

ORDINANCE NO. 208

AN ORDINANCE AUTHORIZING THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, A TOWN, TO ENTER INTO A LONG-TERM LEASE OF THAT WATER RIGHT KNOWN AS THE KANAWHA DITCH AND PIPELINE, BY ITS APPROPRIATE OFFICERS, WITH HOMESTAKE MINING COMPANY, WHICH LEASE IS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, a Town:

Section 1. SHORT TITLE: This Ordinance shall be commonly and legally known as the Water Lease Ordinance.

Section 2. PURPOSE: The purpose of this Ordinance is to authorize the Board of Trustees of the City of Creede, Colorado, to enter into a long-term lease with Homestake Mining Company, whereby the City of Creede shall lease to said company, that amount of the Kanawha Ditch and Pipeline which is in excess of the amount of water consumptively used by the City of Creede.

Section 3. Adoption Not By Reference: This Ordinance is not an adoption by reference and any copy of this Ordinance utilized for publication or otherwise, shall have attached thereto, a full and complete copy of the Lease. The original Lease shall be attached to this Ordinance and shall be a part hereof.

Section 4. TERMS OF LEASE: The terms of the lease to be entered into are set-forth in the original lease, attached hereto.

Section 5. AUTHORITY: The authority for this lease is set-forth in the City Charter of Creede, Colorado, and in C. R. S. 1973 31 - 15 - 713, as amended.

Section 6. WHO SHALL EXECUTE LEASE: The Lease shall be executed by the Mayor of the City of Creede and his signature attested to by the City Clerk of the City of Creede, and each of them shall be acting in their official capacity, and upon the same being so signed, the City of Creede, Colorado shall be bound by the terms thereof.

INTRODUCED, read in full, adopted, approved and signed the 7th day of February, 1977.

Attest:


Mayor


City Clerk

(SEAL)

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INTRODUCED, read in full, adopted, approved and signed the 7th day of February, 1977.

ATTEST: /s/ James H. Basham
Mayor

/s/ Emma H. Swinehart (SEAL)
City Clerk

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PASSED first reading this 3rd day of January, 1977.

/s/ Emma Swinehart
Emma Swinehart - City Clerk

PASSED upon second and final reading this 7th day of February, 1977.

/s/ Emma Swinehart
Emma Swinehart - City Clerk

I, Emma Swinehart, City Clerk of the City of Creede, Colorado, a town, do hereby certify that the attached proof of publication represents the publication of the foregoing ordinance, as provided by law, that such publication included the Lease Agreement, in full, and that the same was so published in accordance with the proof of publication.

I further certify, that in accordance with law, such Ordinance shall be in full force and effect 30 days following such Publication.

Emma Swinehart - City Clerk

(Attach Proof Of Publication Here)

LEASE

THIS LEASE is entered into and dated as of the 3rd day of January, 1977, between the CITY OF CREEDE, a Town ("Lessor"), and HOMESTAKE MINING COMPANY, a California corporation ("Lessee").

RECITALS

1. Lessor is the owner of one-half (1/2) cubic foot of water per second of time of the Kanawha Ditch and Pipeline, adjudicated by the Alamosa County District Court as Appropriation Priority No. 1959-2, with an appropriation date of February 1, 1894, for mining, agricultural, domestic and power purposes. The source of supply of this water right is adjudicated as nontributary to any natural stream and the headgate is located and the portal of the Nelson-Wooster Tunnel whence the North quarter corner of Section 26, T. 42N., R.1 W., N.M.P.M., bears South 6 degrees 07' West 6410.1 feet. The Referee's Findings and Decree of the Court regarding the Kanawha Ditch and Pipeline is recorded in Book 110-I at page 465 of the records of Mineral County, Colorado. The above described water right is hereinafter referred to as the "Kanawha Ditch right".

2. The Kanawha Ditch right is substantially in excess of the amount of water presently consumptively used by Lessor and, therefore, exceeds the "augmentation requirements" fixed by the Division 3 Water Court by its Findings of Fact, Conclusions of Law and Decree Approving Plan for Augmentation Including Exchange for the City of Creede, entered on October 31, 1975, in Case No. W-3329. That amount of the Kanawha Ditch right which is in excess of the amount of water consumptively used by Lessor hereinafter shall be referred to as the "Leased Water".

3. Lessor and Lessee desire to enter into a lease covering the Leased Water.

IN CONSIDERATION of the above recitals, and the promises and covenants contained herein, Lessor and Lessee agree as follows:

1. GRANT. Lessor hereby grants, demises, leases, and lets exclusively unto Lessee, its successors and assigns, the Leased Water together with the right to divert the same to Lessee's own purposes for mining, milling, domestic, power and all other lawful uses and purposes, subject to the terms, conditions and covenants contained herein.

2. TERM. This Lease is granted for a "Primary Term" of twenty years commencing on the date hereof and ending January 2, 1997, and for an additional "Secondary Term" of twenty years commencing twenty years from the date hereof and

ending January 2, 2017, for a total "Lease Term" of forty years.

For purposes of this Lease, the Primary Term shall be divided into four successive "Lease Periods" of five years each, and the Secondary Term shall be divided into four successive Lease Periods of five years each.

3. QUANTITY. This Lease grants to Lessee during the Lease Term all of the Leased Water or the "Minimum Quantity", as hereinafter defined, whichever is greater.

(a) During the first Lease Period of the Primary Term the Minimum Quantity shall be 354 acre feet per year and shall remain fixed throughout the five years of said Lease Period.

(b) During the second Lease Period of the Primary Term the Minimum Quantity shall be 344 acre feet per year and shall remain fixed throughout the five years of said Lease Period.

(c) Thereafter, at the beginning of each of the two succeeding Lease Periods during the Primary Term, the Minimum Quantity may be decreased by no more than 5 acre feet per Lease Period, so that throughout the fourth Lease Period the Minimum Quantity shall be no less than 334 acre feet per year.

(d) During the First Lease Period of the Secondary Term the Minimum Quantity shall be 334 acre feet or the Minimum Quantity in effect during the fourth Lease Period of the Primary Term, whichever amount is greater.

(e) Thereafter, at the beginning of each of the three succeeding Lease Periods during the Secondary Term, the Minimum Quantity may be decreased by no more than 5 acre feet per Lease Period.

(f) Such reduction in the Minimum Quantity shall be made only as is necessary in order for Lessor to meet and provide for its actual increased consumptive domestic uses of water due to its municipal growth, and not otherwise, and such increased uses shall be documented by Lessor with authentic records of measurements taken from its water supply system.

4. PAYMENTS.

(a) Lessee shall pay to Lessor annually the sum of Two Thousand Five Hundred Dollars (\$2,500.00) during the first Lease Period of the Primary Term. During each successive Lease Period of the Primary Term, Lessee shall pay to Lessor annually an amount equal to that amount paid per year during the immediately preceding Lease Period, plus Four Hundred Dollars (\$400.00), so that during the fourth Lease Period of the Primary Term Lessee shall pay to Lessor annually the sum of Three Thousand Seven Hundred Dollars (\$3,700.00). Such annual payments shall be made irrespective of the quantity of water available.

(b) All payments hereunder shall be due and payable on or before January 3 of the year to which such payment is applicable, commencing with the first payment of Two Thousand Five Hundred Dollars (\$2,500.00) upon execution of this Lease, which shall be applicable to the first year of this Lease.

(c) At the end of the Primary Term, Lessor and Lessee shall mutually agree upon the amount of the payments to be paid by Lessee to Lessor during the Secondary Term. The amount of such payments shall be established in a reasonable manner and shall be based upon the then fair market value of the Minimum Quantity in effect during the fourth Lease Period of the Primary Term.

5. RIGHT TO TERMINATE. Notwithstanding any other provisions hereof, Lessee shall have the right to terminate this Lease at its sole option upon written notice to Lessor.

6. NOTICE. All notices, payments or other communications required under this Lease shall be sent as follows:

If intended for Lessor, to:

City of Creede
Box 206
Creede, Colorado 81130
Attn: Mayor

If intended for Lessee, to

Homestake Mining Company
650 California Street
San Francisco, California 94108
Attn: William G. Langston

7. SUPPLY. Notwithstanding any other provisions hereof, Lessor does not warrant or guarantee to Lessee the physical supply of the Leased Water. Lessor, however, will not do anything which might obstruct, diminish, or otherwise injuriously affect the natural flow of water under the Kanawha Ditch right. Moreover, Lessee's rights herein shall be subordinate to Lessors's obligation to supply its augmentation requirements.

8. POINT OF DIVERSION.

(a) Lessee shall determine, subject to the approval of lessor which shall not be unreasonably withheld, a point of diversion from which Lessee can most efficiently divert the largest quantity of Leased Water with the least degree of waste and without infringing upon the vested rights of others, or interfering with Lessor's obligation to supply its augmentation requirements to the Rio Grande River System.

(b) Any change in point of diversion or of the Leased Water initiated by Lessee shall be at the sole expense of Lessee.

9. ASSIGNABILITY. This Lease may be assigned by Lessee at any time with Lessor's consent, which consent shall not be unreasonable withheld by Lessor. The Lease shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

10. TITLE AND CONSENT. Lessor warrants that it owns good and marketable title to the Leased Water, that it has acquired all approvals and consents necessary to execute this lease, and that it does so in compliance with all applicable state laws and local ordinances.

Executed on the date first above written.

ATTEST:

/s/ Emma Swinehart
Town Clerk

LESSOR:
CITY OF CREEDE

By /s/ James Basham
Mayor

LESSEE:
HOMESTAKE MINING COMPANY
a California Corporation

By /s/ A. S. Winters
Resident Manager

STATE OF COLORADO

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COUNTY OF MINERAL

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SS.

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The foregoing instrument was acknowledged to me this 7th day of February, 1977, by /s/ James H. Basham as Mayor and /s/ Emma Swinehart as Town Clerk of the CITY OF CREEDE.

Witness my hand and official seal.

/s/ Chloe Rogers
Notary Public