

# **WATER SUPPLY PLAN AND WASTEWATER REPORT**

**For**

**Forest Lakes Metropolitan District**

**Forest Lakes Phase Two  
(part of Pinon Pines Metropolitan District #2)**

**December 20, 2017  
(Revised November 30, 2018)**

**Prepared By:**



**CONSULTANTS, INC.**

FOREST LAKES METROPOLITAN DISTRICT  
WATER SUPPLY PLAN  
and  
WASTEWATER REPORT

For  
Forest Lakes Phase Two  
(Included within Pinon Pines Metropolitan District #2)

December 20, 2017  
(Revised November 30, 2018)

Prepared for:

Forest Lakes Metropolitan District  
2 North Cascade, Suite 1280  
Colorado Springs, CO 80903

Prepared by:

JDS-Hydro Consultants, Inc  
545 East Pike's Peak, Suite 300  
Colorado Springs, CO

# TABLE OF CONTENTS

## EXECUTIVE SUMMARY AND CONCLUSIONS

### ***SECTION 1 INTRODUCTION***

- 1.1 General

### ***SECTION 2 PROJECTION OF WATER AND WASTEWATER NEEDS***

- 2.1 *Expected Water User Demands:*  
Table 1: Projected Water Demands
- 2.2 *Expected Wastewater Loads*  
Table 2: Projected Wastewater Loads

### ***SECTION 3 WATER RIGHTS AND WATER SYSTEM SUFFICIENCY***

- 3.1 *Legal Water Supply and Water Rights*  
Table 3. Legal Water Supply Summary
- 3.2 *Physical Source of Supply*
- 3.3 *Water Quality and Treatment*
- 3.4 *Water Storage*
- 3.5 *Distribution and Transmission Lines*

### ***SECTION 4 WASTEWATER AND WASTEWATER TREATMENT***

- 4.1 *Wastewater Collection*
- 4.2 *Wastewater Treatment*

## APPENDICES

- Appendix A-* Overall Plan of Forest Lakes Phase Two
- Appendix B-* B1-Water Right Decree 83CW-213  
B-2 Water Right Decree 83 CW-142  
B-3 Water Right Decree 83 CW-139  
B-4 Water Right Decree 83 CW-138  
B-5 Return Flow Agreement  
B-6 Water Right Decree 84-CW-019
- Appendix C-* Water Quality Report-Forest Lakes 2018 Consumer Confidence Report

## ***EXECUTIVE SUMMARY AND CONCLUSIONS***

FLMD has a strong and reliable water supply consisting of a mix of renewable surface water and storage as well as fully consumable non-renewable resources from the Denver basin. The mix of multiple sources and high ratio of renewable water make the overall FLMD water system a very reliable and adequate legal and physical water supply.

1. The FLMD legal water supply on a 300 year basis is a net 724.14 annual acre-feet after relinquishments for augmentation; non-300 year demands; and evaporative losses in the reservoirs. The total annual water demand of 166.30 annual acre-feet when the proposed Phase Two is added is well under the available legal supply of 724.14 AF. It should be noted that portions of this demand (4.59 annual AF) are not subject to the El Paso County 300 Year Rule.
2. With the addition of a second Water Treatment Plant which will access FLMD's surface water rights, the maximum daily demand of 0.327 MGD is far exceeded by the treatment and source capacity of 0.86 MGD (expandable to 1.86 MGD). Therefore we find the physical water supply to be more than adequate and reliable to meet the needs added by Phase Two.
3. Water quality currently meets CDPHE Primary and Secondary Drinking Water Standards. The new plant under construction along with its raw water source has been approved by CDPHE and will also meet all Primary and Secondary Drinking water standards.
4. The total expected wastewater loads of 122,587 GPD are well within FLMD Wastewater Treatment Capacity of 300,000 GPD.
5. It is our conclusion that the development proposed as Forest Lakes Phase Two has adequate legal and physical water supply and will be provided adequate water quality as defined by El Paso County regulations. Additionally wastewater treatment for Phase Two is adequate as defined by El Paso County regulations.
6. Significant Revisions from prior issued report;
  - Number of SFE's in Forest lakes Phase Two dropped from 231 SFE to 180 SFE
  - Other FLMD Water Demands which are outside of the El Paso County jurisdiction and the 300 year rule are added in.

## ***SECTION 1 INTRODUCTION***

The purpose of this study is to provide a Water and Wastewater Sufficiency Report for the proposed Forest Lakes Phase Two. Phase Two should result in very close to full buildout of the residential area of Forest Lakes.

Phase Two is projected to consist of 180 residential single family units.

### *1.1 General:*

Forest Lakes has a community water system owned and operated by the Forest Lakes Metropolitan District. The initial system was constructed in 2008 and has been functional ever since. The system is designated as a Public Water Supply System and has been assigned a PWSID # of CO-0121360.

Filings 1 and 3 have been completed and Filings 2A and 2B are in various stages of completion. The existing water system consists of a single large Arapahoe Well; raw water delivery system; Water Treatment Plant; Water Transmission and Distribution systems; and a 1.5 MG Water Storage Tank.

It should be noted that the area being developed as Forest Lakes Phase Two is formally within what is known as the Pinon Pines Metropolitan District #2. However, Forest Lakes Metropolitan District is the comprehensive water and wastewater service provider to Pinon Pines Metropolitan District #1, #2 and #3. Consequently, this report is prepared for and by Forest Lakes Metropolitan District.

A major surface water treatment plant is under construction at the northeast corner of Bristlecone Reservoir. This plant will be capable of treating 0.50 Million Gallons per Day of Bristlecone Reservoir water at maximum daily production.

In addition to the Surface Water Treatment Plant, an additional water storage tank, small pump station, and piping will be developed with the Phase Two project.

Wastewater Treatment will be provided through the Upper Monument Regional Wastewater Treatment Facility which is jointly owned by Triview Metropolitan District; Donala Water and Sanitation District; and Forest Lakes Metropolitan District.

**Appendix A** is the Preliminary Plan for Forest Lakes Phase Two.

**SECTION 2 PROJECTION OF WATER AND WASTEWATER NEEDS**

*2.1 Expected Water User Demands:*

We have established a standardized value of 0.353 AF per urban level single family equivalent. Filings 1, 2, and 3 are enumerated in the existing user demand table below. 0.392 AF/Unit was previously used for the large estate lots in filings one and three.

Based on above, adding the new Phase Two, Forest Lakes Metropolitan District’s water demands will rise to a total 164.67 annual Acre-Feet for areas developed under the El Paso County 300 Year Rule. Maximum Daily Use is projected on a 2.2 multiplier ratio.

**Table 1**  
**Projected 300 Year Water Demands**  
**Forest Lakes Metropolitan District**

<i>Land Use</i>	<i>Annual Need (AF/Unit)</i>	<i>Total Annual (AF)</i>	<i>Max Day (GPD)</i>
<b><u>Existing Development (Prior Commitments)</u></b>			
Residential (Filing #1)			
34 Large Estate Lots	0.392 AF /Unit	13.33	26,180 GPD
Residential (Filing #3)			
8 Large Estate Lots	0.392 AF/Unit		
71 Medium Size Lots	0.353 AF /Unit	28.17	55,319 GPD
Residential (Filing #2 A and B)			
161 Medium Size Lots	0.353 /Unit	56.76	111,475 GPD
<b><i>Total Existing Commitments</i></b>		<b><i>98.25 AF</i></b>	<b><i>192,971 GPD</i></b>
<b><u>Proposed Development</u></b>			
Residential (Phase Two)			
180 Medium Size Lots	0.353 /Unit	63.46	124,631 GPD
<b>Total Revised Demands (Commitments)</b>		<b>161.71 AF</b>	<b>317,602 GPD</b>

Additional Demands have been added to the FLMD system which are not within the land use jurisdiction of El Paso County. This would include the portion of the service area known as Pinon Pines Metropolitan District #3. This distinction is important as the area is developed within the land use jurisdiction of the Town of Monument and therefore NOT subject to El Paso County’s 300 year rule, when determining water sufficiency. In order to properly account for any Pinon Pines Metropolitan District #3, we are computing its demands separately and we are applying this obligation in Table 3.

**Table 1A**  
**Projected 100 Year Water Demands attributable to Pinon Pines Metro #3**  
**Forest Lakes Metropolitan District**

<i>Land Use</i>	<i>Annual Need (AF/Unit)</i>	<i>Total Annual (AF)</i>	<i>Max Day (GPD)</i>
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**Existing Pinon Pines Metropolitan District #3 Development**  
**(Other 100 Year Commitments)**

Lot 1 Pilot Travel Center Filing No 1  
 10 acres Commercial  
 Pinon Pines #3 (NOT SUBJECT TO 300 Yr Rule)  
 Equivalent SFE = 13 SFE

<b><i>100 Year Obligations</i></b>	<b><i>0.353 AF /Unit</i></b>	<b><i>4.59 AF</i></b>	<b><i>9,015 GPD</i></b>
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Because of the differential in obligations that require 300 year supply and those that require only the standard 100 year supply, we have subtracted the 100 year obligations in Table 3 prior to computing Net available 300 year supply. See Table 3.

*The maximum estimated Daily Demand is 317,602 plus 9,015 gallons/day or 0.327 MGD.*

2.2 *Expected Wastewater Loads*

Forest Lakes Metro District is one of three participants in the Upper Monument Creek Regional Wastewater Treatment Plant. In the last decade or so, low flow plumbing devices and water conservation awareness have driven the typical front range user characteristics downward dramatically. Since all of the houses will be constructed under current codes and conditions a value of 210 PPD-unit is applicable.

The maximum day to average day ratio used is 1.25. It should be noted that the factor tends to be somewhat higher until buildout of the subdivisions is neared.

**Table 2**  
**Projected Wastewater Loads**  
**Forest Lakes Metropolitan District**

<i>Land Use</i>	<i>Average Daily Flow (GPD/Unit)</i>	<i>ADF (GPD)</i>	<i>Max Day (GPD)</i>
<b><u>Existing Plats</u></b>			
Residential (Filing #1) 34 Large Estate Lots	210 gal/day- Unit	7140	8,925 GPD
Residential (Filing #3) 8 Large Estate Lots 71 Medium Size Lots	210 gal/day- Unit	16,590	20,738 GPD
Residential (Filing #2 A and B) 161 Medium Size Lots	210 gal/day- Unit	33,810	42,263 GPD
<b><u>Existing Pinon Pines Metropolitan District #3 Development</u></b>			
Lot 1 Pilot Travel Center Filing No 1 10 acres Commercial Pinon Pines #3 Equivalent SFE = 13 SFE	210 gal/day-SFE	2,730	3,413 GPD
<b><u>Proposed Development</u></b>			
Residential (Phase Two) 180 Medium Size Lots	210 gal/day- Unit	37,800	47,250 GPD
<b>Total Revised Loads</b>		<b>98,070</b>	<b>122,587 GPD</b>



## **SECTION 3 WATER RIGHTS AND WATER SYSTEM SUFFICIENCY**

### **3.1 Legal Water Supply and Water Rights:**

#### Denver Basin Groundwater:

When originally platted, it was expected that non-tributary water from under the main Forest Lakes residential parcel would be used to provide initial service. After the drilling of an initial Arapahoe well at Forest Lakes, an operational decision was made to rely instead on water taken from the re-drilled Dillon Well which was permitted under a different decree 81 CW 213. This water while under Forest Lakes Metro District is under a parcel that is east of Old Denver highway and not associated with the residential lands on which the Filings are platted and proposed. However beneficial use of the Dillon Well is not limited to the lands on which it resides and it can be used on the residential parcel. The legal water right associated with the Dillon Well is an annual **decree of 400 annual acre-feet**.

Two groundwater decrees **83-CW-142 Appendix B-2** and 83-CW-144 define water in the Denver Basin that is under the residential tract on which all of the residential Filings including Phase Two are located. An augmentation decree 83-CW-229 provides for potential pumping of some of the NNT rights. However, only 318 annual acre-feet of NT water (specifically Arapahoe) are actually deeded to FLMD. Although it may be possible that some or all of the remainder might be dedicated to the FLMD in the future, it is currently not planned, and no more than the **318 AF is considered as FLMD legal supply**.

#### Augmentation Relinquishments of Denver Basin Groundwater:

There are 12 separate augmentation cases (all with addendums) for which Forest Lakes provides augmentation water to offset upstream consumption of various ponds and reservoirs. There are two cases (Fly Casting Club 07CW 38, and Air Force Academy 08CW 26) that include significant quantities. The various decrees (which are relatively the same except for the consumption location and quantities) all have the same wording and terms.

The intention of each replacement plan per paragraph 12 is to place primary replacement reliance on 83-CW-142 (Arapahoe). **83-CW-213 Appendix B-1** (Dillon Well) is noted as an alternate source. Although, an Arapahoe well was drilled and cased per 83 CW 142, it is more convenient for Forest Lakes, in the near future, to use the Dillon well because it is available, under-used, and it allows Forest Lakes to better meet certain water quality issues. However, bottom line is that the Dillon is not intended as the long term legal supply.

The total amount of annual water dedicated in the 12 augmentation plans is 49.87 annual acre-feet. **For the purpose of this report, we are rounding the relinquishment value to 50 annual acre-feet.** The Augmentation Decrees are based on 100 year plans and no land use is reliant on those plans, therefore, the water is not subject to the El Paso County 300 year rule. The El Paso County 300 year rule is only applicable to land use as El Paso County does not supersede the State of Colorado on water rights issues only as those rights pertain to land use.

#### Non-300 Year Domestic Demands:

A significant area within FLMD is not subject to the El Paso County 300 Year water rule. Land use authority is based in the Town of Monument. In 2018, FLMD began

developing additional demands in the District which are within the Town. In order to accurately define water demands and simultaneously address the differential in land use designation, we are accounting for Non-300 Year Based Domestic Demands as a debit like 100 year augmentation requirements.

This results in an appropriate method to consider such real water demands while acknowledging the differential in land use based water allocations. Since the original report, FLMD began servicing a commercial user (Pilot Travel Center) that we have estimated as 13 SFE's based on the relative size of water taps.

Surface Water Supplies:

Forest Lakes Metropolitan District also owns an inventory of surface water rights. FLMD owns both Bristlecone and Pinon Reservoirs which are located on the site. These lakes were constructed in the mid 1980's and have been operated since. Both have storage rights:

- Bristlecone Reservoir    Decree 83-CW-139    **Volume 1140 Acre-Feet**
- Pinon Reservoir            Decree 83-CW-138    **Volume 120 Acre-Feet**

These reservoirs are surface fed by Upper Beaver Creek. The surface rights to Upper Beaver Creek are owned by Bob Dellacroce, Colorado Springs Utilities, and the Town of Monument. While FLMD does not actually own any of the surface right feeding the reservoirs, FLMD can divert water from Upper Beaver Creek

The storage rights priority date of May 6, 1983 are seldom in priority, therefore an augmentation plan 84-CW-19 allows for surface water diversion. Depletions caused by diversion are exchanged with fully consumable treated wastewater return flows, non-tributary ground water and/or 660 acre-feet per year of fully consumable Colorado Springs Utilities wastewater return flows. The CSU water is a surface supply and therefore considered renewable resource. These consumable return flows are purchased by FLMD from CSU on a permanent basis for use on the development property pursuant to the terms of the April 23, 1984 Agreement for Purchase of Return Flows (**Return Flow Agreement, Appendix B-5**). By a decreed surface water exchange and terms of the **Return Flow Agreement, the 660 acre-feet per can be impounded in Bristlecone Reservoir** to meet the municipal and irrigation needs on the Forest lakes property, by direct use or augmentation, as well as offset lake evaporation.

The exchange reach is from the Colorado Springs Las Vegas Wastewater Treatment Plant outfall up Fountain, Monument, and Beaver Creeks to Bristlecone Reservoir. As there are times when the return flow exchange cannot be fully operated, the Water Court Decree 84-CW-19 allows out-of-priority water storage and diversion which are augmented by consumable return flows or non-tributary ground water. In addition, at such times there can also be direct use of groundwater and previously stored water.

The reservoirs have been operated continuously since 1986. The augmentation plan **84-CW-19 Appendix B-6** requires FLMD to augment depletions created by lake evaporation. An average value of **lake evaporation has been quantified as 157 annual acre-feet**. **Table 3** on the following page is a summary of legal water supply for FLMD. After relinquishments for augmentation requirements and reservoir evaporative losses, **FLMD has a Net 300 year water supply of 724.14 Acre-feet**.

**TABLE 3**

**Table 3.  
Forest Lakes Metropolitan District Legal Water Supply Summary**

Land Formation/Aquifer	Determination/Decree	Tributary Status	Annual Allocation/Supply 100 Year	Annual Supply 300 Year	Well Permit(s)/Other
			Acre-Feet/Year	Acre-Feet/Year	
<b><u>Groundwater (Non-renewable Water)</u></b>					
Dawson	83-CW-144	NNT	162.00		Denver Basin Waters Decreed not necessarily owned by FLMD
Dawson Augmentation	83-CW-229				
Denver	83-CW-142	NNT	183.00		
Denver Augmentation	83-CW-229				
Arapahoe	83-CW-142	NT	451.00		
Laramie-Fox Hills	83-CW-142	NT	171.00		
<i>Of total above 318 Annual Acre feet Dedicated to Forest Lakes Metro District <sup>1</sup></i>			<b>318.00</b>		Arapahoe Owned by FLMD 83-CW-142  17483-FR (Previously documented)  12 Augmentation Decreases  100 Year Commitments-from Table 1A
Arapahoe (Dillon)	81 CW 213	NT	<b>400.00</b>		
Augmentation Relinquishments <sup>2</sup>			<b>-50.00</b>		
Pinon Pines Metropolitan District #3 Obligations (See Table 1A)			<b>-4.59</b>		
<b>TOTAL LEGAL NON-RENEWABLE NET WATER SUPPLY</b>			<b>663.41</b>	<b>221.14</b>	
<b><u>Surface Water (Renewable Water)</u></b>					
Bristlecone Reservoir	83-CW-139	Storage			1140 Acre-Feet 120 Acre-Feet  Average Established over 28 years  Wastewater Return Flows at Las Vegas CSU WWTP
Pinon Lake	83-CW-138	Storage			
Reservoir Augmentation	84-CW-19	Augmentation			
Evaporative Losses			<b>-157.00</b>		
Contractual CSU Return Flow Agreement <sup>3</sup>	Contract		<b>660.00</b>		
<b>TOTAL LEGAL RENEWABLE WATER SUPPLY</b>			<b>503.00</b>	<b>503.00</b>	
				<b>724.14</b>	
				<b>TOTAL 300 YEAR NET LEGAL SUPPLY</b>	<b>724.14</b>

**Note 1** Of the designated groundwater in Denver Basin listed in shadow, 318 annual acre-feet of the Arapahoe has been Deeded to the FLMD. Therefore only 318 acre-feet is included in legal supply

**Note 2** There are 12 Augmentation plans that require release of waters decreed under 83-CW-142  
The total of these requires up to 49.87 annual acre-feet. For the purpose of analysis, a 50 AF Relinquishment is noted.

**Note 3** This exchange allows Forest Lakes to divert water from Beaver Creek based on CSU ownership of Beaver Creek supply  
exchanged by Forest Lakes MD ownership of 660 Annual Acre-feet of return flows from the Las Vegas WWTP

### 3.2 *Physical Source of Supply:*

Currently, FLMD meets all of its water demands using only the Dillon Well established on the Tech Center parcel. This well has been drilled, completed and operated since 2008. Current well yield is 180 gallons/minute based on current pumping equipment. The equipment can be modified in the future and actual instantaneous yield of the permitted amount of 290 GPM has been documented as achievable. This water is currently treated and delivered to the system from a 0.36 Million Gallons per Day Groundwater Treatment Plant. This facility has been operated for municipal purposes since 2008.

Beginning in late 2017, FLMD began construction of the new Forest Lakes Metro District Surface Water Treatment Plant and Intake Structure. This facility will have a 0.50 MGD Capacity and is expandable to 1.5 MGD capacity if ever needed. This facility should be on line to serve existing and future development in early 2019.

The surface water treatment plant project includes construction of a water intake structure, which will allow FLMD to access its significant surface water rights. Since it would be difficult to expand this intake facility in the future, the intake structure is being constructed to have a capacity, much greater than the ultimate planned capacity of the actual water treatment plant.

With the addition of the surface water facility, the plants and sources can be operated simultaneously and/or separately as desired to meet FLMD needs. FLMD physical water capacity will be increased to 0.86 MGD which far exceeds projected maximum daily demand of 0.317 MGD as defined above in Table 1.

Even with two sources of supply, FLMD has also constructed a mutual aid connection with the Triview Metropolitan District which can be used by either entity to meet emergency backup needs. This does not actually increase capacity of the system but strengthens reliability of continuous supply.

### 3.3 *Water Quality and Treatment:*

The water quality from both groundwater and surface water sources is treated through two water treatment plants. The existing Groundwater plant has been in service since 2008. As of early 2019, the new Surface Water Treatment Plant will go online which will add the second source to the system from Bristlecone Reservoir. All finished water quality meets or exceeds CDPHE primary and secondary Drinking Water standards and will continue to do so in the future.

Appendix C is a full copy of the 2018 Consumer Confidence Report issued in 2018.

### 3.4 *Water Storage:*

An existing 1.5 MG storage tank has been constructed at the site and has been operated since 2008. Although 1/3 of the storage is owned by the Town of

Monument, storage is treated as coincidental making the full capacity available on an emergency basis. This will provide for all required fire storage as well as domestic demand.

Additionally, a secondary tank will be added as master-planned in the northwest corner of the property. This tank will be significantly smaller and will serve the primary purpose of providing adequate domestic and fire storage for the Phase Two pressure zone.

### 3.5 *Distribution and Transmission Lines:*

An existing 14 and 16 inch line comprises the back-bone of the system. These lines are supplemented with 8 inch or larger distribution lines throughout. A small pumping station will be added to the system to support the newly proposed tank.

## **SECTION 4 WASTEWATER AND WASTEWATER TREATMENT**

### 4.1 *Wastewater Collection*

The backbone wastewater system was constructed in 2008/09. The system included two constructed lift stations. The upper wastewater system serving the residential development was implemented in 2015 to serve the first residential development. It now serves all of Filings 1, 2, and 3. The main system was designed to support the addition of Phase Two.

A 6 inch force main and 21 inch sewer interceptor are already in place and connect to the existing Upper Monument Regional Wastewater Treatment Facility.

### 4.2 *Wastewater Treatment*

Forest Lakes Metropolitan District is one of three partners who own the Upper Monument Regional Wastewater Treatment Facility (UMRWWTF). Forest Lakes ownership is 300,000 gallons per day.

**Table 2** projects that with the added Phase Two, total maximum daily wastewater loads are projected to be 0.123 MGD which is more than adequately served by FLMD's 0.300 MGD capacity.

The plant is currently in compliance with its CDPHE Discharge Permit.

# *Appendix A*

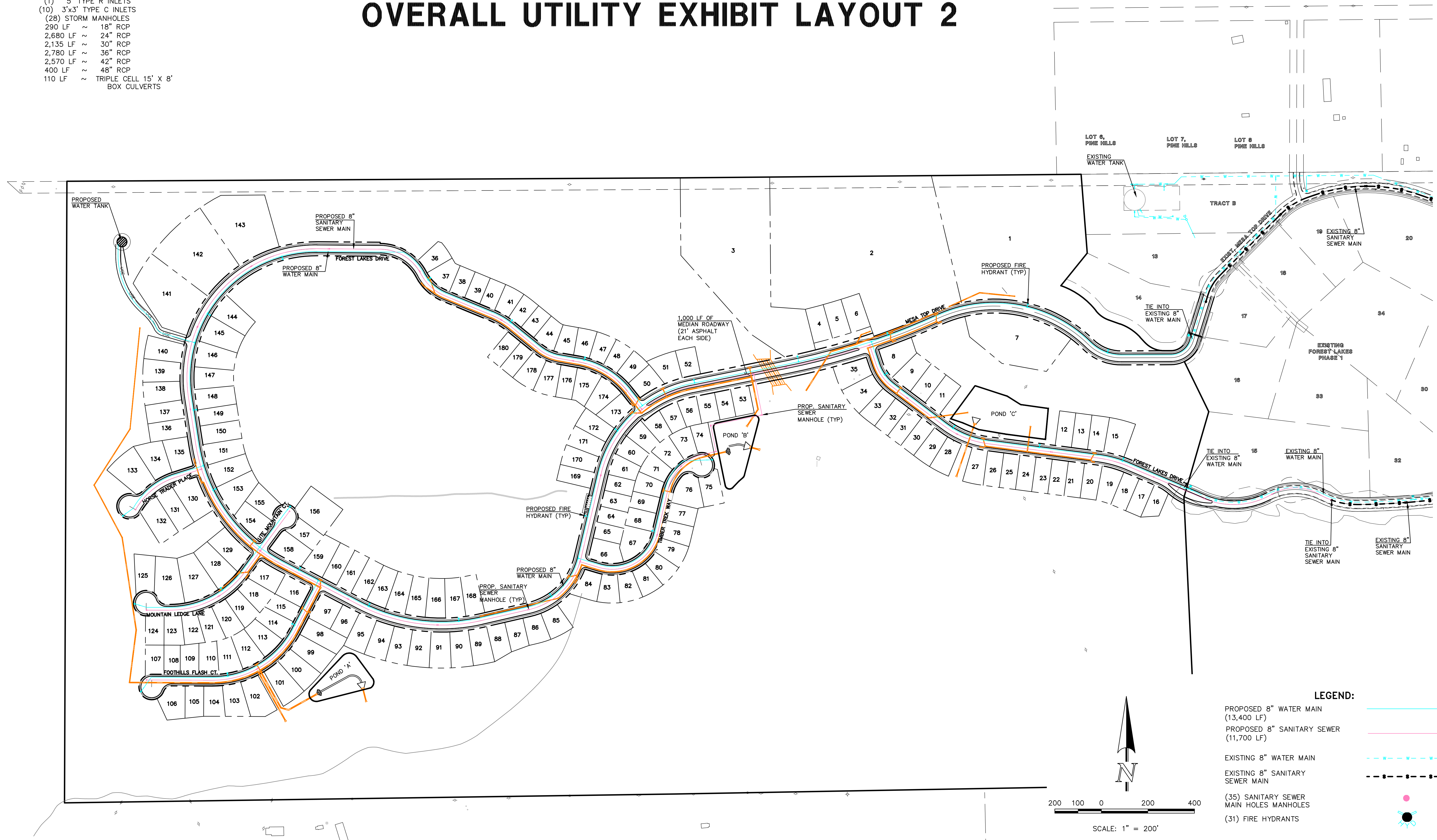
# FOREST LAKES

CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO

## OVERALL UTILITY EXHIBIT LAYOUT 2

### STORM SEWER SYSTEM

- (27) 15' TYPE R INLETS
- (6) 10' TYPE R INLETS
- (1) 5' TYPE R INLETS
- (10) 3'x3' TYPE C INLETS
- (28) STORM MANHOLES
- 290 LF ~ 18" RCP
- 2,680 LF ~ 24" RCP
- 2,135 LF ~ 30" RCP
- 2,780 LF ~ 36" RCP
- 2,570 LF ~ 42" RCP
- 400 LF ~ 48" RCP
- 110 LF ~ TRIPLE CELL 15' X 8' BOX CULVERTS



**LEGEND:**

- PROPOSED 8" WATER MAIN (13,400 LF) —
- PROPOSED 8" SANITARY SEWER (11,700 LF) —
- EXISTING 8" WATER MAIN - - -
- EXISTING 8" SANITARY SEWER MAIN - - -
- (35) SANITARY SEWER MAIN HOLES MANHOLES ●
- (31) FIRE HYDRANTS ●

180 LOTS ~ (7) LARGE  
(73) 80' WIDE  
(100) 70' WIDE

**CLASSIC**  
CONSULTING  
ENGINEERS & SURVEYORS

**FOREST LAKES**

OVERALL UTILITY EXHIBIT LAYOUT 2

**CLASSIC**  
ENGINEERS & SURVEYORS

DESIGNED BY	MAL	SCALE	DATE	09/18/18
DRAWN BY	JRM	(H) 1" = 150'	SHEET	1 OF 1
CHECKED BY		(V) 1" = N/A	JOB NO.	1175.21

619 N. Cascade Avenue, Suite 200 (719) 785-0790  
 Colorado Springs, Colorado 80903 (719) 785-0799 (Fax)

N:\117521\DRAWINGS\EXHIBITS\Overall\_Layout\_2.dwg, 9/25/2018 10:51:46 AM, 1:1



# *Appendix B*

# CENTRAL FILES

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

Case No. 81CW213

COPY

RECEIVED

JUL 20 1984

PINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF RAY E. DILLON, <sup>WATER RESOURCES</sup> RAY E. DILLON, JR., RICHARD W. DILLON and WILLIAM L. SINGLETON <sup>STATE ENGINEER</sup>

IN THE ARAPAHOE NONTRIBUTARY FORMATION

Filed in the office of ~~DRM~~  
Clerk, District Court Water  
Division No. 2, State of  
Colorado

IN EL PASO COUNTY, COLORADO.

JUL 18 1984

Having reviewed all matters contained in the Application and evidence offered in support thereof, and upon stipulation of the parties hereto, the Court enters the following *Ray E. Dillon, Jr.* of Fact, Conclusions of Law, Judgment and Decree.

Clerk

## FINDINGS OF FACT

### 1. Name and Address of Applicants:

Ray E. Dillon, Ray E. Dillon, Jr., Richard W. Dillon, and  
William L. Singleton  
c/o Ray E. Dillon, Jr.  
Box 1266  
Hutchinson, Kansas 67501

### 2. Amount of Water Claimed:

Applicants initiated this case by filing an Application for Underground Nontributary Water Rights herein on December 14, 1981. Applicants seek a decree confirming their right to develop and use 290 g.p.m. of water recoverable from the Arapahoe Formation through Well No. 17483-F, with the amount of water to be withdrawn annually therefrom not to exceed 400 acre-feet.

### 3. Description of Structure:

Name: Well No. 17483-F  
Depth: 1,195 feet  
Location:

In the Northwest Quarter of the Northeast Quarter of  
Section 35, Township 11 South, Range 67 West, 6th  
P.M., El Paso County, former Water District No. 10,  
Irrigation Division No. 2, State of Colorado, at a

point 200 feet from the North line, and 2,000 feet from the East line, of said Section 35.

4. Well Permit:

In February of 1973, application was made to the Colorado Division of Water Resources for a well permit for the subject structure. The Division issued a permit for Well No. 17483-F on August 17, 1973. The permit authorizes a maximum pumping rate from the subject well of 430 g.p.m., with an annual acre-foot limitation of 580 acre-feet. A statement verifying application of such water to beneficial use was timely submitted to the Division of Water Resources pursuant to extensions of time previously obtained therefrom, and accepted for filing by the State Engineer, on October 17, 1974.

As asserted in paragraph 2 of this Decree, Applicants are claiming only 290 g.p.m. and 400 acre-feet (per annum), which limitations are found to be reasonable and required to protect the interests of Objector, the City of Colorado Springs.

5. Source of Water:

Applicants have proven that the ground water which is withdrawn through Well No. 17483-F is not tributary to or hydraulically connected with the Monument Creek system, and that withdrawals through the subject well will not materially affect the flow of Monument Creek or its tributaries within 100 years. Applicants have further proven that withdrawal of water in accordance with the terms of this Decree will not result in material injury to the vested water rights of others. There is water available for withdrawal by Applicants pursuant to and in accordance with C.R.S. §37-90-137.

6. Uses of Water:

The water which is the subject of the rights claimed herein may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of

such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.

7. Statements of Opposition/Entries of Appearance:

A verified Statement of Opposition to the granting of this Application was timely filed by the City of Colorado Springs. In addition, the State and Division Engineer entered their appearance in this matter. No other Statements of Opposition or Entries of Appearance were filed herein, and the time for filing the same has now expired.

The Objector and Entrants hereby withdraw their respective Statement of Opposition and Entry of Appearance, as evidence by the signatures of counsel for Objector and Entrants on page 6 hereof consenting to the terms of this Decree.

The Objector, City of Colorado Springs, stipulates with the Applicants and with the Entrants, State and Division Engineer, that this case shall not act as a precedent for any other wells or surface rights alleged to be nontributary, whether said proceedings or claims arose in the past or will arise in the future.

8. Jurisdiction:

Timely and adequate notice was published of the Application herein as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. None of the lands or water rights involved in this case is within the boundaries of a designated ground water basin.

CONCLUSIONS OF LAW

9. The Court concludes as a matter of law that the determination of nontributary ground water rights as set forth in the decretal portion hereof is contemplated and authorized by law. C.R.S. §37-92-203(1) and §37-90-137(6) (as amended by S.B. 439, enacted October 11, 1983). Applicants qualify for and are entitled to an absolute Decree confirming their right to withdraw ground water pursuant to C.R.S. §37-90-137.

10. The nontributary water rights herein are determined pursuant to C.R.S. §37-90-137, and shall be subject to administration by the State Engineer pursuant to the terms of this Decree, C.R.S. §37-90-137 and other applicable law as nontributary water rights.

JUDGMENT AND DECREE

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

11. The claims which are the subject of this Decree are hereby determined in accordance with the Conclusions of Law herein and as described hereinafter. The Findings of Fact and Conclusions of Law are hereby incorporated into this Decree as if fully set forth herein.

12. Applicants' rights to withdraw nontributary Arapahoe Formation ground water from Well No. 17483-F are hereinafter determined. The location, depth, pumping rate, and annual withdrawal for the well are as follows:

A. Location:

In the Northwest Quarter of the Northeast Quarter of Section 35, Township 11 South, Range 67 West, 6th P.M., El Paso County, former Water District No. 10, Irrigation Division No. 2, State of Colorado, at point 200 feet from the North line, and 2,000 feet from the East line, of said Section 35.

B. Depth: 1,195 feet

C. Pumping Rate: 290 g.p.m. (0.646 c.f.s.)

D. Annual Withdrawal: 400 acre-feet.

13. Well No. 17483-F shall produce nontributary ground water from the Arapahoe Formation only.

14. The subject well shall be operated consistent with sound engineering principles and practices. The well has been encased with an impervious lining at all levels except at the level of the designated aquifer, to prevent withdrawal of ground water in other aquifers.

15. The well shall be identified by its permit number, the Applicants' name, and the name of the producing Formation on the above-ground portion of the well casing or on the pumphead.

16. A totalizing flow meter shall be installed on the well discharge. Applicants shall keep records of all diversions by the well from the totalizing flow meter, and report the same once annually to the Division 2 Engineer. Said annual reporting shall be broken down by the calendar month.

17. Water is available for withdrawal by Applicants from the Arapahoe Formation, and the withdrawal through Well No. 17483-F of the amounts of water specified in paragraph 12 above will not result in material injury to any other vested water rights or to any other owners or users of water.

18. The nontributary ground water which is the subject of this Decree may be used for municipal, domestic, commercial and irrigation purposes. The right to apply such water to the above-specified beneficial uses shall include the right of successive use pursuant to C.R.S. §37-82-106 and the right to use, reuse, and successively use all such water to extinction and to dispose of such water, free of any limitation, restriction, or requirement as to the place of use, the amount of discharge after such use, and as to its reuse, successive use or disposition. The water may be produced for immediate

application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes.

19. Withdrawals through Applicants' well in accordance with the terms and conditions set forth above will not materially affect the flow of Monument Creek or its tributaries within 100 years and therefore is hereby decreed to be nontributary to Monument Creek or its tributaries.

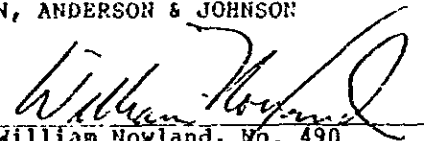
20. The Findings of Fact, Conclusions of Law and Judgment and Decree herein shall not be considered a precedent as to other water matters which might be filed or have been filed with the Water Court or which are claimed or will be claimed by any person or legal entity.

21. This Judgment and Decree constitutes a final determination of the quantity of ground water which Applicants are entitled to withdraw from the Arapahoe Formation through Well No. 17483-F.

APPROVED AS TO FORM AND CONTENT:

HORN, ANDERSON & JOHNSON


By:

  
William Nowland, No. 490  
840 Holly Sugar Building  
Colorado Springs, Colorado 80903

Attorneys for Objector  
City of Colorado Springs

ATTORNEY GENERAL

By:

  
Steven J. Shupe, No. 12523  
Assistant Attorney General  
Natural Resources Section  
1525 Sherman Street, 3rd Floor  
Denver, Colorado 80203

Attorneys for Entrant  
State of Colorado

SAUNDERS, SNYDER, ROSS & DICKSON, P.C.

By: W.B. Tourtillott  
William B. Tourtillott, No. 184  
Deborah L. Freeman, No. 12278  
303 East Seventeenth Avenue, #600  
Denver, Colorado 80203  
Attorneys for Applicants

ENTERED AS THE JUDGMENT AND DECREE OF THIS COURT this 18 day  
of July, 1984.

John R. Tracey  
John R. Tracey  
Water Judge  
Water Division No. 2  
State of Colorado

Filed in the office of the  
Clerk, District Court Water  
Division No. 2, State of  
Colorado

c: Saunders, Snyder, Ross & Dickson  
(W. B. Tourtillott, Jr.)  
Horn, Anderson & Johnson (Nowland)  
Steven J. Shupe, Assistant Attorney General JUL 18 1984  
Robert W. Jesse, Division Engineer  
Dr. Jeris A. Danielson, State Engineer

Richard A. Jensen  
Clerk



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CLERK, DISTRICT COURT, WATER DIVISION, STATE OF COLORADO  
COPY

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO  
SEP 9 1987 SEP 25 1987

Case No. 83CW142

DIV. 6 WATER RIGHTS  
STATE ENGINEER  
COLORADO

*Richard A. Fisher*  
Clerk

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS FROM  
NONTRIBUTARY SOURCES OF GREAT AMERICAN MORTGAGE SERVICE CORP., a  
Missouri corporation, LINCOLN SAVINGS & LOAN ASSOCIATION, a  
California State Savings & Loan Association and FIRST MARYLAND  
SAVINGS & LOAN ASSOCIATION,

IN EL PASO COUNTY.

THIS CLAIM was filed with the Water Clerk, Water Division  
No. 2 on December 30, 1983 and was amended on May 21, 1986 and on  
November 18, 1986.

All notices required by law of the filing of this  
application have been fulfilled, and the Court has jurisdiction  
of this application. The time within which to file Statements of  
Opposition has expired.

All matters contained in the application having been  
reviewed, and testimony having been taken where such testimony is  
necessary, such corrections made as are indicated by the evidence  
presented herein, and upon a finding of good cause shown, IT IS  
HEREBY THE RULING AND DECREE OF THE WATER COURT:

FINDINGS OF FACT

1. Name and Address of Applicants:

First Maryland Savings and Loan  
Association  
(First Maryland Financial Services  
Corporation)  
Jay Finkelstein, Esq.  
Piper & Marbury  
888 16th Street N.W.  
Washington, D.C. 20006  
(202) 785-8150

Great American Mortgage  
Services Corporation  
603 Gate City Bank Bldg.  
1111 Grand  
Kansas City, Missouri 64105

Lincoln Savings & Loan Association  
c/o American Continental Corp.  
2735 E. Camelback Rd.  
Phoenix, Arizona 85016  
Attn: Christopher Chambers  
(602) 957-7170

SEP 21 1987

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 2

2. Statements of Opposition were filed by:

Upper District 10 Water Users Association and Jon Frost  
City of Colorado Springs  
Colorado Water Conservation Board  
State Engineer and Division Engineer  
Edward A. Sabbagh  
Paul W. Smith, Richard & Nancy R. Smith, Norman B. Robinson  
Southeastern Colorado Water Conservancy District  
Christine J. Dellacroce  
Chris and Susan Ogg  
Jeff and Sheri Smyth  
Patricia J. Fox  
Jane and James Rutledge  
Antje Leiser  
Eunice and Ted Bench  
Irl and Carol Mabon  
Sarah Hammond  
Mel and Balinda Parker  
John Seeley  
Walter and Eleanor Langevin  
Robert V. & Patricia Sloan  
Melvin W. & Donna D. Rezac  
Jerry and Susan Lacc  
Jim and Sara Bloise  
Bruce and Margret Weber  
Richard and Linda Stewart  
Charles Lemon  
Bernard and Rose Goick  
Robert and Juanita Patton  
John and Cathy Sarkisian  
Marion J. and Helga M. Rogers  
Dean Lind  
Richard and Mae P. Schroeter  
Laurel Vandiver  
William & Julie Gust  
John Goins  
Gerald and Vivian Brown  
Louis and Jean Kinzer  
Gerald and Cynthia Huntley  
Bob and Dixie Strode  
Kenneth and Anne Hoyt  
Vernon A. and Barbara A. Schnathorst

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 3

Donald & Cathleen Couchman  
Kenneth and Georgia Follansbee  
John Rodney and Jane Francis  
Michael and Jo Lyn Hite  
Kevin and Tammy McCullough  
Jacques J.P. Adnet  
Robert and Nancy McClelland  
Bruce and Bonnie McCloskey  
Steve and Ruth Johnson  
Dearl and Jean Temple  
James and Judith Sargent  
Norman and Patricia Weier  
Thurman and Arbutus Skelly  
Charles and Christa Bergeron  
Carol Jean Minney  
James and Beverly Warsinske  
James and Nancy Drewry  
William A. Negus  
James C. and Wilma Satterwhite  
Carolyn S. Wheat  
Connie V. and Harry D. Sullivan  
Michael and JoAnn Smyth  
James A. Frerick  
Paul and Judith Redner  
Gary E. and Nancy Chase  
Edward and Sandra Helms  
John and Maria Green  
Michael and Linda Adams  
Town of Monument entered the case as an Intervenor

The Statement of Opposition filed by Christine J. Dellacroce  
has subsequently been withdrawn.

3. Applicants own, or have the right to use the water beneath  
approximately 1078.234 acres as described in Exhibit A hereto.

4. Names of Structures and Legal Descriptions.

A. Denver Formation.

D-1: SW1/4 SE1/4 Section 27, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 670 feet from the south section line and 1630 feet from the east section line of said Section 27.

D-2: SE1/4 SW1/4 Section 28, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 515 feet from the south section line and 1495 feet from the west section line of said Section 28.

D-3: SE1/4 SE1/4 Section 29, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 1250 feet from the south section line and 450 feet from the east section line of said Section 29.

B. Arapahoe Formation

A-1: SW1/4 SE1/4 Section 27, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 675 feet from the south section line and 1560 feet from the east section line of Section 27.

A-2: SE1/4 SW1/4 Section 28, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 545 feet from the south section line and 1530 feet from the west section line of said Section 28.

A-3: SE1/4 SE1/4 Section 29, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 1250 feet from the south section line and 400 feet from the east section line of said Section 29.

C. Laramie-Fox Hills Formation

LFH-1: SW1/4 SE1/4 Section 27, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 640 feet from the south section line and 1590 feet from the east section line of said Section 27.

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 5

LFH-2: SE/4 SW1/4 Section 28, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 510 feet from the south section line and 1525 feet from the west section line of said Section 28.

LFH-3: SE1/4 SE1/4 Section 29, T.11S, R.67W, 6th P.M., El Paso County, Colorado, at a point approximately 1200 feet from the south section line and 400 feet from the east section line of said Section 29.

5. Applications for well permits were filed with the Colorado Division of Water Resources on December 29, 1983. Permits have not been issued as of the date of this decree. The State Engineer submitted Determinations of Facts as to this application which have been reviewed and considered by the Court and are attached hereto as Exhibit B.

6. Source of Water: Groundwater from the Denver, Arapahoe and Laramie-Fox Hills aquifers.

7. Date of Appropriation:

In keeping with 37-92-305(11) C.R.S. 1973 as amended by Senate Bill 5 and the ruling of the Colorado Supreme Court in State of Colorado, Department of Natural Resources v. Southwestern Colorado Conservancy District, 671 P.2d 1294 (1983) that nontributary groundwater is not subject to the doctrine of appropriation, the Court finds that a date of appropriation as to wells in the Arapahoe and Laramie-Fox Hills aquifers is inapplicable. As to the Denver aquifer water found to be not nontributary, and to the extent applicable, the Court finds that as of December 30, 1983, Applicants, or their predecessor in interest claim the water sought in the application and have so demonstrated by open and physical acts on the ground and by the completion of an engineering study and hydrogeological investigation on the water available for appropriation and the preparation of, and filing of well permit applications and Water Court applications for the subject water. Applicants have demonstrated and manifested an intent to appropriate the waters claimed herein by giving sufficient notice thereof, all in accordance with law. The evidence presented shows that the Applicants intend to appropriate the waters claimed herein, that

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 6

such intent to appropriate has been adequately demonstrated, and that Applicants are entitled to a decree for the water rights herein decreed.

8. Use of Water:

The water withdrawn from any Arapahoe or Laramie-Fox Hills well may be used, reused and successively used and otherwise disposed of, free of any restriction or requirement as to the place of use, amount of discharge after such use, except that not more than 98% of the water withdrawn annually may be consumptively used. Said water may be produced for immediate application to all municipal purposes and domestic, industrial, livestock, irrigation, commercial, and recreational uses, for storage and subsequent application to said uses, for exchange purposes, or replacement of depletions resulting from the use of water from other sources, and for any and all other augmentation purposes. Water withdrawn from any Denver well may be used, reused, successively used and otherwise disposed of for all purposes, including municipal, domestic, industrial, commercial, irrigation, stock watering, and recreational, uses, storage, exchange and augmentation, except that water from the Denver wells may not be used until a plan for augmentation is presented and approved pursuant to C.R.S. 37-90-137(9)(c). At Applicants' motion, all issues pertaining to such a plan for augmentation, including whether notice regarding said plan for augmentation is sufficient, have been bifurcated from this decree and may be pursued by appropriate motion or by filing a new application. Applicants acknowledge that prior to use of such water for exchange or augmentation or use of claimed discharge or return flows by a change of water right, plan for augmentation or exchange, approval must be obtained from the Water Court for such uses to assure that no other vested or decreed water rights are injured. Further, Applicants' reuse or successive uses of water decreed herein shall be subject to accounting procedures and practices consistent with principles of accounting for water pursuant to law.

9. The evidence presented indicates that water is available for appropriation by Applicants from the Denver, Arapahoe and Laramie-Fox Hills aquifers underlying Applicants' property described in Exhibit A pursuant to the provisions of C.R.S. 1973, Section 37-90-137(4) as set forth herein, and that such

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 7

production and use of water within the limitations set forth herein will not result in material injury to vested water rights of others.

10. The water proposed to be withdrawn from wells in the Arapahoe and Laramie-Fox Hills aquifers meets the definition of "nontributary groundwater" set forth in 37-90-103(10.5) C.R.S., (Senate Bill 5).

11. The water to be withdrawn from wells in the Denver aquifer is not nontributary.

CONCLUSIONS OF LAW

Applicants have complied with the requirements of C.R.S. 1973, 37-90-137(4), and Applicants are entitled to a decree confirming their right to develop and use the Denver, Arapahoe and Laramie-Fox Hills water claimed herein. The amount of water confirmed in this decree is that quantity of water underlying the lands described in Exhibit A and the annual withdrawals are based on an aquifer life of one hundred (100) years. The volume of water available annually for appropriation shall be one percent (1%) of the product of the specific yield of the aquifer, saturated thickness of the aquifer, and the number of acres of surface land from which water is available, pursuant to the provisions of C.R.S. 37-90-137(4) (1985).

JUDGMENT AND DECREE

12. The Findings of Fact and Conclusions of law set forth above are incorporated herein by this reference.

13. Applicants own the land or otherwise have the right to use all of the unappropriated water underlying the land described in Exhibit A in the Denver, Arapahoe and Laramie-Fox Hills formations. The total amount of water available beneath the property in each aquifer is: Denver, 381 acre-feet per year; Arapahoe, 677 acre-feet per year; Laramie-Fox Hills 323 acre-feet per year. One-third (1/3) of the total water available from these aquifers has been appropriated by the Town of Monument in Case No. 83CW09, pursuant to agreement with and conveyance by C.H. Helenberg, predecessor in interest to applicants. The average annual withdrawal amounts set forth in paragraph 17 are

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 8

equal to two-thirds (2/3) of the average annual amount of water available beneath the land. Each well described is designated as an alternate or additional point of diversion for each other well in the same formation, and the wells may be operated as a well field.

14. In constructing and maintaining the wells:

- a. Applicants shall encase each well with an impervious lining at all levels, except the level of the permitted aquifer, to prevent withdrawal of ground-water from other aquifers. Applicants shall also grout the well to prevent commingling of groundwater between aquifers.
- b. Applicants shall also comply with such other requirements for constructing and equipping the well as the State Engineer may reasonably require.
- c. After construction of each well, Applicants shall attach an identification tag to the well specifying the name of the well, the permit number and the aquifer from which the water is withdrawn.
- d. Applicants shall install a totalizing flow meter on each well. The meter shall be installed according to the manufacturer's recommendations and shall be inspected annually, and promptly repaired or recalibrated as needed. If Applicants' meter becomes inoperable it shall be repaired as soon as possible so that measurements may continue.

15. Applicants shall keep records of the amounts pumped and perform the calculations as required by the Division Engineer to determine whether Applicants are in compliance with this decree. Applicants shall supply the Division Engineer with those records annually or more frequently upon request by the Division Engineer.

16. Any well drilled within 200 feet of a decreed location will be deemed to be drilled at the decreed well location pursuant to the permit, and any well drilled at a location more than 200 feet distance from the decreed point will be deemed not to have been drilled at the decreed point of diversion and to require a change



Application of Great American Mortgage Co., et al.  
 Findings of Fact, Conclusions of Law, Judgment  
 and Decree  
 Case No. 83CW142  
 Page No. 9

in point of diversion proceeding in this Court. If the Water Court grants a new point of diversion, the State Engineer shall issue, within sixty (60) days of notification by the Applicants of ruling of the Court and submittal of a well permit application, a well permit for the newly decreed location.

17. Allowed Average Annual Amount of Withdrawal

The criteria used in determining the allowed average annual amount of withdrawal of groundwater from each aquifer herein beneath the land described in Exhibit A are those as follows:

<u>Aquifer</u>	<u>No. of Acres</u>	<u>Saturated Materials (feet)</u>	<u>Specific Yield</u>	<u>2/3 total avg. annual withdrawal Acre-Foot Per year</u>
Denver	1078.234	As per SEO	17	255
Arapahoe	1078.234	Determination	17	451.3
Laramie-Fox Hills	1078.234	of Fact Attached hereto as exhibit B	15	215.3

18. Applicants may exceed the average pumping rates stated in paragraph 19 and the average annual withdrawal amounts stated in paragraph 17 as necessary in order to withdraw the total average appropriation from each aquifer. The sum of the withdrawals from all wells in each aquifer decreed herein (as that sum may subsequently be adjusted pursuant to paragraph 21 herein) may not exceed the product of the number of years since the date of issuance of the first well permit for such a well or the date of this decree, whichever occurs first, times the allowed average annual amount of withdrawal from each aquifer.

19. Well Data

Subject to the total average annual withdrawal limitations set forth in paragraph 17 above, the estimated depths, estimated pumping rates, proposed perforated intervals, estimated annual withdrawals for each well are as follows:

Application of Great American Mortgage Co., et al.  
 Findings of Fact, Conclusions of Law, Judgment  
 and Decree  
 Case No. 83CW142  
 Page No. 10

Well Name	Depth Ft.	Performation (ft.)		Annual Rate GPM	Average Annual Pumping Withdrawal Acre Feet
		Top	Bottom		
D-1	870	250	870	200	88
D-2	870	430	970	200	88
D-3	1080	580	1080	200	89
A-1	1380	940	1380	750	153
A-2	1420	1030	1470	750	153
A-3	1500	1110	1550	750	154
LFH-1	1890	1560	1890	100	75
LFH-2	1940	1590	1940	100	75
LFH-3	2030	1680	2030	100	75

20. With respect to the permits to be issued by the State Engineer's office for construction of the wells described in paragraph 4 herein, the following provisions shall apply.

- a. The State Engineer shall consider the rights granted herein as valid and shall consider the water sought by Applicant as appropriated by Applicant.
- b. When Applicants or their successors in interest are prepared to drill a well described in this decree, they shall apply to the State Engineer for a well permit and that permit shall be issued within sixty (60) days under the terms and conditions set forth in this decree with the conditions for equipping and constructing the well as are specified in paragraph 14 herein, except that no permits shall issue for wells in the Denver aquifer until such time as a plan for augmentation for those wells is approved. In the event that a well permit expires prior to the construction of the well and the application of water to beneficial use, Applicants may apply for a new well permit and the State Engineer shall issue the new well permit with the same terms and conditions as the permit that expired.

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 11

- c. Applicants shall submit well permit applications to the State Engineer's office for any additional, replacement or supplemental wells and shall make application to the Water Court to have such wells decreed as additional or alternate points of diversion for the wells decreed herein.

21. Retained Jurisdiction

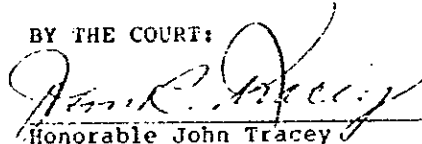
The decree herein grants a water right from the Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the subject property, totaling estimated amounts as set forth in paragraph 17 above.

The Court retains jurisdiction to provide for the adjustment of the annual amount of withdrawal to conform to actual local aquifer characteristics, including specific yield and saturated thickness, as determined from analyses of data obtained from the wells constructed or test holes drilled. The specific yield and saturated thickness set forth in paragraph 17 are based upon the State Engineer's Rules and Regulations for the Denver Basin effective January 1, 1986, amended February 1, 1987, and shall be presumed to be correct. Applicant may submit site specific data to the court to support different values and overcome the presumption. Within sixty (60) days after the completion of such well(s) or test hole(s), the Applicant shall file with the State Engineer, and serve each of the parties who have appeared herein, copies of the well logs from such well(s) or test hole(s). Any party hereto, including the State Engineer, can invoke the Court's retained jurisdiction to make adjustment to the criteria or amounts set forth in paragraph 17 by filing an appropriate motion with the Court and providing notice to all parties hereto.

Application of Great American Mortgage Co., et al.  
Findings of Fact, Conclusions of Law, Judgment  
and Decree  
Case No. 83CW142  
Page No. 12

Dated this 25 day of September, 1987.

BY THE COURT:



Honorable John Tracey  
Water Judge  
Water Division No. 2  
State of Colorado

xc: Martha Phillips Albright  
Frederick A. Fendel, III  
Wayne B. Schroeder and Christopher R. Hermann  
Joseph P. McMahon, Jr.  
David Ladd  
Howard Holme and Kevin B. Pratt  
Gregory L. Johnson and Mark Pipher  
Robert F. T. Krassa  
Division Engineer  
State Engineer

CENTRAL FILES

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Filed in the office of the  
Clerk, District Court, Water  
Division No. 2, State of Colorado

DEC 02 1986

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

Case No. 83CW139

DIV. OF WATER RESOURCES  
STATE ENGINEER  
COLORADO

DEC 1 1986

FINDINGS AND RULING AND DECREE OF THE WATER COURT

*Richard J. Lyons*  
Clerk

CONCERNING THE APPLICATION FOR WATER RIGHTS OF GREAT AMERICAN MORTGAGE SERVICE CORP., a Missouri corporation, LINCOLN SAVINGS & LOAN ASSOCIATION, a California state chartered State Savings & Loan Association and FIRST MARYLAND SAVINGS & LOAN ASSOCIATION,

IN EL PASO COUNTY.

THIS CLAIM, having been filed with the Water Clerk, Water Division No. 2, on December 30, 1983, and the Water Judge being fully advised in the premises, does hereby find:

All notices required by law for the filing of this application have been fulfilled, and the Water Court has jurisdiction of this Application.

Timely Statements of Opposition to said Application were filed by Southeastern Colorado Water Conservancy District; City of Colorado Springs; Upper District 10 Water User's Association and Jon Frost; Christine J. Dellacroce; Norman B. Robinson; and Pro Se objectors listed in Exhibit A hereto. All parties having had adequate notice of trial, those parties not appearing either by Stipulation, listed as Exhibit B, or as listed in Exhibit C are in default and this decree may be entered.

All matters contained in the Application having been reviewed, and testimony having been taken, such corrections made as are indicated by the evidence presented herein, and upon a showing of good cause shown, IT IS HEREBY THE RULING OF THE WATER COURT:

1. The name and address of the claimants:

Great American Mortgage Service Corp.  
c/o Frederick A. Fendel, III  
Broadhurst & Petrock  
1630 Welton Street  
Suite 200  
Denver, Colorado 80202

83CW139

Application of Great American Mortgage Service Corp.  
Lincoln Savings & Loan Assoc., and  
First Maryland Savings & Loan Assoc.  
Findings and Ruling and Decree  
Case No. 83CW139

Lincoln Savings and Loan Association  
c/o Christopher Hermann  
Calkins, Kramer, Grimshaw & Harring  
One United Bank Center  
1700 Lincoln Street  
Suite 3800  
Denver, Colorado 80203

First Maryland Savings & Loan Association  
c/o Martha Phillips Allbright  
Linton & Allbright, P.C.  
410 Seventeenth Street  
Suite 880  
Denver, Colorado 80202

2. The name of the reservoir:  
  
Bristlecone Lake No. 2
3. The legal description of the reservoir:  
  
The south abutment of the dam will be located in the SE1/4 of the SW1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet east of the west section line and 20 feet north of the south section line of said Section 27. The dam alignment is proposed to run in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The proposed high water line will include portions of the SW1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado.
4. The source of water:  
  
Beaver Creek and its tributaries, tributary to Monument Creek.
5. The date of appropriation:

83CW139

Application of Great American Mortgage Service Corp.  
Lincoln Savings & Loan Assoc., and  
First Maryland Savings & Loan Assoc.  
Findings and Ruling and Decree  
Case No. 83CW139

June 6, 1983

6. Date of approval of reservoir by State Engineer.

Approval of design for construction was received on or about April 18, 1984.

7. Height of dam:

80 feet

8. Length of dam:

1,600 feet

9. Total capacity of reservoir in acre-feet:

1,140 acre-feet

10. Active capacity of reservoir in acre-feet:

1,140 acre-feet

11. Dead storage in acre-feet:

10

12. Amount of water claimed:

1,140 acre-feet

13. Use or proposed use of water:

Domestic, irrigation, industrial, commercial, municipal, augmentation and exchange, including the right to fill, refill and reuse.

14. The priority herein awarded said Bristlecone Reservoir was filed in the Water Court in the year 1983 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

83CW139

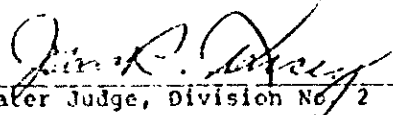
Application of Great American Mortgage Service Corp.  
Lincoln Savings & Loan Assoc., and  
First Maryland Savings & Loan Assoc.  
Findings and Ruling and Decree  
Case No. 83CW139

determined by historical dates of appropriation and not affected by the date of entry of ruling.

15. Certain of the parties hereto have agreed to and signed the Stipulation attached hereto as Exhibit B. At trial, the pro-se objectors who appeared and are listed on Exhibit C hereto, also agreed to the Stipulation. Said Stipulation is hereby approved by the Court, is incorporated herein by this reference, and shall be binding as to the parties thereto and enforceable as an order of this Court. Notice, pursuant to paragraph 3 of the Stipulation, shall be limited to the parties thereto, including the objectors listed in Exhibit C.

16. It is also ordered that the conditional rights herein awarded are hereby continued in full force and effect until November 1990. If Applicant desires to maintain such conditional decree, an application for a quadrennial finding shall be filed during the month of November 1990, or the 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.

DONE IN OPEN COURT this 1 day of Dec.,  
19 87.

  
Water Judge, Division No. 2

xc: Martha Phillips Allbright  
Frederick A. Fendel, III  
Wayne B. Schroeder  
Division Engineer  
State Engineer



GENERAL FILE

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Filed in the office of the  
Clerk, District Court, Water  
Division No. 2, State of  
Colorado

DEC 02 1986

DISTRICT COURT, WATER DIVISION NO. 2  
Case No. 83CW138

STATE OF COLORADO  
WATER RESOURCES  
STATE ENGINEER  
COLORADO

DEC 1 1986

FINDINGS AND RULING AND DECREE OF THE WATER COURT

*Frederick A. Fendel, III*  
Clerk

CONCERNING THE APPLICATION FOR WATER RIGHTS OF GREAT AMERICAN MORTGAGE SERVICE CORP., a Missouri corporation, LINCOLN SAVINGS & LOAN ASSOCIATION, a California state chartered State Savings & Loan Association and FIRST MARYLAND SAVINGS & LOAN ASSOCIATION, IN EL PASO COUNTY.

THIS CLAIM, having been filed with the Water Clerk, Water Division No. 2, on December 30, 1983 and amended June 30, 1986, and the Water Judge being fully advised in the premises, does hereby find:

All notices required by law for the filing of this application have been fulfilled, and the Water Court has jurisdiction of this Application.

Timely Statements of Opposition to said Application were filed by Southeastern Colorado Water Conservancy District; City of Colorado Springs; Upper District 10 Water User's Association and Jon Frost; Christine J. Dellacroce; Norman B. Robinson; and Pro Se objectors listed in Exhibit A hereto. All parties having had adequate notice of trial, those parties not appearing either by Stipulation, listed as Exhibit B, or as listed in Exhibit C are in default and this decree may be entered.

All matters contained in the Application having been reviewed, and testimony having been taken, such corrections made as are indicated by the evidence presented herein, and upon a showing of good cause shown, IT IS HEREBY THE RULING OF THE WATER COURT:

1. The name and address of the claimants:

Great American Mortgage Service Corp.  
c/o Frederick A. Fendel, III  
Broadhurst & Petrock  
1630 Welton Street  
Suite 200  
Denver, Colorado 80202

Application of Great American Mortgage Service Corp.,  
Lincoln Savings & Loan Assoc., and  
First Maryland Savings & Loan Assoc.  
Findings and Ruling and Decree  
Case No. 83CW138

Lincoln Savings and Loan Association  
c/o Christopher Hermann  
Calkins, Kramer, Grimshaw & Haring  
One United Bank Center  
1700 Lincoln Street  
Suite 3800  
Denver, Colorado 80203

First Maryland Savings & Loan Association  
c/o Martha Phillips Allbright  
Linton & Allbright, P.C.  
410 Seventeenth Street  
Suite 880  
Denver, Colorado 80202

2. The name of the reservoir:

Pinon Lake No. 1

3. The legal description of the reservoir:

The west abutment of the dam will be located in the SE1/4 of the SE1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet west of the east section line and 350 feet north of the south section line of said Section 27. The dam alignment is proposed to run in an easterly direction from the above-described abutment for a distance of approximately 700 feet. The proposed high water line will include portions of the SE1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado.

4. The source of water:

Beaver Creek and its tributaries, tributary to Monument Creek.

5. The date of appropriation:

June 6, 1983

Application of Great American Mortgage Service Corp.,  
Lincoln Savings & Loan Assoc., and  
First Maryland Savings & Loan Assoc.  
Findings and Ruling and Decree  
Case No. 83CW138

6. Date of approval of reservoir by State Engineer.

Approval of design for construction was received on  
or about April 18, 1984.

7. Height of dam:

40 feet

8. Length of dam:

700 feet

9. Total capacity of reservoir in acre-feet:

120 acre-feet

10. Active capacity of reservoir in acre-feet:

120 acre-feet

11. Dead storage in acre-feet:

0

12. Amount of water claimed:

120 acre-feet

13. Use or proposed use of water:

Domestic, irrigation, industrial, commercial,  
municipal, augmentation and exchange, including  
the right to fill, refill and reuse.

14. The priority herein awarded said Pinon Reservoir was  
filed in the Water Court in the year 1983 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.

Application of Great American Mortgage Service Corp.,  
Lincoln Savings & Loan Assoc., and  
First Maryland Savings & Loan Assoc.  
Findings and Ruling and Decree  
Case No. 83CW138

15. Certain of the parties hereto have agreed to and signed the Stipulation attached hereto as Exhibit B. At trial, the pro-se objectors who appeared and are listed on Exhibit C hereto, also agreed to the Stipulation. Said Stipulation is hereby approved by the Court, is incorporated herein by this reference, and shall be binding as to the parties thereto and shall be enforceable as an order of this Court. Notice, pursuant to paragraph 3 of the Stipulation, shall be limited to the parties thereto, including the objectors listed in Exhibit C.

16. It is also ordered that the conditional rights herein awarded are hereby continued in full force and effect until November 1990. If Applicant desires to maintain such conditional decree, an application for a quadrennial finding shall be filed during the month of November 1990, or the 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.

DONE IN OPEN COURT this 1 day of Dec.,  
19 86.

  
\_\_\_\_\_  
Water Judge, Division No. 2

xc: Martha Phillips Allbright  
Frederick A. Fendel, III  
Wayne B. Schroeder  
Division Engineer  
State Engineer

Exhibit H

AGREEMENT FOR PURCHASE OF RETURN FLOWS

THIS AGREEMENT made this 27<sup>th</sup> day of April, 1984, by and between the City of Colorado Springs, a municipal corporation (hereinafter referred to as the "City"), and C. E. Company, Colorado Springs, Colorado, (hereinafter referred to as the "Developer").

WHEREAS, Developer proposes to plat, subdivide and develop approximately 1600 acres of land, in El Paso County, Colorado, more fully described in Exhibit "A" attached hereto, for single family, multi-family and commercial use, which is hereinafter called "development"; and

WHEREAS, Developer plans to provide water service to such development by constructing a series of wells which will pump water which is tributary to Monument Creek, a tributary of Fountain Creek, a tributary of the Arkansas River; and

WHEREAS, Developer plans to maintain water levels in the lakes and reservoirs with water pumped from tributary wells and with diversions from Monument Creek and its tributaries; and

WHEREAS, it will be necessary for the Developer to provide augmentation water for such wells in order to obtain the necessary well permits and to adjudicate said wells for year round household and commercial use; and

WHEREAS, it will be necessary for the Developer to provide replacement water for out-of-priority surface diversions; and

WHEREAS, Developer proposes to purchase transmountain or consumptive use return flows from the City at the City's East Las Vegas Street Wastewater Treatment Plant in Colorado Springs, Colorado or some other mutually acceptable point of delivery to the Fountain Creek system; and

WHEREAS, the return flows received by Developer are intended to be used to provide necessary augmentation and exchange water for Developer's wells and replacement for out-of-priority surface diversions.

NOW THEREFORE, in consideration of the foregoing premises and the conditions, agreements, covenants and representations contained below, the parties covenant and agree as follows:

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5-2-84

1. Developer will plat a portion of the development into single family residential lots and will plat another portion of the development property for commercial lots for office/commercial use.

2. Developer calculates that the single family detached residences will average 292.5 gallons of water per day per household. Developer further calculates that the commercial development will use 360,400 gallons of water per day. A conservative estimate is that the commercial offices will be used 310 days per year. Total annual water usage is expected to be 71,851,000 gallons for the single family residences and 111,724,000 gallons for the commercial development, for a total gross water usage of approximately 183,575,000 gallons per year. Additionally, there will be evaporation losses and seepage from the reservoirs.

3. For so long as Developer furnishes water service to the development in the manner herein described, the City will furnish return flows in the amount of 660 acre feet per year to Fountain Creek at the City's Wastewater Treatment Plant in Colorado Springs, Colorado or at another mutually acceptable point of delivery to the Fountain Creek system. The City does not guarantee the quality or quantity of water in Beaver Creek, its tributaries or related alluviums for use by the Developer.

4. The City holds senior water rights on Monument and Fountain Creeks and its tributaries between the proposed wells in the development and the City's Wastewater Treatment Plant. For a period of ten (10) years after the date of execution of this Agreement, the City will not exercise its senior rights against Developer's diversions as herein described. Thereafter, during times when flows in Monument Creek are not sufficient to satisfy the City's in-priority water rights up to 5 c.f.s. at Pikeview, the Developer will by-pass all surface water in Beaver Creek and its tributaries for the City's Pikeview diversions, provided that Developer may continue to divert at such times by paying the City the then prevailing non-potable water rate, as established by the City, for each acre foot of water diverted during such period.

5. The City shall retain all title to and dominion and control over the return flows except for the return flows actually used by the Developer for augmentation of its wells at the point of delivery, and for replacement of out-of-priority surface diversions. Said return flows shall be transmountain or consumptive use water which is available for successive use under Colorado law.

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6. Restrictive covenants on the development will provide that there shall be no individual sewage disposal systems such as septic tanks. The City shall not be responsible for contamination, if any, of surface streams, underground aquifers or wells by reason of any sewage treatment systems installed and operated by the Developer or any subsequent purchaser, assignee or transferee. Any quality degradation in the City's Monument Creek water supply at its municipal intake or other downstream diversion point which requires additional expense or treatment shall be promptly remedied by the user or users of the sewage treatment systems causing the same at such user's or users' expense. Developer shall not be responsible for the water quality of its return flows from the City's Wastewater Treatment Plant or other agreed point of delivery.

7. Prior to January 1 of each year the Developer will submit to the City and the District 10 Water Commissioner for review and approval an operating plan for the upcoming year. This operating plan will include monthly estimates of water to be pumped and used, of water required to maintain reservoir levels, and of water required to be exchanged from the City's Waste Water Treatment Facility. Additionally, Developer shall provide records of consumptive use including evaporation and of diversions from wells and surface rights as reasonably required by the City. In the operating plan the developer will outline the procedure for measuring depletions to Monument Creek and its tributaries and the projected schedule for releasing return flows from the City's Waste Water Treatment Facility.

8. The restrictive covenants on the development shall require each single family residential lot owner, any homeowner's association, and the owner of any commercial lot to install water meters or other measuring devices satisfactory to the Colorado State Engineer at a location or locations on the water system of each as required by such official, and to keep such records of withdrawals and make such reports to the State Engineer as he may require. The Developer is responsible for application and approval of all state, local or federal licenses, permits or certificates to drill wells in accordance with the Developer's plan of augmentation as finally approved.

9. The Developer shall be responsible for the filing and approval of an augmentation plan for the Developer's wells and lakes in the appropriate water court. The City reserves its right to object and participate in said proceedings, as well as other related proceedings. The City agrees to withdraw said objection(s) upon reaching final agreement on the amount of augmentation water necessary and upon performance of this Agreement.

15  
This  
Done

10. The City shall be under no obligation to process any application for water rights for the Developer, and does not warrant any computation of estimated usage by Developer's development.

11. The City shall have no responsibility directly or indirectly to any purchasers, assignees, or transferees of the Developer nor to any third party whatsoever by reason of this Agreement for failure of the Developer to supply any water or sewage treatment facilities, or due to any inability of wells to supply water to Developer's property, or due to any inadequacy of quantity or quality of the water supply or sewage treatment. The City's sole obligation shall be to annually deliver a maximum of 660 acre feet of return flows at the City's Las Vegas Street wastewater treatment facility effluent discharge point or other mutually acceptable point of delivery, pursuant to the water exchange set forth herein. A party desiring to change such point of delivery shall have the responsibility and shall bear the expense of obtaining the necessary approval for such change from the State Engineer and the appropriate water court. The City reserves the right to temporarily make any needed changes with regard to the delivery of return flows and to modify or curtail such return flows as is required in emergency circumstances or in the event that the City is unable to provide return flows at the City's Wastewater Treatment Plant, or any other mutually acceptable point of delivery to the Fountain Creek system, commensurate with the operating plan. In either case, the City shall promptly notify the Developer and the parties shall meet to determine a convenient time when return flows may be completed so as not to interfere with the City's operation of its water and wastewater systems nor prevent compliance by the City with terms of any existing transmountain return flow agreements and with the laws of the State of Colorado.

12. The City represents and warrants that it has marketable title to the right to return flows herein described and that the return flows are free and clear of all liens and encumbrances.

13. The City and Developer agree that closing shall be held no later than ninety (90) days following execution of this Agreement. The exact time and place of closing shall be as designated by mutual agreement of the City and Developer. At closing, Developer shall pay the City the sum of Two Million Six Hundred Forty Thousand and 00/100 Dollars (\$2,640,000.00) in cash or certified funds, and the City will execute appropriate documents to grant Developer a right to reuse the six hundred and sixty acre feet of return flows herein specified so long as Developer provides water service to the development in the manner herein described. The return flows can only be used to

*Closing date extended*



provide water service to other lands upon amendment of this Agreement as provided in Paragraph 14.

14. This Agreement shall inure to the benefit of and shall be binding to the successors and assigns of the City and Developer alike, and shall not be amended except in writing executed by both parties and approved by the Council of the City of Colorado Springs.

Dated this 23<sup>rd</sup> day of April, 1984.

C. R. COMPANY

Attest:

*Paula F. ...*

By:

*Charles ...*

CITY OF COLORADO SPRINGS, a  
municipal corporation

By:

*...*  
Mayor

Attest:

*...*  
City Clerk

Filed in the Court of the State of Colorado  
**RECEIVED COPY**

NOV 19 1987

NOV 17 1987

DISTRICT COURT, WATER DIVISION OF WATER RIGHTS

Case No. 84CW19

STATE ENGINEER  
COLORADO

*Ricardo Salmeron*  
Clerk

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF FOREST LAKES METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

IN EL PASO COUNTY

THIS MATTER, having come before the Court upon the original application of Charles A. Helenberg for approval of plan for augmentation, including an appropriative right of substitution and exchange, and the Court having considered the pleadings, the files herein, and the stipulations submitted by the parties, does find and conclude as follows:

FINDINGS OF FACT

1. Application. The application herein was filed on February 29, 1984. An amendment to the application was filed on April 2, 1984. A second amendment to the application was filed on June 28, 1984.
2. Jurisdiction. Timely and adequate notice of the application, the amendments, and these proceedings in rem have been given as required by law, and the Court has jurisdiction over the subject matter of the application and amendments and over all parties who have appeared, and over those who have not appeared but could have appeared.
3. Applicant. The original applicant herein was Charles A. Helenberg. On March 11, 1986, a Motion to Substitute Great American Mortgage Services Corporation, a Missouri corporation, as the applicant was filed, which was granted on April 24, 1986. Subsequently, First Maryland Savings and Loan Association and Lincoln Savings and Loan Association, a California state-chartered savings and loan association, were added as coapplicants. On September 22, 1987, Forest Lakes Metropolitan District filed a Motion to Substitute Parties, which was granted on September 25, 1987.

CENTRAL FILES

4. Consolidation. On September 30, 1986, Lincoln Savings and Loan Association and First Maryland Savings and Loan Association filed an application for approval of plan for augmentation including an appropriative right of substitution and exchange in Case No. 86CW87. By order of the Court dated February 17, 1987, Case No. 86CW87 and Case No. 84CW19 were consolidated. On September 21, 1987, Lincoln Savings and Loan Association and First Maryland Savings and Loan Association filed a Motion to Withdraw Application in Case No. 86CW87, which was granted on October 14, 1987. The Colorado Water Conservation Board was a party in Case No. 86CW87, but is not a party in Case No. 84CW19. Applicant has stipulated that the Colorado Water Conservation Board may participate in any proceedings pursuant to the Court's retained jurisdiction in paragraph 19(C) herein. Such stipulation is incorporated herein by this reference.

5. Objectors. Statements of Opposition to the application in Case No. 84CW19 were timely filed by the City of Colorado Springs; Upper District 10 Water Users Association and Jon Frost; Southeastern Colorado Water Conservancy District; Norman B. Robinson, Edward A. Sabbagh, Richard and Nancy R. Smith, and Paul W. Smith; Christine J. Dellacroce; Town of Monument, Chris J. and Susan Ogg, Eunice Bench, Jeff and Sheri Smyth, Bernard J. and Rose H. Goick, Irl and Carol Mabon, Jane Rutledge and Sara R. Hammond, Mel and Balinda Parker, Robert E. and Juanita Patton, John R. Seeley, John J. and Cathleen A. Sarkisian, Walter B. and Eleanor Langevin, Marion J. and Helga M. Rogers, Robert V. and Patricia Sloan, Charles Dean Lind, Melvin W. and Donna D. Rezac, Richard R. and Mae P. Schroeter, Connie V. Sullivan, Patricia J. Fox, Jerry E. Lacey, Laurel Vandiver, James E. Bloise, William and Julie Gust, Bruce S. Weber, William A. and Norma Negus, John Goins, Richard Stewart, Gerald and Vivian Brown, Bonnie J. Edmonson, Charles H. Lemon, Jr., Gary E. and Nancy Chase, Louis W. Jr. and Jean W. Kinzer, James C. Satterwhite, Gerald W. and Cynthia Huntley, Robert A. and Nancy McClelland, R. M. and Dixie L. Stroade, Bruce L. McCloskey, Kenneth and Anne Z. Hoyt, Carolyn S. Wheat, Stephen F. and Ruth E. Johnson, Vernon and Barbara A. Schnathorst, Dearl and Jean Temple, Donald E. and Cathleen E. Couchman, John and Maria Green, James and Judith A. Sargent, Kenneth and Georgia Follansbee, Norman and Patricia L. Weier, John R. and Jane A. Francis, Arbutus E. and Thurman J. Skelley, Michael D. and Jo Lynn Hite, Charles L. and Christa E. Bergeron, Kevin B. and Tammy K. McCullough, Carol Jean Minney, Jacques J. P. Adnet, James A. and Beverly J. Warsinske, James C. Jr. and Nancy L. Drewry, Edward C. and Sandra Helms, and Antje Leiser; and the State and Division Engineers. On May 7, 1986, Christine J. Dellacroce withdrew her Statement of

Opposition. Statements of Opposition to the application in Case No. 86CW87 only were filed by Great American Mortgage Services Corporation, Matt P. and Lisa N. Bruksbauer, David P. DeCenzo, Henry D. and Barbara Etter, James W. and Carol L. Green, Richard A. and Vina M. Green, Edward W. and Jannette S. Horn, William Legg, Bonnie D. McCloskey, Judith S. Redner, Paul R. and Linda Viotti, and Richard F. Wirkes. Stipulations to the decree were executed by the Colorado Water Conservation Board, the State Engineer and the Division Engineer, the City of Colorado Springs, the Upper District 10 Water Users Association and Jon Frost, Town of Monument, Southeastern Colorado Water Conservancy District, Norman B. Robinson, and certain pro se objectors as listed on their stipulation. Those stipulations are hereby approved by the Court.

6. Subject Property. Applicant will provide water and wastewater service to the owners of approximately 1,600 acres described in Exhibits "A," "B" and "C" which are attached hereto and incorporated herein by this reference (the "subject property"). A map of the property is attached hereto as Exhibit "D."

7. Augmented Water Rights. The following described structures and water rights will be augmented (collectively referred to as the "Augmented Water Rights"):

A. Storage Rights.

(1) Pinon Lake No. 1:

(a) The west abutment of the dam will be located in the SE 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet West of the East section line and 350 feet North of the South section line of said Section 27. The dam alignment is proposed to run in an easterly direction from the above-described abutment for a distance of approximately 700 feet. The proposed high water line will include portions of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado.

(b) Decreed conditionally for 120 acre feet of active capacity in Case No. 83CW138 on December 1, 1986, with an appropriation date of June 6, 1983.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

(2) Bristlecone Lake No. 2:

(a) The South abutment of the dam will be located in the SE 1/4 of the SW 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet East of the West section line and 20 feet North of the South section line of said Section 27. The dam alignment is proposed to run in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The proposed high water line will include portions of the SW 1/4, Section 27, Township 11 South, Range 67 West, 6 P.M., El Paso County, Colorado.

(b) Decreed conditionally for 1,140 acre feet of active capacity and 10 acre feet of dead storage in Case No. 83CW139 on December 1, 1986, with an appropriation date of June 6, 1983.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

(3) Two other reservoirs, Spruce Reservoir and Willow Reservoir, are proposed and were decreed in Case Nos. 83CW140 and 83CW141 and described in the application herein. These reservoirs have not yet been built, and therefore do not require augmentation at this time. At such time as Applicant is ready to commence construction of these reservoirs, Applicant will file a motion with the water court to include those reservoirs in this plan for augmentation, and shall serve the motion upon all parties herein pursuant to paragraph 19(C) herein.

B. Tributary Underground Water Rights.

(1) Well Qal-1:

(a) Original decreed location was in the SE 1/4 of the SE 1/4, Section 29, Town-

ship 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 337 feet North of the South section line and 551 feet West of the East section line of said Section 29. Applicant has agreed that Well Qal-1 will not be drilled at the location specified in the decree in Case No. 83CW146, but Applicant will file the appropriate water court application and well permit application in order to locate the well in the Southeast quarter of the Southwest quarter, of Section 28, Township 11 South, Range 67 West, 2,600 feet from the West section line and 600 feet from the South section line.

(b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.

(c) Source of water: Beaver Creek alluvium, tributary to Monument Creek.

(2) Well Qal-2:

(a) Located in the NE 1/4 of the SW 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1497 feet North of the South section line and 1449 feet East of the West section line of said Section 35.

(b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.

(c) Source of water: Monument Creek alluvium.

(3) Well Qal-4:

(a) Located in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately

38 feet North of the South section line and 479 feet West of the East section line of said Section 35.

(b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.

(c) Source of water: Monument Creek alluvium.

(4) Well Qal-5:

(a) Located in the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1388 feet West of the East section line and 8 feet North of the South section line of said Section 27.

(b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.

(c) Source of water: Beaver Creek alluvium, tributary to Monument Creek.

C. Surface Water Rights.

(1) Monument Creek Diversion No. 2:

(a) The headgate will be located in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 479 feet West of the East section line and 38 feet North of the South section line of said Section 35.

(b) Decreed on December 1, 1986, in Case No. 83CW145 with an appropriation date of December 30, 1983 for 10 c.f.s., conditional.

(c) Source of water: Monument Creek and its tributaries.

(2) Beaver Creek Diversion No. 3:

(a) The headgate will be located in the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1388 feet West of the East section line and 8 feet North of the South section line of said Section 27.

(b) Decreed in Case No. 83CW145 on December 1, 1986, with an appropriation date of December 30, 1983 for 10 c.f.s., conditional.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

8. Augmentation Water Rights. To augment the Augmented Water Rights described in paragraph 7 above, Applicant will use the following water rights:

A. Nontributary Arapahoe Aquifer, Case No. 83CW142.

A-1, A-2 and A-3, decreed on September 25, 1987 in Case No. 83CW142, and for which applications for well permits were filed with the Division of Water Resources on December 29, 1983.

(1) Points of diversion:

A-1: In the SW 1/4 SE 1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 675 feet from the South section line and 1,560 feet from the East section line of said Section 27.

A-2: In the SE 1/4 SW 1/4 of Section 28, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 545 feet from the South section line and 1,530 feet from the West section line of said Section 28.

A-3: In the SE 1/4 SE 1/4 of Section 29, Township 11 South, Range 67 West, 6th P.M., in



El Paso County, Colorado, at a point approximately 1,250 feet from the South section line and 400 feet from the East section line of said Section 29.

- (2) Depth:  
A-1: Approximately 1,380 feet  
A-2: Approximately 1,420 feet  
A-3: Approximately 1,500 feet
- (3) Appropriation date: Not applicable
- (4) Amount: 250 g.p.m. (.56 c.f.s.) from each well, with a combined pumping rate from A-1, A-2 and A-3 of 750 g.p.m. (1.68 c.f.s.) absolute.
- (5) Pursuant to the decree for A-1, A-2 and A-3 in Case No. 83CW142, and to the Water Purchase Agreement dated August 28, 1987, between Applicant and First Maryland Savings and Loan Association, Applicant has the right to use up to 318 acre feet of water from the non-tributary Arapahoe Formation underlying the land described in Exhibit "A." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW142 only ninety-eight percent (98%) of the water withdrawn through the wells may be used for augmentation purposes. Wells A-1, A-2, and A-3 are alternate points of diversion for each other.

B. Decreed Non-Tributary Arapahoe Aquifer Groundwater Right, Well No. 17483 (The "Dillion Well").

- (1) Point of diversion: NW 1/4 of NE 1/4 of Section 35 of Township 11 South, Range 67 West of the 6th P.M., 200 feet from the North section line and 2,000 feet from the east section line.
- (2) Depth: 1,195 feet.
- (3) Appropriation date: August 17, 1973.
- (4) Amount: 290 g.p.m., 400 acre feet per year
- (5) Decreed: Case No. 81CW213, Water Division 2, Colorado.

- (6) Well permit: Permit No. 17483-F was issued by the Colorado Division of Water Resources on August 17, 1973.

C. Nontributary Laramie-Fox Hills Aquifer.

LFH-1, LFH-2 and LFH-3, decreed on September 25, 1987 in Case No. 83CW142, and for which applications for well permits were filed with the Division of Water Resources on December 29, 1983.

(1) Points of diversion:

LFH-1: In the SW 1/4 SE 1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 640 feet from the South section line and 1,590 feet from the East section line of said Section 27.

LFH-2: In the SE 1/4 SW 1/4 of Section 28, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 510 feet from the South section line and 1,525 feet from the West section line of said Section 28.

LFH-3: In the SE 1/4 SE 1/4 of Section 29, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 1,200 feet from the South section line and 400 feet from the East section line of said Section 29.

(2) Depth:

LFH-1: approximately 1,890 feet  
LFH-2: approximately 1,940 feet  
LFH-3: approximately 2,030 feet

(3) Appropriation date: Not applicable

(4) Amount: 100 g.p.m (.22 c.f.s.) from each well, with a combined pumping rate from LFH-1, LFH-2 and LFH-3 of 300 g.p.m. (.66 c.f.s.) absolute.

(5) Pursuant to the decree for LFH-1, LFH-2 and LFH-3 in Case No. 83CW142 and to the Water Purchase Agreement dated August 28, 1987 between Applicant and First Maryland Savings

and Loan Association, Applicant has the right to use up to 171 acre feet of water from the Laramie-Fox Hills aquifer underlying the land described in Exhibit "A." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW142, only ninety-eight percent (98%) of the water withdrawn through the wells may be used for augmentation purposes.

LFH-4: Decree on October 1, 1987 in Case No. 83CW143, and for which application for a well permit was made to the Division of Water Resources on December 29, 1983.

(1) Point of diversion:

In the NE 1/4 SE 1/4 of Section 35, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point which is located approximately 2,400 feet from the South section line and 300 feet from the East section line of said Section 35.

(2) Depth: Approximately 1,840 feet.

(3) Appropriation date: Not applicable.

(4) Amount: 150 g.p.m. (.33 c.f.s.).

(5) Pursuant to the decree for LFH-4 in Case No. 83CW143, and to the Water Purchase Agreement between Applicant and Lincoln Savings and Loan Association dated August 28, 1987, Applicant has the right to use up to 67.2 acre feet from nontributary Laramie-Fox Hills Formation underlying the land described in Exhibit "B." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW143, only ninety-eight (98%) of the water withdrawn through the well may be used for augmentation purposes.

D. Colorado Springs Return Flows Agreement.

Applicant is granted the appropriate right to exchange and substitute up to 25 c.f.s. and 660 acre feet per year of transmountain or fully consumable effluent obtained by Agreement for

Purchase of Return Flows between Applicant's predecessor in interest, C. H. Company, and the City of Colorado Springs (the "Return Flows Agreement"). A copy of the agreement is attached hereto as Exhibit "E" and incorporated herein by this reference. The subject property is described in the map attached as Exhibit "A" to the Return Flows Agreement. The Return Flows will be delivered at the City of Colorado Springs Wastewater Treatment facility on Fountain Creek in the SW 1/4 of Section 20, Township 14 South, Range 66 West, 6th P.M., El Paso County, Colorado, or other mutually acceptable point of delivery provided in the operating plan, absent injury to other water users and subject to approval by the State Engineer.

Colorado Springs may furnish return flows pursuant to the Return Flows Agreement from the water rights currently owned by the City of Colorado Springs which are described in Exhibit "F," which is attached hereto and incorporated herein by this reference, and any such other water rights now or hereafter acquired by or available to Colorado Springs which are legally available for such use. Applicant and Colorado Springs agree that return flows originating from the City's use of Fryingpan-Arkansas Project water will not be used to supply water to the Applicant pursuant to the Return Flows Agreement.

E. Reservoir Releases.

Releases from the reservoirs described in Paragraph 7(A) herein.

9. Statement of plan for augmentation including exchange and substitution.

A. General Statement of Plan.

The subject property will be developed for residential, commercial, and industrial purposes.

Applicant proposes to use all water available from its tributary underground and surface water rights described in paragraph 7 herein as a source of supply for the proposed development. The alluvial wells will be constructed horizontally within or adjacent to the bed of the surface stream such that depletions resulting from pumping the alluvial wells will occur nearly instantaneously. To the

extent sufficient water is not available under these water rights to meet Applicant's year-round water supply demand, Applicant will augment this supply by withdrawing nontributary ground water described in paragraph 8 herein. Water derived from the Arapahoe and Laramie-Fox Hills formations underlying the subject property may be diverted either for direct use as a source of supply for the development, for direct discharge into the stream system for augmentation purposes, or for storage in the reservoirs described in paragraph 7 herein. The Arapahoe and Laramie-Fox Hills ground water which may be diverted for storage will be stored in said reservoirs for either replacement of evaporative losses from the reservoirs, future use as a water supply for the development, or to replace to the stream system any out-of-priority diversions at the time, location and to the extent necessary to prevent injury to any senior diverters.

Applicant will operate an exchange of up to 25 c.f.s. and 660 acre feet per year with a priority date of June 6, 1983, pursuant to the Return Flows Agreement, subject to the terms of that agreement and the yearly operating plan described in subparagraph 9(F) below. The points of diversion for said exchange are described in paragraph 7(B) and 7(C) above. The return flows to be furnished from the City of Colorado Springs will return to Fountain Creek or its tributaries at the locations described in paragraph 8(D) above.

Applicant is entitled to claim replacement credits for all tributary and nontributary underground diversions which result in: a direct return flow to the stream system; returns from the wastewater treatment plant; releases from the reservoirs; Colorado Springs return flows credited to Applicant pursuant to the Return Flows Agreement; and delayed lawn irrigation return flows, if Applicant establishes the existence and entitlement to claim such lawn irrigation return flows upon invoking the Court's retained jurisdiction pursuant to paragraph 19(B) below.

B. In-house Residential and Commercial-Industrial Water Demands and Depletions.

The subject property is to include at full development: 673 single family residential units and

approximately 224.6 acres of commercial and industrial space. Estimates of water demands for in-house residential and commercial-industrial uses are shown in more detail in the following table:

Item	Demand (Acre-feet)	Consumptive Use (Acre-feet)	Return Flow (Acre-feet)
In-house Residential	221	11	210
Commercial-Industrial	342	17	325
Subtotal	563	28	535

C. Irrigation. The subject property will have a total of approximately 57 irrigated acres of lawns for the residences and surrounding the commercial and industrial buildings. The irrigation demand is expected to be 109 acre feet. Consumptive use will be assumed to include all water used for irrigation. Establishment and quantification of return flows from irrigation are subject to the Court's retained jurisdiction as provided in paragraph 19(B).

D. Reservoir Evaporation.

The subject property has two reservoirs. When full, the two reservoirs will have a total surface area of approximately 78 acres. Gross reservoir evaporation rates are shown in Exhibit "G" hereto. The capacity curves of the reservoirs are attached as Exhibit "H" hereto. It is estimated that evaporation from two reservoirs will be approximately 202 acre feet per year, based upon an estimated annual average total precipitation of 19.8 inches. Actual reservoir evaporation will be calculated on a weekly basis as the evaporation less the effective precipitation as follows:

- (1) The free water surface area of the two reservoirs will be determined from the stage-area-capacity tables (Exhibit "H").

- (2) Precipitation will be measured at Monument Lake or on the subject property, or any other location acceptable to the Division Engineer.
- (3) Effective precipitation will be calculated as seventy percent (70%) of the total measured precipitation.
- (4) The reservoir evaporation rate will be calculated as the applicable gross evaporation rate given in Exhibit "G" minus the effective precipitation determined in (3) above.
- (5) The reservoir evaporation will be determined by multiplying the free water surface area from (1) above by the reservoir evaporation rate determined in (4) above.
- (6) Net reservoir evaporation can never be computed so as to give a credit to the reservoir when out-of-priority and Applicant must replace all out-of-priority storage at the direction of the State Engineer.

E. Return Flows.

- (1) Wastewater:  
Wastewater from the development will be treated at the proposed Forest Lakes - Triview Metropolitan Districts Wastewater Treatment Facility. The point of discharge will be located on Monument Creek in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 500 feet West of the East section line and on the South section line of said Section 35.

Wastewater from both the Forest Lakes Metropolitan District and the Triview Metropolitan District will be separately measured as it enters the wastewater treatment plant. Wastewater from the subject property will be directly discharged to Monument Creek. Applicant has established and shall retain dominion and control over its share of direct effluent discharges. Effluent will be measured as it is discharged from the plant and prorated to determine the share of return flows attributable to Applicant.

(2) Irrigation Return Flows:

Applicant retains dominion and control over any return flows from lawn irrigation which are demonstrated to exist pursuant to paragraph 19(B) below; however, Applicant shall not be entitled to claim any credit for return flows from lawn irrigation until such time as Applicant has obtained this Court's approval to claim such credit pursuant to said paragraph 19(B) below.

- F. Return Flows Agreement. The Return Flows Agreement provides that an operating plan will be prepared prior to January 1 of each year and submitted to the City of Colorado Springs and the District 10 Water Commissioner for review and approval for the upcoming year. Upon approval by the City of Colorado Springs and the Water Commissioner, Applicant will submit a copy of the operating plan to the Division Engineer for review and approval. The operating plan will describe the anticipated quantities and exchange rates that will be used during the coming year. Upon its approval of the proposed operating plan, and after approval by the Water Commissioner for District 10 and the Division Engineer, the City will provide return flows as required by the operating plan in effect for the upcoming year unless changes thereto are approved by Applicant, the City and the Water Commissioner for District 10. Applicant and the City of Colorado Springs have entered into an amended stipulation in this case, which is attached hereto and incorporated herein by this reference. Each year's operating plan will be subject to said stipulation. Pursuant to the Return Flows Agreement, calls originating at the City's Pikeview diversion in excess of 5 c.f.s. will be reduced by the flow rate being exchanged by Applicant at the time of the call, so as to prevent a selective call against other water users.
- G. The Court finds that the plan provides a permanent water supply for the development as described herein.
10. Operation of Augmentation Plan.
- A. Out-of-Priority Diversions. To the extent that a valid senior call upon the Augmented Water Rights exists, as determined by the Division Engineer for



Water Division 2, Applicant shall make replacement water available to the stream which corresponds to and replaces fully the depletions resulting from the out-of-priority diversions of the Augmented Water Rights as calculated according to subparagraph 10(D) below.

- B. Finding of No Injury. Since the operation of the subject plan for augmentation depends on the replacement of water to satisfy the actual depletions occasioned by any out-of-priority diversion up to the limits provided for herein, the Court finds that no injury to the water rights of others will be caused by operation of the plan for augmentation in accordance with this decree; provided, however, that this finding shall not limit the Court in making any subsequent revisions to account for credit for return flows from lawn irrigation pursuant to paragraph 19(B) below.
- C. Administration. The State Engineer shall curtail all out-of-priority diversions and storage, the depletions from which are not replaced as specified in this decree, so as to prevent injury to vested water rights, as specified in §§ 37-92-305(8), C.R.S., and other applicable law.
- D. Accounting and Calculations. To assure that the vested water rights and decreed conditional water rights of others are protected from injury and to assure proper administration of this decree, whenever the Augmented Water Rights are diverting out-of-priority, Applicant shall calculate weekly depletions and report the same to the Division Engineer in a form acceptable to the Division Engineer. Items which will be measured and recorded include:
- (1) Reservoir levels and corresponding volumes and water surface areas.
  - (2) Well pumping and surface diversions.
  - (3) Wastewater treatment plant discharges from the subject property.
  - (4) Colorado Springs effluent which will be credited to Applicant pursuant to the agreement described in 8(D), and pursuant to paragraph 9(F) above.

These measurements will be recorded and submitted weekly or as required by the Division Engineer. A daily record of wastewater treatment discharges will be available. In addition, when reasonably necessary for the Town of Monument to maximize its water availability under the decree in Case No. 83CW10, then upon request by Monument, record-keeping and operation of this plan for augmentation shall be on a daily basis.

#### CONCLUSIONS OF LAW

11. The Court has jurisdiction of the subject matter of this case and all persons affected hereby, whether they have appeared or not, pursuant to C.R.S. § 37-92-203(1), 37-92-302 and 37-92-304.

12. This application was filed with the Water Court pursuant to C.R.S. § 37-92-302(1)(a). Timely Statements of Opposition were filed as indicated above. The time for filing additional Statements of Opposition has expired according to law. C.R.S. § 37-92-301(1)(c).

13. Full and adequate notice of the claims adjudicated herein have been given in the manner required by law.

14. The plan for augmentation proposed by Applicant is one contemplated by law. If implemented and administered in accordance with this decree, the plan for augmentation will permit the depletions associated with the provision of water by Applicant without adversely affecting the owners or users of vested water rights or decreed conditional water rights.

15. The State Engineer shall administer this plan for augmentation in accordance with the law.

16. The State Engineer shall issue permits for the wells described in paragraph 7(B) herein promptly upon the filing of well permit applications by Applicant, consistent with the terms of this decree.

#### JUDGMENT AND DECREE

17. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein.

18. It is ORDERED, ADJUDGED, and DECREED by the Court that the plan for augmentation described herein is approved subject to the terms and conditions set forth herein.

- A. In order to calculate depletions, Applicant will provide data to the Division Engineer as described in paragraph 10(D) above.
- B. In addition, so as to assure the operation of this augmentation and exchange plan, Applicant will install and maintain such water measuring devices as required by the Division Engineer and implement the accounting procedures requested by the Division Engineer.
- C. The date of appropriation for the augmentation plan and appropriative right of exchange described herein is June 6, 1983.

19. Retained Jurisdiction.

- A. In order to assure that the vested water rights of others are not injured by implementation of this plan for augmentation, the Court retains jurisdiction in this matter, and, upon proper petition, the Court will reconsider its approval of the plan for augmentation until five years after the later of (a) the date on which at least 500 residences or seventy-five percent (75%) of the residences which are given final plat approval by the El Paso County Commissioners, whichever is less, are constructed, and (b) the date construction for industrial and commercial use has been completed on at least seventy-five percent (75%) of the acreage proposed for industrial and commercial use as proposed in paragraph 9(B) hereof. Applicant shall give notice to all parties when such construction is completed. If no petition for reconsideration is filed within five years of the receipt of said notice, the retention of jurisdiction for this purpose shall automatically expire.
- B. This Court also shall retain jurisdiction for the purpose of determination and quantification of credits for return flows from lawngrass irrigation. Applicant may file a motion for determination of return flow credit at such time as Applicant believes sufficient data exists for the Court to make such a determination. Copies of the motion

will be served upon all parties who appeared herein.


- C. This Court also shall retain jurisdiction for the purpose of incorporating Spruce Reservoir and Willow Reservoir into this augmentation plan. At the time Applicant is ready to construct one or both of the reservoirs, Applicant shall file a motion to incorporate the reservoirs into this plan, and shall serve copies of the motion upon all parties who have appeared herein and upon the Colorado Water Conservation Board.

20. This Judgment and Decree, as it may from time to time be amended or supplemented, shall be binding upon Applicant Forest Lakes Metropolitan District as well as upon any assignees or successors of Applicant whether governmental or private, in order that the water rights of Objectors may receive continued protection.

21. It is further ORDERED that this judgment and decree shall be filed with the Water Clerk and with the State Engineer and the Division Engineer for Water Division 2.

Done at the City of Pueblo, Colorado, this 17th  
day of November, 1987.

BY THE COURT:

  
\_\_\_\_\_  
John R. Tracey  
Water Judge  
Water Division No. 2  
State of Colorado

xc: Holly I. Holder  
Division Engineer  
State Engineer

RECEIVED

DISTRICT COURT, WATER DIVISION 2, COLORADO

Case No. 84CW19

NOV 05 1987

DIV OF WATER RESOURCES  
STATE ENGINEERS  
COLORADO

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FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

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CONCERNING THE APPLICATION FOR WATER RIGHTS OF FOREST LAKES METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

IN EL PASO COUNTY

---

THIS MATTER, having come before the Court upon the original application of Charles A. Helenberg for approval of plan for augmentation, including an appropriative right of substitution and exchange, and the Court having considered the pleadings, the files herein, and the stipulations submitted by the parties, does find and conclude as follows:

FINDINGS OF FACT

1. Application. The application herein was filed on February 29, 1984. An amendment to the application was filed on April 2, 1984. A second amendment to the application was filed on June 28, 1984.
2. Jurisdiction. Timely and adequate notice of the application, the amendments, and these proceedings in rem have been given as required by law, and the Court has jurisdiction over the subject matter of the application and amendments and over all parties who have appeared, and over those who have not appeared but could have appeared.
3. Applicant. The original applicant herein was Charles A. Helenberg. On March 10, 1986, a Motion to Substitute Great American Mortgage Services Corporation, a Missouri corporation, as the applicant was filed, which was granted on April 24, 1986. Subsequently, First Maryland Savings and Loan Association and Lincoln Savings and Loan Association, a California state-chartered savings and loan association, were added as coapplicants. On September 22, 1987, Forest Lakes Metropolitan District filed a Motion to Substitute Parties, which was granted on September 25, 1987.

CENTRAL FILES

4. Consolidation. On September 30, 1986, Lincoln Savings and Loan Association and First Maryland Savings and Loan Association filed an application for approval of plan for augmentation including an appropriate right of substitution and exchange in Case No. 86CW87. By order of the Court dated February 17, 1987, Case No. 86CW87 and Case No. 84CW19 were consolidated. On September 18, 1987, Lincoln Savings and Loan Association and First Maryland Savings and Loan Association filed a Motion to Withdraw Application in Case No. 86CW87, which was granted on October 14, 1987. The Colorado Water Conservation Board was a party in Case No. 86CW87, but is not a party in Case No. 84CW19. Applicant has stipulated that the Colorado Water Conservation Board may participate in any proceedings pursuant to the Court's retained jurisdiction in paragraph 19(C) herein. Such stipulation is incorporated herein by this reference.

5. Objectors. Statements of Opposition to the application were timely filed by the City of Colorado Springs; Upper District 10 Water Users Association and Jon Frost; Southeastern Colorado Water Conservancy District; Norman B. Robinson, Edward A. Sabbagh, Richard and Nancy R. Smith, and Paul W. Smith; Christine J. Dellacrose; Town of Monument, Chris J. and Susan Ogg, Eunice Bench, Jeff and Sheri Smyth, Bernard J. and Rose H. Goick, Irl and Carol Mabon, Jane Rutledge and Sara R. Hammond, Mel and Balinda Parker, Robert E. and Juanita Patton, John R. Seeley, John J. and Cathleen A. Sarkisian, Walter B. and Elenantr Langevin, Marion J. and Helga M. Rogers, Robert V. and Patricia Sloan, Charles Dean Lind, Melvin W. and Donna D. Rezac, Richard R. and Mae P. Schroeter, Connie V. Sullivan, Patricia J. Fox, Jerry E. Lace, Laurel Vandiver, James E. Bloise, William and Julie Gust, Bruce S. Weber, William A. and Norma Negus, John Goins, Richard Stewart, Gerald and Vivian Brown, Bonnie J. Edmonson, Charles H. Lemon, Jr., Gary E. and Nancy Chase, Louis W. Jr. and Jean W. Kinzer, James C. Satterwhite, Gerald W. and Cynthia Huntley, Robert A. and Nancy McClelland, R. M. and Dixie L. Strade, Bruce L. McCloskey, Kenneth and Anne Z. Hoyt, Carolyn S. Wheat, Stephen F. and Ruth E. Johnson, Vernon and Barbara A. Schnatharst, Dearl and Jean Temple, Donald E. and Cathleen E. Couchman, John and Maria Green, James and Judith A. Sargent, Kenneth and Georgia Follansbee, Norman and Patricia L. Weier, John R. and Jane A. Francis, Arbutus E. and Thurman J. Skelley, Michael D. and Jo Lynn Hite, Charles L. and Christa E. Bergeron, Kevin E. and Tammy K. McCullough, Carol Jean Minney, Jacques J. P. Adnet, James A. and Beverly J. Warsinske, James C. Jr. and Nancy L. Drewry, Edward C. and Sandra Helms, and Antje Leiser; and the State and Division Engineers. On May 7,

1986, Christine J. Dellacroce withdrew her Statement of Opposition.

6. Subject Property. Applicant will provide water and wastewater service to the owners of approximately 1,600 acres described in Exhibits "A," "B" and "C" which are attached hereto and incorporated herein by this reference (the "subject property"). A map of the property is attached hereto as Exhibit "D."

7. Augmented Water Rights. The following described structures and water rights will be augmented (collectively referred to as the "Augmented Water Rights"):

A. Storage Rights.

(1) Pinon Lake No. 1:

- (a) The west abutment of the dam will be located in the SE 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet West of the East section line and 350 feet North of the South section line of said Section 27. The dam alignment is proposed to run in an easterly direction from the above-described abutment for a distance of approximately 700 feet. The proposed high water line will include portions of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado.
- (b) Decreed conditionally for 120 acre feet of active capacity in Case No. 83CW138 on December 1, 1986, with an appropriation date of June 6, 1983.
- (c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

(2) Bristlecone Lake No. 2:

- (a) The South abutment of the dam will be located in the SE 1/4 of the SW 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet East of the West section line and 20 feet

North of the South section line of said Section 27. The dam alignment is proposed to run in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The proposed high water line will include portions of the SW 1/4, Section 27, Township 11 South, Range 67 West, 6 P.M., El Paso County, Colorado.

- (b) Decreed conditionally for 1,140 acre feet of active capacity and 10 acre feet of dead storage in Case No. 83CW139 on December 1, 1986, with an appropriation date of June 6, 1983.
  - (c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.
- (3) Two other reservoirs, Spruce Reservoir and Willow Reservoir, are proposed and were decreed in Case Nos. 83CW140 and 83CW141 and described in the application herein. These reservoirs have not yet been built, and therefore do not require augmentation at this time. At such time as Applicant is ready to commence construction of these reservoirs, Applicant will file a motion with the water court to include those reservoirs in this plan for augmentation, and shall serve the motion upon all parties herein pursuant to paragraph 19(C) herein.

B. Tributary Underground Water Rights.

(1) Well Qal-1:

- (a) Original decreed location was in the SE 1/4 of the SE 1/4, Section 29, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 337 feet North of the South section line and 551 feet West of the East section line of said Section 29. Applicant requests that Well Qal-1 will not be drilled at the location specified in the decree in Case No. 83CW146, but will be located in the Southeast quarter of the Southwest quarter, of Section 28, Township 11 South, Range 67 West, 2,600



feet from the West section line and 600 feet from the South section line.

- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Beaver Creek alluvium, tributary to Monument Creek.

(2) Well Qal-2:

- (a) Located in the NE 1/4 of the SW 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1487 feet North of the South section line and 1449 feet East of the West section line of said Section 35.
- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Monument Creek alluvium.

(3) Well Qal-4:

- (a) Located in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 38 feet North of the South section line and 479 feet West of the East section line of said Section 35.
- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Monument Creek alluvium.

(4) Well Qal-5:

- (a) Located in the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1388 feet West of the East section line and 8 feet North of the South section line of said Section 27.
- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Beaver Creek alluvium, tributary to Monument Creek.

C. Surface Water Rights.

(1) Monument Creek Diversion No. 2:

- (a) The headgate will be located in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 479 feet West of the East section line and 38 feet North of the South section line of said Section 35.
- (b) Decreed on December 1, 1986, in Case No. 83CW145 with an appropriation date of December 30, 1983 for 10 c.f.s., conditional.
- (c) Source of water: Monument Creek and its tributaries.

(2) Beaver Creek Diversion No. 3:

- (a) The headgate will be located in the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1388 feet West of the East section line and 8 feet North of the South section line of said Section 27.

(b) Decreed in Case No. 83CW145 on December 1, 1986, with an appropriation date of December 30, 1983 for 10 c.f.s., conditional.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

8. Augmentation Water Rights. To augment the Augmented Water Rights described in paragraph 7 above, Applicant will use the following water rights:

A. Nontributary Arapahoe Aquifer, Case No. 83CW142.

A-1, A-2 and A-3, decreed on September 25, 1987 in Case No. 83CW142, and for which applications for well permits were filed with the Division of Water Resources on December 29, 1983.

(1) Points of diversion:

A-1: In the SW 1/4 SE 1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 675 feet from the South section line and 1,560 feet from the East section line of said Section 27.

A-2: In the SE 1/4 SW 1/4 of Section 28, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 545 feet from the South section line and 1,530 feet from the West section line of said Section 28.

A-3: In the SE 1/4 SE 1/4 of Section 29, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 1,250 feet from the South section line and 400 feet from the East section line of said Section 29.

(2) Depth:

A-1: Approximately 1,380 feet

A-2: Approximately 1,420 feet

A-3: Approximately 1,500 feet

(3) Appropriation date: Not applicable

- (4) Amount: 250 g.p.m. (.56 c.f.s.) from each well, with a combined pumping rate from A-1, A-2 and A-3 of 750 g.p.m. (1.68 c.f.s.) absolute.
- (5) Pursuant to the decree for A-1, A-2 and A-3 in Case No. 83CW142, and to the Water Purchase Agreement dated August 28, 1987, between Applicant and First Maryland Savings and Loan Association, Applicant has the right to use up to 318 acre feet of water from the non-tributary Arapahoe Formation underlying the land described in Exhibit "A." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW142 only ninety-eight percent (98%) of the water withdrawn through the wells may be used for augmentation purposes. Wells A-1, A-2, and A-3 are alternate points of diversion for each other.

B. Decreed Non-Tributary Arapahoe Aquifer Groundwater Right, Well No. 17483 (The "Dillion Well").

- (1) Point of diversion: NW 1/4 of NE 1/4 of Section 35 of Township 11 South, Range 67 West of the 6th P.M., 200 feet from the North section line and 2,000 feet from the east section line.
- (2) Depth: 1,195 feet.
- (3) Appropriation date: August 17, 1973.
- (4) Amount: 290 g.p.m., 400 acre feet per year
- (5) Decreed: Case No. 81CW213, Water Division 2, Colorado.
- (6) Well permit: Permit No. 17483-F was issued by the Colorado Division of Water Resources on August 17, 1973.

C. Nontributary Laramie-Fox Mills Aquifer.

LFH-1, LFH-2 and LFH-3, decreed on September 25, 1987 in Case No. 83CW142, and for which applications for well permits were filed with the Division of Water Resources on December 29, 1983.

(1) Points of diversion:

LFH-1: In the SW 1/4 SE 1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 640 feet from the South section line and 1,590 feet from the East section line of said Section 27.

LFH-2: In the SE 1/4 SW 1/4 of Section 28, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 510 feet from the South section line and 1,525 feet from the West section line of said Section 28.

LFH-3: In the SE 1/4 SE 1/4 of Section 29, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 1,200 feet from the South section line and 400 feet from the East section line of said Section 29.

(2) Depth:

LFH-1: approximately 1,890 feet

LFH-2: approximately 1,940 feet

LFH-3: approximately 2,030 feet

(3) Appropriation date: Not applicable

(4) Amount: 100 g.p.m (.22 c.f.s.) from each well, with a combined pumping rate from LFH-1, LFH-2 and LFH-3 of 300 g.p.m. (.66 c.f.s.) absolute.

(5) Pursuant to the decree for LFH-1, LFH-2 and LFH-3 in Case No. 83CW142 and to the Water Purchase Agreement dated August 28, 1987 between Applicant and First Maryland Savings and Loan Association, Applicant has the right to use up to 171 acre feet of water from the Laramie-Fox Hills aquifer underlying the land described in Exhibit "A." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW142, only ninety-eight percent (98%) of the water withdrawn through the wells may be used for augmentation purposes.

LFH-4: Decreed on October 1, 1987 in Case No. 83CW143, and for which application for a well permit was made to the Division of Water Resources on December 29, 1983.

(1) Point of diversion:

In the NE 1/4 SE 1/4 of Section 35, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point which is located approximately 2,400 feet from the South section line and 300 feet from the East section line of said Section 35.

(2) Depth: Approximately 1,840 feet.

(3) Appropriation date: Not applicable.

(4) Amount: 150 g.p.m. (.33 c.f.s.).

(5) Pursuant to the decree for LFH-4 in Case No. 83CW142, and to the Water Purchase Agreement between Applicant and Lincoln Savings and Loan Association dated August 28, 1987, Applicant has the right to use up to 67.2 acre feet from nontributary Laramie-Fox Hills Formation underlying the land described in Exhibit "B." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW143, only ninety-eight (98%) of the water withdrawn through the well may be used for augmentation purposes.

D. Colorado Springs Return Flows Agreement.

Applicant is granted the appropriate right to exchange and substitute up to 25 c.f.s. and 660 acre feet per year of transmountain or fully consumable effluent obtained by Agreement for Purchase of Return Flows between Applicant's predecessor in interest, C. H. Company, and the City of Colorado Springs (the "Return Flows Agreement"). A copy of the agreement is attached hereto as Exhibit "E" and incorporated herein by this reference. The subject property is described in the map attached as Exhibit "A" to the Return Flows Agreement. The Return Flows will be delivered at the City of Colorado Springs Wastewater Treatment facility on Fountain Creek in the SW 1/4 of Section 20, Township 14 South,

Range 66 West, 6th P.M., El Paso County, Colorado, or other mutually acceptable point of delivery provided in the operating plan, absent injury to other water users and subject to approval by the State Engineer.

Colorado Springs may furnish return flows pursuant to the Return Flows Agreement from the water rights currently owned by the City of Colorado Springs which are described in Exhibit "F," which is attached hereto and incorporated herein by this reference, and any such other water rights now or hereafter acquired by or available to Colorado Springs which are legally available for such use. Applicant and Colorado Springs agree that return flows originating from the City's use of Fryingpan-Arkansas Project water will not be used to supply water to the Applicant pursuant to the Return Flows Agreement.

E. Reservoir Releases.

Releases from the reservoirs described in Paragraph 7(A) herein.

9. Statement of plan for augmentation including exchange and substitution.

A. General Statement of Plan.

The subject property will be developed for residential, commercial, and industrial purposes.

Applicant proposes to use all water available from its tributary underground and surface water rights described in paragraph 7 herein as a source of supply for the proposed development. The alluvial wells will be constructed horizontally within or adjacent to the bed of the surface stream such that depletions resulting from pumping the alluvial wells will occur nearly instantaneously. To the extent sufficient water is not available under these water rights to meet Applicant's year-round water supply demand, Applicant will augment this supply by withdrawing nontributary ground water described in paragraph 8 herein. Water derived from the Arapahoe and Laramie Fox-Hills formations underlying the subject property may be diverted either for direct use as a source of supply for the development, for direct discharge into the stream system for augmentation purposes, or for storage in the reservoirs described in paragraph 7 herein.

The Arapahoe and Laramie Fox-Hills ground water which may be diverted for storage will be stored in said reservoirs for either replacement of evaporative losses from the reservoirs, future use as a water supply for the development, or to replace to the stream system any out-of-priority diversions at the time, location and to the extent necessary to prevent injury to any senior diverters.

Applicant will operate an exchange of up to 25 c.f.s. and 660 acre feet per year with a priority date of June 6, 1983, pursuant to the Return Flows Agreement, subject to the terms of that agreement and the yearly operating plan described in subparagraph 9(F) below. The points of diversion for said exchange are described in paragraph 7(B) and 7(C) above. The return flows to be furnished from the City of Colorado Springs will return to Fountain Creek or its tributaries at the locations described in paragraph 8(D) above.

Applicant is entitled to claim replacement credits for all tributary and nontributary underground diversions which result in: a direct return flow to the stream system; returns from the wastewater treatment plant; releases from the reservoirs; Colorado Springs return flows credited to Applicant pursuant to the Return Flows Agreement; and delayed lawn irrigation return flows, if Applicant establishes the existence and entitlement to claim such lawn irrigation return flows upon invoking the Court's retained jurisdiction pursuant to paragraph 19(B) below.

B. In-house Residential and Commercial-Industrial Water Demands and Depletions.

The subject property is to include at full development: 673 single family residential units and approximately 224.6 acres of commercial and industrial space. Estimates of water demands for residential and commercial-industrial uses are shown in more detail in the following table:



Item	Demand (Acre-feet)	Consumptive Use (Acre-feet)	Return Flow (Acre-feet)
In-house Residential	221	11	210
Commercial-Industrial	342	17	325
Subtotal	563	28	535

C. Irrigation. The subject property will have a total of approximately 57 irrigated acres of lawns for the residences and surrounding the commercial and industrial buildings. The irrigation demand is expected to be 109 acre feet. Consumptive use will be assumed to include all water used for irrigation. Establishment and quantification of return flows from irrigation are subject to the Court's retained jurisdiction as provided in paragraph 19(B).

D. Reservoir Evaporation.

The subject property has two reservoirs. When full, the two reservoirs will have a total surface area of approximately 78 acres. Gross reservoir evaporation rates are shown in Exhibit "G" hereto. The capacity curves of the reservoirs are attached as Exhibit "H" hereto. It is estimated that evaporation from two reservoirs will be approximately 202 acre feet per year, based upon an estimated annual average total precipitation of 19.8 inches. Actual reservoir evaporation will be calculated on a weekly basis as the evaporation less the effective precipitation as follows:

- (1) The free water surface area of the two reservoirs will be determined from the stage-area-capacity tables (Exhibit "H").
- (2) Precipitation will be measured at Monument Lake or on the subject property, or any other location acceptable to the Division Engineer.

- (3) Effective precipitation will be calculated as seventy percent (70%) of the total measured precipitation.
- (4) The reservoir evaporation rate will be calculated as the applicable gross evaporation rate given in Exhibit "C" minus the effective precipitation determined in (3) above.
- (5) The reservoir evaporation will be determined by multiplying the free water surface area from (1) above by the reservoir evaporation rate determined in (4) above.
- (6) Net reservoir evaporation can never be computed so as to give a credit to the reservoir when out-of-priority and Applicant must replace all out-of-priority storage at the direction of the State Engineer.

E. Return Flows.

(1) Wastewater:

Wastewater from the development will be treated at the proposed Forest Lakes - Triview Metropolitan Districts Wastewater Treatment Facility. The point of discharge will be located on Monument Creek in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 500 feet West of the East section line and on the South section line of said Section 35.

Wastewater from both the Forest Lakes Metropolitan District and the Triview Metropolitan District will be separately measured as it enters the wastewater treatment plant. Wastewater from the subject property will be directly discharged to Monument Creek. Applicant has established and shall retain dominion and control over its share of direct effluent discharges. Effluent will be measured as it is discharged from the plant and prorated to determine the share of return flows attributable to Applicant.

(2) Irrigation Return Flows:

Applicant retains dominion and control over any return flows from lawn irrigation which are demonstrated to exist pursuant to paragraph 19(B) below; however, Applicant shall not be entitled to claim any credit for return flows from lawn irrigation until such time as Applicant has obtained this Court's approval to claim such credit pursuant to said paragraph 19(B) below.

- F. Return Flows Agreement. The Return Flows Agreement provides that an operating plan will be prepared prior to January 1 of each year and submitted to the City of Colorado Springs and the District 10 Water Commissioner for review and approval for the upcoming year. Upon approval by the City of Colorado Springs and the Water Commissioner, Applicant will submit a copy of the operating plan to the Division Engineer for review and approval. The operating plan will describe the anticipated quantities and exchange rates that will be used during the coming year. Upon its approval of the proposed operating plan, and after approval by the Water Commissioner for District 10 and the Division Engineer, the City will provide return flows as required by the operating plan in effect for the upcoming year unless changes thereto are approved by Applicant, the City and the Water Commissioner for District 10. Applicant and the City of Colorado Springs have entered into a stipulation in this case, which is attached hereto and incorporated herein by this reference. Each year's operating plan will be subject to said stipulation. Pursuant to the Return Flows Agreement, calls originating at the City's Pikeview diversion in excess of 5 c.f.s. will be reduced by the flow rate being exchanged by Applicant at the time of the call, so as to prevent a selective call against other water users.
- G. The Court finds that the plan provides a permanent water supply for the development as described herein.
10. Operation of Augmentation Plan
- A. Out-of-Priority Diversions. To the extent that a valid senior call upon the Augmented Water Rights exists, as determined by the Division Engineer for

Water Division 2, Applicant shall make replacement water available to the stream which corresponds to and replaces fully the depletions resulting from the out-of-priority diversions of the Augmented Water Rights as calculated according to subparagraph 10(D) below.

- B. Finding of No Injury. Since the operation of the subject plan for augmentation depends on the replacement of water to satisfy the actual depletions occasioned by any out-of-priority diversion up to the limits provided for herein, the Court finds that no injury to the water rights of others will be caused by operation of the plan for augmentation in accordance with this decree; provided, however, that this finding shall not limit the Court in making any subsequent revisions to account for credit for return flows from lawn irrigation pursuant to paragraph 19(B) below.
- C. Administration. The State Engineer shall curtail all cut-of-priority diversions and storage, the depletions from which are not replaced as specified in this decree, so as to prevent injury to vested water rights, as specified in §§ 37-92-305(8), C.R.S., and other applicable law.
- D. Accounting and Calculations. To assure that the vested water rights and decreed conditional water rights of others are protected from injury and to assure proper administration of this decree, whenever the Augmented Water Rights are diverting out-of-priority, Applicant shall calculate weekly depletions and report the same to the Division Engineer in a form acceptable to the Division Engineer. Items which will be measured and recorded include:
- (1) Reservoir levels and corresponding volumes and water surface areas.
  - (2) Well pumping and surface diversions.
  - (3) Wastewater treatment plant discharges from the subject property.
  - (4) Colorado Springs effluent which will be credited to Applicant pursuant to the agreement described in 8(D), and pursuant to paragraph 9(F) above.

These measurements will be recorded and submitted weekly or as required by the Division Engineer. A daily record of wastewater treatment discharges will be available. In addition, when reasonably necessary for the Town of Monument to maximize its water availability under the decree in Case No. 83CW10, then upon request by Monument, record-keeping and operation of this plan for augmentation shall be on a daily basis.

#### CONCLUSIONS OF LAW

11. The Court has jurisdiction of the subject matter of this case and all persons affected hereby, whether they have appeared or not, pursuant to C.R.S. § 37-92-203(1), 37-92-302 and 37-92-304.
12. This application was filed with the Water Court pursuant to C.R.S. § 37-92-302(1)(a). Timely Statements of Opposition were filed as indicated above. The time for filing additional Statements of Opposition has expired according to law. C.R.S. § 37-92-301(1)(c).
13. Full and adequate notice of the claims adjudicated herein have been given in the manner required by law.
14. The plan for augmentation proposed by Applicant is one contemplated by law. If implemented and administered in accordance with this decree, the plan for augmentation will permit the depletions associated with the provision of water by Applicant without adversely affecting the owners or users of vested water rights or decreed conditional water rights.
15. The State Engineer shall administer this plan for augmentation in accordance with the law.
16. The State Engineer shall issue permits for the wells described in paragraph 7(B) herein promptly upon the filing of well permit applications by Applicant, consistent with the terms of this decree.

#### JUDGMENT AND DECREE

17. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein.

18. It is ORDERED, ADJUDGED, and DECREED by the Court that the plan for augmentation described herein is approved subject to the terms and conditions set forth herein.

- A. In order to calculate depletions, Applicant will provide data to the Division Engineer as described in paragraph 10(D) above.
- B. In addition, so as to assure the operation of this augmentation and exchange plan, Applicant will install and maintain such water measuring devices as required by the Division Engineer and implement the accounting procedures requested by the Division Engineer.
- C. The date of appropriation for the augmentation plan and appropriative right of exchange described herein is June 6, 1963.

19. Retained Jurisdiction.

- A. In order to assure that the vested water rights of others are not injured by implementation of this plan for augmentation, the Court retains jurisdiction in this matter, and, upon proper petition, the Court will reconsider its approval of the plan for augmentation until five years after the later of (a) the date on which at least 500 residences or seventy-five percent (75%) of the residences which are given final plat approval by the El Paso County Commissioners, whichever is less, are constructed, and (b) the date construction for industrial and commercial use has been completed on at least seventy-five percent (75%) of the acreage proposed for industrial and commercial use as proposed in paragraph 9(B) hereof. Applicant shall give notice to all parties when such construction is completed. If no petition for reconsideration is filed within five years of the receipt of said notice, the retention of jurisdiction for this purpose shall automatically expire.
- B. This Court also shall retain jurisdiction for the purpose of determination and quantification of credits for return flows from lawngrass irrigation. Applicant may file a motion for determination of return flow credit at such time as Applicant believes sufficient data exists for the Court to make such a determination. Copies of the motion will be served upon all parties who appeared herein.

will be served upon all parties who appeared herein.


- C. This Court also shall retain jurisdiction for the purpose of incorporating Spruce Reservoir and Willow Reservoir into this augmentation plan. At the time Applicant is ready to construct one or both of the reservoirs, Applicant shall file a motion to incorporate the reservoirs into this plan, and shall serve copies of the motion upon all parties who have appeared herein and upon the Colorado Water Conservation Board.

20. This Judgment and Decree, as it may from time to time be amended or supplemented, shall be binding upon Applicant Forest Lakes Metropolitan District as well as upon any assignees or successors of Applicant whether governmental or private, in order that the water rights of Objectors may receive continued protection.

21. It is further ORDERED that this judgment and decree shall be filed with the Water Clerk and with the State Engineer and the Division Engineer for Water Division 2.

Done at the City of Pueblo, Colorado, this 17th  
day of November, 1987.

BY THE COURT:

  
\_\_\_\_\_  
John R. Tracey  
Water Judge  
Water Division No. 2  
State of Colorado

xc: Holly I. Holder  
Division Engineer  
State Engineer

NOV 17 1987

DISTRICT COURT, WATER DIVISION 2, COLORADO

Case No. 84CW19

*Ricardo Lopez*  
Clerk

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF FOREST LAKES  
METROPOLITAN DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado

IN EL PASO COUNTY

THIS MATTER, having come before the Court upon the original application of Charles A. Helenberg for approval of plan for augmentation, including an appropriative right of substitution and exchange, and the Court having considered the pleadings, the files herein, and the stipulations submitted by the parties, does find and conclude as follows:

FINDINGS OF FACT

1. Application. The application herein was filed on February 29, 1984. An amendment to the application was filed on April 2, 1984. A second amendment to the application was filed on June 28, 1984.
2. Jurisdiction. Timely and adequate notice of the application, the amendments, and these proceedings in rem have been given as required by law, and the Court has jurisdiction over the subject matter of the application and amendments and over all parties who have appeared, and over those who have not appeared but could have appeared.
3. Applicant. The original applicant herein was Charles A. Helenberg. On March 11, 1986, a Motion to Substitute Great American Mortgage Services Corporation, a Missouri corporation, as the applicant was filed, which was granted on April 24, 1986. Subsequently, First Maryland Savings and Loan Association and Lincoln Savings and Loan Association, a California state-chartered savings and loan association, were added as coapplicants. On September 22, 1987, Forest Lakes Metropolitan District filed a Motion to Substitute Parties, which was granted on September 25, 1987.



4. Consolidation. On September 30, 1986, Lincoln Savings and Loan Association and First Maryland Savings and Loan Association filed an application for approval of plan for augmentation including an appropriative right of substitution and exchange in Case No. 86CW87. By order of the Court dated February 17, 1987, Case No. 86CW87 and Case No. 84CW19 were consolidated. On September 21, 1987, Lincoln Savings and Loan Association and First Maryland Savings and Loan Association filed a Motion to Withdraw Application in Case No. 86CW87, which was granted on October 14, 1987. The Colorado Water Conservation Board was a party in Case No. 86CW87, but is not a party in Case No. 84CW19. Applicant has stipulated that the Colorado Water Conservation Board may participate in any proceedings pursuant to the Court's retained jurisdiction in paragraph 19(C) herein. Such stipulation is incorporated herein by this reference.

5. Objectors. Statements of Opposition to the application in Case No. 84CW19 were timely filed by the City of Colorado Springs; Upper District 10 Water Users Association and Jon Frost; Southeastern Colorado Water Conservancy District; Norman B. Robinson, Edward A. Sabbagh, Richard and Nancy R. Smith, and Paul W. Smith; Christine J. Dellacroce; Town of Monument, Chris J. and Susan Ogg, Eunice Bench, Jeff and Sheri Smyth, Bernard J. and Rose H. Goick, Irl and Carol Mabon, Jane Rutledge and Sara R. Hammond, Mel and Balinda Parker, Robert E. and Juanita Patton, John R. Seeley, John J. and Cathleen A. Sarkisian, Walter B. and Eleanor Langevin, Marion J. and Helga M. Rogers, Robert V. and Patricia Sloan, Charles Dean Lind, Melvin W. and Donna D. Rezac, Richard R. and Mae P. Schroeter, Connie V. Sullivan, Patricia J. Fox, Jerry E. Lace, Laurel Vandiver, James E. Bloise, William and Julie Gust, Bruce S. Weber, William A. and Norma Negus, John Goins, Richard Stewart, Gerald and Vivian Brown, Bonnie J. Edmonson, Charles H. Lemon, Jr., Gary E. and Nancy Chase, Louis W. Jr. and Jean W. Kinzer, James C. Satterwhite, Gerald W. and Cynthia Huntley, Robert A. and Nancy McClelland, R. M. and Dixie L. Stroade, Bruce L. McCloskey, Kenneth and Anne Z. Hoyt, Carolyn S. Wheat, Stephen F. and Ruth E. Johnson, Vernon and Barbara A. Schnathorst, Dearn and Jean Temple, Donald E. and Cathleen E. Couchman, John and Maria Green, James and Judith A. Sargent, Kenneth and Georgia Follansbee, Norman and Patricia L. Weier, John R. and Jane A. Francis, Arbutus E. and Thurman J. Skelley, Michael D. and Jo Lynn Hite, Charles L. and Christa E. Bergeron, Kevin B. and Tammy K. McCullough, Carol Jean Minney, Jacques J. P. Adnet, James A. and Beverly J. Warsinske, James C. Jr. and Nancy L. Drewry, Edward C. and Sandra Helms, and Antje Leiser; and the State and Division Engineers. On May 7, 1986, Christine J. Dellacroce withdrew her Statement of

Opposition. Statements of Opposition to the application in Case No. 86CW87 only were filed by Great American Mortgage Services Corporation, Matt P. and Lisa N. Bruksbauer, David P. DeCenzo, Henry D. and Barbara Etter, James W. and Carol L. Green, Richard A. and Vina M. Green, Edward W. and Jannette S. Horn, William Legg, Bonnie D. McCloskey, Judith S. Redner, Paul R. and Linda Viotti, and Richard F. Wirkes. Stipulations to the decree were executed by the Colorado Water Conservation Board, the State Engineer and the Division Engineer, the City of Colorado Springs, the Upper District 10 Water Users Association and Jon Frost, Town of Monument, Southeastern Colorado Water Conservancy District, Norman B. Robinson, and certain pro se objectors as listed on their stipulation. Those stipulations are hereby approved by the Court.

6. Subject Property. Applicant will provide water and wastewater service to the owners of approximately 1,600 acres described in Exhibits "A," "B" and "C" which are attached hereto and incorporated herein by this reference (the "subject property"). A map of the property is attached hereto as Exhibit "D."

7. Augmented Water Rights. The following described structures and water rights will be augmented (collectively referred to as the "Augmented Water Rights"):

A. Storage Rights.

(1) Pinon Lake No. 1:

(a) The west abutment of the dam will be located in the SE 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 1,000 feet West of the East section line and 350 feet North of the South section line of said Section 27. The dam alignment is proposed to run in an easterly direction from the above-described abutment for a distance of approximately 700 feet. The proposed high water line will include portions of the SE 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado.

(b) Decreed conditionally for 120 acre feet of active capacity in Case No. 83CW138 on December 1, 1986, with an appropriation date of June 6, 1983.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

(2) Bristlecone Lake No. 2:

(a) The South abutment of the dam will be located in the SE 1/4 of the SW 1/4, Section 27, Township 11 South, Range 67 West, 6th P.M., El Paso County, Colorado, at a point approximately 2,500 feet East of the West section line and 20 feet North of the South section line of said Section 27. The dam alignment is proposed to run in a northerly direction from the above-described abutment for a distance of approximately 1,600 feet. The proposed high water line will include portions of the SW 1/4, Section 27, Township 11 South, Range 67 West, 6 P.M., El Paso County, Colorado.

(b) Decreed conditionally for 1,140 acre feet of active capacity and 10 acre feet of dead storage in Case No. 83CW139 on December 1, 1986, with an appropriation date of June 6, 1983.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

(3) Two other reservoirs, Spruce Reservoir and Willow Reservoir, are proposed and were decreed in Case Nos. 83CW140 and 83CW141 and described in the application herein. These reservoirs have not yet been built, and therefore do not require augmentation at this time. At such time as Applicant is ready to commence construction of these reservoirs, Applicant will file a motion with the water court to include those reservoirs in this plan for augmentation, and shall serve the motion upon all parties herein pursuant to paragraph 19(C) herein.

B. Tributary Underground Water Rights.

(1) Well Qal-1:

(a) Original decreed location was in the SE 1/4 of the SE 1/4, Section 29, Town-

ship 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 337 feet North of the South section line and 551 feet West of the East section line of said Section 29. Applicant has agreed that Well Qal-1 will not be drilled at the location specified in the decree in Case No. 83CW146, but Applicant will file the appropriate water court application and well permit application in order to locate the well in the Southeast quarter of the Southwest quarter, of Section 28, Township 11 South, Range 67 West, 2,600 feet from the West section line and 600 feet from the South section line.

- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Beaver Creek alluvium, tributary to Monument Creek.

(2) Well Qal-2:

- (a) Located in the NE 1/4 of the SW 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1497 feet North of the South section line and 1449 feet East of the West section line of said Section 35.
- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Monument Creek alluvium.

(3) Well Qal-4:

- (a) Located in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately

38 feet North of the South section line and 479 feet West of the East section line of said Section 35.

- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Monument Creek alluvium.

(4) Well Qal-5:

- (a) Located in the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1388 feet West of the East section line and 8 feet North of the South section line of said Section 27.
- (b) Included in the decree in Case No. 83CW146, which is pending signature by the Judge upon entry of this decree, with an appropriation date of December 29, 1983, for 100 g.p.m.
- (c) Source of water: Beaver Creek alluvium, tributary to Monument Creek.

C. Surface Water Rights.

(1) Monument Creek Diversion No. 2:

- (a) The headgate will be located in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 479 feet West of the East section line and 38 feet North of the South section line of said Section 35.
- (b) Decreed on December 1, 1986, in Case No. 83CW145 with an appropriation date of December 30, 1983 for 10 c.f.s., conditional.

(c) Source of water: Monument Creek and its tributaries.

(2) Beaver Creek Diversion No. 3:

(a) The headgate will be located in the SW 1/4 of the SE 1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1388 feet West of the East section line and 8 feet North of the South section line of said Section 27.

(b) Decreed in Case No. 83CW145 on December 1, 1986, with an appropriation date of December 30, 1983 for 10 c.f.s., conditional.

(c) Source of water: Beaver Creek and its tributaries, tributary to Monument Creek.

8. Augmentation Water Rights. To augment the Augmented Water Rights described in paragraph 7 above, Applicant will use the following water rights:

A. Nontributary Arapahoe Aquifer, Case No. 83CW142.

A-1, A-2 and A-3, decreed on September 25, 1987 in Case No. 83CW142, and for which applications for well permits were filed with the Division of Water Resources on December 29, 1983.

(1) Points of diversion:

A-1: In the SW 1/4 SE 1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 675 feet from the South section line and 1,560 feet from the East section line of said Section 27.

A-2: In the SE 1/4 SW 1/4 of Section 28, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 545 feet from the South section line and 1,530 feet from the West section line of said Section 28.

A-3: In the SE 1/4 SE 1/4 of Section 29, Township 11 South, Range 67 West, 6th P.M., in

El Paso County, Colorado, at a point approximately 1,250 feet from the South section line and 400 feet from the East section line of said Section 29.

- (2) Depth:  
A-1: Approximately 1,380 feet  
A-2: Approximately 1,420 feet  
A-3: Approximately 1,500 feet
- (3) Appropriation date: Not applicable
- (4) Amount: 250 g.p.m. (.56 c.f.s.) from each well, with a combined pumping rate from A-1, A-2 and A-3 of 750 g.p.m. (1.68 c.f.s.) absolute.
- (5) Pursuant to the decree for A-1, A-2 and A-3 in Case No. 83CW142, and to the Water Purchase Agreement dated August 28, 1987, between Applicant and First Maryland Savings and Loan Association, Applicant has the right to use up to 318 acre feet of water from the non-tributary Arapahoe Formation underlying the land described in Exhibit "A." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW142 only ninety-eight percent (98%) of the water withdrawn through the wells may be used for augmentation purposes. Wells A-1, A-2, and A-3 are alternate points of diversion for each other.

B. Decreed Non-Tributary Arapahoe Aquifer Groundwater Right, Well No. 17483 (The "Dillion Well").

- (1) Point of diversion: NW 1/4 of NE 1/4 of Section 35 of Township 11 South, Range 67 West of the 6th P.M., 200 feet from the North section line and 2,000 feet from the east section line.
- (2) Depth: 1,195 feet.
- (3) Appropriation date: August 17, 1973.
- (4) Amount: 290 g.p.m., 400 acre feet per year
- (5) Decreed: Case No. 81CW213, Water Division 2, Colorado.

- (6) Well permit: Permit No. 17483-F was issued by the Colorado Division of Water Resources on August 17, 1973.

C. Nontributary Laramie-Fox Hills Aquifer.

LFH-1, LFH-2 and LFH-3, decreed on September 25, 1987 in Case No. 83CW142, and for which applications for well permits were filed with the Division of Water Resources on December 29, 1983.

(1) Points of diversion:

LFH-1: In the SW 1/4 SE 1/4 of Section 27, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 640 feet from the South section line and 1,590 feet from the East section line of said Section 27.

LFH-2: In the SE 1/4 SW 1/4 of Section 28, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 510 feet from the South section line and 1,525 feet from the West section line of said Section 28.

LFH-3: In the SE 1/4 SE 1/4 of Section 29, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 1,200 feet from the South section line and 400 feet from the East section line of said Section 29.

(2) Depth:

LFH-1: approximately 1,890 feet  
LFH-2: approximately 1,940 feet  
LFH-3: approximately 2,030 feet

(3) Appropriation date: Not applicable

(4) Amount: 100 g.p.m (.22 c.f.s.) from each well, with a combined pumping rate from LFH-1, LFH-2 and LFH-3 of 300 g.p.m. (.66 c.f.s.) absolute.

(5) Pursuant to the decree for LFH-1, LFH-2 and LFH-3 in Case No. 83CW142 and to the Water Purchase Agreement dated August 28, 1987 between Applicant and First Maryland Savings



and Loan Association, Applicant has the right to use up to 171 acre feet of water from the Laramie-Fox Hills aquifer underlying the land described in Exhibit "A." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW142, only ninety-eight percent (98%) of the water withdrawn through the wells may be used for augmentation purposes.

LFH-4: Decreed on October 1, 1987 in Case No. 83CW143, and for which application for a well permit was made to the Division of Water Resources on December 29, 1983.

(1) Point of diversion:

In the NE 1/4 SE 1/4 of Section 35, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point which is located approximately 2,400 feet from the South section line and 300 feet from the East section line of said Section 35.

(2) Depth: Approximately 1,840 feet.

(3) Appropriation date: Not applicable.

(4) Amount: 150 g.p.m. (.33 c.f.s.).

(5) Pursuant to the decree for LFH-4 in Case No. 83CW143, and to the Water Purchase Agreement between Applicant and Lincoln Savings and Loan Association dated August 28, 1987, Applicant has the right to use up to 67.2 acre feet from nontributary Laramie-Fox Hills Formation underlying the land described in Exhibit "B." Because of the requirement to relinquish two percent (2%) of the water withdrawn pursuant to the decree in Case No. 83CW143, only ninety-eight (98%) of the water withdrawn through the well may be used for augmentation purposes.

D. Colorado Springs Return Flows Agreement.

Applicant is granted the appropriative right to exchange and substitute up to 25 c.f.s. and 660 acre feet per year of transmountain or fully consumable effluent obtained by Agreement for

Purchase of Return Flows between Applicant's predecessor in interest, C. H. Company, and the City of Colorado Springs (the "Return Flows Agreement"). A copy of the agreement is attached hereto as Exhibit "E" and incorporated herein by this reference. The subject property is described in the map attached as Exhibit "A" to the Return Flows Agreement. The Return Flows will be delivered at the City of Colorado Springs Wastewater Treatment facility on Fountain Creek in the SW 1/4 of Section 20, Township 14 South, Range 66 West, 6th P.M., El Paso County, Colorado, or other mutually acceptable point of delivery provided in the operating plan, absent injury to other water users and subject to approval by the State Engineer.

Colorado Springs may furnish return flows pursuant to the Return Flows Agreement from the water rights currently owned by the City of Colorado Springs which are described in Exhibit "F," which is attached hereto and incorporated herein by this reference, and any such other water rights now or hereafter acquired by or available to Colorado Springs which are legally available for such use. Applicant and Colorado Springs agree that return flows originating from the City's use of Fryingpan-Arkansas Project water will not be used to supply water to the Applicant pursuant to the Return Flows Agreement.

E. Reservoir Releases.

Releases from the reservoirs described in Paragraph 7(A) herein.

9. Statement of plan for augmentation including exchange and substitution.

A. General Statement of Plan.

The subject property will be developed for residential, commercial, and industrial purposes.

Applicant proposes to use all water available from its tributary underground and surface water rights described in paragraph 7 herein as a source of supply for the proposed development. The alluvial wells will be constructed horizontally within or adjacent to the bed of the surface stream such that depletions resulting from pumping the alluvial wells will occur nearly instantaneously. To the

extent sufficient water is not available under these water rights to meet Applicant's year-round water supply demand, Applicant will augment this supply by withdrawing nontributary ground water described in paragraph 8 herein. Water derived from the Arapahoe and Laramie-Fox Hills formations underlying the subject property may be diverted either for direct use as a source of supply for the development, for direct discharge into the stream system for augmentation purposes, or for storage in the reservoirs described in paragraph 7 herein. The Arapahoe and Laramie-Fox Hills ground water which may be diverted for storage will be stored in said reservoirs for either replacement of evaporative losses from the reservoirs, future use as a water supply for the development, or to replace to the stream system any out-of-priority diversions at the time, location and to the extent necessary to prevent injury to any senior diverters.

Applicant will operate an exchange of up to 25 c.f.s. and 660 acre feet per year with a priority date of June 6, 1983, pursuant to the Return Flows Agreement, subject to the terms of that agreement and the yearly operating plan described in subparagraph 9(F) below. The points of diversion for said exchange are described in paragraph 7(B) and 7(C) above. The return flows to be furnished from the City of Colorado Springs will return to Fountain Creek or its tributaries at the locations described in paragraph 8(D) above.

Applicant is entitled to claim replacement credits for all tributary and nontributary underground diversions which result in: a direct return flow to the stream system; returns from the wastewater treatment plant; releases from the reservoirs; Colorado Springs return flows credited to Applicant pursuant to the Return Flows Agreement; and delayed lawn irrigation return flows, if Applicant establishes the existence and entitlement to claim such lawn irrigation return flows upon invoking the Court's retained jurisdiction pursuant to paragraph 19(B) below.

B. In-house Residential and Commercial-Industrial Water Demands and Depletions.

The subject property is to include at full development: 673 single family residential units and

approximately 224.6 acres of commercial and industrial space. Estimates of water demands for in-house residential and commercial-industrial uses are shown in more detail in the following table:

Item	Demand (Acre-feet)	Consumptive Use (Acre-feet)	Return Flow (Acre-feet)
In-house Residential	221	11	210
Commercial-Industrial	<u>342</u>	<u>17</u>	<u>325</u>
Subtotal	563	28	535

C. Irrigation. The subject property will have a total of approximately 57 irrigated acres of lawns for the residences and surrounding the commercial and industrial buildings. The irrigation demand is expected to be 109 acre feet. Consumptive use will be assumed to include all water used for irrigation. Establishment and quantification of return flows from irrigation are subject to the Court's retained jurisdiction as provided in paragraph 19(B).

D. Reservoir Evaporation.

The subject property has two reservoirs. When full, the two reservoirs will have a total surface area of approximately 78 acres. Gross reservoir evaporation rates are shown in Exhibit "G" hereto. The capacity curves of the reservoirs are attached as Exhibit "H" hereto. It is estimated that evaporation from two reservoirs will be approximately 202 acre feet per year, based upon an estimated annual average total precipitation of 19.8 inches. Actual reservoir evaporation will be calculated on a weekly basis as the evaporation less the effective precipitation as follows:

- (1) The free water surface area of the two reservoirs will be determined from the stage-area-capacity tables (Exhibit "H").

- (2) Precipitation will be measured at Monument Lake or on the subject property, or any other location acceptable to the Division Engineer.
- (3) Effective precipitation will be calculated as seventy percent (70%) of the total measured precipitation.
- (4) The reservoir evaporation rate will be calculated as the applicable gross evaporation rate given in Exhibit "G" minus the effective precipitation determined in (3) above.
- (5) The reservoir evaporation will be determined by multiplying the free water surface area from (1) above by the reservoir evaporation rate determined in (4) above.
- (6) Net reservoir evaporation can never be computed so as to give a credit to the reservoir when out-of-priority and Applicant must replace all out-of-priority storage at the direction of the State Engineer.

E. Return Flows.

- (1) Wastewater:  
Wastewater from the development will be treated at the proposed Forest Lakes - Triview Metropolitan Districts Wastewater Treatment Facility. The point of discharge will be located on Monument Creek in the SE 1/4 of the SE 1/4, Section 35, Township 11 South, Range 67 West, 6th P.M., in El Paso County, Colorado, at a point approximately 500 feet West of the East section line and on the South section line of said Section 35.

Wastewater from both the Forest Lakes Metropolitan District and the Triview Metropolitan District will be separately measured as it enters the wastewater treatment plant. Wastewater from the subject property will be directly discharged to Monument Creek. Applicant has established and shall retain dominion and control over its share of direct effluent discharges. Effluent will be measured as it is discharged from the plant and prorated to determine the share of return flows attributable to Applicant.

(2) Irrigation Return Flows:

Applicant retains dominion and control over any return flows from lawn irrigation which are demonstrated to exist pursuant to paragraph 19(B) below; however, Applicant shall not be entitled to claim any credit for return flows from lawn irrigation until such time as Applicant has obtained this Court's approval to claim such credit pursuant to said paragraph 19(B) below.

F. Return Flows Agreement. The Return Flows Agreement provides that an operating plan will be prepared prior to January 1 of each year and submitted to the City of Colorado Springs and the District 10 Water Commissioner for review and approval for the upcoming year. Upon approval by the City of Colorado Springs and the Water Commissioner, Applicant will submit a copy of the operating plan to the Division Engineer for review and approval. The operating plan will describe the anticipated quantities and exchange rates that will be used during the coming year. Upon its approval of the proposed operating plan, and after approval by the Water Commissioner for District 10 and the Division Engineer, the City will provide return flows as required by the operating plan in effect for the upcoming year unless changes thereto are approved by Applicant, the City and the Water Commissioner for District 10. Applicant and the City of Colorado Springs have entered into an amended stipulation in this case, which is attached hereto and incorporated herein by this reference. Each year's operating plan will be subject to said stipulation. Pursuant to the Return Flows Agreement, calls originating at the City's Pikeview diversion in excess of 5 c.f.s. will be reduced by the flow rate being exchanged by Applicant at the time of the call, so as to prevent a selective call against other water users.

G. The Court finds that the plan provides a permanent water supply for the development as described herein.

10. Operation of Augmentation Plan.

A. Out-of-Priority Diversions. To the extent that a valid senior call upon the Augmented Water Rights exists, as determined by the Division Engineer for

Water Division 2, Applicant shall make replacement water available to the stream which corresponds to and replaces fully the depletions resulting from the out-of-priority diversions of the Augmented Water Rights as calculated according to subparagraph 10(D) below.

- B. Finding of No Injury. Since the operation of the subject plan for augmentation depends on the replacement of water to satisfy the actual depletions occasioned by any out-of-priority diversion up to the limits provided for herein, the Court finds that no injury to the water rights of others will be caused by operation of the plan for augmentation in accordance with this decree; provided, however, that this finding shall not limit the Court in making any subsequent revisions to account for credit for return flows from lawn irrigation pursuant to paragraph 19(B) below.
- C. Administration. The State Engineer shall curtail all out-of-priority diversions and storage, the depletions from which are not replaced as specified in this decree, so as to prevent injury to vested water rights, as specified in §§ 37-92-305(8), C.R.S., and other applicable law.
- D. Accounting and Calculations. To assure that the vested water rights and decreed conditional water rights of others are protected from injury and to assure proper administration of this decree, whenever the Augmented Water Rights are diverting out-of-priority, Applicant shall calculate weekly depletions and report the same to the Division Engineer in a form acceptable to the Division Engineer. Items which will be measured and recorded include:
- (1) Reservoir levels and corresponding volumes and water surface areas.
  - (2) Well pumping and surface diversions.
  - (3) Wastewater treatment plant discharges from the subject property.
  - (4) Colorado Springs effluent which will be credited to Applicant pursuant to the agreement described in 8(D), and pursuant to paragraph 9(F) above.

These measurements will be recorded and submitted weekly or as required by the Division Engineer. A daily record of wastewater treatment discharges will be available. In addition, when reasonably necessary for the Town of Monument to maximize its water availability under the decree in Case No. 83CW10, then upon request by Monument, record-keeping and operation of this plan for augmentation shall be on a daily basis.

#### CONCLUSIONS OF LAW

11. The Court has jurisdiction of the subject matter of this case and all persons affected hereby, whether they have appeared or not, pursuant to C.R.S. § 37-92-203(1), 37-92-302 and 37-92-304.

12. This application was filed with the Water Court pursuant to C.R.S. § 37-92-302(1)(a). Timely Statements of Opposition were filed as indicated above. The time for filing additional Statements of Opposition has expired according to law. C.R.S. § 37-92-301(1)(c).

13. Full and adequate notice of the claims adjudicated herein have been given in the manner required by law.

14. The plan for augmentation proposed by Applicant is one contemplated by law. If implemented and administered in accordance with this decree, the plan for augmentation will permit the depletions associated with the provision of water by Applicant without adversely affecting the owners or users of vested water rights or decreed conditional water rights.

15. The State Engineer shall administer this plan for augmentation in accordance with the law.

16. The State Engineer shall issue permits for the wells described in paragraph 7(B) herein promptly upon the filing of well permit applications by Applicant, consistent with the terms of this decree.

#### JUDGMENT AND DECREE

17. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein.



18. It is ORDERED, ADJUDGED, and DECREED by the Court that the plan for augmentation described herein is approved subject to the terms and conditions set forth herein.

- A. In order to calculate depletions, Applicant will provide data to the Division Engineer as described in paragraph 10(D) above.
- B. In addition, so as to assure the operation of this augmentation and exchange plan, Applicant will install and maintain such water measuring devices as required by the Division Engineer and implement the accounting procedures requested by the Division Engineer.
- C. The date of appropriation for the augmentation plan and appropriative right of exchange described herein is June 6, 1983.

19. Retained Jurisdiction.

- A. In order to assure that the vested water rights of others are not injured by implementation of this plan for augmentation, the Court retains jurisdiction in this matter, and, upon proper petition, the Court will reconsider its approval of the plan for augmentation until five years after the later of (a) the date on which at least 500 residences or seventy-five percent (75%) of the residences which are given final plat approval by the El Paso County Commissioners, whichever is less, are constructed, and (b) the date construction for industrial and commercial use has been completed on at least seventy-five percent (75%) of the acreage proposed for industrial and commercial use as proposed in paragraph 9(B) hereof. Applicant shall give notice to all parties when such construction is completed. If no petition for reconsideration is filed within five years of the receipt of said notice, the retention of jurisdiction for this purpose shall automatically expire.
- B. This Court also shall retain jurisdiction for the purpose of determination and quantification of credits for return flows from lawngrass irrigation. Applicant may file a motion for determination of return flow credit at such time as Applicant believes sufficient data exists for the Court to make such a determination. Copies of the motion

will be served upon all parties who appeared herein.

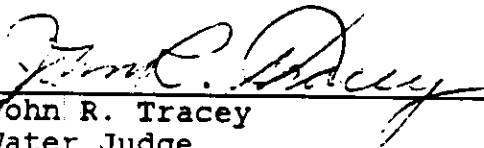
C. This Court also shall retain jurisdiction for the purpose of incorporating Spruce Reservoir and Willow Reservoir into this augmentation plan. At the time Applicant is ready to construct one or both of the reservoirs, Applicant shall file a motion to incorporate the reservoirs into this plan, and shall serve copies of the motion upon all parties who have appeared herein and upon the Colorado Water Conservation Board.

20. This Judgment and Decree, as it may from time to time be amended or supplemented, shall be binding upon Applicant Forest Lakes Metropolitan District as well as upon any assignees or successors of Applicant whether governmental or private, in order that the water rights of Objectors may receive continued protection.

21. It is further ORDERED that this judgment and decree shall be filed with the Water Clerk and with the State Engineer and the Division Engineer for Water Division 2.

Done at the City of Pueblo, Colorado, this 17th  
day of November, 1987.

BY THE COURT:

  
\_\_\_\_\_  
John R. Tracey  
Water Judge  
Water Division No. 2  
State of Colorado

xc: Holly I. Holder  
Division Engineer  
State Engineer

NOV 17 1987

EXHIBIT "A"

Residential Parcel

*Ricardo Lopez*  
Clerk

Those portions of Sections 27, 28, 29, 32 and 33, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, more particularly described as follows: Commencing at the Southeast corner of said Section 27; thence N 01°53'03" W (all bearings used in this description are relative to the East line of the Southeast quarter of said Section 27, which was assumed to be N 01°53'03" W) on the East line of the Southeast quarter of said Section 27, 264.04 feet to a point on the Northerly line of that tract of land described in Book 50 at Page 23 of records of said El Paso County, said point also being the point of beginning; thence continue N 01°53'03" W on the East line of the Southeast quarter of said Section 27, 2415.90 feet to the East Quarter corner of said Section 27; thence S 88°31'14" W on the East-West center of section line of said Section 27, 5306.80 feet to the West quarter corner of said Section 27; thence S 89° 29'35" W on the East-West center of section line of said Section 28, 5342.77 feet to the West quarter corner of said Section 28;; thence S 89°40'20" W on the East-West center of section line of said Section 29, 2638.65 feet to the center of section of said Section 29; thence S 89°38'57" W on the North line of the Northeast quarter of the Southwest quarter of said Section 29, 1317.56 feet to the Northwest corner of the Northeast quarter of the Southwest quarter of said Section 29; thence S 00°08'59" W on the West line of the East one-half of the Southwest quarter of said Section 29, 2645.41 feet to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 29; thence S 00°26'58" W on the West line of the East half of the Northwest quarter of said Section 32, 2606.36 feet to the Southwest corner of the Southeast quarter of the Northwest quarter of said Section 32; thence S 89°49'05" E on the South line of the East half of the Northwest quarter of said Section 32, 1317.36 feet to the Southeast corner of said Northwest quarter; thence N 00°22'56" E on the North-South center of section line of said Section 32, 2592.50 feet to the North quarter corner of said Section 32; thence N 89°10'18" E on the South line of said Section 29, 2620.81 feet to the Southwest corner of said Section 28; thence N 88°58'38" E on the South line of said Section 28, 1331.94 feet to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 28; thence S 00°41'24" W on the East line of the Northwest quarter of the Northwest quarter of said Section 33, 1317.04 feet to the Southeast corner of said

Northwest quarter of the Northwest quarter; thence S 88°55'12" W on the South line of said Northwest quarter of the Northwest quarter, 1342.60 feet to the Southwest corner of the Northwest quarter of the Northwest quarter of said Section 33; thence S 01°09'04" W on the West line of said Section 33, 1318.74 feet to the West quarter corner of said Section 33; thence N 88°51'50" E on the East-West center of section line of said Section 33, 2706.51 feet to the center of section of said Section 33; thence N 00°13'40" E on the North-South center of section line of said Section 33, 2630.85 feet to the South quarter corner of said Section 28; thence N 89°46'22" E on the South line of said Section 28, 2762.01 feet to the Southwest corner of said Section 27; thence N 88°50'20" E on the South line of the Southwest quarter of said Section 27; 2665.40 feet to the South quarter corner of said Section 27; thence N 89°06'01" E on the South line of the Southeast quarter of said Section 27, 2327.52 feet to a point on the Westerly line of that tract of land described in Book 50 at Page 23 of said records; thence Northerly and Easterly on the Westerly and Northerly lines of said tract of land for the following two (2) courses: (1) thence N 01°53'03" W, 264.04 feet; (2) thence N 89°06'01" E, 346.55 feet to the point of beginning.

Also including that tract of land in the Southwest quarter of Section 26, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, as described in Book 3449 at Page 895 of said records, being more particularly described as follows: Beginning at a point on a line being 30.00 feet North of and parallel with the South line of said Section 26, said point being 759.37 feet East of the West line of said Section 26; thence on the arc of a curve to the right whose chord bears N 45°58'38" W, having a central angle of 87°25'20", a radius of 270.75 feet and an arc length of 413.11 feet; thence N 02°15'58" W on the forward tangent to the last mentioned curve, 94.68 feet; thence on the arc of a curve to the left having a central angle of 87°35'35", a radius of 330.67 feet and an arc length of 505.53 feet; thence N 89°51'33" W on the forward tangent to the last mentioned curve, 178.94 feet to a point on the West line of said Section 26; thence S 01°53'03" E on said West line, 60.04 feet; thence S 89°51'33" E, 176.82 feet; thence on the arc of a curve to the right having a central angle of 87°35'35", a radius of 270.67 feet and an arc length of 413.80 feet; thence S 02°15'58" E on the forward tangent to the last mentioned curve, 94.68 feet; thence on the arc of a curve to the left having a central angle of 52°21'58", a radius of 330.75 feet and an arc length of 302.29 feet to a point of said parallel line; thence S 89°41'18" E on said parallel line, 189.97 feet to the point of beginning.

Excepting from the first described tract of land that tract of land described in Book 424 at Page 84 of said records (Beaver Creek Reservoir) being more particularly described as follows: Commencing at the Southeast corner of said Section 27; thence N 73°44'37" W, 565.52 feet to the point of beginning; thence N 59°29'17" E, 240.00 feet; thence W 20°27'21" W, 529.51 feet; thence N 54°47'01" W, 624.57 feet; thence S 59°31'59" W, 267.93 feet; thence S 28°28'39" E, 239.64 feet; thence S 80°23'20" E, 156.87 feet; thence S 45°28'13" E, 147.98 feet; thence S 29°32'04" W, 207.79 feet; thence S 15°26'53" E, 317.80 feet; thence S 60°25'27" E, 227.00 feet; thence N 59°29'17" E, 192.00 feet to the point of beginning.

NOV 17 1987

EXHIBIT "B"

Tech. Center Parcel

*Rosemary J. Lynn*  
Clerk

Covering the Land in the State of Colorado, County of El Paso  
Described as:

PARCEL A

Those portions of Sections 35 and 36, Township 11 South,  
Range 67 West of the 6th P.M., El Paso County, Colorado, more  
particularly described as follows:

COMMENCING at the Northeast corner of said Section 35; thence  
South 00 degrees 51 minutes 27 seconds on the East line of  
said Section 35, 2006.36 feet to the Point of Beginning, said  
point also being on the Westerly right of way of U.S. Highway  
I-25 as described in Book 1959 at Page 742 of the records of  
said El Paso County; thence Southeasterly on said Westerly  
right of way line for the following three (3) courses:

(1) thence South 48 degrees 02 minutes 27 seconds East, 81.40  
feet;

(2) thence on the arc of a curve to the right having a  
central angle of 11 degrees 46 minutes 00 seconds, a radius  
of 2615.00 feet and an arc length of 578.11 feet;

(3) thence South 25 degrees 27 minutes 27 seconds East on a  
non-tangent line to the last mentioned curve, 1955.95 feet;  
thence South 00 degrees 17 minutes 35 seconds West, 197.99  
feet to a point on the Northeasterly right of way line of the  
Denver and Santa Fe Railway Company Railroad as described in  
Book 82 at Page 263 of said records; thence Northwesterly on  
said Northeasterly right of way line for the following six  
(6) courses:

(1) thence North 28 degrees 40 minutes 53 seconds West,  
1077.11 feet;

(2) thence North 61 degrees 19 minutes 07 seconds East, 50.00  
feet;

(3) thence North 28 degrees 40 minutes 53 seconds West,  
1020.00 feet;

(4) thence on the arc of a curve to the left having a central  
angle of 15 degrees 32 minutes 04 seconds, a radius of  
2010.08 feet and an arc length of 544.99 feet;

(5) thence North 00 degrees 51 minutes 27 seconds West on a  
non-tangent line to the last mentioned curve, 71.86 feet;

(6) thence on the arc of a curve to the left whose chord  
bears North 49 degrees 00 minutes 24 seconds West, having a  
central angle of 06 degrees 40 minutes 30 seconds, a radius  
of 2060.08 feet and an arc length of 240.00 feet to a point  
on the Southerly line of that tract of land described in

Book 1613 at Page 162 of said records; thence North 64 degrees 05 minutes 33 seconds East on said Southerly line, 62.62 feet to a point on the Westerly right of way line of said U.S. Highway I-25; thence South 48 degrees 02 minutes 27 seconds East on said Westerly right of way line, 166.24 feet to the Point of Beginning.

Also including that tract of land in said Section 36 more particularly described as follows:

COMMENCING at the Northwest corner of said Section 36; thence South 00 degrees 51 minutes 27 seconds East on the West line of said Section 36, 2638.50 feet to the West quarter corner of said Section 36, said point also being the Point of Beginning; thence South 01 degrees 03 minutes 31 seconds West on the West line of said Section 36, 84.90 feet to a point on the Easterly line of that tract of land described in Book 375 at Page 538 of said records; thence South 27 degrees 56 minutes 29 seconds East on said Easterly line, 2723.69 feet; thence North 00 degrees 17 minutes 35 seconds East, 470.47 feet to a point on the Westerly line of the Denver and Santa Fe Railway Company Railroad right of way as described in said Book 82 at Page 263 of said records; thence Northwesterly on said Westerly right of way line for the following five (5) courses:

- (1) thence North 28 degrees 40 minutes 53 seconds West 1257.71 feet;
- (2) thence South 61 degrees 19 minutes 07 seconds West, 50.00 feet;
- (3) thence North 28 degrees 40 minutes 53 seconds West, 1020.00 feet;
- (4) thence on the arc of a curve to the left having a central angle of 08 degrees 19 minutes 57 seconds, a radius of 1810.08 feet and an arc length of 263.24 feet;
- (5) thence South 00 degrees 51 minutes 27 seconds East on a non-tangent line to the last mentioned curve, 174.61 feet to the Point of Beginning.

Also including that tract of land in Sections 35; and 36 more particularly described as follows:

COMMENCING at the Northeast corner of said Section 35; thence South 00 degrees 51 minutes 27 seconds East on the East line of said Section 35, 2638.50 feet to the East quarter corner thereof; thence South 01 degrees 03 minutes 31 seconds West on the East line of said Section 35, 208.70 feet to the Point of Beginning said point also being on the Westerly line of that tract of land described in Book 375 at Page 538 of said records; thence South 27 degrees 56 minutes 29 seconds East on said Westerly line, 2727.19 feet; thence South 00 degrees

17 minutes 35 seconds West, 24.89 feet to a point on the Southerly line of said Section 36; thence South 89 degrees 08 minutes 36 seconds West on said Southerly line, 1323.24 feet to the Southwest corner of said Section 36; thence South 89 degrees 31 minutes 12 seconds West on the Southerly line of said Section 35, 78.40 feet to a point on the Easterly line of the Denver and Rio Grande Western Railroad right of way as described in Book D at Page 392 and in Book C at Page 574 of said records; thence Northwesterly on said Easterly line for the following four (4) courses:

(1) thence on the arc of a curve to the left whose chord bears North 28 degrees 53 minutes 20 seconds West, having a central angle of 04 degrees 15 minutes 53 seconds, a radius of 2010.08 feet and an arc length of 149.61 feet;

(2) thence North 31 degrees 01 minutes 16 seconds West, on the forward tangent to the last mentioned curve, 1393.20 feet; (3) thence South 89 degrees 32 minutes 52 seconds West, 58.07 feet; (4) thence North 31 degrees 01 minutes 16 seconds West, 743.01 feet to a point on the Easterly line of that tract of land described in Book 3494 at Page 832 of said records; thence Northerly and Westerly on the Easterly and Northerly line of said tract for the following three (3) courses:

(1) thence North 00 degrees 41 minutes 37 seconds East, 692.10 feet;

(2) thence North 63 degrees 53 minutes 27 seconds West, 1433.02 feet;

(3) thence North 00 degrees 19 minutes 43 seconds East, 1293.31 feet to a point on the Southerly line of that tract of land described in Book 534 at Page 571 of said records; thence North 89 degrees 20 minutes 55 seconds East on said Southerly line, 176.43 feet to a point on the Westerly right of way of the Denver and Santa Fe Railway Company Railroad as described in Book 82 at Page 157 of said records; thence Southeasterly on said Westerly right of way line for the following three (3) courses:

(1) thence on the arc of a curve to the left whose chord bears South 43 degrees 27 minutes 31 seconds East, having a central angle of 29 degrees 46 minutes 45 seconds, a radius of 1682.69 feet; and an arc length of 874.57 feet;

(2) thence South 58 degrees 20 minutes 53 seconds East on the forward tangent to the last mentioned curve, 1505.78 feet;

(3) thence on the arc of a curve to the right having a central angle of 15 degrees 50 minutes 43 seconds, a radius of 1660.08 feet and an arc length of 459.10 feet to a point on the Southwesterly line of that tract of land described in Book 375 at Page 549 of said records; thence South 27 degrees 56 minutes 29 seconds East on said Southwesterly line and on a non-tangent line to the last mentioned curve, 469.94 feet to the Point of Beginning.



PARCEL B

That portion of Section 36, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 36; thence North 89 degrees 52 minutes 45 seconds East (all bearings used in this description are relative to the North line of the Northwest quarter of said Section 36, which was assumed to be North 89 degrees 52 minutes 45 seconds East on the North line of the Northwest quarter of said section, 1312.40 feet to a point on the Northerly prolongation of the Westerly line of Chaparral Hills as recorded in Plat Book T-2 at Page 2 of the records of said county; thence South 00 degrees 24 minutes 43 seconds East on said Northerly prolongation, 30.00 feet to a point on a line being 30.00 feet Southerly of and parallel with said North line of the Northwest quarter of said section, said point being the Point of Beginning; thence continue South 00 degrees 24 minutes 43 seconds East on said Northerly prolongation and said Westerly line, 2246.27 feet; thence South 00 degrees 17 minutes 35 seconds West on said Westerly line and its Southerly prolongation, 1343.39 feet to a point on the Northeastery right-of-way line of U.S. Highway I-25 as described in Book 1959 at Page 742 of said records; thence Northwesterly, Northerly and Easterly on the Northeastery, Easterly, and Southerly right of way lines described in said Book 1959, Page 742 for the following five (5) courses:

(1) thence North 25 degrees 27 minutes 27 seconds West, 2803.10 feet; (2) thence North 06 degrees 00 minutes 38 seconds West, 990.78 feet; (3) thence North 25 degrees 53 minutes 33 seconds East, 55.90 feet; (4) thence North 89 degrees 19 minutes 33 seconds East, 200.00 feet; (5) thence North 79 degrees 23 minutes 32 seconds East, 101.10 feet to a point on the aforementioned line being 30.00 feet Southerly of and parallel with the North line of said Section 36; thence North 89 degrees 52 minutes 45 seconds East on said parallel line, 975.59 feet to the Point of Beginning.

Also including the following described tract of land:

COMMENCING at the Northeast corner of Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado; thence South 00 degrees 51 minutes 27 seconds East on the East line of said Section 35, 1532.88 feet to the Point of Beginning, said point also being on the Westerly right of way line of U.S. Highway I-25 as described in Book 1959 at Page 742 of the records of said El Paso County;

thence on said Westerly right of way line for the following five (5) courses:

(1) thence South 25 degrees 27 minutes 27 seconds East, 187.10 feet;

(2) thence South 64 degrees 32 minutes 33 seconds West, 159.06 feet;

(3) thence North 54 degrees 09 minutes 27 seconds West, 268.40 feet;

(4) thence South 41 degrees 57 minutes 33 seconds West, 100.00 feet;

(5) thence South 48 degrees 02 minutes 27 seconds East, 245.99 feet to a point on the Northwesternly line of that tract of land described in Book 1613 at Page 162 of said records; thence South 64 degrees 05 minutes 33 seconds West on said Northwesternly line, 69.29 feet to a point on the Easterly right of way line of that tract of land described in Book 82 at Page 157 of said records; thence Northwesternly on said Easterly right of way line for the following three (3) courses:

(1) thence on the arc of a curve to the left whose chord bears North 56 degrees 17 minutes 09 seconds West, having a central angle of 04 degrees 07 minutes 29 seconds, a radius of 2060.08 feet and an arc length of 148.30 feet;

(2) thence North 58 degrees 20 minutes 53 seconds West on the forward tangent to said curve, 1505.78 feet;

(3) thence on the arc of a curve to the right having a central angle of 48 degrees 13 minutes 58 seconds, a radius of 1282.69 feet and an arc length of 1079.79 feet to a point on the Southerly line of that tract of land described in said Book 1959 at Page 742; thence Easterly and Southeasterly on the Northerly and Westerly lines of said tract for the following five (5) courses:

(1) thence North 85 degrees 15 minutes 25 seconds East, 806.77 feet;

(2) thence North 87 degrees 04 minutes 55 seconds East, 243.00 feet;

(3) thence South 75 degrees 54 minutes 05 seconds East, 196.50 feet;

(4) thence South 43 degrees 42 minutes 31 seconds East, 888.04 feet;

(5) thence South 25 degrees 27 minutes 27 seconds East, 862.90 feet to the Point of Beginning.

#### PARCEL F:

Those portions of the East half of Section 35 and of the West half of the West half of Section 36, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado more particularly described as follows: Beginning at the East quarter corner of said Section 35; thence South 01 degrees 03

minutes 31 seconds West (all bearings used in this description are relative to the East line of the Southeast quarter of said Section 35, which was assumed to be South 01 degrees 03 minutes 31 seconds West) on the East line of the Southeast quarter of said section, 99.84 feet to a point on the Southwesterly right-of-way line of the Denver and Santa Fe Railway Company as described in Book 82 at Page 157 of the records of said county; thence Northwesterly on said Southwesterly right-of-way line for the following three (3) courses:

(1) thence on the arc of a curve to the left whose chord bears North 43 degrees 52 minutes 50 seconds West, having a central angle of 28 degrees 56 minutes 06 seconds, a radius of 1660.08 feet and an arc length of 838.36 feet;

(2) thence North 58 degrees 20 minutes 53 seconds West on the forward tangent to said curve, 1505.78 feet;

(3) thence on the arc of a curve to the right having a central angle of 49 degrees 40 minutes 16 seconds, a radius of 1662.69 feet and an arc length of 1458.76 feet to a point on the Southerly right-of-way line of Baptist Assembly Road; thence Easterly on said Southerly right-of-way line for the following two (2) courses:

(1) thence North 85 degrees 55 minutes 19 seconds East, 400.77 feet;

(2) thence North 85 degrees 15 minutes 25 seconds East, 0.93 feet to a point on the Northeasterly right-of-way line of said Denver and Santa Fe Railway Company; thence Southeast-erly on said Northeasterly right-of-way line for the following three (3) courses:

(1) thence on the arc of a curve to the left whose chord bears South 34 degrees 13 minutes 54 seconds East, having a central angle of 48 degrees 13 minutes 58 seconds, a radius of 1262.69 feet and an arc length of 1079.79 feet;

(2) thence South 58 degrees 20 minutes 53 seconds East on the forward tangent to said curve, 1505.78 feet;

(3) thence on the arc of a curve to the right having a central angle of 12 degrees 40 minutes 44 seconds, a radius of 2060.08 feet and an arc length of 455.87 feet to a point on the West line of the Northwest quarter of said Section 36; thence South 00 degrees 51 minutes 27 seconds East on said West line, 71.86 feet to a point on the Northeasterly right-of-way line of the Denver and Santa Fe Railway Company as recorded in Book 82 at Page 263 of said records; thence Southeasterly on said Northeasterly right-of-way line for the following four (4) courses;

(1) thence on the arc of a curve to the right whose chord bears South 36 degrees 26 minutes 55 seconds East, having a central angle of 15 degrees 32 minutes 04 seconds, a radius of 2010.08 feet and an arc length of 544.99 feet;

(2) thence South 28 degrees 40 minutes 53 seconds East, 1020.00 feet;

(3) thence South 61 degrees 19 minutes 07 seconds West, 50.00 feet;

(4) thence South 28 degrees 40 minutes 53 seconds East, 1077.11 feet to a point on the East line of the West half of the West half of said Section 36; thence South 00 degrees 17 minutes 35 seconds West on said East line, 206.43 feet to a point on the Southwesterly right-of-way line of said Denver and Santa Fe Railway Company; thence Northwesterly on said Southwesterly right-of-way line for the following four (4) courses:

(1) thence North 28 degrees 40 minutes 53 seconds West, 1257.71 feet;

(2) thence South 61 degrees 19 minutes 07 seconds West, 50.00 feet;

(3) thence North 28 degrees 40 minutes 53 seconds West, 1020.00 feet;

(4) thence on the arc of a curve to the left having a central angle of 08 degrees 19 minutes 57 seconds, a radius of 1810.08 feet and an arc length of 263.24 feet to a point on the aforementioned West line of the Northwest quarter of Section 36; thence South 00 degrees 51 minutes 27 seconds East on said West line, 174.61 feet to the POINT OF BEGINNING.

PARCEL G:

That portion of the Southeast quarter of the Southwest quarter of Section 36, Township 11 South, Range 67 West of the 6th P.M., lying Southwesterly of the Southwesterly line of the right-of-way of the Denver and Santa Fe Railway Company.

Book 2690, Page 118  
Division of State of Colorado

**COPY**

NOV 17 1987

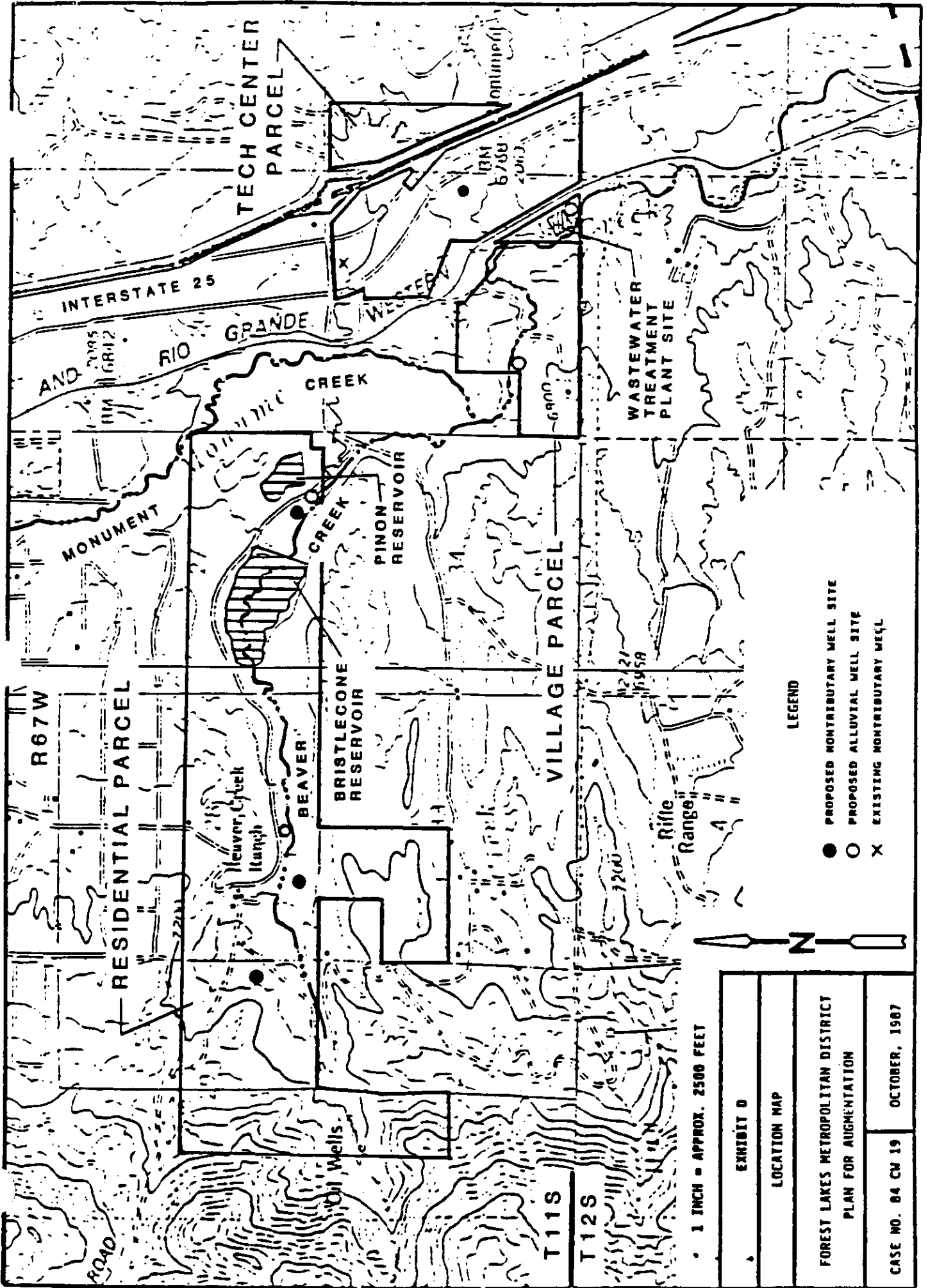
EXHIBIT "C"

Village Parcel

*Roscoe A. Spurr*  
Clerk

Those portions of the East half of the Southwest quarter, the Southwest quarter of the Southwest quarter and the West half of the Southeast quarter of Section 35, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado more particularly described as follows:

Beginning at the Southwest corner of said Section 35; thence N 00°23'55" (all bearings used in this description are relative to the South line of the Southwest quarter of said Section 35, which was assumed to be S 89°41'18" W) on the West line of the Southwest quarter of said section 1329.85 feet to a point on the North line of the Southwest quarter of the Southwest quarter of said Section 35; thence N 89°37'54" E on said North line, 1335.78 feet to a point on the West line of the East half of the Southwest quarter of said Section 35; thence N 00°21'49" E on said West line, 1331.16 feet to a point on the North line of the South half of said Section 35; thence N 89°34'30" E on said North line, 1359.0 feet to a point on the Westerly line of that parcel of land described in Book 2690 at Page 118 of the records of said county; thence Southerly and Southeasterly on the Westerly and Southerly lines of said parcel for the following five (5) courses; (1) thence S 00°21'01" W, 117.60 feet; (2) thence on the arc of a curve to the right having a central angle of 37°55'16", a radius of 230.00 feet and an arc length of 152.23 feet; (3) thence S 51°43'43" E on a non-tangent line to said curve, 814.89 feet; (4) thence N 77°07'36" E, 157.93 feet; (5) thence S 47°56'21" E, 764.59 feet to a point on the East line of the West half of the Southeast quarter of said Section 35; thence S 00°41'37" W on said East line, 1413.61 feet to a point on the South line of said Section 35; thence Westerly on said South line for the following two (2) courses; (1) thence S 89°31'12" W, 1333.55 feet to the South quarter corner of said Section 35; (2) thence S 89°41'18" W, 2673.14 feet to the point of beginning and containing 181.471 acres, more or less.



1 INCH = APPROX. 2500 FEET



**LEGEND**

- PROPOSED MONTRIBUTARY WELL SITE
- PROPOSED ALLUVIAL WELL SITE
- X EXISTING MONTRIBUTARY WELL

EXHIBIT D	
LOCATION MAP	
FOREST LAKES METROPOLITAN DISTRICT PLAN FOR AUGMENTATION	
CASE NO. 84 CM 19	OCTOBER, 1987

NOV 17 1987

AGREEMENT FOR PURCHASE OF RETURN FLOWS

THIS AGREEMENT made this 27 day of November, 1984, by and between the City of Colorado Springs, a municipal corporation (hereinafter referred to as the "City"), and C. H. Company, Colorado Springs, Colorado, (hereinafter referred to as the "Developer").

WHEREAS, Developer proposes to plat, subdivide and develop approximately 1600 acres of land, in El Paso County, Colorado, more fully described in Exhibit "A" attached hereto, for single family, multi-family and commercial use, which is hereinafter called "development"; and

WHEREAS, Developer plans to provide water service to such development by constructing a series of wells which will pump water which is tributary to Monument Creek, a tributary of Fountain Creek, a tributary of the Arkansas River; and

WHEREAS, Developer plans to maintain water levels in the lakes and reservoirs with water pumped from tributary wells and with diversions from Monument Creek and its tributaries; and

WHEREAS, it will be necessary for the Developer to provide augmentation water for such wells in order to obtain the necessary well permits and to adjudicate said wells for year round household and commercial use; and

WHEREAS, it will be necessary for the Developer to provide replacement water for out-of-priority surface diversions; and

WHEREAS, Developer proposes to purchase transmountain or consumptive use return flows from the City at the City's East Las Vegas Street Wastewater Treatment Plant in Colorado Springs, Colorado or some other mutually acceptable point of delivery to the Fountain Creek system; and

WHEREAS, the return flows received by Developer are intended to be used to provide necessary augmentation and exchange water for Developer's wells and replacement for out-of-priority surface diversions.

NOW THEREFORE, in consideration of the foregoing premises and the conditions, agreements, covenants and representations contained below, the parties covenanted in the presence of the Clerk, District Court Water Division, State of Colorado as follows:

COPIED in the presence of the  
Clerk, District Court Water  
Division, State of  
Colorado

NOV 17 1987

*Rosie A. Lynn*  
Clerk

1. Developer will plat a portion of the development into single family residential lots and will plat another portion of the development property for commercial lots for office/commercial use.

2. Developer calculates that the single family detached residences will average 292.5 gallons of water per day per household. Developer further calculates that the commercial development will use 360,400 gallons of water per day. A conservative estimate is that the commercial offices will be used 310 days per year. Total annual water usage is expected to be 71,851,000 gallons for the single family residences and 111,724,000 gallons for the commercial development, for a total gross water usage of approximately 183,575,000 gallons per year. Additionally, there will be evaporation losses and seepage from the reservoirs.

3. For so long as Developer furnishes water service to the development in the manner herein described, the City will furnish return flows in the amount of 660 acre feet per year to Fountain Creek at the City's Wastewater Treatment Plant in Colorado Springs, Colorado or at another mutually acceptable point of delivery to the Fountain Creek system. The City does not guarantee the quality or quantity of water in Beaver Creek, its tributaries or related alluviums for use by the Developer.

4. The City holds senior water rights on Monument and Fountain Creeks and its tributaries between the proposed wells in the development and the City's Wastewater Treatment Plant. For a period of ten (10) years after the date of execution of this Agreement, the City will not exercise its senior rights against Developer's diversions as herein described. Thereafter, during times when flows in Monument Creek are not sufficient to satisfy the City's in-priority water rights up to 5 c.f.s. at Pikeview, the Developer will by-pass all surface water in Beaver Creek and its tributaries for the City's Pikeview diversions, provided that Developer may continue to divert at such times by paying the City the then prevailing non-potable water rate, as established by the City, for each acre foot of water diverted during such period.

5. The City shall retain all title to and dominion and control over the return flows except for the return flows actually used by the Developer for augmentation of its wells at the point of delivery, and for replacement of out-of-priority surface diversions. Said return flows shall be transmountain or consumptive use water which is available for successive use under Colorado law.



6. Restrictive covenants on the development will provide that there shall be no individual sewage disposal systems such as septic tanks. The City shall not be responsible for contamination, if any, of surface streams, underground aquifers or wells by reason of any sewage treatment systems installed and operated by the Developer or any subsequent purchaser, assignee or transferee. Any quality degradation in the City's Monument Creek water supply at its municipal intake or other downstream diversion point which requires additional expense or treatment shall be promptly remedied by the user or users of the sewage treatment systems causing the same at such user's or users' expense. Developer shall not be responsible for the water quality of its return flows from the City's Wastewater Treatment Plant or other agreed point of delivery.

7. Prior to January 1 of each year the Developer will submit to the City and the District 10 Water Commissioner for review and approval an operating plan for the upcoming year. This operating plan will include monthly estimates of water to be pumped and used, of water required to maintain reservoir levels, and of water required to be exchanged from the City's Waste Water Treatment Facility. Additionally, Developer shall provide records of consumptive use including evaporation and of diversions from wells and surface rights as reasonably required by the City. In the operating plan the developer will outline the procedure for measuring depletions to Monument Creek and its tributaries and the projected schedule for releasing return flows from the City's Waste Water Treatment Facility.

8. The restrictive covenants on the development shall require each single family residential lot owner, any homeowner's association, and the owner of any commercial lot to install water meters or other measuring devices satisfactory to the Colorado State Engineer at a location or locations on the water system of each as required by such official, and to keep such records of withdrawals and make such reports to the State Engineer as he may require. The Developer is responsible for application and approval of all state, local or federal licenses, permits or certificates to drill wells in accordance with the Developer's plan of augmentation as finally approved.

9. The Developer shall be responsible for the filing and approval of an augmentation plan for the Developer's wells and lakes in the appropriate water court. The City reserves its right to object and participate in said proceedings, as well as other related proceedings. The City agrees to withdraw said objection(s) upon reaching final agreement on the amount of augmentation water necessary and upon performance of this Agreement.

10. The City shall be under no obligation to process any applications for water rights for the Developer, and does not warrant any computation of estimated usage by Developer's development.

11. The City shall have no responsibility directly or indirectly to any purchasers, assignees, or transferees of the Developer nor to any third party whatsoever by reason of this Agreement for failure of the Developer to supply any water or sewage treatment facilities, or due to any inability of wells to supply water to Developer's property, or due to any inadequacy of quantity or quality of the water supply or sewage treatment. The City's sole obligation shall be to annually deliver a maximum of 660 acre feet of return flows at the City's Las Vegas Street wastewater treatment facility effluent discharge point or other mutually acceptable point of delivery, pursuant to the water exchange set forth herein. A party desiring to change such point of delivery shall have the responsibility and shall bear the expense of obtaining the necessary approval for such change from the State Engineer and the appropriate water court. The City reserves the right to temporarily make any needed changes with regard to the delivery of return flows and to modify or curtail such return flows as is required in emergency circumstances or in the event that the City is unable to provide return flows at the City's Wastewater Treatment Plant, or any other mutually acceptable point of delivery to the Fountain Creek system, commensurate with the operating plan. In either case, the City shall promptly notify the Developer and the parties shall meet to determine a convenient time when return flows may be completed so as not to interfere with the City's operation of its water and wastewater systems nor prevent compliance by the City with terms of any existing transmountain return flow agreements and with the laws of the State of Colorado.

12. The City represents and warrants that it has marketable title to the right to return flows herein described and that the return flows are free and clear of all liens and encumbrances.

13. The City and Developer agree that closing shall be held no later than ninety (90) days following execution of this Agreement. The exact time and place of closing shall be as designated by mutual agreement of the City and Developer. At closing, Developer shall pay the City the sum of Two Million Six Hundred Forty Thousand and 00/100 Dollars (\$2,640,000.00) in cash or certified funds, and the City will execute appropriate documents to grant Developer a right to reuse the six hundred and sixty acre feet of return flows herein specified so long as Developer provides water service to the development in the manner herein described. The return flows can only be used to

provide water service to other lands upon amendment of this Agreement as provided in Section 10.14.

14. This Agreement shall inure to the benefit of and shall be binding to the successors and assigns of the City and Developer alike, and shall not be amended except in writing executed by both parties and approved by the Council of the City of Colorado Springs.

Dated this 23<sup>rd</sup> day of April, 1994.

C. E. COMPANY

By: *Alvin C. H. Lumberg*

Attest:

*[Signature]*

CITY OF COLORADO SPRINGS, a  
municipal corporation

By: *[Signature]*  
Mayor

Attest:

*[Signature]*  
City Clerk

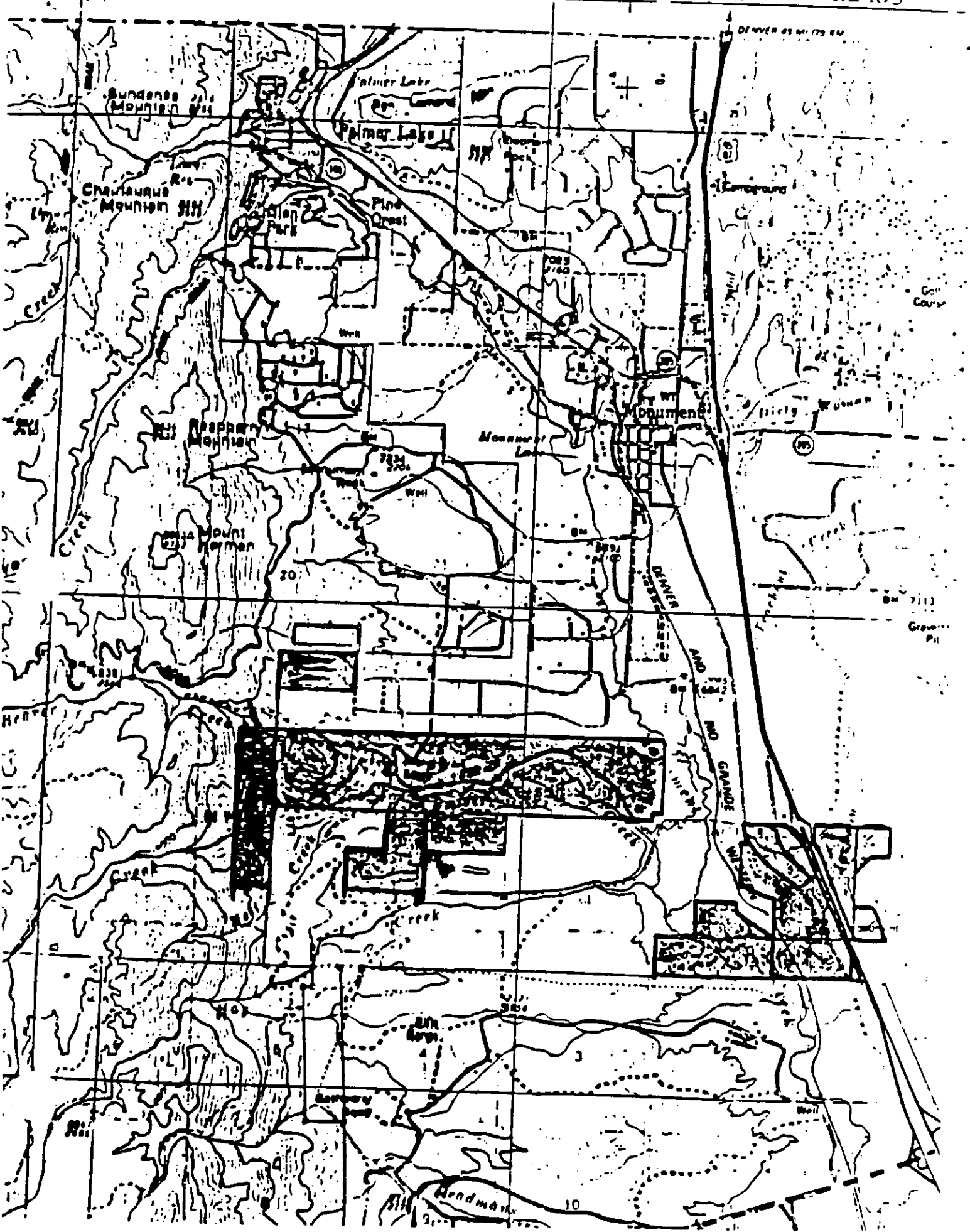


EXHIBIT "F"

SOURCES OF TRANSMOUNTAIN OR CONSUMPTIVE USE  
RETURN FLOWS FROM COLORADO SPRINGS' WATER RIGHTS

HOMESTAKE PROJECT:

(Amended and Supplemental Decree pursuant to Remittitur of the Supreme Court in its Case No. 18866, Civil Action No. 1193)

TWIN LAKES RESERVOIR AND CANAL COMPANY:

(Independence Pass Transmountain Diversion System Decrees; Original decree, August 25, 1936, for Independence Pass Transmountain Diversion System No. 284; Findings of Fact, conclusions of Law and Decree, Case No. W-1901)

COLORADO CANAL COMPANIES:

(Findings of Fact, Conclusions of Law and Decree in Case Nos. 84CW62, 84CW63 and 84CW64)

CF&I RIGHTS:

(As may be decreed in Case No. 86CW117)

RETURN FLOW EXCHANGE DECREES:

(As are or may be decreed in Case Nos. 84CW202 and 84CW203, and Case No. 86CW118)

Filed in the office of the  
Clerk, District Court Water  
Division No. 2, State of  
Colorado

NOV 17 1987

*Piscina Agner*  
Clerk

EXHIBIT "G"

Reservoir Evaporation Rates

<u>Month</u>	<u>Weekly Evaporation Rate</u>
	<u>Inches/week</u>
January	0.36
February	0.39
March	0.39
April	0.96
May	1.17
June	1.49
July	1.51
August	1.35
September	1.07
October	0.81
November	0.40
December	0.36

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Filed in the Office of the  
Clerk, District Court Water  
Division No. 2, State of  
Colorado

NOV 17 1987

*Russell J. Lynn*  
Clerk

TABLE A-1  
BRISTLECONE

Filed in the office of the  
Clerk, District Court V  
Division No. 2, State  
Colorado

NOV 17 1987

GAGE READING	.0	.1	.2	.3	.4
	.5	.6	.7	.8	.9
0	15.0 17.5	15.5 18.0	16.0 18.5	16.5 19.0	17.0 19.5
1	20.0 22.5	20.5 23.0	21.0 23.5	21.5 24.0	22.0 24.5
2	25.0 28.0	25.6 28.6	26.2 29.2	26.8 29.8	27.4 30.4
3	31.0 34.0	31.6 34.6	32.2 35.2	32.8 35.8	33.4 36.4
4	37.0 40.0	37.6 40.6	38.2 41.2	38.8 41.8	39.4 42.4
5	43.0 46.0	43.6 46.6	44.2 47.2	44.8 47.8	45.4 48.4
6	49.0 52.0	49.6 52.6	50.2 53.2	50.8 53.8	51.4 54.4
7	55.0 61.5	56.3 62.8	57.6 64.1	58.9 65.4	60.2 66.7
8	68.0 74.5	69.3 75.8	70.6 77.1	71.9 78.4	73.2 79.7
9	81.0 87.5	82.3 88.8	83.6 90.1	84.9 91.4	86.2 92.7
10	94.0 100.5	95.3 101.8	96.6 103.1	97.9 104.4	99.2 105.7
11	107.0 113.5	108.3 114.8	109.6 116.1	110.9 117.4	112.2 118.7
12	120.0 130.0	122.0 132.0	124.0 134.0	126.0 136.0	128.0 138.0

*Rosemary Lyness*  
Clerk

Sheet 1 of 3

TABLE A-1  
(Continued)

GAGE READING	.0	.1	.2	.3	.4
	.5	.6	.7	.8	.9
13	140.0 150.0	142.0 152.0	144.0 154.0	146.0 156.0	148.0 158.0
14	160.0 170.0	162.0 172.0	164.0 174.0	166.0 176.0	168.0 178.0
15	180.0 190.0	182.0 192.0	184.0 194.0	186.0 196.0	188.0 198.0
16	200.0 210.0	202.0 212.0	204.0 214.0	206.0 216.0	208.0 218.0
17	220.0 234.0	222.8 236.8	225.6 239.6	228.4 242.4	231.2 245.2
18	248.0 262.0	250.8 264.8	253.6 267.6	256.4 270.4	259.2 273.2
19	276.0 290.0	278.8 292.8	281.6 295.6	284.4 298.4	287.2 301.2
20	304.0 318.0	306.8 320.8	309.6 323.6	312.4 326.4	315.2 329.2
21	332.0 346.0	334.8 348.8	337.6 351.6	340.4 354.4	343.2 357.2
22	360.0 376.0	363.2 379.2	366.4 382.4	369.6 385.6	372.8 388.8
23	392.0 408.0	395.2 411.2	398.4 414.4	401.6 417.6	404.8 420.8
24	424.0 440.0	427.2 443.2	430.4 446.4	433.6 449.6	436.8 452.8
25	456.0 472.0	459.2 475.2	462.4 478.4	465.6 481.6	468.8 484.8
26	488.0 504.0	491.2 507.2	494.4 510.4	497.6 513.6	500.8 516.8
27	520.0 537.0	523.4 540.4	526.8 543.8	530.2 547.2	533.6 550.6



TABLE A-1  
(Continued)

GAGE READING	.0	.1	.2	.3	.4
	.5	.6	.7	.8	.9
28	554.0 571.0	557.4 574.4	560.8 577.8	564.2 581.2	567.6 584.6
29	588.0 605.0	591.4 608.4	594.8 611.8	598.2 615.2	601.6 618.6
30	622.0 639.0	625.4 642.4	628.8 645.8	632.3 649.2	635.6 652.6
31	656.0 673.0	659.4 676.4	662.8 679.8	666.2 683.2	669.6 686.6
32	690.0 713.0	694.6 717.6	699.2 722.2	703.8 726.8	708.4 731.4
33	736.0 759.0	740.6 763.6	745.2 768.2	749.8 772.8	754.4 777.4
34	782.0 805.0	786.6 809.6	791.2 814.2	795.8 818.8	800.4 823.4
35	828.0 851.0	832.6 855.6	837.2 860.2	841.8 864.8	846.4 869.4
36	874.0 897.0	878.6 901.6	883.2 906.2	887.8 910.8	892.4 915.4
37	920.0 951.1	926.2 957.3	932.4 963.3	938.7 969.5	944.9 975.8
38	982.0 1013.1	988.2 1019.3	994.4 1025.5	1000.6 1031.7	1006.9 1038.0
39	1044.2 1075.3	1050.4 1081.5	1056.6 1087.7	1062.8 1093.9	1069.1 1100.2
40	1106.4 1137.5	1112.6 1143.7	1118.8 1149.9	1125.0 1156.1	1131.3 1162.4
41	1168.6 1199.7	1174.8 1205.9	1181.0 1212.1	1187.2 1218.3	1193.5 1224.6
42	1231.0				

BRISTLECONE RESERVOIR  
STAGE - SURFACE AREA TABLE

<u>Gage Height (Ft)</u>	<u>Area (Acres)</u>
0	5
5	6
10	13
15	20
20	28
25	32
30	34
35	46
40	62
42	64

Source: Derived from Stage-Capacity Table prepared by Woodward-Clyde Consultants (March 1987)

TABLE A-1  
PINON

GAGE READING	.0	.1	.2	.3	.4
	.5	.6	.7	.8	.9
0	5.83	5.92	6.01	6.10	6.19
	6.28	6.37	6.46	6.55	6.64
1	6.73	6.82	6.91	7.00	7.20
	7.40	7.60	7.80	8.00	8.20
2	8.40	8.60	8.80	9.00	9.20
	9.40	9.60	9.80	10.00	10.20
3	10.40	10.60	10.80	11.00	11.20
	11.40	11.60	11.80	12.00	12.20
4	12.40	12.60	12.80	13.00	13.20
	13.40	13.60	13.80	14.00	14.20
5	14.40	14.60	14.80	15.00	15.20
	15.40	15.60	15.80	16.00	16.20
6	16.40	16.60	16.80	17.00	17.47
	17.94	18.41	18.88	19.35	19.82
7	20.29	20.76	21.23	21.70	22.17
	22.64	23.11	23.58	24.05	24.52
8	24.99	25.46	25.93	26.40	26.87
	27.34	27.81	28.28	28.75	29.22
9	29.69	30.16	30.63	31.10	31.57
	32.04	32.51	32.98	33.45	33.92
10	34.39	34.86	35.33	35.80	36.27
	36.74	37.21	37.68	38.15	38.62
11	39.09	39.56	40.03	40.50	41.21
	41.92	42.63	43.34	44.05	44.76
12	45.47	46.18	46.89	47.60	48.31
	49.02	49.73	50.44	51.15	51.86

TABLE A-1  
(Continued)

GAGE READING	.0	.1	.2	.3	.4
	.5	.6	.7	.8	.9
13	52.57 56.12	53.28 56.83	53.99 57.54	54.70 58.25	55.41 58.96
14	59.67 63.22	60.38 63.93	61.09 64.64	61.80 65.35	62.51 66.06
15	66.77 70.32	67.48 71.03	68.19 71.74	68.90 72.45	69.61 73.16
16	73.87 78.78	74.58 80.17	75.29 81.56	76.00 82.95	77.39 84.34
17	85.73 92.68	87.12 94.07	88.51 95.46	88.90 96.85	91.29 98.24
18	99.63 106.58	101.02 107.97	102.41 109.36	103.80 110.75	105.19 112.14
19	113.53 120.48	114.92 121.87	116.31 123.26	117.70 124.65	119.09 126.04
20	127.43 134.38	128.82 135.77	130.21 137.16	131.60 138.55	132.99 139.94
21	141.33	142.72	144.11	145.50	

PINON RESERVOIR

STAGE - SURFACE AREA TABLE

<u>Gage Height (Ft)</u>	<u>Area (Acres)</u>
0	0.9
5	2.0
10	4.7
15	7.1
20	13.9
21	13.9

Source: Derived from Stage - Capacity Table prepared by Woodward - Clyde Consultants (March, 1987)

DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

Case No. 84CW19

NOV 17 1987

AMENDED STIPULATION

*Rosemary J. Lyons*

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

Clerk

FOREST LAKES METROPOLITAN DISTRICT, a quasi-municipal corporation  
and political subdivision of the State of Colorado,

IN EL PASO COUNTY.

COMES NOW the City of Colorado Springs ("City"), and Applicant Forest Lakes Metropolitan District ("Applicant"), (collective the "Parties"), by and through their respective attorneys, in consideration of their mutual benefits, covenants and obligations, agree and stipulate as follows:

1. Applicant claims to have succeeded to the interests of C.H. Company in the Agreement for Purchase of Return Flows between C.H. Company and the City of Colorado Springs dated April 23, 1984 ("Return Flows Agreement"). A true copy of said Return Flows Agreement is attached as Exhibit "E" to the proposed decree. The City's obligations to provide return flows to Applicant under the Return Flows Agreement pursuant to the terms of this decree are contingent upon Applicant obtaining exclusive rights to the Return Flows Agreement by judgment and decree in Case No. 85CW100, or otherwise.

2. The City agrees that the Return Flows Agreement is accurately incorporated into the proposed decree attached hereto. The City stipulates to the entry of a decree which contains terms and conditions no less restrictive than this proposed decree, provided that this Stipulation shall be deemed to be incorporated in the decree to be entered.

3. Applicant and the City agree that the delivery of return flows for exchange and rates of exchange shall be specified in the annual operating plan called for in Paragraph 7 of the Return Flows Agreement. The City agrees that up to 2 c.f.s. of return flows will be made available to Applicant for augmentation or exchange as provided in the decree to be entered in this case, as requested by Applicant, which amounts shall be deducted from the annual volumetric limit of 660 acre feet of return flows to be provided under the terms of the Return Flows Agreement. The amounts requested by Applicant in excess of 2 c.f.s. are subject to approval by the City in connection with each annual operating plan.

4. The total amount of return flows to be available to Applicant under the terms of the Return Flows Agreement for augmentation or exchange, as provided in this decree, shall not exceed 660 acre feet each year. Any amounts of return flows not used each year by Applicant shall not be carried over to subsequent years without the City's express consent. The City shall not be required to furnish return flows for Applicant's use from a future year's supply.

5. Return flows to be furnished by the City under the terms of the Return Flows Agreement shall only be used in connection with Applicant's providing water service to the lands described in Exhibits "A," "B" and "C" attached to the decree, unless the provisions of paragraph 13 of the Return Flows Agreement are complied with.

6. Except as provided in paragraph 3 of this Stipulation, the Parties do not intend by this Stipulation and the terms of the decree to be entered in this case to amend the Return Flows Agreement and the respective duties, obligations and terms and conditions provided therein in any respect.

Respectfully submitted this 13<sup>th</sup> day of November, 1987.

ANDERSON, JOHNSON & GIANUNZIO

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# *Appendix C*



## FOREST LAKES MD 2018 Drinking Water Quality Report For Calendar Year 2017

*Public Water System ID: CO0121360*

**Esta es información importante. Si no la pueden leer, necesitan que alguien se la traduzca.**

We are pleased to present to you this year's water quality report. Our constant goal is to provide you with a safe and dependable supply of drinking water. Please contact ANN NICHOLS at 719-327-5810 with any questions or for public participation opportunities that may affect water quality.

### General Information

All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (1-800-426-4791) or by visiting <http://water.epa.gov/drink/contaminants>.

Some people may be more vulnerable to contaminants in drinking water than the general population. Immunocompromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV-AIDS or other immune system disorders, some elderly, and infants can be particularly at risk of infections. These people should seek advice about drinking water from their health care providers. For more information about contaminants and potential health effects, or to receive a copy of the U.S. Environmental Protection Agency (EPA) and the U.S. Centers for Disease Control (CDC) guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and microbiological contaminants call the EPA Safe Drinking Water Hotline at (1-800-426-4791).

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity. Contaminants that may be present in source water include:

- **Microbial contaminants:** viruses and bacteria that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.
- **Inorganic contaminants:** salts and metals, which can be naturally-occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.
- **Pesticides and herbicides:** may come from a variety of sources, such as agriculture, urban storm water runoff, and residential uses.
- **Radioactive contaminants:** can be naturally occurring or be the result of oil and gas production and mining activities.
- **Organic chemical contaminants:** including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and also may come from gas stations, urban storm water runoff, and septic systems.

In order to ensure that tap water is safe to drink, the Colorado Department of Public Health and Environment prescribes regulations limiting the amount of certain contaminants in water provided by public water systems. The Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

**Lead in Drinking Water**

If present, elevated levels of lead can cause serious health problems (especially for pregnant women and young children). It is possible that lead levels at your home may be higher than other homes in the community as a result of materials used in your home's plumbing. If you are concerned about lead in your water, you may wish to have your water tested. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. Additional information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>.

**Source Water Assessment and Protection (SWAP)**

The Colorado Department of Public Health and Environment has provided us with a Source Water Assessment Report for our water supply. For general information or to obtain a copy of the report please visit [www.colorado.gov/cdphe/ccr](http://www.colorado.gov/cdphe/ccr). The report is located under "Guidance: Source Water Assessment Reports". Search the table using 121360, FOREST LAKES MD, or by contacting ANN NICHOLS at 719-327-5810. The Source Water Assessment Report provides a screening-level evaluation of potential contamination that ***could*** occur. It ***does not*** mean that the contamination ***has or will*** occur. We can use this information to evaluate the need to improve our current water treatment capabilities and prepare for future contamination threats. This can help us ensure that quality finished water is delivered to your homes. In addition, the source water assessment results provide a starting point for developing a source water protection plan. Potential sources of contamination in our source water area are listed on the next page.

Please contact us to learn more about what you can do to help protect your drinking water sources, any questions about the Drinking Water Quality Report, to learn more about our system, or to attend scheduled public meetings. We want you, our valued customers, to be informed about the services we provide and the quality water we deliver to you every day.

**Our Water Sources**

<b><u>Source</u></b>	<b><u>Source Type</u></b>	<b><u>Water Type</u></b>	<b><u>Potential Source(s) of Contamination</u></b>
DILLON WELL	Well	Groundwater	Aboveground, Underground and leaking storage tank sites. Other facilities.  Commercial/ Industrial transportation. Road Miles  High and low intensity Residential.  Urban Recreational Grasses. Deciduous Forest. Evergreen Forest.  Quarries/ Strip Mines/ Gravel pits  Agricultural Land (row crops, small grains pasture hay, follow & others )  Septic Systems, Gas and Oil Wells

## Terms and Abbreviations

- **Maximum Contaminant Level (MCL)** – The highest level of a contaminant allowed in drinking water.
- **Treatment Technique (TT)** – A required process intended to reduce the level of a contaminant in drinking water.
- **Health-Based** – A violation of either a MCL or TT.
- **Non-Health-Based** – A violation that is not a MCL or TT.
- **Action Level (AL)** – The concentration of a contaminant which, if exceeded, triggers treatment and other regulatory requirements.
- **Maximum Residual Disinfectant Level (MRDL)** – The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
- **Maximum Contaminant Level Goal (MCLG)** – The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.
- **Maximum Residual Disinfectant Level Goal (MRDLG)** – The level of a drinking water disinfectant, below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
- **Violation (No Abbreviation)** – Failure to meet a Colorado Primary Drinking Water Regulation.
- **Formal Enforcement Action (No Abbreviation)** – Escalated action taken by the State (due to the risk to public health, or number or severity of violations) to bring a non-compliant water system back into compliance.
- **Variance and Exemptions (V/E)** – Department permission not to meet a MCL or treatment technique under certain conditions.
- **Gross Alpha (No Abbreviation)** – Gross alpha particle activity compliance value. It includes radium-226, but excludes radon 222, and uranium.
- **Picocuries per liter (pCi/L)** – Measure of the radioactivity in water.
- **Nephelometric Turbidity Unit (NTU)** – Measure of the clarity or cloudiness of water. Turbidity in excess of 5 NTU is just noticeable to the typical person.
- **Compliance Value (No Abbreviation)** – Single or calculated value used to determine if regulatory contaminant level (e.g. MCL) is met. Examples of calculated values are the 90<sup>th</sup> Percentile, Running Annual Average (RAA) and Locational Running Annual Average (LRAA).
- **Average (x-bar)** – Typical value.
- **Range (R)** – Lowest value to the highest value.
- **Sample Size (n)** – Number or count of values (i.e. number of water samples collected).
- **Parts per million = Milligrams per liter (ppm = mg/L)** – One part per million corresponds to one minute in two years or a single penny in \$10,000.
- **Parts per billion = Micrograms per liter (ppb = ug/L)** – One part per billion corresponds to one minute in 2,000 years, or a single penny in \$10,000,000.
- **Not Applicable (N/A)** – Does not apply or not available.
- **Level 1 Assessment** – A study of the water system to identify potential problems and determine (if possible) why total coliform bacteria have been found in our water system.
- **Level 2 Assessment** – A very detailed study of the water system to identify potential problems and determine (if possible) why an E. coli MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

### Detected Contaminants

FOREST LAKES MD routinely monitors for contaminants in your drinking water according to Federal and State laws. The following table(s) show all detections found in the period of January 1 to December 31, 2017 unless otherwise noted. The State of Colorado requires us to monitor for certain contaminants less than once per year because the concentrations of these contaminants are not expected to vary significantly from year to year, or the system is not considered vulnerable to this type of contamination. Therefore, some of our data, though representative, may be more than one year old. Violations and Formal Enforcement Actions, if any, are reported in the next section of this report.

**Note:** Only detected contaminants sampled within the last 5 years appear in this report. If no tables appear in this section then no contaminants were detected in the last round of monitoring.

<b>Disinfectants Sampled in the Distribution System</b> <b>TT Requirement:</b> At least 95% of samples per period (month or quarter) must be at least 0.2 ppm <i>OR</i> If sample size is less than 40 no more than 1 sample is below 0.2 ppm <b>Typical Sources:</b> Water additive used to control microbes						
Disinfectant Name	Time Period	Results	Number of Samples Below Level	Sample Size	TT Violation	MRDL
Chlorine	December, 2017	<u>Lowest period</u> percentage of samples meeting TT requirement: 100%	0	2	No	4.0 ppm

<b>Lead and Copper Sampled in the Distribution System</b>								
Contaminant Name	Time Period	90 <sup>th</sup> Percentile	Sample Size	Unit of Measure	90 <sup>th</sup> Percentile AL	Sample Sites Above AL	90 <sup>th</sup> Percentile AL Exceedance	Typical Sources
Copper	08/09/2017 to 08/11/2017	0.07	7	ppm	1.3	0	No	Corrosion of household plumbing systems; Erosion of natural deposits
Lead	08/09/2017 to 08/11/2017	1.6	7	ppb	15	0	No	Corrosion of household plumbing systems; Erosion of natural deposits

Disinfection Byproducts Sampled in the Distribution System										
Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	Highest Compliance Value	MCL Violation	Typical Sources
Total Trihalomethanes (TTHM)	2017	10.1	10.1 to 10.1	1	ppb	80	N/A		No	Byproduct of drinking water disinfection

Radionuclides Sampled at the Entry Point to the Distribution System									
Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Gross Alpha	2017	6.13	5.6 to 6.7	4	pCi/L	15	0	No	Erosion of natural deposits
Combined Radium	2017	4.44	3.2 to 5.2	5	pCi/L	5	0	No	Erosion of natural deposits
Gross Beta Particle Activity	2017	2.5	1.7 to 3.3	2	pCi/L*	50	0	No	Decay of natural and man-made deposits
*The MCL for Gross Beta Particle Activity is 4 mrem/year. Since there is no simple conversion between mrem/year and pCi/L EPA considers 50 pCi/L to be the level of concern for Gross Beta Particle Activity.									

Inorganic Contaminants Sampled at the Entry Point to the Distribution System									
Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Barium	2017	0.05	0.04 to 0.06	4	ppm	2	2	No	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits
Fluoride	2017	1.5	1.48 to 1.52	4	ppm	4	4	No	Erosion of natural deposits; water additive which promotes strong teeth; discharge from fertilizer and aluminum factories

Synthetic Organic Contaminants Sampled at the Entry Point to the Distribution System									
Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Lindane	2017	6	0 to 30	5	ppt	200	200	No	Runoff/leaching from insecticide used on cattle, lumber, gardens

Secondary Contaminants**						
**Secondary standards are <u>non-enforceable</u> guidelines for contaminants that may cause cosmetic effects (such as skin, or tooth discoloration) or aesthetic effects (such as taste, odor, or color) in drinking water.						
Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	Secondary Standard
Sodium	2017	6.82	6.2 to 8.5	4	ppm	N/A

### Unregulated Contaminants\*\*\*

EPA has implemented the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants that are suspected to be present in drinking water and do not have health-based standards set under the Safe Drinking Water Act. EPA uses the results of UCMR monitoring to learn about the occurrence of unregulated contaminants in drinking water and to decide whether or not these contaminants will be regulated in the future. We performed monitoring and reported the analytical results of the monitoring to EPA in accordance with its Third Unregulated Contaminant Monitoring Rule (UCMR3). Once EPA reviews the submitted results, the results are made available in the EPA's National Contaminant Occurrence Database (NCOD) (<http://www.epa.gov/dwucmr/national-contaminant-occurrence-database-ncod>) Consumers can review UCMR results by accessing the NCOD. Contaminants that were detected during our UCMR3 sampling and the corresponding analytical results are provided below.

Contaminant Name	Year	Average	Range Low - High	Sample Size	Unit of Measure

\*\*\*More information about the contaminants that were included in UCMR3 monitoring can be found at: <http://www.drinktap.org/water-info/whats-in-my-water/unregulated-contaminant-monitoring-rule.aspx>. Learn more about the EPA UCMR at: <http://www.epa.gov/dwucmr/learn-about-unregulated-contaminant-monitoring-rule> or contact the Safe Drinking Water Hotline at (800) 426-4791 or <http://water.epa.gov/drink/contact.cfm>.



### Violations, Significant Deficiencies, Backflow/Cross-Connection, and Formal Enforcement Actions

No Violations or Formal Enforcement Actions