

DISTRICT COURT, WATER DIVISION 1 COLORADO 901 9th Avenue, Room 418 P. O. Box 2038 Greeley, CO 80632	<div style="border: 1px solid black; padding: 5px; text-align: center;">FILED IN DISTRICT COURT SEP 17 '02 WELD COUNTY, COLO.</div> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF MOUNTAIN MUTUAL RESERVOIR COMPANY IN JEFFERSON COUNTY	
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT APPROVING AN EXCHANGE WATER RIGHT	

THIS MATTER, having come on for consideration upon the Application of the Mountain Mutual Reservoir Company for an Exchange Water Right, and the Court having considered the pleadings, the files herein, the stipulations of the parties, the evidence presented and the comments of the Division Engineer, does find.

FINDINGS OF FACT

1. The Application was filed with the Water Clerk, Water Division 1, on April 28, 2000. All notices required by law of the filing of this Application have been fulfilled, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

2. Statements of Opposition to the Application were filed by the Red Rocks Country Club, on June 27, 2000; by Theodore M. Zorich, on June 28, 2000; by the Foothills Park and Recreation District, on June 29, 2000; by the City and County of Denver, acting by and through its Board of Water Commissioners, on June 29, 2000; by the Buffalo Park Development Company, on June 30, 2000; by Jefferson County, on June 30, 2000; by the State Engineer and Division Engineer for Water Division 1, on June 30, 2000; and by the Colorado Water Conservation Board, on June 30, 2000. No other statements of opposition have been filed and the time for filing such statements has expired.

3. This matter was initially referred to the Referee for consideration pursuant to §37-92-203(7), 10 C.R.S. (2001). On September 6, 2000, by Order of the Referee entered pursuant to §37-92-303(2), 10 C.R.S. (2001), the Application was re-referred to the Water Judge.

4. The mailing address of the Mountain Mutual Reservoir Company (hereinafter referred to as "MMRC"), is as follows: 2

Mountain Mutual Reservoir Company
2525 South Wadsworth Blvd., Suite 306
Lakewood, Colorado 80227

5. MMRC has requested the adjudication of a conditional water exchange referred to as the MMRC Exchange No. 2. The exchange will allow water owned by the MMRC that is available in Bear Creek and the Soda Lakes Reservoir Nos. 1 and 2 to be moved into the North Turkey Creek drainage basin for storage in Meadowview Reservoir. This is an upstream movement of water.

6. The length of the exchange reach is approximately 14 miles. Stream segments impacted by the exchange are portions of Turkey Creek and North Turkey Creek. The downstream point of the exchange is the confluence of Bear Creek and Turkey Creek at Bear Creek Lake located in the N 1/2 NW 1/4, Section 5, Township 5 South, Range 69 West, 6th P.M., Jefferson County, Colorado. The upstream point of the exchange consists of three locations. The first is the intake for Meadowview Reservoir on the North bank of North Turkey Creek located in the SW 1/4 SE 1/4 of Section 26, Township 5 South, Range 71 West, 6th P.M., Jefferson County, Colorado, at a point approximately 190 feet from the South section line and 2,400 feet from the East section line of Section 26. A second point for the upstream portion of the exchange is the Evergreen Memorial Park Ditch which is located on an unnamed tributary of North Turkey Creek in the NE 1/4 SE 1/4 of Section 26, Township 5 South, Range 71 West, of the 6th P.M., at a point approximately 1,800 feet from the South section line and 750 feet from the East section line of Section 26. The third point for the upstream portion of the exchange is the unnamed drainage within which Meadowview Reservoir will be located in the S 1/2 of Section 26, Township 5 South, Range 71 West, 6th P.M., Jefferson County, Colorado, at a point approximately 1,700 feet from the South section line and 2,400 feet from the East section line of Section 26. The exchange can more particularly be described as operating from the confluence of Turkey Creek and Bear Creek, as well as the confluence of the Soda Lakes outlet ditch and Turkey Creek; thence up Turkey Creek to the confluence of North Turkey Creek and South Turkey Creek in the NW 1/4 NW 1/4, Section 27, Township 5 South, Range 70 West, 6th P.M., (at or immediately South of the North section line of said Section 27); and thence up North Turkey Creek and its unnamed tributaries in the S 1/2 of Section 26, Township 5 South, Range 71 West, 6th P.M. to the above described locations.

7. The source of water for the exchange will be consumptive use water yielded by 7.71 shares of stock in the Harriman Ditch

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Company, 2.0 shares of stock in the Warrior Ditch Company and 8.71 shares of stock in the Soda Lakes Reservoir and Mineral Water Company. Decrees approving a change of use of these water rights to include augmentation, exchange and substitution purposes, quantifying the historic consumptive use of the rights and clarifying the terms and conditions under which the water may be used for augmentation, replacement and exchange purposes have previously been entered in Case Nos. 94CW168, 95CW196, 95CW281, 95CW291, 96CW103, 96CW1046, 97CW091, 97CW280, 97CW281, 97CW282, 97CW336, 97CW337, 97CW338, 97CW372, 98CW240, 98CW241, 98CW310 and 98CW311. All such terms and conditions from those Decrees are incorporated herein by this reference.

8. The date of appropriation for the exchange is April 28, 2000.

9. The rate of exchange is 2.0 cubic feet per second, CONDITIONAL.

10. Once the subject water is exchanged into Meadowview Reservoir, it will be used for replacement, augmentation and exchange purposes by shareholders of MMRC, as expressly authorized by the Decrees listed in Paragraph No. 7, above, and any other final decrees entered by this Court which expressly authorize additional uses by MMRC shareholders. This exchange shall not be operated and no use under this exchange shall be permitted until Meadowview Reservoir has been constructed.

11. MMRC has demonstrated that water in the amount claimed for exchange can and will be diverted and beneficially used, and that the project can and will be completed with diligence and within a reasonable time, pursuant to the requirements of §37-92-305(9)(b), 10 C.R.S. (2001).

12. The upstream exchange of water shall be conducted only when all water rights which are located within the exchange reach, and whose priorities are senior to April 28, 2000, are either (1) in priority and fully satisfied, or (2) unable to divert water to the extent then desired because of being partially or totally called out by a downstream senior water right that is located at or below the point where MMRC delivers substitution and replacement water. Senior intervening water rights shall be deemed to be in priority when the physical supply of water available to any such water right, at its point of diversion, would entitle its user to divert water for beneficial use from a point within the exchange reach, but for diversions by MMRC hereunder, and the user is then seeking to make such a diversion of water. MMRC's entitlement to the April 16, 1862, priority decreed to the Warrior Ditch and the April 15, 1868, priority decreed to the Harriman Ditch shall not

be used to call any water right or exchange that diverts above the Warrior Ditch on Turkey Creek, or its tributaries.

13. Notwithstanding the above terms of Paragraph No. 12, MMRC has stipulated with the Colorado Water Conservation Board ("CWCB"), that the operation of the exchange shall be subordinate to the CWCB's instream flow water right Application currently pending in Case No. 94CW250, (i.e. the section of North Turkey Creek between its confluence with an unnamed tributary in the SW 1/4 SE 1/4 of Section 25, Township 5 South, Range 71 West, 6th P.M., and its confluence with South Turkey Creek). Assuming that a decree is ultimately awarded to the CWCB in Case No. 94CW250, the exchange awarded herein shall not be operated unless the instream flow water right described in said decree is fully satisfied.

14. The exchange will operate only when there is a live stream between the point where exchange water is released to the stream system, (i.e. the confluence of Bear Creek and Turkey Creek, or the confluence of the Soda Lakes outlet Ditch and Turkey Creek as described above), and one or more of the intake facilities for Meadowview Reservoir on North Turkey and its tributaries; provided, however, that notwithstanding the above provision, the State water administration officials, on a case by case basis, may authorize an exchange which commands the entire flow of the stream at a particular location outside of a senior instream flow reach if they reasonably determine that there will be no injury to any other water right. Prior to operating the exchange, MMRC shall notify the appropriate State water administration official and obtain approval to proceed. To the extent that more water is diverted to storage in Meadowview Reservoir than is proper for whatever reason, any such over diversions shall be released to North Turkey Creek within twenty-four hours of such information becoming known to MMRC.

15. MMRC shall install and maintain such measuring devices as the Division Engineer may reasonably require for administration of the exchange.

CONCLUSIONS OF LAW

16. This Application was filed with the Water Clerk, Water Division No. 1, pursuant to §37-92-302(a), 10 C.R.S. (2001). Statements of Opposition were filed by Red Rocks Country Club, Theodore M. Zorich, Jefferson County, the Foothills Park and Recreation District, the Buffalo Park Development Company, the City and County of Denver, acting by and through its Board of Water Commissioners, the State Engineer and Division Engineer and the Colorado Water Conservation Board. As is specified in §37-92-302(1)(c), 10 C.R.S. (2001), the time for filing statements of

opposition has expired. Applicant has entered into Stipulations with the City and County of Denver, acting by and through its Board of Water Commissioners, the Foothills Park and Recreation District, the Colorado Water Conservation Board, Red Rocks Country Club, the State Engineer and the Division Engineer for Water Division 1 and Theodore M. Zorich. The terms and conditions of said Stipulations are incorporated herein by reference.

17. The request of MMRC for an exchange water right is contemplated and authorized by law. Sections 37-92-305(3), (5) and (8), §37-80-120 and §37-83-104, 10 C.R.S. (2001).

18. The State Engineer may lawfully be required to administer this exchange water right in the manner set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

19. The Application for Exchange Water Right proposed by the Mountain Mutual Reservoir Company is approved.

20. All of the foregoing Findings of Fact and Conclusions of Law are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

21. The priority awarded herein to the MMRC Exchange No. 2 was filed in the Water Court in 2000 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.

22. It is also ordered that the conditional exchange right awarded herein is hereby continued in full force and effect until September 30, 2008. If MMRC desires to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before September 30, 2008, or a showing made on or before such date that the conditional exchange right has become an absolute water right by reason of the completion of the appropriation.

DATED: September 17, 2002

Certified to be a full, true and correct copy of the original in my custody.

ed October 21, 2002

MARY M. BOHLENDER
Clerk of the District Court
Weld County, Colorado

By Kurt M. Mohlman
Deputy



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