

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO

Case No. 88CW13

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

1-38
CONCERNING THE APPLICATION FOR WATER RIGHTS OF ROBERT
KESSLER IN PARK AND JEFFERSON COUNTIES

This matter having come before the Court on the Application for Conditional Water Rights and Approval of Plan for Augmentation, Including Change of Water Rights and Appropriative Right of Exchange of Robert Kessler ("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. Filing and Notice. The Application in this case was properly filed on January 29, 1988. All notices required by law have been given of 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.

2. Opposition. Statements of Opposition in this matter were timely filed by the City of Aurora ("Aurora") and The Henrylyn Irrigation District. The time for filing statements of opposition has now expired. This Judgment and Decree has been approved by Applicant and all of the opposers.

3. Proposed Development. Applicant owns approximately 35 acres located in Sections 6 and 7, 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 in three parcels, which are described in the attached Exhibit B. Water uses on each parcel are expected to include in-house use in single-family dwellings, 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 Kessler Wells No. 1 through 3, located as follows:

- 2
- A. Kessler Well No. 1 will be located on Parcel 1 at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 7 S., R. 71 W., 6th P.M., approximately 2,303 feet from the East section line and 125 feet from the North section line.
 - B. Kessler Well No. 2 will be located on Parcel 2 at a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T. 7 S., R. 71 W., 6th P.M., approximately 2,253 feet from the East section line and 440 feet from the South section line.
 - C. Kessler Well No. 3 will be located on Parcel 3 at a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T. 7 S., R. 71 W., 6th P.M., approximately 2,103 feet from the East section line and 935 feet from the South section line.

Each well will withdraw groundwater tributary to the South Platte River, at a depth up to 600 feet and a rate of flow up to 15 g.p.m. Each parcel may be served by an individual well or by a community well constructed to serve two or more lots.

5. Appropriation. The Applicant has made appropriations for the Kessler Wells 1-3 at the locations described in paragraph 4 above, as follows:

(a) Source: Groundwater tributary to the North Fork of the South Platte River.

(b) Depth of Wells: a maximum of 600 feet.

(c) Date of Appropriation: January 29, 1988.

(d) How Appropriation Initiated: by the formation of an intent to appropriate, completion of a survey and planning and engineering studies.

(e) Date Water Applied to Beneficial Use:
N/A.

(f) Amount: 15 g.p.m., conditional.

(g) Use and Proposed Use: Domestic, municipal, irrigation, recreation, fish propagation, stock watering, fire protection, augmentation, exchange, and all other beneficial uses.

(h) Location of Structures: The Applicant may construct the Kessler Wells 1-3 at any point within a 200-foot radius of the locations stated in paragraph 4 above.

(i) Alternate Point of Diversion: Applicant may utilize the Kessler Wells 1-3 as alternate points of diversion for each other. Two or more parcels on the Property may be served by shared community wells.

(j) Single Integrated System. The Kessler Wells No. 1-3 are part of a single integrated water system designated to provide a water supply to the Property. The three parcels on the Property may be developed in phases over a period of time depending on economics, market conditions, and other factors affecting the Property as a whole.

(k) Well Permits. The Applicant or his successors may apply to the State Engineer for well permits for the Kessler Wells 1-3 at such time as each parcel is ready to receive water service. The State Engineer shall issue permits for these wells upon proper application 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) In-house Use: 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 three parcels is estimated to be .094 acre-feet. Stream depletions from this use will be evenly distributed throughout the year.

(b) 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	.17
	<u>1.72</u>

- (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	.10
	<u>.36</u>

- (3) The Property will be allowed a total of 1,500 square feet of lawn area (an average of 500 square feet per parcel) or 7,500 square feet of garden area (an average of 2,500 square feet per parcel). A combination of lawns and gardens will be allowed, subject to the aggregate annual restriction on irrigation consumptive use on the Property of .06 acre-feet, to be determined in accordance with subparagraphs 6(b)(1) and (2).

(c) Horses: Each horse will require 0.0112 acre-feet per year, all of which will be deemed depleted. The Applicant may maintain up to 9 horses on the Property, for a maximum annual consumptive use of .10 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 entered into a

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purchase agreement with North Fork Associates and Mountain Mutual Reservoir Company ("Sellers") to purchase up to 0.254 consumptive acre-feet of water from the Sellers' water rights, to be represented by 8.1 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 0.254 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 NE $\frac{1}{4}$, 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 N $\frac{1}{4}$ 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, 1367
- 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.

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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 JT Ditch headgate to 0 c.f.s. Historically, water diverted through the Guiraud JT Ditch was used to irrigate 276.29 acres of hay meadows in Sections 9, 10 and 15, Township 11 South, Range 7S West, 6th P.M., Park County, Colorado. Past decrees have determined the average annual consumptive use under the Guiraud JT Ditch to be 1.5 acre-feet per acre. The owner of the lands historically irrigated by the 1.856 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 JT 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 E $\frac{1}{2}$, SW $\frac{1}{4}$, 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 NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 32 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$, 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) 88CW002
- C. Court: (1) Park County District Court;
(2) District Court, Water Division No. 1

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- 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 $\frac{1}{2}$ corner of Section 26, T. 6 South, Range 72 West, 6th P.M. bears North $52^{\circ}44'$ 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 Ponds 1 and 2.

(a) Applicant has also entered into an agreement with the owner of the Douglass Ranch Ponds 1 and 2 to utilize these Ponds as a source of augmentation water in this Plan and a place of storage of the water rights described in paragraph 7. These Ponds were conditionally decreed in Case No. 87CW148, Water Division No. 1, in the amount of 4.0 acre-feet and 2.31 acre-feet, respectively, at or within 200 feet of the following locations:

The centerline of the dam for Douglass Ranch Pond 1 will be 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 $4^{\circ}44'$ East, a distance of 1818 feet, more or less.

The centerline of the dam for Douglass Ranch Pond 2 will be located on an unnamed tributary of Elk Creek at a point whence the southwest corner of Section 5, Township 7 South, Range 71 West of the 6th Principal

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Meridian, bears South 9°45' West, a distance of 1921 feet, more or less.

Water will be stored in the Ponds either under their own priorities as decreed in Case No. 87CW148 or by exchange utilizing Applicant's interest in the water rights described in paragraph 7. Water so stored can then be used for augmentation purposes to offset out-of-priority depletions under this plan. 10

(b) Water may be stored in the Ponds under their own priorities only in accordance with the terms and conditions set forth in Case No. 87CW148.

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 .0070 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 or at the Douglass Ranch ponds 1-2, 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 0.254 acre-feet per year. By this plan for augmentation, Applicant will provide up to 0.254 acre-feet per year of replacement water to offset out-of-priority depletions to surface and groundwater tributary to the North Fork of the South Platte River. The out-of-priority depletions permitted under this plan will be limited to the lesser of 0.254 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 agreed to assign to Mountain Mutual Reservoir Company for Applicant's benefit and use in this plan, .0065 c.f.s. of the 1.866 c.f.s. of the Guiraud 3T Ditch priority above-described, plus .0005 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 0.254 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 0.141 acre-feet per year at the historic rate of .046 c.f.s. per consumptive acre-foot per year, approximately 0.113 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 C.

(c) Mountain Mutual Reservoir Company will make available to the Division Engineer or his designated agent, up to 0.254 acre-feet of replacement water from the sources described in paragraph 7 to: (1) fill, by exchange, the Douglass Ranch Ponds 1 and 2 regardless of whether the Ponds have previously filled under their own priorities; and (2) offset cut-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.

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(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 Ponds 1 or 2. Augmentation water shall be provided by releases from the Douglass Ranch Ponds 1 or 2 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 on the Property 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 Ponds (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 Ponds (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 CWCBS and the Division Engineer of the time and location of such releases prior to their occurrence.

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(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 Ponds 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 the three parcels on the Property until August 1, 1989, prior to the first filling of the Ponds. 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 0.254 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 Douglass Ranch Ponds 1 and 2 and Applicant's points of direct-flow diversion at the Kessler Wells 1-3. Such appropriative right of exchange was initiated on and entitled to a priority date of January 29, 1988, at the rate of up to 0.1 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 SE $\frac{1}{4}$, 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 streamflow is greater than 5.5 c.f.s.

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- (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 0.254 consumptive acre-feet per year. At Applicant's election, all or part of this exchange may be used to fill the Douglass Ranch Ponds 1 and 2 at a time of year to be determined by Applicant, regardless of whether the Ponds have previously filled under their own priorities.

12. Commitment of Douglass Ranch Ponds 1 and 2. Subject to the provisions of paragraph 27, 0.254 acre-feet of the actual capacity of the Ponds shall be committed to this plan for augmentation. 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 Ponds 1 and 2 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 Ponds 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

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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 0.254 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 0.254 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 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

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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. 16

20. Change Approved. .0070 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 D, 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 Ponds and the credits remaining from Applicant's entitlement to 0.254 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 to individual purchasers of the parcels of the Property or a homeowner's association or similar entity. 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 the Property. 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 is less than the consumptive uses occurring on the Property. 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. Applicant may transfer its whole or fractional shares in the Mountain Mutual Reservoir Company to the individual purchasers of parcels of the Property or a Subdivision homeowners' association. The owner of the Douglass Ranch Ponds shall have the responsibility to operate the Ponds for the benefit of the Property to the extent that the Ponds are required to offset depletions occurring on the Property.

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 Property from November 1 through April 30 of each year.

b. The Property shall 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) 0.254 acre-feet on the Property; or (b) the amount of augmentation water actually available under this plan.

25. Curtailment. In the event water is not available under this plan to fully augment otherwise out-of-priority depletions associated with the Property, water users within the Property 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 Kessler Wells 1-3 as long as the depletions from such diversions 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 at any time out-of-priority consumptive uses of the Property exceed the amount of augmentation water available under this plan. Well permits for the Kessler Wells 1-3 may require that no use of

groundwater may occur until at least 0.254 acre-feet of water has been stored once in the Douglass Ranch Ponds 1 or 2 for the benefit of Applicant under this plan; provided, however, that permits allowing in-house uses only until August 1, 1989 may be issued to serve the three parcels on the Property prior to the first filling of the Ponds.

27. Commitment. Applicant hereby commits the 0.254 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 development plans for the Property, reduction in anticipated lawn or garden area or number of horses to be kept on the Property, 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 0.254 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 water rights for the Kessler Wells 1-3 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

RECEIPTION NO. 98115766

Kessler Wells 1-3 shall be filed in November 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 Kessler Wells 1-3.

(a) The Applicant or the owners of individual wells shall apply to the State Engineer for a well permit for any well to be located on the Property prior to constructing that well.

(b) The Applicant may construct the Kessler Wells 1-3 within 200 feet of the locations described in paragraph 4. 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 homeowners' association acting in accordance with restrictive covenants authorizing such waiver.

(c) Applicant may construct and operate any of the Kessler Wells 1-3 as alternate points of diversion for any other well in the event that two or more parcels are served by a single well.

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

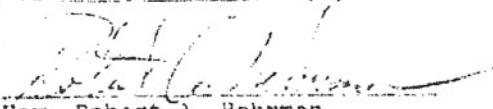
31. Retained Jurisdiction. Pursuant to C.R.S. §37-92-304(6), the Court will retain continuing jurisdiction of this case on the question of injury to the vested rights of others until five years from the date at which wells serving two of the three parcels on the Property have been constructed and are 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 judgment and decree shall be filed with the Water Clerk and a copy filed with the State Engineer and Division Engineer.

RECEIPT NO. 08115966

Case No. 88CW13
Application of
Robert Kessler

Dated this 22nd day of November, 1988.


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

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Certified to be a full, true and correct
copy of the original in my custody.

Dated November 23, 1988
Gauris Pawlak
CLERK, WATER DIVISION 1
STATE OF COLORADO



RECEPTION NO. 88115966

ACCEPTANCE:

The terms and conditions of this judgment and decree are accepted by North Fork Associates and Mountain Mutual Reservoir Company, which agree to be bound thereby.

NORTH FORK ASSOCIATES

MOUNTAIN MUTUAL RESERVOIR
COMPANY

By: *Robert Kessler*

By: *Robert Kessler*

CBW512D.

RECEPTION NO. 88115966

All that part of the NW 1/4 of the NE 1/4 of Section 7, Township 7 South, Range 71 West of the 6th P.M., and all that part of the SW 1/4 of the SE 1/4 and the NW 1/4 of the SE 1/4 of Section 6, Township 7 South, Range 71 West of the 6th P.M., described as follows:

From the TRUE POINT OF BEGINNING at the Northwest corner of the SW 1/4 of the SE 1/4 of Section 6, Township 7 South, Range 71 West of the 6th P.M.;

thence South $0^{\circ}20'$ East a distance of 1873.35 feet, more or less, to the Northwest corner of a tract of land described as Parcel A in an instrument recorded in Book 2307 at Page 472 of the Jefferson County Records;

thence North $86^{\circ}10'$ East a distance of 350 feet;

thence North $27^{\circ}30'$ East a distance of 770 feet;

thence North $7^{\circ}10'$ East a distance of 1230 feet;

thence South $86^{\circ}10'$ West parallel to the North line of the SW 1/4 of the SE 1/4 of said Section 6 a distance 900 feet, more or less, to the POINT OF BEGINNING;

AND TOGETHER WITH the West 250 feet of the NW 1/4 of the SE 1/4 of said Section 6 lying South of the Southerly right-of-way line of U.S.

Highway 285 as described in Book 1039 at Page 104 of the Jefferson County Records;

EXCEPTING therefrom any portion thereof lying within the road right-of-way as described in Book 2307 at Page 472 and being generally along the Easterly line of said property;

BUT TOGETHER WITH a 50-foot wide non-exclusive easement for ingress and egress the centerline of which is described as follows:

Beginning at the center of Section 7, Township 7 South, Range 71 West of the 6th P.M.;

thence South $0^{\circ}20'$ East, a distance of 686.07 feet;

thence North $86^{\circ}41'$ East a distance of 702.10 feet to the TRUE POINT OF BEGINNING of the center line of said 50 foot easement;

thence along said center line the following courses and distances;

thence North $3^{\circ}20'$ West a distance of 350 feet;

thence North $10^{\circ}20'$ East, a distance of 350 feet;

thence North 12° West a distance of 636 feet;

thence North $11^{\circ}30'$ West, a distance of 636 feet;

thence North 11° West, a distance of 318 feet;

thence North $10^{\circ}30'$ West a distance of 5.8 feet;

thence North $27^{\circ}30'$ East a distance of 770 feet;

thence North $7^{\circ}10'$ East a distance of 1255 feet;

thence South $86^{\circ}10'$ West a distance of 675 feet;

thence North $0^{\circ}20'$ West a distance of 574 feet, more or less, to a point on the South right of way line of U.S. Highway No. 285.

LEGAL DESCRIPTION-PARCEL 1

A parcel of land located in the Northwest of the Northeast of Section 7, Township 7 South, Range 71 West of the 6th. P.M., and the Southwest of the Southeast of Section 6, Township 7 South, Range 71 West of the 6th. P.M., County of Jefferson, State of Colorado, more particularly described as follows:

BEGINNING at the North & corner of said Section 7; thence South $00^{\circ}22'12''$ East, along the Westerly line of said the NE $\frac{1}{4}$, a distance of 631.25 feet; thence North $86^{\circ}10'$ East, a distance of 350.00 feet; thence North $30^{\circ}23'36''$ East, a distance of 691.75 feet; thence North $07^{\circ}47'40''$ East, a distance of 160.00 feet; thence North $89^{\circ}00'32''$ West, a distance of 728.36 feet, more or less, to the Westerly line of said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 6; thence South $01^{\circ}10'32''$ East, along said Westerly line, a distance of 160.00 feet, to the Point Of Beginning.

LEGAL DESCRIPTION-PARCEL 2

A parcel of land located in the Southwest of the Southeast of Section 6, Township 7 South, Range 71 West of the 6th. P.M., County of Jefferson, State of Colorado, more particularly described as follows:

BEGINNING at a point on the Westerly line of said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, whence the South & corner of said Section 6 bears South $01^{\circ}10'32''$ East, a distance of 160.00 feet; thence North $01^{\circ}10'32''$ West, along said Westerly line, a distance of 380.00 feet; thence South $89^{\circ}47'33''$ East, a distance of 820.85 feet; thence South $07^{\circ}47'40''$ West, a distance of 395.00 feet; thence North $89^{\circ}00'32''$ West, a distance of 728.36 feet, to the Point of Beginning.

LEGAL DESCRIPTION-PARCEL 3

A parcel of land located in the Southeast of Section 6, Township 7 South, Range 71 West of the 6th. P.M., County of Jefferson, State of Colorado, more particularly described as follows:

BEGINNING at a point on the Westerly line of said Southeast, whence the South & corner of said Section 6 bears South $01^{\circ}10'32''$ East, a distance of 740.00 feet; thence North $01^{\circ}10'32''$ West, along said Westerly line, a distance of 778.01 feet, more or less, to the Southerly right of way line of U.S. Highway No. 285; thence North $73^{\circ}36'04''$ East, along said right of way line, a distance of 135.06 feet; thence North $65^{\circ}41'30''$ East, along said right of way line, a distance of 115.15 feet; thence South $01^{\circ}10'32''$ East, a distance of 569.63 feet, more or less, to the Northerly line of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 6; thence North $89^{\circ}45'26''$ East, along said Northerly line, a distance of 650.00 feet; thence South $07^{\circ}47'40''$ East, a distance of 508.41 feet; thence North $89^{\circ}47'33''$ West, a distance of 820.85 feet, to the Point Of Beginning.

RECEPTION NO. 80115966

EXHIBIT B

LEGAL DESCRIPTION-PARCEL 1

A parcel of land located in the Northwest of the Northeast of Section 7, Township 7 South, Range 71 West of the 6th. P.M., and the Southwest of the Southeast of Section 6, Township 7 South, Range 71 West of the 6th. P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at the North E corner of said Section 7; thence South $00^{\circ}22'12''$ East, along the Westerly line of said Section 7, a distance of 631.25 feet; thence North $85^{\circ}10'$ East, a distance of 350.00 feet; thence North $30^{\circ}23'36''$ East, a distance of 691.75 feet; thence North $07^{\circ}47'40''$ East, a distance of 160.00 feet; thence North $89^{\circ}00'32''$ West, a distance of 728.36 feet, more or less, to the Westerly line of said SW of the SE of said Section 6; thence South $01^{\circ}10'32''$ East, along said Westerly line, a distance of 160.00 feet, to the Point of Beginning.

LEGAL DESCRIPTION-PARCEL 2

A parcel of land located in the Southwest of the Southeast of Section 6, Township 7 South, Range 71 West of the 6th. P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at a point on the Westerly line of said SW of the SE, whence the South E corner of said Section 6 bears South $01^{\circ}10'32''$ East, a distance of 160.00 feet; thence North $01^{\circ}10'32''$ West, along said Westerly line, a distance of 300.00 feet; thence South $89^{\circ}47'33''$ East, a distance of 820.85 feet; thence South $07^{\circ}47'40''$ West, a distance of 393.00 feet; thence North $89^{\circ}00'32''$ West, a distance of 728.36 feet, to the Point of Beginning.

LEGAL DESCRIPTION-PARCEL 3

A parcel of land located in the Southeast of Section 6, Township 7 South, Range 71 West of the 6th. P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at a point on the Westerly line of said Southeast, whence the South E corner of said Section 6 bears North $01^{\circ}10'32''$ East, a distance of 740.00 feet; thence North $01^{\circ}10'32''$ West, along said Westerly line, a distance of 378.81 feet, more or less, to the Southerly right of way line of U.S. Highway No. 285; thence North $73^{\circ}34'04''$ East, along said right of way line, a distance of 159.06 feet; thence North $65^{\circ}41'30''$ East, along said right of way line, a distance of 107.45 feet; thence South $01^{\circ}10'32''$ East, a distance of 569.63 feet, more or less, to the Northerly line of the SW of the SE of said Section 6; thence North $89^{\circ}45'26''$ East, along said Northerly line, a distance of 650.00 feet; thence South $07^{\circ}47'40''$ East, a distance of 508.41 feet; thence North $89^{\circ}47'33''$ West, a distance of 820.85 feet, to the Point of Beginning.

RECEPTION NO 88115266

TRIBUTATION OF GOIRAUD 3-T WATER
IN PLANS FOR AUGMENTATION (PFA)
September 1987

Decreed Plans for Augmentation

Decree Date	Division 1 Case Number	Names of Application & Development	Decreed to PFA (CFS)	Surplus (CFS)
09/22/1983	W-6353-72	Mountain W&S Dist. J. T. McDowell & Sons	0.500	0.500(2)
12/03/1972	W-7440	Hartsel Ranch Corp. J. T. McDowell & Sons	2.000	0
11/11/1974	W-7466	Woodside Park Assoc., J. T. McDowell & Sons; Woodside Park	1.000	0
03/12/1975	W-7389	Parkview Associates Ltd., Parkview	0.330	0
03/12/1975	W-7590	Arnold C. Earns; Ravenswood	0.035	0.005
03/16/1975	W-7610	Beaver Ridge, Ltd. James T. McDowell; Beaver Ridge Recreation Village	1.000	0
07/19/1975	W-7785-74	Venture 73 Partnership J. T. McDowell & Sons; Venture 73 Subdivision	0.080	0
12/02/1975	W-7784-74	L. E. Development Co., J. T. McDowell & Sons	0.460	0.770
03/08/1976	W-7742-74	T-R Development Corp., Valley of the Sun	0.710	0
07/29/1976	W-8107-75	Elkhorn Ranch Co., J. T. McDowell & Sons; Elkhorn Ranch	0.750	0
03/10/1977	W-8259-76	Elen M. Brockman, Donald T. Grice, William L. Arren, James E. Mueller & Gerald J. Pylgaa; Piano Meadows	0.074	0

RECEPTION NO. 88115966

ABOLITION OF GUARANTY 3-T WATER
IN PLANS FOR AUGMENTATION (PFA)

September 1987

(Contd.)

Decreed Plans for Augmentation

<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Application & Development</u>	<u>Decreed to PFA (CFS)</u>	<u>Surplus (CFS)</u>
08/04/1977	W-8109-75	Western Union Realty Corp.; Western Union Ranch	3.500	0
04/11/1978	W-8625-77	F. B. Howes, Jr., D/S/A S & H Construction Co.; Broken Wheel Village	0.130	0
05/15/1978	W-8568-77	Chatfield East Development Co.	0.396	0
Dismissed	W-8572-77	Warm Springs Ranch	0.0	1.500(3)
05/17/1978	W-8389-76	Widdowfield & Parkview Assoc. Ltd.; Widdowfield Subdivision	0.170	0
08/22/1978	W-8574-77	Richard R. Helmick, J. T. McDowell & Sons; Wildwood Recreational Village	1.250	0
12/07/1978	W-8648-77	Kenneth E. Winchell, J. T. McDowell & Sons	1.048	0.690(9)
12/07/1978	W-8668-77	Thomas L. Lebonis, Roberta J. Debonis, and Venture 73 Partnership	0.170	0
01/16/1979	W-8343-76	J. T. McDowell & Sons	1.012(1)	0
05/10/1979	W-8770-77	Woodside Ltd.	- (2)	0
07/03/1979	W-9358-78	Kenneth E. Barber, William W. Poleson, J. T. McDowell & Sons; Silverheels Ranch	0.500	0
03/25/1980	W-8480-77	Fairplay-Four Mile Creek Ltd.; Foxtail Pines	0.640	0

EXHIBIT C

Case No. 880413

TABLETION OF GUIRAUD S-T WATER
IN PLANS FOR AUGMENTATION (PFA)
September 1987
(Contd.)

Decreed Plans for Augmentation

<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Application & Development</u>	<u>Decreed to PFA (CFS)</u>	<u>Surplus (CFS)</u>
08/11/1980	79-CW-163	William W. Poleson; Michigan Hill Ranch	0.490	0
04/17/1981	80-CW-131	Thomas L. Boknis, Robert J. Fabonis, and Venture 73 Partnership; Spruce Hill	0.0(4)	0
12/02/1981	80-CW-194	Frank and Jean Ann Leach; Adventure Placer & Key Placer	0.170	0
06/15/1981	80-CW-195 (79-CW-163)	Melba Farr; Sun Mountain	0.130(6)	0
10/04/1983	81-CW-129	Woodside Park 5 & 6 Homeowners Association, North Fork Associates, Mountain Mutual Res. Co., Woodside Park	0.0(3)	0
TOTALS FROM DECREEED AND PLANS			16.535	3.465

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RECEPTION NO. 88117946

RESOLUTION OF GUINARD 3-T RATE
IN PLANS FOR AUGMENTATION (PFA)
March 1988

Plans for Augmentation Based on
North Fork Associates' 1.866 cfs (3) (2)

<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 (CFS)</u>
03/29/1980	03/02/1982	80CW050	North Fork Associates, Mountain Mutual Res. Co., Burland Meadows, Ltd.; Burland Meadows	.205
04/30/1981	06/09/1983	81CW144	North Fork Associates, Mountain Mutual Res. Co., Will-O-Wisp; Will-O-Wisp P.U.D.	.467
04/30/1981		81CW145	North Fork Associates, Mountain Mutual Res. Co., Crystal Lake Resort Properties; Pine Valley North and Pine Valley South Subdivision	.020
07/01/1981	05/25/1983	81CW212	North Fork Associates, Mountain Mutual Res. Co., Wagon Tongue Company; Wagon Tongue Subdivision	(10)
08/31/1981	05/23/1983	81CW282	North Fork Associates, Mountain Mutual Res. Co., David Hall; Golden Hill Estates	.024
05/27/1983	12/29/1983	83CW124	North Fork Associates, Mountain Mutual Res. Co., Woodside Park 5 and 6 Homeowners Association; Woodside Park Units 5 and 6	.010
12/27/1983	12/22/1984	83CW023	North Fork Associates, Mountain Mutual Res. Co., Raven's Subdivision	.001

EXHIBIT C
TABULATION OF GUIRAUD 3-T WATER
IN PLANS FOR AUGMENTATION (PTA)
March 1988

Case No. 85CN13

Plans for Augmentation Based on
North Fork Associates' 1.866 cfs (3) (8)

28

<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 (CFS)</u>
04/26/1985	04/29/1987	85CN110	North Fork Associates, Mountain Mutual Res. Co., Camp ID-BA-BA-JZ Assn.	.058
09/30/1985	12/24/1986	85CN254	Freedonia Company, North Fork Associates, Mountain Mutual Res. Co.; Freedonia Ranch	.009
Substitute Water Supply Plan			Tranquil Acres Water Supply, Inc., North Fork Associates	.042
08/28/1986(7)	12/04/1987	85CN126	Muiredale Ranch Resort, Inc.	.052
08/28/1987 12/30/1987(7)	In Process	85CN148	Douglass Ranch Venture, Inc.	.138
01/ /1988	In Process	85CN013	Robert Kessler	0.007
03/ /1988	In Process		Jeff. Co. Sch. Dist. R-1 North Fork Associates Mountain Mutual Res. Co.	0.034
TOTAL OF CURRENT (MARCH 1988) NORTH FORK ASSOCIATES' OBLIGATIONS TO PLANS FOR AUGMENTATION				1.067
SURPLUS FROM NORTH FORK ASSOCIATES' OWNERSHIP OF 1.866 CFS				0.799

FOOTNOTES FOR EXHIBIT B

Repealed Plans for Augmentation

- (1) Due to an error in estimating the area irrigated by the Guiraud 3T Ditch, 1.011 cfs was abandoned.
- (2) Depletions were covered by the 1.0 cfs of Guiraud 3T right in Case No. W-7466.
- (3) The right for 1.500 cfs was acquired by North Fork Associates from Warm Springs Ranch. W-8572-77 was dismissed by stipulation.
- (4) Case No. 85CN131 was an application for amendment to Case No. W-8668-77, involving no additional use of Guiraud 3T water.

RECEPTION NO. 86115966

EXHIBIT C
TABULATION OF GUIRAUD J-T WATER
IN PLANS FOR AUGMENTATION (PPA)
March 1968

Case No. 88CW13

Plans for Augmentation Based on
North Fork Associates' 1.866 cfs (3)(8)

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FOOTNOTES FOR EXHIBIT A (Cont'd)

- (5) Case No. 81CW129 was an application to modify the uses of water decreed in Case Nos. W-7466 and W-8770-77. An additional use of Guiraud JT water is involved. Also, none of the 1,300 cfs of North Fork Associates' ownership of Guiraud JT water is involved.
- (6) Applicant purchased 0.13 cfs out of 0.30 cfs surplus in Case No. 79CW163.
- (7) Application amendment date.
- (8) The right for 0.366 cfs of the 0.50 cfs surplus Guiraud JT water right in W-6355 was acquired by Agreement by North Fork Associates from Mountain Water and Sanitation District.
- (9) Ownership successor to W-8648-77, i.e., Theodore Sigan, sold the 0.470 cfs surplus (10.25 ac-ft CU) plus 0.22 cfs (4.75 ac-ft CU) from the augmentation plan water to North Fork Associates Managing Partners. The 0.22 cfs may be subject to approval by the Water Court.
- (10) Mountain Mutual Reservoir Company's water rights have been withdrawn from Case No. 81CW212.

RECEPTION NO. 88115966

EXHIBIT C

CURRENT OBLIGATIONS AGAINST 80 ACRES-PEET ANNUALLY
AVAILABLE FROM SPINNEY MOUNTAIN RESERVOIR
(March 1988)

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Application & Development</u>	<u>Amount of Obligation Ac-Ft Per Year</u>
06/22/1977	05/13/1980 08/30/1985	W-8564-77	N.D. Properties 1978, Ltd.; Conifer Center	2.49
03/29/1980	05/02/1982	80CW050	North Fork Associates, Mountain Mutual Res. Co., Burland Meadows Ltd.; Burland Meadows	3.50
04/20/1981	10/04/1983	81CW129	Woodside Park 5 & 6 Homeowners Association, North Fork Associates, Mountain Mutual Res. Co., Woodside Park Unit One Homeowners' Association, Inc., Woodside Park Homeowners' Association Units 2, 3 and 4; Woodside Park	4.00
04/30/1981	06/29/1983	81CW144	North Fork Associates, Mountain Mutual Res. Co., Will-O-Wisp; Will-O-Wisp P.U.D.	8.19
04/30/1981		81CW145	North Fork Associates, Mountain Mutual Res. Co., Crystal Lake Resort Properties; Pine Valley North and Pine Valley South Subdivisions	0.55
07/01/1981	05/25/1983	81CW212	North Fork Associates, Mountain Mutual Res. Co., Wagon Tongue Company; Wagon Tongue Subdivision	(c)
08/31/1981	05/13/1983	81CW282	North Fork Associates, Mountain Mutual Res. Co., David Hall; Golden Hill Estates	0.73

RECEPTION NO. 88115966

EXHIBIT C (Contd.)
(March 1988)

Case No. 88CW13

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Application & Development</u>	<u>Amount of Obligation Ac-Ft Per Year</u>
12/27/1983	12/22/1984	83CW323	North Fork Associates, Mountain Mutual Res. Co., Raven's Subdivision; Raven's Subdivision	0.04
04/26/1985	Pending	85CW110	North Fork Associates, Mountain Mutual Res. Co., Camp ID-RA-EA-JE Assn.	1.48
08/30/1985	12/24/1986	85CW234	Freedonia Company, North Fork Associates and Mountain Mutual Res. Co., Freedonia Ranch	0.146
01/30/1986	12/24/1986	86CW021	Tiny Town Investment Corp. 285 Business Center	4.00
Substitute Water Supply Plan			Tranquil Acres Water Supply, Inc., North Fork Associates	1.09(a)
08/28/1986(b)	12/04/1987	85CW326	Mooredale Ranch Resort, Inc.	1.24
12/31/1986	03/15/1988	86CW372	Pete C. Kuyper	15.00
08/28/1987 12/30/1987(b)	In Progress	87CW148	Douglass Ranch Venture, Inc.	0.933
10/30/1987	In Process	87CW200	Mount in WIS District	3.000
01/ /1988	In Process	88CW013	Robert Kessler	0.113
03/ /1988	In Process		Jeff. Co. Sch. Dist. R-1 North Fork Associates Mountain Mutual Res. Co.	0.331
Sub-Total of deliveries to points of replacement				46.833
Transportation charges reserved on above and future obligations				5.000
Evaporation losses at Lower Sacramento Creek Reservoir				<u>1.600</u>
TOTAL OBLIGATIONS AGAINST MOUNTAIN MUTUAL RESERVOIR COMPANY'S				
DES OF 30 ACRE-FEET PER YEAR FROM SPIRNEY MOUNTAIN RESERVOIR				53.433

(a) Includes Transportation Charges

(b) Application Amendment Date

(c) Mountain Mutual Reservoir Company water rights have been withdrawn from Case No. 81CW212

RECEPTION NO. 88115966

APR 22 1968

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RECEPTION NO. B8115966

APR 11 2, 20 10 MAY 21, 20

[illegible]

32

14426 SALTWATER CREEK RESERVOIR RD, 102200008
NORTH WIND April 1, 19__ to March 31, 19__
KYE-FLOR

EXHIBIT D
Page 2 of 6

Lower Sacramento Creek Railroad No. 1 Running

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Storage At Beginning Of Month	Storage At End Of Month	Total Storage Released (Gross)	Storage by GTR Right	Storage Released	Firm Charge	Award Stored	6-7	Stored Units	Total Net Losses	MISC Storage at Beginning Of Month	MISC Award of Release & Net Loss If \$50,	MISC Per Mileage Per Car Load	MISC Charges On Storage	MISC Box Cars At End Of Month

64448 278
X (20-3)
X 252,
64406 278
X (25).

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WOODSIDE RESERVOIR OPERATIONS
WATER YEAR April 1, 19__ to March 31, 19__

EXHIBIT D
Sheet 3 of 6

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
					Stored by Exchange			
Month	Storage At Beginning Of Month	Storage At End of Month	Releases For Depletions	Total Net Gain In Storage 2 - 1 + 3	Storage Releases	Transpor- tation Charges	Amount Stored 5 - 6	Net Amount Stored Under Own Right 4 - 7
April								
May								
June								
July								
August								
September								
October								
November								
December								
January								
February								
March								
TOTALS								

RECEPTION NO. 88113946

Reporting Form For
Calculation of Monthly Depletions

1. Single-Family Residences
Constructed and Occupied

_____ (a)
x 0.00262 af/month (b)
= _____ af/month (c)

2. Lawn Irrigation

Total Square Footage Irrigated _____ s.f. (a)
x 43560 (b)
= _____ acres (c)

Lawn Consumptive Use:

May 0.19 x 2c = _____ af (d)
June 0.50 x 2c = _____ af (e)
July 0.29 x 2c = _____ af (f)
Aug 0.29 x 2c = _____ af (g)
Sep 0.28 x 2c = _____ af (h)
Oct 0.17 x 2c = _____ af (i)

3. Garden Irrigation

Total Square Footage Irrigated _____ s.f. (a)
x 43560 (b)
= _____ acres (c)

Garden Consumptive Use:

June 0.10 x 3c = _____ af (d)
July 0.16 x 3c = _____ af (e)
Aug 0.10 x 3c = _____ af (f)

4. Horses

Number of Horses Stabled at
Project

(a)

x 0.000934

(b)

Monthly Depletion

= _____ af

(c)

5. Douglass Ponds

These ponds are to be administered with the following evaporation charges in feet.

Nov-Mar	0.33 (aggregate)
Apr	0.15
May	0.16
June	0.19
July	0.22
Aug	0.21
Sep	0.13
Oct	<u>0.02</u>
Total	1.50 feet

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EXHIBIT D
 Sheet 5 of 6
 Kessler Project
 Case No. 89-CW-13

Summary of Monthly Depletions and Replacements in Acre-feet

DEPLETIONS						REPLACEMENTS					ELK CREEK		STORAGE			
Month	Single Family Reaches	Lawn Irrig	Garden Irrig	Houses	Total Depltns	In Priority Depltns	From Quiraud JT	From MMC Reservoir(s)	From Douglass Ponds	Total	Flow CFS	Date	A Stor at Beg of Mon	B Stor at End of Mon	C Releases for Depltns	D Total Net Gain in Stor B-MC
Jan	1c	0	0	4c												
Feb	1c	0	0	4c												
Mar	1c	0	0	4c												
Apr	1c	0	0	4c												
May	1c	2d	0	4c												
June	1c	2e	3d	4c												
July	1c	2f	3e	4c												
Aug	1c	2g	3f	4c												
Sep	1c	2h	0	4c												
Oct	1c	2i	0	4c												
Nov	1c	0	0	4c												
Dec	1c	0	0	4c												
Total																

RECEPTION NO. 08115966

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LEGEND
 A Boundary
 1911.01 14 1/2 in. scale
 at 2175, 4.0 LTR

FOR TRANSFERRED CHARGE
 Section 1000 87-0-118
 Section 1000 88-0-118
 All Creek Boundary Section 80-0-0

GENERAL DESCRIPTION

From
 Section 1000, 87-0-118
 Section 1000, 88-0-118

To
 Section 1000, 87-0-118
 Section 1000, 88-0-118

Section for Property Description

From
 Section 1000, 87-0-118
 Section 1000, 88-0-118

To
 Section 1000, 87-0-118
 Section 1000, 88-0-118

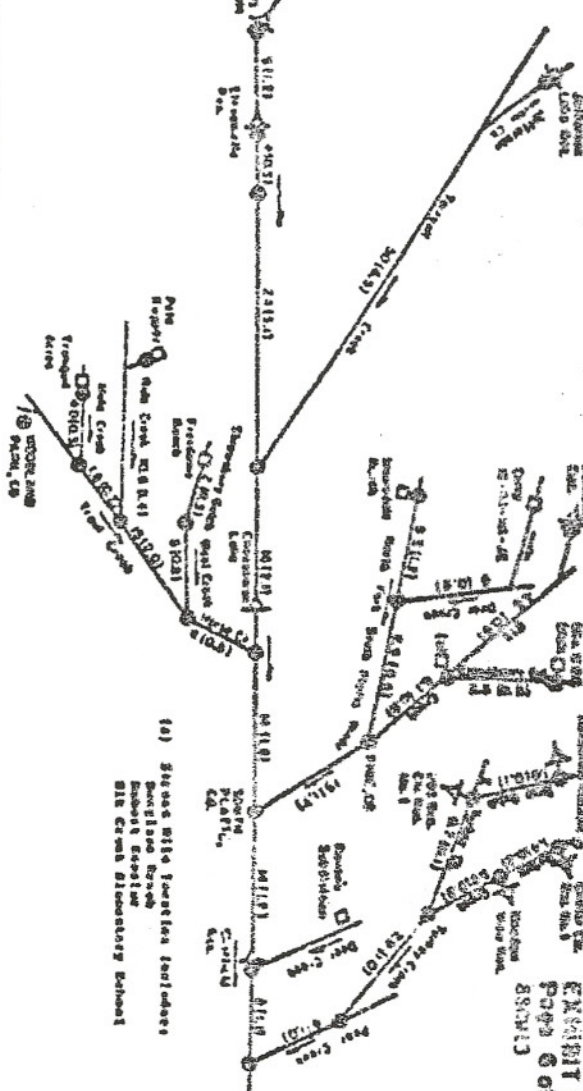
Charge on Water

10.00
 0.00

Charge (Credit)
 Section 1000
 Section 1000
 Section 1000

Expenditure of State
 Subordinate Dept:
 8/17/07
 2/15/08
 4/11/09

Working Conditions, Inc.
 CONTRACTING ENGINEERS
 2000 10th Street, N.W.
 Grand Rapids, Michigan 49503



ENCLOSURE
 Page 6 of 6
 88013

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LEGEND

▲ Railroad

● 15 mi. to nearest rail
at 0117, 4017, 4117

□ Project

SEE TRACKS FOR FURTHER DETAILS
Boulevard Route 8-CR-101
Robert's Road 88-CR-013
Silt Creek 88-CR-013

STATION LOCATIONS

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

STATION FOR FURTHER INFORMATION

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

Station
Boulevard Route 88-CR-101
Boulevard Route 88-CR-101

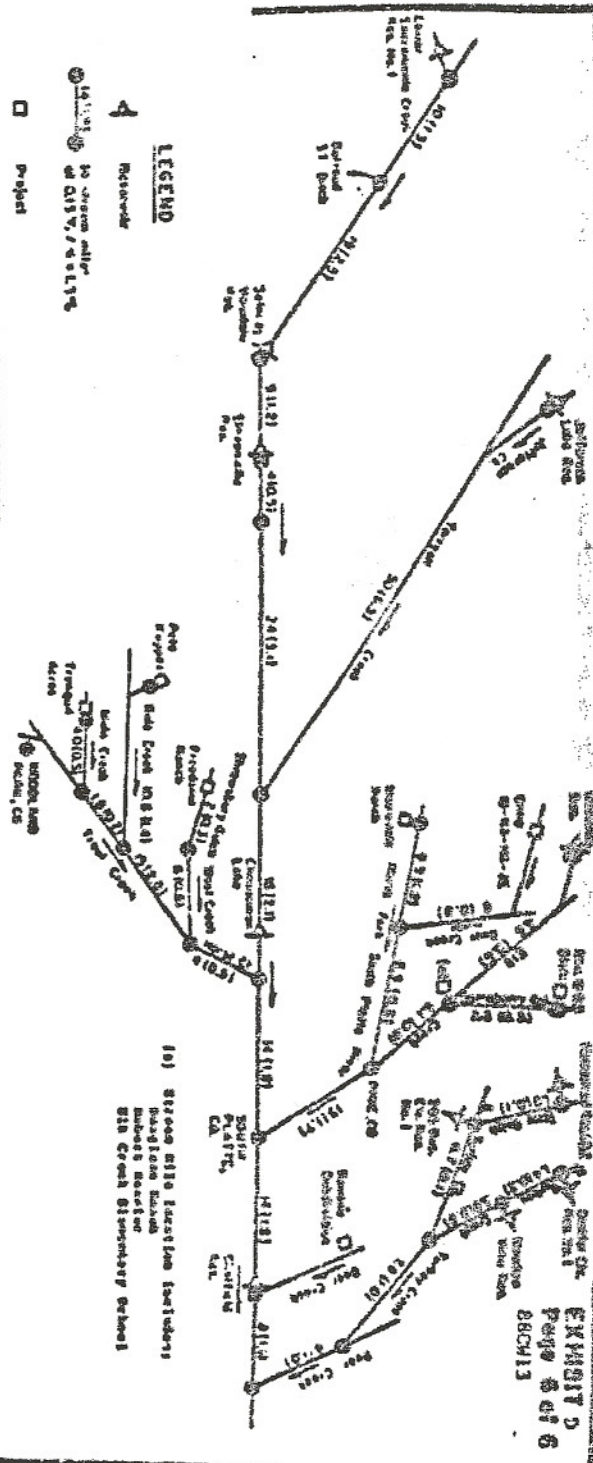


EXHIBIT D
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