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To: Mayor Kudron and the Grand Lake Board of Trustees  
From: John Crone, Town Manager  
Re: Town Water Rights  
Date: December 11, 2023

**Background**

The Town has recently received a request to transfer water rights to a local property for irrigation purposes. The water requested comes from the Cairn's Pipeline #1 rights.

This request gives the Board an opportunity to review some of the memos written by our Town Attorney in the past.

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MEMORANDUM

TO: Grand Lake Board of Trustees  
FROM: Scotty P. Krob, Town Attorney  
SUBJECT: Town of Grand Lake's Water rights  
DATE: April 9, 1993, Revised

This memorandum is presented to you in anticipation of our meeting next Monday, April 12, 1993 to discuss the current status of the Town's water rights and to plan future actions of the Town in connection with those rights. If time does not permit your review of the entire memorandum, you may want to refer to the summary provided at the end of the memorandum.

Introduction

Based on my review of the Town files, it appears that the Town has the right to divert 6.0 c.f.s. from the Grand Lake Town Well or the Tonahutu Creek and the right to divert 3.0 c.f.s. from the Tonahutu Creek. In addition the Town is entitled to divert water from three wells quit claimed to it by Morningstar Development and Walter Burkey. This should provide an ample amount of water to satisfy the needs of the Town for the foreseeable future.

Grand Lake Pipeline water right

On October 28, 1955, nunc pro tunc November 7, 1952, the Court in the General Adjudication of water rights for Water District No. 51, awarded the Town of Grand Lake a conditional water right in the amount of 6.75 c.f.s., for municipal and domestic purposes, diverting water from the Tonahutu Creek, with an appropriation date of March 15, 1945. This right, known as the Grand Lake Pipe Line water right was district appropriation #501.

By decree dated October 1, 1968, a copy of which is attached as Appendix A, 6.0 c.f.s. of the 6.75 c.f.s. conditional decree was made absolute for municipal and domestic purposes. This decree is recorded in Book 231, Page 110 of the records of Grand County, Colorado. It is unclear what happened to 0.75 c.f.s. of the conditional water right. The text of the absolute decree suggests the Court may have been under the impression that the

conditional right was for only 6.0 rather than 6.75 c.f.s. In any event, it appears that only the 6.0 c.f.s. which was made absolute remains in existence today.

As discussed in the following section, the Grand Lake well was later decreed as an alternate point of diversion for the 6.0 c.f.s Grand Lake Pipe Line water right.

#### Grand Lake Well

On October 27, 1980, in Case No. 79-CW-288, the Court awarded the Town of Grand Lake a conditional right for the Grand Lake Well in the amount of 0.550 c.f.s., for all municipal purposes, including without limitation, irrigation, domestic, manufacturing, commercial, industrial, mechanical and fire protection, with an appropriation date of March 15, 1979. See Appendix B, attached.

On the same day, October 27, 1980, in Case No. 79-CW-287, the Court decreed that the Grand Lake Well could be used as an alternate point of diversion for the water previously awarded to the Grand Lake Pipe Line, provided that a proper recording device was installed and that the total diversions from the Grand Lake Pipe Line and the Grand Lake Well not exceed 6.0 c.f.s. See Appendix C, attached.

On October 18, 1982, in Case No. 82-CW-111, the Court made the 0.550 c.f.s. conditional water right for the Grand Lake Well absolute, for the same municipal purposes and with the same appropriation date as were set forth in the conditional decree. See Appendix D, attached.

#### Cairns Pipeline No. 1

By far the most involved history of any of the Town's water rights is the Cairns Pipeline No. 1 water right. In a general stream adjudication in 1911, James Cairns was awarded a conditional water right in the amount of 4.406 c.f.s., for irrigation, power and domestic purposes, for the North Inlet to Grand Lake (aka the Tonahutu), with an appropriation date of November 26, 1907. See Appendix E, attached.

On June 1, 1954 in Case No. 183, the Court entered a decree making 1.06 c.f.s. of the Cairns' Pipeline No.1 conditional water right absolute for domestic purposes only, with the remaining portions of the conditional right continued conditional. See Appendix F, attached.

In 1984 the Cairns Pipeline No. 1 water right was placed on the abandonment list and the Town protested such listing. As a result, in Case No. 84-CW-726 and 84-CW-218, the Town entered into a stipulation with the State, which was accepted and entered as an Order of the Court on October 16, 1986. See Appendix G, attached. The stipulation withdrew 3.0 c.f.s. of the Cairns Pipeline No. 1

water right from the abandonment list. Of this 3.0 c.f.s., it recognized the 1.06 c.f.s. that had previously been made absolute and allowed the remaining 1.94 c.f.s. to continue as a conditional water right, on the condition that the Town make it absolute within six months of the Court's order. This deadline was later extended by an Amended Order of the Court entered on April 21, 1987, to and including August 31, 1987. See Appendix H, attached.

On August 28, 1987 the Town filed Case No. 87-CW-196 asking that the 1.94 c.f.s. be made absolute. See Appendix H1, attached. This request was granted by a Ruling of Referee which was approved and adopted as a decree of the Water Court on July 25, 1988. See Appendix I, attached. As a result of this a decree making 1.94 c.f.s. absolute and the earlier decree making 1.06 c.f.s. absolute, a total of 3.0 c.f.s. of the Cairns Pipeline No. 1 water right has been made absolute. The remaining portions of the Cairns Pipeline No. 1 water right have been abandoned.

In discussions with Orlyn Bell, the Division Engineer for Water Division No. 5, it appears that his records show only the 1.06 c.f.s. as having been made absolute, with the full remaining amount still existing as a conditional right. After our meeting Monday, I suggest that I contact Orlyn and send him copies of the decrees along with a request that he correct his records to show that the full 3.0 c.f.s. has been made absolute. Given the early priority date of this water right, it is probably the most valuable right owned by the Town.

Although the right was originally awarded to James Cairns, it appears to have been conveyed to the Town twice. It is my understanding from the notes in the file that the Cairns Pipeline No. 1 water right was conveyed to four gentlemen who operated the Grand Lake Water Company prior to incorporation of the Town and that they later conveyed it to the Town. It is my belief that the deeds reflecting these transactions are in the Town's files somewhere. They need to be located and examined before the Town takes any further action in connection with this water right. In addition Patience Kemp, as the heir of James Cairns, her father, executed a quit claim deed dated December 13, 1979 conveying any remaining interest to the Town. See Appendix I2, attached. I believe this original deed is still in the Town's files and has never been recorded. It should be recorded with the Clerk and Recorder as soon as possible.

#### Cairns Pipeline No. 2

As part of the same general adjudication in which James Cairns received a water right for Cairns' Pipeline No. 1, he was also awarded a conditional water right in the amount of 5.016 c.f.s., with an appropriation date of November 27, 1907 for irrigation, power and domestic purposes for Cairns Pipeline No. 2 to be diverted out of the North Inlet (Tonahutu). See Appendix E, attached.

By quit claim deed dated December 13, 1979, Patience Kemp conveyed any interest she had in Cairns Pipeline No. 2 to the Town. See Appendix K, attached. Cairns Pipeline No. 2 was placed on the abandonment list at the same time as Cairns Pipeline No. 1. However, as there was no evidence of historic use and as an accommodation for removing Cairns Pipeline No. 1 from the abandonment list, the Town allowed the abandonment of the Cairns Pipeline No. 2 water right. See Appendix G, attached.

#### Cairns Reservoirs No. 2 and No. 3

As part of the same general adjudication in which James Cairns received conditional water rights for Cairns Pipelines No. 1 and No. 2, he also received conditional storage rights for Cairns No. 2 Reservoir and Cairns No. 3 Reservoir. Cairns No. 2 Reservoir was granted a conditional decree for storage of 6,083,154 cubic feet of water for power manufacturing and mechanical purposes and generation of electricity with an appropriation date of December 8, 1904. Cairns Reservoir No. 3 was granted a conditional decree for storage of 14,498,754 cubic feet of water for power for manufacturing and mechanical purposes and the generation of electricity. See Appendix E, attached. Cairns No. 2 Reservoir was quit claimed to the Town by Patience Kemp on December 13, 1979. See Appendix L, attached. Cairns No. 3 Reservoir was quit claimed to the Town by Patience Kemp on December 13, 1979. See Appendix M, attached. Cairns Reservoirs No. 2 and No. 3 were placed on the abandonment list along with the pipeline rights. As there was no evidence that the reservoirs had ever been constructed, upon advice of previous counsel to the Town, no protest was filed and these rights have been abandoned. In addition, it appears the the decreed locations of these reservoirs are within the boundaries of Rocky Mountain National Park, making their construction at any time in the future unlikely.

The preceding water rights are the major rights which the Town has owned or currently owns according to the Town's files I reviewed. However, there are a few minor water rights that Town has picked up along the way.

#### Morningstar Development/El Navajo Lodge wells

As part of its PUD for El Navajo Condominiums and its agreement to annex to the Town, Morningstar Development Corporation (Gary Stauffer) entered into a Well Transfer Agreement dated September 1981, and recorded in Book 302 at Page 555 of the records of Grand County, Colorado. See Appendix N, attached. Pursuant to that agreement, Morningstar agreed to convey all appurtenant water rights to the Town, specifically including:

A. Water Well Permit No. 24888

According to the Statement of Beneficial Use of Ground Water filed with the State Engineer on June 30, 1980 (Appendix O, attached), this is a 15 gallon per minute well which has been drilled and put to beneficial use to divert up to one acre-foot annually for commercial purposes. There are two limiting conditions on this well. First, a decree approving the well must be obtained from the Water Court in Water Division No. 5. Second, this well can only be operated as a back up for a well drilled under Permit No. 14250-F. Only one of these two wells can be operated at any time and the total amount diverted must be no more than 20 c.f.s. and no more than one acre-foot per year.

Water court approval of this well was obtained in Case No. W-3944, by decree entered September 28, 1979. According to the Decree this is the Kovach Well No. 1 and it was approved for household use only for one household, with an appropriation date of August 3, 1976. See Appendix P, attached.

B. Water Well Permit No. 014250-F

According to the Statement of Beneficial Use of Ground Water filed on with the State Engineer February 4, 1970 (Appendix Q, attached) this is a 20 gallon per minute well which has been drilled and put to beneficial use for commercial purposes. If the Town intends to use or claim either of these wells, it must submit a notice of transfer of ownership to the State Engineer.

C. 0.033 c.f.s to Kovach Well No. 1

Although listed as a separate item in the agreement with Morningstar, the Kovach Well No. 1 appears to be the same well as is discussed in A., above. See Appendix P, attached. The Statement of Beneficial Use of Ground Water is attached as Appendix Q.

The conveyances from Morningstar to the Town were accomplished by a quit claim deed dated September 28, 1981 and recorded in Book 302 at Page 553 of the records of Grand County, Colorado. See Appendix R, attached.

Burkey Well

Through the same type of well transfer agreement and quit claim deed arrangement as was used with Morningstar, Walter Burkey conveyed his interest in another well to the Town. See Appendix S (Well Transfer Agreement) and Appendix T, (Quit Claim deed), attached. According to the Statement of Beneficial Use of Ground Water filed on July 29, 1980 with the State Engineer, the well is for 10 gallons per minute for household use only., with a

priority date of June 7, 1980. See Appendix U, attached. As with the wells discussed above, if the Town intends to claim this well, it must file the required notice of transfer with the State Engineer.

WATER RIGHTS SUMMARY

1. Major Water Rights

A. Grand Lake Pipeline water right

Amount: 6.0 c.f.s., absolute  
Adjudication date: November 7, 1952  
Appropriation date: March 15, 1945  
Uses: Municipal and domestic  
Point of diversion: Grand Lake Well or  
Tonahutu Creek

B. Cairns Pipeline No. 1

Amount: 3.0 c.f.s., absolute  
Adjudication date: 1908  
Appropriation date: November 26, 1907  
Uses: Irrigation, power and domestic purposes  
Point of diversion: tonahutu Creek

2. Minor Water Rights

A. Grand Lake Well

Amount: 0.550 c.f.s., absolute  
Adjudication date: October 27, 1980  
Appropriation date: March 15, 1979  
Uses: All municipal purposes  
Point of diversion: Grand Lake well  
Note: Right of limited value as total  
diversions from Grand Lake well cannot exceed  
6.0 c.f.s.

B. Water Well Permit No. 24888 - aka Kovach Well

Amount: 15 g.p.m.  
Uses: Commercial, but may be limited to  
household use only  
Note: Cannot be operated at same time as well  
under Well Permit No. 014250-F, below

C. Water Well Permit No. 014250-F

Amount: 20 g.p.m.  
Uses: Commercial

D. Burkey Well

Amount: 10 g.p.m.  
Uses: Household use only



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**MEMORANDUM**

**TO: Shane Hale**

**FROM: Scott Krob**

**PRIVILEGED AND CONFIDENTIAL**

**DATE: April 14, 2010**

**RE: Selling or leasing Grand Lake water rights to Grand County**

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this memo is being provided as background for our discussions with the BOT regarding the possibility of selling or leasing some of Grand Lake's water rights to Grand County until such time as the Town needs such rights for future development or expansion.

The Town of Grand Lake has two primary water rights. The Cairns Pipeline No. 1 right is a 1908 water right in the amount of 3.0 c.f.s., absolute, which can be diverted at the Town's diversion point on the Tonahutu or the Town wells, for irrigation, power, and domestic uses. This water right is junior to the Shoshone right which is sometimes the calling right on the Colorado River, but senior to the CBT right. It is also protected by Senate Document 80 which enables the Town to divert under this right even when it is not in priority in exchange for releases from Green Mountain, at least to the extent of historic use in 1972, if not later.

The Town's other water right is the Grand Lake Pipeline right, which is a 1952 water right in the amount of 6.0 c.f.s., absolute, which can be diverted at the Town's diversion point on the Tonahutu or the Town wells for municipal and domestic uses. This water right is junior to the Shoshone and the CBT right, but is also protected by Senate Document 80 and Green Mountain, thereby allowing out-of-priority releases, at least to the extent of historic use in 1972, if not later. Although the last engineering analysis of the Town's use of these water rights is rather dated, it appears that the Town currently uses substantially less than half of the decreed amounts of its water rights.

The fact that both of the Town's water rights are "absolute" rather than "conditional" is beneficial to the Town in that it limits challenges to these rights from other water users and reduces (but does not eliminate) the risk of having the rights listed as abandoned, so long as they are used within the Town for their decreed purposes. However, the absolute nature of the Town's water rights is also the main obstacle to conveying the water rights to the County for its use. If the water rights are conveyed to the County (or any other water user) to be used for other purposes or at other locations, the County would need to file a change application with the water court. Under Colorado water law, only the amount of an absolute water right

that has been historically used can be changed to different use or to a similar use at a different location. This process is sometimes referred to as “re-quantification” of the water right. Somewhat ironically, while absolute water rights are re-quantified based on historic use, conditional water rights are re-quantified based on a less stringent standard of “contemplated draft”, which looks at the amount of water the Town contemplated using eventually under the water right, rather than the amount it has actually used. It may be difficult for the County to show any historic use of the water rights the Town would be conveying to it and hence, the County might receive little, if any, benefit from an conveyance of the Town’s water rights.

In discussing this matter with the County’s water attorney, Dave Taussig, he agrees generally that an outright conveyance of the Town’s absolute water rights would almost certainly face re-quantification and therefore be of little benefit to the County. We did however discuss some possibilities of leasing the Town’s rights to the County until they are needed by the Town. Dave seemed very interested in pursuing this approach. Perhaps the best prospect would be for the Town to lease the available portion of its water rights to the County. The County, in turn, would lease the rights to a downstream user, preferably a municipality such as Glenwood Springs or perhaps even Grand Junction. The County would then seek to store some of those rights in Granby Reservoir, which has some storage space available. The rights would then be released from storage to allow the water to flow downstream to the leasing municipality. The County would time those releases to maximize the benefit to the County’s stream preservation program, primarily during the late summer and early fall.

Such an approach would involve a change in use and therefore could involve re-quantification. The likely objectors in a change case on the Colorado River are primarily the Northern District, the State, and the federal government. However, if the change is from one municipality to another and the net effect is to keep water in the stream it may be a change that these entities would be willing to not object to. Dave’s suggestion is that the Town and the County approach these entities before submitting a change application to negotiate their willingness not to object to the proposed change. He feels that the current negotiations between the County and these entities on other related matters may make it possible to achieve such an agreement.

The course of action Dave and I discussed would be for you and I and a representative of the BOT to meet with Dave and Lurline Curran and one or more of the County Commissioners. Then, if the Town and the County agree, discussions should be undertaken with the primary potential objectors. There are certainly risks involved in going down this path, including but not limited to whether the primary potential objectors will agree not to object to the proposed change or whether unforeseen objectors might enter the case and force re-quantification. However, there are also substantial risks of abandonment if the Town simply does nothing with the currently unused portions of its water rights.

I look forward to discussing these issues with you and the BOT. If you have any questions or need anything further in preparation for those discussions, please let me know.