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May 9, 2006

Via E-Mail and U.S. Mail

LCMD Board of Directors
Lake Creek Metropolitan District
c/o Robertson & Marchetti, P.C.
Attn: Cissy Olson
P.O. Box 600
28 Second Street, Suite 213
Edwards, CO 81632

Re: Case No. 01CW277 - Application of Lake Creek Metropolitan District

Dear Directors:

We are very pleased to report the Water Judge has confirmed the Referee's Ruling and issued it as the final Judgment and Decree of the Court. A copy of the final Decree is enclosed for your review and file.

Please note that Paragraph III.6 of the decree requires that the District submit an annual operating report to the division engineer by November 15th each year. Zancanella & Associates, Inc. already submits a similar report for the District in connection with its Substitute Supply Plan, and should thereby be familiar with this process.

The issuance of the final decree in this case concludes this matter. Although this process took longer than than the District's Board and counsel anticipated, we believe the District successfully adjudicated a plan for augmentation that will grow with the District for decades. Please contact us with any questions regarding this matter.

Very truly yours,

BALCOMB & GREEN, P.C.

By


Christopher L. Geiger

cc w/ encls.: Thomas A. Zancanella, P.E.
CLG:kc
Encls.

<p>DISTRICT COURT, WATER DIVISION 5, COLORADO</p> <p>GARFIELD COUNTY COURTHOUSE 109 8TH STREET, STE. 104 GLENWOOD SPRINGS, CO 81601 (970) 945-5075</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>CASE No. 01CW277</p> <p>WATER DIVISION 5</p>
<p>APPLICANT:</p> <p>LAKE CREEK METROPOLITAN DISTRICT, IN EAGLE COUNTY, COLORADO.</p>	
<p>FINDINGS OF FACT, RULING OF REFEREE AND JUDGMENT AND DECREE</p>	

This matter came before the Court upon the Amended Application of Lake Creek Metropolitan District for change of water rights, for amendment to Decree in Case Nos. W-3587 and 98CW115, and for confirmation of entitlement to benefits of the Green Mountain Reservoir "Historic Users' Pool." Applicant is represented by David C. Hallford and Christopher L. Geiger of Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO, 81602.

The Water Judge referred the Amended Application to the undersigned as Water Referee for Water Division No. 5, State of Colorado, in accordance with Article 92 of Title 37, Colorado Revised Statutes 1973, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee has made such investigations as are necessary to determine whether or not the statements in the Amended Application are true, has become fully advised with respect to the subject matter of the Amended Application and has consulted with the Division Engineer for Water Division No. 5. The Referee hereby makes the following determination and ruling as the Referee in this matter.

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I. FINDINGS OF FACT

1. The Applicant is the Lake Creek Metropolitan District (hereinafter "District" or "Applicant"), whose address is c/o Robertson & Marchetti, P.C., Attn: Ken Marchetti, P.O. Box 600, 28 2nd Street, Suite 213, Edwards, Colorado 81632. Applicant was previously named Lake Creek Meadows Water District before it modified its service plan and became a metropolitan district organized under COLO. REV. STAT. §§ 32-1-101 *et seq.*
2. Applicant provides both potable and raw water supplies to its constituents. Historically, Applicant has diverted water for delivery to its constituents at several points of diversion, including at the Lake Creek Meadows Water District Intake (hereinafter "Intake"). The Intake was decreed in W-3589 and changed to alternate points of diversion in 95CW365. The Intake, at its original location and alternate points of diversion, is benefitted by a plan for augmentation decreed in Case No. W-3587. The decree for that plan for augmentation designates consumptive use credits (quantified in W-3587) from Applicant's interests in the Creamery Ditch First Enlargement and Lui Hopper Ditch, either through direct exchange or through storage releases from Lake Creek Meadows Reservoir (decreed in W-3590), to provide replacement water for out-of-priority diversions at the Intake.
3. On October 31, 2001, Applicant filed an Application for Change of Water Rights, for Amendment to Decree in Case No. W-3587, and for Confirmation of Entitlement to Benefits of the Green Mountain Reservoir "Historic Users' Pool." Applicant filed an Amended Application for Change of Water Rights, for Amendment to Decree in Case No. W-3587 and Case No. 98CW115, and for Confirmation of Entitlement to Benefits of the Green Mountain Reservoir "Historic Users' Pool" on November 22, 2002.
4. The Application and the Amended Application were properly published in the resume for Water Division No. 5, and Applicant has paid all publication costs. In its Amended Application, the Applicant provided the Court with the names of owners or reputed owners upon whose property water will be placed to beneficial use under this Decree, and with the names of owners or reputed owners upon whose property any points of diversion or storage structures identified in this Decree are located. Pursuant to COLO. REV. STAT. § 37-92-302(3)(c)(I), the Water Clerk has notified the owners or reputed owners of properties upon which water will be placed to beneficial use under this Decree, and those owners of property upon which points of diversion or storage structures identified in this

Decree are located, as identified in the Amended Application. The Court finds that providing notice of the Amended Application to said parties is sufficient to comply with the notice requirements of COLO. REV. STAT. § 37-92-302(3)(c)(I). All notices required by law have been made, and the Court has jurisdiction over the Application, the Amended Application and all of the parties in this case.

5. City of Colorado Springs, Squaw Creek Metropolitan District and Weeping Willow Services, LP filed timely statements of opposition to the Amended Application. No other statements of opposition were filed, and the time for filing such statements has expired. By Court Order entered May 19, 2004, Upper Eagle Regional Water Authority was substituted in place of Opposer Squaw Creek Metropolitan District. The Opposers have consented to entry of this Decree, as evidenced by their respective stipulations with the Applicant on file with the Court.

6. The State and Division Engineers intervened pursuant to a stipulation with the Applicant to resolve concerns about Applicant's claims regarding the Green Mountain Reservoir "Historic Users' Pool" as more fully explained herein.

**CLAIM FOR CHANGE OF WATER RIGHT:
LAKE CREEK MEADOWS WATER DISTRICT INTAKE**

7. Information From Original Decree:

- A. Date Entered: January 31, 1979
- B. Case No.: W-3589
- C. Court: Water Division No. 5
- D. Original Decreed Point of Diversion: located at a point whence the Southwest Corner of Section 18, Township 5 South, Range 82 West of the 6th P.M. bears S. 34°00' West a distance of 2,410 feet.
- E. Original Decreed Source: West Lake Creek, tributary to Lake Creek, tributary to Eagle River.

- F. Appropriation Date: June 1, 1975
 - G. Beneficial Use Date: June 1, 1977
 - H. Amount: 2.0 cfs, absolute
 - I. Use: municipal, domestic, irrigation, recreation
8. Information from Previous Change Decree: In Case No. 95CW365, Water Division No. 5, the Court approved alternate points of diversion for the Intake at the Lake Creek Meadows Water District Intake Alternate Well Nos. 1 through 4, the legal descriptions and sources of which are as follows:
- A. Lake Creek Meadows Water District Intake Alternate Well No. 1:
 - (1) Location: in the SW1/4NE1/4 of Section 18, Township 5 South, Range 82 West of the 6th P.M., at a point whence the center of Section 18 bears South 50°40'31" West a distance of 750.66 feet, located 2063 feet West of the East line and 2164 feet South of the North line of said section.
 - (2) Source: East Lake Creek alluvium, tributary to Lake Creek, tributary to Eagle River.
 - B. Lake Creek Meadows Water District Intake Alternate Well No. 2:
 - (1) Location: in the SW1/4NE1/4 of Section 18, Township 5 South, Range 82 West of the 6th P.M., at a point whence the center of Section 18 bears South 39°14'51" West a distance of 750.36 feet, located 2168 feet West of the East line and 2061 feet South of the North line in said section.
 - (2) Source: East Lake Creek alluvium, tributary to Lake Creek, tributary to Eagle River.
 - C. Lake Creek Meadows Water District Intake Alternate Well No. 3:
 - (1) Location: in the SE1/4NE1/4 of Section 18, Township 5 South, Range 82 West of the 6th P.M., at a point whence the center of Section 18 bears North

69°59'02" East a distance of 1315.83 feet, located 1400 feet East of the West line and 2230 feet North of the South line in said section.

(2) Source: West Lake Creek alluvium, tributary to Lake Creek, tributary to Eagle River.

D. Lake Creek Meadows Water District Intake Alternate Well No. 4:

(1) Location: in the SE1/4NE1/4 of Section 18, Township 5 South, Range 82 West of the 6th P.M., at a point whence the center of Section 18 bears North 63°12'33" East a distance of 1428.99 feet, located 1340 feet East of the West line and 2030 feet North of the South line in said section.

(2) Source: West Lake Creek alluvium, tributary to Lake Creek, tributary to Eagle River.

9. Proposed Changes:

A. Additional Alternate Points of Diversion: The Lake Creek Meadows Water District Intake was originally constructed and operated as a surface water right (diverting at the location described in paragraph I.7.D. above), to provide municipal, domestic, recreation and irrigation water service throughout the Lake Creek Metropolitan District. To comply with regulations promulgated by the Colorado Department of Health, the District adjudicated in Case No. 95CW365 the alternate points of diversion at the wells described in paragraph I.8 above. In this case, the District requests a further change of the Intake water right to additional alternate points of diversion within a well field. A map of the well field is attached as Exhibit A hereto and is incorporated herein by this reference.

(1) The wells which will serve as alternate points within the well field may be located at any point within the Lake Creek Meadows Subdivision, the Plat for which was recorded on May 6, 1974 at Reception No. 130469, provided that the wells shall be located within 100 feet of the stream in the alluvium of East Lake Creek, West Lake Creek, or Lake Creek. Location of the wells within 100 feet of the stream in the alluvium, as provided above, will not require delayed depletion accounting. As an alternative, wells may be located in excess of 100 feet of the stream in the alluvium if a delayed depletion analysis is provided that is acceptable to the

Colorado Division of Water Resources. Depletions from operations of the well field will be reported in accounting submitted on an annual basis.

(2) The District may develop as many wells as are necessary in the defined well field for cumulative maximum diversions of 2.0 cfs from any combination of the Intake at the original location, the alternate well sites decreed in Case No. 95CW365, and the alternate points decreed herein. The District's cumulative maximum diversions at such points under the Intake water right, when or as augmented by the consumptive use credits decreed to its interests in the Lui Hopper and Creamery Ditch First Enlargement water rights, will be limited to 500 acre feet annually for which the consumptive use will be 105 acre feet annually, as decreed in W-3587. Total diversions under the Intake water right from all points of diversion shall be limited to the amount available, and within the decreed amount, at the original point of diversion. No change of use of the Intake water right is contemplated, and no expansion of use will result from the requested change. Out-of-priority depletions resulting from diversions of the Intake water right at any combination of the original and decreed alternate points shall continue to be replaced pursuant to the augmentation plan decreed for the District in Case No. W-3587, Water Division No. 5, except as modified in the amendments to W-3587 decreed herein.

(3) The District is entitled to have as many well permits as are necessary to divert a cumulative maximum diversion of 2.0 cfs, and to be issued well permits by the State Engineer to construct, and use groundwater from, the wells to be located within the boundaries of the well field, so long as the well permit applications confirm that operation of the wells will be subject to the terms and conditions of this decree. Amendment of this decree is not required each time a new well location is determined. All well permits issued hereunder are subject to the requirements of Colo. Rev. Stat. § 37-90-137(2). The District shall notify both the Water Court, the Division of Water Resources and the Opposers of the precise location of each new well in the above-described well field within 60 days of completion of the well. Concurrent with such notice, the District shall advise the notified parties whether any additional conditions are necessary to avoid injury to other water rights from well pumping at that location. If the District determines that additional conditions are necessary, it shall identify all such additional necessary conditions in its notice to the parties, and shall also, within 60 days from the date of mailing of such notice, petition the Court to amend this Decree accordingly. If any

notified party is not satisfied with the District's determination as to whether additional conditions are necessary, or is not satisfied that any additional conditions identified by the District are adequate to avoid injury to other water rights from well pumping at that location, such party may, within 60 days from the date of mailing of the District's notice, petition the Court to reopen this Decree for the limited purpose of considering whether other additional conditions are necessary to avoid injury to other water rights from well pumping at the location identified by the District, and for no other purposes. Consistent with the operation of retained jurisdiction pursuant to Colo. Rev. Stat. § 37-92-304(6), no further notice shall be required to amend or reopen this Decree for the limited purposes allowed hereunder.

(4) In Case No. 98CW115, this Court decreed alternate points of diversion for the District's interests in the Creamery Ditch First Enlargement and the Lui Hopper Ditch to multiple points within stream reaches along West Lake Creek and East Lake Creek that are consistent with the request for the well field made herein.

(5) The District, a political subdivision of the State of Colorado, has the right to exercise the power of eminent domain, as necessary, to construct wells and related facilities on property owned by another. Pursuant to Colo. Rev. Stat. § 37-92-304(3.6), the District shall not construct a well on property owned by another unless the right to construct such a well is obtained by consent of the land owner or by the exercise of eminent domain.

(6) Applicant agrees with Opposer Weeping Willows LLC that the notice requirements of Colo. Rev. Stat. § 37-90-137(2)(b)(II)(B) were not implemented in this case. Therefore, in conformance with Colo. Rev. Stat. § 37-90-137(2)(b)(I) and (II)(A), no well permit shall be issued for any well that will exercise the water rights confirmed in this decree and that will be located within six hundred feet of a then-existing well unless the state engineer, after a hearing, finds that any then-existing well within six hundred feet of the proposed well will not be materially injured or unless the State Engineer notifies the owner of all wells within six hundred feet of the proposed well by certified mail, and receives no response within the time set forth in the notice. At such time as the Applicant may file an application for a well permit for any well that will be located within six hundred feet of any then-existing well on Weeping Willow's property, Applicant shall serve upon counsel for Weeping

Willow a copy of such application as well as any notice required under Colo. Rev. Stat. § 37-90-137(2)(b)(I) and (II)(A).

B. Place of Use: The District supplies water for municipal and other purposes within its service area. In this case, the District also seeks to change the Intake water right to confirm that the place of use will occur within the District's "service area" meaning any lands to which the District now or in the future provides water for municipal and other purposes. The District shall not extend service to any area using the Intake water right that results in return flows from water diverted under the Intake water right accruing to any basin that is not tributary to East Lake Creek, West Lake Creek, or Lake Creek.

CLAIMS INVOLVING GREEN MOUNTAIN RESERVOIR HISTORIC USERS' POOL

10. In its Amended Application, the District asserted three claims for relief related to the operation of the Green Mountain Reservoir "Historic Users' Pool" which is hereinafter referred to as the "Historic Users' Pool" or "HUP." Specifically, the District sought to confirm that its interests in the Creamery Ditch First Enlargement, Lui Hopper Ditch, Lake Creek Meadows Intake and Lake Creek Meadows Reservoir are beneficiaries of releases from the Historic Users' Pool. The District further sought this Court's approval to amend the plan for augmentation decreed in W-3587 and change of water rights decreed in 98CW115 in order to reconcile those decrees with the HUP-beneficiary status of the Creamery Ditch First Enlargement, Lui Hopper Ditch, Lake Creek Meadows Intake and Lake Creek Meadows Reservoir.

11. Historic Users' Pool beneficiary status of water rights is based on the following existing legal authorities:

A. Senate Document 80, 75th Congress, 1st Session (June 15, 1937).

B. "Operating Policy" promulgated in the Final Notice of Operating Policy for Green Mountain Reservoir, Colorado Big Thompson Project, Colorado, effective January 23, 1984 and published in the Federal Register, Vol. 48, No. 247, p. 56657 on December 22, 1983 as amended effective September 3, 1987 and published in the Federal Register, Vol. 52, No. 176 on September 11, 1987.

C. "Blue River Decree" which is comprised of and includes the Final Decree, Final Judgment, and Findings of Fact and Conclusions of Law and Final Judgment, all dated October 12, 1955 together with subsequent orders and decrees entered by the United States District Court, District of Colorado in its Consolidated Cases No. 2782, 5016 and 5017, including but not limited to the Findings of Fact, Conclusions of Law and Judgment and Decree entered in the Consolidated Cases and in Case No. 88CW382, District Court, Water Division No. 5, State of Colorado dated November 10, 1992.

12. Withdrawal of Claims:

The District has withdrawn its claims concerning Historic Users' Pool benefits, and this withdrawal is without prejudice. The District's withdrawal of its claims leaves determination of the scope and application of Historic Users' Pool benefits for the District's water rights subject to the application of the relevant legal authorities cited in subparagraph 11 above and future amendments thereof and supplements thereto, to judicial interpretation, and to the Engineers' administration of the Historic User's Pool pursuant to those authorities and other relevant authorities.

**CLAIM FOR CHANGE OF WATER RIGHTS:
LUI HOPPER DITCH AND CREAMERY DITCH FIRST ENLARGEMENT**

13. Information from previous decrees for the Creamery Ditch and Lui Hopper Ditch:

A. Information from Original Decree for Creamery Ditch First Enlargement and Lui Hopper Ditch:

- (1) Date Entered: October 3, 1936
- (2) Civil Action No.: 963
- (3) Court: Eagle County District Court

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B. Previous Change Decrees (Water Division No. 5) for Creamery Ditch First Enlargement and Lui Hopper Ditch:

- (1) Case No.: W-3587
- (2) Case No.: 95CW365
- (3) Case No.: 98CW115

C. Source:

(1) Creamery Ditch First Enlargement:

a. Original Decree in CA 963: East Lake Creek, tributary to Lake Creek, tributary to Eagle River.

b. Alternate Point Decreed in W-3587: West Lake Creek, tributary to Lake Creek, tributary to Eagle River.

(2) Lui Hopper Ditch:

a. Original Decree in CA 963: West Lake Creek, tributary to Lake Creek, tributary to Eagle River.

b. Alternate Point Decreed in W-3587: West Lake Creek, tributary to Lake Creek, tributary to Eagle River.

D. Appropriation Dates:

- (1) Creamery Ditch First Enlargement: May 5, 1898
- (2) Lui Hopper Ditch: June 1, 1888

E. Amounts:

- (1) Creamery Ditch First Enlargement: The right was decreed for 13.16 cfs

originally, of which Applicant owns 1.5 cfs. and the consumptive-use credits associated with 33 acres of historical irrigation under the ditch as quantified by decree in Case No. W-3587, Water Division No. 5.

(2) Lui Hopper Ditch: The right was decreed for 4.84 cfs originally, of which Applicant owns 4.6585 cfs and the consumptive-use credits associated with 41 acres of historical irrigation under the ditch, as quantified by decree in Case No. W-3587, Water Division No. 5.

F. Decreed Points of Diversion:

(1) Creamery Ditch First Enlargement, Civil Action No. 963: Located at a point whence the Southwest corner of Section 8, Township 5 South, Range 82 West of the 6th P.M., bears North 30°06' East a distance of 3576 feet.

(2) Lui Hopper Ditch, Civil Action No. 963, as corrected in W-3587: Located at a point whence the Southwest corner of Section 18, Township 5 South, Range 82 West of the 6th P.M., bears South 36°00' West a distance of 2160 feet.

(3) Alternate Points of Diversion Decreed for both the Creamery Ditch First Enlargement and the Lui Hopper Ditch in Case No. W-3587:

a. Lake Creek Meadows Water District Intake: Located at a point whence the Southwest corner of Section 18, Township 5 South, Range 82 West of the 6th P.M., bears South 34°00' West a distance of 2410 feet.

b. Lake Creek Meadows Ditch: Located at a point whence the Southwest corner of Section 18, Township 5 South, Range 82 West of the 6th P.M., bears South 31°30' West a distance 3820 feet.

(4) Alternate Point of Diversion Decreed only to Creamery Ditch First Enlargement in W-3587: At the headgate of the Lui Hopper Ditch, as decreed in Civil Action No. 963: Located at a point whence the Southwest corner of Section 18, Township 5 South, Range 82 West of the 6th P.M., bears South 36°00' West a distance of 2160 feet.

(5) Alternate Points of Diversion Decreed for both the Creamery Ditch First Enlargement and the Lui Hopper Ditch in Case No. 95CW365: Lake Creek Meadows Water District Intake Well Nos. 1 - 4 (see paragraph I.8 above).

(6) Alternate Points of Diversion Decreed for both the Creamery Ditch First Enlargement and the Lui Hopper Ditch in Case No. 98CW115:

a. For diversion at any point or points within a stream reach on East Lake Creek and Lake Creek extending from the original decreed point of diversion for the Creamery Ditch First Enlargement to the point where Lake Creek leaves the District service area, which point is described as follows: a point on the North line of the W1/2 of the SE1/4 of Section 7, Township 5 South, Range 82 West, 6th P.M., said point being approximately 2660 feet North of the South line and 3710 feet East of the West line of said Section 7.

b. For diversion at any point or points within a stream reach on West Lake Creek and Lake Creek extending from the original decreed point of diversion for the Lui Hopper Ditch to the point where Lake Creek leaves the District service area, which point is described as follows: a point on the North line of the W1/2 of the SE1/4 of Section 7, Township 5 South, Range 82 West, 6th P.M., said point being approximately 2660 feet North of the South line and 3710 feet East of the West line of said Section 7.

c. At the Lake Creek Meadows Ditch No. 2 on West Lake Creek (within the stream reach described in the preceding subparagraph I.13.F.6.b), the point for which is more particularly described as follows: situated at a point along West Lake Creek from which the center of Section 18, Township 5 South, Range 82 West, 6th P.M. bears South 43°30' East a distance of 965 feet.

G. Proposed changes: The District supplies water for municipal and other purposes within its service area. The District seeks to change the Lui Hopper Ditch and Creamery Ditch First Enlargement water rights to confirm that the place of use will occur within the District's "service area" meaning any lands to which the District now or in the

future provides water for municipal and other purposes. The District shall not extend service to any area using its interests in the Lui Hopper Ditch and Creamery Ditch First Enlargement water rights that results in return flows from water diverted under these rights right accruing to any basin that is not tributary to East Lake Creek, West Lake Creek, or Lake Creek.

**CLAIMS FOR AMENDMENT TO DECREE IN CASE NO. W-3587
TO ADD ADDITIONAL SUPPLIES OF REPLACEMENT WATER
TO PLAN FOR AUGMENTATION**

14. Background to Claims:

A. In Case No. W-3587, this Court decreed a plan for augmentation to augment out-of-priority depletions resulting from diversions at the Intake, and changed the District's interests in the Creamery Ditch First Enlargement and Lui Hopper Ditch¹ to allow both to be diverted at alternate points of diversion, including at the Intake. For example, in paragraph 15 of the W-3587 Decree, the Court stated that "[d]uring the irrigation season, as determined by the Division Engineer or his representative, if necessitated by a valid call, the water diverted at the Lake Creek Meadows Water District Intake will be supplied by either the Lui Hopper Ditch under priority no. 373, or the Creamery Ditch First Enlargement under priority no. 383."

B. In paragraph 15 of the Decree in Case No. W-3587, this Court also decreed a change of use for the District's interests in the Creamery Ditch First Enlargement and Lui Hopper Ditch "from irrigation to recreation, municipal, domestic, irrigation, mechanical, manufacturing, fire protection and sewage treatment."

C. In the Decree in Case No. W-3587, the Court decreed that 41 acres were historically irrigated by the District's interest in the Lui Hopper Ditch and 33 acres by the District's interest in the Creamery Ditch First Enlargement. The consumptive use of irrigation of these combined 74 acres was approximately 105 acre feet during an average

¹ These water rights, and the District's interests therein, are described in paragraph I.13 of this Findings of Fact, Ruling of Referee, Judgment and Decree, *supra*.

year and 128 acre feet during a dry year. The historical combined diversion of these water rights averaged 500 acre feet annually. The decreed monthly allocation of the 105 acre feet of consumptive use during the average year is:

Month	Allocated Acre Feet of C.U.
May	7.0
June	27.0
July	32.0
August	25.0
September	12.0
October	2.0
ANNUAL TOTAL:	105.0

D. The Decree in W-3587 requires that the first 11.4 of the 105 acre feet of consumptive-use decreed to the Creamery Ditch First Enlargement and Lui Hopper Ditch be dedicated to augmentation of the Intake for the District's in-house domestic requirements either by direct exchange or indirect replacement using the consumptive-use credits to fill the Lake Creek Meadows Reservoir for subsequent release. The balance (93.6 acre feet average annually) of the consumptive-use credits available under the District's interests in the Lui Hopper Ditch and Creamery Ditch First Enlargement was decreed available for the uses for which the District's interests in these water rights were changed, including continued irrigation, and for replacement of evaporation from Lake Creek Meadows Reservoir.

E. The Decree in W-3587, at paragraphs 11 and 15, also recognizes that the Intake water right can divert under its own priority without augmentation when there is not a valid senior call in effect.

F. Another element of the plan for augmentation decreed in W-3587 is that the District's non-irrigation season out-of-priority depletions will be replaced with releases from

Lake Creek Meadows Reservoir. Information from the original decree for this water right is as follows:

- (1) Date Entered: 5/8/1979
- (2) Case No.: W-3590
- (3) Court: Water Division No. 5
- (4) Legal Description: The dam is located at a point whence the Southwest corner of Section 18, Township 5 South, Range 82 West of the 6th P.M. bears S. 27°00' West a distance of 4,940 feet.
- (5) Source: West Lake Creek, through the Lake Creek Meadows Ditch, tributary to Lake Creek, tributary to the Eagle River.
- (6) Appropriation Date: 6/10/1969
- (7) Amount: 7.0 acre feet.
- (8) Uses: Piscatorial, municipal, domestic, irrigation, recreation, mechanical, manufacturing, fire protection and sewage treatment.
- (9) Status: The absolute and conditional status of this right is as follows:
 - a. 7.0 acre feet was decreed absolute for piscatorial in W-3590.
 - b. 2.0 acre feet was decreed absolute for municipal, domestic, irrigation, recreation and fire protection in 99CW91.
 - c. 5.0 acre feet remains conditional for municipal, domestic, irrigation, recreation and fire protection per the Decree in 99CW91.
 - d. 7.0 acre feet remains conditional for mechanical, manufacturing and sewer treatment per the Decree in 99CW91.

15. The District seeks to amend the plan for augmentation decreed in W-3587 by adding supplies in Wolford Mountain Reservoir, Ruedi Reservoir, and/or Eagle Park Reservoir (and other Eagle River supplies available to the Colorado River Water Conservation District) to supplement or provide an alternate supply of replacement water for use in the District's W-3587 augmentation plan as amended herein.

A. Applicant has entered into Water Supply Contract No. CW02024 A&B with the Colorado River Water Conservation District ("CRWCD") acting by and through its Colorado River Water Projects Enterprise for 10.1 acre feet of Colorado River Supply and 5.2 acre feet of Eagle River Supply sources. Releases from the supplemental or alternative sources will be made pursuant to this contract.

B. The information from the previous decrees for these water supplies available to the District under its water supply contract with the CRWCD is set forth in Exhibit B attached hereto and incorporated herein by this reference.

16. With the addition of the CRWCD supplies discussed above, the District owns or controls by contract 127.30 acre feet of augmentation water, comprised of 105 acre feet of consumptive-use credits decreed to its interests in the Lui Hopper and Creamery Ditch First Enlargement water rights, 10.2 acre feet of Colorado River supply sources under contract with the CRWCD, 5.1 acre feet of Eagle River supply sources under contract with the CRWCD, and 7.0 acre feet decreed to the Lake Creek Meadows Reservoir in W-3590, of which 2.0 c.f.s was decreed absolute for municipal, domestic, irrigation, recreation and fire protection in 99CW91.

A. Consistent with the Decree in W-3587, the first 11.4 of the 105 acre feet of consumptive-use decreed to the Creamery Ditch First Enlargement and Lui Hopper Ditch in W-3587 will remain dedicated to augmentation of the Intake for the District's in-house domestic requirements, either by direct exchange or indirect replacement using the consumptive-use credits to fill the Lake Creek Meadows Reservoir for subsequent release.

B. The remaining 115.90 of the 127.3 acre feet shall be available to the District for use pursuant to the plan for augmentation decreed in W-3587 as amended herein. The District may use these 115.90 acre feet for augmentation of the Intake for all of its decreed uses at all of its decreed points of diversion, replacement of evaporation, or, in the case of the District's interests in the Lui Hopper and Creamery Ditch First Enlargements, diversion

(at the decreed alternate points of diversion for those water rights) and consumption of the remaining 93.6 acre feet of consumptive use credits decreed to those water rights in W-3587.

17. The District, by amending the plan for augmentation decreed in W-3587, is preparing for future development and redevelopment within its service area. The District does not know exactly what development or redevelopment may occur, and must estimate the extent and nature of its future needs.

A. This Court notes that the District is a special district, and therefore a "quasi-municipal corporation and political subdivision" of the state. COLO. REV. STAT. § 32-1-103(20). "[M]unicipalities require sufficient flexibility . . . to allow them to plan for future water needs." Thornton v. Bijou Irr. Co., 926 P.2d 1, 39 (Colo. 1996). "[M]unicipal appropriations for reasonably anticipated future requirements, including requirements for projected growth areas not presently within the municipal boundaries, are valid." Id. at 40. The District may, therefore, amend the plan for augmentation decreed in W-3587 to prepare for reasonably anticipated future requirements.

B. The District has prepared planning scenarios of its future anticipated needs. One such scenario is included as Exhibit C hereto. Exhibit C illustrates the anticipated operation of the District's system (including diversions, consumptive use and augmentation releases) under current planning assumptions.

C. Exhibit C is one illustration of how the District's available supply of replacement water may be used to satisfy its future needs. Exhibit C is an example of the District's accounting for depletions and replacements, and may be changed to reflect actual uses. Because the District is entitled to reasonable flexibility in planning for its future needs, it may modify the mix of uses and related depletions covered under this plan for augmentation and illustrated in Exhibit C under the following conditions:

a. The depletions from all uses shall not exceed the legally and physically available replacement water under the plan for augmentation decreed in W-3587 and amended herein.

b. The plan for augmentation decreed in W-3587 and amended herein shall be administered under the terms and conditions of the Ruling, Judgment and Decree entered herein.

c. The District shall account for diversions, depletions and replacements under the plan for augmentation decreed in W-3587 and amended herein on a form or forms, which may be similar to Exhibit C, that are acceptable to and approved by the Division Engineer, Water Division No. 5.

d. Notwithstanding the District's ability to modify the mix of uses and related depletions covered under this plan for augmentation, the depletion assumptions for said uses shall remain consistent such that a standard EQR shall be calculated as the amount of water used by 3.5 persons each using 100 gallons per day and for the irrigation of up to 3000 square feet, for which uses the consumption for in-house uses shall be assumed to be 15 percent and the irrigation efficiency shall be assumed to be 80 percent. .

D. The illustration of the District's plan for augmentation contained in Exhibit C assumes that the District's augmented junior water rights will be out of priority the entire year, and that all depletions from the diversion of those water rights will therefore be required to be replaced. In reality, the District's augmented water rights may be in priority for periods of time each year. Replacement of depletions from diversion of the District's water rights augmented under this plan for augmentation shall only be required when those water rights are subject to, and to the extent that they are curtailed by, a valid administrative call.

**SECOND CLAIM TO AMEND DECREE IN W-3587
TO INCORPORATE AND AUGMENT ALTERNATE POINTS OF DIVERSION
OF THE INTAKE WATER RIGHT**

18. Purpose of Amendment: The District seeks a finding herein that the water supply plan decreed in Case No. W-3587 is amended to incorporate diversions and augmentation of the Intake water right at the alternate points described in paragraph I.9 above for service within the District's service area. The District shall not extend service to any area using the Intake water right that results in return flows from water diverted under the Intake water right accruing to any basin that is not tributary to East Lake Creek, West Lake Creek, or Lake Creek.

GENERAL FINDINGS OF FACT RELATING TO ABOVE CLAIMS

19. The two amendments requested by the District to the W-3587 Decree at paragraphs I.14 through I.18 above will not expand the scope or use of the District's augmented diversions. Subject to the Applicant's compliance with the terms and conditions contained herein, no injury will result to other vested or decreed conditional water rights as a result of the Court's approval of the amendments.

20. The District asked the Court to notify the objectors in W-3587 of this Amended Application by providing them with a copy of the resume notice of the Amended Application. The names and addresses of the Objectors are set forth in the W-3587 case file. The Water Clerk notified the said W-3587 objectors by providing them with a copy of the resume notice of the Amended Application, pursuant to Colo. Rev. Stat. § 37-92-302(3)(c)(I). All jurisdictional requirements have been met for this Court to enter this Decree for amendment of the Decree in Case No. W-3587.

21. The water to be provided for augmentation under the above described augmentation rights is of a quality and quantity so as to meet the requirements for which the water has been used by senior downstream appropriators, and therefore meets the requirements of Colo. Rev. Stat. § 37-92-305(5).

22. The Court has given due consideration to the Division Engineer's Summary of Consultation dated January 24, 2002, and also to the Division Engineer's Summary of Consultation to the Amended Application, dated August 29, 2003. See Colo. Rev. Stat. § 37-92-302(4). A copy of each of these Summaries of Consultation was properly served on all parties.

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II. CONCLUSIONS OF LAW

1. Statements contained in the foregoing findings of fact are incorporated herein to the extent that they constitute conclusions of law.
2. All notices required by law have been properly made, including as required under Colo. Rev. Stat. § 37-92-302(3). The Court has jurisdiction over the Amended Application and over all persons or entities who have appeared and who had standing to appear, even though they did not do so.
3. The Amended Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969, Colo. Rev. Stat. §§ 37-92-101 through -602.
4. Applicant has fulfilled all legal requirements for a decree for the requested changes of water rights, including Colo. Rev. Stat. §§ 37-92-302 and 37-92-305.
5. The changes of water rights described herein will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.
6. The water to be provided for augmentation under any and all of the above described augmentation rights is of a quality and quantity so as to meet the requirements for which the water has been used by senior downstream appropriators, and therefore meets the requirements of Colo. Rev. Stat. § 37-92-305(5).
7. The subject Amended Application is in accordance with Colorado law. Applicant has fulfilled all legal requirements for entry of a decree in this case.

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III. JUDGMENT AND DECREE

1. The foregoing findings of fact and conclusions of law are incorporated herein.
2. The Court hereby approves and decrees the changes of water rights for the Lake Creek Meadows Water District Intake, Lui Hopper Ditch and Creamery Ditch First Enlargement as described herein.
3. The Court hereby decrees and approves the amendments to the Decree in Case No. W-3587, as described herein.
4. In consideration of the specific findings and conclusions made herein, and in conformance with Colo. Rev. Stat. § 37-92-304(6) (1990), as amended, the changes of water rights, amendments to decrees, and augmentation plan decreed herein shall be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others for a period of five years from the date on which the Applicant gives notice to the Court and the Opposers that the consumptive use attributable to its then-current level of service under this plan for augmentation is equal to 60% of the amount of augmentation water available to the District under this Decree, as identified in paragraph I.16 above. If no petition for reconsideration is filed within said five years, retention of jurisdiction for this purpose shall automatically expire. Any party who wants the Court to reconsider the question of injury must file a verified petition with the Court, setting forth the facts that cause such injury and explaining the claimed injury. The party filing the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition. If the Court finds those facts to be established, the Applicant shall thereupon bear the burden of proof to show (a) that any modification sought by the Applicant will avoid injury to other water rights, or (b) that any modification sought by the petitioner is not required to avoid injury to other water rights, or (c) that any term or condition proposed by Applicant in response to the petition does avoid injury to other water rights.
5. In conformance with Colo. Rev. Stat. § 37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.
6. The Applicant shall install measuring devices, provide accounting, and supply calculations regarding the amounts and timing of diversions and depletions as reasonably required by the Division Engineer for the operation of this plan. The Applicant shall also

file an annual report with the Division Engineer by November 15th of each year summarizing diversions and replacements made under this plan.

7. Review of determinations made by the Division Engineer or the State Engineer in administration of the subject water rights and this Decree is a "water matter" over which the Water Court has exclusive jurisdiction.

8. It is accordingly ordered that this Ruling of Referee and Judgment and Decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to Colo. Rev. Stat. § 37-92-304, as amended.

9. It is further ordered that a copy of this Ruling of Referee and Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Done this 30th day of March, 2006.

Copy of the foregoing mailed to all Counsel
of Record, Water Referee, Div. Engineer
and State Engineer Date 3-31-06
[Signature]
Deputy Clerk Water Div. 5
Geiger

BY THE COURT:

[Signature]
A. Lain Leoniak, Water Referee

No protest was filed in this matter. The foregoing Ruling of the Referee is confirmed and approved, and is made the Judgment and Decree of this Court.

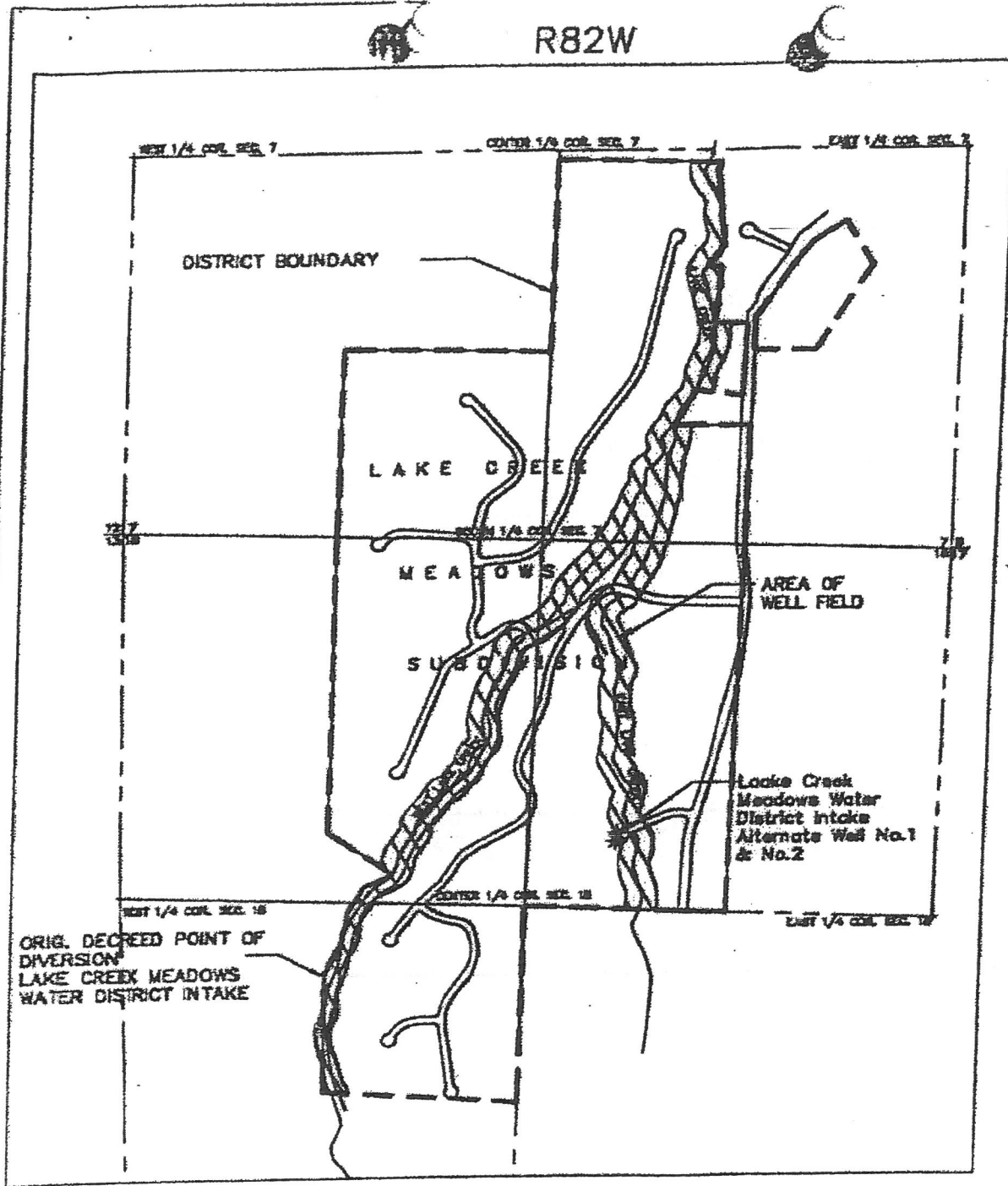
Done this 1st day of May, 2006.

Copy of the foregoing mailed to all Counsel
of Record, Water Referee, Div. Engineer
and State Engineer Date 5-2-06
[Signature]
Deputy Clerk Water Div. 5
Geiger

BY THE COURT:

[Signature]
T. Peter Craven, Water Judge

R82W



T5S



Scale in Feet

EXHIBIT A

WELL FIELD LOCATION MAP

LAKE CREEK METROPOLITAN DISTRICT

FIGURE NO.

1

SCALE: 1" = 1000'	DATE: OCT. 30, 2008	SHEET: 1 OF 1
DRAWN BY: BCP	CHD BY: BCP	APPO BY: TAZ
DRAWING: WellField.dwg		



ZANCANELLA AND ASSOCIATES, INC.
ENGINEERING CONSULTANTS
 1001 NORTH 10TH STREET - SUITE 100
 DENVER, COLORADO 80202 (303) 441-0700

PROJECT: 3408

17

**Exhibit
B**

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Information from prior decrees for water supplies available to the River District and used for augmentation:

The Colorado River Supply is available from Wolford Mountain Reservoir and Ruedi Reservoir. The Eagle River Supply is available from storage facilities located in the headwaters of the Eagle River, including Eagle Park Reservoir and Homestake Reservoir. Applicant's use of C.R.W.C.D.'s water is contingent upon the continued existence and terms of the water supply contract between C.R.W.C.D. and Applicant.

A. Wolford Mountain Reservoir. The River District owns and operates Wolford Mountain Reservoir (f/k/a Gunsight Pass Reservoir) which has the following water rights:

- (1) Case No. 87CW283; District Court, Water Division No. 5:

Decree Date: November 20, 1989

Legal description of place of storage: The dam is located in the SW1/4 NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The intersection of the dam axis with the right abutment will occur at a point which bears W. 54°54'20" E. a distance of 3,716.46 feet from the NW Corner of said Section 25.

Source: Muddy Creek and its tributaries

Amount: 59,993 acre feet conditional; of this amount, 32,986 acre feet were made absolute for piscatorial and recreational uses by decree entered in Water Court Case No. 95CW251.

Appropriation Date: December 14, 1987

Use: All beneficial uses, including but not limited to domestic, municipal, agricultural and recreational uses, which uses satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District; use to meet the water requirements of the inhabitants of the River District for all uses, including uses in the Middle Park area; and use to meet the terms of a lease agreement executed March 3, 1987 between the River District and the City and County of Denver.

- ii. Case No. 95CW281; District Court, Water Division No. 5

Exhibit
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Decree Date: August 26, 1997

Legal description of place of storage: The dam is located in the SW1/4 NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point which bears S. 53°24'56" E. a distance of 3,395.51 feet from the NW Corner of said Section 25; the bearing of said dam axis from Sta. 19+35.61 to Sta. 0+00 being S. 75° 28' 29" E.

Source: Muddy Creek and its tributaries

Amount: 6,000 acre feet conditional

Appropriation Date: January 16, 1995

Use: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Project; such uses will be made directly or by substitution, augmentation, or exchange. None of the water stored in the exercise of the right will be delivered directly or by exchange, substitution, or otherwise for use outside of Colorado Water Division No. 5.

iii. Case No. 98CW237; District Court, Water Division No. 5:

Decree Date: July 6, 2000.

Legal Description of place of storage: Same as for 95CW281.

Source: Muddy Creek and its tributaries

Amount: 30,000 acre feet conditional with 15,895 AF being absolute for recreational and piscatorial and flood control.

Appropriation Date: November 17, 1998

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Use: Certain of the beneficial uses previously adjudicated for Wolford Mountain Reservoir in Case No. 87CW283, District Court for Colorado Water Division No. 5 (November 20, 1989 Judgment and Decree), and Case No. 95CW281, District Court for Colorado Water Division No. 5 (August 26, 1997 Judgment and Decree).

87CW283: The reservoir will be used to satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District. This will involve all uses, including but not limited to domestic, municipal, agricultural, and recreational uses. The reservoir will also be used to meet the water requirements of the inhabitants of the River District for all uses, including uses in the Middle Park area.

95CW281: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Reservoir Project; such uses will be made directly or by substitution, augmentation, or exchange.

Remarks: The Refill Right described herein will be exercised to provide supply for the Western Slope uses of water from Wolford Mountain Reservoir described above, including flood control, other operational purposes, and environmental mitigation and enhancement for the benefit of uses within the District. The Refill Right will not be used in conjunction with the Reservoir capacity (24,000 a.f.) which is allocated for the supply of water to the Denver Board of Water Commissioners under Applicant's contractual relationship with Denver, or the Reservoir capacity (6,000 AF) which is allocated for Colorado River endangered fish releases.

B. **Ruedi Reservoir.** The River District holds Contracts No. 009D60C111 and 009D6C0118 from the United States Bureau of Reclamation for 1,200 acre feet of annual supply from Ruedi Reservoir and may obtain contracts for additional supplies in the future. This water will be used in addition to and as substitution for Wolford Mountain Reservoir water in appropriate circumstances where Ruedi water is physically equivalent to Wolford water. The decree descriptions of Ruedi Reservoir's water rights follow.

Exhibit
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(1) Ruedi Reservoir was decreed in the Garfield County District Court in Civil Action No. 4613 for domestic, municipal, irrigation, industrial, generation of electrical energy, stock watering and piscatorial uses, with an appropriation date of July 29, 1957. By subsequent order of the Water Court entered in Case No. W-789-76, the decreed amount of this reservoir has been fixed at 102,369 acre feet. Ruedi Reservoir is located in Sections 7, 8, 9, 11 and 14 through 18, T. 8 S., R. 84 W., 6th P.M., in Eagle and Pitkin Counties, and derives its water supply from the Fryingpan River.

(2) By decree of the Water Court in Case No. 81CW34 Ruedi Reservoir was decreed a refill right in the amount of 101,280 AF conditional. In Water Court Case No. 95CW95, 44,509 AF was made absolute.

C. Eagle Park Reservoir. Eagle Park Reservoir Company owns and operates the Eagle Park Reservoir Project located in the headwaters of the Eagle River. The River District is a shareholder in the Reservoir Company and is entitled to yield from the Eagle Park Reservoir Project and exchange supplies provided by Aurora and Colorado Springs. This water will be used in addition to Wolford Mountain Reservoir and Ruedi Reservoir water when those water rights cannot be exchanged above the confluence of the Colorado River and the Eagle River. The River District's 2,000 shares of Class A, Series 2 stock in the Eagle Park Reservoir Company entitle the River District to the annual release and/or diversion of up to 200 acre feet from Eagle Park Reservoir and the Arkansas Well more particularly described as follows:

(1) Eagle Park Reservoir, decreed by the Water Court in Cases No. 92CW340 and 93CW301, for a combined total capacity of 27,600 acre feet, with an appropriation date of March 16, 1991, for 5300 acre feet, and May 18, 1993, for 22,300 acre feet, together with the right to divert at the rate of 80 cfs under the August 10, 1956 appropriation date of the Pando Feeder Canal pursuant to the decree of the Water Court entered in Case No. 97CW288, for mining, milling, industrial, snowmaking, municipal, domestic, stock watering, recreation, fish and wildlife, irrigation, agricultural, exchange, replacement, augmentation and all other beneficial purposes. Eagle Park Reservoir is augmented by exchange by decree of the Water Court entered in Case No. 95CW348. The north abutment of the dam crest is located approximately 160 feet north of the south section line and 650 feet east of the west section line of Section 28, T. 7 S., R. 79 W., 6th P.M., Eagle County, Colorado. The source of Eagle Park Reservoir is the East Fork of the Eagle River including runoff, surface flow and seepage from the area above the reservoir and tributary thereto, and water tributary to Tenmile Creek a tributary of the Blue River. In addition to the tributary area upstream of the reservoir, the specific points of diversion into storage for Eagle Park Reservoir are as follows:

(1) The East Fork Interceptor Ditch, which has a capacity of 48 cfs and diverts from unnamed tributaries of the East Fork of the Eagle River at the following points, all of which are located in Eagle County, Colorado:

**Exhibit
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900 feet south of the north section line and 1100 feet west of the east section line of Section 5, T. 8 S., R. 79 W., 6th P.M.

1250 feet south of the north section line and 700 feet east of the west section line of Section 4, T. 8 S., R. 79 W., 6th P.M.

- (c) 1200 feet north of the south section line and 800 feet east of the west section line of Section 33, T. 7 S., R. 79 W., 6th P.M.
- (d) Runoff, surface flow, and seepage from the area above the East Fork Interceptor Ditch as it runs between the above-described points of diversion and Eagle Park Reservoir.
- (2) The Chalk Mountain Interceptor Ditch, which has a capacity of 12 cfs and diverts runoff and seepage as it runs a distance of approximately 3.4 miles from Fremont Pass, located in the W/2 of Section 11, T. 8 S., R. 79 W., 6th P.M., northwesterly along State Highway 91 and the South side of Robinson Tailing Pond, thence westerly to the south of Chalk Mountain Reservoir and Robinson Reservoir, thence northwesterly to Eagle Park Reservoir. The Chalk Mountain Interceptor Ditch diverts water from the headwaters of Tenmile Creek in Summit County and from the headwaters of the East Fork of the Eagle River in Eagle County.
- (3) The East Interceptor Ditch, which has a capacity of 20 cfs and runs northeasterly from a point whence the northeast corner of Section 2, T. 8 S., R. 79 W., 6th P.M. bears North $77^{\circ}20'$ East a distance of 850 feet at the north fork of McNulty Creek, thence along the east side of Robinson and Tenmile Tailing Ponds into Supply Canal No.1 described below. The East Interceptor Ditch diverts water from the north fork of McNulty Creek and surface flow, seepage, and runoff from watersheds above it that are tributary to Tenmile Creek.
- (4) The Supply Canal No. 1, which has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points:
- (a) On the west bank of Humbug Creek at a point whence the southwest corner of Section 18, T. 7 S., R. 78 W. bears South $71^{\circ}35'$ West a distance of 3250 feet.

**Exhibit
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On the south bank of Mayflower Creek at a point whence the northeast corner of Section 24, T. 7 S., R. 79 W., 6th P.M. bears North $16^{\circ}55'$ East a distance of 2250 feet.

- (c) Runoff, surface flow, and seepage from the area above the Supply Canal No. 1 as it runs between the above-described points of diversion and the Climax Mill.
- (5) The Supply Canal No. 2, which has a capacity of 10 cfs and diverts water from the following tributaries of Tenmile Creek at the following points:

On the west bank of Searle Creek at a point whence U.S.L.M. Kokomo bears South $45^{\circ}58'$ East 3740 feet (located in the NW1/4 of the SE1/4 of Section 13, T. 7 S., R. 79 W., 6th P.M.).

On the south bank of Kokomo Creek at a point whence U.S.L.M. Kokomo bears North $39^{\circ}36'$ east 2635 feet (located in the SE1/4 of Section 22, T. 7 S., R. 79 W., 6th P.M.).

Runoff, surface flow, and seepage from the area above the Supply Canal No. 2 as it runs between the above-described points of diversion and the Climax Mill.

- (6) The East Fork Pumping Plant, which has a capacity of 6 cfs and diverts from the East Fork of the Eagle River at a point in the SE1/4 NE1/4 of Section 32, T. 7 S., R. 79 W., 6th P.M. at a point whence the NE corner of said Section 32 bears N. $31^{\circ}53'$ E. a distance of 2414 feet.

The Eagle Park Reservoir Company must first receive the permission of Climax Molybdenum Company to use the East Fork Interceptor Ditch, Supply Canal No. 1 and Supply Canal No. 2 described above to divert water into Eagle Park Reservoir. Nevertheless, the firm yield of the River District's supply is not dependent on the use of those facilities.

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- ii. **Arkansas Well**, being the first 455 acre feet per year of historic transbasin diversions from an undivided 1/7th interest in and to that certain water right known as the Stevens and Leiter Ditch, originally decreed by the Chaffee County District Court for 38 cfs with a priority date of September 1, 1873, as changed by the Chaffee County District Court, in Civil Action No. 5276, to a new point of diversion which is a well located in the E1/2 SE1/4 SE1/4 of Section 10, T. 8 S., R. 79 W. of the 6th P.M., whence the SE corner of Section 10 bears South 17°37' East, a distance of 364.8 feet, on the East Fork of the Arkansas River in Lake County, Colorado, as said change was confirmed by the District Court in and for Water Division No. 2, in Case No. 91CW028, providing that said water could be diverted at the rate of 1.086 cfs, with an annual volumetric limit of 786 acre feet, to the Colorado River Basin for use and disposition there, without any return flows to the Arkansas River Basin, together with the right to use, reuse and successively use said water to extinction. At such time as the East Fork Pumping Plant described above is fully operational, the Arkansas Well water will no longer be needed and the River District's supply will be obtained from Eagle Park Reservoir.
- iii. **Exchange Supply**. Pursuant to a Memorandum of Understanding dated effective as of April 21, 1998 (the "MOU") among the City of Aurora, the City of Colorado Springs, the River District, Climax Molybdenum Company, Vail Associates, Inc., the Upper Eagle Regional Water Authority, and the Eagle River Water & Sanitation District; and the Water Exchange Agreement dated June 17, 1998 among Aurora, Colorado Springs, and the Eagle Park Reservoir Company, Aurora and Colorado Springs agreed to make up to 500 acre feet of water available for West Slope use from facilities owned and operated by Aurora and Colorado Springs in exchange for up to 800 acre feet of replacement water from the West Slope participants. The River District's 100 shares of Class B stock in the Eagle Park Reservoir Company entitle the River District to up to 100 acre feet per year of consumptive beneficial use water to be derived from fully consumable water annually diverted by and/or stored in the following structures owned and controlled by Aurora and Colorado Springs:



**Exhibit
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- (1) **Homestake Project.** Homestake Reservoir, also known as Elliott-Weers Reservoir, was decreed by the Eagle County District Court in Civil Action No. 1193 for 83,338.98 acre feet conditional, 43,504.7 acre feet of which is now absolute. This reservoir is located on Homestake Creek with a dam being located whence the NW Corner of Section 31, T. 7 S., R. 80 W., 6th P.M. bears N. 58°30.6' E. 24,659 feet from the East dam abutment and N. 62°25.8' E. 25,746 feet from the West dam abutment. The sources of supply of said Reservoir are the East Fork of Homestake Creek, the Middle Fork of Homestake Creek and Homestake Creek.

- (2) **Camp Hale Project.** Aurora and Colorado Springs may provide to the River District water released from those surface and ground water storage rights sought by Aurora and Colorado Springs in Cases No. 88CW449 and 95CW272, District Court for Colorado Water Division No. 5.

River District Contractors' use of augmentation water from Homestake Reservoir made available through contract or other arrangement with the Eagle Park Reservoir Company shall be dependent upon the continued existence of, and conditions set forth in, the Water Exchange Agreement dated June 17, 1998 between the Cities of Aurora and Colorado Springs and the Eagle Park Reservoir Company, together with any modifications thereto, or constraints thereon, as may be necessitated by the decree entered in Case No. 98CW270, Water Division No. 5.

Additional Information for Homestake Project. The detailed descriptions of the structures decreed by the Eagle County District Court in Civil Action No. 1193 for the Homestake Project are set forth below.

<u>Structure</u>	<u>Amount</u>
French Creek Intake. S. 82°18.3' E. 20988 ft. to NW corner Sec. 31, T. 7 S., R. 80 W.	60.1 cfs
Fancy Creek Intake. N. 85°10.5' E. 25280 ft. to NW corner Sec. 31 T. 7 S., R. 80 W.	38.6 cfs
Missouri Creek Intake. N. 77°12.4' E. 28800 ft. to NW corner Sec. 31 T. 7 S., R. 80 W.	39.8 cfs



**Exhibit
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Sopris Creek Intake.

41.3 cfs

N. 74°7.6' E. 29848 ft. to NW corner Sec. 31
T. 7 S., R. 80 W.

East Fork Conduit.

The East Fork Conduit diverts water from the East Fork of Homestake Creek pursuant to its appropriation of 70.8 cubic feet per second of time absolute and 189.2 cubic feet per second of time conditional therefrom and conveys these waters to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the reservoir, said East Fork Conduit having a capacity of 260 cubic feet per second of time and total length of approximately 3093 feet. The point of diversion of said conduit is on East Fork Homestake Creek at a point whence the Northwest corner of Section 31, T. 7 S., R. 80 W. bears N. 55°40.5' E., 22,917 feet.

Homestake Tunnel.

Homestake Tunnel under the Continental Divide for the conveyance of water into the Arkansas River Basin with its intake located at a point under Homestake Reservoir whence the Northwest corner of Section 10, T. 9 S., R. 81 W., 6th P.M. bears S. 15°27'08" E. 26,173.03 feet appropriates a maximum amount of 10 cubic feet per second of time conditional of water seeping and percolating into Homestake tunnel from former Water District No. 37 areas and 300 cubic feet per second of time absolute from Middle Fork of Homestake Creek, at its said Northerly portal, its point of diversion; said tunnel has a length of 27,400 feet and a capacity of 700 cubic feet per second of time. The tunnel will convey out of former Water District No. 37 up to 700 cubic feet per second of time of waters appropriated by the tunnel from the Middle Fork of Homestake Creek, together with water appropriated by the tunnel from the Homestake Creek and East Fork Conduits and Homestake Reservoir, to an outlet at a point from where the Northwest corner of Section 10, T. 9 S., R. 81 W., 6th P.M. bears N. 6°40'52" E., a distance of 2,173.54 feet.

Homestake Reservoir.

Homestake Reservoir, also known as Elliott-Weers Reservoir, has capacity of 83,338.98 acre feet conditional, is located on Homestake Creek with a dam whence Homestake Peak bears S. 73°26' E. 10,477 feet from the easterly end thereof and S. 74°57' E. 13,347 feet from the westerly end thereof, said dam having a maximum height of 411.5 feet and a length of 3,380 feet. The sources of supply of said reservoir are Homestake Conduit (the sources of this conduit as herein above set forth), East Fork Conduit (the source of this conduit as herein above set forth), the Middle Fork of Homestake Creek and Homestake Creek, and said reservoir has appropriated for storage 83,338.98 acre feet annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7 acre feet absolute

**Exhibit
B**

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and is located on Homestake Creek with a dam whence the NW Corner of Section 31 T. 7 S., R. 80 W., 6th P.M. bears N. 58°30.6' E. 24,659 feet from the East dam abutment and N. 62°25.8' E. 25,746 feet from the West dam abutment, said dam has a maximum height of 265.0 feet and a length of 1996 feet.

The sources of supply of said existing Homestake Reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 acre feet annually from said sources and also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel.

Table 1
Lake Creek Metro District

Water Demand and Consumptive Use Summary

Peritable Water Demands - Domestic	
No. of Residential EQR's	280.0 EQR's
No. of persons / residence	3.5 up / EQR
No. gallons / person / day	100.0 up / day
Percent Consumed	15%
Pond Area	0.15 acres
Lawn Area's	11,015 up / EQR
Application Efficiency	80%
Annual Lawn Grass Irrigation Requirement	1.40 ft
Possible Water - Domestic Lawn Area (total)	70.8 m ³ /day

	(1) Domestic (In-House) (in. ft)		(2) Domestic (Outside) (in. ft)		(3) Diversion Requirements (in. ft)		(4) Pumping (in. ft)		(5) Consumptive Use (in. ft)		(6) Total (in. ft)	(7) Augmentation Credits Case No. W-3587	(8) Reservoir Rebalances
	In-House	Outside	In-House	Outside	Evaporation	Total	In-House	Outside	Evaporation	Total			
January	9.3	0.0	0.00	0.00	68.1	9.3	68.1	1.4	0.00	0.00	1.4	0.0	1.40
February	8.4	0.0	0.02	0.00	68.2	8.4	68.2	1.3	0.00	0.02	1.3	0.0	1.28
March	9.3	0.0	0.03	0.00	68.3	9.4	68.3	1.4	0.00	0.03	1.4	0.0	1.43
April	9.0	0.0	0.05	0.00	68.4	9.1	68.4	1.4	0.00	0.05	1.4	0.0	1.40
May	9.3	8.9	0.06	0.06	18.2	13.1	13.1	1.4	0.06	0.06	6.5	7.0	1.55
June	9.0	31.9	0.08	0.08	41.0	208.9	208.9	1.4	25.5	0.08	26.9	27.0	0.98
July	9.3	37.2	0.08	0.07	46.6	340.0	340.0	1.4	29.7	0.08	31.2	32.0	1.09
August	9.3	29.2	0.07	0.07	38.6	261.7	261.7	1.4	23.4	0.07	24.8	25.0	0.95
September	9.0	14.2	0.06	0.06	23.2	175.3	175.3	1.4	11.3	0.06	12.7	12.0	0.74
October	9.3	2.7	0.04	0.04	12.0	87.7	87.7	1.4	2.1	0.04	3.6	2.0	1.56
November	9.0	0.0	0.02	0.00	9.0	68.2	68.2	1.4	0.00	0.02	1.4	0.0	1.37
December	9.3	0.0	0.00	0.00	68.1	9.3	68.1	1.4	0.00	0.00	1.4	0.0	1.40
Total	109.8	173.9	0.5	0.5	234.2	..	234.2	16.5	99.1	0.5	116.1	105.0	15.13

(1) 1 quart per Residential EQR times No. of Person's Residences (see Table 1) times No. Gallons/Person/Day times Number of Days in Month.
 (2) 1 quart Domestic Water - Domestic Irrigation times Monthly CIR divided by Application Efficiency.
 (3) 1 quart Pond Area times No. of Persons times No. of Days in Month times 11.33 (inches) divided by 12 (months) divided by 12 (days in month).
 (4) 1 quart per person times No. of Persons times No. of Days in Month times 11.33 (inches) divided by 12 (months) divided by 12 (days in month).
 (5) 1 quart per person times No. of Persons times No. of Days in Month times 11.33 (inches) divided by 12 (months) divided by 12 (days in month).
 (6) 1 quart per person times No. of Persons times No. of Days in Month times 11.33 (inches) divided by 12 (months) divided by 12 (days in month).
 (7) Equals Column (2) times Irrigation Efficiency.
 (8) Equals Column (3).
 (9) Equals the sum of Column (6) thru (8).
 (10) Based on Case No. W-3587.
 (11) In-lake from CWRWD Contract source, The Solid Storage, or Green Man Res. HRP, if available.

	Domestic CIR (in. ft)		Days in Month		Pond Evaporation (in. ft)	
	In-House	Outside	Days	Month	Days	Month
January	0.00	0.00	31	31
February	0.00	0.00	28	28	0.10	0.10
March	0.00	0.00	31	31	0.21	0.21
April	0.00	0.00	30	30	0.31	0.31
May	0.10	0.10	31	31	0.43	0.43
June	0.36	0.36	30	30	0.53	0.53
July	0.42	0.42	31	31	0.55	0.55
August	0.33	0.33	31	31	0.44	0.44
September	0.16	0.16	30	30	0.38	0.38
October	0.03	0.03	31	31	0.26	0.26
November	0.00	0.00	30	30	0.14	0.14
December	0.00	0.00	31	31
Total	1.40	1.40	365	365	3.33	3.33

