

History of Upper Arkansas Water Conservancy District

By Ken Baker

Note: Ken Baker was Chaffee County Attorney in 1977 and became one of the original organizers of the UAWCD, its first General Manager and attorney, and later a Board Consultant.

I. ORIGINAL DISTRICT

The Upper Arkansas Water Conservancy District (UAWCD and sometimes “Upper District” or “the District”) was officially authorized on April 27, 1979 by Decree signed by the Hon. Max Wilson, District Court Judge in Division 11, sitting in Fremont County, Colorado. The Upper District comprised the territory within Chaffee County and that portion of Fremont County included within School District R-32-J and School District RE-3. The territory included in the District encompasses School District RE-3, School District R-32-J and School District R-31. The Upper District was organized under the “Water Conservancy Act” of the State of Colorado. The Act requires the districts formed under this Act to have specifically described territory, thus the selection of legally existing and legally described governmental agencies (the School Districts) as the “territory” within the District.

The original directors, all of whom were active participants in the promotion and organization of the District, were:

Denzel Goodwin	RE-3	Fremont County
Thomas Young	RE-3	Fremont County
Glenn Everett	R-32-J	Chaffee County
Wendell Hutchinson	R-32-J	Chaffee County
Roy Bowen	R-31	Chaffee County
Franklin Springer	R-31	Chaffee County
Verl Freek		At Large

Directors Goodwin, Hutchinson, Everett and Springer were appointed for three-year terms beginning June 1, 1979 and ending June 1, 1983. Directors Young, Bowen and Freek were appointed for two- year terms ending June 1, 1981. Denzel Goodwin was elected as the first Chairman of the Board of Directors and served as Chairman for 23 years.

Ken Baker was selected as the General Manager and served as manager and attorney until retirement in 2001. Jimmy McCormick, one of the most active petitioners, was selected as Honorary Treasurer and has served in that capacity until the present date. Terry Dixon was a staff member of the original water association and the district since 1978. Creation of the Water Activity Enterprise to manage the augmentation plan in 1994 introduced to our office and to the local water community Linda Foster who manages the day to day operations of the District's augmentation program.

The original office was 122 West 2nd Street, Salida, Colorado, the law office of Ken Baker. The building was the location of Salida's original telephone company. Pictures taken in 1927 hang in the District's offices. In 1977 Ken Baker and John Peeples owned the building. Later on October 1, 1991 Baker and Peeples sold the building to the Upper District. On August 14, 2001 the District sold the original office building and acquired the current office complex at 339 East Highway 50.

The mill levy maximum for water conservancy districts is 0.5 mills without a vote of taxpayers. The original mill levy for the Upper District was set at 0.478 mills and has continued at that rate throughout its history.

The official birth of the Upper District began in April 1979, but the ideological and inspirational origins began in the summer and early fall of 1977—a time of “water law conflict.” “Water Law” in Colorado began with the creation of the Colorado Territory and continued in the customs and practices of miners, irrigators and municipalities that diverted water from the rivers and streams and applied it to consumptive “beneficial use” under the Colorado Doctrine of “appropriation.” Over the decades of water law history refinements and changes seeped into the laws and customs of beneficial use. In 1973 the legislature indulged in a radical new concept and created a “non-consumptive” beneficial use granted exclusively to the Colorado Water Conservation Board (the CWCB). The CWCB was created by statute in 1937, about the same time the Water Conservancy Act was enacted. Both statutes passed into law during the legendary “Dust Bowl” years in the western United States. The legislative missions were to promote conservation of water and to assist irrigators and municipalities in the storage and productive use of a limited resource. The concept of non-consumptive “in-stream” use of water, on the surface, appeared to be a passive and non-injurious use of

water. An in-stream flow, however, was a decreed use of water that acted as a legal barrier for water exchanges through the decreed instream “reach” of the stream. Traditional water rights owners were alarmed when CWCB attorneys and staff began to file Water Court applications for stream flows on the multitude of streams in the Colorado Mountains. Many of the flows requested in the applications exceeded normal late summer and dry-year historic flows experienced by water rights owners, and in some cases normal flows. Compounding the instream flow filings, the West was experiencing the worst drought since the Dust Bowl days in the 1930’s.

Under the leadership of Charles (Tommy) Thompson, General Manager of the Southeastern Colorado Water Conservancy District (SECWCD) and its water attorney, Charles Beise, a strategy meeting was scheduled in Cortez, Colorado to meet September 23, 1977 together with the Board of the Southwestern Colorado Water Conservation District (SWCWCD). The latter District Board was represented by Sam Maynes, a legendary water attorney. George Everett, Jr., a cattle rancher and Board Director of the SECWCD was assigned to meet with the Chaffee County Board of Commissioners to solicit the County’s help in representation at the Cortez meeting and assistance in chartering an airplane to fly the representatives to Cortez.

On Monday the 19th of September, George Everett, who was also the Chairman of the Chaffee County Board of Adjustment, met with the commissioners. County officials attending were Dick Tuttle, Board Chairman, Commissioners Eddie Holman and Ed Krocesky, together with Bob Stotler, the County Manager, and Ken Baker, County Attorney. Others present at the meeting were Dan Everett (George’s brother and Land Use Administrator), Merl Entz (airport manager and airplane charter representative), Donna Nevens, commissioners’ clerk, and Denzel Goodwin, a Fremont County rancher. Everett explained the mission of the SECWCD Board and the SWCWCD Board and asked the commissioners to charter an airplane from Harriet Alexander Field and to send delegates to the meeting on Friday the 23rd.

Commissioner Tuttle, Bob Stotler and Ken Baker declined the request to make the trip. The full Board, County Manager and County Attorney were scheduled to make a flight to Denver Stapleton’s Airport on Thursday the 22nd to hear a report on a new federal law authorizing “Payment in Lieu of Taxes” (PILT funds). Baker and Tuttle had

made previous commitments. The County Commissioners agreed to charter a flight to Cortez and asked those present if they would like to attend. Those accepting the request to fly to Cortez were Eddie Holman, Ed Krocesky, and Dan Everett. George Everett stated that he would invite Tom McCurdy President of the SECWCD to fly with the group from Salida. The delegate group of five, together with the pilot Del Delacaris, comprised the six- passenger limit for the single engine Cessna airplane. The historic irony of the decisions made that day shall live forever. Had one or more of the three who declined the request to fly to Cortez accepted the request, the pilot would have been Merl Entz and the airplane would have been a twin engine Beech Bonanza--a more experienced pilot and a more powerful airplane.

Following the Commissioners' meeting on Monday morning, George Everett, Ken Baker and Denzel Goodwin joined each other in a follow-up conversation on the Courthouse sidewalk. Everett expressed a concern that the SECWCD was not chartered to represent all of the irrigator and water rights interests in the upper valley. The SECWCD's primary mission is to manage Fryingpan-Arkansas Project Water flowing from Pitkin County on the Western Slope of Colorado. Everett stated that "we" needed a water conservancy district of "our own" in the upper valley. He asked Baker if he would do the legal work and help form a new district. Baker responded that this would be new legal territory for him, but he would be glad to help. Denzel Goodwin agreeing with Everett's remarks suggested that the district, when formed, should include Fremont County.

The Thursday trip to Stapleton Airfield was uneventful. The flight was smooth and the day was calm. After the PILT meeting the Commissioners, Stotler and Baker took a shuttle to the airport. The wind had picked up to gusts of 40 to 50 mph. A jet stream had moved southerly into northern Colorado and high winds resulted. The take-off from Stapleton was extremely rocky. When the airplane was in flight Delacaris changed flight route from the South Park route to the east side of the Rampart Range, then across to Canon City and up the Arkansas River Canon to Salida. The weather in Salida was calm.

Friday morning brought with it the winds experienced in Denver the day before. Baker walked from his home a few blocks from my office on 2nd Street in Salida. He

usually arrived about 7:30 am to begin the day's work. On this day he received an early call from Sara Neal Dougherty, the Poncha Springs' Clerk. While in conversation she abruptly shouted, "There's been an airplane crash on the hillside." Baker immediately responded "That's our airplane." and hung up. He ran across the street to Tuttle's Trading Post to find Dick Tuttle and told him what Sara had said and expressed his concern. Baker ran home to get his car.

Tuttle and Baker drove to Harriet Alexander Field and picked up Merl Entz. They drove to the Friend Ranch. The trees were still burning. Merl hitched a ride from a sheriff's patrol and rode to the site of the Crash. On his return he confirmed that it was the Cessna with George Everett and the others. The meeting in Cortez was canceled and the delegates returned home to mourn the dead. Governor Dick Lamm, after appearing personally in Salida, appointed two new commissioners in Chaffee County. Judge Robb of Pueblo appointed Glenn Everett to succeed his father on the SECWCD Board.

The spring and summer of 1978 began as an instant replay of the 1977 drought. An 1874 river call was ordered by the Division Engineer. Such a call virtually shuts down every major ditch in the upper valley. The ranchers reluctantly acknowledged the call. It is the doctrine of prior appropriation that makes the system work. It is a rule of order. The word spread, however, that the irrigation wells were pumping in the lower valley, and under Rules and Regulations Governing Use, Control and Protection of Surface and Ground Water Rights, the State Engineer was permitting wells to pump and irrigate under decrees 75 years junior to ditch decrees ordered shut down. A small group of Chaffee County community leaders who were also in the ranching industry looked the State Engineer in the eye and refused to shut down unless the out-of-priority wells were curtailed. "Right is right and fair is fair" they said. The engineer blinked, and then, with the force of the Attorney General's office, and the threat of court, persuaded these law-abiding citizen-ranchers that "might is right."

The ditches that remained open in defiance of the 1874 river call were the Sunnyside Park Ditch, Williams and Hamm Ditch, New Salida Ditch and McPherson Ditch. The State Engineer, Clarence Kuiper, obtained a permanent injunction against all of the defiant irrigators. The Engineer concluded that pumping of certain wells in the lower Arkansas Basin represented no injury to decrees junior to 1874.

The wound did not heal. The scar festered in the memories of these rebels, some of whom were still grieving from loss of family in the 1977 airplane crash. Time heals, but the Master in the Kansas-Colorado case may have helped heal the old wounds. Sixteen years after the 1978 rebellion the Special Master concurred with the sparky group of dissenters—the wells were pumping out of priority and the State of Colorado was wrong to permit the use.

On July 6, 1978 the now chastened irrigators, together with other irrigators and public officials, met at the Chaffee County Courthouse to discuss a multitude of problems revolving around the alarming loss of upstream water in the Arkansas Basin. The general consensus was the formation of a water conservancy district as proposed by George Everett before the September airplane crash.

John Carlson, a well-known water attorney from Denver, attended the meeting at the request of Ken Baker. Mr. Carlson explained the history of the failure of the State Engineer to curtail well irrigators pumping out of priority and suggested that formation of a water conservancy district could provide the financial and political stature to confront the grievance against the lack of enforcement of the stream priorities against the pumpers. Listed among the previous efforts to protect water rights was the 1927 formation of the Upper Arkansas River Protective Association. Primarily behind the efforts of George Everett, Sr. (George Everett, Jr.'s father) the 1927 effort was prior to the 1930's drought, and prior to use of high capacity irrigation wells. Ditch owners had never experienced an 1874 river call. The customary call has been the 1884 call because the Highline Ditch above the Rocky Ford Ditch is an 1884 priority. When the Rocky Ford spills, all 1884 priorities on the Arkansas are open. The Fort Lyon Ditch with a priority date of April 15, 1884 is the principal ditch below the Rocky Ford Ditch.

Following the July 6th meeting a core group of irrigators continued to meet on a regular basis at the house of Wendell Hutchinson. Included in the regulars were Wendell Hutchinson, Denzel Goodwin, Tom Young, Glenn Everett, Tom Knickerbocker and Ken Baker. Dick Dixon, a journalism teacher and historian, acted as a scribe. Through the efforts of this group a mission statement was developed and completed in third draft on October 19, 1978. Denzel Goodwin, a former Fremont County Commissioner and well-known rancher in the Howard area, teamed up with Ken Baker to solicit funds from

public entities to give the newly formed Upper Arkansas Water Protection Association a financial base. The group received contributions from Chaffee County, Salida, Canon City, Florence and Fremont County.

Ground work organization began with the aid of industrious friends, irrigators, politicians, and other generous people. Outstanding petition circulators were Kenny Englert and Jim McCormick. They spent hours at public events and supermarkets getting property owners to sign. John Lane, a Chaffee County Commissioner, circulated petitions and gave his best efforts. Ralph Scanga, Jr. (Terry) and Phil Smith, both of whom would later be board members, were present. Jim McCormick, now an Honorary Treasurer, gave his undivided time and effort to the organizing group.

Charlie Elliott, a partner of John Carlson, both of the law firm Holland & Hart, became our counsel of record and a petition was drafted to file in District Court. The majority of the District's territory was in Chaffee County, but the sitting District Judge, Howard Purdy, acknowledged that he would prefer an election for the new district rather than petitions as the statute required. The petition was then filed in Fremont County before the Chief Judge, Max Wilson. The requested signatures were being gathered and title research of the irrigated and non-irrigated lands was completed. Jeanne Foster of Salida prepared the title research and a territory map of the District. On April 27, 1979 the petition for organization of the UAWCD was heard in Fremont District Court and Findings and Decree signed by Judge Wilson. The first meeting (organizational meeting) of the new Board of Directors was held on June 7, 1979.

II. CUSTER COUNTY INCLUSION

In January 1981 Joe Reid, on behalf of an Ad Hoc Committee of Custer County Citizens, petitioned the Board of Directors of the Upper Arkansas Water Conservancy District to allow Ken Baker to assist in the forming of a water conservancy district to include Custer County within the territory of UAWCD. Later in January of 1981 the Board of Directors of the District approved Ken Baker's assistance to the Ad Hoc Committee. The Association's office was located at 612 Main Street, Silver Cliff, Colorado.

On June 19, 1981 Joe Reid, Bob Senderhauf, Bill Donley, Bud Piquette, John Coleman, Lawrence Entz and Fred Luthi formed a water association of interested irrigators and business people. The name of the association was Custer County Water Association. The purpose was to create a legal entity to petition Custer County citizens for the inclusion of Custer County into the UAWCD. Joe Reid at that time was a Custer County Commissioner and an irrigator.

The Custer County petitioners included the Board of County Commissioners, Round Mountain Water and Sanitation district, Town of Westcliffe, and the Town of Silver Cliff. There was no formal opposition to the inclusion contemplated in the petition, which was filed under the UAWCD original court case in Fremont County, Civil Action No. 79CV30.

On March 24, 1982 a public hearing on the petition for inclusion of Custer County was held in Fremont District Court before the Honorable Paul Keohane. Joe Reid and others of Custer County testified to show proof of the petitions. Denzel Goodwin testified for the UAWCD to show proof of the Board of Directors' approval of the inclusion. (A note of interest: During Goodwin's testimony the Judge asked Mr. Baker how he would testify if he were the witness. Mr. Baker read from his prepared notes and commented from his own preparedness. When he had concluded his comments, the Judge turned to Mr. Goodwin and asked, "Mr. Goodwin, do you agree with the statements made by Mr. Baker?" Goodwin replied "Yes." The Judge then stated, "The record will show that Mr. Baker's statements are Mr. Goodwin's testimony. Thank you Mr. Goodwin."

The Judge signed the Findings and Decree and on March 24, 1982 Custer County territory was included within the Upper District. Two members at-large were designated in the Judge's order to represent Custer County. The Judge appointed Robert (Bob) Senderhauf and Robert (Bill) Donley as original members of the Board of Directors of UAWCD. Both still sit as Board members.

III. UPPER DISTRICT'S WATER AUGMENTATION PLAN

Some time in the late decade of 1980, the Hill Ranch near Nathrop sold its water rights to an investor group. The group representatives proposed selling the yield from the

water rights to the Upper District. The concept was to create an augmentation plan that would make water rights available to individuals who could then apply to the State Engineer's Office (SEO) for well permits. The price paid to Hill Ranches was beyond the financial ability of the District. The concept, however, remained an open topic of the Board members.

As the finances of the District began to accumulate from the small mill levy tax yield, the Board was invited to accept occasional offers for sale of stock in Twin Lakes Reservoir and Canal Company. Jim McCormick had contacts with Twin Lakes shareholders who from time to time offered shares for sale. The Board began to approve purchase of individual shares and a few multiple share purchases in the \$5,000 to \$6,000 price range. By 1990 the District owned 19-2/3 shares of Twin Lakes stock. Each year the Board would dedicate use of the shares to an irrigator diverting from the mainstem of the Arkansas so that the water would benefit someone within the District territory.

In April 1990 Thomas Nevens, a Salida native citizen and local business man, approached the District Board with an offer to sell 31.9 acre feet of White Ditch No. 1. The ditch takes water from the South Arkansas west of Salida, and historically irrigated ranch land on the south side of the South Arkansas (locally known as "Little River"). Nevens had converted his ownership in the White Ditch No. 1 to a consumptive use yield for the purpose of augmenting a small residential development in which he shared a partnership interest.

Nevens did not need all of the water converted to consumptive use, and his preliminary efforts to exchange the water rights to his business (COZINCO) were not productive. Nevens had no rights of exchange from the confluence of Little River and the mainstem of the Arkansas—a distance upstream of about five miles to Smelter Town. He made a generous proposal to the Board to sell his water rights (31.9 acre feet) for the sum of \$10,000. The acquisition of the White Ditch water rights and the accumulated Twin Lakes shares made the concept of a general augmentation plan realistic.

By this time the Board had employed a professional engineer on a contract basis. William R. Smith had served as an interim State Water Engineer after Clarence Kuiper. Bill, as we called him, had a relationship to the valley. His son Bruce was the local water commissioner. Bill Smith took an avid interest in the general plan of augmentation, and

together with Denzel Goodwin, walked the several ditches and streams that could be served by a plan of augmentation using Twin Lakes shares and the White Ditch water rights. The two, now senior citizens with a mission, created a contour map that would serve as the basis for an augmentation territory the SEO and the Water Court could approve.

The concept of a general plan of the kind proposed by the District was not entirely new. A plan of augmentation was in place in the San Luis Valley, operating off the Rio Grande. Denzel Goodwin and Tom Young made a trip to visit the San Luis Valley Water Conservancy District. That District's plan did not fit the requirements the Upper District would need in the Arkansas drainage. This plan operated on a different basis than the plan proposed by the Upper District. The Upper District plan called for 100% replenishment of all depletions resulting from well use. Later Ken Baker and Denzel Goodwin drove to Basalt, Colorado to visit with the manager of the Basalt Water Conservancy District. The plan in place there was operating off a substitute water supply plan (no court decree) using Bureau of Reclamation water from Ruedi Reservoir. This plan would not work in the Upper District territory. A new, first of its kind plan had to be developed. A plan to provide for delayed return flows and water storage for replacement of tributary waters consumed by water users under the plan.

The District Board employed Ken Baker to serve as its water attorney in conjunction with his other managerial duties and general legal services. An application was drafted in preliminary form and presented to Steve Witte, Division Water Engineer in Pueblo. Bill Smith, Denzel Goodwin and Ken Baker negotiated terms and conditions that appeared to be acceptable to the SEO and that could be approved by the Water Court. The next phase of pre-filing review was made in conferences in the Denver office of the State Engineer, Hal Simpson, and in the offices of Fairfield and Woods in Denver. Fairfield and Woods represented the SECWCD in Pueblo and would be significant opposers in a water court filing. Other significant players would be Pueblo Board of Water Works, Pueblo West Metropolitan District, Colorado Springs Utilities and the City of Salida. Mr. Baker, Mr. Goodwin and Mr. Smith deemed a pre-filing negotiated stipulation with each entity to be essential to the first-of-its-kind augmentation plan. The

major hurdle was the SEO and its staff, and the attorney general's office that represented the SEO and the CWCB.

The negotiations with Hal Simpson's office became tense. Jennifer Gimbel, a bright and aggressive First Assistant Attorney General, was giving the District very little optimism about moving forward with this novel plan. The application filed in Water Division No. 2 as Case No. 92CW84 was proceeding slowly. Shortly, however, the long pending water rights battle between the State of Kansas and the State of Colorado to resolve water issues on the Arkansas River changed the political climate for the SEO and for the District.

The District Board had agreed that the augmentation plan as proposed was likely futile and should be dropped. A meeting was scheduled with Hal Simpson in his office, together with Attorney General representative, Jennifer Gimbel, and Simpson's staff. Denzel Goodwin, Terry Scanga and Ken Baker proposed to drop the plan and withdraw the application. The atmosphere in the meeting was a change from the previous adversarial session. Jennifer Gimbel, First Assistant Attorney General, and later appointed the Executive Director of CWCB, asked Denzel if he would like a cup of coffee and took him aside for a conversation. She later approached Ken and Terry with an affable air. This meeting continued in a very cordial atmosphere. Hal Simpson appeared in the conference room and announced that the augmentation plan should move forward. He set forth conditions for operation of the plan and directed Attorney Gimbel to work with the District to draft a suitable findings and decree.

Engineer Simpson had a mission to satisfy the outcome of the pending litigation with the State of Kansas. That struggle would involve the drafting and approval of an amendment to the Rule and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas Basin. A key to resolving well rights and well pumping for hundreds of domestic well users in the Upper Arkansas Valley would be a court approved plan of augmentation and the Upper District had such a plan proposed.

The original plan of augmentation included those portions of the District territory scoped out by Goodwin and Smith and delineated along a blue contour line approved by Steve Witte. Custer County was also included. Resistance began to arise in Custer County. Joe Reid had died and the local county commissioners, persuaded by

representatives of Round Mountain Water and Sanitation District and one of the District Board directors, prepared a resolution requesting that Custer County be withdrawn from the augmentation application. The District Board reluctantly consented to the request, against the wishes of Director Bob Senderhauf. (In July 2009 the District Board authorized attorneys John Hill and Marcus Lock to file an application for a comprehensive plan of augmentation in Custer County.)

With the support of the SEO, Engineer Steve Witte, and with stipulations finalized with the many opposers, the Final Ruling of Referee was prepared and sent to Clyde B. Young, Jr., Water Referee, Division No. 2. The Referee's Ruling was signed on January 21, 1994 and referred to the Honorable John Anderson, District Judge, and entered into Findings and Decree on February 18, 1994.

IV. AMENDING THE RULES AND REGULATIONS ON THE ARKANSAS

When the Colorado General Assembly passed the Water Right Determination and Administration Act of 1969, it was an attempt to integrate surface and groundwater use and to promote the dual aims of Fellhauer v. People, 167 Colo. 320, 447 P.2d 986 (1969), which dual aims were the protection of vested rights and maximum utilization of groundwater. (Note: Denzel Goodwin and other diverters from the Arkansas were objectors to Feldhauer pumping water from a well adjacent to the river.) All wells diverting tributary water not located in designated basins became subject to the provisions of the 1969 act as set forth in §37-92-602 C.R.S. The 1965 act had been amended in 1967 to require that the finding of the State Engineer be supported by hydrological and geographical facts and require a finding that there is unappropriated water available before a permit should be granted. It was the intent of the statute to set strict standards, limiting the constitutional guarantee of the right to divert unappropriated waters of natural streams found in Section 6 of XVI of the State Constitution. The hallmark case of Hall v. Kuiper, 181 Colo. 130, 510 P.2d 329 (1973), affirmed this standard. The Court held that:

...whenever a court or water administration official can make a finding that the pumping of a junior well materially injures senior appropriators who were calling generally for more water, there exists a legitimate and constitutional ground and reason for regulation of the well, and a showing

of a call against that well by a particular senior user is not necessary. In other words, we hold that, subject to the conditions hereafter mentioned, the State Assembly may under proper channels of authority delegate to the water officials the power to protect the stream against unreasonable injury by junior wells when lower senior appropriators are not receiving, but are in need of and asking for their decreed rights.

As was then currently the case for the well owners, in Kuiper v. Well Owners Conservation Ass'n, 176 Colo. 119, 420 P.2d, 268 (1971), the well owners sought to enjoin enforcement of rules promulgated by the State Engineer providing that wells in certain delineated zones could be shut down after a demand, or “call” by a senior surface appropriator whose priority could not be filled by the water then running in the stream. Then then-current Rules and Regulations resulted directly from the decision Fellhauer v. People, which decision had been the operator’s manual for the State Engineer since 1969. Following Fellhauer, the Court reasoned in Kuiper v. Well Owners Conservation Ass'n, that maximum use of all surface and groundwater would be an impossibility.

All that can be expected is that he (State Engineer) exercise his best judgment, using information then available to attempt to reach the goal of maximum use, of course without being arbitrary or capricious.

Without the conclusion in Kansas v. Colorado, the State Engineer had a duty to regulate all the waters of the Arkansas River, including tributary groundwater. Based upon the then-current state of technology, as concluded in the Kansas v. Colorado litigation, the Amended Rules complied with the State Engineer’s statutory mandate and complied with then-current state of the art technology.

However, in response to the anticipated ruling to be made by Special Master Littleworth, the State Water Engineer filed Amended Rules and Regulations concerning the diversion and use of tributary groundwater in the Arkansas basin (Amended Rules), which Amended Rules were filed with the Court on September 29, 1995 pursuant to the statutory requirements. The Amended Rules were published in the resume for Water Division No. 2 and were published in newspapers in every county in Water Division 2. The SEO was regulating under Rules promulgated under the guidelines of the Court as stated in Kuiper v. Well Owners Conservation Ass'n. The Amended Rules proposed by Engineer Simpson were in response to the report of Special Master Arthur L. Littleworth

in Kansas v. Colorado litigation. The Special Master Report concluded that the pumping of post compact wells depleted usable flows in the Arkansas River at the state line. Prior to filing the Amended Rules and Regulations, State Engineer Hal Simpson and Division Engineer Steve Witte met with Denzel Goodwin and Ken Baker in Salida. During the lunchtime meeting Simpson asked Goodwin if he would serve on a committee to formulate recommendations for the Amended rules and Regulations. Goodwin agreed to serve on the committee and recommended Frank McMurry as an additional member. Goodwin and McMurry were selected by State Engineer Hal Simpson to serve as representatives.. Both drove to the meetings held in La Junta, Colorado.

The UAWCD was organized as a formal quasi- municipal agency to participate in the formation of rules and the rule of law governing administration of water rights on the Arkansas River. The action of the State Engineer to amend the rules of water administration and water rights determination on the Arkansas responded to the heart of the grievances which were the catalyst forming the Upper District.

The Board of Directors authorized Attorney Baker to join the action and support the State Engineer, Hal Simpson. Support of a water court petition, however, is not a legal concept contemplated by the 1969 Act. The Act provides for litigants other than the applicant to file “Statements of Opposition.” Mr. Baker, with approval of the Board, filed an amicus statement stylized as an opposition. The “Statement of Opposition” supported the SEO’s request to amend the rules and regulations. Mr. Baker sent copies to all parties he anticipated to be opposers—twenty-one parties, including a response to Jennifer Gimbel at the Attorney General’s office, were included on the certificate of mailing.

Within a few days, whether inspired by Mr. Baker or not, responses were filed by other “opposers” supporting the SEO. Kevin Pratt, attorney for a group of irrigators benefiting from the then-current rules and regulations, filed a traditional Statement of Opposition to genuinely oppose a change in the rules.

The legal argument of the UAWCD was concise and simple:

“The Upper District supports the promulgation and implementation of the Amended Rules and seeks establishment and enforcement of such Rules.

In the conduct of the Kansas v. Colorado litigation the finest legal and technical practitioners in the field of Colorado water law participated in a tributary groundwater seminar which, at the present time, represents the state of the art, both legally and technically. The conclusions from this state of the art seminar are clear and convincing, and confirmed by the United States Supreme Court in its decision in Kansas v. Colorado, 14 U.S. ____, 115 S.Ct. 1733, 113 L.Ed.2d 759 (1995). Not only has past well pumping taken the water of Kansans, it has taken the property of senior Colorado water rights' owners on the Arkansas and its tributaries. The state of the art legal and technical conclusions fit well into the guidelines of Kuiper v. Well Owners Conservation Ass'n, *supra* wherein the Court provided an operator's manual for the State Engineer and directed that the State Engineer would exercise his best judgment, using information then available to attempt to reach the goal of maximum use of water.”

The State Engineer has a statutory duty to amend the existing Rules and Regulations governing the diversion of the use of tributary groundwater in the Arkansas River Basin. The State Engineer has the legal and technical foundation to amend the existing rules. The Amended Rules comply with the operator's manual set forth in *Fellhauer* and highlighted by *Kuiper v. Well Owners Conservation Ass'n* and should be approved by this Court.

The trial was scheduled to be held in Canon City, the home court of Hon. John Anderson, District Judge and also designated Water Judge for Division No. 2. Some attorneys from other water court divisions expressed concern that the newly appointed Water Judge might not have the experience to hold hearing on an issue of such major consequence. The conduct of the hearings over several days relieved the concerned attorneys. The new judge was totally in control and grasped the issues completely. After the trial the judge asked for and participated in field trips to the several major ditches in the valley. He interviewed irrigators on both sides of the case to understand how the appropriation mechanics of the stream operated. He came to court prepared to hear witness testimony and hear legal argument, but before his ruling he, along with Denzel Goodwin, drove from ditch to ditch and became familiar with the physical plumbing of the Arkansas River.

The State Engineer's amended rules, now supported by a Water Court decree, confirmed that “all” water rights except in-house use and permitted domestic wells are

subject to the Colorado doctrine of appropriation. The SEO's need for the Upper District plan of augmentation now became clear.

V. COTTONWOOD CREEK AUGMENTATION

The original plan of augmentation, Case 92CW84, was finally approved in February 1994. In the interim, the Board was contacted by Steve Monson, an attorney with the law firm Berniger, Berg, Rioth & Diver, P.C. This law firm represented "FirstAmerican Bank in Colorado Springs." FirstAmerican had foreclosed on a property near Buena Vista. The property included .595 c.f.s. of water from the Thompson Ditch taking its supply from the Cottonwood Creek. This is the same ditch from which the Town of Buena Vista had developed an augmentation plan for its municipal water supply. The ditch was decreed for 4.0 c.f.s. Buena Vista had acquired 2.0 c.f.s., Yale Lake Estates had acquired 0.3 c.f.s., and FirstAmerican had acquired .595 c.f.s. representing a 35% interest in the ditch.

The Board opened negotiations with FirstAmerican and prepared to file a second plan of augmentation covering the Cottonwood drainage. The purchase price would be \$3,000 per acre-foot consumptive use. At that time the agreed sum of \$3,000 per acre-foot was high market for native water. Twin Lakes shares that represent approximately one acre-foot annually were selling for a higher price, but they were transmountain water rights that included storage in Twin Lakes Reservoir.

In December 1993 the Board entered into a formal contract with FirstAmerican for a purchase price of \$65,350 based upon a consumptive use amount of 23.45 acre feet of water. The price was less than the bank had originally anticipated, but was based on the actual number of acre-feet that the engineer's analysis confirmed.

W.R. Smith (Bill Smith), the Board's professional engineer, made an evaluation of the consumptive use based upon the engineering confirmed in Case No. 92CW84. The original augmentation plan approved by the Water Court established an accepted standard for change cases in the Upper Arkansas. With Bill Smith's analysis the District filed a new plan of augmentation using the Thompson Ditch water as the source of augmentation. On April 12, 1994 the Upper District filed Case No. 94CW5 in Water Court. Evidence of water rights was represented by warranty deeds from Harvard

Ranches to Robert a. Green and Mt. Princeton Trout Club and FirstAmerican Bank, and a deed from FirstAmerican Bank to the Upper District. The property conveyed was .595 c.f.s. of water from the Thompson Ditch out of Cottonwood Creek, being Ditch No. 3 with Priority No. 3 from Water District 11. The Thompson Ditch was adjudicated June 19, 1890 with appropriation date December 19, 1864.

The principal objectors in Case 94W5 were the Town of Buena Vista, represented by Peter Cosgriff, and the State Engineer's Office, represented by Jennifer Gimbel. The substantive issues addressed in the Cottonwood Creek plan were essentially identical to those in the original plan. The major difference was the 1864 priority of the Thompson Ditch. The District agreed to dry up 14.35 acres of land historically irrigated by the Thompson water and to monument the corners of the dry up.

The District had negotiated storage space in Rainbow Lake and in Cottonwood Reservoir. Both reservoirs had late decrees that were junior to river calls. The storage of Thompson water in these reservoirs gave the owners greater protection against river calls that might lower the desired levels of each reservoir. Denzel Goodwin designed the flow measuring device for the Cottonwood Reservoir. The District constructed the device that is still in use.

Another requirement was protection of the CWCB instream flows. In 1977 the CWCB had acquired a 20 c.f.s. flow on the mainstem of the Cottonwood and a 10 c.f.s. flow on South Cottonwood and the Middle Cottonwood above the South Cottonwood confluence. This CWCB filing was one of the many that were to be discussed in the September 23, 1977 meeting in Cortez.

By July 1995 the several other objectors, including the Town of Buena Vista, St. Charles Mesa Water District, Western Water Rights L.P Fund I, Southeastern Colorado Water Conservancy District, City of Colorado Springs Utilities Department, Twin Lakes Reservoir and Canal Company, and Colorado Wildlife Commission, had signed stipulations and the Final Ruling of Referee was signed by Water Referee Clyde Young. The Water Court Decree approving the Referee's Final Ruling was signed by Judge Tracey on August 19, 1995.

In February 1996 the Upper District filed an additional application in Case No. 96CW17 for the purpose of exchanging Fryingpan-Arkansas Project Water from the

Arkansas River into Cottonwood Reservoir and Rainbow Lake. The District solicited the aid of the Southeastern Colorado Water Conservancy to join in the application to exchange Project Water through the CWCB instream flow reaches.

During the 1977 litigation with CWCB, the SECWCD obtained a right of exchange limit of 10 c.f.s. instead of the decreed instream flow of 20 c.f.s. This provided a larger window of exchange for the Upper District. Additionally the Upper District entered into a conceptual storage plan with the Town of Buena Vista. With the SECWCD and the Town of Buena Vista as proponents, application proceeded through Water Court with little opposition. The main objectors were the City of Aurora, Pueblo Board of Water Works, Colorado Springs Utility Department and St. Charles Mesa.

The Findings and Decree were approved by Judge John Anderson July 12, 1999.

VI. UAWCD AND CITY OF SALIDA

The UAWCD began its official meetings in June 1979. Within the first few months the new Board of Directors operated from the brief case of Ken Baker and met in public buildings where space was offered. The first meetings were held in the basement of the Chaffee County Bank on the corner of G Street and 2nd Street.

As time passed the Board met in other locations, including the Chaffee County District Court room. When Custer County joined the District, the Board traveled in Jim McCormick's Dodge travel van to meet in a community room in Silver Cliff, Custer County. These meetings were scheduled every three months. When the Board finally purchased the building on 2nd Street, all meetings were held in the new board room.

One of the District's first guests was Dick Bondurant, a local rancher, businessman and member of the Salida City Council. Dick was concerned that the traditional water rights of the City of Salida were mainly unadjudicated irrigation rights, except for the hot springs water used in the swimming pool. The decree for the hot springs was very junior (1928) but the waters originated from springs near Poncha Springs and were piped to Salida. No claims for injury were likely to arise from this junior use. During the time that Pat Brooks served as mayor, and later city administrator, she sat as an unofficial delegate from the City on the District's Board. Pat is an engineer by profession and provided counsel and expertise to the Board of Directors.

The majority of Salida's water was irrigation water. The main municipal supply came from the Harrington Ditch and the Salida Water Works. The Salida Water Works feeds a series of small water galleries that served as the City's water supply. Bondurant recognized the need for the City to file an application with the Water Court to obtain court-decreed augmentation of the City's water supply for the future. Bondurant encouraged the City Council to take some action to ensure that City's legal right to continue to consume the ditch water. With the support of the Upper District the City Council employed the firm of Moses, Wittemyer, Harrison and Woodruff, P.C. to assist the City in its water application in the Water Court.

David Harrison, a Salida native citizen, together with Jay Montgomery, principals in the law firm, began the process of preparing an inventory of Salida's water and the possibility of acquiring additional water. Ken Baker and Denzel Goodwin visited with officials in the offices of Denver and Rio Grande Western Railroad Company. The D&RGW had historically used water rights in the Salida yards and at the Mears Junction Station. The hope was to acquire these water rights to supplement Salida's supplies. The Railroad Company water rights did not have decrees that could be used in the Salida water system. Moreover, after the steam engine period in railroading, the diesel electric engines no longer consumed large volumes of water. The consumptive use value of the railroad water had disappeared.

The attorneys filed an action in Water Court, Division No. 2 in Pueblo under Action No. 84CW158. The primary source of treated water for City use is the Harrington Ditch with 6.2 c.f.s. The second source of treated water comes from the Salida Water Works or Galleries. This appropriation was decreed for municipal use in 1900. Recharge of the galleries was supplemented by the Salida Reservoir Ditch, formerly known as the Champ Ditch. Even though it did not have formal court approval to change its use from irrigation to municipal use the City continued to use the water in its system. The third source of water is the Pasquale Springs, an adjudicated water right taking its supply from the north side of the Arkansas River near the Ute Trail road. This water supply had special significance because augmentation can be provided directly by Fryingpan-Arkansas Project water.

In conjunction with the augmentation plan for the City, the Upper District entered into a long- term lease to the City of reservoir storage space in North Fork Reservoir. The lease provides space for 295 acre- feet of water. Operation of Salida’s water system has been sufficiently efficient. The City has had little need of the storage space. The District is paid in the form of excess augmentation credits from the City’s augmentation plan. These credits have been utilized by the District.

In 2006 and 2007 Salida acquired full ownership of the Vandaveer Ranch and its share of the Tensassee Ditch. The City filed an application for change of use and change of point of diversion of the Tensassee water to the Harrington Ditch headgate. With the help of the Upper District’s engineer, Ivan Walter, additional consumptive use values have been added to Salida’s net yield from the change. Salida and the District have been cooperating to ensure a water plan that the Water Court can approve. The yield from the Tensassee irrigation rights will ensure municipal water availability for future growth, and for development of the Vandaveer Ranch property. An additional benefit may arise from the conversion of the irrigation water to consumptive use—water remaining in the South Arkansas will enlarge the water exchange window for exchanges to Poncha Springs and the District’s need to make water exchanges into Boss Lake, North Fork Reservoir and O’Haver (Gray’s Creek) Reservoir.

VII. UAWCD AND TOWN OF PONCHA SPRINGS

When the Upper District was organized in 1979, the Town of Poncha Springs was a small rural community. Residents’ homes and business houses were supplied water from individual wells. When the City of Salida began its quest for augmentation, the Town officials, Steve Hall (Mayor) and Sara Neal Dougherty (Clerk) began to talk with the District staff and Board members about obtaining water for an augmentation plan.

The Town had little financial resources and had only the Poncha Springs Acequia irrigation water. The Poncha Springs Acequia, decreed in June 1890, carries 5.82 c.f.s. with an appropriation date March 3, 1881. Two c.f.s. of water is owned by the Town. Beneficial use under the decree is 50 acres per c.f.s. The Town, however, owns only one small lateral that delivers water to Southside residents along the South Arkansas. The other lateral bisects the Town and delivers water to the Denison Ranches east of the

Town limits. A small lateral owned by the Alloy family delivered .5 c.f.s .of water to a small ranch north of the town limits. These water rights and the ranch were purchased by the Town at the turn of the century.

The share of Poncha Springs Acequia owned by the Town had little historic consumptive use and was insufficient for an augmentation plan. Other water sources were investigated, including the 2 c.f.s. Larkspur Ditch that took its source from the Marshall Creek drainage collected on the western rim of Marshall Pass. The water was not considered reliable for a permanent augmentation plan. South Arkansas ditch water, if available, was expensive and would require land dry-up. Eventually Denzel Goodwin and Wendell Hutchinson suggested use of Fryingpan-Arkansas Project water.

The Town was eligible for purchase of Project water west of Pueblo Reservoir. Project water, however, is “Supplemental Water” and not normally considered usable as a source for a permanent water augmentation plan. Glenn Everett and Wendell Hutchinson, members of the Board of Directors of the Southeastern Colorado Water Conservancy District, influenced the Southeast Board to allocate annually 100 acre-feet of Project water to be used in an augmentation plan. Denzel Goodwin and Wendell Hutchinson persuaded the Division Engineer to permit the Town’s augmentation plan with Project water.

The Town hired David Harrison from the same law firm representing Salida in its augmentation plan. The Town also hired Leo Eisel of Wright Water Engineers of Denver to prepare the professional engineer’s report. The Town asked the District to enter into a water storage agreement. The agreement was signed December 9, 1982 and provided for storage of Project water in one of the three reservoirs managed by the District—Boss Lake, North Fork Reservoir and Grey’s Creek (O’Haver) Reservoir.

In January 1982 Leo Eisel prepared a study of the Poncha Springs Water Supply. Eisel projected a future population of 500 people “without unduly burdening the present population with unnecessary costs.” Eisel projected purchase of 87 acre-feet of Project water annually. This purchase could be reduced to about 71 acre-feet if the Poncha Springs Acequia could be used for lawn and landscape irrigation. On two separate occasions the owners of the Boyd-Haines lateral delivering water to the Denison Ranches applied to change the point of diversion of their acequia water to the Murray Ditch east of

Poncha Springs. On both occasions the Town Council objected to the change. As a consequence the Town cannot deliver water except in the small lateral along the South Arkansas River.

In 1982 the Town had a population of approximately 250 people and the engineer projected growth of 5% per year and a population of 500 by the year 2000. The engineer's report stated that if the Town "elects not to continue the use of the Poncha Springs Acequia for landscape irrigation, it will be necessary to obtain additional water supply and water rights for the 'Town's central system in order to meet summer lawn and garden irrigation water together with normal domestic demand." The engineer's predictions were fairly accurate. In mid July 2008 the Town wells could not supply the demand to furnish water for in-house use and outside lawn and water irrigation. The Town administration banned outside irrigation from water well sources.

The engineer recommended a well or possibly several wells to be located near the South Arkansas River. Two wells were drilled south of the river. (The Town later drilled a third well.)

The engineer considered a change of point of diversion of the Town ditch to a new well so that the irrigation water could be delivered (when in priority) to each town residence. The lack of historic consumptive use of the ditch water would not produce the yield necessary for the augmentation plan and thus Project water became the source of water for the new plan.

Normal depletion returns from the new well locations, under the augmentation plan, would be returned directly to the mainstem of the Arkansas through Poncha Springs' sewer system. Pumping from the wells decreased the normal flow in the South Arkansas above Salida's main ditch, the Harrington. The State Water Engineer would administer releases from the Upper District reservoirs to replace the water to be diverted through the Town's sewer system.

The Town received its decree April 27, 1983. The decree authorized two 50 g.p.m. wells and required the Town to purchase from the Southeastern Colorado Water Conservancy District 45 acre-feet or more, as demands require, to protect Arkansas River water users. A maximum population for this plan was projected at 500 people. If Poncha Springs grows beyond 500, the Town may develop additional supplies of water for

bypass water and out-of-priority depletions. The decree also provides that the Town agrees to consult with the Colorado Water Conservation Board, the Upper Arkansas Water Conservancy District, and the State Engineer's Office as may be necessary to prevent injury to senior water rights.

In the years following the Water Court approval of the augmentation plan the Town Clerk neglected to file the annual water allocation applications with the Southeastern Colorado Water Conservancy District. Glenn Everett and Denzel Goodwin (now a Board member of the Southeast District) would take the Clerk, and sometimes the Mayor and the Clerk, to Pueblo to attend the annual Allocation Committee meeting to ensure the Town its annual supply of augmentation water.

VIII. ACQUISITION OF THREE CHAFFEE COUNTY RESERVOIRS

In 1979 when the UAWCD was authorized, Chaffee County controlled three public reservoirs. The three public reservoirs, State Reservoir Boss Lake, North Fork Reservoir and Gray's Creek Reservoir (also known as O'Haver Reservoir), in Chaffee County are located within the United States Forest boundaries.

A. State Reservoir Boss Lake

State Reservoir Boss Lake was created by the Colorado Assembly, not by a decree of the Court. The State Reservoir is one of three reservoirs that overlay a natural lake, Boss Lake, named after the Boss Mining District. Two of the reservoirs are known as Donnell Reservoirs 1 and 2. The appropriations for the latter two took effect on July 19, 1889 and were decreed on June 19, 1890. A quiet title action of State vs. Lionelle declared a combined capacity of both reservoirs to be 108 acre feet.

On April 16, 1891 the Colorado State legislature approved appropriation and authorized construction of "State Reservoir Boss Lake" for irrigation of lands in the South Arkansas River drainage without reference to priority. The intent of the statute was to provide water to all surface irrigators during the late summer when junior priority rights might otherwise be called out. The legislature provided for storage of 30,000,000 cubic feet (688 acre feet) of water. The combined storage of Donnell Reservoirs No. 1 and No. 2 and State Reservoir Boss Lake equaled 548 acre feet of usable, physical capacity attributable to the impoundment by the dam.

Note: The Lionelle family in 1938 made a claim for enlargement of Donnell Reservoir, but the enlargement was never accomplished.

The legislation creating State Reservoir Boss Lake is one of four other acts creating reservoirs under the leadership of Governor “Billy” Adams, and in the case of State Reservoir Boss Lake, dedicated the management authority to the Board of County Commissioners of Chaffee County. Enactment of the legislation in 1891, construction of the dam, and establishment of ownership and management all preceded the federal law that created the Forest Service and established Federal jurisdiction over management of reservoirs within Forest Service boundaries. The original map was filed by Frank P. Black in 1908 and approved by the Forest Supervisor of Cochetopa National Forest. Currently reservoirs within the Forest Service boundaries are subject to a permitting process that requires the permits to be renewed each ten-year anniversary. Chaffee County received a permit from the Forest Service on April 16, 1919, renewed November 12, 1942, but for some reason the permit did not need renewal each ten years and continued in place until the UAWCD acquired control of the reservoir in 1981 when the legislature authorized transfer of the duty to control and maintain the reservoir from the Board of County Commissioners to UAWCD.

One of the primary reasons for transfer of the reservoir to the Upper District was that the District would assume liability and responsibility for damages. The disaster following the break in Lawn Lake Reservoir above Estes Park had created fear in all reservoir owners and managers. Insurance companies declined coverage and older dams, such as the one at Boss Lake, were fragile. In the 1950’s the State Engineer required the County to breach the existing dam and reduce storage to 257 acre feet, but even so, the Board of County Commissioners of Chaffee County was anxious to transfer dam responsibility. On May 17, 1982 Chaffee County entered into an agreement to transfer complete control and responsibility for State Reservoir Boss Lake to UAWCD.

At the time of the transfer negotiations, Ken Baker was Chaffee County Attorney and also general manager of UAWCD. To avoid a conflict, the contract for transfer and control of the reservoir was drafted by the Fremont County attorney who represented Chaffee County for this purpose. One of the Chaffee County Commissioners objected to the agreement because he wanted the reservoir drained. Harold Blackwell, Chairman of

the Chaffee County Board, declined to consider such an extreme measure and he persuaded the Board to approve the agreement.

Following the Upper District's acquisition of the reservoir, the local Forest Service supervisor, Barney Lyons, met with Ken Baker and Denzel Goodwin to negotiate a new permit. Supervisor Lyons asked for an increase in fees and substantial rehabilitation to the reservoir site. The Upper District had few funds and a very low tax base. When the negotiations seemed to be at an impasse, Goodwin contacted Congressman Ray Kogovsek in Pueblo, Colorado and asked for the Congressman to assist the Upper District in these discussions. Congressman Kogovsek asked the Forest Service to give the newly formed District some relief from the regulations, and the permit issue went away for a few years until Supervisor Charlie Medina was transferred to Salida.

B. North Fork Reservoir

In the early 1950's the State Water Engineer determined that State Reservoir Boss Lake was in danger of collapse and ordered the spillway lowered to prevent a dam break. As an alternative to the loss of irrigation water stored in Boss Lake and used by the surface irrigators using ditches diverting from the South Arkansas River, Chaffee County began construction of a dam across the outflow of North Fork Lake, a natural lake at the head of North Fork Creek.

The intent of the Commissioners was to recreate a storage vessel like Boss Lake Reservoir, and to use the stored water in the same manner as the 1891 statute had mandated for that reservoir. For reasons not explained in County records, the County did not seek new state legislation, nor did the County seek a storage decree under Colorado law. Water was stored in the reservoir, and water was released from the reservoir without acquiring court decrees and with apparent lack of administration by the State Water Engineer.

During one of the dry summers in the 1977 to 1978 era, a rancher named Henry DeLuca asked the County Commissioners to release water from North Fork Reservoir to irrigate the second alfalfa crop. He told the Commissioners that the County had always released water in mid-summer. The Commissioners declined the request because the reservoir had no official water decree.

On May 17, 1982, Chaffee County formally transferred control of Boss Lake, North Fork Reservoir and Gray's Creek Reservoir to the UAWCD.

On August 19, 1982, Denzel Goodwin, Chairman of the District, sent a letter to Robert W. Jesse, Division Engineer in Pueblo. The letter asked for release of 100 acre feet of water to North Fork Creek and the South Arkansas River during the month of September without respect to priority under the same guidelines as releases from Boss Lake. The water was to be replenished with Poncha Springs Acequia Ditch water when available. Jesse agreed to the release and replacement request.

A chronological history of North Fork Reservoir dated September 24, 2005 is attached hereto for reference.

C. Gray's Creek (O'Haver) Reservoir

Gray's Creek Reservoir, later renamed O'Haver Reservoir in honor of T.R. (Bob) O'Haver, a long-time local businessman and Chaffee County Commissioner, is supplied by water from Gray's Creek flowing from the Marshall Pass drainage. An earth-filled, on-stream dam stores a decreed capacity of 193 acre feet of water for conditional uses of irrigation, municipal, industrial and augmentation.

One of the three Chaffee County reservoirs permitted for use by the United States Forest Service, O'Haver fits into a pattern of reservoirs originally managed by the Chaffee County Commissioners. As noted in the Boss Lake Reservoir review, and the North Fork Reservoir review, waters stored in the mountain reservoirs were primarily intended to supply late summer irrigation water without regard to traditional priority rights. (The state statute creating State Reservoir Boss Lake specifically provides release of the stored water for the use and benefit of diverters on the South Arkansas River without regard for priority.)

As early as 1942 the County Commissioners were being urged to expand Gray's Creek basin into another operable storage reservoir. Harry Bender, a well known local contractor with heavy earth moving equipment, suggested probable reservoir sites. One site was in Chalk Creek. Bender actually moved large boulders into Chalk Creek in a location upstream of Alpine and formed an instream retention lake. The second site Bender recommended was the location in Gray's Creek basin where the reservoir is currently located.

Almost simultaneously the Chaffee County Commissioners were expanding North Fork Lake into a new reservoir as discussed in the Boss Lake review, the State Water Engineer had serious concerns about the stability of the Boss Lake dam and was recommending release of the water stored in that reservoir.

The County proposed to finance the new reservoirs with moneys collected from a mill levy of one mill put on in 1945 and designated as a post war improvement fund. The fund was dropped in 1950 and a new fund, known as a water development fund, was created. The intent, as stated in the records at that time, was “allowing ditch users to keep their headgates open even though a prior river call from Pueblo, or thereabouts, has been received.” The stated purposes were to furnish supplemental water for irrigation, impound water for recreation, and initiate flood control.

The O’Haver dam was begun June 1, 1949, and completed in about 100 days, and cost \$21,000, not including road construction. The original proposal included impoundment of 600 acre- feet of water. The construction of O’Haver Reservoir and enlargement of North Fork Reservoir were sponsored by the Soil Conservation District. The Chairman of the District was George G. Everett, father of George E. Everett who envisioned the concept of the Upper Arkansas Water Conservancy District, and grandfather of Glenn Everett who was an organizer of UAWCD and has served as Chairman of the Board of Directors of UAWCD for many years.

A Quit Claim Deed from the Denver and Rio Grande Western Railroad Company dated August 16, 1956 was recorded September 5, 1956 in Book 286 at Page 5 of the Chaffee County records. This deed conveyed well rights that were 100% consumptive use, 365 days per year.

Mears Junction	0.0929 c.f.s.
Shirley Station	0.773 c.f.s.
Grays Station	0.773 c.f.s.
Parlin Curve	0.773 c.f.s.
Marshall Pass	<u>0.0153</u> c.f.s.
Total	0.3403 c.f.s.

The decreed date recited in Case No. 3053, District No. 11, is January 18, 1932. The acre feet equivalent of 0.3403 c.f.s. is 246.366 acre feet.

The record shows that Harold Krasomil, then a water commissioner, suggested use of the railroad wells to supply water to O’Haver Reservoir.

In 1982, when the three reservoirs were transferred to the UAWCD, Ken Baker made efforts to research the use of the water rights for adjudication for storage in O'Haver Reservoir. The search concluded that the waters owned by the railroad company were used to supply water to steam engines. Such waters were totally consumed by the steam engines and would be valuable rights. However the introduction of diesel electric engines and the abandonment of the railroad over Marshall Pass may have resulted in an abandonment of the water rights.

For a number of years the District Water Engineer in Pueblo recognized water storage rights and out-of-priority releases of water as proposed by the Soil Conservation District and the County Commissioners. A letter from County Attorney, Ken Baker, to Robert W. Jesse, Division Engineer, dated June 22, 1981 requested a right to store waters in North Fork Reservoir and in O'Haver Reservoir. As stated in the North Fork Reservoir review, on August 19, 1982, after the transfer of the reservoirs to UAWCD, Denzel Goodwin wrote a similar letter to Robert Jesse asking for a release of 100 acre feet of water from North Fork during the month of September. Jesse authorized this release on the condition that the water would be replaced by water from the Poncha Springs Acequia Ditch.

On June 28, 1985, based upon a Ruling dated September 7, 1984 in Case No. 82CW205 the Water Court issued a decree granting to the UAWCD a conditional water rights for irrigation, municipal, industrial, recreational and augmentation uses. Mary (Mooney) Mead Hammond represented the District in this Water Court application. After this date, the UAWCD has continued to renew the conditional rights and has exchanged augmentation water in O'Haver Reservoir. The reservoir has been one of the two reservoirs in which the Town of Poncha Springs has stored its augmentation water.

Following the fateful airplane crash in September 1977, the Colorado Water Conservation Board (CWCB) obtained instream water decrees below North Fork Reservoir and O'Haver Reservoir. UAWCD management has developed windows of opportunity to exchange water from the Arkansas River into these reservoirs. Some of the exchanges include water exchanged from mainstem reservoirs and tributaries.
