

<p>DISTRICT COURT, WATER DIVISION 1, COLORADO</p> <p>Court Address: Weld County Courthouse 901 – 9<sup>th</sup> Street P.O. Box 2038 Greeley, CO 80632</p>	<p>EFILED Document DATE FILED: August 11, 2004 11:22 PM CO Weld County District Court Filing ID: 4033255 Case Number: 2001CW161 Review Clerk: Peggy Pauken</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE VILLAGE AT ELK CROSSING, LLC</p> <p>IN JEFFERSON COUNTY, COLORADO</p>	<p><b>▲ COURT USE ONLY ▲</b></p> <p>Case Number: 2001CW161</p>
<p>Attorneys for Applicant:</p> <p>Priscilla S. Fulmer, #14936 Bendelow Law Firm, P.C. 1120 Lincoln Street, Suite 1000 Denver, Colorado 80203 Phone: (303) 837-9600 Facsimile: (303) 860-0311 E-mail: <a href="mailto:priscillafulmer@bendelow.net">priscillafulmer@bendelow.net</a></p> <p>Timothy J. Flanagan, Atty. Reg. #6356 Fowler, Schimberg &amp; Flanagan, P.C. 1640 Grant Street, Suite 300 Denver, Colorado 80203 Phone Number: (303) 298-8603 Fax Number: (303) 298-8748 E-mail: <a href="mailto:t_flanagan@fsf-law.com">t_flanagan@fsf-law.com</a></p> <p><input type="checkbox"/></p>	<p>Division: 1</p>
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE</b></p>	

This claim for water rights, water storage rights and approval of plan for augmentation and exchange having been filed with the Water Clerk, Water Division 1, in Case No. 01CW161 on September 28, 2001, and amended on September 30, 2003, and all matters contained, the Application having been reviewed and evidence presented as was necessary, and otherwise being fully advised in the premises, the Court does hereby find:

**FINDINGS OF FACT**

- The name and address of the Applicant is as follows:

<p>Village at Elk Crossing, LLC 11660 Antler Trail Littleton, Co 80127 (303) 816-4898</p>	<p>North Fork Associates and the Mountain Mutual Reservoir Company 2525 S. Wadsworth Boulevard #306 Denver, CO 80227 303-989-6932</p>
---	---

2. Statements of Opposition, Stipulations and Trial to the Court:

- A. Timely statements of opposition to the original Application were filed by the Aspen Park Improvement Association, Bennett Auslaender, Carl Bagwell, the Bishop and the Diocese of Colorado, Joseph H. Bosworth and H. Arlena Wood (which Statement of Opposition was withdrawn by Order of the Court dated November 20, 2002), Buffalo Park Development Company, Austin B. Caesar, the Colorado Water Conservation Board, Foothills Park and Recreation District ("Foothills"), John Harden, Jefferson County, Jefferson County School District R-1, Hank and Joan Krausman (which Statement of Opposition was withdrawn on December 4, 2003), Sheryl D. Light, John C. and Janet Marie McIlwaine, Monteverde Homeowners Association (which Statement of Opposition was dismissed as to the Monteverde Homeowners Association but not as to Amy L. Tyson by Order of the Court dated July 28, 2003), Mountain Mutual Reservoir Company (which Statement of Opposition was withdrawn on September 25, 2003), Clay and Valerie Powell, Michael E. Rachfalski and Judy I. Bullock, Red Rocks Country Club ("Red Rocks"), Rod Snyder, South Evergreen Water District, Ralph E. and Virginia L. Vance, Steven L. Wood (whose property and water rights were subsequently acquired by Applicant), and Theodore M. Zorich ("Ted Zorich").
- B. Timely Statements of Opposition to the Amended Application were filed by Aspen Park Metropolitan District, Greg P. and Jill D. Anderson, Dorothy Hatch, Kenneth D. and Patricia D. Adams and Carla L. Seeliger. An Amended Statement of Opposition was filed to the Amended Application by Bennett Auslaender. No other statements have been filed and the time for filing such objections has expired. The case was re-referred to the Water Judge by Order of the Court on June 20, 2003.
- C. Stipulations were entered into between Applicant and the following parties:
- 1) The Colorado Water Conservation Board approved June 19, 2003;
  - 2) Carl Bagwell approved September 15, 2003;
  - 3) Sheryl D. Light approved October 7, 2003;
  - 4) John Harden, approved January 15, 2004;
  - 5) South Evergreen Water District approved January 26, 2004;
  - 6) Aspen Park Metropolitan District approved March 2 2004;
  - 7) Kenneth D. and Patricia D, Adams approved March 2, 2004;
  - 8) Jefferson County School District R-1, approved March 15, 2004;
  - 9) Carla L. Seeliger, approved March 19, 2004;
  - 10) Bennett Auslaender, approved March 22, 2004;
  - 11) Buffalo Park Development Company, approved March 26, 2004 (Nunc Pro Tunc March 22, 2004);
  - 12) Red Rocks Country Club, approved March 31, 2004;
  - 13) Foothills Park and Recreation District, approved March 31, 2004;
  - 14) Jefferson County, Colorado, approved March 31, 2004; and
  - 15) Theodore M. Zorich, approved March 31, 2004.

D. This Application was brought before the Court for a three-day trial commencing March 29, 2004. John and Janet McIlwaine (Well No. 100563), Clay and Valerie Powell (Well No. 233156), Virginia Vance (Well No. 50806), the Bishop and Diocese of Colorado (Well No. 139298), Austin Caesar (Well Nos. 7162 or 157744), Michael Rachfalski and Judy Bullock (Well No. 93777), Aspen Park Improvement Association (Well No. 3801), Dorothy Hatch (Well No. 38169), Amy L. Tyson (Well No. 128872), and Greg and Jill Anderson (Well No. 128871) (collectively "Remaining Opposers") opposed VEC's Application at trial. Opposer Rod Snyder (Well No. 74121) did not participate in the trial. On May 26, 2004, the Court issued its Order ("Post-trial Order") in this case. In the event of any conflicting provision(s) between the Post-trial Order and this Decree, the Post-trial Order shall control.

3. Jurisdiction: Timely and adequate notice of the pendency of these proceedings has been given in the manner required by law. This Court has jurisdiction over the subject matter of these proceedings and over the parties affected hereby, whether they have appeared or not.

4. General Description of the Application:

A. Location:

The Village at Elk Crossing (the "Development") is a proposed commercial development of approximately 30 acres just north of Conifer, Colorado located in NW1/4 SE1/4, Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M. in Jefferson County, Colorado (the "Property"). The location of the Property is shown on Exhibit 1.

B. General Description of the Water Rights and Development:

Applicant made application for conditional water rights for five tributary wells ("Village Wells Nos. 1 through 5"), a spring (the "Village Spring") and a pond (the "Village Pond") located on the Property, and to utilize certain water rights for augmentation and exchange purposes in order to operate in accordance with the plan for augmentation and exchange described herein. At full build out, the Development is planned to include commercial, retail, office and warehouse space, with proposed grocery and restaurant space. The Development will occur in several stages and water demands and augmentation needs will correspond respectively. Landscaping will be limited to native plants and grasses which require no irrigation. Initial irrigation requirements for grow-in of native vegetation will be provided from water supplies brought in from off-site sources. Treated wastewater from the Development shall be recharged to bedrock materials directly beneath the Property.

#### **ADJUDICATION OF UNDERGROUND WATER RIGHTS (CONDITIONAL)**

5. Village Wells Nos. 1-5

A. Legal description:

Village Well No. 1: The well will be located in the NW1/4 SE1/4 of Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M., 1520 feet from the East section line and 1520 feet from the South section line.

Village Well No. 2: The well will be located in the NW1/4 SE1/4 of Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M., 1520 feet from the East section line and 1870 feet from the South section line.

Village Well No. 3: The well will be located in the NW1/4 SE1/4 of Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M., 1720 feet from the East section line and 2020 feet from the South section line.

Village Well No. 4: The well will be located in the NW1/4 SE1/4 of Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M., 2320 feet from the East section line and 1820 feet from the South section line.

Village Well No. 5: The well will be located in the NW1/4 SE1/4 of Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M., 1820 feet from the East section line and 1520 feet from the South section line.

B. Source: Groundwater tributary to North Turkey Creek, a tributary of Turkey Creek, tributary to the South Platte River.

C. Appropriation:

- 1) Date of Appropriation: Village Wells Nos. 1-5: May 24, 2001.
- 2) How appropriation initiated: Village Well Nos. 1-5: Determination of intent to appropriate and determination of technical work to be performed to support the preparation of the application.
- 3) Date water applied to beneficial use: Village Wells Nos. 1-5: NA

D. Uses: Indoor Commercial use and fire protection

E. Amount: 50 gpm for each of the Village Wells Nos. 1 through 5, conditional, not to exceed a combined annual volume of 24.48 acre-feet.

F. Depth: Village Wells Nos. 1 through 5 will be drilled to a depth of approximately 500 feet.

G. Well Permits: Prior to the issuance of permits for Village Wells Nos. 1 through 5, the Applicant must demonstrate that the Village Pond described below has been constructed with an active capacity of 3.7 acre-feet and an operable outlet works, that the Village Pond has been filled, and that Meadowview Reservoir has been constructed and filled.

6. The Village Spring:

- A. Legal Description: NW1/4SE1/4 of Section 14, Township 6 South, Range 71 West of the 6<sup>th</sup> P.M., 1950 feet from the South section line and 1330 feet from the East section line of Section 14.
- B. Source: Spring tributary to North Turkey Creek, a tributary of Turkey Creek, tributary to the South Platte River.
- C. Appropriation:
  - 1) Date of Appropriation: May 24, 2001.
  - 2) How appropriation initiated: Determination of intent to appropriate and determination of technical work to be performed to support the preparation of the application.
  - 3) Date water applied to beneficial use: N/A.
- D. Uses: Augmentation and piscatorial.
- E. Amount: 0.022 cfs., 10 gpm.

**ADJUDICATION OF WATER STORAGE RIGHTS**

7. Village Pond

- A. Legal Description: Location of Dam: NW1/4 SE1/4 of Section 14, Township 6 South, Range 71 West, of the 6<sup>th</sup> P.M.; the center of Village Pond is located approximately 2450 feet from the South section line and 1600 feet from the East section line of said Section 14.
- B. Source: Village Pond will be filled/maintained by natural inflow from Village Spring, from natural runoff from an un-named tributary to North Turkey Creek and from water rights pursuant to the exchange described in Paragraphs 8 through 22 herein ("Exchange Water").
- C. Appropriation:
  - 1) Date of Appropriation: May 24, 2001.
  - 2) How appropriation initiated: Determination of intent to appropriate, determination of technical work to be performed to support the preparation of the application.
  - 3) Date water applied to beneficial use: NA.
- D. Uses: The water from Village Spring, runoff and Exchange Water will be stored in Village Pond and released as required for augmentation of out-of-priority depletions caused by Village Wells Nos. 1 through 5. The Village Pond will also

be used for recreation and piscatorial purposes. VEC will only take water in priority and thus, no augmentation of evaporation from the Village Pond is required, except in situations when the Applicant is unable to release water stored out-of-priority in the Village Pond as described in this paragraph below. The surface area of the Village Pond is estimated to be no larger than 0.5 acres. Once the Village Pond is built, the evaporation from the surface area shall be adjusted to reflect the actual as-built surface area, based on an evaporation rate of 1.949 acre-feet per acre of open water surface area at the subject location. This calculated amount will be used to account for the remaining augmentation supply available in the Village Pond. In the event that the Village Pond outlet is unable to release precipitation and spring flows when out-of-priority, all out-of-priority evaporation will be replaced by the Applicant. The following monthly net evaporation rates will be utilized in the accounting of the operation of this augmentation plan:

<u>January</u>	<u>0.000 feet</u>
<u>February</u>	<u>0.000 feet</u>
<u>March</u>	<u>0.112 feet</u>
<u>April</u>	<u>0.174 feet</u>
<u>May</u>	<u>0.261 feet</u>
<u>June</u>	<u>0.376 feet</u>
<u>July</u>	<u>0.342 feet</u>
<u>August</u>	<u>0.254 feet</u>
<u>September</u>	<u>0.263 feet</u>
<u>October</u>	<u>0.167 feet</u>
<u>November</u>	<u>0.000 feet</u>
<u>December</u>	<u>0.000 feet</u>

- E. Surface inflow to the Village Pond shall be passed through when the Village Pond is not in priority, unless an exchange to the Village Pond is then operating pursuant to this Decree.
- F. Amount claimed: 3.7 acre-feet, conditional.
- G. Surface Area of High Water Line: Village Pond is primarily an excavated structure, with an estimated surface area of 0.5 acres, a dam height of less than 10 feet and an estimated length of the dam to be 150 feet.
- H. Total Capacity of Reservoir: 3.7 acre-feet of active capacity and no dead storage.
- I. Lining of the Village Pond: Applicant shall line the Village Pond in accordance with the following terms and conditions:
  - 1) Design Standard

The intent of the Village Pond lining design is to achieve ground water inflow (leakage rate) into the Village Pond that is not greater than  $0.03 \text{ ft}^3/\text{day}/\text{ft}^2$  ( $1 \times 10^{-5} \text{ cm}^3/\text{sec}/\text{cm}^2$ ) multiplied by the length of the perimeter wall in feet multiplied by the average vertical depth of the perimeter wall as measured from the ground

surface to the bottom of the Village Pond along the toe of the Pond side slope, plus  $0.0015 \text{ ft}^3/\text{day}/\text{ft}^2$  ( $5 \times 10^{-7} \text{ cm}^3/\text{sec}/\text{cm}^2$ ) multiplied by the area of the bottom of the liner system or natural bedrock bounded by the perimeter wall. Appropriate geotechnical evaluations and analyses should be performed to indicate that the Design Standard could be achieved with the proposed design to a reasonable probability. It is recommended that the Applicant submit design and construction plans for review to the State Engineer.

2) Construction Standards

The Applicant must demonstrate that the constructed liner meets the requirements of the design by performing appropriate quality control observations and tests. The Applicant shall provide written documentation of the work performed and results of quality control field and laboratory tests. Tests performed shall meet or exceed the standards established by the American Petroleum Institute (API) and/or the American Society of Testing and Materials (ASTM) as applicable.

3) Performance Standards

The Performance Standard shall be three times the Design Standard as described above. The Performance Standard shall be applied to an initial test of competency of the liner, as well as to the ongoing operation of the Village Pond.

4) Initial Liner Test

A water balance must be done to demonstrate that the balance of the inflows (e.g., precipitation and ground water) and outflows (e.g., evaporation) equals the change in storage volume by a minimum of a 90-day rest. Ongoing monitoring of the water balance may also be required as determined by the Division Engineer. The frequency of accounting and monitoring as well as the type and accuracy of the monitoring devices shall be determined after consultation with the Division Engineer. The Applicant shall demonstrate that during a 90-day rest period the unregulated ground water inflow to the pit does not exceed the Performance Standard. Demonstration of inflows less than the Performance Standard shall be sufficient cause for a determination that the Applicant has constructed a lined Village Pond and is entitled to store water. If the unregulated ground water inflow to the Village Pond exceeds the Performance Standard, the State Engineer shall require the Village Pond to be dewatered until satisfactory changes have been made to the liner to conduct another initial liner test.

5) Water Budget Accounting

Monthly accounting shall be required as long as the liner continues to meet the Design Standard. Weekly accounting (or more frequent if required by the Division Engineer) shall be required for liners which do not meet the Design Standard but continue to meet the Performance Standard. Evidence of

compliance with the standards shall be established through a mass balance analysis accounting for inflows, outflows, and change in storage.

If the State or Division Engineer determines that the ground water inflow (leakage rate) into the Village Pond is greater than the Performance Standard, the Applicant shall be required to calculate the inflow to or outflow from the Village Pond by means of a mass-balance analysis on a 48-hour basis, and return to the stream system such inflows within 48 hours, without such water being used by Applicant in any manner. This 48-hour accounting shall only be for the entire period specified under the Liner Failure During Operation Section (see below) and shall not be done permanently.

6) Liner Failure During Operation

In the event that the average daily unregulated ground water inflow to the Village Pond exceeds the Performance Standard for two consecutive months, as evidenced by accounting (see above), the Applicant or its successor and the State Engineer's Office shall begin to consult regarding the probable cause of the unregulated ground water inflow, and the appropriate actions to be taken in response thereto. If the State or Division Engineer and the Applicant cannot reach an agreement on the appropriate actions to reduce the unregulated ground water inflow to less than the Performance Standard within nine months of the beginning of the consultations, the State or Division Engineer shall provide written notice to the Applicant of their determination to correct this problem. The 48-hour accounting shall begin following the two consecutive months that the Performance Standard is exceeded and shall continue until the Applicant has demonstrated that the Performance Standard has been met. Applicant shall have two (2) years from the date of such written notice of liner failure to repair the liner to an inflow less than the Performance Standard. If satisfactory repairs are not completed within the two year period, no new water shall be stored in the Village Pond until either 1) the repair is made, 2) the issue is decided by the Water Court under retained jurisdiction, or, 3) the State Engineer's Office otherwise grants permission for storage to continue.

**ADJUDICATION OF APPROPRIATIVE RIGHTS OF  
SUBSTITUTION AND EXCHANGE**

8. Applicant seeks adjudication of a conditional appropriative right of substitution and exchange pursuant to §37-80-120 and §37-92-302(1)(a), C.R.S. on unnamed tributaries of North Turkey Creek, North Turkey Creek, Turkey Creek, Bear Creek and the South Platte River. The purpose of this appropriative right of substitution and exchange is to permit diversions of water by Village Wells Nos. 1 through 5 and the Village Pond when Applicant can operate the exchange, for the purposes described herein, when curtailment would otherwise be required under the priority system. For those times when the Village Pond cannot be filled under its own priority, Applicant has entered into a Water Purchase Agreement with Tiny Town Investment Corporation ("TTIC") (the "TTIC Water Rights") and a Water Purchase Agreement with North Fork Associates, LLC



and Mountain Mutual Reservoir Company (collectively "MMRC") (the "MMRC Water Rights") to implement Applicant's right of substitution and exchange herein. The timing of the TTIC and MMRC Exchanges (as described below) shall be based on the need to fill the Village Pond, the need to exchange up to two acre-feet into Meadowview Reservoir and the ability of the TTIC and MMRC Exchanges to occur, as determined by senior calls on the stream affecting the TTIC and MMRC Exchanges and senior exchanges across the reaches related to the TTIC and MMRC Exchanges. Administration of the TTIC and MMRC Exchanges will be determined and controlled by the Division Engineer.

#### TTIC Water Rights

9. Pursuant to the TTIC Agreement, Applicant has purchased 2.15 acre-feet per year out of a total of 4.0 acre-feet per year that was decreed by this Court in Case No. 86CW021 on December 24, 1986, which is to be released from Spinney Mountain Reservoir for use by TTIC under its plan for augmentation (the "TTIC Decree"). It has been determined that under its plan for augmentation, TTIC will not utilize the 2.15 acre-feet of the 4.0 acre-feet of water for augmentation purposes, and in accordance with Paragraph 26 of the TTIC Decree, up to 2.15 acre-feet of the augmentation water is "surplus" that may be leased or sold to third parties. Applicant will utilize the 2.15 acre-feet of water, the TTIC Water Rights, for its exchange purposes through releases from Spinney Mountain Reservoir.
10. The date of appropriation for the TTIC Exchange shall be August 1, 2001, based on the initial date of the analysis of the use of the TTIC Water Rights by Applicant and negotiations to purchase the water rights.
11. If the Village Pond cannot be filled under its own priority, up to 2.15 acre-feet of the TTIC Water Rights may be released during times when water can be exchanged up Turkey Creek to the Village Pond to enable a maximum of 2.15 acre feet to be exchanged into storage at the Village Pond, as determined by Applicant after prior consultation with and approval from the Division Engineer or its designated representative. Notwithstanding the Colorado Water Conservation Board's (CWCB's) instream flow right decreed in Case No. 94CW250, which is addressed below, the TTIC Exchange may only be operated when water rights which divert within the exchange reach whose priorities are senior to the exchange priority described herein are either (1) in priority and fully satisfied, (2) not diverting due to lack of demand, or (3) unable to divert because of being called out by a downstream senior water right that is located below the downstream terminus of the exchange reach. Such an exchange shall be limited to those times when there is a live stream on Turkey Creek-Bear Creek stream system through the exchange reach. Live stream means at least the amount of water to be exchanged at each measurement point or diversion structure. Exchanges may only be operated to the extent that there is flow at each gage, and at a rate not to exceed the minimum flow measured at any of the gages.
12. Since the depletion associated with water use from the Village Wells Nos. 1-5 is to an unnamed tributary of North Turkey Creek at a location above the point where replacement water is delivered to the stream system by TTIC, the Applicant is awarded a conditional appropriative right of substitute supply and exchange pursuant to C.R.S. §§ 37-80-120 and 37-92-302(1)(a). The program of substitution and exchange will utilize

the water released from Spinney Mountain Reservoir into the South Platte, exchanged from the confluence of Bear Creek and the South Platte; up Bear Creek to its confluence with Turkey Creek; up Turkey Creek to its confluence with North Turkey Creek; and up North Turkey Creek to the confluence of North Turkey Creek and an unnamed tributary in the NW1/4, NW1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M., up the unnamed tributary to a second unnamed tributary in the SE1/4, NW1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M., up the second unnamed tributary to the Village Pond, in NW1/4, SE1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M. and stored therein. Because of the distance from Spinney Mountain to the upper reaches of the TTIC Exchange, a three (3) day delay shall be taken into account in determining the availability of exchange water to operate pursuant to this decree. The TTIC program of substitution and exchange to the Village Pond utilizing the TTIC Water Rights shall be administered with a priority date of August 1, 2001.

MMRC Water Rights

13. VEC has entered into a contract with NFA and MMRC to purchase 63.6 shares of the capital stock of MMRC. The 63.6 shares represent the right to receive 2.00 acre feet of "firm" yield augmentation water per year from the water rights and storage facilities MMRC holds for the benefit of its shareholders, as more particularly described below.

14. The water rights which MMRC owns for the benefit of its shareholders (hereinafter referred to as the "Bear Creek/Turkey Creek water rights"), are summarized as follows:

A. Harriman Ditch: 7.71 shares of the 400 shares of capital stock (1.93%), issued and outstanding in the Harriman Ditch Company. Said Company owns direct flow water rights decreed to the Harriman Ditch, Pursuant to the Decree entered in Civil Action No. 6832, on February 4, 1884, the Ditch was awarded the following direct flow priorities:

Appropriation Date	Priority No.	Source	Amount	MMRC Entitlement
April 15, 1868	21	Turkey Creek	10.75 cfs	0.2072 cfs
March 16, 1869	23	Bear Creek	7.94 cfs	0.1530 cfs
May 1, 1871	25	Bear Creek	25.54 cfs	0.4923 cfs
March 1, 1882	30	Bear Creek	12.87 cfs	0.2481 cfs

The Bear Creek headgate of the Harriman Ditch is located on the South bank of Bear Creek in the NE 1/4 NE 1/4, Section 2, Township 5 South, Range 70 West, 6<sup>th</sup> P.M., Jefferson County, Colorado. The Turkey Creek headgate of the Harriman Ditch is located on the South bank of Turkey Creek near the Southwest corner of Section 6, Township 5 South, Range 69 West, 6<sup>th</sup> P.M., Jefferson County, Colorado. The Ditch was originally decreed for irrigation, livestock watering, domestic and municipal purposes.

B. Warrior Ditch: 2.0 shares of the 160 shares of capital stock (1.25%), issued and outstanding in the Warrior Ditch Company. Said Company owns direct flow water rights decreed to the Warrior Ditch. Pursuant to the Decree entered in Civil Action No. 6832 on February 4, 1884, the Ditch was awarded the following direct flow priorities:

Appropriation Date	Priority No.	Source	Amount	MMRC Entitlement
December 1, 1861	4	Bear Creek	12.33 cfs	0.1541 cfs
April 16, 1862	8	Turkey Creek	2.86 cfs	0.0358 cfs
October 31, 1864	14	Bear Creek	25.47 cfs	0.3184 cfs
April 1, 1865	16	Bear Creek	11.49 cfs	0.1436 cfs

The headgates of the Warrior Ditch are the same as those of the Harriman Ditch, described above. The Ditch was originally decreed for irrigation purposes.

C. Soda Lake Reservoir Nos. 1 and 2: 8.71 shares of the 400 shares of capital stock (2.18%), issued and outstanding in the Soda Lakes Reservoir and Mineral Water Company. Said Company owns storage water rights decreed to the Soda Lakes Reservoir Nos. 1 and 2. Pursuant to the Decree entered in Civil Action No. 91471 on September 24, 1935, the Soda Lake Reservoir Nos. 1 and 2 were adjudicated for 1,794 acre feet for irrigation purposes, and 598 acre feet for storage for supplying the City of Denver with water for municipal purposes, including the watering of lawns and gardens. The date of appropriation awarded the structures was February 11, 1893. The Soda Lakes Reservoirs are located in Section 1, Township 5 South, Range 70 West, 6th P.M., Jefferson County. The Reservoirs are filled through the Harriman Ditch.

D. Meadowview Reservoir: The structure is located in the NE 1/4 SW 1/4 and the NW 1/4 SE 1/4 of Section 26, Township 5 South, Range 71 West, 6th P.M., Jefferson County, Colorado. Meadowview Reservoir was awarded a conditional water right in Case No. 2001CW294, in an amount of water up to 50 acre feet, for augmentation, replacement, exchange and substitution purposes, with the understanding that the amount will be reduced to the difference between 50 acre feet and the volume of water decreed in Case No. 94CW290 for the same purposes. The source is water tributary to North Turkey Creek. To the extent that Meadowview Reservoir cannot be filled under its own priority each year, or space later becomes available in the Reservoir after being filled, Harriman Ditch and Warrior Ditch direct flow water and water available to MMRC in the Soda Lakes Reservoirs will be stored in Meadowview Reservoir by exchange pursuant to the appropriative rights of substitution and exchange decreed in Case Nos. 2000CW060 and 2001CW293, and the currently pending claim in Case No. 94CW290.

Tabulation of MMRC Firm Yield Water  
and Terms and Conditions for Use of MMRC Water

15. The overall "firm" yield of consumptive use water available from the MMRC portfolio of Bear Creek/Turkey Creek water rights and storage facilities was quantified in the Decree entered by the District Court for Water Division 1 in Case No. 2001CW293, dated July 16, 2003. The volume of firm yield water committed to this augmentation plan, as well as the volume of firm yield water committed to all existing decreed and currently pending plans for augmentation which utilize the subject water rights are summarized in Exhibit 2 attached hereto and made a part here of. The terms and conditions under which the Bear Creek/Turkey Creek water rights are used for augmentation and replacement purposes are set forth in the Decree in Case No. 2001CW293, and are deemed to be res judicata in future proceedings involving such rights, pursuant to Williams v. Midway Ranches, 938 P.2d 515 (Colo. 1997). Reference is made to the Decree in Case No. 2001CW293 for more detailed information. Said Terms and Conditions are set forth in Exhibit 3 attached hereto and made a part hereof.

Substitute Supply and Exchange Program  
to Replace Depletions from the Village Wells

16. If the Village Pond has insufficient storage to make releases to meet depletions to North Turkey Creek, Turkey Creek and points downstream, up to 2.0 acre-feet of "firm" yield MMRC Water Rights may be released during times when the exchange decreed in Case No. 2001CW293 can be operated, to offset depletions to North Turkey Creek, Turkey Creek and points downstream by either continuously leaving a portion of MMRC's direct flow water rights in the stream or periodically releasing water stored in Soda Lakes Reservoirs. During times when such an exchange cannot be operated, depletions will primarily be augmented by periodically releasing water from Meadowview Reservoir.
17. At times when the exchange in 2001CW293 can be operated the MMRC exchange to Meadowview Reservoir will utilize portions of its Harriman Ditch and Warrior Ditch direct flow rights, as well as water previously stored in Soda Lakes Reservoirs Nos. 1 and 2. The reaches of the stream affected by the MMRC Exchange shall include sections of Turkey Creek and its tributaries. The downstream point of exchange shall be the confluence of Bear Creek and Turkey Creek at Bear Creek Lake in Section 5, Township 5 South, Range 69 West, 6<sup>th</sup> P.M., Jefferson County, Colorado. The exchange shall extend upstream on Turkey Creek to its confluence with North Turkey Creek and South Turkey Creek in the NW ¼ NW ¼ of Section 27, Township 5 South, Range 70 West, 6<sup>th</sup> P.M.; and thence up North Turkey Creek to the inlet facilities for Meadowview Reservoir in the S ½ of Section 26, Township 5 South, Range 71 West, 6<sup>th</sup> P.M., as more particularly described in the Decree entered in Case No. 2000CW060. Alternatively, instead of exchanging into storage in the Meadowview Reservoir, the exchange may be continued up North Turkey Creek to the confluence of North Turkey Creek and an unnamed tributary in the NW1/4, NW1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M. up the unnamed tributary to a second unnamed tributary in the SE1/4, NW1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M., up the second unnamed tributary to the Village Pond, in NW1/4, SE1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M. Water stored in Meadowview Reservoir may also be exchanged upstream into storage in the Village Pond.
18. Except as regarding the CWCB's instream flow right decreed in Case No. 94CW250, which are addressed below, the MMRC Exchange will only operate when there is a live stream between the point where exchange water is released to the stream system and the particular upstream point of exchange.
19. The portion of the MMRC Exchange utilizing the 2.0 acre-feet of MMRC Water Rights from the confluence of Turkey Creek and Bear Creek up to the Village Pond will be administered with a priority date of September 30, 2003, the date the Application was amended to include the MMRC Water Rights, at a maximum flow rate of 0.3 cubic feet per second.
20. Diversions from Turkey Creek. Applicant's entitlement to Warrior Ditch Priority No. 8 and Harriman Ditch Priority No. 21 from Turkey Creek shall not be used to call out any water right or exchange right that diverts upstream of the Warrior Ditch on Turkey Creek, or its tributaries, with a priority date senior to the filing of the application in Case No. 01CW161.
21. The exchange will operate only when there is a live stream between the upstream point of exchange and the location where exchange water is made available to the stream system by MMRC. Live stream means at least the amount of water to be exchanged at

each measurement point or diversion structure. Exchanges may only be operated to the extent that there is flow at each gage, and at a rate not to exceed the minimum flow measured at any of the gages. Provided, however, that 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 not injury to any other water right. 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.

22. The exchange of water shall be conducted only when all water rights which are located within the exchange reach, and whose priorities are senior to September 30, 2003, 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. Senior intervening water rights shall be deemed to be in priority when the physical supply of water available to any such water right, at its point of diversion, would entitle its user to divert water for beneficial use from a point within the exchange reach, and the user is then seeking to make such a diversion of water. Water rights in the exchange reach which are senior to the exchange priority described herein shall be deemed to be entitled to divert water if, in the absence of the instantaneous stream depletions resulting from the Village Wells No. 1-5, such water rights would have been entitled to divert at their points of diversion. MMRC's entitlement to the April 16, 1862, priority decreed to the Warrior Ditch and the April 15, 1868, priority decreed to the Harriman Ditch shall not be used to call any water right or exchange that diverts above the Warrior Ditch on Turkey Creek, or its tributaries. The conditions set forth in this Paragraph shall apply to all water rights except the instream flow decreed in Case No. 94CW250 which is addressed in Paragraph No. 23, herein.

The Colorado Water Conservation Board Water Rights

23. Applicant and the CWCB have stipulated as follows:
  - A. Applicant acknowledges that the CWCB has the following instream flow water right to preserve the natural environment to a reasonable degree, which rights were appropriated prior to the filing of the application in Case No. 01CW161.

<u>Case No.</u>	<u>Stream</u>	<u>Amount (cfs)</u>	<u>Approp. Date</u>
94CW250	North Turkey Creek	2.9 (Summer) 0.75 (Winter)	11/8/85

- B. In connection with the diversion of water under the junior groundwater rights, Village Wells Nos. 1 through 5, at any time the streamflow of North Turkey Creek within the CWCB's instream flow reach, which is downstream from these diversion points, is at or below the stream flow appropriated by the CWCB in Case No. 94CW250, Applicant agrees to:
  - i. Replace the depletions in time and amount at or above the upstream terminus of the CWCB's instream flow water right.

- C. In connection with the diversion of water for the junior storage water rights for the Village Pond, at any time the streamflow of North Turkey Creek within the CWCB's instream flow reach, which is downstream from these diversion points, is at or below the stream flow appropriated by the CWCB in Case No. 94CW250, Applicant agrees to either:
- i. Curtail all diversions or
  - ii. Replace the depletions in time and amount at or above the upstream terminus of the CWCB's instream flow water right.
- D. The Applicant also seeks to decree an augmentation plan to permit it to make out-of-priority diversions. To the extent that the Applicant seeks to divert out-of-priority in a manner not covered in paragraphs (b) and (c) above, the Applicant agrees that it will not divert unless:
- i. the CWCB's instream flow water rights are fully satisfied on North Turkey Creek;  
or
  - ii. the Applicant replaces its out of priority depletions in time and amount at or above the upstream terminus of the CWCB's instream flow water right.
- E. The Applicant agrees it will not operate its right of substitution and exchange at any time the flow in the North Turkey Creek within the instream flow reach of the CWCB's instream flow water right is at or below the stream flow appropriated by the CWCB in Case No. 94CW250;
- F. So as to assure the operation of the augmentation and exchange plan, Applicant will install and maintain such water measuring devices, implement such accounting procedures, and provide such calculations as may be required by the State or Division Engineer to administer the terms of this decree. The Colorado Water Conservation Board shall have access to any such measuring device(s) at reasonable times in order to make readings therefrom.

#### **APPROVAL OF PLAN FOR AUGMENTATION**

24. **General Description and Water Rights to be Used for Augmentation Plan:**

- A. Applicant proposes to develop approximately 30 acres in the NW1/4SE1/4 of Section 14, Township 6 South, Range 71 West of the 6<sup>th</sup> P.M. to include commercial and retail office and warehouse space, with proposed grocery and restaurant space. The Development will occur in several stages and water demands and augmentation needs will correspond respectively. The plan for augmentation was developed to replace out-of-priority depletions associated with the use of Village Wells Nos. 1 through 5 as applied for in the original application. The total water demand for the Development is approximately 24.48 acre-feet of water per year for which consumptive use must be calculated. Of this 24.48 acre-feet, five percent or approximately 1.2 acre-feet of water used for commercial purposes will be consumed per year using a central mechanical wastewater treatment system.

- B. In order to provide the necessary replacement water for the Development to the stream system in the Turkey Creek drainage basin, Applicant proposes to use water stored in the Village Pond to the extent water is physically and legally available for storage and water stored in Meadowview Reservoir. Applicant intends to store sufficient water to satisfy carry over storage.
- C. Applicant shall make releases from the Village Pond at any and all times when Applicant's water rights are out of priority or the exchanges to the Village Pond are not available and the Jefferson County School District's water rights are in priority, without the need for a formal call by the Jefferson County School District.

25. Terms and conditions to avoid injury to surrounding vested ground water rights.

The statements in this paragraph of certain terms and conditions are not intended to minimize the significance of other terms and conditions to avoid injury which are found elsewhere in this Decree.

- A. VEC's augmentation and exchange provide replacement supplies to the stream. Certain vested ground water rights in the vicinity of VEC's development are also entitled to protection from injury through the operation of VEC's out-of-priority pumping. To protect such ground water rights from injury, VEC will return at least ninety-five percent (95%) of the water pumped from Village Wells 1 through 5, after use and effluent treatment, to a groundwater recharge facility. The groundwater recharge facility will return the treated effluent to the fractured bedrock aquifer from which the water was withdrawn and not to any shallow alluvial aquifer. VEC will submit as-built plans for the recharge facility that establish VEC's compliance with this sub-paragraph to the Division Engineer, Bennett Auslaender, and to any other party to this case who so requests.
- B. Prior to beginning pumping from Village Wells 1 through 5, VEC shall design and install a monitoring network to measure the performance of the recharge of treated effluent to the fractured bedrock aquifer. The monitoring network shall include the number and location of monitoring wells on the VEC property acceptable to Jefferson County, each with shallow and deep dual-completed monitoring holes completed at a sufficient distance from the recharge facility to measure the recharge to the fractured bedrock aquifer, and shall monitor water levels in all monitoring wells on at least a weekly basis. VEC will provide detailed plans of the monitoring network to Jefferson County and to any party in this case who so requests at least 30 days prior to installing the monitoring network.
- C. Appendix A of Bennett Auslaender's Stipulation, reflects an area potentially "at risk" of well-to-well interference from VEC's pumping. VEC has entered into certain stipulations with wells owners in the vicinity surrounding VEC to mitigate effects of such potential interference. Those stipulations are hereby incorporated into this decree by reference. In accordance with the Court's Post-trial Order, VEC shall afford the Remaining Opposers similar protection afforded the individual well owners who entered into stipulations with VEC. Those protections will be the same as outlined in the Jefferson County Official Development Plan for the Village at Elk Crossing, Section J, at page 6. In order to obtain such protection, any Remaining Opposer who desires such monitoring of their well

listed above in paragraph 2D must notify VEC, in writing, no later than thirty days from the date of this Decree stating that they desire to enter into an agreement with VEC for access to their property and monitoring of such well in accordance with this paragraph. Within 90 days of the issuance of this Decree, VEC must file a notice with this court that identifies the additional wells that will be monitored.

26. Terms and Conditions to Avoid Injury to Downstream Surface Water Rights.

The statements in this paragraph of certain terms and conditions are not intended to minimize the significance of other terms and conditions to avoid injury which are found elsewhere in this Decree.

- A. If all or any portion of the 2.0 acre-feet of MMRC firm yield water is not released to meet VEC's augmentation requirements or exchanged to storage into the VEC Pond (the "Excess MMRC Water"), then the Excess MMRC Water will be released each year at such times as to benefit Bergen, Red Rocks and the Spickerman water rights owned by Ted Zorich. Provided, however, that water exchanged to the VEC Pond need not be released except to meet augmentation requirements. Releases from the Meadowview Reservoir will be made in a slug fashion and at such times as directed by the Division Engineer. To the extent possible under the terms and conditions of this Decree, the TTIC Water Rights shall be exchanged to the VEC Pond before utilizing the MMRC Water Rights for such exchange; provided, that Applicant must exchange sufficient water from either or both the TTIC and MMRC Water Rights to comply with the term and condition of this Decree in paragraph 25.C. above requiring releases from the VEC Pond under certain conditions to prevent injury to the Jefferson County School District. No more than 1.0 acre-foot of the MMRC water is to be used to exchange to the VEC Pond.
- B. The VEC pumping of the 24.48 acre-feet from the Village Wells 1 through 5 will be continuous throughout the year because demands will be evenly distributed throughout the year. Following use and treatment of effluent, at least ninety-five percent (95%) of the water pumped from Village Wells 1 through 5 will be returned to the bedrock aquifer through the VEC recharge facilities. As a result, the timing of the stream depletions, amounting to no more than five percent (5%) of pumping, will also be evenly distributed throughout the year (0.1 acre-foot per month). Replacements for out of priority stream depletions will be made by releasing augmentation water stored in the Village Pond or in Meadowview Reservoir, or by leaving the MMRC Water Rights and/or the TTIC Water Rights in the stream. The actual day-to-day and year-to-year operations will be contained in accounting forms approved by the Division Engineer.
- C. Prior to the issuance of permits for Village Wells Nos. 1 through 5, the Applicant must demonstrate that the Village Pond has been constructed with an active capacity of 3.7 acre-feet and an operable outlet works, that the Village Pond has been filled, and that Meadowview Reservoir has been constructed and filled.
- D. The terms and conditions under which the Bear Creek/Turkey Creek water rights are used for augmentation and replacement purposes are set forth in the Decree in Case No. 2001CW293, and are deemed to be res judicata in future proceedings involving such rights, pursuant to Williams v. Midway Ranches, 938



P.2d 515 (Colo. 1997). Reference is made to the Decree in Case No. 2001CW293 for more detailed information. Said Terms and Conditions are set forth in Exhibit 3 attached hereto and made a part hereof.

27. Name of Structures to be Augmented: Village Wells Nos. 1 through 5 described in Paragraph 5 that will pump to a central storage tank. Deliveries from the storage tank for indoor uses shall be metered separately and recorded monthly.
28. Since the depletion associated with water use from the Village Wells Nos. 1-5 is to an unnamed tributary of North Turkey Creek at a location above the point where replacement water is delivered to the stream system by MMRC, the Applicant is awarded a conditional appropriative right of substitute supply and exchange pursuant to C.R.S. §§ 37-80-120 and 37-92-302(1)(a). The program of substitution and exchange will utilize portions of the Harriman Ditch and Warrior Ditch direct flow rights, as well as water previously stored in Soda Lakes Reservoirs No. 1 and 2 for exchange to Village Pond, or alternatively the program will include an exchange of MMRC water from Meadowview Reservoir to the Village Pond. The reach of the stream impacted by this program of substitution and exchange shall extend from the confluence of Bear Creek and Turkey Creek at Bear Creek Lake in Section 5, Township 5 South, Range 70 West, 6<sup>th</sup> P.M., Jefferson County, Colorado; thence up Turkey Creek to the confluence of North Turkey Creek and South Turkey Creek in the NW ¼ NW ¼ of Section 27, Township 5 South, Range 70 West, 6<sup>th</sup> P.M.; thence up North Turkey Creek to its confluence with an unnamed tributary in the NW1/4, NW1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M. up the unnamed tributary to a second unnamed tributary in the SE1/4, NW1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M., up the second unnamed tributary to the Village Pond, in NW1/4, SE1/4, Section 14, Township 6 South, Range 71 West, 6<sup>th</sup> P.M. and stored therein. The MMRC program of substitution and exchange to the Village Pond utilizing the MMRC rights shall be administered with a priority date of September 30, 2003, at a maximum flow rate of 0.3 of a cubic foot per second.
29. When conditions permit, MMRC will augment stream depletions resulting from water use from the Village Wells No. 1-5, by foregoing diversions of MMRC's Warrior Ditch or Harriman Ditch water rights. In addition, water previously stored in the Soda Lakes Reservoir Nos. 1 and 2 and Meadowview Reservoir will be exchanged to the Village Pond. The exchange will operate to replace depletions to the flow of water in Turkey Creek, North Turkey Creek and the unnamed tributary of North Turkey Creek as the depletions occur. Direct flow of water available to MMRC will be left in the stream at a rate equivalent to the rate of depletions. In this way, the flow of water in the stream system below the point where replacement water is delivered will be unaffected. In the alternative, direct flow of water and storage water available to MMRC will be left in or released to the stream to replace aggregated depletions. If the calling water right on Turkey Creek is within the Harriman Ditch system, MMRC may release water from Soda Lake Reservoirs directly to the Harriman Ditch, or MMRC may deliver its direct flow rights to the Harriman Ditch at either the Bear Creek or Turkey Creek headgates; provided, however, that any use of the April 16, 1862, priority decreed to the Warrior Ditch and the April 15, 1868, priority decreed to the Harriman Ditch shall be subject to the conditions set forth in Paragraph No. 21.

### CONCLUSIONS OF LAW

30. This Court has jurisdiction over the subject matter of these proceedings and over all who may be affected thereby, whether they have chosen to appear or not pursuant to C.R.S. §§ 37-92-302, 37-92-304(6), and 37-92-305.
31. This application was filed with the Water Court pursuant to C.R.S. §37-92-302(1)(a). Full, timely and adequate notice of the claims adjudicated herein and of the pendency of this action was given in the manner provided by law.
32. The request for water rights, water storage rights and plan for augmentation and exchange decreed herein are, as a matter of law, permissible and come within the definitions authorized by statute.
33. The terms and conditions as set forth in this decree are adequate to prevent injury to the owners of, or persons entitled to use, water under a vested water right or a decreed conditional water right. As a result of the operation of the Plan for Augmentation and Exchange as set forth herein, there is water available for withdrawal from the Village Well Nos. 1 through 5 described above, and the construction and use of the same will not result in material injury to the vested water rights of others. Accordingly, pursuant to C.R.S. §37-90-137(2), and the terms and conditions of this Decree, the State Engineer shall approve applications for well permits or replacement well permits by Applicant.
34. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.
35. This decree is administrable by the water officials of the State of Colorado. Applicant will furnish to the Division Engineer or its representative appropriate records evidencing Applicant's operations under this decree.

### JUDGMENT AND DECREE

36. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein.
37. The Application for water rights, water storage rights and plan for augmentation and exchange as described herein is hereby approved. The State Engineer, Division Engineer for Water Division 1, and other water administration officials are ordered to administer the water rights decreed herein in accordance with this decree and in accordance with the priorities awarded herein. As a result of the approval of this plan for augmentation and exchange subject to the terms and conditions set forth in the foregoing Findings of Fact and Conclusions of Law, water will be made available from the Village Wells Nos. 1 through 5 described herein, and the vested rights of others will not be materially injured by the contemplated diversions therefrom. Pursuant to C.R.S. §37-92-305(6) and §37-90-137(2), and the terms and conditions of this Decree, the State Engineer shall issue a permit for the Village Wells Nos. 1 through 5 that Applicant and its successors-in-interest may need to construct, upon receipt of a permit application for the well.

38. The Application in this case was filed in the Water Court for Water Division 1 in the year 2001, and the priority awarded herein shall be administered as having been filed in that year and shall be junior to all priorities awarded in earlier years for water derived from the same source. As between water rights awarded in the same calendar year, priorities shall be determined by the date of appropriation as decreed and shall not be affected by the date of this decree.
39. Administration. The plan for exchange is hereby approved, subject to the terms and conditions provided herein. That State Engineer, Division Engineer for Water Division 1, and other water administration officials are ordered to administer the plan for exchange in accordance with this decree and in accordance with the priorities awarded herein. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.
40. Measurement and Accounting. In order to assure that the vested water rights of others are protected from injury and to assure proper administration of this decree, prior to diversion of water by Applicant under any right decreed or approved herein, Applicant shall install measuring devices and provide accounting as required by the Division Engineer. VEC shall install totalizing flow meters on all the wells that are the subject of this Decree and at the recharge facility to measure the amount of water discharged into the recharge facility, and keep said meters in good repair to provide information to the Division Engineer, Foothills, Jefferson County, Red Rocks, Ted Zorich and the Jefferson County School District R-1 by monthly accounting forms approved by the Division Engineer substantially similar to those attached hereto as Exhibit 4. Parshall flumes with suitable recorders shall be installed on the "unnamed tributary" both above and below the VEC Pond, at the point where the flow below the VEC Pond discharges into the intervening unnamed tributary and where the intervening unnamed tributary discharges into Turkey Creek. All flumes shall be installed prior to any exchange into or augmentation of the VEC Pond, at locations reasonably acceptable to Opposers, Foothills, Red Rocks, Ted Zorich and Jefferson County. Any disagreement as to such locations may be resolved pursuant to retained jurisdiction. Monitoring of the unnamed tributary and of the recharge facility as described herein, as well as quarterly water quality measurements of the unnamed tributary are required during the retained jurisdiction period. Reports will be provided to the Division Engineer and the Jefferson County School District R-1 on a quarterly basis, and to other parties in this case who so request.


The Applicant will comply with the Colorado Department of Public Health and Environment discharge limits as they pertain to the recharge facility, including but not limited to a maximum average discharge to the recharge facility of 10 mg/l total nitrogen.

41. Retained jurisdiction: To assure that adequate protection is provided to other vested water rights or other conditional water rights, the Court shall retain jurisdiction for a period of ten years after 75% buildout of the development. The point in time at which 75% buildout is reached shall be certified in writing to the Water Court by Applicant, or its successors and assigns, with copies mailed to the Division Engineer and all parties who have appeared herein or their counsel of record. Upon the filing of a proper petition during the period of retained jurisdiction, the Court will reconsider its approval pursuant to § 37-92-304(6), C.R.S. Any such petition shall be served on all parties who have appeared herein, by certified mail, return receipt requested. Such petition shall be made

in good faith, under oath, and shall set forth with particularity the factual basis upon which the requested reconsideration is premised. The Applicant has the burden to show its compliance with the decree. If it is alleged that the decree is causing injury, the party alleging injury shall have the burden of going forward to establish the prima facie facts alleged in the petition. If a prima facie case of injury to vested water rights is established, Applicant shall thereupon bear the burden of proof to show that (a) any modification sought by any other party is not required to avoid injury to other appropriators, or (b) that any term or condition proposed by Applicant in response to the petition avoids injury to other appropriators.

42. The conditional rights associated with water rights decreed herein are continued in full force and effect until August 31, 2010. If Applicant desires to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before the last business day in August 2010, 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 appropriation.

DATED this 11<sup>th</sup> day of August, 2004.

  
\_\_\_\_\_  
Roger A. Klein  
Water Judge  
Water Division No. 1

*This order was filed electronically pursuant to Rule 121, §1-26. The original signed order is in the Court's file.*