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| DISTRICT COURT, WATER DIVISION 1<br>COLORADO<br>901 9th Avenue<br>Greeley, CO 80631   | <div style="text-align: center;"> <b>▲ COURT USE ONLY</b><br/> ▲ </div> <div style="text-align: center;"> Case Number 2007CW123 </div> |
| CONCERNING THE APPLICATION FOR WATER RIGHTS OF<br><br><b>COLORADO MOUNTAIN PROPERTIES, INC.,<br/> MOUNTAIN LAND CONSTRUCTION CO., RONALD P.<br/> LEWIS, CAROL J. LEWIS, CHRISTOPHER C. VAN<br/> INWAGEN, PATRICK DEROMEDI AND MOUNTAIN<br/> MUTUAL RESERVOIR COMPANY</b><br><br>IN JEFFERSON COUNTY |  |
| <div style="text-align: center;"> <b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE<br/> OF THE WATER COURT</b> </div>   |  |

This matter, having come on for consideration upon the Application of Colorado Mountain Properties, Inc., Mountain Land Construction Co., Ronald P. Lewis, Carol J. Lewis, Christopher C. Van Inwagen, Patrick Deromedi and Mountain Mutual Reservoir Company, for Surface and Alluvial Water Rights, Approval of a Plan for Augmentation and Exchange Right, and the Court having considered the pleadings, the files herein, the evidence presented and the comments of the Division Engineer, does find.

### FINDINGS OF FACT

1. The Application was filed with the Water Clerk, Water Division 1, on May 31, 2007. All notices required by law of the filing of this Application have been fulfilled, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

2. Statements of Opposition to the Application were filed by Brook Forest Water District, Evergreen Metropolitan District, Colorado Water Conservation Board, Town of Morrison, Farhad Sarrafian, Vista Exline, Jeremiah P. Lee, II, Larry J. Plume, Henry L. Kerschbaum, Ben Napheys, III, Jane Kelley, John Espinosa, Douglas M. Brown, Susan E. Brown and the Cragmont Estates Homeowners Association. No other statements of opposition have been filed in this matter and the time for filing such statements has now expired. The Application was initially referred to the Referee for consideration pursuant to C.R.S. §37-92-203(7). On September 12, 2007, by Order of the Referee entered pursuant to C.R.S. §37-92-303(2), the Application was re-referred to the Water Judge.

3. Colorado Mountain Properties, Inc. (hereinafter referred to as "Colorado Mountain Properties"), is the primary applicant in this matter. The mailing address of Colorado Mountain Properties is as follows:

Colorado Mountain Properties, Inc.  
26624 North Turkey Creek Road  
Evergreen, Colorado 80439

4. The Applicants own approximately 102 acres of land located in portions of Section 28, Township 5 South, Range 71 West, 6th P.M., Jefferson County. The property is more particularly described in Exhibit "A-3," and consists of portions of Blocks A, C and D of the Cragmont Subdivision (located in the NW 1/4 NE 1/4, the SW 1/4 NE 1/4, and the NW 1/4 SE 1/4 of Section 28), Block H of the Sprucedale Park Subdivision (located in the SE 1/4 NW 1/4 and the E 1/2 NE 1/4 NW 1/4 of Section 28), and the NW 1/4 SE 1/4 NE 1/4 of Section 28, ("Subject Property"). Maps that illustrate the Subject Property are attached as Exhibits "A-1" and "A-2." The Subject Property is in the process of being developed as a residential subdivision. A maximum of 100 single-family homes will be constructed within the Subject Property. The water rights and augmentation plan decreed herein will not be used to provide water service outside of the Subject Property.

5. Water for the development will be supplied from a central water system using water obtained from the Sprucedale Infiltration Gallery Nos. 1 and 2, and the Sprucedale Ditch. Use of water shall be limited to ordinary household purposes inside residences. No outside irrigation or other outside use of water is allowed under this augmentation plan.

#### ADJUDICATION OF WATER RIGHTS

6. The Applicants have requested the adjudication of surface and alluvial water rights for the Sprucedale Ditch and the Sprucedale Infiltration Gallery Nos. 1 and 2. The Sprucedale Infiltration Gallery No. 1 is located in the NE 1/4 NW 1/4 of Section 28, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 2,650 feet from the East Section line and 110 feet from the North Section line of said Section 28. The structure was hand dug in 1963 to a depth of approximately 15 feet and has historically served a single-family residence. The Sprucedale Infiltration Gallery No. 2 is located in the NE 1/4 NW 1/4 of Section 28, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 2,720 feet from the East Section line and 190 feet from the North Section line of said Section 28. The structure was constructed to a depth of between six and ten feet below the natural ground surface in conjunction with the building of Sprucedale Reservoir, an off stream reservoir adjacent to Cub Creek, to eliminate the potential for alluvial Cub Creek water applying upward pressure on the reservoir liner. The Sprucedale Ditch is located in the NE 1/4 NW 1/4 of Section 28, Township 5 South, Range 71 West, 6th P.M., Jefferson County, at a point approximately 2,810 feet from the East Section line and 300 feet from the North Section line of said Section 28. The Ditch is used to divert water from Cub Creek into and through Sprucedale Reservoir on a continuous basis. The Applicants have also requested the adjudication of an appropriative right of substitute supply and exchange as more particularly described in Paragraph No. 19, *infra*.

7. The date of appropriation for the Sprucedale Infiltration Gallery No. 1 is June 30, 1963. The date of appropriation for the Sprucedale Infiltration Gallery No. 2 is June 30, 2006. The date of appropriation for the Sprucedale Ditch is June 30, 1962.

8. The source of water for the Sprucedale Infiltration Gallery Nos. 1 and 2 is the alluvium of Cub Creek, a tributary of Bear Creek and the South Platte River. The source of water for the Sprucedale Ditch is Cub Creek.

9. The amount of water decreed to the Sprucedale Infiltration Gallery No. 1 is 4.7 gallons per minute, Absolute, and 10.3 gallons per minute, Conditional. The amount of water decreed to the Sprucedale Infiltration Gallery No. 2 is 15 gallons per minute, Conditional. The amount of water decreed to the Sprucedale Ditch is 30 gallons per minute, Conditional. The maximum instantaneous diversion rate shall not exceed 60 gallons per minute if all three structures are diverting simultaneously.

10. Water from each of the structures is decreed for ordinary household purposes inside single-family dwellings and fire protection purposes.

#### WATER USE AND DEPLETIONS

11. Fifteen homes to be served under this augmentation plan currently exist and have been occupied for varying lengths of time ranging from nine months to over six years. For the past five years, water has been supplied to these homes from sources outside of the Bear Creek basin. Water usage at each of the existing residences has been metered. The average usage of water has been documented to be 128 gallons per day per residence. This augmentation plan has been designed to accommodate an average daily water usage of 150 gallons per residence. Depletions will be replaced in accordance with measured water deliveries to customers. Wastewater from all in-building uses of water will initially be treated utilizing individual non-evaporative septic systems with soil absorption leach fields. Ten percent (10%) of the water used for in-building purposes is assumed to be consumed. Return flows are to Cub Creek. A mechanical type of central wastewater treatment facility may be constructed in the future. Depletions associated with water usage in each home that is connected to a mechanical type wastewater treatment facility will be based on a five percent (5%) consumption factor. All new homes built after a mechanical type wastewater treatment facility is constructed will be required to connect to the facility. In addition, any homes using individual on-site septic systems at the time a mechanical type wastewater treatment facility is constructed will be required to connect to the facility at such time as the septic system must be replaced, or upon failure of the septic system. Should mechanical type wastewater treatment be used in the future, the point of effluent discharge to Cub Creek shall be at or above the point of diversion from Cub Creek whenever the in-stream flow water right decreed in Case No. 94CW251 is not fully satisfied.

12. Based on the water use requirements set forth in Paragraph No. 11, total water diversions for the development being proposed at full build-out shall not exceed 16.8 acre feet per year.

13. 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 is 2.16 acre-feet per year once return flows from all septic systems reach the stream system. This figure is based on water deliveries to 100 homes averaging no more than 150 gallons per day per home, with no outside usage of water and the utilization of septic systems for wastewater treatment. It also includes evaporation losses from the open water surface of Sprucedale Reservoir, as more particularly described herein.

WATER RIGHTS TO BE USED FOR  
AUGMENTATION AND REPLACEMENT PURPOSES

14. In order to provide the necessary replacement water to the stream system, 68.8 shares of the capital stock of the Mountain Mutual Reservoir Company (hereinafter referred to as "MMRC"), will be committed to this augmentation plan as long as the method of wastewater treatment is via non-evaporative septic systems with soil absorption leach fields. Should a mechanical type of central wastewater treatment facility be constructed in the future, the number of MMRC shares committed to this plan will be reduced to 42 shares. MMRC is a nonprofit Colorado corporation, which has been created for the following principal purposes:

- a. To receive and hold title to direct flow and storage water rights, reservoirs and interests therein, lands, easements, rights-of-way, and other related facilities, in trust for its shareholders; and
- b. To administer water rights and operate facilities for its shareholders, in accordance with individual plans for augmentation approved by the Water Court.

The 68.8 shares represent the right to receive 2.16 acre feet of augmentation water per year.

15. The water rights which MMRC owns for the benefit of its shareholders (hereinafter referred to as the "subject 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 Number | 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, 6th P.M., Jefferson County. 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, 6th P.M., Jefferson County. 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 Number | Source       | Amount    | MMRC Entitlement |
|--------------------|-----------------|--------------|-----------|------------------|
| Dec. 1, 1861       | 4               | Bear Creek   | 12.33 cfs | 0.1541 cfs       |
| April 16, 1862     | 8               | Turkey Creek | 2.86 cfs  | 0.0358 cfs       |
| Oct. 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 in Paragraph No. 15(a). The Ditch was originally decreed for irrigation purposes.

c. Soda Lakes 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. 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 decreed in 2001CW294 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 North Turkey Creek and 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 is stored in

Meadowview Reservoir by exchange pursuant to the appropriative rights of substitution and exchange decreed in Case Nos. 94CW290, 2000CW060 and 2001CW293.

TERMS AND CONDITIONS UNDER WHICH MMRC'S WATER RIGHTS ARE USED FOR AUGMENTATION, REPLACEMENT AND EXCHANGE PURPOSES

16. The terms and conditions under which MMRC's Harriman Ditch, Warrior Ditch and Soda Lakes water are used for augmentation and replacement purposes were decreed in Case No. 2001CW293 and can be described as follows:

a. MMRC's Harriman Ditch Entitlement (i.e. 7.71 shares):

i. Only the historic consumptive use portion of MMRC's Harriman Ditch entitlement shall be utilized by MMRC for replacement, augmentation, exchange and storage purposes. Diversions under the March 16, 1869, and the May 1, 1871, priorities decreed to the Ditch are limited as follows:

| Priority Number | Appropriation Date | Diversion Rates in cfs |       |       |       |        |           |
|-----------------|--------------------|------------------------|-------|-------|-------|--------|-----------|
|                 |                    | April                  | May   | June  | July  | August | September |
| 23              | 3-16-1869          | 0.087                  | 0.117 | 0.130 | 0.078 | 0.078  | 0.081     |
| 25              | 5-01-1871          | 0.098                  | 0.171 | 0.353 | 0.257 | 0.187  | 0.213     |

| Priority Number | Appropriation Date | Maximum Monthly Ten Year Diversions in Acre Feet |      |       |       |        |       | Total Maximum Ten Year Diversions |
|-----------------|--------------------|--|------|-------|-------|--------|-------|-----------------------------------|
|                 |                    | April  | May  | June  | July  | August | Sept. | Acre Feet                         |
| 23              | 3-16-1869          | 16.5   | 41.8 | 52.8  | 20.9  | 16.5   | 13.5  | 162                               |
| 25              | 5-01-1871          | 13.2   | 47.3 | 126.5 | 110.0 | 52.8   | 26.4  | 330                               |

The water may be stored in the Soda Lakes Reservoirs and Meadowview Reservoir to the extent there is space in MMRC's storage accounts. The water may also be left in the stream system to offset depletions resulting from water use by MMRC shareholders.

ii. MMRC's entitlement to the April 15, 1868, priority decreed to the Harriman Ditch (i.e. 0.2072 cfs of Priority No. 21 from Turkey Creek), shall be used only for substitution and exchange purposes involving structures located within the Turkey Creek drainage basin. All such uses are subject to the conditions set forth in Paragraph Nos. 22 and 26, infra.

iii. To provide for the maintenance of historic ditch losses, an amount of water equal to fifteen percent (15%) of MMRC's pro-rata entitlement to the Harriman Ditch direct flow priorities from Bear Creek (i.e. up to a maximum of 0.0230 cfs of the March 16, 1869, priority; up to a maximum of 0.0738 cfs of the May 1, 1871, priority; and up to a maximum of 0.0372 cfs of the March 1, 1882,

priority), is available for call by the Harriman Ditch Company for the benefit of the shareholders who continue to use the Harriman Ditch.

iv. 0.0655 cfs of MMRC's pro-rata entitlement to the May 1, 1871, priority decreed to the Harriman Ditch and 0.2109 cfs of MMRC's pro-rata entitlement to the March 1, 1882, priority decreed to the Harriman Ditch shall be abandoned to Bear Creek, upon expiration of the retained jurisdiction period in Case No. 94CW168.

v. Whenever water rights within former Water District No. 9 holding priorities between May 1, 1871, and March 1, 1882, are being curtailed because of a call originating from the South Platte River, the diversion rates for the May 1, 1871, priority decreed to the Harriman Ditch (i.e. Priority No. 25), shall be reduced sixteen percent (16%), in accordance with the following schedule:

| Priority Number | Appropriation Date | Diversion Rates in cfs |       |       |       |        |           |
|-----------------|--------------------|------------------------|-------|-------|-------|--------|-----------|
|                 |                    | April                  | May   | June  | July  | August | September |
| 25              | 5-1-1871           | 0.082                  | 0.144 | 0.297 | 0.216 | 0.157  | 0.179     |

b. MMRC's Warrior Ditch Entitlement (i.e. 2.0 shares):

i. Only the historic consumptive use portion of MMRC's Warrior Ditch entitlement shall be utilized by MMRC for replacement, augmentation and exchange purposes. Diversions under the December 1, 1861, and the October 31, 1864, priorities decreed to the Ditch are limited as follows:

| Priority Number | Appropriation Date | Diversion Rate in cfs | Time Period of Diversion | Maximum Yearly Diversion (AF) |
|-----------------|--------------------|-----------------------|--------------------------|-------------------------------|
| 4               | 12-01-1861         | 0.0809                | May 1 – October 31       | 21.7                          |
| 14              | 10-31-1864         | 0.0892                | June 1 – August 31       | 8.7                           |

Whenever the above referenced priorities decreed to the Warrior Ditch are available during the period May 1 through October 31 of each year, MMRC may place a call for the water, up to the diversion rates stated, for purposes of offsetting depletions resulting from water use by MMRC shareholders. Alternatively, the water may be diverted to storage in the Soda Lakes Reservoirs and Meadowview Reservoir to the extent there is space in MMRC's storage accounts.

ii. MMRC's entitlement to the April 16, 1862, priority decreed to the Warrior Ditch (i.e. 0.0358 cfs of Priority No. 8 from Turkey Creek), shall be used only for substitution and exchange purposes involving structures located within the Turkey Creek drainage basin. All such uses are subject to the conditions set forth in Paragraph Nos. 22 and 25, infra.

iii. To provide for the maintenance of historic ditch losses, an amount of water equal to twenty percent (20%) of MMRC's pro-rata entitlement to the Warrior Ditch direct flow priorities from Bear Creek (i.e. up to a maximum of 0.0308 cfs of the December 1, 1861, priority; up to a maximum of 0.0637 cfs of the October 31, 1864, priority; and up to a maximum of 0.0287 cfs of the April 1, 1865, priority), shall be available for call by the Warrior Ditch Company for the benefit of the shareholders who continue to use the Warrior Ditch.

iv. 0.0424 cfs of MMRC's pro-rata entitlement to the December 1, 1861, priority decreed to the Warrior Ditch, 0.1655 cfs of MMRC's pro-rata entitlement to the October 31, 1864, priority decreed to the Warrior Ditch and 0.1149 cfs of MMRC's pro-rata entitlement to the April 1, 1865, priority decreed to the Warrior Ditch shall be abandoned to Bear Creek, upon expiration of the retained jurisdiction period in Case No. 94CW168.

c. MMRC's Soda Lakes Reservoir Nos. 1 & 2 Entitlement (i.e. 8.71 shares):

i. MMRC's full entitlement to the storage priorities decreed to the Soda Lakes Reservoir Nos. 1 and 2 may be diverted each year to the extent the storage rights are in priority. MMRC's storage account in the Soda Lakes system is limited to 2.18% of the actual storage capacity of the system.

ii. All water in MMRC's storage account on November 1 of each year (i.e. the beginning of the storage season), shall be considered available for use as replacement water in plans for augmentation administered by MMRC, with the exception of reserved ground and surface water return flows described herein.

iii. The unused storage capacity available to MMRC in the Soda Lakes system at the beginning of each storage season is determined by the pro-rata storage entitlement available to 8.71 shares, less the physical carryover of Soda Lakes decree water in MMRC's account on the previous October 31.

iv. Twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between November 1 and the following May 31 of each water year is reserved for release to Marston Reservoir through the Harriman Ditch. A request for such a release must be made by the Denver Water Department on or before June 30 of the water year in which the water is stored. The twenty percent figure represents historic ground water return flows associated with MMRC's entitlement to the Soda Lakes Reservoir Nos. 1 and 2 storage rights.

v. Twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between June 1 and the following October 31 of each water year is reserved for release to Marston Reservoir through the Harriman Ditch. A request for such a release must be made by the Denver Water Department on or before November 30 of the same calendar



year when the water is stored. The twenty percent figure represents additional historic delayed ground water return flows associated with MMRC's entitlement to the Soda Lakes Reservoir Nos. 1 and 2 storage rights.

vi. If the Denver Water Department fails to make a request for the release of the water described in (iv) and (v), above, by the dates specified, said water automatically becomes the property of MMRC and is available for augmentation and replacement purposes.

vii. No later than May 31 of each storage season, twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between November 1 and the following May 31 of each water year is released to Turkey Creek in accordance with the direction of the State water administration officials. The twenty percent figure represents historic surface water return flows associated with the subject water rights.

viii. No later than November 30 of each water year, twenty percent of the water stored under the Soda Lakes Reservoir Nos. 1 and 2 storage priorities for the benefit of MMRC between June 1 and the following October 31 of each calendar year is released to Turkey Creek in accordance with the direction of the State water administration officials. The twenty percent figure represents historic surface water return flows associated with the subject water rights.

ix. MMRC shall be assessed a proportionate amount of the evaporation and seepage losses from the Soda Lakes Reservoir Nos. 1 and 2 in accordance with the operating rules and regulations of the Soda Lakes Reservoir and Mineral Water Company. The same standard for evaporation and seepage losses applies to all water stored in the Soda Lakes system; provided, however, that until an actual record of evaporation and seepage losses is established, three acre feet of the water stored in MMRC's account each year is reserved for such purposes.

x. Any release of MMRC's water stored in the Soda Lakes system to Turkey Creek or the Harriman Ditch for augmentation and replacement purposes, or for purposes of filling tank trucks, shall be in accordance with the operating rules and regulations of the Soda Lakes Reservoir and Mineral Water Company.

17. MMRC's interests in the Harriman Ditch, Warrior Ditch and Soda Lakes Reservoir Nos. 1 and 2 water rights, as described above, have been approved for the following purposes: augmentation, replacement, exchange, substitution, storage, and the right to use, reuse and make a succession of uses of such water to extinction, either directly or by exchange. Direct use of the subject water rights includes, but is not limited to, leaving the consumptive use water in the stream as replacement water for out-of-priority stream depletions.

FIRM YIELD OF THE PORTFOLIO OF MMRC WATER RIGHTS AND STORAGE  
FACILITIES

18. The overall “firm” yield of consumptive use water available from the MMRC portfolio of the subject water rights and storage facilities was quantified in Case No. 2001CW293. 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 the attached Exhibit "B."

SUBSTITUTE SUPPLY AND EXCHANGE PROGRAM TO REPLACE DEPLETIONS  
FROM THE SPRUCEDALE INFILTRATION GALLERY NOS. 1 AND 2 AND THE  
SPRUCEDALE DITCH, AND TO FILL AN ON-SITE RESERVOIR

19. Since the points of depletion associated with water use from the Sprucedale Infiltration Gallery Nos. 1 and 2, and the Sprucedale Ditch (“subject diversion facilities”), and the location of Sprucedale Reservoir, are on a side tributary of Bear Creek and upstream of the point where augmentation and replacement water is delivered to the stream system by MMRC, the Applicants are awarded a separate appropriative right of substitute supply and exchange pursuant to C.R.S. §37-80-120 and §37-92-302(1)(a). The exchange shall be administered with a priority date of May 31, 2007, at a maximum flow rate of 0.005 of a cubic foot per second when instantaneous stream depletions are being augmented, and 0.3 of a cubic foot per second when water is being exchanged to storage in Sprucedale Reservoir. The reach of the exchange shall extend from the confluence of Bear Creek and Turkey Creek at Bear Creek Lake in Section 5, Township 5 South, Range 69 West, 6th P.M., Jefferson County; thence up Bear Creek to its confluence with Cub Creek located in the SW 1/4 NE1/4 of Section 10, Township 5 South, Range 71 West, 6th P.M.; and thence up Cub Creek to the headgate of Sprucedale Ditch and the point where depletions from the development impact Cub Creek in the NE 1/4 NW 1/4 of Section 28, Township 5 South, Range 71 West, 6th P.M.

20. When conditions permit, MMRC will augment stream depletions resulting from water use from the subject diversion facilities 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 will be exchanged to points upstream. The exchange will operate to replace depletions to the flow of water in Bear Creek and Cub Creek as the depletions occur, as well as to store MMRC water in Sprucedale Reservoir. Storage of water in Sprucedale Reservoir by exchange shall be subject to the terms and conditions contained in the Decree entered in Case No. 01CW306, governing storage in the Reservoir. Direct flow water available to MMRC will be left in the stream at a rate equivalent to the rate of depletions and/or the rate of diversions to storage. 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 water and storage water available to MMRC will be left in or released to the stream to replace aggregated depletions as described in Paragraph No. 28, *infra*. If the calling water right on Bear Creek is within the Harriman Ditch system, MMRC may release water from Soda Lakes 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 Nos. 22, 25, and 26. The term “water right” as used herein includes a decreed exchange.

21. The exchange will operate only when there is a live stream between the upstream point of the exchange and the location where exchange water is made available to the stream system by MMRC. 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 that are located within the exchange reach, including any water exchange rights with points of diversion that occur within the exchange reach described herein, or with stream reaches that overlap portions of the exchange reach described herein, and whose priorities are senior to May 31, 2007, 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, 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 subject diversion facilities, 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 flows decreed in Case Nos. 94CW256, 94CW259 and 94CW260 which are addressed in Paragraph No. 23, herein.

23. MMRC has previously stipulated with the Colorado Water Conservation Board (“CWCB”), in Case No. 94CW290 (in particular Paragraph No. 13 of the Stipulation and Paragraph Nos. 1.13, 5.2 and 6.11 of Attachment "1" to the Stipulation in that matter), that if an exchange by a MMRC shareholder involves moving water upstream on Bear Creek and Cub Creek within the instream flow reaches described in the Decrees entered in Case Nos. 94CW251, 94CW259 and 94CW260 (i.e. Cub Creek between its headwaters and its confluence with Bear Creek immediately downstream of Evergreen Lake; and Bear Creek between Evergreen Lake and the location of the Harriman Ditch headgate), such an exchange shall not be operated unless the CWCB's in-stream flow rights in the sections of Cub Creek and Bear Creek impacted by the exchange are fully satisfied; provided, however that this limitation shall not apply if the exchange is limited to offsetting the instantaneous stream depletions then occurring from wells included in plans for augmentation that utilize augmentation and replacement water supplied by MMRC, so long as such instantaneous depletions do not exceed the stipulated amount specified in Case No. 94CW290. To effectuate the above referenced Stipulation, the Applicants agree that whenever a call under the instream flow right decreed in any of Case No. 94CW251, Case No. 94CW259 or 94CW260 is recognized and is being administered by the Division Engineer, instantaneous depletions under this plan for augmentation shall not exceed 3 gallons per minute.

The CWCB agrees that so long as instantaneous depletions pursuant to this plan for augmentation, as calculated pursuant to this Paragraph, do not exceed 3 gallons per minute, such depletions do not exceed the amounts authorized under the above referenced Stipulation. In calculating the instantaneous depletions under this plan for augmentation, Applicants may claim appropriate credit for: (1) instantaneous septic system return flow occurring to the stream, subject to the provisions of Paragraph No. 24, *infra*; and (2) instantaneous releases of water made pursuant to the provisions of Paragraph No. 27, *infra*, provided that such releases are made upstream of the reach of any affected instream flow right.

24. Diversions into the central water system will immediately impact the flow of water in Cub Creek. However, due to the fact that twelve of the existing fifteen homes have historically been served using imported water for more than three years, return flows from the septic tank/soil absorption systems serving those homes will be equal to at least ninety percent (90%), of the water to be diverted under this augmentation plan to serve those homes. For the remaining three existing homes, and at such time as additional homes are constructed and occupied, and assuming that waste water from each home is treated by an individual septic tank/soil absorption system, augmentation of one-hundred percent (100 percent) of diversions for each such home covered by this plan will be made for a period of three years after occupancy. At the end of three years, it will be assumed that an equilibrium of diversions and return flows has been reached for the residence. To ensure that sufficient augmentation water is available under this augmentation plan to temporarily replace one hundred percent of diversions, no more than fifteen additional homes shall be served under this augmentation plan in any consecutive three-year period. At such time as a total of forty-five homes are being served under this plan, the number of new connections allowed under the plan shall be reduced to twelve homes in any three-year period. At such time as a total of seventy-five homes are being served under this plan, the number of new connections allowed under the plan shall be reduced to nine homes in any three-year period. In order to assure that there is sufficient augmentation water to accommodate the temporary increase in stream depletions resulting from a delay in return flows to the stream system, a total of 119.2 shares of MMRC stock, yielding 3.742 acre feet of augmentation water, will be temporarily committed to this plan until it can be demonstrated that less than 3.742 acre feet of augmentation water is required to account for delayed return flows. Once return flows to the stream system from all residences served by this plan reach a steady state condition, the volume of augmentation water committed to this plan shall automatically revert to no more than the volume of water described in Paragraph No. 14, *supra*. If a central wastewater treatment system is provided for the development, and the wastewater treatment system delivers treated wastewater directly to Cub Creek at a demonstrated discharge rate of ninety five percent of diversions then occurring to the homes served by the central system, the augmentation requirement shall be five percent of the volume of water delivered to customers on the central wastewater system and the requirement to temporarily augment one hundred percent of diversions shall not be applicable. The limitation on the number of new homes to be built in any three-year period shall not apply for any homes that are continuously served using water from a source other than Cub Creek for a period of three years after construction and occupancy. No home may be served for a period of three years using water from a source other than Cub Creek.

25. All water diverted by MMRC from Turkey Creek or Bear Creek pursuant to the substitution and exchange practices described herein that is attributable to MMRC's entitlement

to the April 16, 1862, priority decreed to the Warrior Ditch, shall be included in the annual volumetric limits set forth herein for the December 1, 1861, priority decreed to the Warrior Ditch (i.e. Priority No. 4 from Bear Creek), or the October 31, 1864, priority decreed to the Warrior Ditch (i.e. Priority No. 14 from Bear Creek), and shall be limited to the diversions season specified herein.

26. All water diverted by MMRC from Turkey Creek or Bear Creek pursuant to the substitution and exchange practices described herein that is attributable to MMRC's entitlement to the April 15, 1868, priority decree to the Harriman Ditch, shall be included in the ten year volumetric limits specified herein for the March 16, 1869, priority decreed to the Harriman Ditch (i.e. Priority No. 23 from Bear Creek), and shall be limited to the diversion season specified herein.

27. Depletions to the stream system which occur during the period May through October, inclusive, will be continuously augmented by leaving a portion of MMRC's direct flow water rights in the stream, to the extent possible. During times when MMRC's direct flow water rights are not in priority and during the months of November through April, inclusive, depletions will primarily be augmented by releasing water from the Soda Lakes Reservoirs. Subject to the provisions set forth in Paragraph No. 28, *infra*, any time that MMRC's water rights cannot be exchanged upstream to the point of injury, such as when senior water rights located within the exchange reach are not fully satisfied, Colorado Mountain Properties, Inc., or its successor-in-interest, is required under the terms of this decree, and without further direction from the State water administration officials, to either release water to Cub Creek from Sprucedale Reservoir, or physically transport augmentation water by tank truck for delivery to the stream system at a location upstream of the point of injury. In the alternative, MMRC can release water from a reservoir located upstream of the calling water right. To the extent that none of those options are fulfilled, MMRC shall be responsible for the physical transport of augmentation water. If neither Colorado Mountain Properties, Inc. (or its successor-in-interest), nor MMRC, augment all depletions associated with diversions from the facilities described herein, including depletions associated with the temporary replacement of one hundred percent of water deliveries to newly constructed homes as described in Paragraph No. 24, *supra*, diversions shall be immediately curtailed. The Division Engineer may allow the delivery of trucked water directly to a reservoir entitled to receive augmentation and replacement water from the Applicants, in lieu of releasing such water to the stream system.

28. Due to the small volume of annual stream depletions projected to occur from the operation of the diversion facilities described herein, during times when the exchange of Harriman Ditch and Warrior Ditch water cannot be operated, the depletions then occurring may be aggregated and replaced by one or more releases of short duration from a reservoir or other storage container located upstream of all water rights deprived of water during the period of aggregation, or by the physical importation of water as described above. 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 or as reasonably required by the Division Engineer; and further provided that the downstream water right deprived of water during the period of aggregation is allowed to divert the water so released regardless of the river call then existing and the owner of

the water right is notified by Applicants before the aggregated release is made. The provisions of this Paragraph shall not apply if the calling water right is the instream flow right decreed in Case Nos. 94CW251, 94CW259 or 94CW260, unless the CWCB staff first consents to an aggregated release of augmentation water to satisfy the call.

29. In order to ensure that sufficient augmentation water will be available for this augmentation plan, MMRC has agreed to reserve for the benefit of Colorado Mountain Properties, and its assigns, and for use in this plan, 2.16 acre feet of Bear Creek firm yield water supplies as set forth in the attached Exhibit "B."

30. 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. The court further finds that, subject to the terms and conditions contained in this decree, the uses of the water described herein may be implemented and may continue without material injury to the vested water rights or decreed conditional water rights of others.

### **CONCLUSIONS OF LAW**

31. This Application was filed with the Water Clerk, Water Division No. 1, pursuant to C.R.S. § 37-92-302(1)(a). Statements of Opposition were filed by Brook Forest Water District, Evergreen Metropolitan District, Colorado Water Conservation Board, Town of Morrison, Farhad Sarrafian, Vista Exline, Jeremiah P. Lee, II, Larry J. Plume, Henry L. Kerschbaum, Ben Napheys, III, Jane Kelley, John Espinosa, Douglas M. Brown, Susan E. Brown and the Cragmont Estates Homeowners Association. Applicants have entered into Stipulations with the Brook Forest Water District, Evergreen Metropolitan District, Town of Morrison, Farhad Sarrafian, Vista Exline, Jeremiah P. Lee, II, Larry J. Plume, Henry L. Kerschbaum, Ben Napheys, III, Jane Kelley, John Espinosa, Douglas M. Brown, Susan E. Brown, Cragmont Estates Homeowners Association and Colorado Water Conservation Board. The terms and conditions of said Stipulations are incorporated herein by reference.

32. The request of the Applicants for approval of a plan for augmentation and exchange right described herein is contemplated and authorized by law, and if administered in accordance with this decree, will permit the uninterrupted utilization of the diversion facilities described herein, without adversely affecting any other vested water rights in the South Platte River or its tributaries. C.R.S. Sections 37-92-305(3), (5) and (8), §37-80-120 and §37-83-104.

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

34. As a result of the operation of the Plan for Augmentation in accordance with the terms and conditions herein, there is water available for withdrawal from the Sprucedale Infiltration Gallery Nos. 1 and 2, and the use of same will not result in the material injury of the vested water rights of others. Accordingly, if determined to be necessary, the State Engineer shall approve applications for well permits for the Sprucedale Infiltration Gallery Nos. 1 and 2 submitted by Colorado Mountain Properties, or its successors and assigns, in accordance with the

provisions of C.R.S. §37-90-137(2) 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:**

35. The Application for Surface and Alluvial Water Rights, Approval of a Plan for Augmentation and Exchange Right, proposed by Colorado Mountain Properties, Inc., Mountain Land Construction Co., Ronald P. Lewis, Carol J. Lewis, Christopher C. Van Inwagen, Patrick Deromedi and Mountain Mutual Reservoir Company is approved.

36. The State Engineer, the Division Engineer and/or the Water Commissioner for former Water District No. 9 shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of water from the subject diversion facilities 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 the operator of the diversion facilities is ever unable to provide the replacement water required, then the subject facilities shall not be entitled to operate under the protection of this Plan, and shall be subject to administration and curtailment in accordance with the laws, rules and regulations of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions of which are not so replaced as to prevent injury to vested water rights.

37. 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.

38. The Applicants and their 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 subject diversion facilities. 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 subject facilities.

39. The Court confirms that storage water available to MMRC in the Soda Lakes Reservoir Nos. 1 and 2 can be utilized for replacement and augmentation purposes to replace depletions associated with out-of-priority water use in the Bear Creek drainage basin.

**WATER ACCOUNTING AND RECORD KEEPING**

40. The Bear Creek water rights involved in the plan for augmentation approved herein shall be incorporated into the existing water rights administration plan of MMRC. Colorado Mountain Properties shall be responsible for overseeing the operation of the central water system, including but not limited to the construction, operation, maintenance, repair and replacement of the Sprucedale Infiltration Gallery Nos. 1 and 2 and Sprucedale Ditch, the storage and release of water from Sprucedale Reservoir, compliance with the measurement and reporting obligations under this augmentation plan and otherwise assuring compliance with this Decree and the Stipulations with the Opposers. The rights and obligations set forth in this Decree may

be assigned by Colorado Mountain Properties to an Umbrella Organization that agrees in writing to accept such rights and obligations. The term “Umbrella Organization” is defined as (1) an entity recognized as having the legal right to conduct business in Colorado, such as, but not limited to, a corporation, a limited liability company or an association; (2) a property owners association incorporated in the State of Colorado that includes as members all owners of the Subject Property; or (3) a municipal entity or special district organized under the laws of Colorado that includes the Subject Property. The Sprucedale Infiltration Gallery Nos. 1 and 2, and the Sprucedale Ditch shall each be equipped with measuring and recording devices that are capable of accurately monitoring the volume and rate of water diverted from Cub Creek and the alluvium of Cub Creek. Colorado Mountain Properties, or the Umbrella Organization shall be responsible for monitoring and recording the volume of water delivered to residents within the development on a monthly basis, or such more frequent basis as may be required by the State water administration officials, accounting for all water that is stored in and released from Sprucedale Reservoir, including evaporation and seepage losses, and reporting such information to MMRC at the end of each month. If MMRC fails to receive such information on a timely basis, MMRC shall be responsible for obtaining such data. Depletions associated with operation of the subject diversion facilities shall be calculated on the basis of ten percent or five percent depending upon the type of wastewater treatment used, and Colorado Mountain Properties or the Umbrella Organization shall maintain a current record of the owners and addresses of all homes served by on-site septic systems and by the central wastewater treatment plant. Out-of-priority evaporation losses from Sprucedale Reservoir shall be calculated on the basis of an evaporation rate of 1.67 acre-feet per acre. Each month, the then existing surface area of Sprucedale Reservoir shall be determined from the reservoir stage/area relationship attached hereto and incorporated herein as Exhibit “C,” and shall be multiplied by the following figures, illustrated in feet, to calculate evaporation:

|        |      |             |              |            |
|--------|------|-------------|--------------|------------|
| Jan.:  | 0.00 | April: 0.12 | July: 0.30   | Oct.: 0.13 |
| Feb.:  | 0.03 | May: 0.20   | August: 0.23 | Nov.: 0.04 |
| March: | 0.07 | June: 0.31  | Sept.: 0.24  | Dec.: 0.00 |

The operation of Sprucedale Reservoir on a flow through basis (i.e. by continuously diverting water from Cub Creek through the Sprucedale Ditch and continuously releasing water through the outlet works of the Reservoir), shall be limited to those times when the CWCB’s instream flow right on Cub Creek is fully satisfied and the exchange of MMRC water described herein is in priority. MMRC shall include depletions under this augmentation plan, which are out-of-priority, in the reports made to the State water officials for other plans for augmentation that utilize MMRC augmentation water supplies, as more particularly described in the Decree entered in Case No. 2001CW293. On the basis of the submitted reports, and in accordance with the directives of the Division Engineer, MMRC shall make the required release of augmentation water by properly documenting the instream delivery of replacement water from the Warrior Ditch and the Harriman Ditch, or the release of storage water from the Soda Lakes Reservoirs. Water released from Sprucedale Reservoir, or the physical importation of augmentation and replacement water, shall be the responsibility of Colorado Mountain Properties or the Umbrella Organization. The release of storage water shall be subject to the conditions stated in Paragraph No. 28, supra. An example of the type of information to be included in the water accounting for this augmentation plan is attached as Exhibit "C." Information on the form shall be provided to



the Division Engineer or his designated representative at an agreed upon schedule. Applicants shall make such information available to opposers upon written request and payment of reasonable copying charges. It is not the Court's intention to mandate the use of Exhibit "C" in its existing format. The Exhibit has been included simply to provide an illustration of the information that must be gathered and recorded. The Applicants, with the approval of the Division Engineer, can modify the form in the future as changes may become necessary for proper administration. In the event that Colorado Mountain Properties or the Umbrella Organization fails to comply with the terms and conditions of the decree, all diversions that are not in compliance with the decree shall be subject to curtailment by the State water administration officials. During the pendency of any such enforcement actions, MMRC shall continue to provide replacement water to cover depletions under this augmentation plan, but only up to the volume of water described in Paragraph No. 29, *supra*.

41. As a result of the approval of this Plan for Augmentation, the vested rights of others will not be materially injured by diversions from the Sprucedale Infiltration Gallery Nos. 1 and 2. Should it be determined that well permits are needed for the operation of those structures, the State Engineer shall issue permits for the Sprucedale Infiltration Gallery Nos. 1 and 2 upon the submittal of appropriate applications by Colorado Mountain Properties or its assigns, in accordance with C.R.S. §37-90-137(2). If this plan for augmentation is operating as decreed herein at the time an application for a well permit is submitted to the State Engineer, a permit for each structure shall be granted.

42. Pursuant to the provisions contained in C.R.S. §37-92-304(6), the plan for augmentation decreed herein shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to vested water rights, for a period of five years from the date that permanent depletions under this decree (i.e. not including the temporary depletions associated with delayed return flows described in Paragraph No. 24, above), reach 1.25 acre foot per year, as certified in writing to the Water Clerk by the umbrella organization referenced in Paragraph No. 40, above, with copies mailed to all parties who have appeared herein and their counsel of record. Any person, within the designated 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 Applicants shall thereupon have the burden of proof to show: (a) that any modification sought by Applicants will avoid injury to other appropriators, or (b) that any modification sought by an Opposer is not required to avoid injury to other appropriators, or (c) that any term or condition proposed by the Applicants in response to Opposer's petition does avoid injury to other appropriators. Such petition shall be filed with the Court under the above styled caption and case number and shall be served by certified mail, return receipt requested, on all parties who have appeared herein, or on their counsel of record. If no such petition is lodged within the designated 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.

43. In addition to the retained jurisdiction provision set forth above, until the steady state condition regarding return flows to the stream system is reached, as described in Paragraph No. 24, *supra*, Applicants may file a petition with the Court using the same procedure and following the same criteria outlined in Paragraph No. 42, *supra*, requesting that an adjustment be made to the restriction in said Paragraph on the number of new homes that can be served in a three year period under this plan, and/or a modification be made to the temporary commitment of additional augmentation water to the plan.


44. The priorities awarded herein to the Sprucedale Infiltration Gallery Nos. 1 and 2, the Sprucedale Ditch, and the exchange described in Paragraph No. 19, *supra*, were filed in the Water Court in 2007 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.

45. It is also ordered that the conditional water rights awarded herein to the Sprucedale Infiltration Gallery Nos. 1 and 2 and the Sprucedale Ditch are hereby continued in full force and effect until **December 31, 2014**. If Colorado Mountain Properties or its successors and assigns desire to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before **December 31, 2014**, or a showing made on or before such date that the conditional rights have become absolute rights by reason of the completion of the appropriations.

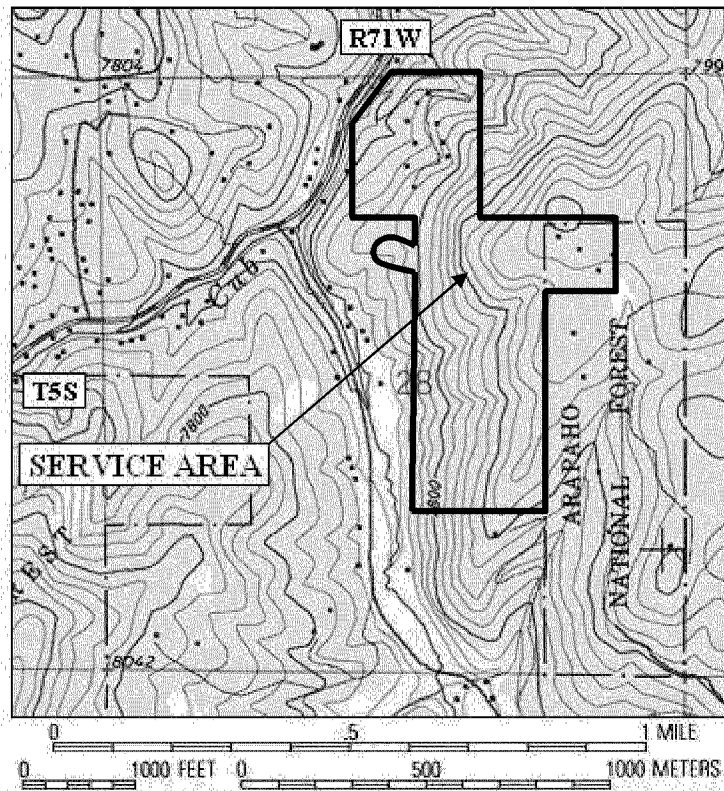
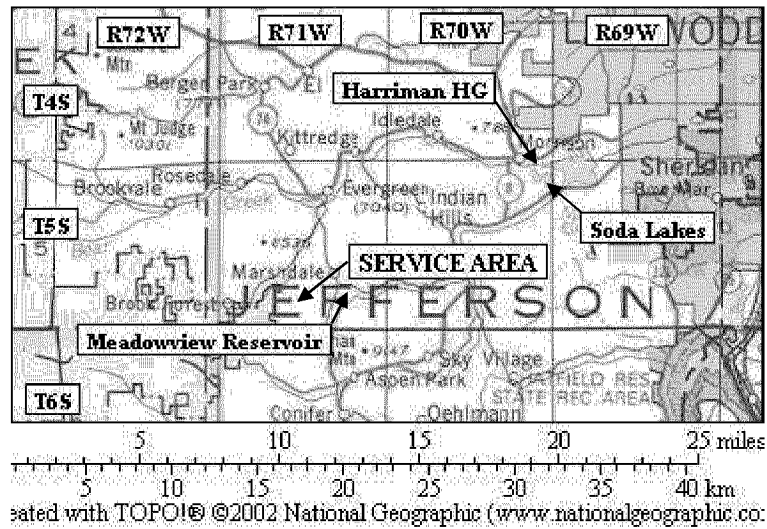
46. A copy of this decree shall be recorded by Colorado Mountain Properties in the office of the Jefferson County Clerk and Recorder so that the decree will appear in the chain of title for the properties covered by this plan for augmentation. All future owners of the properties described in Paragraph No. 4, *supra*, shall be bound by the provisions hereof, and the terms and conditions contained herein shall be a covenant running with the land, and shall be binding upon all future owners.

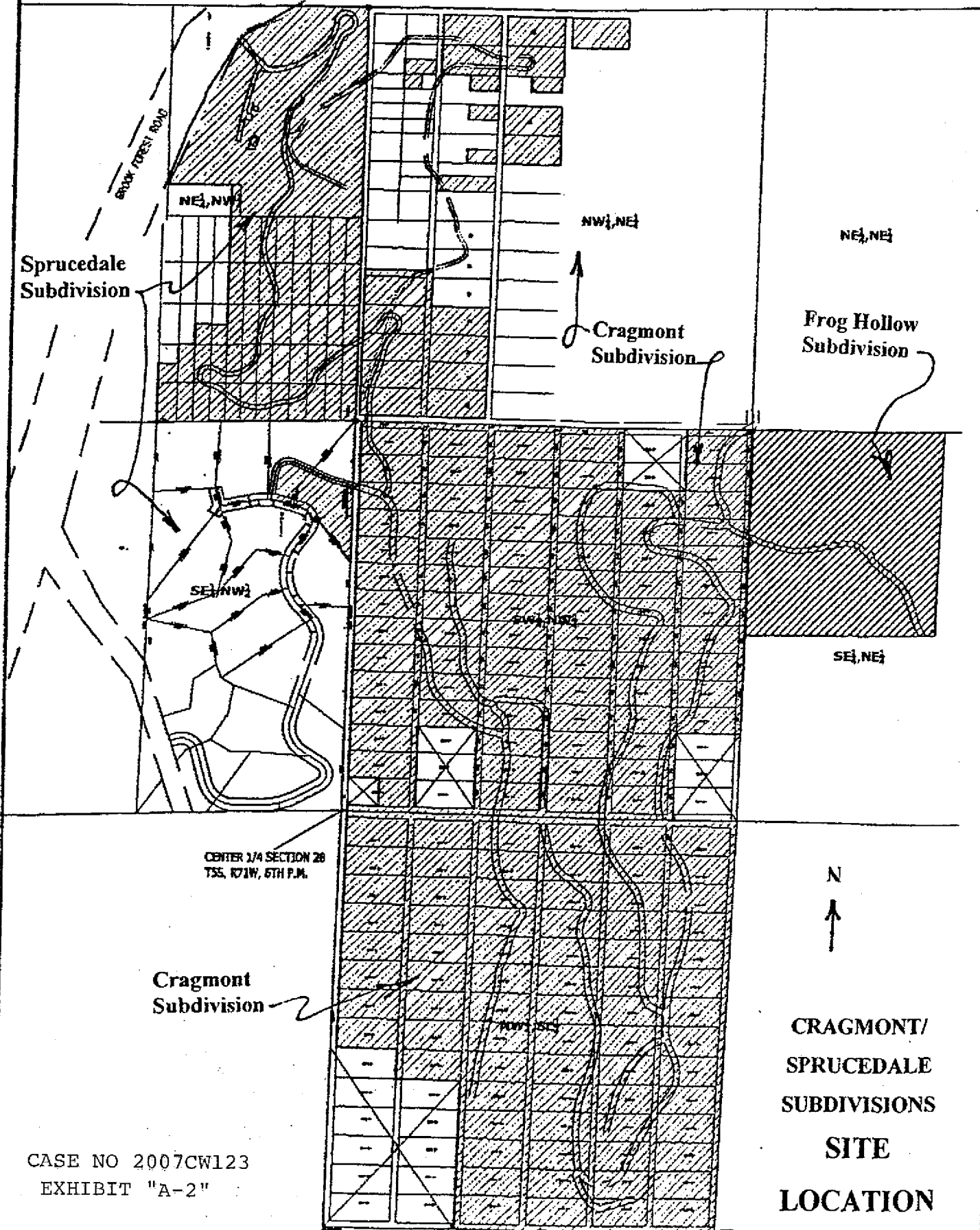
DATED: December 11, 2008.

By the court,

  
Roger A. Klein  
Water Judge  
Water Division No. 1

*This document was filed pursuant to C.R.C.P. 121, § 1-26. A printable version of the electronically signed order is available in the Court's electronic file.*





CASE NO 2007CW123  
EXHIBIT "A-2"

CRAGMONT/  
SPRUCEDALE  
SUBDIVISIONS  
SITE  
LOCATION  
MAP

**LEGAL DESCRIPTION OF LAND INCLUDED IN  
CASE NO. 2007CW123**

**SPRUCEDALE SUBDIVISION:**

ALL OF LOTS 1 THROUGH 8, INCLUSIVE, LOTS 17 THROUGH 24, INCLUSIVE, LOTS 25 THROUGH 32, INCLUSIVE, LOTS 38 THROUGH 48, INCLUSIVE, LOTS 49 THROUGH 60, INCLUSIVE AND THE SOUTH ½ OF LOTS 33, 34 AND 37, BLOCK H, SPRUCEDALE

**CRAGMONT SUBDIVISION:**

BLOCK A: SOUTH WEST ¼ OF LOT 2, WEST ½ OF THE NORTH EAST ¼ OF LOT 3, LOTS 10 THROUGH 16, INCLUSIVE, NORTH EAST ¼ OF LOT 17, NORTH EAST ¼ OF LOT 18, SOUTH EAST ¼ OF LOT 19, SOUTH ½ OF LOT 20, LOTS 25 THROUGH 30 INCLUSIVE, NORTH EAST ¼ OF LOT 31, LOTS 32 AND 33, LOT 43

BLOCK C: LOTS 1 THROUGH 13, INCLUSIVE, WEST ½ OF LOT 14, LOTS 15 THROUGH 25, INCLUSIVE, LOTS 29 THROUGH 56, INCLUSIVE, LOTS 59 THROUGH 81, INCLUSIVE, LANES P1 THROUGH P90, INCLUSIVE

BLOCK D: LOTS 1 THROUGH 8, INCLUSIVE, LOTS 15-23, INCLUSIVE, LOTS 29 THROUGH 84, INCLUSIVE, LANES P1 THROUGH P106, INCLUSIVE

**SPRUCEDALE PARK, EXEMPTION SURVEY #1**

BEGINNING AT THE NORTH EAST CORNER OF SPRUCEDALE PARK, EXEMPTION SURVEY NO. 1, THENCE S38°51'58"W (ALONG THE ORIGINAL LINE BETWEEN LOTS 7 AND 8, SPRUCEDALE PARK, EXEMPTION SURVEY NO. 1, AT BLUE CREEK) A DISTANCE OF 213.60; THENCE S64°50'51"E A DISTANCE OF 145.94'; THENCE N0°26'46"E, ALONG THE EAST LINE OF SPRUCEDALE PARK, EXEMPTION SURVEY NO. 1 AT BLUE CREEK, A DISTANCE OF 228.00' TO A POINT OF BEGINNING

**UNPLATTED LAND IN SECTION 28, TOWNSHIP 5 SOUTH, RANGE 71 WEST  
FURTHER DESCRIBED AS:**

PARCEL 1: THE NORTH WEST ¼ OF THE SOUTH EAST ¼ OF THE NORTH EAST ¼

PARCEL 2: COMMENCING AT THE NORTHEAST CORNER OF THE NW 1/4 OF THE SAID SECTION 28, THENCE IN WESTERLY DIRECTION ALONG THE NORTH BOUNDARY OF SAID NW 1/4 TO THE INTERSECTION OF SAID NORTH BOUNDARY AND THE CENTER LINE OF CUB CREEK, THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE CENTER LINE OF SAID CUB CREEK TO A POINT WHERE THE CENTER LINE OF CUB CREEK INTERSECTS THE NORTH BOUNDARY OF THE PRIVATE ROAD AS NOW LOCATED, THENCE IN SOUTHEASTERLY DIRECTION

**EXHIBIT "A-3"**

ALONG THE NORTH BOUNDARY OF SAID PRIVATE ROAD TO A POINT 180 FEET SOUTH OF THE INTERSECTION OF THE CENTER OF CUB CREEK AND THE NORTH BOUNDARY OF THE SAID NORTH WEST QUARTER, THENCE IN AN EASTERLY DIRECTION AND PARALLEL TO THE SAID NORTH BOUNDARY OF THE NW 1/4 TO A POINT ON THE EAST BOUNDARY OF THE NW 1/4, THENCE IN A NORTHERLY DIRECTION ALONG THE SAID EAST BOUNDARY OF THE NW 1/4, A DISTANCE OF 180 FEET TO THE POINT OF BEGINNING

PARCEL 3: COMMENCING AT A POINT 180 FEET SOUTH OF THE NE CORNER OF THE NE 1/4 NW 1/4, A DISTANCE OF 468.1 FEET TO THE NE CORNER OF BLOCK "H", SPRUCEDALE PARK, THENCE IN A WESTERLY DIRECTION ALONG THE NORTH LINE OF BLOCK "H" TO THE WEST SIDE OF LOT 8, A DISTANCE OF 412.3 FEET; THENCE NORTH 100 FEET; THENCE WEST AND PARALLEL TO THE NORTH LINE OF BLOCK "H", 200 FEET MORE OR LESS TO THE EAST SIDE OF THE COUNTY ROAD; THENCE IN A NORTH EASTERLY DIRECTION ALONG THE EAST SIDE OF THE COUNTY ROAD A DISTANCE OF 487 FEET, MORE OR LESS TO A POINT 15 FEET NORTH OF THE CENTER OF THE PRIVATE ROAD GOING FROM THE COUNTY ROAD TO THE LAND EAST OF THE COUNTY ROAD; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A LINE 15 FEET NORTH OF THE CENTER OF THE PRIVATE ROAD TO A POINT 180 FEET SOUTH OF THE NORTH LINE OF SEC 28, THENCE EAST AND PARALLEL TO THE NORTH LINE OF SEC 28, A DISTANCE OF 271 FEET TO THE POINT OF BEGINNING

**TABULATION OF MMRC FIRM YIELD WATER  
IN PLANS FOR AUGMENTATION (PFA)  
BEAR CREEK & TURKEY CREEK**

October 2008

Plans for Augmentation Based on 39.0 Acre-Feet Yield for Bear Creek and 23.8 Acre-Feet for Turkey Creek

| <u>Date of Application</u> | <u>Decree Date</u> | <u>Division 1 Case Number</u> | <u>Names of Applicants &amp; Development</u>    | <u>Decree Or Application Amount In Acre-Feet Per Year</u><br><u>Bear Creek</u> <u>Turkey Creek</u> |
|----------------------------|--------------------|-------------------------------|---|--|
| 08/30/1994                 | 08/20/96           | 94CW168                       | Idledale Water & Sanitation Dist.,              | 5.650  |
| 09/30/1994                 | 10/16/06           | 94CW290                       | Buffalo Park Development Co.<br>Buffalo Meadows | 2.070  |
| 09/30/1994                 | 10/16/06           | 94CW290                       | Buffalo Park Development Co.<br>Homestead       | 2.050  |
| 09/29/1995                 | 07/08/96           | 95CW196                       | Colleen H. Karford                              | 0.063  |
| 12/29/1995                 | 10/20/97           | 95CW281                       | Black Mountain Ranch,                           | 0.806  |
| 12/29/1995                 | 07/28/97           | 95CW291                       | Norman Meyer                                    | 1.000  |
| 05/31/1996                 | 07/14/97           | 96CW103                       | Giv Mattingly                                   | 0.934  |
| 12/31/1996                 | 03/05/98           | 96CW1046                      | Neta and Howard Wheeler                         | 0.197  |
| 02/26/1997                 | 01/22/98           | 97CW091                       | Smith Acres II, LLC.                            | 0.188  |
| 10/29/1997                 | 07/10/98           | 97CW280                       | Colleen H. Karford                              | 0.031  |
| 10/29/1997                 | 07/10/98           | 97CW281                       | Le Gault Sommet Revelateurs, LLC                | 0.953  |
| 10/29/1997                 | 07/10/98           | 97CW282                       | Boksmati & Fulaij, LLC                          | 0.373  |
| 12/01/1997                 | 10/09/98           | 97CW336                       | Ray A. and Sharon K. Petersburg                 | 1.063  |
| 12/01/1997                 | 10/01/98           | 97CW337                       | James Martin/William Shirky                     | 0.084  |
| 12/01/1997                 | 10/20/98           | 97CW338                       | 9064 Hwy 285, Inc.                              | 0.168  |
| 12/30/1997                 | 10/20/98           | 97CW372                       | Gregory and Eva L. White                        | 0.408  |
| 03/31/1998                 | 03/17/99           | 98CW240                       | Eisenbud Family                                 | 1.394  |
| 03/31/1998                 | 03/23/99           | 98CW241                       | Allyn Breech                                    | 0.246  |
| 06/30/1998                 | 10/14/04           | 98CW291                       | David J. Figuli                                 | 0.377  |
| 06/30/1998                 | 12/07/04           | 98CW292                       | Conifer Corners, LLC                            | 1.400  |
| 07/30/1998                 | 06/17/99           | 98CW310                       | Scott E. Sabina                                 | 0.253  |
| 07/30/1998                 | 06/11/99           | 98CW311                       | Mystic Ridge, LLC                               | 0.386  |
| 03/31/1999                 | 07/19/04           | 99CW035                       | Mark P. & Kim R. Meyer                          | 0.031  |
| 06/30/1999                 | 04/12/04           | 99CW096                       | Scott A. Wilson                                 | 1.051  |
| 09/30/1999                 | 09/22/04           | 99CW122                       | John Gold, Etal, & Margaret Sandbak             | 0.198  |
| 10/30/1999                 | 11/08/04           | 99CW171                       | Byron C. & Ruth M. Angevine                     | 0.220  |

**EXHIBIT "B"**  
**Case No. 2007CW123**  
**B-1**

**TABULATION OF MMRC FIRM YIELD WATER  
IN PLANS FOR AUGMENTATION (PFA)  
BEAR CREEK & TURKEY CREEK**

October 2008

Plans for Augmentation Based on 39.0 Acre-Feet Yield for Bear Creek and 23.8 Acre-Feet for Turkey Creek

| <u>Date of Application</u> | <u>Decree Date</u> | <u>Division 1 Case Number</u> | <u>Names of Applicants &amp; Development</u> | <u>Decree Or Application Amount In Acre-Feet Per Year</u> |                     |
|----------------------------|--------------------|-------------------------------|--|---|---------------------|
|                            |                    |                               |  | <u>Bear Creek</u>   | <u>Turkey Creek</u> |
| 12/27/1999                 | 11/17/04           | 99CW212                       | Jami Jensen                                  | 0.621   |                     |
| 09/30/2003                 | 08/11/04           | 01CW161                       | Village at Elk Crossing, LLC                 |   | 2.000               |
| 07/31/2003                 | 10/19/04           | 03CW278                       | Ferrero-Sheppard Family Trust                | 0.034   |                     |
| 07/31/2003                 | 05/25/06           | 03CW279                       | Jennifer L. Johnson                          |   | 0.604               |
| 07/31/2003                 | 09/22/04           | 03CW280                       | James F. & Mary Louise Etter                 | 0.171   |                     |
| 07/31/2003                 | 07/07/04           | 03CW281                       | Peggy B. & Helen C. Burleson                 | 0.260   |                     |
| 08/29/2003                 | 09/22/04           | 03CW299                       | Robert F. & Susan D. Dell                    | 0.228   |                     |
| 09/30/2003                 | 12/29/04           | 03CW312                       | Debra Powers                                 | 0.113   |                     |
| 09/30/2003                 | 01/07/05           | 03CW340                       | Daniel N. Warner                             |   | 0.535               |
| 10/30/2003                 | 06/08/05           | 03CW363                       | Leonard & Jennifer Osmond                    | 0.000 <sup>(1)</sup>                                      |                     |
| 10/30/2003                 | 11/16/04           | 03CW364                       | Eric L. Smith                                | 0.180   |                     |
| 10/30/2003                 | In Process         | 03CW371                       | Horizon Holding                              |   | 0.300               |
| 10/30/2003                 | In Process         | 03CW372                       | Bobcat Ridge Estates                         |   | 0.471               |
| 12/31/2003                 | 05/12/05           | 03CW425                       | James & Susan Biestek                        | 0.037   |                     |
| 03/30/2004                 | 01/04/05           | 04CW073                       | Robert Espinosa & Debra Carbone              |   | 0.050               |
| 04/30/2004                 | 11/17/04           | 04CW107                       | James and Paula Jagels                       | 0.137   |                     |
| 05/31/2004                 | 11/22/05           | 04CW135                       | Westhaven Heights Horse Owners               | 0.449   |                     |
| 06/30/2004                 | 05/25/07           | 04CW160                       | Corrine Meyers                               |   | 0.084               |
| 06/30/2004                 | 04/26/05           | 04CW161                       | Mark and Anne Bossman                        |   | 0.806               |
| 07/31/2004                 | 11/17/05           | 04CW186                       | Spring Valley Revocable Trust                | 0.193   |                     |
| 09/30/2004                 | 05/17/05           | 04CW232                       | Landmark Building Systems                    |   | 0.196               |
| 10/28/2004                 | 04/10/07           | 04CW263                       | Dream Weaver Homes, LLC                      | 0.386   |                     |
| 10/29/2004                 | 10/05/05           | 04CW267                       | Tony Miller                                  | 0.273   |                     |
| 12/27/2004                 | 12/27/06           | 04CW320                       | Helen Mleynek                                | 0.227   |                     |
| 03/29/2005                 | 11/15/05           | 05CW056                       | Magdalenski & Besant                         | 0.273   |                     |
| 05/29/2005                 | 01/17/05           | 05CW107                       | Meyers/Wilson                                | 0.113   |                     |
| 05/29/2005                 | 03/29/06           | 05CW108                       | Thunderbolt Circle, LLC                      |   | 0.220               |
| 07/29/2005                 | 04/05/06           | 05CW174                       | Hanna E. Holt Living Trust                   | 0.114   |                     |



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|--------------------------------|------------------------|-----------------------------------|--|---|---------------------|
|                                |                        |                                   |  | <u>Bear Creek</u>   | <u>Turkey Creek</u> |
| 07/29/2005                     | 04/05/06               | 05CW176                           | Armond A. Azharian                                   |   | 0.176               |
| 09/30/2005                     | 03/23/06               | 05CW250                           | Linda J. Glandt                                      | 0.056   |                     |
| 10/31/2005                     | 06/19/07               | 05CW266                           | Williams Development                                 |   | 0.250               |
| 11/30/2005                     | 12/27/06               | 05CW287                           | Falcon Wing Ranch                                    | 0.157   |                     |
| 12/16/2005                     | 12/29/06               | 05CW299                           | Castle Springs Manor                                 | 1.009   |                     |
| 12/30/2005                     | 11/20/06               | 05CW336                           | Park Water Company                                   | 0.706   |                     |
| 12/30/2005                     | 06/06/06               | 05CW339                           | Lane Ranch   |   | 0.126               |
| 02/28/2005                     | 07/28/06               | 06CW060                           | KAC Partners   | 0.032   |                     |
| 03/31/2006                     | 12/05/06               | 06CW080                           | Kelly and Chana Guy                                  |   | 0.095               |
| 03/31/2006                     | 12/12/06               | 06CW084                           | Louis and Lynette Appelhans                          | 0.056   |                     |
| 04/28/2006                     | 11/15/06               | 06CW101                           | Geneva Glen Camp                                     |   | 1.800               |
| 04/28/2006                     | 11/03/06               | 06CW107                           | West Ranch Center                                    |   | 0.382               |
| 11/30/2006                     | 05/25/07               | 06CW246                           | Richard & Juliana Lehman                             | 0.104   |                     |
| 11/30/2006                     | 06/14/07               | 06CW247                           | Michael & Joanne Kortendick                          | 0.088   |                     |
| 02/28/2007                     | 03/14/08               | 07CW034                           | Sugarbush Conifer, LLC                               |   | 0.377               |
| 03/31/2007                     | In Process             | 07CW067                           | Lost and Found, Inc.                                 | 0.270   |                     |
| 04/30/2007                     | 06/23/08               | 07CW088                           | Conifer Ridge Properties, LLC                        |   | 0.800               |
| 05/31/2007                     | In Process             | 07CW123                           | Colorado Mountain Properties, Inc<br>(Permanent)     | 2.160   |                     |
| 05/31/2007                     | In Process             | 07CW123                           | Colorado Mountain Properties, Inc<br>(Temporary)     | 1.582   |                     |
| 01/31/2008                     | In Process             | 08CW021                           | Donald A. and Barbara D. Bullock                     | 0.063   |                     |
| 02/28/2008                     | In Process             | 08CW041                           | Tallgrass, Inc.                                      | 0.138   |                     |
| 03/31/2008                     | In Process             | 08CW060                           | Hans W. Von Barby                                    | 0.129   |                     |
| 03/31/2008                     | In Process             | 08CW064                           | Jerome S. Oldham                                     | 0.120   |                     |
| 07/31/2008                     | In Process             | 08CW156                           | Goodwin & Martens                                    | 0.144   |                     |
|                                | In Process             |                                   | Richard H. and Pamela S. Bard                        | 3.500   |                     |
|                                |                        |                                   | Robbert De Weijer                                    |   | 0.094               |
| N/A                            |                        |                                   | AKS, LLC   |   | 0.376               |

**EXHIBIT "B"**  
**Case No. 2007CW123**  
**B-3**

**TABULATION OF MMRC FIRM YIELD WATER  
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BEAR CREEK & TURKEY CREEK**

October 2008

Plans for Augmentation Based on 39.0 Acre-Feet Yield for Bear Creek and 23.8 Acre-Feet for Turkey Creek

| <u>Date of<br/>Application</u>  | <u>Decree<br/>Date</u> | <u>Division 1<br/>Case Number</u> | <u>Names of<br/>Applicants &amp;<br/>Development</u> | <u>Decree Or Application Amount<br/>In Acre-Feet Per Year</u> |                     |
|---|------------------------|-----------------------------------|--|---|---------------------|
|   |                        |                                   |  | <u>Bear Creek</u>   | <u>Turkey Creek</u> |
| N/A   |                        |                                   | Gary V. McCulloch Trust                              |   | 0.065               |
| N/A   |                        |                                   | Dennis R. and Linda L. Graves                        |   | 0.094               |
| N/A   |                        |                                   | Turkey Creek Holding Co., LLC                        |   | 0.615               |
| N/A   |                        |                                   | Freedom Real Estate, Inc.                            |   | 0.615               |
| N/A   |                        |                                   | Village at Elk Crossing, LLC                         |   | 0.500               |
| N/A   |                        |                                   | Buffalo Park Development Co.                         | _____   | <u>3.859</u>        |
| TOTAL OF CURRENT OBLIGATIONS<br>TO PLANS FOR AUGMENTATION   |                        |                                   |  | 27.777  | 23.800              |
| SURPLUS AVAILABLE FOR FUTURE PLANS<br>FROM 39.0 ACRE-FEET FOR BEAR CREEK AND<br>23.8 FOR TURKEY CREEK |                        |                                   |  | 11.223  | 0.000               |

(1) Decree vacated by order of Water Division No. 1, Water Judge on June 20, 2008

