

Recorded at 10:30 o'clock A M. May 6, 1980

Reception No. 285928 Constance Saul Park Co. Recorder

BOOK 310-PAGE 391

Revised Mar 31, 1980 10:30 o'clock A M.  
Reception No. 285928  
Recorder, Park County

BOOK 303-PAGE 822

FILED DISTRICT COURT  
WELLS COUNTY  
CONSTANCE SAUL

MAR 25 8 44 AM '80

HARRY H. CORNELL  
CLERK

IN THE DISTRICT COURT IN AND FOR  
WATER DIVISION NO. 1

STATE OF COLORADO

Case No. W-8480-77

IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS FOR FAIRPLAY- )  
FOUR MILE CREEK, LTD., a Colorado )  
Limited Partnership )

IN THE MIDDLE FORK OF THE )  
SOUTH PLATTE RIVER )

TRIBUTARY INVOLVED: )  
SACRAMENTO CREEK )

IN PARK COUNTY )

FINDINGS )  
AND RULING OF THE )  
REFEREE AND INTERLOCUTORY )  
DECREE APPROVING )  
CHANGE OF WATER RIGHTS )  
AND PLAN FOR )  
AUGMENTATION )

This matter came on for hearing on the 25th day of March, 1980, on the second amended application for change of water rights and approval of plan for augmentation filed by the Applicant, and the Referee, having examined the files and records herein, and having heard the evidence presented, hereby finds:

JURISDICTION AND PARTIES

1. The original application herein was filed on January 31, 1977 by Applicant, represented by Jerry R. Dunn. Timely and adequate notice of this proceeding has been given in the manner required by law, and the Referee and Water Judge sitting in this Court have jurisdiction over the subject matter of these proceedings and over all parties affected hereby, whether they have appeared or not. Statements of Opposition were timely filed by Kokanee Corporation, represented by David L. Harrison of Moses, Wittemeyer and Harrison, P.C.; The State of Colorado, by and through The Colorado Water Conservation Board, represented by David W. Robbins, First Assistant Attorney General; The City and County of Denver, by and through its Board of Water Commissioners, represented by Michael L. Walker; and The Central Colorado Water Conservancy District, represented by Alvin L. Steinmark. A supplemental application was filed on June 30, 1977 and

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BOX 310-475  
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timely and adequate notice thereof has been given in the manner required by law. Statements of Opposition were timely filed by The State of Colorado, by and through the Colorado Water Conservation Board, represented by David W. Robbins; and The City of Aurora, represented by Leland M. Coulter, City Attorney.

2. A pretrial conference was held before Referee Thomas J. Aron on March 17, 1978. The matter was set for term day in September, 1978, to be set for a second pretrial. An order was entered by Referee Aron on June 12, 1978 postponing further proceedings herein until further notice, which order was withdrawn by Order of Judge Donald A. Carpenter on September 10, 1978. An Order was entered by Referee Aron on August 29, 1978 authorizing the withdrawal of Jerry R. Dunn and the substitution therefor of Joseph A. Cope of Musick, Williamson, Schwartz, Leavenworth & Cope, P.C., as attorney for Applicant.

3. A second amended application was filed on April 30, 1979 and timely and adequate notice thereof has been given in the manner required by law. Statements of Opposition were timely filed by the City and County of Denver, by and through its Board of Water Commissioners, represented by Wayne D. Williams, Michael L. Walker, Anne R. McGee and Henry C. Tiegen; the City of Thornton, represented by Kenneth L. Broadhurst; and by John Pratt, represented by Brian N. Geddes. No other Statements of Opposition have been filed and the statutory period for filing Statements of Opposition has expired.

4. The Objectors, except John Pratt, are the owners and users of surface water rights in Water Division No. 1. Each of these Objectors has requested that the plan for augmentation and change of water rights requested in the subject application, if allowed, be so conditioned as to protect its respective water rights. The parties to this proceeding have agreed, as evidenced by the signatures of their respective attorneys, that the provisions of this decree are sufficient, if allowed, to prevent any injury to their respective water rights.

PROPOSED DEVELOPMENT

5. Applicant owns approximately 1950 acres of land in Sections 4, 5, 6, 7, 8 and 9, Township 10 South, Range 77 West, 6th P.M., Park County, Colorado. Applicant proposes to subdivide and plot these lands for 500 single-family dwellings, 300 multi-family dwellings and a small commercial area. This development is to be known as Foxtail Pines. Only the single family dwellings are proposed to be constructed at the present time and this decree shall apply only to said single family units.

WATER REQUIREMENTS

6. Water supply for the single-family residences will be from individual on-lot wells, and wastewater treatment will be by individual, on-lot septic systems. No outside irrigation will be permitted utilizing such wells. Based upon 80 gallons per capita per day, 3.5 persons per dwelling, year-round occupancy and, 500 proposed dwelling units, and based upon a consumption factor of 10% through the individual septic systems, Applicant expects the development to result in maximum diversions of 156.8 acre feet, and consumption of 15.68 acre feet per year.

WATER RIGHTS OWNED BY APPLICANT

- 7. Applicant owns the following decreed water rights:
  - a) Sacramento Ditch, priority No. 81 for 1 cubic foot per second for domestic purposes out of Sacramento Creek, with a priority date of July 27, 1886, decreed on May 22, 1913 by the District Court In and for Park County, Colorado.
  - bi) Sacramento Ditch, priority number 205 for 60 cubic feet per second for irrigation purposes out of Sacramento Creek, with a priority date of July 27, 1886, decreed on October 18, 1889 by the District Court In and for Park County, Colorado.

- c) Guiraud 3T Ditch. Applicant is the owner of 0.75 cubic feet per second out of 20.0 cubic feet per second originally decreed to the Guiraud 3T Ditch, priority No. 6, appropriation date July 1, 1867, decreed October 18, 1889 by the District Court, in and for Park County, Colorado.

8. Opponents claim that a portion of the Guiraud 3T water right owned by applicant has been abandoned to the South Platte River by the provisions of the decree dated December 2, 1975 in Case No. W-7784-74, issued by the District Court in and for Water Division No. 1. In dispute is 10.0 acre feet of water per year, or 0.46 cubic feet per second out of 2.0 cubic feet per second of the direct flow right of the Guiraud 3T water right which was originally conveyed to L. S. Development Company by James T. McDowell & Sons, and was later conveyed in equal portions of 1 cubic foot per second from L.S. Development Company to James L. Sheerin and James S. Billups, Jr. The deed from L. S. Development Company to James S. Billups, dated January 22, 1976, conveyed "1.0 c.f.s. of water decreed to the Guiraud 3T Ditch... Together with all rights accruing by reason of the decree set forth in... Case No. W-7784-74...." Opponents contend that if the 0.46 cubic feet per second of the 2.0 cubic feet per second was in fact abandoned, L.S. Development Company could only convey 1.54 cubic feet per second, or only 0.77 cubic feet per second each to Sheerin and Billups. Of the Guiraud 3T water purchased by Billups, 0.13 cubic feet per second was conveyed to S & H Construction Company prior to the conveyance of 0.75 cubic feet per second to Applicant. Opponents' contention is that if Billups only received 0.77 cubic feet per second from L.S. Development Company, his subsequent conveyance of 0.13 cubic feet per second to S & H Construction Company would leave only 0.64 cubic feet per second available for conveyance to Applicant, and not 0.75 cubic feet per second. Thus, 0.11 cubic feet per second of Applicant's Guiraud 3T water right is in dispute.

9. The parties to this decree propose to resolve the abandonment issue at a later time, in a separate proceeding. Since title to 0.64 cubic feet per second of the subject Guiraud 3T water right is not in dispute, Applicant intends to proceed with its Plan of Augmentation utilizing the undisputed 0.64 cubic feet per second, reserving the right to seek enlargement of this decree, upon the same terms and conditions contained herein, after resolution of the abandonment issue.

#### HISTORIC USE

10. The decreed right for the Guiraud 3T Ditch has been used since 1955 to irrigate native and domestic grasses on a portion of the lands in Sections 10, 12 and 15, Township 11 South, Range 67 West, 6th P.M. Prior to that time, the water rights were used to irrigate other lands in the same general area. Historic irrigation use of the Guiraud 3T water rights has occurred during the period of May through September. The headgate of the Guiraud 3T Ditch is located on the Middle Fork of the South Platte River, in the NE 1/4 of the NE 1/4 of Section 3, Township 11 South, Range 76 West of the 6th P.M., in Park County, Colorado.

11. Numerous prior decrees of this court have established that the historic average annual consumption of water resulting from the use of the Guiraud 3T water rights has been 21.825 acre feet for each 1.0 cubic feet per second decreed. Applicant owns an undisputed 0.64 cubic feet per second of the Guiraud 3T water right, which yields a transferable average consumptive use of 13.97 acre feet per year. None of the land irrigated by Applicant's portion of the Guiraud 3T Ditch water right, which was dried up under a previous decree, was subirrigated, and there has been a net average reduction of consumptive use on the land removed from irrigation equal to the 21.825 acre feet per cubic foot per second decreed per year. The land has been entirely removed from irrigation and the water to which the Guiraud 3T headgate is entitled has been reduced by Applicant's 0.64 cubic feet per second. Applicant will not irrigate or subirrigate the

below described lands with this water right or any other water right, unless such a use is decreed by this Court in a subsequent proceeding.

12. The 0.64 cubic foot per second of the Guiraud JT water right was used, together with the remaining portions of the 2.0 cubic feet per second involved in W-7784-74, on the following tracts of land:

Tract A:

A tract of land located in the NW $\frac{1}{4}$  of Section 15, Township 11 South, Range 76 West, of the 6th P.M., County of Park, State of Colorado, lying West of Colo. State Highway No. 9, more particularly described as follows: Beginning at the W $\frac{1}{2}$  corner of said Section 15, thence N00 degrees 32' 12"W along the West line of said Section 15, for a distance of 921.38' to the true point of beginning, thence N00 degrees 32' 12"W along said West line for a distance of 753.09', thence N52 degrees 15'00"E for a distance of 829.03' to a point on the Southwesterly right-of-way of Colo. State Highway No. 9. Thence S37 degrees 45'00"E along said R.O.W. for a distance of 119.38' to a Highway Monument Station 532+08, thence S 37 degrees 45'00"E along said R.O.W. for a distance of 480.37', thence S 52 degrees 15'00"W for a distance of 1284.49' to a point on the West line of said Section 15, the true point of beginning. Containing 14.55 acres, more or less. All bearings are referenced to the centerline of Colo. State Highway No. 9.

Tract B:

A tract of land located in the SE $\frac{1}{4}$  of Section 9, Township 11 South, Range 76 West, of the 6th P.M., County of Park, State of Colorado, lying Westerly of Colorado State Highway No. 9, more particularly described as follows: Beginning at the SE corner of said Section 9, thence S89 degrees 15'23"E along the South line of Section 10 for a distance of 317.99' to a point on the Westerly right-of-way of Colorado State Highway No. 9, thence N37 degrees 45'00"W along said R.O.W. for a distance of 1680.43' to the true point of beginning, thence leaving said R.O.W. S52 degrees 15'00"W for a distance of 1075.60', to the edge of the County Road, thence N00 degrees 18'56"E along said road for a distance of 1234.00', thence leaving said road S83 degrees 34'43"E for a distance of 78.33', thence S89 degrees 50'32"E for a distance of 330.50' to a point on the Westerly right-of-way of Colorado State Highway No. 9, thence along said R.O.W. for the following 2 courses, to the left along the arc of a curve whose delta is 02 degrees 13'00" and whose radius is 2915.00' for a distance of 112.77', thence S37 degrees 45'00"E for a distance of 601.16' to the true point of beginning. Containing 14.55 acres, more or less. All bearings are referenced to the centerline of Colorado State Highway No. 9.

13. The above described land has been surveyed and has been marked with monuments to clearly delineate the boundaries. The described plot has been dried up.

#### PLAN OF AUGMENTATION

14. The source of water supply for the Foxtail Pines development will be individual on-lot wells withdrawing groundwater which is tributary to the Middle Fork of the South Platte River and to Four Mile Creek. No outside irrigation will be permitted utilizing such wells. Wastewater disposal will be by individual on-lot septic systems with non-evaporative leach fields. Enforcement of the foregoing water use and wastewater disposal provisions will be provided by Applicant through the imposition of restrictive covenants and the creation of a homeowners association. Copies of the forms of the covenants and articles of incorporation of the association are attached hereto as Exhibits A and B.

15. The basis of the Plan of Augmentation is the replacement to the stream system, from direct flow and storage water rights, of an amount of water equal to the depletion to the stream system caused by the development's use of water. The depletion caused by the development's use of water will be equal to the consumption of water withdrawn through the wells. The largest portion of the diversion will be returned to the stream system through the percolation of the leach fields of the on-lot septic systems.

16. Until the abandonment issue discussed above is resolved, Applicant has agreed to limit the development, and this plan for augmentation, to 401 lots. The estimated net depletion of the South Platte River and its tributaries resulting from in-house use within 401 single-family dwellings is 12.53 acre feet per year. This figure is based on a 100% occupancy rate of 3.5 people per unit, 365 days per year, utilization of 80 gallons per person per day, and allowing 10 per cent consumptive use of in-house water. Should any of the on-lot septic

systems later be found by the Court to support luxuriant surface growth, the 10% consumptive use factor shall no longer be applicable in further proceedings in this case held pursuant to C.R.S. 1973, Section 37-92-304. The estimated average evaporation loss from the surface of the storage facilities necessary for this plan for augmentation is 1.39 acre feet per year, based upon an evaporation loss rate of 1.2 acre feet per acre over a surface area of 1.16 acres. The total average annual depletion to the stream system which will occur as a result of Applicant's development of 401 units is 13.97 acre feet per year.

17. Replacement of the depletions will require that a certain portion of the Applicant's Guiraud 3T water right be left in the Middle Fork of the South Platte River to offset the consumptive use expected to occur during the irrigation season of May through September. The remaining portion of Applicant's Guiraud 3T water right will be diverted through the Sacramento Ditch to Foxtail Pines Reservoirs 1 and 2, described in Paragraph 18, or another suitable storage facility, to be released at the call of the Division Engineer when the Guiraud 3T water is out of priority during the irrigation season, May through September, and to offset the consumptive use expected during the non-irrigation season, October through April. There will be approximately 5.24 acre feet of water consumptively used by the proposed development of 401 units during the irrigation season, and there will be approximately 7.34 acre feet of water consumptively used by the development of 401 units during the non-irrigation season. Since the Guiraud 3T Ditch did not take water for irrigation from October through April, and since the Foxtail Pines development will be using water during that time, a portion of the right will have to be changed to a storage right. The stored water will then be released at the direction of the Division Engineer to offset the on-going winter depletion. The plan requires the following water rights modification:



- (A) Applicant will terminate the use of the total 0.64 cubic feet per second of the Guiraud 3T water right for irrigation and will devote the historic consumption of water saved thereby to replace the water consumed.
- (B) 0.24 cubic feet per second of the Guiraud 3T water right yielding an average of 5.24 consumptive acre feet per year will be left in the river at the headgate of the Guiraud 3T Ditch, which headgate is located on the Middle Fork of the South Platte River, in the NE 1/4 of the NE 1/4 of Section 8, Township 11 South, Range 76 West of the 6th P.M., in Park County, Colorado, to compensate for the 5.24 acre feet of irrigation season depletion caused by the development.
- (C) The point of diversion of 0.4 cubic feet per second of the Guiraud 3T water right will be changed from the headgate of the Guiraud 3T Ditch to the headgate of the Sacramento Ditch, located on the Southerly bank of Sacramento Creek in the SE 1/4 of the NE 1/4 of Section 36, Township 9 South, Range 78 West of the 6th P.M., Park County, Colorado. This portion of the Guiraud 3T water right will be changed to a storage right, with an average yearly accumulation of 8.73 acre feet of water, and such water will be diverted for storage only during the historic irrigation season of May through September. The water stored will be released as ordered by the Division Engineer to replace depletions occurring during the October through April period, and those depletions not replaced by paragraph (A), above, which might occur when the Guiraud 3T water right is out of priority during the irrigation season.

18. Applicant will construct and utilize for such storage and release either the Foftall Pine Reservoirs 1 and 2, to be located in the N 1/2 of Section 8, Township 10 South, Range 77 West of the 6th P.M. in Park County, Colorado, or another suitable storage facility approved by the Division Engineer.

19. The Court finds that by the imposition of the conditions set forth in these findings, a portion of the Gufraud 3T Ditch water right may be changed without adversely affecting the water rights of any other appropriators in the South Platte River Basin. The Court finds that by the institution of the augmentation plan herein approved, the Applicant, or its successors and assigns, may secure permits for, and use, 401 domestic on-lot wells to serve the proposed Foftall Pines development, without adversely affecting any other water right in the South Platte River Basin. The Court finds that the plan for augmentation, if operated in accordance herewith, will obviate the necessity to curtail the diversions through the wells required to serve the Foftall Pines development. This finding shall not create any presumption of non-injury in the event of a rehearing brought pursuant to C.R.S. 1973, Section 37-92-304. However, this finding of non-injury shall be conclusive upon subsequent modification to extend this decree to additional wells on the same basis as contained in the provisions of this plan of augmentation, pending the resolution of the abandonment issue set forth in Paragraphs 8 and 9 herein.

#### CONCLUSIONS OF LAW

20. The change sought for a portion of the water right decreed to the Gufraud 3T Ditch and the construction of an augmentation reservoir under the conditions set forth herein will not adversely affect any other water right in the South Platte River Basin and may be lawfully decreed by this Court.

21. The plan of augmentation proposed by the Applicant is one which is contemplated by law if the plan is administered in accordance with this decree.

22. In accordance with the terms of this decree, the State Engineer may administer the plan of augmentation and grant permits for 401 household use only on-lot wells. If the augmentation plan, as set forth herein, is implemented, and if depletions resulting from the use of 401 household use only on-lot wells are replaced as provided herein, the State Engineer shall not curtail diversions through any of the wells.

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

23. The plan for augmentation proposed by Applicant is hereby approved and decreed.

24. The right to 0.4 cubic feet per second out of the water right decreed to the Guiraud 3T Ditch is hereby changed to a storage right to permit storage of an average of 8.73 acre feet of water per year. Storage in Foxtail Pines Reservoirs 1 and 2 or another suitable facility shall be allowed each year when water is legally available during the period May 1 to September 30 as provided herein.

25. 0.24 cubic feet per second of the Guiraud 3T right, yielding an average of 5.24 consumptive acre feet per year, will be left in the river at the headgate of the Guiraud 3T Ditch to compensate for 5.24 acre feet of depletions caused by the 401 wells in the Foxtail Pines development.

26. The State Engineer, the Division Engineer for Water Division No. 1 and other administrative officials charged with the responsibility of administering the waters of the Guiraud 3T Ditch and the South Platte River shall administer the plan for augmentation approved herein in the following manner:

A. During the period May 1 to September 30, a portion of the water right decreed to the Guiraud 3T Ditch in the amount of 0.24 cubic feet per second, with an equivalent average consumptive use of 5.24 acre feet per year, will be left in the river at the headgate of the Guiraud 3T Ditch. During the same period, 0.4 cubic feet per second

out of the Guiraud JT Ditch water right shall be diverted through the Sacramento Ditch for storage to the average extent of 8.73 acre feet per year.

B. During the period from October 1 to April 30 of each water year, and those periods between May 1 to September 30 when the Guiraud JT water right is out of priority, the Division Engineer shall require the Applicant, or its successors and assigns, to release from storage such amounts of water, at such rates of flow, as are necessary to offset the depletions resulting from groundwater diversions, not otherwise replaced pursuant to this plan, such releases to be in accordance with the information regarding the development which is provided to the Division Engineer.

C. In his determination of applications for permits for the 401 wells, the State Engineer shall not deny permits to construct 401 household use only on-lot wells to serve the Foxtail Pines development on the grounds of non-availability of unappropriated water or injury to other water rights, provided that the terms and conditions described elsewhere in this Decree are met.

D. Each well permit issued by the State Engineer under this plan for augmentation shall include as a condition of its approval that it is subject to the limitations of the decree entered in this case.

E. The State Engineer, the Division Engineer of Water Division No. 1 and their respective subordinates shall not curtail diversions through wells constructed under permits, issued pursuant to this decree in order to provide water to other water rights, even though such wells otherwise would be out of priority, so long as the operation of such wells and this augmentation plan are implemented in accordance with this decree. If, in the judgment of the Division Engineer, the Applicant or its successors and assigns will not have sufficient water to meet the requirements of con-

in ascertaining for depletions as they occur through the calendar year, the Division Engineer may notify them that a deficiency exists. It is expected that the Division Engineer will notify Applicant, or its successors and assigns, if it comes to his attention that a deficiency may exist. However, such notice shall not be a prerequisite to the Division Engineer's administration of water rights in accordance with the priority system. Applicant, or its successors and assigns, shall have the responsibility to obtain the required amounts of water or to take such other actions as are required to assure the continuation of an adequate supply of water for the development. However to the extent that Applicant, or its successors and assigns, is ever unable to provide replacement water, as required under this decree, the wells decreed hereunder shall not be entitled to operate under the protection of this plan for augmentation, but shall be subject to administration and curtailment in accordance with the priority system.

27. All subsequent lot purchasers within the Foxtail Pines Development, as herein defined, shall be bound by the terms of the decree in this matter. The restrictive covenants running with the property adopted at the time of subdivision shall allow the use of water only as permitted under this plan for augmentation, and shall prohibit all other uses. To further facilitate the enforcement of this condition, Applicant shall form a homeowners' association which shall be comprised of all lot owners within the Foxtail Pines development. The association shall enforce, and shall be required by the restrictive covenants running with the land pursuant to which it is created, to enforce the restrictions in the covenants. It will be empowered to be sued on behalf of its constituent property owners by any person entitled to enforce the decree in this matter and it may in turn sue its constituent property owners to force compliance with the terms hereof, or join them in any enforcement procedure. The restrictive covenants aforesaid shall be filed with the Court, served on all parties hereto, and filed for record in

the office of the Clerk and Recorder, County of Park, Colorado, prior to the construction of any wells on the subject property. The Applicant shall install, and the Homeowners' Association shall maintain, a sufficient number of recording and measuring devices to ensure adequate administration of this plan for augmentation, subject to the prior approval of the State Engineer, and shall make such annual and other periodic reports including the name and address of the person responsible for such reports to the Division Engineer as he may require. The form attached hereto as Exhibit C shall be used for such reports until changed by the Division Engineer.

28. Applicant, or its successors and assigns, will remain responsible for compliance with the conditions of this decree. Should it become necessary for Applicant to transfer by sale or assignment the water rights utilized as the water supply for the development as described in paragraph 17, together with storage capacity in the facilities described in paragraph 18, to the homeowners in said development, such transfer by sale or assignment shall be subject to the conditions of regulation and enforcement of the terms of this plan of augmentation by the Homeowners' Association described in paragraph 27. So long as this decree is in full force and effect and not modified by subsequent court decree, Applicant, or its successors and assigns, or any subsequent owner of the 0.64 cubic feet per second of the Guiraud BT water right utilized to replace depletions occasioned by the wells covered by this plan shall not transfer or sell this water right or in any other manner cause this water right to be unavailable for the augmentation plan decreed herein. So long as the transferable consumptive use is being utilized for augmentation purposes, it will be considered to be an active water right being applied to beneficial use and not subject to abandonment despite the lack of record of use by the Water Commissioner or Division Engineer.

29. The total consumptive use of water resulting from use in 401 units in the Foxtail Pines development and the use of Foxtail Pines Reservoirs 1 & 2, or other suitable storage facility approved by the Division Engineer, shall not exceed 13.97 acre feet per year.

30. This decree shall become effective when approved by the Water Referee, shall be recorded in the Office of the Clerk and Recorder for Park County, and shall constitute a covenant running with the land to be developed under the augmentation plan set forth herein.

31. The State Engineer in the discharge of his responsibility with respect to the processing of applications for permits to drill 401 household use only on-lot wells to provide domestic water service for the Foxtail Pines development shall recognize the existence and operation of this plan for augmentation.

32. No diversion shall be permitted through the 401 household use only on-lot wells to be constructed under this decree until such time as the Applicant shall have constructed Foxtail Pines Reservoirs 1 and 2 or another suitable facility approved by the Division Engineer to a combined capacity of 10.0 acre feet and shall have stored 8.73 acre feet of water in said reservoirs to replace out of priority depletions.


33. This plan for augmentation for the Foxtail Pines development shall apply only to 401 single family dwelling units of said development.

34. The Guiraud JT water right transferred to Applicant will retain its priority date and number under this plan of augmentation.

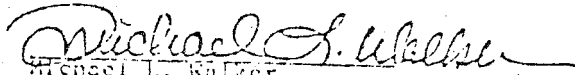
35. The Court retains jurisdiction for a period of five (5) years from the date of execution of this decree, subject to extension as provided in C.R.S. 1973, Section 37-92-304, to consider whether the provisions of this decree are adequate to prevent injury to the vested water rights of the Objectors herein or to consider whether the provisions of this decree are administrable so as to protect the vested water rights of others against injury. Such issues shall be raised only upon motion of any party and only after appropriate notice has been given to all other parties. The Applicant shall further have the right to seek modification of this interlocutory decree pending the resolution of the abandonment issue set forth in Paragraphs 8

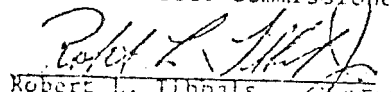
and 9 herein, to extend to additional wells on the same basis as the provisions of this plan for augmentation. The Applicant shall further have the right to seek modification of this decree so as to utilize the Sacramento Ditch water rights for augmentation of additional portions of the Foxtrail Pines development. Should Applicant not seek such modifications within five (5) years from the date of execution of this decree, the application for change of water rights and for approval of the plan of augmentation with respect to the 0.11 c.f.s. of disputed Guiraud JT water rights and the Sacramento Ditch water rights shall be dismissed.

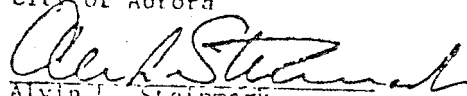
DATED this 23<sup>rd</sup> day of March, 1980.

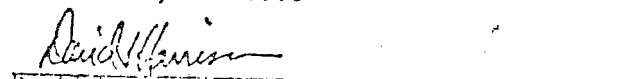
  
Raymond S. Liesman  
Water Referee,  
Water Division 1

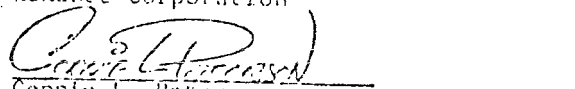
Approved as to substance and form:

  
Michael L. Walker  
Attorney for Objector,  
City and County of Denver,  
acting by and through its  
Board of Water Commissioners

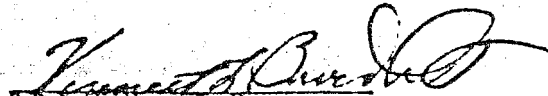
  
Robert L. Tibbels  
Attorney for Objector,  
City of Aurora

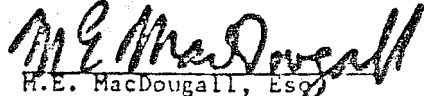
  
Alvin L. Steinmark  
Attorney for Objector,  
Central Colorado Water  
Conservancy District


  
David L. Harrison  
Attorney for Objector, Rialto, Ltd, successor to  
Kokanee Corporation

  
Connie L. Peterson  
Attorney General's Office for Objector,  
The State of Colorado by and through  
The Colorado Water Conservation Board



  
Kenneth L. Broadhurst #1659  
Attorney for Objector,  
City of Thornton

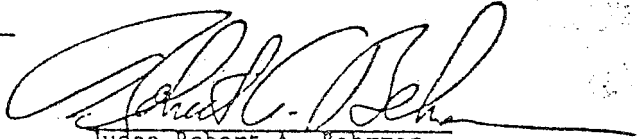
  
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John Pratt

  
Joseph A. Cope  
Attorney for Applicant,  
Fairplay-Four Mile Creek, Ltd.

THE COURT DOETH FIND: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND IS HEREBY MADE THE JUDG-  
MENT AND DECREE OF THIS COURT.

DATED: April 28, 1980

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