

<p>DISTRICT COURT, WATER DIVISION 1, COLORADO</p> <p>Weld County Courthouse P.O. Box 2038 901 9th Avenue Greeley, Colorado 80632</p> <hr/> <p>In the Matter of the Application for Water Rights of</p> <p>FOXTAIL PINES OWNERS ASSOCIATION, a Colorado non-profit corporation,</p> <p>In Park County.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number:</p> <p>03 CW 345</p>
<p style="text-align: center;">FINDINGS AND RULING OF THE REFEREE AND DECREE OF THE WATER COURT</p>	

THIS MATTER comes on for consideration by the Water Referee upon the Application and Amended Application for Adjudication of Water Storage Right and Appropriative Right of Substitution and Exchange and for Approval of a Plan for Augmentation. The Application was filed on September 30, 2003, and the Amended Application was filed on May 28, 2010, on behalf of Foxtail Pines Owners Association, in Park County.

All matters contained in the application were reviewed, and testimony was taken where such testimony was necessary and such corrections made as were indicated by the evidence presented. The Referee, being fully advised in the premises, does hereby find:

FINDINGS OF FACT

1.1 Name and address of applicant:

Foxtail Pines Owners Association
P.O. Box 516
Fairplay, Colorado 80440
(719) 836-2031

1.2 A timely Statement of Opposition was filed to the Application by the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver”). A timely Statement of Opposition was filed to the Amended Application by the Center of Colorado

Water Conservancy District (“CCWCD”). The time for filing additional Statements of Opposition has expired and no other person has entered his appearance herein.

1.3 Timely and adequate notice of the pendency of these proceedings *in rem* has been given in the manner required by law. This court has exclusive jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties whether they have appeared or not.

1.4 The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

1.5 The Division Engineer provided his Summary of Consultation to the Application on December 17, 2003, and to the Amended Application on September 30, 2010.

1.6 The purpose of this application is to adjudicate a water storage right for the Foxtail Pines Recreational Pond, and an appropriative right of substitution and exchange to replace evaporation from the Pond, and to obtain approval of a plan for augmentation to augment evaporation from the Pond.

1.7 Applicant is a homeowners association, incorporated under the law of the State of Colorado. Applicant owns the land underlying the Foxtail Pines Recreational Pond, and has entered into a contract with Mountain Mutual Reservoir Company to provide replacement and augmentation water.

1.8 Applicant requests that this court decree the water storage right and the appropriative right of substitution and exchange claimed herein, in conjunction with the approval of the claimed plan for augmentation.

1.9 Applicant and objector Denver have entered into a Stipulation and Agreement dated August 30, 2011, in which Denver has agreed to the entry of these Findings and Ruling of the Referee and Decree of the Water Court. Applicant and objector CCWCD have entered into a Stipulation and Agreement dated December 12, 2011, in which CCWCD has agreed to the entry of these Findings and Ruling of the Referee and Decree of the Water Court.

Adjudication of Water Storage Right

2.1 Name of reservoir: Foxtail Pines Recreational Pond

A. Legal description:

Location of Reservoir: Foxtail Pines Recreational Pond is an on-channel reservoir on an unnamed tributary of Four Mile Creek, tributary to the South Fork of the South Platte River, located in the SE 1/4 of the SE 1/4 of Section 6, Township 10 South, Range 77 West of the 6th P.M., Park County, Colorado, the outlet of which is located at a point 10 feet from the south section line and 475 feet from the east section line of said section 6.

B. Source: An unnamed tributary of Four Mile Creek, tributary to the South Fork of the South Platte River.

C. Date of appropriation: June 1, 1956:

1. How appropriation was initiated:
Construction of dam and impounding of water.

2. Date water applied to beneficial use: June 1, 1956.

D. Amount claimed:

1. In acre feet: 5.0 acre feet.

E. Use: Stock watering, recreation, fish propagation.

F. Surface area of high water line: 2.0 acres

1. Maximum height of dam in feet: 6.0 feet

2. Length of dam in feet: 420 feet

G. Total capacity of reservoir in acre feet: 5.0 acre feet.

H. Name and addresses of owner of land on which structure for the water right is located:

Foxtail Pines Owners Association
P.O. Box 516
Fairplay, Colorado 80440

2.2 Diversions by applicant under this water storage right will be made only in priority, for storage. Water stored will be used for stock watering, recreation, and fish propagation.

2.3 The court finds that applicant's activities on the date indicated above sufficiently indicate its intent to appropriate the storage water right adjudicated herein. Further, the court finds that the priority confirmed herein shall be senior to all priorities awarded based upon applications filed after 2003 and to all applications filed during 2003, but receiving priority dated subsequent to the dates awarded herein.

2.4 Applicant shall institute an accounting system for its water storage right, recorded in an appropriate format acceptable to the Water Commissioner and the Division Engineer for Water Division 1. Said record shall be submitted to the Water Commissioner or Division Engineer on an annual basis or at such other reasonable intervals as they may request.

Approval of Plan for Augmentation including Adjudication of Appropriative Right of Substitution and Exchange

3.1 Applicant seeks approval of a plan for augmentation including adjudication of an appropriative right of substitution and exchange at a maximum rate of 0.13 cubic feet per second (cfs) with an appropriation date of May 28, 2010, based upon field investigation, engineering analysis and the filing of this application, all forming the intent to appropriate. The purpose of the plan for augmentation and the appropriative right of substitution and exchange is to replace depletions from the evaporation of water in Foxtail Pines Recreational Pond, described herein, when curtailment or release would otherwise be required, subject to administration of the priority system.

3.2 The depletions from the evaporation of water in the Foxtail Pines Recreation Pond that will be replaced through the augmentation plan and the exercise of the appropriative right of substitution and exchange are described on Table 1 and Table 2, attached hereto as Exhibit "A" and incorporated herein by this reference.

3.3 WATER RIGHTS TO BE USED FOR AUGMENTATION, REPLACEMENT AND AS A SUBSTITUTE SUPPLY: Applicant has entered into a contract with North Fork Associates, LLC to purchase 20.5 shares of the capital stock of the Mountain Mutual Reservoir Company, ("MMRC"). The 20.5 shares represent the right to receive 0.643 of an acre foot of augmentation water per year from the water rights and storage facilities MMRC holds for the benefit of its shareholders. MMRC is a nonprofit Colorado corporation that has been created for the following principal purposes: 1) To receive and hold title to direct flow and storage water rights, reservoirs

and interests therein, lands, easements, rights-of-way, and other related facilities, in trust for its shareholders; and 2) To administer water rights and operate facilities for its shareholders, in accordance with individual plans for augmentation approved by the Water Court. MMRC owns the following water rights that may be used for the benefit of the Applicant:

- a. The Nickerson Ditch Water Rights. The Carruthers Ditch No. 2 and The Nickerson Ditch No. 2 ("Nickerson Ditch water rights"), portions of which will be used to replace the out-of-priority evaporation losses from the Foxtail Pines Recreational Pond. The Nickerson Ditch water rights have a priority date of May 1, 1867 and were decreed in the original adjudication for former Water District No. 23 by the Park County District Court on May 22, 1913 in Civil Action No. 1678. Historically, the Nickerson Ditch water rights were diverted from Deer Creek at the headgate of the Nickerson Ditch No. 2 in the NW 1/4 SE 1/4 of Section 9, Township 7 South, Range 72 West, 6th P.M., Park County. The decree entered in Case No. 00CW074 on October 11, 2002, changed the portion of these water rights owned by MMRC from irrigation use to augmentation, replacement, exchange and storage, including storage in Maddox Reservoir and Lower Sacramento Creek Reservoir No. 1.
- b. Guiraud 3T Ditch. MMRC owns 3.297 cubic feet per second of the water right decreed to the Guiraud 3T Ditch as follows, (hereinafter referred to as the "Guiraud 3T Ditch Right"), decreed for 20 cfs on October 18, 1889, in the original adjudication in Water District 23, with an appropriation date of July 1, 1867. The Guiraud 3T Ditch headgate is located on the South bank of the Middle Fork of the South Platte River in the NE 1/4, Section 8, Township 11 South, Range 76 West, 6th P.M., Park County, Colorado, at a point whence the Northeast Corner of the NE 1/4 of said Section 8 bears North 63 degree 35 minutes East, 1,305feet. Originally decreed for irrigation uses, this water right has been subject to various change proceedings. Past decrees have determined the average annual consumptive use under the Guiraud 3T Ditch to be 21.825 acre feet per 1.0 cfs. The Guiraud 3T Ditch Right owned by MMRC is either left in the stream system to offset stream depletions associated with water usage by MMRC shareholders, or the water is stored in reservoirs available to MMRC. The Decree in Case No. 96CW287 adjudicated an exchange to storage, in the Lower Sacramento Creek Reservoir No. 1, of the portion of the Guiraud 3T Ditch Right being committed to this augmentation plan. The exchange is identified as the MMRC Exchange No. 1, and has a priority date of October 15, 1996.
- c. Lower Sacramento Creek Reservoir No. 1. MMRC owns a 21.8 percent interest in the Lower Sacramento Creek Reservoir No. 1. The Reservoir is decreed for domestic, municipal, commercial, industrial, irrigation, fish and wildlife propagation, recreational and all other beneficial purposes, including exchange to compensate for depletions in the South Platte River or its tributaries. It was

decreed for 40 acre feet of storage in Case No. W-7741-74, with an appropriation date of July 25, 1974. The Reservoir is located in the NE 1/4 NW 1/4, Section 32 and the SE 1/4 SW 1/4, Section 29, Township 9 South, Range 77 West, 6th P.M., Park County, Colorado. Releases from the Reservoir are made pursuant to the decrees issued in Case Nos. 85CW250 and 85CW465.

- d. Maddox Reservoir. The Maddox Reservoir is located in the NE 1/4 SW 1/4, Section 22, Township 7 South, Range 73 West of the 6th P.M. in Park County. It was adjudicated on November 11, 1971 with an appropriation date of May 31, 1905. It is decreed for multiple purposes including irrigation, domestic, fish culture and recreation with a capacity of 54.0 acre-feet. It is filled by the Maddox Reservoir Feeder Ditch, which diverts from the North Fork of the South Platte River in the NE 1/4 SW 1/4, Section 22, Township 7 South, Range 73 West of the 6th P.M. and is decreed as an alternate point of diversion for the Slatg Ditch.

3.4 DESCRIPTION OF AUGMENTATION PLAN: Depletions associated with the evaporation from Foxtail Pines Recreation Pond during the period April 23 through October 31, inclusive, will be continuously augmented by leaving a portion of MMRC's water rights in the stream. During times when these direct flow water rights are not in priority and during the non-irrigation season, depletions will be augmented by releasing water from Maddox Reservoir or the Lower Sacramento Creek Reservoir No. 1. Due to the small volume of annual stream depletions projected to occur under this plan, instantaneous stream depletions may be aggregated and replaced by one or more releases from storage of short duration. In order to assure that sufficient augmentation water will be available for this augmentation plan, 0.029 of a cubic foot per second of the above referenced Guiraud 3T Ditch priority, and the additional water rights described on Exhibits "B" and "C," yielding 0.643 of an acre foot of water per year, will be assigned by MMRC to this augmentation plan. During the non-irrigation season and times when the direct flow rights are not in priority, depletions will be augmented by releasing water from Lower Sacramento Creek Reservoir No. 1. Transportation charges from the point where water is released from MMRC's facilities to the stream system, to the point of depletion from the subject wells, shall be computed on the basis of 0.13 percent per mile.

3.5 DESCRIPTION OF EXCHANGE: Since the point of depletion associated with the evaporation from Foxtail Pines Recreation Pond is on a side tributary of the South Fork of the South Platte River, the applicant has requested adjudication of an appropriative right of substitute supply and exchange pursuant to C.R.S. §37-80-120 and §37-92-302(1)(a). Credit will be taken by Applicant for the 0.029 cfs decreed to the water rights described herein, left in the Middle Fork of the South Platte River at times when Applicant could otherwise divert the water. Water will be left in the stream, as a substituted supply, and in exchange for water stored in Foxtail Pines Recreational Pond, or water evaporated from Foxtail Pines Recreational Pond. This appropriative right of substitution and exchange for the Guiraud 3T Ditch water will be from the confluence of the Middle Fork and the South Fork of the South Platte River in the NE 1/4 NE 1/4, Section 14, Township 12 South, Range 75 West, thence up the South Fork to the confluence

of Four Mile Creek in the SW 1/4 SE 1/4, Section 7, Township 12 South, Range 75 West, thence up Four Mile Creek to the confluence of an unnamed stream in the NW 1/4 SW 1/4, Section 22, Township 10 South, Range 77 West, thence up the unnamed stream to the reservoir in the SE 1/4 SE 1/4, Section 6, Township 10 South, Range 77 West, all in the 6th P.M.

The exchange for the Nickerson Ditch water will be a portion of the Nickerson Ditch Rights will be carried in the stream channel to the confluence of the North Fork of the South Platte River, and the main stem of the South Platte River located in the SW 1/4 SE 1/4 of Section 25, Township 7 South, Range 70 West, 6th P.M. From there, the water will be exchanged up the South Platte River to the confluence of the South Platte River and the South Fork of the South Platte in the NE 1/4 NE 1/4 of Section 14, Township 12 South, Range 75 West, 6th P.M.; thence up the South Fork and Four Mile Creek as above described.

3.6 The terms and conditions under which MMRC's Nickerson Ditch Rights are used for augmentation and replacement purposes were defined and approved in Case No. 00CW174, as follows:

- a. The Nickerson Ditch Rights may be left in the stream system to offset depletions from water use by MMRC shareholders. The water may also be stored in Maddox Reservoir, the Lower Sacramento Creek Reservoir No. 1 and other MMRC reservoirs within the South Platte Basin located above South Platte, Colorado; provided, however, that the details of storage in another reservoir are published in the Water Resume, or such storage is approved by the State Engineer pursuant to C.R.S. §37-80-120 and §37-92-308.
- b. The maximum rate of diversion under the Nickerson Ditch Rights is 0.8 of a cubic foot per second. Diversions are limited to the May 1, 1867, priorities decreed to the Parmalee Ditch No. 1 and the Carruthers Ditch No. 2.
- c. Diversions to storage and/or assignment for in-stream augmentation credit are limited to the period April 23 through October 31 of each year, and are further limited to those times when water is physically and legally available for diversion at the historic Nickerson Ditch No. 2 headgate on Deer Creek. If the May 1, 1867, priority is not fully satisfied to the extent of 0.8 of a cubic foot per second, the diversion rate is reduced to the flow that is then physically and legally available.
- d. Maximum monthly diversion under the Nickerson Ditch Rights are limited as follows: April, 2.0 acre feet; May, 16.0 acre feet; Jun, 19.0 acre feet; July, 16.0 acre feet; August, 10.0 acre feet; September, 7.0 acre feet; and October, 4.0 acre feet. Maximum annual diversions are limited to 62 acre feet per year. During any consecutive ten year period, total diversions are further limited to 486 acre feet.

3.7 The Nickerson Ditch Rights are either left in the stream system to offset stream depletions associated with the water usage by MMRC shareholders, or the water is stored in Maddox Reservoir, located in the NE 1/4 SW 1/4 of Section 22, Township 7 South, Range 73 West, 6th P.M., Park County, or the Lower Sacramento Creek Reservoir No. 1, located in the NE 1/4 NW 1/4 of Section 32 and the SE 1/4 SW 1/4 of Section 29, Township 9 South, Range 77 West, 6th P.M., Park County, for later release. The Decree in Case No. 00CW174 adjudicated exchanges of the Nickerson Ditch Rights to storage in Maddox Reservoir and Lower Sacramento Creek Reservoir No. 1, with an August 17, 2000, priority date.

3.8 In order to ensure that sufficient augmentation and replacement water will be available for the augmentation plan and the exchange, MMRC has agreed to reserve for the benefit of the applicant, and its assigns, and for the use in this plan, 0.643 of an acre foot of augmentation and replacement water per year. The volume of water committed to this augmentation plan and exchange, as well as other decreed and currently pending plans for augmentation are summarized in the attached Exhibits “B” and “C.”

3.9 The exchange will operate only when there is a live stream between the upstream point of the exchange and the location where the exchange water is made available to the stream system by MMRC, (“exchange reach”). Prior to operating the exchange, MMRC shall notify the appropriate State water administration official and obtain approval to proceed. The Division Engineer or his designated agent shall notify MMRC when the exchange must cease. The exchange of water shall be conducted only when all water rights that are located within the exchange reach, and whose priorities are senior to May 28, 2010, are either: (1) in priority and fully satisfied; or (2) unable to divert water to the extent then desired because of being partially or totally called out by a downstream senior water right that is located at or below the point where MMRC delivers substitution and replacement water. Notwithstanding the above provision, the State water administration officials, on a case by case basis, may authorize an exchange which commands the entire flow of the stream at a particular location outside of a senior instream flow reach if they reasonably determine that there will be no injury to any other water right. The exchange will be administered with a priority date of May 28, 2010, at a maximum flow rate of 0.029 of a cubic foot per second. To the extent that MMRC’s water rights cannot be exchanged upstream to the point of injury, the applicant shall have the option of physically transporting augmentation water by tank truck for delivery to the stream system at a location upstream of the point of injury, or releasing water from the Foxtail Pines Recreational Pond. If Denver’s water rights are impacted by the operation of this plan, replacement water may be delivered to one of Denver’s diversion or storage facilities in an amount equal to the depletion, pursuant to the Stipulation referenced in paragraph 4.1.

3.10 Due to the small volume of annual stream depletions projected to occur from the expanded water operations described herein, instantaneous stream depletions may be aggregated and replaced by an assignment of the Guiraud 3T Ditch rights at a higher than normal rate of delivery for a short time, or by one or more releases of short duration from storage. The rate and timing of an aggregated delivery of replacement water shall be determined by the Division

Engineer or his designated representative; provided, however, that an aggregated delivery shall be required no more frequently than once per month; and further provided that the downstream water right deprived of water during the period of aggregation is allowed to divert the water so released regardless of the river call then existing.

3.11 The depletions associated with the Foxtail Pines Recreation Pond will be calculated based upon Exhibit A. In no event shall the amount of depletions under this augmentation plan be allowed to exceed the amount of MMRC augmentation water that is available for release. MMRC shall include depletions associated with such water usage in the reports that are presently being made to the State water officials for the other plans of augmentation that utilize MMRC augmentation water supplies. On the basis of the submitted reports, not only for this plan but other plans administered by MMRC, and in accordance with the directives of the Division Engineer, MMRC shall make the required release of augmentation water by properly documenting the in-stream delivery of replacement water from the Guiraud 3T Ditch Rights, or the release of storage water from Lower Sacramento Creek Reservoir No. 1. The delivery of water shall be subject to the conditions stated in 3.10, supra.

3.12 Denver Water owns the Beery Ditch and Four Mile No. 9 water rights on Four Mile Creek. The amount of water available for diversion under these water rights is determined at the Beery Gage. The Applicant's Foxtail Pines Reservoir is located above the Beery Gage. At the time of this decree, the Applicant owned no replacement sources capable of replacing out-of-priority depletions on Four Mile Creek above the Beery Gage. To prevent injury to Denver's water rights, the Applicant shall determine the amount of out-of-priority depletions to Four Mile Creek above the Beery Gage. If the Beery Ditch or Four Mile No. 9 Ditch was shorted water as a result of Applicant's depletions, any augmentation releases for out-of-priority depletions on Four Mile Creek shall be made from any source located above Denver Water's Eleven-Mile Reservoir. Applicant shall notify Denver Water of said releases so that they may be stored under its water rights. Notification shall be made in advance by telephone to: Denver Water Raw Water Control, 303-628-6510.

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

CONCLUSIONS OF LAW

4.1 This Application was filed with the Water Clerk, Water Division 1, pursuant to C.R.S. §37-92-302(1)(a). Statements of Opposition were filed by Denver and CCWCD. As is specified in C.R.S. §37-92-302(1)(c), the time for filing statements of opposition has expired. Applicants have entered into Stipulations with Denver and CCWCD. The terms and conditions of the Stipulations are incorporated herein by reference.

4.2 The Application and Amended Application for Adjudication of Water Storage Right and Appropriative Right of Substitution and Exchange and for Approval of a Plan for Augmentation described herein is contemplated and authorized by law, and if administered in accordance with this decree, will permit the uninterrupted use of the Foxtail Pines Recreational Pond for the purposes described herein without adversely affecting any other vested water rights in the South Platte River or its tributaries. C.R.S. §§37-92-305(3), (5) and (8), §37-80-120 and §37-83-104.

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

4.4 As a result of the operation of the Plan for Augmentation, and the exchange, the depletions associated with the evaporation from the Foxtail Pines Recreation Pond will not result in the material injury to the vested water rights of others.

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

5.1 The Application and Amended Application for Adjudication of Water Storage Right and Appropriative Right of Substitution and Exchange and for Approval of a Plan for Augmentation is approved.

5.2 The State Engineer, the Division Engineer and/or the Water Commissioner shall not, at the request of appropriators, or on their own initiative, curtail the use of the Foxtail Pines Recreation Pond so long as the out-of-priority depletions associated with the evaporation from the Pond are replaced to the stream system pursuant to the conditions contained herein. To the extent that applicant is ever unable to provide the replacement water required, then the Pond shall not be entitled to operate under the protection of this Plan, and shall be subject to administration and curtailment in accordance with the laws, rules and regulations of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions of which are not so replaced as to prevent injury to vested water rights.

5.3 All of the foregoing Finding of Fact and Conclusions of Law are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

5.4 Applicant, and its successors, shall make available for release to the stream system a sufficient quantity of water to replace depletions associated with the Pond. The volume of augmentation water required to be released each year shall be limited to out-of-priority depletions to the stream system directly attributable to the evaporation, and in no event exceed 0.643 of an acre foot per year.

5.5 The Court confirms that the water rights described herein as augmentation and replacement water can be utilized for replacement and augmentation purposes to replace depletions associated with out-of-priority water use as described herein.

5.6 The water storage right sought herein is contemplated by law and if administered in accordance with this decree will not result in injury to the vested rights or decreed conditional water rights of others.

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

5.8 A copy of this decree shall be recorded by the applicant in the office of the Park County Clerk and Recorder.

Dated: January 3, 2012



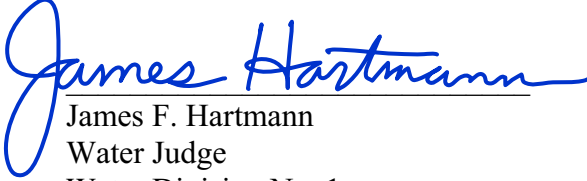
John S. Cowan
Water Referee
Water Division 1

This document was e-filed pursuant to C.R.C.P. 121 §1-16. A printable version of the electronically signed document is available in the court's electronic file.

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE
THE JUDGMENT AND DECREE OF THIS COURT.

Dated: January 25, 2012.


James F. Hartmann
Water Judge
Water Division No. 1

**Table 1
Foxtail Pines Pond
Annual Net Pond Evaporation**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1 Evap Rate (In)	1.0%	3.0%	6.0%	9.0%	12.5%	15.5%	16.0%	13.0%	11.0%	7.5%	4.0%	1.5%	100.0%
2 Effect Precp (In)	0.32	0.96	1.92	2.88	4.00	4.96	5.12	4.16	3.52	2.40	1.28	0.48	32.00
3 Evap. Distribution	1.18	1.07	1.38	1.31	1.37	1.35	2.31	1.26	1.32	1.07	1.14	1.25	16.00
4 Gross Evap (In)	0.94	0.85	1.11	1.05	1.09	1.08	1.85	1.00	1.06	0.85	0.91	1.00	12.80
5 Avg. Precip (In)	0.00	0.00	0.00	0.00	0.00	0.00	7.56	4.56	3.30	0.00	0.00	0.00	28.62
6 Effective Precip (In)	0.00	0.11	0.81	1.83	0.00	0.00	0.00	0.00	0.22	1.55	0.37	0.00	4.89
7 Potential C.U. of sub-irrigated grass (In)	0.00	0.00	0.00	1.50	7.78	12.68	12.29	7.41	6.05	0.00	0.00	0.00	47.71
8 Net Depletion in Grass Area (In)	0.00	0.11	0.81	1.38	0.00	0.00	0.00	0.00	0.00	1.55	0.37	0.00	4.22
9 Willow/Potentilla E.T, subirrigated area (In)													
10 Net Depletion in Willow/Potentilla Area (In)													

- (1) Annual Evaporation Rate from NOAA TR 33
- (2) Effective Precipitation Rate
- (3) Evaporation Distribution Rates
- (4) Gross Evaporation per month = Evaporation Rate (1) X Evaporation Distribution Rate (3)
- (5) Average of precipitation at Breckenridge modified to 16 inches per year Climatological Data Annual Summary for Colorado
- (6) Effective Precipitation = Average Precipitation (5) X Effective Precipitation Rate (2)
- (7) Potential C.U. of sub-irrigated grass = Potential C.U. using South Park Coefficients
- (8) Net Depletion in Subirrigated Grass Area= Gross Evaporation (4)- Effective Precipitation (6) in non-growth season and Gross Evaporation (4)- Potential C.U. of Grass (7) the balance of the year, not to go below 0.
- (9) Potential C.U. of willows, Rantz, S.E.(1968) A Suggested Method For Estimating Evapotranspiration by Native Phreatophytes, U.S.G.S. Professional Paper 600-D
- (10) Net Depletion in Willow Area= Gross Evaporation (4)- Willow/Potentilla E. T., (9) not to be less than 0 during growing season. Same as Grass Area the balance of the year

**Table 2
Foxtail Pines Pond
Net Replacement Requirements**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Month	0.00	0.01	0.07	0.15	0.00	0.00	0.00	0.00	0.01	0.13	0.03	0.00	0.40
Average rate of depletions based on 80% of area sub-irrigated grass and 20% of area in willows/potentilla (ft)	0.00	0.00	0.00	0.29	0.00	0.00	0.00	0.00	0.03	0.26	0.06	0.00	0.63
Depletions from 2.0 acres (af)													

**TABULATION OF GUIRAUD 3-T WATER
IN PLANS FOR AUGMENTATION (PFA)**

September 2011

Plans for Augmentation Based on
North Fork Associates' 3.297 cfs (3)(7)(8)(13)(15)

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Applicants & Development</u>	<u>Decree Amount (cfs)</u>	<u>Decree Amount (af)</u>
03/29/1980	05/02/1982	80CW050	Burland Meadows, Ltd.;	.205	4.470
04/30/1981	06/09/1983	81CW144	Will-O-Wisp P.U.D.	.287 ⁽¹¹⁾	5.560
04/20/1981	05/16/1989	81CW145	Pine Valley North Properties	.020	0.427
07/01/1981	05/25/1983	81CW212	Wagon Tongue Company	(9)	0.000
08/31/1981	05/13/1983	81CW282	Golden Hill Estates	.024	0.520
05/27/1983	12/19/1983	83CW124	Woodside Park Units 5 and 6	.010	0.220
12/27/1983	12/12/1984	83CW323	Raven's Subdivision	.001	0.030
04/26/1985	04/29/1987	85CW110	Camp ID-RA-HA-JE Assn.	.058	1.260
09/30/1985	12/24/1986	85CW254	Freedonia Company	.009	0.179
06/29/1988	06/27/1990	88CW102	Tranq. Ac Wtr. Supply, Inc.	.060	1.190
08/28/1986 ⁽⁶⁾	12/04/1987	85CW326	Mooredale Ranch Resort, Inc.	.052	1.130
08/28/1987 12/20/1987 ⁽⁶⁾	06/02/1988	87CW148	Douglass Ranch Venture, Inc.	.113 ⁽¹⁰⁾	2.267
01/29/1988	11/22/1988	88CW013	Robert Kessler	.007	0.153
03/30/1988	11/18/1988	88CW060	Jeff. Co. Sch. Dist. R-1	.034	0.746
12/ /1988	06/29/1990	88CW205	Marcus J. Pardi	.003	0.063
05/30/1989	07/03/1990	89CW079	Rancho Mirage	.022	0.484
08/31/1990	04/03/1991	90CW063	Hendrie Associates, Ltd.	.014	0.304
06/28/1991	01/22/1992	91CW050	James P. Campbell	.007	0.158
12/31/1991	11/17/1992	91CW119	Sharon F. & Charles W. Manning	.028	0.605
06/30/1992	11/18/1992	92CW074	Conifer Associates	.070	1.519

IN PLANS FOR AUGMENTATION (PFA)

September 2011

Plans for Augmentation Based on

North Fork Associates' 3.297 cfs (3)(7)(8)(13)(15)

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division 1 Case Number</u>	<u>Names of Applicants & Development</u>	<u>Decree Amount (cfs)</u>	<u>Decree Amount (af)</u>
07/31/1992	01/29/1993	92CW087	Belle Meade Subdivision	.040	0.864
09/30/1992	08/13/1993	92CW107	Florissant Water & Sanitation Dist	.238	5.192
11/30/1992	06/18/1993	92CW124	Safari Ranch, Ltd.	.010	0.225
06/30/1993	05/26/1995	93CW076	Lost Valley Ranch	.208	4.545
07/30/1993	07/29/1994	93CW089	Rocky Mountain Christian Conf. Grounds Assoc., Inc.	.037	0.800
11/30/1993	11/28/1994	93CW144	Robert Kessler	.127	2.766
02/28/1994	06/20/1994	94CW017	Marilyn Merritt	.003	0.075
06/30/1994	02/06/1996	94CW083	National Park Service	.021	0.462
10/28/1994	06/30/1995	94CW192	Forest Ridge, LLC	.046 ⁽¹⁴⁾	1.012
12/29/1994	12/21/1995	94CW281	A. C. Rupp	.134	2.918
01/30/1995	10/25/1995	95CW011	American Standard Ins. Co.	.005	0.099
01/30/1995	10/25/1995	95CW012	Rocky Mt. Conservative Baptist	.059	1.276
03/31/1995	07/29/1996	95CW055	Michael A. Kahat & Margie E. Kahat	.003	0.076
07/31/1995	05/20/1996	95CW150	Pine Ranch Associates, LLC	.041	0.894
07/31/1995	04/12/1996	95CW151	Forest Ridge, LLP	.000 ⁽¹²⁾	0.000
07/31/1995	11/27/1996	95CW154	Girl Scouts - Mile Hi Council	.017	0.369
12/29/1995	12/19/1996	95CW290	Sidles Family Trust	.033	0.712
02/29/1996	04/02/1997	96CW044	Rocky Mountain Yearly Meeting of the Friends Church	.036	0.792
05/25/1996	04/07/1997	96CW092	Sportsmen's Paradise, Inc.	.070	0.153
05/31/1996	03/31/1997	96CW122	Harlen J. and Grace E. Helker	.022	0.484
07/31/1996	05/30/1997	96CW160	Kevin Dennison & Mary Dennison	.004	0.086

**TABULATION OF GUIRAUD 3-T WATER
IN PLANS FOR AUGMENTATION (PFA)**

September 2011

Plans for Augmentation Based on
North Fork Associates' 3.297 cfs (3)(7)(8)(13)(15)

<u>Date of Application</u>	<u>Decree Date</u>	<u>Division I Case Number</u>	<u>Names of Applicants & Development</u>	<u>Decree Amount (cfs)</u>	<u>Decree Amount (af)</u>
07/31/1996	07/21/1997	96CW166	Callaghan, Mulligan, Mulligan and Maruyama Joint Venture	.018	0.386
09/30/1996	01/14/1998	96CW224	Quest International Properties, LLC	.183	4.000
12/27/1996	12/13/1999	96CW803	Westwood Lakes Water District	.214	4.669
12/31/1996	10/16/1997	96CW1047	Charles J. Catello	.002	0.047
12/31/1996	10/16/1997	96CW1048	Stephan & Susan McCarthy	.001	0.015
04/30/1997	11/12/1997	97CW141	William & Rebecca Conking	.004	0.082
06/30/1997	04/28/1999	97CW194	Middle Fork Land & Cattle	.078	1.814
07/31/1997	01/27/1999	97CW221	Alken Investments, LLC	.072	1.581
09/30/1997	07/02/1999	97CW256	Florissant Water & Sanitation	.021	0.458
12/30/1997	07/10/1998	97CW375	Harlan J. Helker	.004	0.086
02/23/1998	01/27/1999	98CW022	John E. Termotto ETAL.	.023	0.494
04/30/1998	01/27/1999	98CW263	Pinecrest Lodge, LLC	.009	0.196
10/30/1998	04/19/1999	98CW401	Younger, Eric and Carol	.012	0.256
02/29/2000	09/10/2002	00CW019	Rosewood Hills P & H Assoc.	.067	1.422
12/31/2002	08/15/2003	02CW387	Ron Griffin & Charlotte Griffin	.002	0.077
09/30/2003	In Process	03CW345	Foxtail Pines Owners Association	.029	0.643
11/19/2004	06/02/2005	04CW283	Sacred Living, Inc & Gary Stamper	.011	0.232
N/A			Theodore Zigan	.014	0.314

**TABULATION OF GUIRAUD 3-T WATER
IN PLANS FOR AUGMENTATION (PFA)**

September 2011

Plans for Augmentation Based on
North Fork Associates' 3.297 cfs (3)(7)(8)(13)(15)

ASSIGNED TO LOWER SACRAMENTO CREEK RESERVOIR FOR EVAPORATION	0.019	0.415
TOTAL OF CURRENT NORTH FORK ASSOCIATES' OBLIGATIONS TO PLANS FOR AUGMENTATION	2.889	63.093
SURPLUS FROM NORTH FORK ASSOCIATES' OWNERSHIP OF 3.297 CFS	0.408	8.905

FOOTNOTES

Decreed Plans for Augmentation

- (1) Due to an error in estimating the area irrigated by the Guiraud 3T Ditch, 1.012 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. 80CW131 was an application for amendment to Case No. W-8668-77, involving no additional use of Guiraud 3T water.
- (5) Case No. 81CW129 was an application to modify the uses of water decreed in Case Nos. W-7466 and W-8770-77. No additional use of Guiraud 3T water is involved. Also, none of the 2.556 cfs of North Fork Associates' ownership of Guiraud 3T water is involved.
- (6) Application amendment date.
- (7) The right of 0.366 cfs of the 0.50 cfs surplus Guiraud 3T water right in W-6355 was acquired by Agreement by North Fork Associates from Mountain Water and Sanitation District.
- (8) Ownership successor to W-8648-77, i.e., Theodore Zigan, 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 has been approved by the Water Court.
- (9) Mountain Mutual Reservoir Company water rights have been withdrawn from Case No. 81CW212.
- (10) 0.026 cfs of Mountain Mutual Reservoir Company's water rights have been withdrawn from 87CW148.
- (11) 0.180 cfs of Mountain Mutual Reservoir Company's water rights have been withdrawn by amendment dated 8 June 1995.
- (12) Combined with 94CW192
- (13) The right of 0.312 cfs of the surplus Guiraud 3T water in Case No. 87CW200 was purchased by North Fork Associates from Mountain Water and Sanitation District.

**TABULATION OF GUIRAUD 3-T WATER
IN PLANS FOR AUGMENTATION (PFA)**

September 2011

Plans for Augmentation Based on
North Fork Associates' 3.297 cfs (3)(7)(8)(13)(15)

- (14) 0.034 cfs of Mountain Mutual Reservoir Company's water rights has been withdrawn by amendment to decree.
- (15) 0.430 cfs purchased from Theodore Zigan that was in W-8648-77 which was vacated by the order of James Harman on August 14, 2009.

**TABULATION OF LOWER SACRAMENTO CREEK RESERVOIR SPACE
IN PLANS FOR AUGMENTATION (PFA)**

Sept 2011

Plans for Augmentation Based on MMRC's 7.72 acre feet of space in Lower Sacramento Creek Reservoir.

<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 (af)</u>
06/30/1997	04/28/1999	97CW194	Middle Fork Land & Cattle	1.159
07/31/1997	01/27/1999	97CW221	Alken Investments, LLC	0.875
02/23/1998	01/27/1999	98CW022	John E. Termotto ETAL.	0.271
10/30/1998	04/19/1999	98CW401	Younger, Eric and Carol	0.119
02/29/2000	09/10/2002	00CW019	Rosewood Hills P & H Assoc.	0.717
08/28/2003	12/03/2008	03CW301	Golden Bell Camp & Conference	0.814
09/30/2003	In Process	03CW345	Foxtail Pines Owners Assoc.	0.561
07/26/2004	05/17/2005	04CW182	Dirk L. Craver	0.067
11/19/2004	05/12/2005	04CW283	Sacred Living Inc. & Gary Stamper	0.051
11/30/2005	12/12/2006	05CW294	River Ranch Restoration Co. LLC	0.346
10/31/2006	05/25/2007	06CW231	Topaz Mountain Ranch, LLC	0.034
02/28/2007	08/18/2009	07CW032	Gregg Sutherland	0.038
06/30/2009	In Progress	09CW089	Glacier Ridge Association, Inc.	1.135
N/A			Theodore Zigan	0.183
TOTAL OF CURRENT MOUNTAIN MUTUAL RESERVOIR OBLIGATIONS TO PLANS FOR AUGMENTATION				6.370
SURPLUS FROM NORTH FORK ASSOCIATES' OWNERSHIP OF 7.72 ACRE-FEET				1.350