

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO

Case No. 87CW148

FILED IN DISTRICT COURT

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AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF DOUGLASS RANCH VENTURE, INC. IN PARK AND JEFFERSON COUNTIES

This matter having come before the Court on the Amended Application for Absolute and Conditional Water Rights and Approval of Plan for Augmentation, Including Change of Water Rights and Appropriative Right of Exchange of Douglass Ranch Venture, Inc. ("Applicant"), and the Court having considered the pleadings, the files herein, the evidence presented, the stipulation of the parties, the comments of the Division Engineer and otherwise being fully advised, hereby makes the following findings of fact and conclusions of law and enters the following judgment and decree:

FINDINGS OF FACT

1. (a). Filing and Notice. The application in this case was properly filed on August 28, 1987. A first amendment to the application was filed on December 30, 1987. All notices required by law have been given of the application and first amendment thereto (collectively, the ("Application")). This Court has jurisdiction over the subject matter of the Application and over all persons affected thereby whether they have appeared or not.

(b). Original Decree and Motion to Amend. On June 2, 1988, the Court entered in this matter its Findings of Fact, Conclusions of Law, Judgment and Decree (the "Decree"). On November 1, 1990, the Applicant filed a Motion to Amend Decree, as permitted by Paragraph 27 of the Decree. The Applicant sought to amend the Decree to reflect that it has constructed only one of the two decreed Douglass Ranch Ponds. As a result, it sought to amend the conditional water rights awarded for these ponds. Because construction of only one pond would result in less evaporation than the two-pond system, the Applicant also sought to amend its decreed plan for augmentation to reduce the volume of water which it was required to commit for augmentation purposes. Lastly, the Applicant requested that the Court delete a provision of Paragraph 26 of the Decree to reflect that the Applicant had stored an adequate amount of water in Pond 1. Because the Applicant constructed Pond 1 within 200 feet of its decreed location and because the relief requested would result in less consumption of water, the Applicant was not required to publish its motion. See Uniform Local Water Court Rules, Rule 4(b)(1)(4). None of the opposers in this case opposed the motion. The Court granted the Applicant's motion by order dated December 3, 1990, and, as a result, enters this Amended Decree.

2. Opposition. Statements of Opposition in this matter were timely filed by the City and County of Denver acting by and through its Board of Water Commissioners ("Denver"), the City of Aurora ("Aurora"), The Farmers Reservoir and Irrigation Company ("FRICO"), H.A. and Lila B. Krogh ("Krogh"), the Colorado Water Conservation Board ("CWCB"), and the State and Division Engineers (the "State"). The time for filing statements of opposition has now expired. Krogh have withdrawn their statement of opposition. This Amended Judgment and Decree has been approved by Applicant and all of the remaining opposers.

3. Proposed Development. Applicant owns approximately 269 acres located in Sections 5, 6, 7, and 8, T. 7 S., R. 71 W., 6th P.M. in Jefferson County, Colorado (the "Property"), which is described in the attached Exhibit A. Applicant intends to develop the Property as follows: (a) a 42-unit residential development (the "Subdivision") on 234 acres of the Property; and (b) an eight-unit bed and breakfast lodge and associated facilities (the "Lodge Parcel") on the 35-acre tract described in the attached Exhibit B. Water uses within the Subdivision are expected to include in-house use in single-family dwellings, irrigation of lawns and gardens, ponds, and sewage disposal. Water use for the Lodge Parcel will include commercial in-house use, residential use in one single-family dwelling, irrigation of lawns and gardens, watering of horses, and sewage disposal.

4. Water Supply. Water will be supplied to the Property by diversions from the following structures:

(a) Douglass Ranch Wells No. 1 through 42. Douglass Ranch Wells No. 1-42 will be located within the boundaries of the Subdivision. Each well will withdraw groundwater tributary to Elk Creek, a tributary of the South Platte River, at a depth up to 600 feet and a rate of flow up to 15 g.p.m. Each of the 42 proposed Subdivision lots may be served by an individual well or in some cases by community wells constructed to serve two or more lots. The approximate lot boundaries, which are subject to change, are shown on the attached Exhibit C.

(b) Douglass Ranch Pumphouse ("Pumphouse"). The Pumphouse is located at a point from which the southeast corner of Section 6, Township 7 South, Range 71 West of the 6th Principal Meridian, bears South 36°58' East, a distance of 2060 feet, more or less. The Pumphouse will serve only the Lodge Parcel.

(c) Douglass Ranch Pond 1. The centerline of the dam for Douglass Ranch Pond 1 is located on an unnamed tributary of Elk

Creek at a point whence the southeast corner of Section 6, Township 7 South, Range 71 West of the 6th Principal Meridian, bears South 3°00' East, a distance of 1819 feet, more or less.

The Pond will provide a water supply to the Subdivision for recreation, fish propagation, stock watering and fire protection as well as a source of augmentation and exchange water for uses on both the Subdivision and the Lodge Parcel.

5. Appropriation. The Applicant and its predecessors have made appropriations for the Douglass Ranch Pumphouse and Douglass Ranch Pond 1 at the locations described in paragraph 4 above, as follows:

(a) Source:

- (1) Douglass Ranch Pumphouse: Groundwater tributary to Elk Creek, a tributary of the North Fork of the South Platte River.
- (2) Douglass Ranch Pond 1 : An unnamed tributary of Elk Creek, a tributary of the North Fork of the South Platte River.

(b) Depth of Wells:

- (1) Douglass Ranch Wells No. 1-42: a maximum of 600 feet.
- (2) Douglass Ranch Pumphouse: exact depth unknown; estimated at approximately 25 feet.

(c) Date of Appropriation:

- (1) Douglass Ranch Pond 1 : August 31, 1987
- (2) Douglass Ranch Pumphouse: December 31, 1949.

(d) How Appropriation Initiated:

- (1) Douglass Ranch Pond 1 : by the formation of an intent to appropriate, completion of a survey and planning and engineering studies.
- (2) Douglass Ranch Pumphouse: by beneficial use of water prior to December 31, 1931.

(e) Date Water Applied to Beneficial Use: Water from the Douglass Ranch Pumphouse was beneficially used for the

absolute uses specified in the following paragraph 5(g) (2) prior to December 31, 1949.

(f) Amount:

- (1) Douglass Ranch Pumphouse: 13.75 g.p.m., absolute.
- (2) Douglass Ranch Pond No. 1: (1) 187,320 cubic feet (4.30 acre-feet), conditional.

(g) Use and Proposed Use:

- (1) Douglass Ranch Pond 1 : Domestic, municipal, irrigation, commercial, recreation, fish propagation, stock watering, fire protection, augmentation, exchange, and all other beneficial uses.
- (2) Douglass Ranch Pumphouse: Ordinary household purposes for not more than three single-family dwellings, fire protection, the watering of poultry, domestic animals, and livestock on a farm or ranch, and the irrigation of not over one acre of gardens and lawns.

(h) Pond Dimensions

(1) Surface Area at High Water Line:

Douglass Ranch Pond No. 1: 28,350 square feet (.65 acres)

(2) Maximum Height of Dam in Feet:

15.5 feet (10 feet from existing creek bottom to spillway).

(3) Length of Dam in Feet:

Douglass Ranch Pond No. 1: 168

(4) Total Capacity of Reservoir:

Douglass Ranch Pond No. 1: 187,320 cubic feet (4.30 acre-feet)

(5) Active Capacity: same as total capacity

(6) Dead Storage: 0

(i) Location of Structure: The Applicant may construct the Douglass Ranch Pond 1 at any point within a 200-

foot radius of the location stated in paragraph 4(c) above.

(j) Exempt Use of Pumphouse: The absolute uses of the Douglass Ranch Pumphouse described in paragraph 5(g) (2) are exempt from administration under C.R.S. §37-92-602(1)(e) only to the extent that (1) the Pumphouse remains the only well on the 35-acre tract in which it is presently located and (2) it is used solely for the exempt purposes for which an absolute water right is awarded herein.

The Applicant presently intends to utilize the Douglass Ranch Pumphouse for non-exempt commercial purposes as described in the following paragraphs 6(b), (c), and (e). The Applicant will apply for a well permit for these uses of the Pumphouse and the State Engineer shall issue said permit in accordance with the terms of the plan for augmentation described herein. Unless the Applicant or its successors notifies the Division Engineer in writing that the Pumphouse is and will be used solely for the exempt purposes described in paragraph 5(g) (2), the Pumphouse may be operated only in accordance with the plan for augmentation approved in this Judgment and Decree.

(k) Operation of Douglass Ranch Wells 1-42: No water rights or conditional water rights are confirmed in this decree for the Douglass Ranch Wells 1-42, which will be operated only in accordance with the plan for augmentation decreed herein.

Plan for Augmentation

6. Water Requirements. The water requirements and depletions which will result from water uses within the Property are determined to be as follows:

(a) Subdivision Lots: Each single-family dwelling will require 0.314 acre-feet of water per year for in-house uses, based on an average 3.5 persons per unit, 365-day occupancy, and 80 gallons per person per day. Ten percent (10%) of this requirement will be consumed through individual soil-absorption septic systems, resulting in a net depletion of 0.0314 consumptive acre-feet per year per single-family dwelling. The total annual in-house consumptive use for the 42 Subdivision Lots is estimated to be 1.32 acre-feet. Stream depletions from this use will be evenly distributed throughout the year.

(b) Lodge and Caretaker's House: The Lodge will be operated under this plan for augmentation as an eight-unit bed and breakfast lodge. The gross annual water requirement for in-house use at the Lodge is 1.8 acre-feet, of which 0.18 acre-feet will be

depleted through a single soil-absorption septic system.

In addition, one single-family dwelling known as the Caretaker's House is located on the 35-acre Lodge Parcel. The gross annual water requirement for this unit is 0.314 acre-feet, of which .0314 acre-feet will be depleted through a soil-absorption septic system.

Stream depletions from these in-house uses will be evenly distributed throughout the year.

(c) Lawn and Garden Irrigation:

- (1) Each acre of lawn irrigation will require 2.76 acre-feet per year, of which 1.72 acre-feet per year will be depleted. Stream depletions will occur according to the following schedule:

Irrigation consumptive use
per acre of lawns (acre-feet)

May	.19
June	.50
July	.29
August	.29
September	.28
October	<u>.17</u>
	1.72

- (2) Each acre of garden irrigation will require 0.57 acre-feet per year, of which 0.36 acre-feet per year will be depleted. Stream depletions will occur according to the following schedule:

Irrigation consumptive use
per acre of gardens (acre-feet)

June	.1
July	.16
August	<u>.10</u>
	.36

- (3) The Subdivision will be allowed a total of 14,700 square feet of lawn area (an average of 350 square feet per unit) or 70,200 square feet of garden area (an average of 1,700 square feet per unit). A combination of lawns and gardens will be allowed, subject to the aggregate annual restriction on irrigation consumptive use in the

Subdivision of .58 acre-feet, to be determined in accordance with subparagraphs 6(c) (1) and (2).

- (4) The Lodge Parcel will have up to 500 square feet of lawn area or 2,400 square feet of garden area under this plan for augmentation. A combination of lawns and gardens will be allowed, subject to an aggregate annual restriction on irrigation consumptive use of .02 acre-feet, to be determined in accordance with subparagraphs 6(c) (1) and (2).

(d) Pond Evaporation: The surface area of the exposed pond will have a maximum net evaporation of .98 acre-feet per year, all of which will be depleted. The surface area of the Douglass Ranch Pond 1 is .65 acre. Depletions from pond evaporation will occur according to the following schedule:

Evaporation loss (feet)

April	.15
May	.16
June	.19
July	.22
August	.21
September	.15
October	.09
November-March	<u>.33</u>
	1.50

(e) Horses: Each horse will require 0.0112 acre-feet per year, all of which will be deemed depleted. The Applicant may maintain up to 6 horses on the Lodge Parcel, for a maximum annual consumptive use of .07 acre-feet. Stream depletions from this use will be evenly distributed throughout the year.

7. Augmentation Water. In order to provide augmentation water for the out-of-priority depletions associated with the Property, Applicant has exercised its option pursuant to a purchase agreement with North Fork Associates and Mountain Mutual Reservoir Company ("Sellers") to purchase up to 3.2 consumptive acre-feet of water from the Sellers' water rights, to be represented by 101.9 shares of the capital stock of Mountain Mutual Reservoir Company. Sellers are also obligated under the agreement to provide all water necessary to replace transportation losses associated with this plan. Sellers will provide Applicant's 3.2 consumptive acre-feet of water from the following water rights owned by Sellers:

A. Guiraud 3T Ditch.

- A. Date entered: October 18, 1889
- B. Case No: Original Adjudication
- C. Court: Water District 23 Park County District Court
- D. Type of water right (surface, underground, storage):
Surface
- E. Legal description of point(s) of diversion or place
of storage:

The Guiraud 3T headgate is located:

South bank of the Middle Fork of the South Platte River in the NE1/4, Section 8, Township 11 South, Range 76 West of the 6th P.M., Park County, Colorado at a point whence the NE corner of the NE1/4 of said Section 8 bears North 63°35' East, 1305 feet.

- F. Source: Middle Fork of the South Platte River
- G. Amount: 1.866 c.f.s. of the total decreed amount of
20 c.f.s.
- H. Appropriation: July 1, 1867
- I. Decreed use (if irrigation, include total acreage):

Originally decreed for irrigation uses, this water right has been subject to various change proceedings. A decree authorizing a change of the point of diversion and place of use was entered on May 15, 1954, in Civil Action No. 3376, Park County District Court. Subsequent to 1954, various change of water right and plan for augmentation proceedings have either been decreed or are pending which are anticipated to reduce the quantity of water left at the Guiraud 3T Ditch headgate to 0 c.f.s. Historically, water diverted through the Guiraud 3T Ditch was used to irrigate 276.28 acres of hay meadows in Sections 9, 10 and 15, Township 11 South, Range 76 West, 6th P.M., Park County, Colorado. Past decrees have determined the average annual consumptive use under the Guiraud 3T Ditch to be 1.5 acre-feet per acre. The owner of the lands

historically irrigated by the 1.866 c.f.s. now owned by North Fork Associates and Mountain Mutual Reservoir Company has contracted to remove, and has removed 27.15 acres of land from irrigation. Said acreage has been surveyed and monumented in the field. This acreage includes the land historically irrigated with that portion of the Guiraud 3T Ditch water right which is committed to this plan for augmentation.

B. Spinney Mountain Reservoir.

North Fork Associates and Mountain Mutual Reservoir Company have a right by deed dated March 23, 1987, recorded in Park County on May 29, 1987, at Book 411, Page 876, to an undivided interest in the right of first use of a firm yield of 80 acre-feet of water per annum from any of the water rights owned by the City of Aurora and decreed by the District Court, Water Division No. 1, for storage in Spinney Mountain Reservoir, including, but not limited to, the water right described as follows:

- A. Date entered: 1973
- B. Case No. W-7395
- C. Court: Water Division No. 1
- D. Type of water right (surface, underground, storage):
Storage
- E. Legal description of point(s) of diversion or place of storage:

Said Reservoir is located on the South Platte River, with the left abutment of the dam being at a point whence the Southwest corner of Section 36, Township 12 South, Range 74 West, 6th P.M., Park County, Colorado, bears South 23°26' West, a distance of 8,314.3 feet.

- F. Source: South Platte River
- G. Amount: 86,000 acre-feet
- H. Appropriation: March 26, 1973
- I. Decreed use: domestic, irrigation, municipal and all other beneficial uses

Various decreed direct flow water rights have been transferred to storage in the structure by the Division No. 1 Water Court and provide the basic yield of the annual allotment to North Fork Associates and Mountain Mutual Reservoir Company of 80 acre-feet.

C. Woodside Reservoir.

- A. Date entered: 1978
- B. Case No.: W-8771-77
- C. Court: Water Division No. 1
- D. Type of water right (surface, underground, storage):
Storage
- E. Legal description of point(s) of diversion or place of storage:

It is not yet constructed but will be located in the Elk Creek drainage basin in the E1/2, SW1/4, Section 26, Township 6 South, Range 72 West, 6th P.M., Park County, Colorado.
- F. Source: Elk Creek and unnamed tributaries thereof.
- G. Amount: 50 acre-feet
- H. Appropriation: September 1, 1977
- I. Decreed use: Domestic, municipal, piscatorial, fire fighting, exchange and all other beneficial uses

D. Lower Sacramento Creek Reservoir No. 1.

- A. Date entered: 1974
- B. Case No. W-7741-74
- C. Court: Water Division No. 1
- D. Type of water right (surface, underground, storage):
Storage
- E. Legal description of point(s) of diversion or place of storage:

The Reservoir is located in the NE1/4 NW1/4, Section 32 and the SE1/4 SW1/4, Section 29, Township 9 South, Range 77 West, 6th P.M., Park County, Colorado.

- F. Source: Sacramento Creek
 - G. Amount: 40 acre-feet. North Fork Associates owns a 25.2% interest in the Lower Sacramento Creek Reservoir No. 1.
 - H. Appropriation: July 25, 1974
 - I. Decreed use: Domestic, municipal, commercial, industrial, irrigation, fish and wildlife propagation, recreational and all other beneficial purposes, including exchange to compensate for depletions to the South Platte River or its tributaries.
- E. (1) Glasman Ditch and
(2) Glasman Ditch No. 2.
- A. Date entered: (1) May 22, 1913;
(2) December 31, 1984
 - B. Case No.: (1) unknown; (2) 83CW002
 - C. Court: (1) Park County District Court;
(2) District Court, Water Division No. 1
 - D. Type of water right: Surface
 - E. Legal description of point of diversion:

A point on the right bank of Elk Creek at a point from which the western 1/4 corner of Section 26, T. 6 South, Range 72 West, 6th P.M. bears North 52°44' West, a distance of 2,030 feet, more or less.
 - F. Source: Elk Creek, a tributary to the North Fork of the South Platte River
 - G. Amount: (1) 1.0 c.f.s., absolute; (2) 0.70 c.f.s., conditional
 - H. Appropriation: (1) May 1, 1885;
(2) August 31, 1981

I. Decreed use: (1) Irrigation. In Case No. 81CW144, 6.0 acre-feet of the historic consumptive use was changed from irrigation use to allow utilization as a credit to Woodside Reservoir's annual evaporation losses and/or irrigation.

(2) Domestic, commercial, irrigation, piscatorial, recreational, and municipal

8. Douglass Ranch Pond 1.

(a) Water will be stored in the Pond either under its own priority as decreed herein or by exchange utilizing the water rights described in paragraph 7 above. Water so stored can then be used for augmentation purposes to offset out-of-priority depletions under this plan.

(b) Water may not be stored in the Pond under its own priority during the months of August through October except at such times as (a) the Applicant has caused the actual streamflow in Elk Creek at the Flow Point to be measured; and (b) the Division Engineer or his designee makes a specific finding that such measured streamflow is and continues to be greater than 5.5 c.f.s.

9. Historic Use and Change of Water Right. Past decrees of this Court have determined the average annual consumptive use under the Guiraud 3T Ditch to be 1.5 acre-feet per acre during an average irrigation season from April 15 to September 15. The historic use of the Glasman Ditch was determined in Case No. 81CW144. Various decreed direct flow water rights have been transferred to storage in Spinney Mountain Reservoir by the Water Court for Water Division No. 1 and contribute to the basic yield of North Fork Associates' annual allotment of 80 acre-feet.

No vested water right or decreed conditional water right will be injured by a change in use of up to 0.113 c.f.s. of the Guiraud 3T Ditch from irrigation to domestic, municipal, commercial, irrigation, recreation, fish propagation, stock watering, fire protection, augmentation and exchange purposes for use at the point of initial delivery for augmentation or, by exchange, at the Applicant's points of diversion and places of storage as herein described, subject to the terms and conditions of this judgment and decree.

10. Plan for Augmentation.

(a) The maximum out-of-priority water consumption by all uses of the Property to be served by this augmentation plan is 3.18

acre-feet per year, of which 2.88 acre-feet is associated with the Subdivision and 0.3 acre-feet is associated with the Lodge Parcel. By this plan for augmentation, Applicant will provide up to 3.2 acre-feet per year of replacement water to offset out-of-priority depletions to surface and groundwater tributary to Elk Creek, a tributary of the North Fork of the South Platte River. The out-of-priority depletions permitted under this plan will be limited to the lesser of 3.2 consumptive acre-feet per year or the amount of augmentation water actually available under this decree.

(b) In order to ensure that sufficient augmentation water will be available for the Property, North Fork Associates has assigned to Mountain Mutual Reservoir Company for Applicant's benefit and use in this plan, 0.104 c.f.s. of the 1.866 c.f.s. of the Guiraud 3T Ditch priority above-described, plus .009 c.f.s. to pay for transportation charges, as described below. In addition, North Fork Associates has agreed to assign to Mountain Mutual Reservoir Company for Applicant's benefit an undivided interest in the water storage rights described in paragraph 7 above, plus an amount of water necessary to pay for evaporation and transportation charges, as described below. Applicant is entitled to so much of said water storage rights as is necessary, in conjunction with the actual yield of Applicant's fractional interest in the Guiraud 3T Ditch, to yield up to 3.2 acre-feet of augmentation water for replacement or exchange purposes each year in this plan for augmentation. Assuming that Applicant's interest in the Guiraud 3T Ditch yields 2.267 acre-feet per year at the historic rate of .046 c.f.s. per consumptive acre-foot per year, approximately 0.933 acre-feet of storage water will be required. The total commitments of North Fork Associates' interests in the water rights described in paragraph 7 under this and other presently decreed augmentation plans is shown in the attached Exhibit D.

(c) Mountain Mutual Reservoir Company will make available to the Division Engineer or his designated agent, up to 3.2 acre-feet of replacement water from the sources described in paragraph 7 to: (1) fill, by exchange, the Douglass Ranch Pond 1 regardless of whether the Pond has previously filled under its own priority; and (2) offset out-of-priority stream depletions associated with water use by the Property. Augmentation water will be provided by assigning a portion of the above-described Guiraud 3T Ditch rights for instream credit or sufficient water will be released from storage in Spinney Mountain Reservoir, Lower Sacramento Creek Reservoir No. 1 or Woodside Reservoir. The initial point of delivery of this augmentation water will be at the confluence of the North Fork of the South Platte River and the main stem of the South Platte River in Section 25, Township 7 South, Range 70 West, 6th P.M., Jefferson County, Colorado. From that

point, augmentation water will be delivered to the Property by exchange. Augmentation water will be made available in this manner whenever the appropriative right of exchange described in the following paragraph 11 is in priority and as specified in the following subparagraph 10(f). Once Woodside Reservoir is constructed, augmentation water may be delivered directly to Elk Creek.

(d) Mountain Mutual Reservoir Company will attempt to fill Woodside Reservoir and Lower Sacramento Creek Reservoir No. 1 under the reservoirs' own priorities. If the structures cannot be so filled, water from Spinney Mountain Reservoir may be exchanged to storage in one or both of the reservoirs. Any such exchange to Woodside Reservoir shall be subject to the administration of the Division Engineer or his designated agent and shall be limited to those times when all vested water rights with priority dates senior to February 29, 1980, which divert water from Elk Creek and/or the North Fork of the South Platte River, are either in priority and fully satisfied or are out of priority because of a call initiated by a more senior call which can be satisfied by the release of Spinney Mountain Reservoir water.

(e) Applicant may, in the alternative to or in combination with the releases of Mountain Mutual augmentation water described in subparagraphs (b)-(d) above, release augmentation water to Elk Creek directly from Douglass Ranch Pond 1. Augmentation water shall be provided by releases from the Douglass Ranch Pond 1 or the Woodside Reservoir whenever the exchange described in the following paragraph 11 cannot occur under the conditions of paragraph 11.

(f) No replacement of out-of-priority stream depletions resulting from water use in the Subdivision or the Lodge Parcel shall be made during the months of November, December, January, February, or March. These monthly depletions shall be aggregated and a single release of replacement water shall be made in the month of April of each year for all out-of-priority depletions occurring in the preceding five months (November-March) and for all out-of-priority depletions occurring or expected to occur during April. Such replacement shall be made by one aggregate release from the Douglass Ranch Pond (or, after its completion, from Woodside Reservoir) as soon after April 1 of each year as weather and operating conditions permit; provided, that if (1) due to weather conditions, the outlet works of the Pond (or Woodside Reservoir) are not or will not be operable prior to April 30; or (2) the conditions of the following paragraph 11(b)(2) are satisfied at the time of the release; the aggregate release for the preceding November-April out-of-priority depletion shall be made

by releasing water from the storage facilities described in the foregoing subparagraphs 7(B) or (D). The Applicant shall notify the CWCB and the Division Engineer of the time and location of such releases prior to their occurrence.

(g) Out-of-priority diversion by Applicant during the months of November through April shall not be curtailed provided that the requirements of the preceding subparagraph 10(f) are satisfied.

(h) Notwithstanding the requirements of subparagraphs 10(e), (f), and (g) for direct release of augmentation water from the Douglass Ranch Pond and the restrictions on the exchange set forth in paragraphs 11(a) and (b), groundwater may be diverted and used for in-house purposes only to serve up to ten subdivision lots, the bed and breakfast lodge, and the Caretaker's House until August 1, 1989, prior to the first filling of the Pond. All other requirements of this decree, including the requirement to provide full augmentation of depletions resulting from such use from the water rights described in paragraph 7, apply to such use. After August 1, 1989, all requirements of this decree shall apply to such use.

11. Exchange Rights. Applicant has properly established an appropriative right of exchange of up to 3.2 consumptive acre-feet of the water rights described in paragraph 7 above for that reach of the North Fork of the South Platte River and Elk Creek between (a) the initial point of delivery as described in paragraph 10(c) above and (b) the Applicant's place of storage at the Douglass Ranch Pond 1 and points of direct-flow diversion at the Douglass Ranch Wells 1-42 and the Douglass Ranch Pumphouse. Such appropriative right of exchange was initiated on and entitled to a priority date of August 31, 1987, at the rate of up to 1.0 c.f.s. Such exchange will operate subject to the following terms and conditions:

(a) Subject to the following subparagraph 11(b), the exchange cannot occur if and to the extent that senior water rights on the North Fork of the South Platte below the confluence with Elk Creek or on Elk Creek downstream of the Property have a valid call on such streams.

(b) In order to protect the minimum stream-flow right of the CWCB on Elk Creek in the amount of 5 c.f.s.:

- (1) The exchange may occur at any time during the months of May, June and July of each year except at such times as:
 - (a) the CWCB has caused the actual streamflow in Elk

Creek at the County highway bridge between Pine and Buffalo in the SE1/4, Section 27, T. 7 South, R. 71 West, N.M.P.M. ("Flow Point") to be measured; (b) such measured streamflow is less than 5.5 c.f.s.; and (c) the CWCB has placed a valid call on the exchange to prevent material injury to its senior minimum streamflow right. Any such call shall remain in effect until the Division Engineer or his designee makes a specific finding that the measured stream-flow is greater than 5.5 c.f.s.

- (2) The exchange may not occur during the months of August through April except at such times as (a) the Applicant has caused the actual streamflow in Elk Creek at the Flow Point to be measured; and (b) the Division Engineer or his designee makes a specific finding that such measured streamflow is and continues to be greater than 5.5 c.f.s.

(c) Water in the amount sought to be exchanged must be available for release or credit under the water rights described in paragraph 7.

(d) North Fork Associates and Mountain Mutual Reservoir Company shall, for the benefit of Applicant, release such amounts of water from storage, and/or credit the stream with such portions of the Guiraud 3T Ditch right, as are necessary to effectuate the exchange of up to 3.2 consumptive acre-feet per year. At Applicant's election, all or part of this exchange may be used to fill the Douglass Ranch Pond 1 at a time of year to be determined by Applicant, regardless of whether the Pond has previously filled under its own priority.

12. Regulation of Douglass Ranch Pond 1. In order to insure that the Douglass Ranch Pond 1 is properly operated and administered, the following shall apply:

(a) The Pond will be permitted to accumulate water only at such times and to the extent that either (i) an exchange is occurring under paragraph 11 above, or (ii) the Pond is in priority under its own priority.

(b) The Pond will be constructed so that specific pond levels can be maintained and water not entitled to be stored in the Pond can be released. A staff gauge correlated with a depth-area capacity table shall be installed for the Pond to permit proper determination of the amount of water in storage. The depth-area capacity relationships and "as constructed" documentation will be supplied by Applicant to any opposer requesting such data.

(c) Applicant will install and maintain a measuring device at or below Douglass Ranch Pond 1 at a location approved by the Division Engineer or local Water Commissioner to accurately measure the amount of augmentation water which is released from the Pond.

(d) The volume of water entitled to be stored in the Pond shall be adjusted, if necessary, to reflect evaporative losses occurring to assure that water is not stored out of priority without augmentation under this plan.

(e) Subject to the provisions of paragraph 27, 3.2 acre-feet of the actual capacity of the Pond shall be committed to this plan for augmentation, and 30,000 gallons (.09 acre-feet) shall be committed to fire protection uses on the Subdivision and the Lodge Parcel. This committed capacity shall not be allocated to any other plan for augmentation without prior judicial approval.

13. Releases from Storage. Releases required under this plan from Spinney Mountain Reservoir, Woodside Reservoir, Lower Sacramento Creek Reservoir No. 1, and/or Douglass Ranch Pond 1 shall be made at such times and may be aggregated as determined by the Division Engineer; provided, however, that with respect to releases to be made from Spinney Mountain Reservoir, Mountain Mutual Reservoir Company and/or the Division Engineer shall provide the City of Aurora, operator of Spinney Mountain Reservoir, at least 24 hours prior notice, during regular working hours Monday through Friday, of the required time and amount of such releases; and provided further, that releases from the Douglass Ranch Pond shall be made no more frequently than one aggregate release per month from April through October. Such releases shall be in the amounts required to replace the out-of-priority depletions described in paragraph 10 above and, with respect to releases of water rights owned by North Fork Associates or Mountain Mutual, to provide water for the exchange described in paragraph 11 above, and to replace transportation losses between (1) the historic point of diversion of the Guiraud 3T Ditch or the point of release from Spinney Mountain Reservoir, Woodside Reservoir and/or Lower Sacramento Creek Reservoir No. 1 and (2) the confluence of the North Fork and the mainstem of the South Platte River. Those transportation charges shall be made at the rate of 0.13% per mile of stream channel used. Whether any transportation credits are given shall be in the reasonable discretion of the State and Division Engineers, unless otherwise ordered by the Water Court. Such transportation charges shall not be assessed against Applicant's entitlement to 3.2 consumptive acre-feet of water as described in paragraph 10(a) above but shall be assessed against North Fork Associates and Mountain Mutual Water Company's remaining

water rights.

14. No Injury. The change of water rights and augmentation plan described herein are contemplated by law and if operated and administered in accordance with this decree will permit the Applicant to make up to 3.2 consumptive acre-feet of otherwise out-of-priority depletions without adversely affecting the owner or user of any vested water rights or decreed conditional water rights.

CONCLUSIONS OF LAW

15. Incorporation. Any of the above findings of fact which may be considered conclusions of law are incorporated herein.

16. Adjudication of Rights. Applicant is entitled to a decree for the water rights and conditional water rights described in paragraph 5 above and the appropriative right of exchange described in paragraph 11 above.

17. Administration. The State Engineer, Division Engineer, Water Division No. 1, and their representatives are required by C.R.S. §37-92-501, as amended, to administer this Plan for Augmentation in the manner and subject to the terms and conditions set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

18. Incorporation. Each of the foregoing findings of fact and conclusions of law are incorporated herein by reference and are to be considered a part of the decretal portion of this decree as though set forth in full.

19. Plan Approved. The above-described plan for augmentation is approved subject to the terms and conditions set forth herein. This plan shall not take effect until the Applicant has furnished evidence to the Division Engineer that it has completed its purchase of augmentation water as described in paragraph 7.

20. Change Approved. 0.113 of 1.866 c.f.s. out of the water right decreed to the Guiraud 3T Ditch is hereby changed as described in paragraph 9 above.

21. Accounting. Applicant will supply the following information to Mountain Mutual Reservoir Company and the Division Engineer on a monthly basis utilizing the accounting form attached

as Exhibit E, sheets 4 and 5, or such other forms as may be reasonably acceptable to the Division Engineer. Such forms shall include at least the following information:

(a) The calculation of depletions for each month utilizing the depletion assumptions set forth in paragraph 6 above; and

(b) The amount of water in storage and available for release from the Douglass Ranch Pond and the credits remaining from Applicant's entitlement to 3.2 acre-feet of consumptive use water from the rights described in paragraph 7 above.

22. Administration. The Applicant will assume responsibility for the operation and internal enforcement and regulation of this plan. Applicant may transfer such responsibility (a) to a homeowner's association or similar entity, with respect to the Subdivision, and (b) to the owner of the 35-acre Lodge Parcel, with respect to water uses occurring on that Parcel. Applicant shall promptly notify Mountain Mutual and the Division Engineer of any such transfer and the name, address, and telephone number of one person who may be contacted concerning the administration of each parcel. Restrictive covenants shall be created and recorded against both the Subdivision and the Lodge Parcel. Such covenants shall provide for compliance with this judgment and decree including the provisions for curtailment of water usage if the augmentation water available by virtue of shares of Mountain Mutual associated with the Subdivision and the Lodge Parcel, respectively, is less than the consumptive uses occurring on those parcels as determined in accordance with the following paragraph 6. The Applicant, homeowner's association, or other person or entity responsible for operation of the plan shall also have the power to and be responsible for enforcing any curtailment of water usage within the Property required hereunder. For the purposes of administration of the plan, the Subdivision and the Lodge Parcel shall be treated as separate entities and the entitlement of each to augmentation water shall be determined by the respective shares of Mountain Mutual Reservoir Company associated with each parcel. Applicant may transfer its whole or fractional shares in the Mountain Mutual Reservoir Company as follows: those shares associated with in-house use within the Subdivision may be transferred to the individual purchasers of Subdivision lots; those shares associated with evaporation from the Douglass Ranch Pond 1 may be transferred to a Subdivision homeowners' association; those shares associated with lawn and garden irrigation within the Subdivision may be transferred to a Subdivision homeowners' association or individual lot owners; those shares associated with all in-house, irrigation, and horse uses of

water on the Lodge Parcel may be transferred to the purchaser of that parcel. Ownership of shares associated with Pond evaporation and the responsibility for operation of the Pond shall include the responsibility to operate the Pond for the benefit of the Lodge Parcel to the extent that the Pond is required to offset depletions occurring on that Parcel.

23. Mountain Mutual. Mountain Mutual Reservoir Company shall assist Applicant in administering this plan and shall provide Applicant with the necessary information regarding the water rights committed to this plan and described in paragraph 7 above. The Applicant will provide Mountain Mutual Reservoir Company with the necessary information regarding the actual water uses under this augmentation plan for use in Mountain Mutual Reservoir Company's reports to the Division Engineer.

24. Permitted Uses. a. No irrigation shall occur on the Subdivision or the Lodge Parcel from November 1 through April 30 of each year.

b. The Subdivision and the Lodge Parcel, respectively, shall each be allowed any mix of the water uses described in paragraph 6 above and to change such mix from time to time, provided that the total annual out-of-priority depletions do not exceed the lesser of (a)(i) 2.88 acre-feet within the Subdivision, and (ii) 0.3 acre-feet within the Lodge Parcel; or (b) the amount of augmentation water actually available by virtue of the shares of Mountain Mutual Reservoir Company associated with the Subdivision and Lodge Parcel, respectively.

25. Curtailment. In the event water is not available under this plan to fully augment otherwise out-of-priority depletions associated with the Subdivision or the Lodge Parcel, water users within the Subdivision or Lodge Parcel, respectively, shall reduce their consumptive uses or acquire additional augmentation water acceptable to the Division Engineer in order that consumptive uses will not exceed the water available for augmentation.

26. State Engineer. The State Engineer shall (a) administer the plan for augmentation and exchange as set forth herein; (b) not curtail diversions by any of the Douglass Ranch Wells 1-42 or the Pumphouse Well or storage of water in the Douglass Ranch Pond 1 as long as the depletions from such diversions or storage are augmented as set forth in this plan; (c) issue well permits at such time as Applicant or its successors file completed permit applications, subject to the terms and conditions of this decree; and (d) curtail diversions from the wells or

storage in the Douglass Ranch Pond 1 at any time out-of-priority consumptive uses of the Property exceed the amount of augmentation water available under this plan.

27. Commitment. Applicant hereby commits the 3.2 consumptive acre-feet of water described in paragraph 7 above to this plan. However, if during the period of retained jurisdiction described in paragraph 30 below Applicant desires to reduce the amount of such water committed to the plan (because of a scale down of the Subdivision, reduction in anticipated lawn or garden area, or other reasons) it may move the Court to do so, provided that sufficient augmentation water remains dedicated to this plan to cover depletions from whatever portion of the Property has been final platted at that time. Such motion shall be sent to the Division Engineer, Mountain Mutual and all opposers herein. No other notice (e.g., publication in the resume) need be given. If no objections to the motion are filed in 15 days, the motion shall be granted. If objections are filed a hearing shall be held to determine if the motion should be granted. If the motion is granted, out-of-priority depletions in the Property shall be permitted only to the extent of such lessened commitment. The water so released from commitment under this plan may be sold, leased or otherwise transferred by Applicant to any person or entity and/or used in any manner permitted by law, including as augmentation water in other judicially approved augmentation plans; provided, however, the transportation losses borne by Mountain Mutual Reservoir Company shall not exceed those required under this augmentation plan.

It is also recognized that the Property will probably be developed in phases so that the entire 3.2 acre-feet of augmentation water will not be immediately required. Applicant may utilize any such water not needed to replace out-of-priority diversions actually occurring on the Property for any other lawful purpose provided: (1) any necessary judicial or administrative approvals are obtained for such interim use; and (2) prior notice is provided to each opposer.

28. Adjudication of Rights. Applicant is hereby awarded the conditional storage right for the Douglass Ranch Pond 1 and the absolute water rights for the Douglass Ranch Pumphouse described in paragraph 5 above and the appropriative right of exchange described in paragraph 11 above. An application for quadrennial finding of reasonable diligence with respect to the conditional water rights decreed to the Douglass Ranch Pond 1 shall be filed in June of 1992 and every fourth calendar year thereafter until a determination has been made that said water rights have become absolute.

29. Location and Use of Douglass Ranch Wells and Douglass Ranch Pumphouse.

(a) The Applicant or the owners of individual Subdivision lots shall apply to the State Engineer for a well permit for any well to be located on the Subdivision prior to constructing that well. The owner of the Lodge Parcel shall apply to the State Engineer for a well permit for the Douglass Ranch Pumphouse prior to using that well for non-exempt purposes under this augmentation plan.

(b) The Applicant may construct the Douglass Ranch Wells No. 1-42 at any point within the individual Subdivision lots which are described on Exhibit C, as such lot boundaries may change prior to final Subdivision approval by Jefferson County. The 600-foot spacing limit set forth in C.R.S. §37-90-137(2) may be waived by the individual owners of wells within the 600-foot radius of any proposed well or by a Subdivision homeowners' association acting in accordance with restrictive covenants authorizing such waiver.

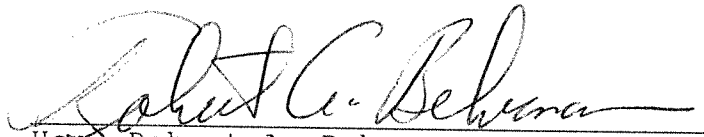
(c) Applicant may construct and operate any of the Douglass Ranch Wells No. 1-42 as alternate points of diversion for any other well in the event that two or more lots are served by a single well; provided, that the maximum allowed rate of flow of any one well shall be 15 g.p.m. regardless of the number of lots served unless otherwise approved by the State Engineer.

30. Measurement of Water Diversion, Storage, and Use. The Applicant shall install and maintain staff gauges and other measuring devices as required by the Division Engineer.

31. Retained Jurisdiction. Pursuant to C.R.S. §37-92-304(6), the Court will retain continuing jurisdiction of this case on the question of injury to the vested rights of others until five years from the date at which wells serving 25 Subdivision lots have been constructed and are in operation. Any aggrieved party may request at any time within such period a hearing before this Court for the purpose of modifying this decree because of injury to said party's water rights. Any such request shall be by means of a petition made in good faith stating with particularity the factual basis upon which it is asserted that injury has occurred. A copy of such petition shall be served on all of the parties hereto.

32. Filing. This amended judgment and decree shall be filed with the Water Clerk and a copy filed with the State Engineer and Division Engineer.

Dated this _____ day of JAN 23 1991, 1990.



Hon. Robert A. Behrman
Water Judge
Water Division No. 1