

FILED IN WELD COUNTY
COMMONS COURTS

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO

CASE NO. 92CW074

34 APR 21 AIO: 12

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE
OF THE WATER COURT APPROVING UNDERGROUND WATER RIGHTS, A PLAN FOR
AUGMENTATION AND CHANGE OF WATER RIGHTS, INCLUDING EXCHANGES

CONCERNING THE APPLICATION FOR WATER RIGHTS OF CONIFER ASSOCIATES,
A LIMITED LIABILITY COMPANY, NORTH FORK ASSOCIATES AND MOUNTAIN
MUTUAL RESERVOIR COMPANY

IN JEFFERSON AND PARK COUNTIES

THIS MATTER was originally decreed by the Court on November 18, 1992. As a result of certain changes in the development plans of Conifer Associates, a Limited Liability Company, one of the co-applicants, a Petition to Amend the Decree was filed on November 30, 1993. The Court, after considering the Petition, the responses thereto, the files herein, the evidence presented and the comments of the Division Engineer does hereby enter the following Amended Findings of Fact, Conclusions of Law, Judgment and Decree.

FINDINGS OF FACT

1. The Application was originally filed with the Water Clerk, Water Division No. 1, on June 30, 1992. All notices required by law of the filing of the original Application were fulfilled, and this Court had jurisdiction over the subject matter of the proceeding and over all parties affected thereby, whether they appeared or not. The land and water rights involved herein are not included within the boundaries of any designated groundwater basin.

2. The Petition to Amend the Decree was filed on November 30, 1993 and the contents were published in the November, 1993 Water Resume.

3. A Statement of Opposition to the original Application was filed on August 31, 1992 by the State Engineer and the Division Engineer for Water Division No. 1. No statements of opposition were filed in response to the Petition to Amend Decree and the time for filing such statements has now expired.

4. Scott Deem and James Goyette were original Applicants in this Case. Subsequent to the filing of the June 30, 1992 Application, Messrs. Deem and Goyette conveyed the property covered by the plan for augmentation to Conifer Associates, a Limited Liability Company (hereinafter referred to as "Conifer Associates"). Upon a Motion filed by Messrs. Deem and Goyette, which Motion was approved by the Court on October 15, 1992, Conifer Associates was substituted as an applicant in place of Messrs. Deem and Goyette. The mailing address for Conifer Associates is as follows:

Conifer Associates, a Limited Liability Company
11995 Cochise Circle
Conifer, Colorado 80433

5. The Application filed on June 30, 1992 was initially referred to the Referee for consideration pursuant to §37-92-203(7), 15 C.R.S. (1990). On September 16, 1992, by Order of the Referee entered pursuant to §37-92-303(2), 15 C.R.S. (1990), the Application was re-referred to the Water Judge.

6. Conifer Associates is the owner of approximately 360 acres of land located within Sections 26, 27 and 35, Township 6 South, Range 71 West, 6th P.M., Jefferson County, Colorado. The original development plan was to subdivide approximately 320 acres of the property into a thirty-one unit single family residential subdivision to be known as Conifer Ridge. Lot owners were to be allowed up to four horses per lot. However, during the county subdivision process, the decision was made to develop two lots under an exemption to expedite the sale of the two lots, and to reduce the number of lots within Conifer Ridge from 31 to 27. In addition, there has been a reduction in the number of horses allowed within the Conifer Ridge subdivision from four to three horses per lot. The plat for Conifer Ridge was filed of record in the office of the Jefferson County Clerk and Recorder on September 2, 1993 and appears of record as Reception No. 93135619. Plat restriction number 3 clarifies that only three horses can be boarded per lot. Conifer Associates is in the process of obtaining subdivision approval for forty acres in the SE 1/4 of the SE 1/4 of Section 26, Township 6 South, Range 71 West, 6th P.M., which is contiguous to Conifer Ridge. Five single family residential lots will be created with the same water use patterns as the lots in Conifer Ridge. The area to be platted will be called Conifer Ridge Annex.

7. It is contemplated that all of the above described lots will be held in separate ownership once development is completed. Water for the homes, yards, gardens and other uses authorized

herein will be provided from tributary wells. Each lot will have its own well.

8. Conditional underground water rights for thirty-one wells to be located within the SW 1/4 and the SW 1/4 SE 1/4 of Section 26, the SE 1/4 SE 1/4 of Section 27 and the NW 1/4 NW 1/4 of Section 35, all in Township 6 South, Range 71 West, 6th P.M., Jefferson County, Colorado were requested in the original application. Two of the wells will no longer be constructed as a result of the modified development plans (i.e. Well Nos. 7 and 19 as identified in the original decree). The wells to be constructed in Section 26 are described as follows:

<u>Well No.</u>	<u>Distance from South Section Line (feet)</u>	<u>Distance from East(E) or West(W) Section Line (feet)</u>
1	1440	1460 W
2	2140	1300 W
3	1800	1940 W
4	1260	2180 W
5	1240	2260 E
6	1180	1770 E
8	360	1880 E
9	470	2370 E
10	540	2200 W
11	180	1790 W
12	490	1370 W
13	410	850 W
16	180	220 W
21	1040	300 W
22	1550	630 W
23	2030	600 W
24	2440	560 W
25	2910	460 W
26	2850	870 W
27	2720	1330 W
28	2830	1800 W
29	2730	2310 W
30	2220	2050 W
31	1000	850 W

Wells to be constructed in Section 27 are described as follows:

<u>Well No.</u>	<u>Distance from South Section Line (feet)</u>	<u>Distance from East Section Line (feet)</u>
17	510	320
18	370	970
20	1100	390

Wells to be constructed in Section 35 will be located on the two lots which are being developed under a platting exemption and are not part of the Conifer Ridge or Conifer Ridge Annex subdivisions. Future owners of the two lots will be allowed to water up to four horses. The locations of the wells can be described as follows:

<u>Well No.</u>	<u>Distance from North Section Line (feet)</u>	<u>Distance from West Section Line (feet)</u>
14	700	1000
15	950	470

In accordance with the requirements set forth in §37-92-302(2), 15 C.R.S. (1990), well permit applications were submitted to the State Engineer for each of the above referenced wells. The applications were denied by the State Engineer on September 14, 1992, under File Nos. AD-12873 through AD-12878, File Nos. AD-12880 through AD-12890, and File Nos. AD-12892 through 12903, pending formal approval of a plan for augmentation by this Court. Subsequent to the entry of the original Decree in this matter, the following well permits have been issued by the State Engineer:

<u>Well No.</u>	<u>Permit No.</u>	<u>Well No.</u>	<u>Permit No.</u>
2	043046-F	20	042970-F
14	042786-F	21	042879-F
15	042211-F	23	042971-F
16	042233-F	24	042972-F
17	042968-F	30	042878-F
18	042979-F	31	042973-F

With the exception of Well No. 14-042786-F and Well No. 15-042211-F (i.e. the wells to be located on the lots developed under the platting exemption referenced in Paragraph No. 6, supra), only three horses shall be watered from each well, regardless of the number of horses that may be stated in the conditions of approval for a previously issued well permit, and the owner of the well shall be subject to the terms and conditions of this Amended Decree.

9. The date of appropriation for the wells described in Paragraph No. 8, supra, is June 12, 1992.

10. As a result of the change in its development plans, Conifer Associates, or its successors in interest, will also construct five wells in the SE 1/4 SE 1/4 of Section 26, Township 6 South, Range 71 West, 6th P.M., at, or near, the following locations:

<u>Well No.</u>	<u>Distance from South Section Line (feet)</u>	<u>Distance from East Section Line (feet)</u>
32	910	1265
33	1260	550
34	765	800
35	245	440
36	315	1195

Independent water rights have not been sought for the five wells described above. They will be drilled pursuant to the terms and conditions of this plan for augmentation and will not have their own independent priority dates.

11. The source of water for each of the above described wells is groundwater which is tributary to Casto Creek, Kennedy Gulch and West Resort Creek, all of which are tributary to the North Fork of the South Platte River.

12. Each well will be pumped at a maximum flow rate of 15 gallons per minute.

13. The water will be used for domestic purposes, which shall include ordinary household uses in single family dwellings, the watering of domestic animals (specifically including livestock), the irrigation of home gardens and lawns, fire protection and the filling and maintenance of swimming pools, as further described herein.

14. When fully developed, it is anticipated that the thirty four single family residences covered by this plan for augmentation will require approximately 11.7 acre feet of water per year. This figure is based upon prior engineering studies of similar residential subdivisions and assumes: (1) an occupancy of 3.5 persons per residence on a year around basis, and a per capita water usage of 80 gallons per person per day; (2) the owner of each lot will be allowed to irrigate a maximum of 300 square feet of lawns or 1,200 square feet of gardens, or any combination thereof, that does not consume more water than 300 square feet of lawns; (3) the owners of two of the lots (i.e the two lots which were developed pursuant to the platting exemption), will be allowed to board a maximum of four horses or equivalent livestock, and the owners of the thirty-two lots within Conifer Ridge and the Conifer Ridge Annex will be allowed to board a maximum of three horses or equivalent livestock; however to the extent that the owner of a lot does not desire to board the maximum number of livestock allowed, the owner shall be allowed to increase outside irrigation by an amount of consumption the livestock would have consumed annually; and (4) a total of four indoor or outdoor swimming pools, having

a surface area of approximately 250 square feet each, may also be constructed pursuant to this plan for augmentation.

15. Wastewater from all in-house uses will be treated by non-evaporative septic systems using soil absorption leach fields. No more than ten percent (10%) of the water used for in-house purposes will be consumed. Wastewater treatment systems which consume less water may be utilized if demonstrated to be more effective than the standard non-evaporative septic type system. Projected total annual stream depletions associated with water use at the subdivision and at the two lots created by the subdivision exemption, as referenced in Paragraph No. 6, supra, (assuming the diversion facilities described in Paragraph Nos. 8 and 10, supra, are out-of-priority the entire year), are 2.785 acre feet per year. For purposes of administering this plan for augmentation, it shall be assumed that the maximum volume of augmentation water required to be released to the stream system each year is: (a) the number of homes occupied or proposed to be occupied that year, multiplied by 0.0314 of an acre foot; plus (b) the area of irrigated lawn grass within the development multiplied by 1.66 acre feet per acre; plus (c) the area of irrigated gardens within the development multiplied by 0.40 of an acre foot per acre; plus (d) the total number of livestock boarded within the development multiplied by 10 gallons per animal per day; plus (e) the total area of open water surface for all swimming pools within the development multiplied by 3.0 acre feet per acre of open water surface. A homeowners association will be created to, among other matters, assist in the administration of this augmentation plan.

16. In order to provide the necessary replacement water to the stream system, Conifer Associates has purchased from North Fork Associates, 97.4 shares of the capital stock of the Mountain Mutual Reservoir Company, a non-profit Colorado corporation which has been created for the following principal purposes:

i. 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 stockholders; and

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

The 97.4 shares of stock entitles Conifer Associates, its successors and assigns, to receive 3.059 acre feet of augmentation water per year from the water rights and storage facilities which Mountain Mutual Reservoir Company holds for the benefit of its

shareholders. A copy of Mountain Mutual's Bylaws is on file with the Court.

17. North Fork Associates and Mountain Mutual Reservoir Company own the following water rights which will be used to meet annual augmentation requirements for the residential development described above:

a. Guiraud 3T Ditch. North Fork Associates and Mountain Mutual Reservoir Company own 1.866 cubic feet per second of the water rights decreed to the Guiraud 3T Ditch as follows:

<u>Adjudication</u> <u>Date</u>	<u>Appropriation</u> <u>Date</u>	<u>Amount</u>
Oct. 18, 1889	July 1, 1867	20 cfs

(Original Adjudication, Water District 23)

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° 35' East, 1,305 feet. Originally decreed for irrigation uses, this water right has been subject to various change proceedings. A decree authorizing a change of the point of diversion and place of use was entered on May 15, 1954, in Civil Action No. 3376, Park County District Court. Subsequent to 1954, various change of water right and plan for augmentation proceedings have either been decreed or are pending which are anticipated to reduce the quantity of water left at the Guiraud 3T Ditch headgate to 0 cfs. Historically, water diverted through the Guiraud 3T Ditch was used to irrigate 276.28 acres of hay meadows in Sections 9, 10 and 15, Township 11 South, Range 76 West, 6th P.M., Park County, Colorado. Past decrees have determined the average annual consumptive use under the Guiraud 3T Ditch to be 1.5 acre feet per acre. The owner of the lands historically irrigated by the 1.866 cfs now owned by North Fork Associates and Mountain Mutual Reservoir Company has contracted to remove and has removed 27.15 acres of land from irrigation. Said acreage has been surveyed and monumented in the field. This acreage includes the land historically irrigated with that portion of the Guiraud 3T Ditch water right which is committed to this plan for augmentation.

b. Spinney Mountain Reservoir. North Fork Associates and Mountain Mutual Reservoir Company are the owners by deed of a firm annual yield of 80 acre feet of water stored in Spinney Mountain Reservoir. 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. A storage decree for the reservoir has

been entered for domestic, irrigation, municipal and all other beneficial uses as follows:

<u>Adjudication Date</u>	<u>Appropriation Date</u>	<u>Amount (AF)</u>
1973: Case No. W-7395	March 26, 1973	86,000

In addition, various decreed direct flow water rights have been transferred to storage in the structure by the District Court for Water Division No. 1 and provide the basic yield of the annual allotment of 80 acre feet.

c. Lower Sacramento Creek Reservoir No. 1. North Fork Associates owns a 25.2 percent interest in the Lower Sacramento Creek Reservoir No. 1. The Reservoir has been constructed and holds the following decree 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:

<u>Adjudication Date</u>	<u>Appropriation Date</u>	<u>Amount (AF)</u>
1974: Case No. W-7741-74	July 25, 1974	40

The Reservoir is 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, Colorado. Releases from the Reservoir are made pursuant to the Decrees issued in Case Nos. 84CW250 and 85CW465.

d. Woodside Reservoir. North Fork Associates and Mountain Mutual Reservoir Company own all of the physical facilities and the Water Rights decreed to the Woodside Reservoir as follows:

<u>Adjudication Date</u>	<u>Appropriation Date</u>	<u>Amount (AF)</u>
1978: Case No. W-8771-77	September 1, 1977	50

The Reservoir is decreed for domestic, municipal, commercial, irrigation, recreation, light industrial, piscatorial, fire fighting, exchange and all other beneficial uses. It is not yet constructed but will be located in the Elk Creek drainage basin in the E 1/2 SW 1/4 of Section 26, Township 6 South, Range 72 West, 6th P.M., Park County, Colorado. A finding of reasonable diligence, was approved on October 5, 1988, in Case No. 82CW355.

18. In order to assure that sufficient augmentation water will be available for the Conifer Ridge Subdivision, North Fork Associates has assigned to Mountain Mutual Reservoir Company for the benefit of Conifer Associates, its successors and assigns, and

for use in this augmentation plan, 0.070 of a cubic foot per second of the Guiraud 3T Ditch priority, yielding 1.519 acre feet of water per year, from the 1.866 cubic feet per second above described. In addition, North Fork Associates has assigned to Mountain Mutual Reservoir Company, 1.540 acre feet of its right to annual water deliveries from Spinney Mountain Reservoir. In order to provide augmentation water from the Guiraud 3T Ditch for use in this plan, North Fork Associates and Mountain Mutual Reservoir Company have caused 0.667 of an acre of the grounds historically irrigated by the Guiraud 3T Ditch to be removed from irrigation for each acre foot of consumptive use water under the Ditch. Sufficient acreage has previously been monumented in the field and set aside for the benefit of plans for augmentation administered by Mountain Mutual Reservoir Company. The approval and monumentation of the dried up lands are on the basis of criteria which have been approved and accepted by the Water Court in prior plans for augmentation and which have been adopted by the State Engineer. Deliveries from Spinney Mountain Reservoir and the Guiraud 3T Ditch which are committed to other augmentation plans and stockholders of Mountain Mutual Reservoir Company are set forth in the attached Exhibits "A" and "B."

19. Depletions to the South Platte River drainage basin which are attributable to water use at the proposed development will be augmented during the period May through September, inclusive, by leaving the above referenced Guiraud 3T Ditch water rights in the stream. During times when the Guiraud 3T Ditch is not in priority and during the months of October through April, inclusive, depletions will be augmented by releasing water from Spinney Mountain Reservoir, the Lower Sacramento Creek Reservoir No. 1 or Woodside Reservoir. Transportation charges from the point where water is released to the stream system from Mountain Mutual Reservoir Company's facilities, to the point of depletion, shall be as calculated by the Division Engineer (currently transportation charges are calculated on the basis of 0.13 percent per mile).

20. In order to provide the necessary augmentation water for this and other augmentation plans, Mountain Mutual Reservoir Company will attempt to fill the Lower Sacramento Creek Reservoir No. 1 and Woodside Reservoir under the reservoirs' own priorities. If the structures cannot be so filled, Mountain Mutual Reservoir Company may elect to exchange water from Spinney Mountain Reservoir to storage in either Woodside Reservoir or Lower Sacramento Creek Reservoir No. 1. These exchanges have been decreed in prior plans for augmentation. Mountain Mutual Reservoir Company has previously agreed to limit the exchange between Woodside Reservoir and either Spinney Mountain Reservoir or Lower Sacramento Creek Reservoir No. 1 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 between the point of diversion for Woodside Reservoir and the confluence of the North Fork and the main stem of the South Platte River are either in priority and fully satisfied to the extent of their call, or are out-of-priority because of a downstream call initiated by a more senior water right which can be at least partially satisfied by the release of Spinney Mountain Reservoir water. The rate of exchange is decreed to be limited to 5 c.f.s. Similarly, the exchange from Spinney Mountain Reservoir to Lower Sacramento Creek Reservoir No. 1 is limited to those times when all vested water rights with priority dates senior to February 29, 1980, which divert water from Sacramento Creek and/or the Middle Fork of the South Platte River between the point of diversion for the Lower Sacramento Creek Reservoir No. 1 and Spinney Mountain Reservoir are either in priority and fully satisfied to the extent of their call, or are out-of-priority because of a downstream call initiated by a more senior water right which can be at least partially satisfied by the release of Spinney Mountain Reservoir water. The rate of exchange into Lower Sacramento Creek Reservoir No. 1 is limited to 2 c.f.s. Evaporation losses incurred by Woodside Reservoir will be replaced by six acre-feet of consumptive use water from the Glasman Ditch as decreed in Case No. 81CW144. Evaporation losses incurred by the Lower Sacramento Creek Reservoir No. 1 will be replaced by the exchange of Spinney Mountain Reservoir water to storage.

21. Due to the small volume of annual stream depletions projected to occur from the development, instantaneous stream depletions during times when the Guiraud 3T Ditch water right is not used for augmentation purposes, shall be aggregated and replaced by one or more releases from storage of short duration. The rate and timing of an aggregated release shall be determined by the Division Engineer or his designated representative; provided, however, that an aggregated release shall be required no more frequently than once per month. With respect to releases to be made from Spinney Mountain Reservoir, the Mountain Mutual Reservoir Company and the Division Engineer, or his designated representative, shall provide the City of Aurora, operator of Spinney Mountain Reservoir, with at least 24 hours prior notice during regular working hours, Monday through Friday, of the required time and amount of such releases.

22. The Court finds that the source of replacement water and the protective terms outlined above are sufficient to protect the vested rights of other water users in the South Platte River Basin.

CONCLUSIONS OF LAW

23. The Application and the Petition to Amend Decree were filed with the Water Clerk, Water Division No. 1, pursuant to §37-

92-302(a), 15 C.R.S. (1990). A Statement of Opposition was filed by the State Engineer and the Division Engineer, for Water Division No. 1 to the original application. No statements of opposition were filed in response to the Petition to Amend Decree. As is specified in §37-92-302(1)(c), 15 C.R.S. (1990), the time for filing statements of opposition has expired.

24. The Application for Underground Water Rights, Approval of a Plan for Augmentation and Change of Water Rights, Including Exchanges, described herein, and the Petition to amend Decree are contemplated and authorized by law. This decree will permit the uninterrupted utilization of the wells described in Paragraph Nos. 8 and 10, supra, without adversely affecting any other vested water rights in the South Platte River or its tributaries. Sections 37-92-305(3), (5) and (8), §37-80-120 and §37-83-104, 15 C.R.S. (1990).

25. The State Engineer may lawfully be required to administer this plan for augmentation and change of water rights, and the water exchanges, in the manner set forth herein.

26. As a result of the operation of the Plan for Augmentation set forth herein, there is water available for withdrawal from the wells described in Paragraph Nos. 8 and 10, supra, and the construction and use of same will not result in the material injury of the vested water rights of others. Accordingly, the State Engineer shall approve the applications for Well Nos. 1-6, 8-18 and 20-36. Section 37-90-137(2), 15 C.R.S. (1990) and Cache La Poudre Water Users Association v. Glacier View Meadows, 191 Colo. 53, 550 P.2d 288 (1976).

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

27. The conditional underground water rights, plan for augmentation, change of water rights and water exchanges proposed by Conifer Associates, North Fork Associates and Mountain Mutual Reservoir Company are approved.

28. The State Engineer, the Division Engineer and/or the Water Commissioners for former Water District Nos. 8 and 80 shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of water by the owners of the wells which are covered by this plan for augmentation, so long as the out-of-priority depletions associated with such diversions are replaced to the stream system pursuant to the conditions contained herein. To the extent that Conifer Associates, or its successors and assigns are ever unable to provide the replacement water required, then the diversion facilities described in Paragraph Nos.

8 and 10, supra, 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 §37-92-305(8), 15 C.R.S. (1990), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights.

29. All of the foregoing Findings 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.

30. Conifer Associates, and its successors and assigns, shall make available for release to the stream system, a sufficient quantity of water to replace depletions caused by diversions from the above referenced wells. 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 diversions through the wells described in Paragraph Nos. 8 and 10, supra.

31. A total of 0.070 of a cubic foot per second of the above described 1.866 cubic feet per second decreed to the Guiraud 3T Ditch is hereby changed to allow replacement of depletions associated with water use within the above referenced development at the point of injury rather than at its present point of diversion in the NE 1/4 of Section 8, Township 11 South, Range 76 West, 6th P.M., Park County, Colorado. The Court also confirms that storage water available to Conifer Associates, and its successors and assigns, in Spinney Mountain Reservoir, the Lower Sacramento Creek Reservoir No. 1 and Woodside Reservoir can be utilized for replacement and augmentation purposes to replace depletions associated with out-of-priority water use described herein.

32. The point of depletion associated with the out-of-priority diversions from wells is upstream of the point of delivery of augmentation water from the Guiraud 3T Ditch, Spinney Mountain Reservoir, the Lower Sacramento Creek Reservoir No. 1 and Woodside Reservoir. Conifer Associates, and its successors and assigns, are therefore decreed appropriative rights of substitute supply and exchange pursuant to §37-80-120 and §37-92-302(1)(a), 15 C.R.S. (1990). The reach of the exchange shall extend from the confluence of the North Fork of the South Platte River and the main stem of the South Platte River, up the North Fork to its confluence with Kennedy Gulch, up Kennedy Gulch to its confluence with Casto Creek and up Casto Creek to the point where the wells impact Casto Creek in Section 27, Township 6 South, Range 71 West of the 6th P.M. From Kennedy Gulch, the exchange shall also extend up an unnamed

tributary which intersects with Kennedy Gulch in the SW 1/4 SW 1/4 of Section 24, Township 6 South, Range 71 West, 6th P.M. and up the unnamed tributary to a point where the wells impact the unnamed tributary in Section 26, Township 6 South, Range 71 West, 6th P.M. The exchange shall also extend from the confluence of Last Resort Creek and the North Fork of the South Platte River, up Last Resort Creek to its confluence with West Resort Creek, up West Resort Creek to its confluence with an unnamed tributary in the S 1/2 of Section 34, Township 6 South, Range 71 West, 6th P.M. and up the unnamed tributary to a point where the wells impact the unnamed tributary in the NW 1/4 NW 1/4 of Section 35, Township 6 South, Range 71 West, 6th P.M. The exchanges shall operate to replace depletions to the flow of water in the above referenced streams as the depletions occur. The exchanges shall be administered with a priority date of June 12, 1992, at a maximum flow rate of 0.25 c.f.s., to the extent of 2.788 acre feet per year.

33. Depletions from the wells referenced herein shall be calculated by adding: (1) the number of homes located within the residential subdivision in a particular year multiplied by 0.0314 of an acre foot and assuming an equal monthly distribution of water use throughout the year; (2) the areas of lawns and gardens multiplied by the figures set forth in Paragraph No. 15, supra, and assuming an irrigation season of May 15, through September 15; (3) the number of livestock boarded within the subdivision multiplied by 10 gallons per animal per day; and (4) the total area of open water surfaces in all swimming pools within the subdivision multiplied by 3.0 acre feet per acre of open water surface. Mountain Mutual Reservoir Company shall include such depletions which are out-of-priority in the monthly reports made to the State water officials for other plans for augmentation which utilize Mountain Mutual Reservoir Company augmentation water supplies. On the basis of the submitted reports, and in accordance with the directives of the Division Engineer, Mountain Mutual Reservoir Company shall make the required release of augmentation water by properly documenting the instream delivery of replacement water from the Guiraud 3T Ditch or the release of storage water from Spinney Mountain Reservoir, Woodside Reservoir and the Lower Sacramento Creek Reservoir No. 1. Releases of storage water shall be subject to the conditions stated in Paragraph No. 21, supra. It shall be the responsibility of the homeowners group, to be created by Conifer Associates, to complete an annual survey of each individual lot described herein which sets forth the number of square feet of lawns and gardens, the number of horses or equivalent livestock units and whether a pool exists on the lot and its size. Mountain Mutual Reservoir Company shall be provided with a copy of the annual individual lot survey and the appropriate water use figures so that adequate replacement of depletions can be made. Mountain Mutual Reservoir Company shall provide the water

commissioner with a copy of the annual individual lot survey upon request. In addition, Mountain Mutual Reservoir Company shall provide to the Division Engineer an annual water accounting report which summarizes the individual lot survey. An example of the type of information to be included in this annual water accounting report is attached as Exhibit "C." The form used for the annual individual lot survey shall be acceptable to the Division Engineer.

34. As a result of the approval of this Plan for Augmentation, water will be made available for the tributary wells described in Paragraph Nos. 8 and 10, supra, and the vested rights of others will not be materially injured by the contemplated diversions therefrom. Pursuant to §37-92-305(6), 15 C.R.S. (1990), the State Engineer shall grant a permit for each of the wells described in Paragraph No. 8, supra, upon receipt of this decree. Pursuant to §37-90-137(2), C.R.S. (1990), permits for the wells described in Paragraph No. 10, supra, shall be granted when the permit applications are submitted to the State Engineer. Permit applications for those lots which will have a swimming pool shall be accompanied by a letter stating that a pool is authorized for the subject lot, signed by Conifer Associates or the homeowners group to be created by Conifer Associates.

35. Pursuant to the provisions contained in §37-92-304(6), 15 C.R.S. (1990), 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 time that fifty percent of the lots covered by this plan for augmentation are built out, as certified to the Division Engineer by Conifer Associates or the homeowners group to be created by Conifer Associates. Any person, within the subject 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 the 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 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 counsel of record for all parties who have appeared herein. 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.

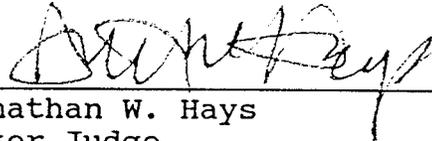
36. The priorities awarded herein to Well Nos. 1-6, 8-18 and 20-31 were filed in the Water Court in 1992 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.

37. It is also ordered that the conditional water rights herein awarded to Well Nos. 1-6, 8-18 and 20-31 are hereby continued in full force and effect until November, 1998. If Conifer Associates, or its successors and assigns, desires to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before November, 1998, or a showing made on or before such date that the conditional water rights have become absolute water rights by reason of the completion of the appropriations.

38. This Amended Decree shall supersede and replace in its entirety the original Decree entered in this matter on November 18, 1992.

Signed and entered this 21 day of April, 1994,
nunc pro tunc, November 18, 1992.

BY THE COURT

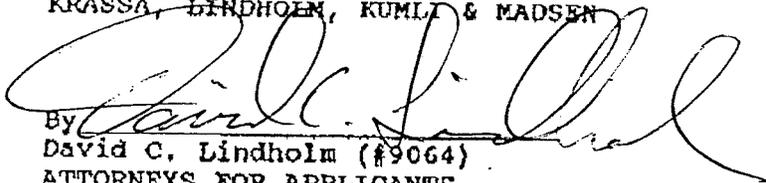


Jonathan W. Hays
Water Judge
Water Division No. 1
State of Colorado

Conifer Associates, a
Limited Liability Company
92CW074
Page 16

APPROVED AS TO FORM AND SUBSTANCE:

KRASSA, LINDHOLM, KUMLI & MADSEN



By David C. Lindholm (#9064)
ATTORNEYS FOR APPLICANTS,
CONIFER ASSOCIATES, A LIMITED
LIABILITY COMPANY, NORTH FORK
ASSOCIATES AND MOUNTAIN MUTUAL
RESERVOIR COMPANY

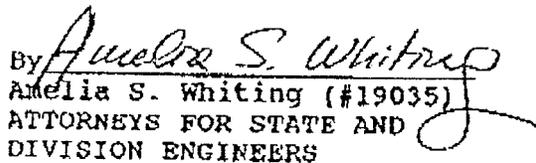
GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

PATRICIA S. BANGERT
Deputy Attorney General

JENNIFER L. GIMBEL
First Assistant Attorney General


By Amelia S. Whiting (#19035)
ATTORNEYS FOR STATE AND
DIVISION ENGINEERS

ANNUAL SURVEY

CONIFER RIDGE SUBDIVISION

ANNUAL AUGMENTATION REQUIREMENT REPORT Case No. 92-CW-074

Water Year November 1, 19____ to October 31, 19____

ANNUAL CONSUMPTIVE USE (CU)

Name _____

Address _____

City _____ State _____ Zip _____

Lot No. _____ Telephone _____

Use (1)	Unit (2)	Number (3)	Acres (sq. ft./43560) (4)	CU Rate af/yr (5)	Total CU-af (4) x (5) (6)
In-House	Permitted Well	1		0.0314 af/home	0.0314
Lawn	sq. ft. ^(a)	_____	_____	1.6600 af/ac	_____
Garden	sq. ft. ^(a)	_____	_____	0.4100 af/ac	_____
Horse watering	Horse ^(a)	_____		0.0112 af/horse	(c) _____
Swimming pool ^(d)	sq. ft.	250	0.0057	3.0000 af/ac	_____
Total Replacement Requirement					_____

(a) Choose two of the following maximums or a proportionate amount of more than one as long as the above total does not to exceed 0.0764^(d) acre-feet per lot.

- (1) Maximum number of horses = 3 head (See Note 1 for exception)
- (2) Area of lawn surface with lawn only = 300 sq. ft.
- (3) Area of garden surface with garden only = 1200 sq. ft.
- (4) Proportionate equation where lawn and garden are desired:
(4 X lawn area) + garden area = 1200 sq. ft.

(b) Horse credits may be exchanged to increased lawn or garden but the lawn and garden credits may not be exchanged for horses. One horse equates to 300 sq. ft. of lawn.

(c) Column (3) X Column (5)

(d) Lots designated for a 250 sq. ft. swimming pool may total 0.0935 acre-feet.

NOTE 1: Lots on south side of Richmond Rd, Case No. E961292, Map #183, Reception #93040197, 3/29/1993 are permitted 4 horses and a total of 0.0877 acre-feet for the lot.

NOTE 2: Conifer Ridge Homeowners Association will send a copy of this form to Mountain Mutual Reservoir Company in October of each year.