



2006147918

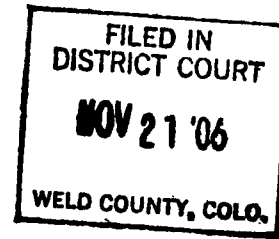
12/15/2006 09:22:33 AM 22 Page(s)

Jefferson County, Colorado

R \$111.00

D \$0.00

WAPPLI

E-FILED

▲ COURT USE ONLY ▲

Case Number 2005CW336

DISTRICT COURT, WATER DIVISION 1
COLORADO

901 9th Avenue, Room 418

P. O. Box 2038

Greeley, CO 80632

CONCERNING THE APPLICATION FOR
WATER RIGHTS OF PARK WATER
COMPANY, NORTH FORK ASSOCIATES,
LLC AND MOUNTAIN MUTUAL
RESERVOIR COMPANY

IN JEFFERSON COUNTY

Div.:

Ctm.:

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND
DECREE OF THE WATER COURT APPROVING UNDERGROUND
WATER RIGHTS, A PLAN FOR AUGMENTATION AND EXCHANGE
RIGHT**

This matter, having come on for consideration upon the Application of the Park Water Company, North Fork Associates, LLC and Mountain Mutual Reservoir Company, for Underground Water Rights, Approval of a Plan for Augmentation and Exchange Right, and the Court having considered the pleadings, the files herein, the evidence presented and the comments of the Division Engineer, does find.

FINDINGS OF FACT

1. The Application was filed with the Water Clerk, Water Division 1, on December 30, 2005. All notices required by law of the filing of this Application have been fulfilled, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

2. Statements of Opposition to the Application were filed by Evergreen Lutheran Church and Jefferson County. The Evergreen Lutheran Church later withdrew its Statement of Opposition. No other statements of opposition have been filed in this matter and the time for filing such statements has now expired. This matter was initially referred to the Referee for consideration pursuant to C.R.S. §37-92-203(7). On

PORTIONS OF THIS DOCUMENT
ARE OF POOR QUALITY

September 19, 2006, by Order of the Referee entered pursuant to C.R.S. §37-92-303(2), the Application was re-referred to the Water Judge.

3. The Park Water Company, (hereinafter referred to as "Park Water"), is the primary applicant in this matter. The mailing address of Park Water is as follows:

Park Water Company
P. O. Box 126
Evergreen, Colorado 80437-0126

4. Park Water is a Colorado nonprofit corporation that was created to operate a water system for residents of the Wonderview Subdivision. The service area encompasses approximately 37 acres within the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County. It is anticipated that a maximum of 42 single family residences will be served at full build-out. A map of the service area is attached as Exhibit "A."

5. The water supply for customers of Park Water is from wells drilled into the fractured granites underlying the Wonderview Subdivision. Use of water from the wells is limited to in-house purposes within single family residences. Park Water currently operates four wells, designated as the Park Water Company Well Nos. 1, 2, 3 and 5. Three additional wells, designated as the Park Water Company Well Nos. 6, 7 and 8, may be constructed in the future. The Park Water Company Well Nos. 1, 3 and 5 were drilled pursuant to permits issued by the Colorado Division of Water Resources in accordance with C.R.S. §37-92-602, (i.e. Permit Nos. 66731, 16848 and 16514). The Park Water Company Well No. 2 was never registered. Upon entry of the decree herein, permits for all of the wells will be obtained from the Colorado Division of Water Resources pursuant to the provisions set forth in Paragraph No. 40, *infra.*, and Permit Nos. 66731, 16848 and 16514 will be cancelled. All of the existing wells and the proposed new wells will be administered in accordance with this plan for augmentation.

ADJUDICATION OF WATER RIGHTS

6. Park Water has requested the adjudication of underground water rights for the Park Water Company Well Nos. 1, 2, 3, 5, 6, 7 and 8. The Park Water Company Well No. 1 is located in the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 310 feet from the North Section line and 1,670 feet from the East Section line of said Section 22. The Park Water Company Well No. 2 is located in the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 400 feet from the North Section line and 1,480 feet from the East Section line of said Section 22. The Park Water Company Well No. 3 is located in the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 350 feet

3

from the North Section line and 1,780 feet from the East Section line of said Section 22. The Park Water Company Well No. 5 is located in the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 330 feet from the North Section line and 1,670 feet from the East Section line of said Section 22. The Park Water Company Well No. 6 will be located in the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 500 feet from the North Section line and 1,500 feet from the East Section line of said Section 22. The exact locations of the Park Water Company Well Nos. 7 and 8 have not yet been determined. The wells can generally be described as being within the NW 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M., Jefferson County.

7. The date of appropriation for the Park Water Company Well No. 1 is December 1, 1973. The date of appropriation for the Park Water Company Well No. 2 is June 3, 1959. The date of appropriation for the Park Water Company Well No. 3 is September 16, 1963. The date of appropriation for the Park Water Company Well No. 5 is September 16, 1963. The date of appropriation for each of the Park Water Company Well Nos. 6, 7 and 8 is December 30, 2005.

8. The source of water for all of the wells is ground water that is tributary to Lans Gulch, Cub Creek, Bear Creek and the South Platte River.

9. The amount of water decreed to the Park Water Company Well No. 1 is 12 gallons per minute, Absolute. The amount of water decreed to the Park Water Company Well No. 2 is 7.5 gallons per minute, Absolute. The amount of water decreed to the Park Water Company Well No. 3 is 10.5 gallons per minute, Absolute. The amount of water decreed to the Park Water Company Well No. 5 is 7.6 gallons per minute, Absolute. The amount of water decreed to each of the Park Water Company Well Nos. 6, 7 and 8 is 20 gallons per minute, Conditional.

10. Water from each of the wells is decreed for municipal, domestic and fire protection purposes.

WATER USE AND DEPLETIONS

11. Water deliveries to customers of Park Water are metered. The water supply wells are also equipped with totalizing flow meters. The meters are read and the results recorded on a monthly basis. Between 1998 and 2004, the daily water usage never exceeded an average of 150 gallons per residence over the course of each year. In all years but one, water usage per residence was substantially lower. Depletions will be replaced in accordance with measured water deliveries to customers. Wastewater from all in-building uses of water is or will be treated utilizing individual non-evaporative septic systems with soil absorption leach fields. Ten percent (10%) of the water used for

in-building purposes is assumed to be consumed. Return flows are to Lans Gulch and Cub Creek.

12. The anticipated total water requirements for the customers of Park Water at full build out are projected to be no more than 7.1 acre feet per year.

13. For purposes of administering this plan for augmentation, it shall be assumed that the maximum volume of augmentation water required to be released to the stream system is 0.706 of an acre foot per year.

WATER RIGHTS TO BE USED FOR AUGMENTATION AND REPLACEMENT PURPOSES

14. In order to provide the necessary replacement water to the stream system, Park Water has entered into a contract with North Fork Associates, LLC to purchase 22.5 shares of the capital stock of the Mountain Mutual Reservoir Company. The Mountain Mutual Reservoir Company (hereinafter referred to as "MMRC"), is a nonprofit Colorado corporation which has been created for the following principal purposes:

a. To receive and hold title to direct flow and storage water rights, reservoirs and interests therein, lands, easements, rights-of-way, and other related facilities, in trust for its shareholders; and

b. To administer water rights and operate facilities for its shareholders, in accordance with individual plans for augmentation approved by the Water Court.

The 22.5 shares represent the right to receive 0.706 of an acre foot of augmentation water per year.

15. The water rights which MMRC owns for the benefit of its shareholders (hereinafter referred to as the "subject water rights"), are summarized as follows:

a. Harriman Ditch. 7.71 shares of the 400 shares of capital stock (1.93%), issued and outstanding in the Harriman Ditch Company. Said Company owns direct flow water rights decreed to the Harriman Ditch. Pursuant to the Decree entered in Civil Action No. 6832, on February 4, 1884, the Ditch was awarded the following direct flow priorities:

Appropriation Date	Priority Number	Source	Amount	MMRC Entitlement
April 15, 1868	21	Turkey Creek	10.75 cfs	0.2072 cfs
March 16, 1869	23	Bear Creek	7.94 cfs	0.1530 cfs
May 1, 1871	25	Bear Creek	25.54 cfs	0.4923 cfs
March 1, 1882	30	Bear Creek	12.87 cfs	0.2481 cfs

The Bear Creek headgate of the Harriman Ditch is located on the South bank of Bear Creek in the NE 1/4 NE 1/4, Section 2, Township 5 South, Range 70 West, 6th P.M., Jefferson County. The Turkey Creek headgate of the Harriman Ditch is located on the South bank of Turkey Creek near the Southwest corner of Section 6, Township 5 South, Range 69 West, 6th P.M., Jefferson County. The Ditch was originally decreed for irrigation, livestock watering, domestic and municipal purposes.

b. Warrior Ditch. 2.0 shares of the 160 shares of capital stock (1.25%), issued and outstanding in the Warrior Ditch Company. Said Company owns direct flow water rights decreed to the Warrior Ditch. Pursuant to the Decree entered in Civil Action No. 6832 on February 4, 1884, the Ditch was awarded the following direct flow priorities:

Appropriation Date	Priority Number	Source	Amount	MMRC Entitlement
Dec. 1, 1861	4	Bear Creek	12.33 cfs	0.1541 cfs
April 16, 1862	8	Turkey Creek	2.86 cfs	0.0358 cfs
Oct. 31, 1864	14	Bear Creek	25.47 cfs	0.3184 cfs
April 1, 1865	16	Bear Creek	11.49 cfs	0.1436 cfs

The headgates of the Warrior Ditch are the same as those of the Harriman Ditch, described in Paragraph No. 15(a). The Ditch was originally decreed for irrigation purposes.

c. Soda Lakes Reservoir Nos. 1 and 2. 8.71 shares of the 400 shares of capital stock (2.18%), issued and outstanding in the Soda Lakes Reservoir and Mineral Water Company. Said Company owns storage water rights decreed to the Soda Lakes Reservoir Nos. 1 and 2. Pursuant to the Decree entered in Civil Action No. 91471 on September 24, 1935, the Soda Lake Reservoir Nos. 1 and 2 were adjudicated for 1,794 acre feet for irrigation purposes, and 598 acre feet for storage for supplying the City of Denver with water for municipal purposes, including the watering of lawns and gardens. The date of appropriation awarded the structures was February 11, 1893. The Soda Lakes Reservoirs are located in Section 1, Township 5 South, Range 70 West, 6th P.M., Jefferson County. The Reservoirs are filled through the Harriman Ditch.

d. Meadowview Reservoir. The structure is located in the NE 1/4 SW 1/4 and the NW 1/4 SE 1/4 of Section 26, Township 5 South, Range 71 West, 6th P.M., Jefferson County. Meadowview Reservoir was awarded a conditional water right in Case No. 2001CW294, in an amount of water up to 50 acre feet, for augmentation, replacement, exchange and substitution purposes, with the understanding that the amount decreed in 2001CW294 will be reduced to the difference between 50 acre feet and the volume of water decreed in Case No. 94CW290 for the same purposes. The source is North Turkey Creek and water tributary to North Turkey Creek. To the extent that Meadowview Reservoir cannot be filled under its own priority each year, or space later becomes available in the Reservoir after being filled, Harriman Ditch and Warrior Ditch direct flow water and water available to MMRC in the Soda Lakes Reservoirs is stored in

Meadowview Reservoir by exchange pursuant to the appropriative rights of substitution and exchange decreed in Case Nos. 94CW290, 2000CW060 and 2001CW293.

TERMS AND CONDITIONS UNDER WHICH MMRC'S WATER RIGHTS ARE USED FOR AUGMENTATION, REPLACEMENT AND EXCHANGE PURPOSES

16. The terms and conditions under which MMRC's Harriman Ditch, Warrior Ditch and Soda Lakes water are used for augmentation and replacement purposes were decreed in Case No. 2001CW293 and can be described as follows:

a. MMRC's Harriman Ditch Entitlement (i.e. 7.71 shares):

i. Only the historic consumptive use portion of MMRC's Harriman Ditch entitlement shall be utilized by MMRC for replacement, augmentation, exchange and storage purposes. Diversions under the March 16, 1869, and the May 1, 1871, priorities decreed to the Ditch are limited as follows:

Priority Number	Appropriation Date	Diversion Rates in cfs					
		April	May	June	July	August	September
23	3-16-1869	0.087	0.117	0.130	0.078	0.078	0.081
25	5-01-1871	0.098	0.171	0.353	0.257	0.187	0.213

Priority Number	Appropriation Date	Maximum Monthly Ten Year Diversions in Acre Feet						Total Maximum Ten Year Diversions
		April	May	June	July	August	Sept.	Acre Feet
23	3-16-1869	16.5	41.8	52.8	20.9	16.5	13.5	162
25	5-01-1871	13.2	47.3	126.5	110.0	52.8	26.4	330

The water may be stored in the Soda Lakes Reservoirs and Meadowview Reservoir to the extent there is space in MMRC's storage accounts. The water may also be left in the stream system to offset depletions resulting from water use by MMRC shareholders.

ii. MMRC's entitlement to the April 15, 1868, priority decreed to the Harriman Ditch (i.e. 0.2072 cfs of Priority No. 21 from Turkey Creek), shall be used only for substitution and exchange purposes involving structures located within the Turkey Creek drainage basin. All such uses are subject to the conditions set forth in Paragraph Nos. 22 and 25, infra.

iii. To provide for the maintenance of historic ditch losses, an amount of water equal to fifteen percent (15%) of MMRC's pro-rata entitlement to the Harriman Ditch direct flow priorities from Bear Creek (i.e. up to a maximum of 0.0230 cfs of the March 16, 1869, priority; up to a maximum of 0.0738 cfs of the May 1, 1871, priority; and up to a maximum of 0.0372 cfs of the March 1, 1882, priority), is available for call by the Harriman Ditch Company for the benefit of the shareholders who continue to use the Harriman Ditch.

iv. 0.0655 cfs of MMRC's pro-rata entitlement to the May 1, 1871, priority decreed to the Harriman Ditch and 0.2109 cfs of MMRC's pro-rata entitlement to the March 1, 1882, priority decreed to the Harriman Ditch shall be abandoned to Bear Creek, upon expiration of the retained jurisdiction period in Case No. 94CW168.

v. Whenever water rights within former Water District No. 9 holding priorities between May 1, 1871, and March 1, 1882, are being curtailed because of a call originating from the South Platte River, the diversion rates for the May 1, 1871, priority decreed to the Harriman Ditch (i.e. Priority No. 25), shall be reduced sixteen percent (16%), in accordance with the following schedule:

Priority Number	Appropriation Date	Diversion Rates in cfs					
		April	May	June	July	August	September
25	5-1-1871	0.082	0.144	0.297	0.216	0.157	0.179

b. MMRC's Warrior Ditch Entitlement (i.e. 2.0 shares):

i. Only the historic consumptive use portion of MMRC's Warrior Ditch entitlement shall be utilized by MMRC for replacement, augmentation and exchange purposes. Diversions under the December 1, 1861, and the October 31, 1864, priorities decreed to the Ditch are limited as follows:

Priority Number	Appropriation Date	Diversion Rate in cfs	Time Period of Diversion	Maximum Yearly Diversion (AF)
4	12-01-1861	0.0809	May 1 – October 31	21.7
14	10-31-1864	0.0892	June 1 – August 31	8.7

Whenever the above referenced priorities decreed to the Warrior Ditch are available during the period May 1 through October 31 of each year, MMRC may place a call for the water, up to the diversion rates stated, for purposes of offsetting depletions resulting from water use by MMRC shareholders. Alternatively, the water may be diverted to storage in the Soda Lakes Reservoirs and Meadowview Reservoir to the extent there is space in MMRC's storage accounts.

ii. MMRC's entitlement to the April 16, 1862, priority decreed to the Warrior Ditch (i.e. 0.0358 cfs of Priority No. 8 from Turkey Creek), shall be used only for substitution

and exchange purposes involving structures located within the Turkey Creek drainage basin. All such uses are subject to the conditions set forth in Paragraph Nos. 22 and 24, infra.

iii. To provide for the maintenance of historic ditch losses, an amount of water equal to twenty percent (20%) of MMRC's pro-rata entitlement to the Warrior Ditch direct flow priorities from Bear Creek (i.e. up to a maximum of 0.0308 cfs of the December 1, 1861, priority; up to a maximum of 0.0637 cfs of the October 31, 1864, priority; and up to a maximum of 0.0287 cfs of the April 1, 1865, priority), shall be available for call by the Warrior Ditch Company for the benefit of the shareholders who continue to use the Warrior Ditch.

iv. 0.0424 cfs of MMRC's pro-rata entitlement to the December 1, 1861, priority decreed to the Warrior Ditch, 0.1655 cfs of MMRC's pro-rata entitlement to the October 31, 1864, priority decreed to the Warrior Ditch and 0.1149 cfs of MMRC's pro-rata entitlement to the April 1, 1865, priority decreed to the Warrior Ditch shall be abandoned to Bear Creek, upon expiration of the retained jurisdiction period in Case No. 94CW168.

c. MMRC's Soda Lakes Reservoir Nos. 1 and 2 Entitlement (i.e. 8.71 shares):

i. MMRC's full entitlement to the storage priorities decreed to the Soda Lakes Reservoir Nos. 1 and 2 may be diverted each year to the extent the storage rights are in priority. MMRC's storage account in the Soda Lakes system is limited to 2.18% of the actual storage capacity of the system.

ii. All water in MMRC's storage account on November 1 of each year (i.e. the beginning of the storage season), shall be considered available for use as replacement water in plans for augmentation administered by MMRC, with the exception of reserved ground and surface water return flows described herein.

iii. The unused storage capacity available to MMRC in the Soda Lakes system at the beginning of each storage season is determined by the pro-rata storage entitlement available to 8.71 shares, less the physical carryover of Soda Lakes decree water in MMRC's account on the previous October 31.

iv. Twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between November 1 and the following May 31 of each water year is reserved for release to Marston Reservoir through the Harriman Ditch. A request for such a release must be made by the Denver Water Department on or before June 30 of the water year in which the water is stored. The twenty percent figure represents historic ground water return flows associated with MMRC's entitlement to the Soda Lakes Reservoir Nos. 1 and 2 storage rights.

v. Twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between June 1 and the following October 31 of each water year is reserved for release to Marston Reservoir through the Harriman Ditch. A

request for such a release must be made by the Denver Water Department on or before November 30 of the same calendar year when the water is stored. The twenty percent figure represents additional historic delayed ground water return flows associated with MMRC's entitlement to the Soda Lakes Reservoir Nos. 1 and 2 storage rights. 9

vi. If the Denver Water Department fails to make a request for the release of the water described in (iv) and (v), above, by the dates specified, said water automatically becomes the property of MMRC and is available for augmentation and replacement purposes.

vii. No later than May 31 of each storage season, twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between November 1 and the following May 31 of each water year is released to Turkey Creek in accordance with the direction of the State water administration officials. The twenty percent figure represents historic surface water return flows associated with the subject water rights.

viii. No later than November 30 of each water year, twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between June 1 and the following October 31 of each calendar year is released to Turkey Creek in accordance with the direction of the State water administration officials. The twenty percent figure represents historic surface water return flows associated with the subject water rights.

ix. MMRC shall be assessed a proportionate amount of the evaporation and seepage losses from the Soda Lakes Reservoir Nos. 1 and 2 in accordance with the operating rules and regulations of the Soda Lakes Reservoir and Mineral Water Company. The same standard for evaporation and seepage losses applies to all water stored in the Soda Lakes system; provided, however, that until an actual record of evaporation and seepage losses is established, three acre feet of the water stored in MMRC's account each year is reserved for such purposes.

x. Any release of MMRC's water stored in the Soda Lakes system to Turkey Creek or the Harriman Ditch for augmentation and replacement purposes, or for purposes of filling tank trucks, shall be in accordance with the operating rules and regulations of the Soda Lakes Reservoir and Mineral Water Company.

17. MMRC's interests in the Harriman Ditch, Warrior Ditch and Soda Lakes Reservoir Nos. 1 and 2 water rights, as described above, have been approved for the following purposes: augmentation, replacement, exchange, substitution, storage, and the right to use, reuse and make a succession of uses of such water to extinction, either directly or by exchange. Direct use of the subject water rights includes, but is not limited to, leaving the consumptive use water in the stream as replacement water for well depletions.

FIRM YIELD OF THE PORTFOLIO OF MMRC WATER RIGHTS AND STORAGE
FACILITIES

18. The overall "firm" yield of consumptive use water available from the MMRC portfolio of the subject water rights and storage facilities was quantified in Case No. 2001CW293. The volume of firm yield water committed to this augmentation plan, as well as the volume of firm yield water committed to all existing decreed and currently pending plans for augmentation which utilize the subject water rights are summarized in the attached Exhibit "B." MMRC shall prepare and maintain an accurate and continuously updated record of the volume of "firm" yield water committed to all existing decreed and pending plans for augmentation using the above referenced MMRC water rights. This record shall be provided to the Water Commissioner and will also be made available to the Opposer in this Case upon request and payment of reasonable costs associated with copying and mailing.

SUBSTITUTE SUPPLY AND EXCHANGE PROGRAM TO REPLACE DEPLETIONS
FROM THE PARK WATER COMPANY WELLS

19. Since the points of depletion associated with water use from the Park Water Company wells. are on a side tributary of Bear Creek and upstream of the point where augmentation and replacement water is delivered to the stream system by MMRC, Park Water is awarded a separate appropriative right of substitute supply and exchange pursuant to C.R.S. §37-80-120 and §37-92-302(1)(a). The exchange shall be administered with a priority date of December 30, 2005, at a maximum flow rate of 0.001 of a cubic foot per second. The reach of the exchange shall extend from the confluence of Bear Creek and Turkey Creek at Bear Creek Lake in Section 5, Township 5 South, Range 69 West, 6th P.M., Jefferson County; and thence up Bear Creek to its confluence with Cub Creek in the SE 1/4 NE 1/4 of Section 10, Township 5 South, Range 71 West, 6th P.M. From there, one arm of the exchange shall continue up Cub Creek to its confluence with Lans Gulch in the NW 1/4 SW 1/4 of Section 15, Township 5 South, Range 71 West, 6th P.M.; and thence up Lans Gulch to the point where depletions from the subject wells impact Lans Gulch in the NE 1/4 NW 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M. A second arm of the exchange shall extend up Cub Creek to its intersection with an unnamed tributary in the SW 1/4 NE 1/4 of Section 15, Township 5 South, Range 71 West, 6th P.M.; and thence up the unnamed tributary to the point where depletions from the subject wells impact the unnamed tributary in the NE 1/4 NE 1/4 of Section 22, Township 5 South, Range 71 West, 6th P.M.

20. When conditions permit, MMRC will augment stream depletions resulting from water use from the Park Water Company wells. by foregoing diversions of MMRC's Warrior Ditch or Harriman Ditch water rights. In addition, water previously stored in the Soda Lakes Reservoir Nos. 1 and 2 will be exchanged to points upstream. The exchange will operate to replace depletions to the flow of water in Cub Creek and Bear Creek as the depletions occur. Direct flow water available to MMRC will be left in the stream at a rate equivalent to the rate of depletions. In this way, the flow of water in the stream system below the point where replacement water is delivered will be unaffected. In the alternative, direct flow water and storage water available to MMRC will be left in or released to the stream to replace aggregated depletions as described in Paragraph No. 27, infra. If the calling water right on Bear Creek is

within the Harriman Ditch system, MMRC may release water from Soda Lakes Reservoirs directly to the Harriman Ditch, or MMRC may deliver its direct flow rights to the Harriman Ditch at either the Bear Creek or Turkey Creek headgates; provided, however, that any use of the April 16, 1862, priority decreed to the Warrior Ditch and the April 15, 1868, priority decreed to the Harriman Ditch shall be subject to the conditions set forth in Paragraph Nos. 22, 24 and 25. The term "water right" as used herein includes a decreed exchange. ||

21. The exchange will operate only when there is a live stream between the upstream point of the exchange and the location where exchange water is made available to the stream system by MMRC. Prior to operating the exchange, MMRC shall notify the appropriate State water administration official and obtain approval to proceed. The Division Engineer or his designated agent shall notify MMRC when the exchange must cease.

22. The exchange of water shall be conducted only when all water rights that are located within the exchange reach, including any water exchange rights with points of diversion that occur within the exchange reach, and whose priorities are senior to December 30, 2005, are either (1) in priority and fully satisfied, or (2) unable to divert water to the extent then desired because of being partially or totally called out by a downstream senior water right that is located at or below the point where MMRC delivers substitution and replacement water. Senior intervening water rights shall be deemed to be in priority when the physical supply of water available to any such water right, at its point of diversion, would entitle its user to divert water for beneficial use from a point within the exchange reach, and the user is then seeking to make such a diversion of water. Water rights in the exchange reach which are senior to the exchange priority described herein shall be deemed to be entitled to divert water if, in the absence of the instantaneous stream depletions resulting from the subject wells, such water rights would have been entitled to divert at their points of diversion. MMRC's entitlement to the April 16, 1862, priority decreed to the Warrior Ditch and the April 15, 1868, priority decreed to the Harriman Ditch shall not be used to call any water right or exchange that diverts above the Warrior Ditch on Turkey Creek, or its tributaries. The conditions set forth in this Paragraph shall apply to all water rights except the in-stream flows decreed in Case Nos. 94CW256, 94CW259 and 94CW260 which are addressed in Paragraph No. 23, herein.

23. MMRC has previously stipulated with the Colorado Water Conservation Board ("CWCB"), in Case No. 94CW290 (in particular Paragraph Nos. 1.13, 5.2 and 6.11 of Attachment "1" to the Stipulation in that matter), that if an exchange by a MMRC shareholder involves moving water upstream on Bear Creek within the in-stream flow reaches described in the Decrees entered in Case Nos. 94CW256, 94CW259 and 94CW260 (i.e. Cub Creek between its headwaters and its confluence with Bear Creek immediately downstream of Evergreen Lake; and Bear Creek between Evergreen Lake and the location of the Harriman Ditch headgate), such an exchange shall not be operated unless the CWCB's in-stream flow rights in the sections of Cub Creek and Bear Creek impacted by the exchange are fully satisfied; provided, however that this limitation shall not apply if the exchange is limited to offsetting the instantaneous stream

depletions then occurring from pumping of wells included in a plan for augmentation that utilizes augmentation and replacement water supplied by MMRC.

24. All water diverted by MMRC from Turkey Creek or Bear Creek pursuant to the substitution and exchange practices described herein that is attributable to MMRC's entitlement to the April 16, 1862, priority decreed to the Warrior Ditch, shall be included in the annual volumetric limits set forth herein for the December 1, 1861, priority decreed to the Warrior Ditch (i.e. Priority No. 4 from Bear Creek), or the October 31, 1864, priority decreed to the Warrior Ditch (i.e. Priority No. 14 from Bear Creek), and shall be limited to the diversion season specified herein.

25. All water diverted by MMRC from Turkey Creek or Bear Creek pursuant to the substitution and exchange practices described herein that is attributable to MMRC's entitlement to the April 15, 1868, priority decree to the Harriman Ditch, shall be included in the ten year volumetric limits specified herein for the March 16, 1869, priority decreed to the Harriman Ditch (i.e. Priority No. 23 from Bear Creek), and shall be limited to the diversion season specified herein.

26. Depletions to the stream system which occur during the period May through October, inclusive, will be continuously augmented by leaving a portion of MMRC's direct flow water rights in the stream, to the extent possible. During times when MMRC's direct flow water rights are not in priority and during the months of November through April, inclusive, depletions will primarily be augmented by releasing water from the Soda Lakes Reservoirs. Subject to the provisions set forth in Paragraph No. 27, infra., any time that MMRC's water rights cannot be exchanged upstream to the point of injury, such as when senior water rights located within the exchange reach are not fully satisfied, Park Water, or its successors and assigns, are required under the terms of this decree, and without further direction from the State water administration officials, to either physically transport augmentation water by tank truck for delivery to the stream system at a location upstream of the point of injury, or release water from an on-site storage container. To the extent that Park Water, or its successors and assigns, does not fulfill such an obligation, MMRC shall be responsible for the physical transport of augmentation water. If the above obligation is not fulfilled by Park Water, its successors and assigns, or MMRC, so as to augment all depletions from the subject wells, pumping of the wells shall be immediately curtailed. The Division Engineer may allow the delivery of trucked water directly to a reservoir entitled to receive augmentation and replacement water from the Applicants, in lieu of releasing such water to the stream system. The Court's approval of the physical transportation of augmentation water by tank truck to the point of injury shall not serve as precedent in any future Water Court application, nor shall it preclude any opposer to a future Water Court application from objecting to use of such means of replacement.

27. Due to the small volume of annual stream depletions projected to occur from the operation of the subject wells, during times when the exchange of Harriman Ditch and Warrior Ditch water cannot be operated, the depletions then occurring may be aggregated and replaced

by one or more releases of short duration from a reservoir or other storage container located upstream of all water rights deprived of water during the period of aggregation, or by the physical importation of water as described above. The rate and timing of an aggregated release shall be determined by the Division Engineer or his designated representative; provided, however, that an aggregated release shall be required no more frequently than once per month or as reasonably required by the Division Engineer; and further provided that the downstream water right deprived of water during the period of aggregation is allowed to divert the water so released regardless of the river call then existing and the owner of the water right is notified by Applicants before the aggregated release is made. 13

28. In order to ensure that sufficient augmentation water will be available for this augmentation plan, MMRC has agreed to reserve for the benefit of Park Water, and its assigns, and for use in this plan, 0.706 of an acre foot of Bear Creek firm yield water supplies as set forth in the attached Exhibit "B."

29. The Court finds that the source of replacement water and the protective terms outlined above are sufficient to protect the vested rights of other water users in the South Platte River Basin. The court further finds that, subject to the terms and conditions contained in this decree, the uses of the water described herein may be implemented and may continue without material injury to the vested water rights or decreed conditional water rights of others.

CONCLUSIONS OF LAW

30. This Application was filed with the Water Clerk, Water Division No. 1, pursuant to C.R.S. §37-92-302(1)(a). A Statement of Opposition was filed by Jefferson County. As is specified in C.R.S. §37-92-302(1)(c), the time for filing statements of opposition has expired. Applicants have entered into a Stipulation with Jefferson County. The terms and conditions of said Stipulation are incorporated herein by reference.

31. The request of Park Water, North Fork Associates, LLC and MMRC for approval of a plan for augmentation and exchange right described herein is contemplated and authorized by law, and if administered in accordance with this decree, will permit the uninterrupted utilization of the wells described herein, without adversely affecting any other vested water rights in the South Platte River or its tributaries. C.R.S. Sections 37-92-305(3), (5) and (8), §37-80-120 and §37-83-104.

32. The State Engineer may lawfully be required to administer this plan for augmentation and water exchange in the manner set forth herein.

33. As a result of the operation of the Plan for Augmentation, there is water available for withdrawal from the Park Water Company Well Nos. 1, 2, 3, 5, 6, 7 and 8, and the use of same will not result in the material injury of the vested water rights of others. Accordingly, the State Engineer shall approve applications for new well permits or replacement well permits

15
recording the volume of water delivered to its customers on a monthly basis and reporting total water usage to MMRC at the end of each month. On or before November 1 of each year, Park Water shall certify in writing to MMRC that water withdrawn from the subject wells has only been used for the purposes decreed herein and that the well meters are in working condition. Depletions from the subject wells shall be calculated monthly, and shall be equal to ten percent (10%) of the volume of water pumped, as shown by the monthly flow meter readings. In the event that a flow meter malfunctions, it shall be promptly repaired or replaced, but in no event shall the repair or replacement extend beyond forty-five (45) days from the discovery of the malfunction. MMRC, in consultation with the State water administration officials, shall estimate the volume of water pumped from a well during any period that actual meter readings are not available, using prior meter readings and taking into account seasonal fluctuations in use and any significant changes in the size of the development from that which existed when meter readings were available; provided, however, the volume used in the estimate shall be no less than the same period for the prior year. MMRC shall include depletions from the subject wells which are out-of-priority, in the reports made to the State water officials for other plans for augmentation which utilize MMRC augmentation water supplies, as more particularly described in the Decree entered in Case No. 2001CW293. On the basis of the submitted reports, and in accordance with the requirements of this decree and the directives of the Division Engineer, MMRC shall make the required release of augmentation water, or water shall be provided by tank truck above the point of injury or released from an on site storage container. MMRC shall properly document the in-stream delivery of replacement water from the Warrior Ditch and the Harriman Ditch, or the release of storage water from Meadowview Reservoir and the Soda Lakes Reservoirs. Water released from an on site storage container, or the physical importation of augmentation and replacement water, shall be the responsibility of Park Water. The release of storage water shall be subject to the conditions stated in Paragraph No. 27, supra. An example of the type of information to be included in the water accounting for this augmentation plan is attached as Exhibit "C." Information on the form shall be provided to the Division Engineer or his designated representative at an agreed upon schedule. It is not the Court's intention to mandate the use of the Exhibit "C" in its existing format. The Exhibit has been included simply to provide an illustration of the information that must be gathered and recorded. The Applicants, with the approval of the Division Engineer, can modify the form in the future as changes may become necessary for proper administration. If a report or other information submitted to MMRC indicates that annual depletions exceed 0.706 of an acre foot per year, or that the subject water rights are being used for undecreed purposes, MMRC shall immediately notify Park Water that the terms and conditions of this augmentation plan are being violated and a reduction in water usage is required. On such notice from MMRC, Park Water shall immediately take all necessary steps to reduce water usage by its customers and/or to cease any and all undecreed uses of the subject water rights, and to file with MMRC a written, signed certification that such reduction or cessation of use has occurred within Park Water's service area. The certification shall include factual support for the assertion such reduction or cessation of use has occurred. Should Park Water : (1) fail to curtail the excess water uses and/or to cease any and all undecreed uses of the subject water rights; (2) fail to provide the required written certification to MMRC within fifteen days after receiving notice that the terms and conditions of this Decree are

being violated; or (3) fail to repair or replace a malfunctioning flow meter, MMRC shall immediately notify the State water administration officials of the situation. In the event that Park Water fails to comply with the terms and conditions of the decree, all diversions that are not in compliance with the decree shall be subject to curtailment by the State water administration officials. During the pendency of any such enforcement actions, MMRC shall continue to provide replacement water to cover depletions from all wells covered by the plan, but only up to the volume of water described in Paragraph No. 28, supra. 16

MANDATORY ISSUANCE OF WELL PERMITS

40. As a result of the approval of this Plan for Augmentation, water will be made available from the Park Water Company Well Nos. 1, 2, 3, 5, 6, 7 and 8, and the vested rights of others will not be materially injured by the contemplated diversions therefrom. In accordance with the provisions of C.R.S. §37-90-137(2)(b)(II)(B), Park Water served the record owners of all wells located within 600 feet of the subject wells with a copy of the Application in this matter. Accordingly, in accordance with C.R.S. §37-90-137(2), if this plan for augmentation is operating as envisioned herein at the time an application for a permit to construct each well is submitted to the State Engineer, a permit for construction of the well shall be granted without regard to the six hundred feet spacing requirement contained in C.R.S. §37-90-137(2)(b)(I). The reconstruction of the wells shall be approved upon the submittal of new applications to the State Engineer if the location of the replacement well will be within 200 feet of the location of the existing well.

41. Pursuant to the provisions contained in C.R.S. §37-92-304(6), the plan for augmentation decreed herein shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to vested water rights, for a period of five years from the date of this decree. Any person, within the designated period, may petition the Court to invoke its retained jurisdiction. Any such request shall state with particularity the factual basis for requesting that the Court evaluate injury to vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. Unless otherwise stated herein, the party lodging 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 Applicants shall thereupon have the burden of proof to show: (a) that any modification sought by Applicants will avoid injury to other appropriators, or (b) that any modification sought by an Opposer is not required to avoid injury to other appropriators, or (c) that any term or condition proposed by the Applicants in response to Opposer's petition does avoid injury to other appropriators. Such petition shall be filed with the Court under the above styled caption and case number and shall be served by certified mail, return receipt requested, on all parties who have appeared herein, or on their counsel of record. If no such petition is lodged within the designated period, and the retained jurisdiction period is not extended by the Court in accordance with the provisions of the statute, this decree shall become final under its own terms.

42. The priorities awarded herein to the Park Water Company wells and the exchange described in Paragraph No. 19, supra., were filed in the Water Court in 2005 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling. 17


43. It is also ordered that the conditional water rights awarded herein are hereby continued in full force and effect until Nov. 30, 2012. If Park Water or its successors and assigns desires to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before Nov. 30, 2012, or a showing made on or before such date that the conditional rights have become absolute rights by reason of the completion of the appropriations.

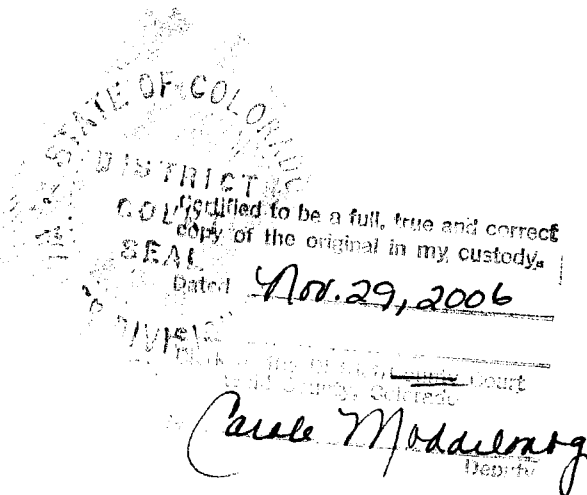
44. Parts of this Decree are the result of substantial negotiations and settlement discussions between the parties. The terms of the Decree are based on the specific facts and circumstances of this case and compromises by the parties. By stipulating to the entry of this Decree, no party intends that the Decree become a precedent to resolve issues in any other case, and all parties reserve their right to challenge any assertion that similar terms and conditions should be included in any other pending or future cases.

45. A copy of this decree shall be recorded by Park Water in the office of the Jefferson County Clerk and Recorder so that the decree will appear in Park Water's chain of title. All future owners of the properties served by Park Water shall be bound by the provisions hereof, and the terms and conditions contained herein shall be a covenant running with those properties, and shall be binding upon all future owners.

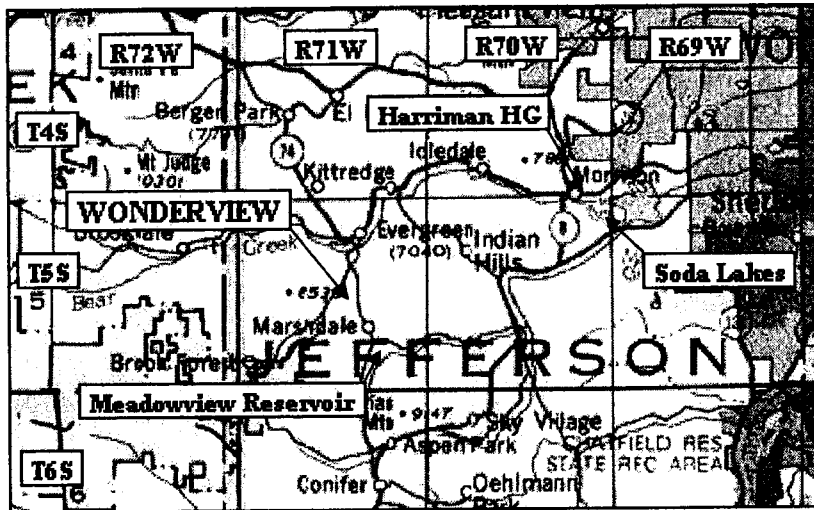
Dated: Nov. 21, 2006

By the court:


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

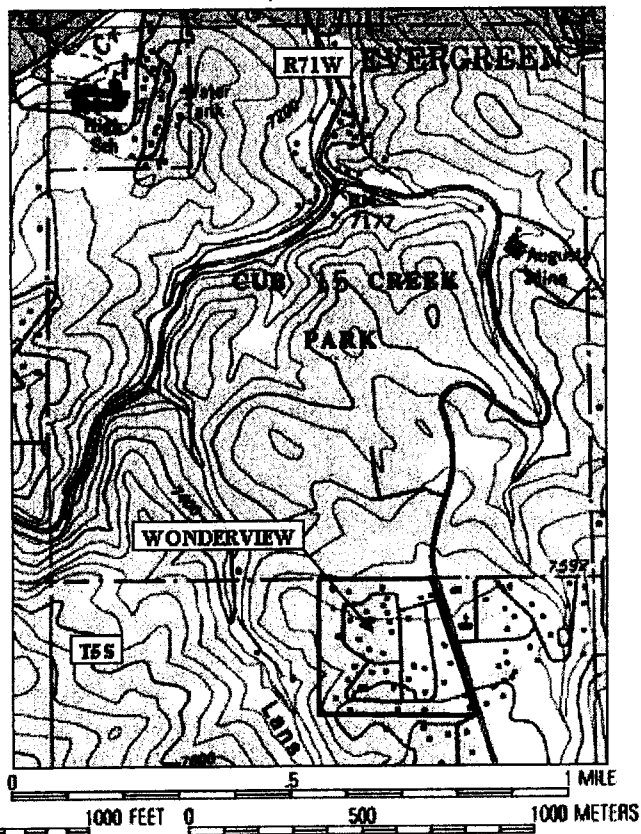


REGIONAL MAP, WONDERVIEW



Map created with TOPO!® ©2002 National Geographic (www.nationalgeographic.com/topo)

AREA MAP, WONDERVIEW



Map created with TOPO!® ©2002 National Geographic (www.nationalgeographic.com/topo)

**TABULATION OF MMRC FIRM YIELD WATER
IN PLANS FOR AUGMENTATION (PFA)
BEAR CREEK & TURKEY CREEK
November 2006**

Plans for Augmentation Based on 39.0 Acre-Feet Yield for Bear Creek and 23.8 Acre-Feet for Turkey Creek

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Applicants & Development</u>	<u>Decree Or Application Amount In Acre-Feet Per Year</u>	
				<u>Bear Creek</u>	<u>Turkey Creek</u>
08/30/1994	08/20/96	94CW168	Idledale Water & Sanitation Dist.,	5.650	
09/30/1994	10/16/06	94CW290	Buffalo Park Development Co. Buffalo Meadows		2.070
09/30/1994	10/16/06	94CW290	Buffalo Park Development Co. Homestead		2.050
09/30/1994	In Process	94CW290	Buffalo Park Development Co. Sprucedale Reservoir	0.300	
09/29/1995	07/08/96	95CW196	Colleen H. Karford		0.063
12/29/1995	10/20/97	95CW281	Black Mountain Ranch,	0.806	
12/29/1995	07/28/97	95CW291	Norman Meyer	1.000	
05/31/1996	07/14/97	96CW103	Giv Mattingly	0.934	
12/31/1996	03/05/98	96CW1046	Neta and Howard Wheeler		0.197
02/26/1997	01/22/98	97CW091	Smith Acres II, LLC.		0.188
10/29/1997	07/10/98	97CW280	Colleen H. Karford		0.031
10/29/1997	07/10/98	97CW281	Le Gault Sommet Revelateurs, LLC		0.953
10/29/1997	07/10/98	97CW282	Boksmati & Fulaij, LLC		0.373
12/01/1997	10/09/98	97CW336	Ray A. and Sharon K. Petersburg	1.063	
12/01/1997	10/01/98	97CW337	James Martin/William Shirky	0.084	
12/01/1997	10/20/98	97CW338	Trilogy Conifer, LLC		1.399
12/30/1997	10/20/98	97CW372	Gregory and Eva L. White		0.408
03/31/1998	03/17/99	98CW240	Eisenbud Family	1.394	
03/31/1998	03/23/99	98CW241	Allyn Breech	0.246	
06/30/1998	10/14/04	98CW291	David J. Figuli		0.377
06/30/1998	12/07/04	98CW292	Conifer Corners, LLC		1.400
07/30/1998	06/17/99	98CW310	Scott E. Sabina	0.253	
07/30/1998	06/11/99	98CW311	Mystic Ridge, LLC	0.386	
03/31/1999	07/19/04	99CW035	Mark P. & Kim R. Meyer		0.031
06/30/1999	04/12/04	99CW096	Scott A. Wilson	1.051	

EXHIBIT "B"
Case No. 2005CW336
B-1

**TABULATION OF MMRC FIRM YIELD WATER
IN PLANS FOR AUGMENTATION (PFA)
BEAR CREEK & TURKEY CREEK**

November 2006

Plans for Augmentation Based on 39.0 Acre-Feet Yield for Bear Creek and 23.8 Acre-Feet for Turkey Creek

20

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Applicants & Development</u>	<u>Decree Or Application Amount In Acre-Feet Per Year</u>	
				<u>Bear Creek</u>	<u>Turkey Creek</u>
09/30/1999	09/22/04	99CW122	John Gold, et. al. & Margaret Sandbak	0.198	
10/30/1999	11/08/04	99CW171	Byron C. & Ruth M. Angevine	0.220	
12/27/1999	11/17/04	99CW212	Jami Jensen	0.621	
09/30/2003	08/11/04	01CW161	Village at Elk Crossing, LLC		2.000
07/31/2003	10/19/04	03CW278	Ferrero-Sheppard Family Trust	0.034	
07/31/2003	05/25/06	03CW279	Jennifer L. Johnson		0.604
07/31/2003	09/22/04	03CW280	James F. & Mary Louise Etter	0.171	
07/31/2003	07/07/04	03CW281	Peggy B. & Helen C. Burleson	0.260	
08/29/2003	09/22/04	03CW299	Robert F. & Susan D. Dell	0.228	
09/30/2003	12/29/04	03CW312	Debra Powers	0.113	
09/30/2003	01/07/05	03CW340	Daniel N. Warner		0.535
10/30/2003	06/08/05	03CW363	Leonard & Jennifer Osmond	0.108	
10/30/2003	11/16/04	03CW364	Eric L. Smith	0.180	
10/30/2003	In Process	03CW371	Horizon Holding		0.300
10/30/2003	In Process	03CW372	Bobcat Ridge Estates		0.471
12/31/2003	05/12/05	03CW425	James & Susan Biestek	0.037	
03/30/2004	01/04/05	04CW073	Robert Espinosa & Debra Carbone		0.050
04/30/2004	11/17/04	04CW107	James and Paula Jagels	0.137	
05/31/2004	11/22/05	04CW135	Westhaven Heights Horse Owners	0.449	
06/30/2004	In Process	04CW160	Corrine Meyers		0.084
06/30/2004	04/26/05	04CW161	Mark and Anne Bossman		0.806
07/31/2004	11/17/05	04CW186	Spring Valley Revocable Trust	0.193	
09/30/2004	05/17/05	04CW232	Landmark Building Systems		0.196
10/28/2004	In Process	04CW263	Dream Weaver Homes, LLC	0.386	
10/29/2004	10/05/05	04CW267	Tony Miller	0.273	
12/27/2004	In Process	04CW320	Helen Mleynek	0.227	
03/29/2005	11/15/05	05CW056	Magdalenski & Besant	0.273	
05/29/2005	01/17/05	05CW107	Meyers/Wilson	0.113	

EXHIBIT "B"
Case No. 2005CW336

**TABULATION OF MMRC FIRM YIELD WATER
IN PLANS FOR AUGMENTATION (PFA)
BEAR CREEK & TURKEY CREEK**

November 2006

Plans for Augmentation Based on 39.0 Acre-Feet Yield for Bear Creek and 23.8 Acre-Feet for Turkey Creek

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Applicants & Development</u>	<u>Decree Or Application Amount In Acre-Feet Per Year</u>	
				<u>Bear Creek</u>	<u>Turkey Creek</u>
05/29/2005	03/29/06	05CW108	Thunderbolt Circle, LLC		0.220
07/29/2005	04/05/06	05CW174	Hanna E. Holt Living Trust	0.114	
07/29/2005	04/05/06	05CW176	Armond A. Azharian		0.176
09/30/2005	03/23/06	05CW250	Linda J. Glandt	0.056	
10/31/2005	In Process	05CW266	Williams Development		0.250
11/30/2005	In Process	05CW287	Falcon Wing Ranch	0.157	
12/16/2005	In Process	05CW299	Castle Springs Manor	1.009	
12/30/2005	In Process	05CW336	Park Water Company	0.706	
12/30/2005	06/06/06	05CW339	Lane Ranch		0.126
02/28/2005	07/28/06	06CW060	KAC Partners	0.032	
03/31/2006	In Process	06CW080	Kelly and Chana Guy		0.095
03/31/2006	In Process	06CW084	Louis and Lynette Appelhans	0.056	
04/28/2006	11/15/06	06CW101	Geneva Glen Camp		1.800
04/28/2006	11/3/06	06CW107	West Ranch Center		0.382
	In Process	06CW	Michael & Joanne Kortendick	0.088	
	In Process	06CW	Richard & Juliana Lehman	0.099	
	In Process	06CW	AKS, LLC		0.376
	In Process	06CW	Lost and Found, Inc.	0.270	
			Dennis R. and Linda L. Graves		0.094
N/A			Village at Elk Crossing, LLC		0.500
N/A			Buffalo Park Development	<u>3.140</u>	<u>5.195</u>
TOTAL OF CURRENT OBLIGATIONS TO PLANS FOR AUGMENTATION				23.115	23.800
SURPLUS AVAILABLE FOR FUTURE PLANS FROM 39.0 ACRE-FEET FOR BEAR CREEK AND 23.8 FOR TURKEY CREEK				15.885	0.000

21

PARK WATER

P.O. BOX 126

EVERGREEN CO 80437

WATER COURT CASE NO. 2005CW336

A B C D E F G H I J K L M N

EOM	Well No. 1		Well No. 2		Well No. 3		Well No. 5		Well No. --		Total	
	Meter Reading	Diverted (B)-(B) ⁻¹	Meter Reading	Diverted (D)-(D) ⁻¹	Meter Reading	Diverted (F)-(F) ⁻¹	Meter Reading	Diverted (H)-(H) ⁻¹	Meter Reading	Diverted (J)-(J) ⁻¹	Diverted (I)+(K) Gal	Consumed (M)X 0.1 AF
Oct		XXX		XXX		XXX		XXX		XXX	XXX	XXX
Nov												
Dec												
Jan												
Feb												
Mar												
Apr												
May												
Jun												
Jul												
Aug												
Sep												
Oct												
Tot	XXX		XXX		XXX		XXX		XXX			

Send copy to Mountain Mutual Reservoir Company and Water Commissioner for District 9.

22

EXHIBIT "C"
2005CW336