake and Infiltration Gallery and agrees to subordinate this change to the rights of CWCB for instream flow on Cottonwood Creek. BV has also agreed to subordinate to CWCB to maintain the subject instream decreed rights in Case No. 79CW115 the entire 4 cfs of the Town owned by BV.

30. BV owns by original appropriation the Supply, which Ditch was historically used to irrigate grass, small grains and a variety of garden vegetables on property shown as Parcel G on attached Exhibit A. The property is generally located in the S½ of the present municipality of Buena Vista. The property historically irrigated has been dried up or has been developed for residential purposes in which case the water supplying lawns, gardens, etc., is distributed through the municipal system from the Town Intake and Infiltration Gallery.

BV seeks a change of point of diversion of the Supply to the Town Intake and Infiltration Gallery and agrees to subordinate this change to the rights of CWCB for instream flow on Cottonwood Creek. BV has agreed to subordinate to CWCB to maintain the subject instream decreed rights in Case No. 79CW115 2 cfs of the Supply.

31. BV has agreed to install an appropriate measuring gauge in Cottonwood Creek immediately downstream from its Town intake and infiltration gallery and has agreed to provide CWCB with annual reports of its use of water at the Town intake and infiltration gallery which report shall include a record of weekly diversion. BV has further agreed during April, May, September and October, upon notification from CWCB or St. Charles or the Division Engineer to take daily recordings of the gauge to be installed in Cottonwood Creek below the Town Intake and Infiltration Gallery. BV has further agreed to provide gauge measurements to Objectors upon request. BV will take monthly measurements of the water table in areas formerly irrigated by the Leesmeagh and Gorrel and shall make available such measurements to the Objectors upon request. Further, upon notification to BV, the Objectors shall be permitted access to the areas claimed for dry-up in order to verify claims for dry-up.

32. That individually and collectively the new domestic and municipal water use by BV now or as contemplated by this decree with respect to the Leesmeagh, Gorrel, Town, and Supply has and will result in less consumptive use than when these rights were used on the land originally irrigated and when water was diverted into these ditches at their original points of diversion.

33. That the Court finds that the return flow from the use of the subject rights in BV's municipal system will inure to the benefit of both Cottonwood Creek and the Arkansas River and further that by reason of the dry up of the lands historically irrigated by Cottonwood Irrigating (Parcel E), Prior Right (Parcel C), Thompson (Parcel B), Supply (Parcel G), and Town (Parcel F) which lands historically contributed by return flow to the Arkansas River and the nature of BV's historic present and contemplated future use of all of the BV Water Rights that on balance Cottonwood Creek will benefit by return flow more than historically on all points between the Town Intake and the confluence of Cottonwood Creek with the Arkansas River.

34. Pursuant to 37-92-304(6), C.R.S., as amended, the approval of the within change shall be subject to reconsideration by the Court on the question of injury to the vested rights of others for a period of five years after the date on which BV's full entitlement in each and every one of the water rights listed in paragraph 7 is diverted at the

points described in paragraph 12 hereof to the fullest extent permitted by this Decree.

35. That although there has been some variance in the time period of historical use of BV Water Rights for irrigation purposes, the average period of irrigation for these rights is determined by the Court to be approximately from the 1st day of April through October 31st of each year and all changes in character of use and point of diversion herein made applicable to these rights in this proceeding (except BV Water Works) previously decreed for domestic purposes) shall be limited to the same time period.

36. The Court finds that by the imposition of the conditions set forth in these findings specifically including recognition of previously dried up irrigated acreage and contemplated dry up of other acreage, the BV Water Rights may be used for general domestic and municipal purposes as set forth in the application and likewise may be diverted in their original decreed amounts, except as herein expressly limited, at the Town Intake and Infiltration Gallery using their present decreed priority dates without adversely affecting any vested water rights or decreed conditional water rights in the Arkansas River or its tributaries.

37. By reason of the lateness of the priority of the George W. Tegler Ditch, BV wishes to withdraw and delete this right from its application and it is so ordered.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. The provisions of paragraphs 1-37 are incorporated herein and made a part of the Court's Judgment and Decree as if set out in full.

2. That the Applicant be, and the same hereby is, awarded approval of its application for change of water rights to wit:

Name and Address Town of Buena Vista  
P.O. Box 2002  
Buena Vista, Colorado 81211

Name of Water Right and Amount of Water

| <u>Ditch</u> | <u>Decreed Amount (cfs)</u> | <u>Appropriation Date</u> | <u>Adjudication Date</u> | <u>Ownership by Town (cfs)</u> |
|--------------|-----------------------------|---------------------------|--------------------------|--------------------------------|
| Leesmeagh    | 4.0                         | 11/30/1864                | 6/19/1890                | 17833'                         |
| Thompson     | 4.0                         | 12/19/1864                | 6/19/1890                | 2.0 •                          |
| Prior Right  | 2.0                         | 04/30/1866                | 6/19/1890                | 1.0 •                          |

|                         |             |                          |                          |                            |
|-------------------------|-------------|--------------------------|--------------------------|----------------------------|
| Gorrel (& alternate)    | 4.0         | 05/31/1866               | 6/19/1890                | 2.66 *                     |
| Cottonwood Irrigating   | 6.0<br>13.0 | 07/31/1866<br>12/31/1872 | 06/19/1890<br>06/19/1890 | 0.88 *<br>0.12.            |
| Town                    | 4.0         | 06/01/1880               | 07/14/1903               | 2.0 out of the decreed 4.0 |
| Supply                  | 2.0         | 06/01/1880               | 07/14/1903               | 2.0                        |
| Buena Vista Water Works | 10.0        | 06/01/1883               | 09/10/1904               | 10.0                       |

Location of New, Amended Or Alternate Point of Diversion for Said Use (Except Town Well No. 1).

#### TOWN INTAKE

A point whence the NE corner of Section 13, Township 14 South, Range 79 West of the 6th P.M. bears N. 32°03'33" E. 2,944.64 feet, Chaffee County, Colorado.

#### INFILTRATION GALLERY

SW 1/4 of the NE 1/4 and the NW 1/4 of the SE 1/4 of Section 13, Township 14 South, Range 79 West, of the 6th P.M., Chaffee County, Colorado.

Approved Change and Nature of Change of New, Amended or Alternate Point of Diversion by each water right to above Point of Diversion (Except Town Well No. 1)

1. Leesmeagh - Alternate Point of Diversion.
2. Thompson - Change or Correction of Point of Diversion.
3. Prior Right - Change or Correction of Point of Diversion.
4. Gorrel - Alternate Point of Diversion.
5. Cottonwood Irrigating - Change or Correction of Point of Diversion.
6. Town - Change of point of diversion of 2 cfs with subordination of entire 4 cfs of Town to CWCB to support decreed instream flow of Cottonwood Creek.
7. Supply - Change of point of diversion with subordination to CWCB to support decreed instream flow of Cottonwood Creek.
8. Buena Vista Water Works - Partial alternate change

of point of diversion and change or correction of point of diversion.

Amount of Water Changed (Subject to limitations herein contained)

|                                   |   |
|-----------------------------------|---|
| 1. <u>Leesmeagh</u>               | 1.833 cfs                                   |
| 2. <u>Thompson</u>                | 2.0 cfs                                     |
| 3. <u>Prior Right</u>             | 1.0 cfs                                     |
| 4. <u>Gorrel</u>                  | 2.66 cfs                                    |
| 5. <u>Cottonwood</u>              | 0.88 cfs                                    |
| <u>Irrigating</u>                 | 0.12 cfs                                    |
| 6. <u>Town</u>                    | 2.0 cfs (out of 4.0 cfs<br>of <u>Town</u> ) |
| 7. <u>Supply</u>                  | 2.0 cfs                                     |
| 8. <u>Buena Vista Water Works</u> | .1 cfs                                      |

Location of Alternate Point of Diversion for .1 cfs Buena Vista Water Works

Town Well No. 1

A point in the NE 1/4 NE 1/4, Section 19, Township 14 South, Range 78 West of the 6th P.M. whence NE corner of said section bears N. 61°26' E. 320.2 feet

Approved Alternate Point of Diversion for .1 cfs Buena Vista Water Works

The above alternate point of diversion for .1 cfs is hereby approved.

Approved Change of Character of Use

There is hereby approved the change of character of use of the above seven irrigation rights to also include irrigation for lawns, gardens and green spaces, municipal use, domestic use, fire protection use, recreation use and all other beneficial uses including historical crop irrigation.

3. That transfer and use of the above rights (with the exception of .1 cfs. of Buena Vista Water Works) to the Town Intake and Infiltration Gallery shall be limited to the period of April 1 through October 31st of each year.

4. That BV's use of the transferred water rights, i.e. Cottonwood Irrigating, Prior Right, and Thompson for general

domestic and municipal purposes shall be subject to the following specific conditions and limitations:

(a) BV shall not place a call against St. Charles water rights to wit:

Cottonwood Irrigating Priority No. 1 - 1.2 cfs  
(Appropriation 7/31/1866 - Total - 6.0 cfs)

Cottonwood Irrigating Priority No. 2 - 2.6 cfs  
(Appropriation 12/31/1872 - Total - 13.0 cfs)

under BV's interest in the following water rights:  
Thompson - 2.0 cfs  
(Appropriation 12/19/1864 - Total - 4.0 cfs, adjud.  
6/19/1890)

Prior Right - 1.0  
(Appropriation 4/30/1866 - Total - 2.0 cfs, adjud  
6/19/1890)

(b) When water is physically and legally available to the priorities in Cottonwood Irrigating Ditch, St. Charles shall have the first right to such water to the extent of ownership in such priority, i.e. BV will subordinate its .88 cfs in Cottonwood Irrigating Priority No. 1 and its .12 cfs in Cottonwood Irrigating Priority No. 2 to St. Charles' 1.2 cfs interest in Cottonwood Irrigating Ditch Priority No. 1 and its 2.6 cfs interest in Cottonwood Irrigating Ditch Priority No. 2.

(c) In the event St. Charles' entitlement to water under the decree in W-4411 is curtailed as a result of losing stream conditions between the original point of diversion of Cottonwood Irrigating Ditch and St. Charles' required downstream measuring gauge all as described in findings paragraph 10 and decretal paragraph 1.A. of the decree entered by this Court in said case W-4411, BV shall curtail its diversions or otherwise provide water to make up such deficit except during the month of April, to the extent necessary to make up such deficit.

5. That BV shall, prior to the use of the Leesmeagh at the Town Intake and Infiltration Gallery, dry up permanently at least 63 acres as shown as part of Parcel A on the attached Exhibit A historically irrigated by Leesmeagh and shall not thereafter irrigate said tract by use of the Leesmeagh. The land shall be dried up subject to the approval of the Division Engineer and Objectors. In the event the dry up of historically irrigated acreage is less than 63 acres, the diversion amounts shall be proportionally reduced to reflect actual dry up acreage.

6. That BV shall, prior to the use of the Correl for general domestic and municipal purposes, dry up all or a portion of the Correl meadow as shown as Parcel D on the attached Exhibit A. The historic irrigation diversion rate of the Correl is 1.30 cfs or 0.027 cfs per acre based on the 48 acres historically irrigated. Upon transfer and change of the Correl pursuant to this decree the maximum diversion rates given in paragraph 27 shall be proportionally reduced for each acre of the 48 acres that remains irrigated or has not dried up. The maximum rate of diversion for irrigation shall be reduced by 0.027 cfs for each acre not dried up. After said land has been withdrawn from irrigation, it shall thereafter not be irrigated by the Correl. The land shall be dried up subject to the approval of the Division Engineer and Objectors.

In order to obtain credit for dry-up of Leesmeagh or Correl acreage, BV shall construct an observation well of two inch PVC pipe at the lowest point of any tract for which dry-up is claimed (in conformity to standard engineering practice) and shall show that the water table is kept four (4) feet below ground surface or deeper.

Notwithstanding the provisions of this Decree relating to permanent dry-up of the Leesmeagh and Correl acreage, BV shall be allowed to provide water and water services for municipal purposes only through its municipal system to such areas.

7. That upon transfer and change pursuant to the within decree, BV shall subordinate its exercise of the Leesmeagh and Correl water right to the 20 cfs. instream flow decreed to CWCB in Case No. 79CW115 during the months of April, May, September and October of each year as herein provided. At such time that the flow in Cottonwood Creek immediately below the Town Intake and Infiltration Gallery is less than 20 cfs, BV shall limit its diversion under the Leesmeagh and Correl for a total from both ditches to 1.4 cfs in May and to 1.4 cfs in September and shall not divert any water in April and October from said ditches.

8. That the maximum rates of diversion of the total of the Leesmeagh and Correl water rights after they have been changed to municipal use shall be as follows:

|                    | <u>Total<br/>Leesmeagh &amp; Correl</u> | <u>Leesmeagh</u> | <u>Correl</u> |
|--------------------|---|------------------|---------------|
| January - April    | Zero                                    | Zero             | Zero          |
| May                | 1.4 cfs                                 | 0.8 cfs          | 0.6 cfs       |
| June               | 2.0 cfs                                 | 1.1 cfs          | 0.9 cfs       |
| July               | 2.0 cfs                                 | 1.1 cfs          | 0.9 cfs       |
| August             | 1.5 cfs                                 | 0.8 cfs          | 0.7 cfs       |
| September          | 1.4 cfs                                 | 0.8 cfs          | 0.6 cfs       |
| October - December | Zero                                    | Zero             | Zero          |

9. That BV be restrained and restricted from the future irrigation from the below listed rights those parcels previously and historically irrigated by the Cottonwood Irrigating, Prior Right, Town, Thompson and Supply as shown on Exhibit A and with respect to said water rights the land shall be deemed permanently committed to this dry up.

10. That at such time as BV commences use of Town Well No. 1 as an alternate point of diversion and at such times as the Buena Vista Water Works right is in priority, it will cease to divert .1 cfs out of the Buena Vista Water Works at its point of diversion at the Town Intake and Infiltration Gallery.

11. That BV's transfer of the point of diversion of 2 cfs of the Town (as well as the 2 cfs of the Town not transferred) and Supply shall be subordinate to the right of CWCB decree in Case No. 79CW115 for an instream flow of 20 cfs in Cottonwood Creek in the segment of the stream from the confluence of Middle and South Cottonwood Creek to its confluence of the Arkansas River. At such times as the flow in Cottonwood Creek immediately below the Town Intake and Infiltration Gallery is less than 20 cfs. BV agrees not to divert any water under its Town or Supply water rights.

12. That BV shall install an appropriate measuring gauge in Cottonwood Creek immediately downstream from its Town Intake and Infiltration Gallery and shall provide CWCB with annual reports of its use of water at the Town Intake and Infiltration Gallery, which reports shall include a record of weekly diversions. BV shall further during April, May, September and October, upon notification from CWCB or the Division Engineer take daily recordings of the gauge to be installed in Cottonwood Creek below the Town Intake and Infiltration Gallery. BV will provide gauge measurements to Objectors upon request.

13. That BV will apply to the Colorado Division of Water Resources for a permit to drill Town Well No. 1, making reference to this decree as herein approved and the State Engineer shall issue a well permit for the construction of the Town Well No. 1 as herein proposed and the State Engineer is ordered to issue such permit within a reasonable time following the entry of a decree herein.

14. That the Court shall retain continuing jurisdiction to consider any allegation of material injury to the vested water rights of others resulting from the conditions of the within decree for a period of five (5) years from the date on which BV's full entitlement in each and every one of the water rights listed in paragraph 7 is diverted at the point described in paragraph 12 hereof to the fullest extent permitted by this Decree.




15. Upon diversion at the points recited in paragraph 12 herein of any water under any of the water rights identified in paragraph 7 herein and, subject to the provision of paragraphs 27 and 28 as they relate to the Leesmeagh and Gorrel, no water under BV's ownership (listed in paragraph 7) shall henceforth be diverted into the subject headgate or ditch, and the land historically irrigated under BV's said ownership shall not again be irrigated without further judicial approval.

16. That copies of this ruling shall be mailed as provided by statute.

DONE AND ENTERED in open Court this 19 day of June, 1989.

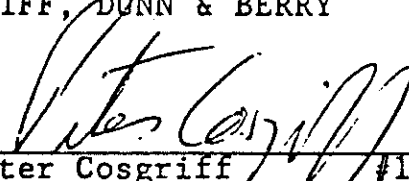
BY THE COURT:

  
John R. Tracey, Water Judge

APPROVED AS TO SUBSTANCE AND FORM:

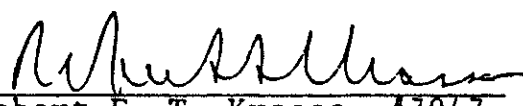
FOR APPLICANT:

COSGRIFF, DUNN & BERRY

By:   
Peter Cosgriff #1420  
131 West 5th Street  
P.O. Box 11  
Leadville, CO 80461  
Telephone: (719) 486-1885  
Town Attorney

FOR OBJECTORS:

KRASSA, LINDHOLM, KUMLI & MADSEN

By:   
Robert F. T. Krassa #7947  
760 United Bank Building  
Pueblo, CO 81003  
Telephone: (719) 542-3945  
Attorneys for St. Charles  
Mesa Water District

c: Cosgriff, Dunn & Berry (Cosgriff)  
 Krassa, Lindholm, Kumli & Madsen (Krassa)  
 Kelly, Stansfield & O'Donnell (Flanagan)  
 Attorney General's Office (Martinez)  
 Holme, Roberts & Owen (Browning)  
 Hughes, Duncan & Dingess (Dingess)  
 Division Engineer  
 State Engineer

*unc 6-19-89*

Filed in the office of the  
 Clerk, District Court Water  
 Division No. 2, State of  
 Colorado

JUN 19 1989

*Roselee Lucero*  
 Clerk

DISTRICT COURT  
 WATER DIVISION NO. 2  
 STATE OF COLORADO

Certified to be a full, true  
 and correct copy of original.

Date: JUN 19 1989  
 PRINCIPAL LUCERO, CLERK  
 Deputy Clerk  
 DISTRICT COURT  
 WATER DIVISION NO. 2  
 STATE OF COLORADO

APPLICANT

|                    |              |       |               |
|--------------------|--------------|-------|---------------|
| WELL PERMIT NUMBER | <u>51396</u> | -     | <u>F</u>      |
| DIV. 2             | CNTY. 8      | WD 11 | DES. BASIN MD |

Lot: Block: Filing: Subdiv:

BUENA VISTA TOWN OF  
P O BOX 2002  
BUENA VISTA CO 81211-

(719)395-6898

APPROVED WELL LOCATION  
CHAFFEE COUNTY

SW 1/4 NE 1/4 Section 13  
Twp 14 S RANGE 79 W 6th P.M.

DISTANCES FROM SECTION LINES

2950 Ft. from South Section Line  
1800 Ft. from East Section Line

PERMIT TO USE AN EXISTING WELL , AMENDED APRIL 2, 1999

ISSUANCE OF THIS PERMIT DOES NOT CONFER A WATER RIGHT


CONDITIONS OF APPROVAL


- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of the permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to CRS 37-90-137(2) for use of an existing infiltration gallery as a point of diversion of the Buena Vista Water Works as implied by the decree granted to the Town of Buena Vista in case no. 83CW88, Division 2 Water Court.
- 4) This well is subject to administration by the Division Engineer in accordance with applicable decrees, statutes, rules, and regulations.
- 5) The use of ground water from this well is limited to supplying to Town of Buena Vista water supply system.
- 6) The maximum pumping rate shall not exceed 1,700 GPM.
- 7) The maximum annual amount of ground water to be appropriated shall not exceed 1,900 acre-feet.
- 8) A metering method must be established for this well pursuant to the Amended Rules Governing the Measurement of Tributary Ground Water Diversions Located in the Arkansas River Basin.
- 9) The owner shall mark the well in a conspicuous place with well permit number(s), name of the aquifer, and court case number(s) as appropriate. The owner shall take necessary means and precautions to preserve these markings.
- 10) This well shall be constructed at least 600 feet from any existing well completed in the same aquifer that is not owned by the applicant, for which a 600 foot spacing waiver has not been obtained.
- 11) This permit has been approved with distances from section lines as given on the November 13, 1998 application. You are hereby notified that you have the right to appeal the issuance of this permit, by filing a written request with this office within sixty (60) days of the date of issuance, pursuant to the State Administrative Procedures Act. (See Section 24-4-104 through 106, C.R.S.).

Note: The Distances from section lines represent the down stream point of perforated pipe.  
Cross referenced to monitoring hole acknowledgement MH-35129.

## OWNER'S COPY

APPROVED  
KVH

  
\_\_\_\_\_  
State Engineer

  
\_\_\_\_\_  
By

Receipt No. 0429390

DATE ISSUED FEB 23 1999

EXPIRATION DATE FEB 23 2000

Town Well  
at WTP

LIC

|                    |             |          |               |
|--------------------|-------------|----------|---------------|
| WELL PERMIT NUMBER | <u>2221</u> | <u>F</u> | <u>R</u>      |
| DIV. 2             | CNTY. 8     | WD 11    | DES. BASIN MD |

APPLICANT

TOWN OF BUENA VISTA  
% PUBLIC WORKS DIRECTOR  
BOX 2002  
BUENA VISTA CO 81211-

(719)395-8643

PERMIT TO CONSTRUCT A WELL

APPROVED WELL LOCATION  
CHAFFEE COUNTY

SE 1/4 NE 1/4 Section 13  
Twp 14 S RANGE 79 W 6th P.M.

DISTANCES FROM SECTION LINES

2100 Ft. from North Section Line  
780 Ft. from East Section Line

ISSUANCE OF THIS PERMIT DOES NOT CONFER A WATER RIGHT

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of the permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to CRS 37-90-137(2) for the replacement of an existing well, permit no. 2221-F. The old well must be plugged according to the Water Well Construction Rules. A Well Abandonment Report must be submitted within sixty (60) days after construction of the new well, affirming that the old well was plugged.
- 4) This well is subject to administration by the Division Engineer in accordance with applicable decrees, statutes, rules, and regulations.
- 5) The use of ground water from this well is limited to supplying the Town of Buena Vista water service system.
- 6) The maximum pumping rate shall not exceed 225 GPM.
- 7) The maximum annual amount of ground water to be appropriated shall not exceed 360 acre-feet.
- 8) A metering method must be established for this well pursuant to the Amended Rules Governing the Measurement of Tributary Ground Water Diversions Located in the Arkansas River Basin.
- 9) The owner shall mark the well in a conspicuous place with well permit number(s), name of the aquifer, and court case number(s) as appropriate. The owner shall take necessary means and precautions to preserve these markings.
- 10) This well shall be constructed not more than 200 feet from the location specified on this permit.
- 11) This well shall be constructed at least 600 feet from any existing well completed in the same aquifer that is not owned by the applicant for which no 600 foot spacing waiver was obtained.

APPROVED  
KVH

*Hal D. Simpson*  
State Engineer

*Dick Wolfe*  
By

Receipt No. 0426236

DATE ISSUED NOV 17 1998

EXPIRATION DATE NOV 17 1999