



Joseph Rivera

December 31, 2018

Original sent via electronic mail to: kariparsons@elpasoco.com

Kari Parsons, Project Manager
El Paso County Development Services Department
2880 International Circle
Colorado Springs, CO 80910-6107

Re: **Project Name:** Forest Lakes Phase II PUD
Project Number: PUDSP 181
Description: Approval is being requested for a PUD/Preliminary Plan to develop 180 single family lots, and configure and plat a subdivision layout. This phase of Forest Lakes development is located on 287 acres located in Section 28 & 29, Township 11 South, Range 67 West (hereinafter "Project Area").

Dear Ms. Parsons:

The Town of Monument (Town) holds an easement interest in the Project Area. The Town is the named beneficiary of a blanket easement that conveys to it the following rights:

- the right to an undivided one-third of the water recoverable from nontributary formations under the Project Area, including the rights of an overlying landowner, and those rights have been adjudicated by the Water Court by the decrees in Cases 83CW9 and 08CW63, both of which have been recorded in the El Paso County records as shown on the first page of each Decree, and copies of each are attached as **Exhibit 1**;
- the right to acquire the groundwater, which includes the right to select drilling sites of an adequate size, shape, and number for drilling operations within the Project Area to recover the Town's full 1/3 interest in the nontributary Denver Basin formations and to construct and maintain wells, chlorination stations, pump stations, well houses, and other water supply system infrastructure necessary for the delivery of water to the Town from the selected sites ("Project Sites");
- the right to reasonable access to the Project Sites within the Project Area (egress and ingress), which includes the transport of heavy machinery and drilling rigs to the Project Sites; and

Attorneys at Law

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- the right to construct and maintain the infrastructure necessary to transport the acquired groundwater from the Project Sites across the Project Area to interconnect with the Town's water system and/or adjacent bodies of water.

A copy of the Special Warranty Deed conveying the above property interests to the Town is attached as **Exhibit 2**.

The project's PUD/preliminary plan and other related documents available through El Paso County's application review web-site fail to clearly reference the Town's easement interest in the Project Area. However, until the Town's easement interest is properly addressed, the Project Area may not be platted nor may any permits be issued to the developer.

If additional information is required, please contact me at 303.493.6678.

Sincerely,

MURRAY DAHL BEERY & RENAUD LLP

A handwritten signature in black ink, appearing to read 'JR', with a stylized flourish extending to the right.

Joseph Rivera, Town Attorney
Town of Monument, Colorado

JMR/cw

Attachments

EXHIBIT 1

TO

FOREST LAKE PRELIMINARY PLAN/PUD COMMENT LETTER

**Findings, Judgements and Decrees in District Court
Water Division No. 2 - Case Nos. 83CW9 and 08CW63**

Project Name: Forest Lakes Phase II PUD

Project Number: PUDSP 181

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BOOK 5412 PAGE 788

ARDIS W. SCHMITT
El Paso County Clerk & Recorder

Filed in the office of the
Clerk, District Court, Water
Division 2, State of
Colorado

COPY

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

AUG 13 1987

CASE NO. 83CW9

Ardis W. Schmitt
Clerk

FINDINGS, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF
MONUMENT, IN EL PASO COUNTY

39-

THIS MATTER came on for presentation of prima facie case, pursuant to regular setting and notice, on Aug. 13, 1987. Applicant Town of Monument (Monument) was represented by Special Water Counsel Robert F. T. Krassa. No other parties appeared.

The Court notes that a proposed decree in this matter, which bears signatures showing approval thereof by Monument and certain Objectors and Entrants of Appearance has been filed herein.

All matters contained in the application, as amended, having been reviewed, and such testimony and evidence having been taken as necessary, and being now fully advised in the premises, the Court hereby enters the following findings, judgment and decree in accordance with CRS 37-92-304(5):

1. The Application in this matter was filed with the Water Clerk, Water Division 2, on January 31, 1983. Pursuant to order dated February 26, 1986, an Amendment of the Application was filed on that date and published in the Water Resume. Pursuant to Order dated October 29, 1986, a Second Amendment of the Application was filed on that date and published in the Water Resume.

2. All notices required by law for the filing of this application have been fulfilled and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. Pursuant to C.R.S. 37-90-137(6), no republication is necessary, and the Court may determine the rights to the subject non-tributary groundwater in accordance with the procedures of C.R.S. 37-92-302 to 37-92-305.

3. A Statement of Opposition in this matter was timely filed by the City of Colorado Springs, which also filed a Supplemental Statement of Opposition to the First Amendment of the

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get
Application. Woodmoor Water and Sanitation District also filed a Statement of Opposition. Gary Construction, Inc., and the State Engineer and the Division Engineer for Water Division No. 2, and ~~Woodmoor Water and Sanitation District~~ entered their appearances. Charles A. Helenberg moved to intervene in this matter but then withdrew the said motion, per Order Dated March 22, 1984. Great American Mortgage Services Corporation on March 12, 1986, filed a motion to be substituted for said Helenberg as an Objector, which motion was granted by Order dated April 1, 1986. However, the Court now finds that said Order was based on the misapprehension that Helenberg was an Objector, and the Order is now rescinded. Subsequent to the first Amendment of the Application, First Maryland Savings and Loan timely filed a Statement of Opposition. The time in which to file Statements of Opposition herein has expired.

4. This matter was referred to the Water Referee on January 31, 1983, and was re-referred to the Water Judge on April 19, 1983. No ruling was entered nor other action taken by the Water Referee.

5. None of the lands or water rights involved herein are located within the boundaries of a designated groundwater basin.

6. The Court has considered all matters provided by law for approval of a water right to non-tributary underground water, particularly as found at C.R.S. 37-90-137 and 37-92-302 through 305.

7. Well permit applications for the subject wells were properly filed with the office of the State Engineer on or about February 24, 1983, and the State Engineer has neither granted nor denied such permits within six months thereafter. The State Engineer has filed a Determination of Facts dated June 9, 1986, and an amended Determination of Facts dated April 17th, 1987, concerning this matter with the Clerk of this Court. *get*

8. Pursuant to Special Warranty Deed from Charles A. Helenberg, recorded March 7, 1984, at Book 3842, page 1529, records of El Paso County, Monument owns all rights, including the rights of an overlying landowner, to an undivided one-third of the water recoverable from the Denver, Arapahoe and Laramie Fox Hills aquifers under a tract of land comprising about 1086 acres on which the subject wells are located, which is more particularly described as follows (all in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, Colorado):

Section 26 - metes and bounds tract of about 1.6 acres.

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S 1/2, Section 27 (except 2.1 acre tract at Book 50, page 23 and Book 424, page 84, records of El Paso County);
S 1/2, Section 28;

SE 1/4 and E 1/2 SW 1/4, Section 29;

E 1/2 NW 1/4, Section 32;

E 1/2 NW 1/4 and SW 1/4 NW 1/4, Section 33;

containing 1085.5 acres more or less (hereinafter "the property"). The Town of Monument does not own any interest in the water in the Dawson aquifer on the property. Helenberg's successors in interest, First Maryland Financial Services Corporation, Great American Mortgage Services Corporation, and Lincoln Savings and Loan Association, who are the Applicants in Case 83CW142 in this Court, retain the other two-thirds of the water in the Denver, Arapahoe and Laramie-Fox Hills aquifers and rights to use the same under 1078.234 acres of the property, and El Paso County has succeeded to ownership of two-thirds of the water in said aquifers and rights to use the same under the remaining 7.266 acres of the property. However, Monument has withdrawn from this case its request to adjudicate the water in the Arapahoe aquifer in said Section 26. Monument is not in this case adjudicating its groundwater in the Denver aquifer under the property.

On December 16, 1982

9. Monument regularly authorized the filing of the application in this case and has diligently pursued this case in the water court.

10. The water from the subject wells is needed to support the present and reasonably anticipated future population of Monument. Withdrawing water from the sources specified is an economical and reasonable way for Monument to meet the requirements of its inhabitants. Actual construction of the wells and use of the water therefrom has received a great deal of careful thought. Water is estimated to be available for appropriation and diversion in the quantities requested. Monument intends, and is able financially and physically to complete the project within a reasonable time. The subject waters can and will be diverted, possessed and controlled and will be beneficially used. All of the subject wells are part of a single water system for purposes of reasonable diligence requirements.

11. Withdrawal of the water from the Arapahoe and the Laramie-Fox Hills aquifers underlying the subject property "will not within one hundred years deplete the flow of a natural stream . . . at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal" from the respective aquifers and therefore conforms to the definition of "Nontributary groundwater"

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as found at CRS 37-90-103 (10.5) (1986 Suppl). Applicant has 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 Applicant pursuant to and in accordance with C.R.S. Sections 37-90-137(4) and 37-90-137(6).

12. The State Engineer's Denver Basin Rules, 2CCR 402-6, as amended, provide that the groundwater in the Arapahoe and Laramie-Fox Hills aquifers underlying said land is non-tributary. The term "nontributary" as used herein has the meaning provided at CRS 37-90-103 (10.5) as amended. The saturated thickness of the subject aquifers, the specific yields of the sands of each aquifer, and the amounts in storage, are estimated to be as follows:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Specific Yield</u>	<u>Monument's Share of Amount in Storage</u>
Arapahoe	370 feet	17%	22,736 AF
Laramie-Fox Hills	200 feet	15%	10,870 AF

The Court finds that the saturated sand thicknesses of the respective aquifers can be reasonably estimated from the maps in the Denver Basin Rules, 2 CCR 402-6, and that, subject to the Court's retained jurisdiction as provided in CRS 37-92-305(11) and set forth in Paragraph 33, infra, the estimates contained above, which conform to the State Engineer's Determination of Facts, shall be used for purposes of this decree.

13. The said quantities of water will be considered to be unappropriated under C.R.S. 37-90-137(4) for purposes of this Application. The State Engineer has reported to the Court that his records do not disclose any existing wells or other water rights claiming or diverting groundwater from the said aquifers underlying the said lands.

14. The allowed average annual amount of withdrawal for all of the wells in a specific aquifer shall not exceed one percent of the total amount of water stored in the aquifers at the date of this decree, exclusive of artificial recharge, recoverable from that aquifer beneath the overlying land. However, the allowed annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn from the well or wells does not exceed the product of the number of years since the date or dates of issuance of the well permit or permits or the date or dates of determination or determinations of right to groundwater by the Water Court, whichever comes first, times the allowed average annual amount of withdrawal.

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15. The water rights decreed herein will be used, and the Applicant shall have the right to make a succession of uses pursuant to CRS Section 37-82-106(2), for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife and fire protection. The water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes within the service area of Applicant's water system, which includes the property described in Paragraph 8 hereof. Such water may be conducted into and along any natural stream and taken out again at any point with due regard to the rights of others and due allowance for evaporation and other losses from natural causes as may be determined by the State Engineer. The rights approved and decreed herein include the rights of reuse, successive use and the right of disposition by sale, exchange or otherwise, to extinction, of all such water in accordance with CRS Section 37-82-106(2). However Applicant may not consume more than 98% of the annual quantity of the nontributary groundwater withdrawn from the aquifer(s) underlying its property unless otherwise permitted by the State Engineer. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicant, so long as Applicant can demonstrate to the reasonable satisfaction of the State Engineer prior to issuance of the permit that an amount equal to 2% of such annual withdrawals (by volume) will be relinquished to the stream system, by quantifiable return flows or otherwise.

CONCLUSIONS OF LAW

16. This application was filed with the Water Court pursuant to C.R.S. Section 37-92-302(1)(a).

17. The court concludes as a matter of law that the determination of groundwater rights as set forth in the decretal portion hereof is contemplated and authorized by law, and this Court has exclusive jurisdiction over this proceeding pursuant to C.R.S. Section 37-92-203 and 37-90-137(6).

18. The Court has jurisdiction of the subject matter of this application and over all persons affected hereby. C.R.S. Section 37-92-203(1).

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19. The groundwater rights herein are determined pursuant to C.R.S. Section 37-90-137(4) and shall be subject to administration by the State Engineer pursuant to the terms of this Decree, C.R.S. Section 37-90-137(4), and other applicable law, rules and regulations, as nontributary water rights.

20. The applicants have complied with each of the requirements of C.R.S. Section 37-90-137(4). The issuance of well permits by the Division of Water Resources for the appropriations of nontributary groundwater described herein is justified. Applicant is entitled to a Decree confirming its Arapahoe and Laramie-Fox Hills aquifer appropriations described herein, subject to the provisions of the decretal paragraphs below.

21. The Court concludes the rights to groundwater determined herein are governed by C.R.S. Section 37-92-305(11) and that subsequent showings or findings of reasonable diligence shall not be required.

DECREE

NOW, THEREFORE, IT IS HEREBY THE DECREE OF THE WATER COURT:

22. The application for determination of underground water rights from the Denver Basin aquifers is granted subject to the limitations described herein, to the Applicant, Town of Monument, a Colorado Municipal Corporation, Post Office Box "U", Monument, Colorado 80132.

23. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set out in full.

24. Applicant's appropriations for its wells, as described above, are hereby confirmed at the rates given herein, with an appropriation date of December 16, 1982. Water may be used for the purposes and in the manner set forth in Paragraph 15.

25. Names and Legal Descriptions of Location of Wells
(all in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, Colorado):

- (a) Beaver Creek Well A-1: SW 1/4 of the SE 1/4, Section 27, being 2000 feet from the East line and 1250 feet from the South line of said Section 27.
- (b) Beaver Creek Well A-2: SW 1/4 of the SE 1/4, Section 28, being 2020 feet from the East line and 1200 feet from the South line of said Section 28.

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- (c) Beaver Creek Well A-3: SE 1/4 of the SE 1/4, Section 29, being 300 feet from the East line and 1200 feet from the South line of said Section 29.
- (d) Beaver Creek Well LFH-1: SW 1/4 of the SE 1/4, Section 27, being 2000 feet from the East line and 1200 feet from the South line of said Section 27.
- (e) Beaver Creek Well LFH-2: SW 1/4 of the SE 1/4, Section 28, being 2020 feet from the East line and 1220 feet from the South line of said Section 28.
- (f) Beaver Creek Well LFH-3: SE 1/4 of the SE 1/4, Section 29, being 320 feet from the East line and 1200 feet from the South line of said Section 29.

Wells numbered A-3 and LFH-3 in this case and the wells with the same numbers in Cases 83CW142 and 83CW144 (First of Maryland) in this Court will be within 600 feet of each other if constructed at their proposed locations. It is anticipated that only one of such wells A-3 and only one such Well LFH-3 will be constructed, and will be used jointly by Monument and First Maryland or its successors. If that is not the case, then the second party applying for a well permit shall obtain any necessary approvals to move its well an appropriate distance, or shall follow the procedure set forth at CRS 37-90-137(2) for obtaining a permit without regard to the 600 foot spacing limitation.

26. Depth and Source:

(a) Monument Wells A-1, A-2 and A-3 will draw water entirely from the Arapahoe aquifer, and their depths shall be to full penetration of said aquifer, estimated to lie at the following intervals below the land surface:

<u>Well No.</u>	<u>Depth to Top Feet</u>	<u>Depth to Bottom Feet</u>
A-1	970	1410
A-2	1070	1510
A-3	1110	1550

(b) Monument Wells LFH-1, LFH-2 and LFH-3 will draw water entirely from the Laramie-Fox Hills aquifer, and their

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depths shall be to full penetration of said aquifer, estimated to lie at the following intervals below the land surface:

<u>Well No.</u>	<u>Depth to Top Feet</u>	<u>Depth to Bottom Feet</u>
LFH-1	1600	1930
LFH-2	1600	2000
LFH-3	1680	2030

27. Date of Appropriation: December 16, 1982.

28. Amount of water:

(a) Flow Rates. Monument Wells A-1, A-2 and A-3 will each withdraw water at the rate of 150 gpm (0.333 cfs). Monument Wells LFH-1, LFH-2 and LFH-3 will each withdraw water at the rate of 75 gpm (0.167 cfs).

(b) Volumetric Limitations. The above flow rates are limited by the provision that subject to provisions of Paragraph 14 Monument shall not withdraw more than the following average annual amounts of water from each of the aquifers under the water rights granted herein:

Arapahoe	227.3 acre feet
Laramie-Fox Hills	108.7 acre feet

(c) The pumping rates for each well described above may exceed the nominal pumping rates set forth herein to the extent necessary to withdraw the full allocation of water from the Arapahoe and Laramie-Fox Hills aquifers pursuant to paragraph 14 hereof.

29. In addition to the wells described in Paragraph 25, Applicant may construct such additional wells as are required to recover the entire amount of groundwater in the Arapahoe and Laramie-Fox Hills aquifers underlying the property described in Paragraph 8, provided such additional wells are located within areas determined by the State Engineer's Denver Basin Rules to be nontributary for the respective aquifers. As additional wells are planned, permit applications shall be filed pursuant to CRS 37-90-137(10) and applications may be filed in accordance with law for the designation of these additional wells as alternate points of diversion. Wells A-1, A-2 and A-3, together with any such additional wells in the Arapahoe aquifer, shall comprise a well field as that term is defined in the Statewide Nontributary Groundwater Rules, 2CCR 402-7, and the Applicant may withdraw its total annual amount of withdrawal from the Arapahoe aquifer from any combination of such wells. Also, Wells LFH-1, LFH-2 and

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LFH-3 together with any such additional wells in the Laramie Fox-Hills aquifers, shall comprise a well field as that term is defined in the Statewide Nontributary Groundwater Rules, 2CCR 402-7, and the Applicant may withdraw its total annual amount of withdrawal from the Laramie-Fox Hills from any combination of such wells.

30. Applicant shall submit well permit applications to the State Engineer's Office for any additional or replacement wells. In considering such permit applications, the State Engineer shall be governed by the Findings of Fact, Conclusions of Law, and Decree herein. Any such permitting action may be reviewed by this Court pursuant to C.R.S. Section 37-92-305(6).

31. With respect to any well permits to be issued by the State Engineer's office pursuant to this decree, the following provisions shall apply:

- A. The State Engineer shall consider the rights granted herein as valid and shall consider the water sought by applicants as appropriated until this court orders that such rights are abandoned. The State Engineer is directed to forthwith issue any and all permits for wells decreed herein in accordance with the terms of this decree.
- B. If any permit should expire before the well has been completed, applicants shall apply to the State Engineer for issuance of a new well permit at the time applicants are prepared to complete the well. The State Engineer shall promptly issue a new well permit with restrictions no more burdensome than are found in this decree.
- C. In the event that any of the annual appropriations decreed herein are modified in a proceeding held pursuant to Paragraph 33 hereof, the existing permit for the structure shall be amended to reflect such modified annual appropriation. New permits shall likewise reflect any such modification to the annual appropriation approved herein.

32. In constructing and maintaining these wells, the applicants shall encase the wells with an impervious lining and seal all levels, except the level of the aquifer into which the well is completed, to prevent withdrawal of groundwater from other aquifers, or the mixing of water from different aquifers. Totalizing flow meters shall be installed on each well when it is put to beneficial use. Diversion records shall be maintained by the applicants and submitted to the Colorado Division of Water Resources upon request. After construction, applicants shall attach identification tags to each well specifying the name of the well, the permit number, and the aquifer from which the water is withdrawn.

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33. The water judge shall retain jurisdiction of this matter to provide for the adjustment of the annual amount of withdrawal allowed by each well to conform to actual local aquifer characteristics pursuant to C.R.S. 37-92-305(11) and other applicable law. Applicants shall obtain a geophysical log of each of the subject wells or a geophysical log of the applicable aquifer from another well located within 1320 feet of the decreed location of the subject well, and, within 60 days after completion of a well, or at such earlier time as applicants may elect, if the required geophysical information is available, applicant shall serve upon the parties copies of said geophysical log and well completion report. No later than six months after completion of the last well or at such earlier date as adequate data are available, any party may, by petition, invoke the court's retained jurisdiction under the above caption and case number and request a determination of the amount of water available to that well. The petition shall state the quantity of water which the moving party believes applicant is entitled to withdraw annually, based upon the saturated sand thickness as revealed by the geophysical log(s) and the other parameters determined herein. The State Engineer upon receipt of said petition shall utilize data available to him and make a final Determination of Water Rights Finding within 4 months and submit same to the Water Court. If no protest to such a filing is made within 60 days, the Final Determination of Water Right shall be incorporated into the decree by the Water Court. In the event of a protest, or in the event the State Engineer makes no determination within 4 months, such final determination shall be made by the Water Court after notice and hearing.

34. The nature and extent of the rights determined herein are defined by C.R.S. Section 37-90-137(4). No findings of reasonable diligence are required to maintain the water rights determined herein. C.R.S. Section 37-92-305(11). Pursuant to C.R.S. Section 37-90-137(6), this proceeding is for the determination of the right to use the water described herein for future uses.

35. Any well decreed herein which is drilled within 200 feet of the location decreed herein shall be deemed to have been drilled at the decreed well location and shall not require separate approval by this court of a change in point of diversion.

36. Applicant may not consume more than 98% of the annual quantity of the nontributary groundwater withdrawn from the aquifer(s) underlying its property unless otherwise permitted by the State Engineer. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicant, so long as Applicant can

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demonstrate to the reasonable satisfaction of the State Engineer prior to issuance of the permit that an amount equal to 2% of such annual withdrawals (by volume) will be relinquished to the stream system, by quantifiable return flows or otherwise.

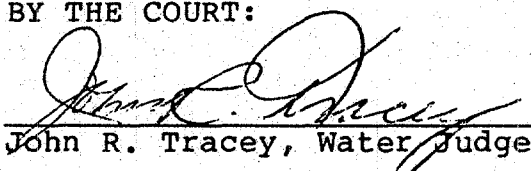
37. Determinations made herein are specific to the subject lands and shall not affect determinations made in other matters.

38. Applicant shall comply with any rules and regulations which have been lawfully promulgated by the State Engineer pursuant to C.R.S. Section 37-90-137, as amended by Senate Bill 5.

39. Applicant shall install and maintain such water measurement devices and recording devices as are deemed essential by the Division Engineer, and the same shall be installed and operated in accordance with instructions from the Division Engineer. In particular, Monument shall install a totalizing flow meter on each well, keep records of diversion and submit same to the Division Engineer annually. Each well shall be identified at the well head or pump house by well permit number, producing formation and name of owner.

DONE this 13 day of Aug., 1987.

BY THE COURT:

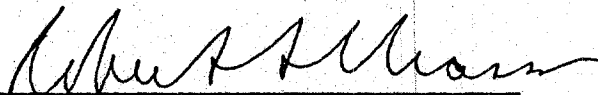


John R. Tracey, Water Judge

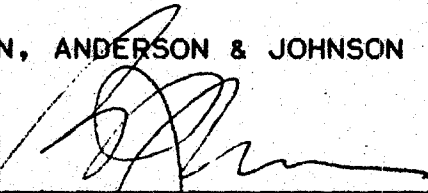
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APPROVED AS TO FORM AND SUBSTANCE:


LAW OFFICES OF
ROBERT F. T. KRASSA, P.C.

By 
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SPECIAL WATER COUNSEL FOR
TOWN OF MONUMENT
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HORN, ANDERSON & JOHNSON

By 
Gregory L. Johnson
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COLORADO SPRINGS
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Colorado Springs, Co. 80903
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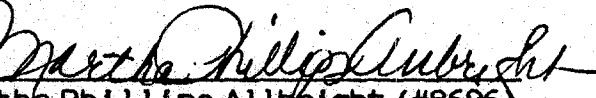
SAUNDERS, SNYDER, ROSS & DICKSON

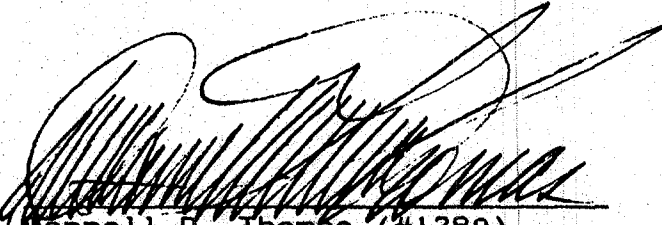
for By  #12923
W. B. Tourtillott, Jr. (#184)
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CO.

ATTORNEY GENERAL

By 
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BROADHURST & PETROCK

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MORTGAGE SERVICES CORPORATION

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83CW9
Page 12A

APPROVED AS TO FORM AND SUBSTANCE:

LAW OFFICES OF
ROBERT F. T. KRASSA, P.C.

HORN, ANDERSON & JOHNSON

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ATTORNEYS FOR WOODMOOR WATER AND
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DISTRICT COURT
WATER DIVISION NO. 2
STATE OF COLORADO

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DISTRICT COURT WATER DIVISION NO. 2, COLORADO 501 N. Elizabeth Street Pueblo, CO 81003	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: TOWN OF MONUMENT, IN EL PASO COUNTY, COLORADO	
	Case Number: 08CW63
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This matter came before the Court upon motion for entry of decree consistent with stipulations with all opposers. The proposed decree has been tendered to the Court pursuant to '37-92-305(3) C.R.S. All matters contained in the Application having been reviewed, and such testimony and evidence having been taken as necessary, and being now fully advised in the premises, the Court now enters the following Findings of Fact, Conclusions of Law, Judgment and Decree pursuant to Sec. 37-92-304(5), C.R.S.

FINDINGS OF FACT

1. Application Filed, Amendment. The application in this matter was filed by the Town of Monument (herein "Monument" or Applicant), c/o Catherine Green, Town Manager, P.O. Box 325, Monument, Colorado 80132, with the Water Clerk, Water Division 2, on August 30, 2008. A Motion to Amend Application was filed on September 26, 2008, and said Amendment was granted pursuant to Order dated September 29, 2008 and subsequently published in the Water Resume.

2. Notices. All notices required by law for the filing of the application and the amendment thereof herein have been fulfilled and the Court has jurisdiction of the

subject matter of this proceeding and over all who have standing to appear as parties, whether they have appeared or not.

a. The application and the amendment were duly published in the Water Resume.

b. Monument is the record title owner of all of the water and water rights which are the subject of this Application. However, Monument does not own the overlying lands nor does it provide water service to the overlying lands comprising the "Property" (the Property is described in paragraph 12 hereof). Pursuant to §37-92-302(2)(b), C.R.S., Monument has, within ten days after the filing of the Application, given notice thereof by certified mail, return receipt requested, to every owner of the overlying land and every person who has a lien or mortgage on or deed of trust to the overlying land, to the last address shown for such owners in the public records of El Paso County. Monument reasonably relied on the real estate records of the El Paso County Assessor or the records of the El Paso County Clerk and Recorder, as searched by Land Title Guarantee Company and the Applicant, in determining such owners and lien holders.

3. Jurisdiction. Pursuant to '37-90-137(6), 37-92-203(1) and 37-92-302(2) C.R.S., the Court may determine the rights to the subject groundwater in accordance with the procedures of '37-92-302 to 37-92-305, C.R.S.

4. Opposition; Stipulations. Statements of Opposition to the application in this matter were timely filed by the following parties: Forest Lakes, LLC; MHW, LLC; Woodmoor Water and Sanitation District No. 1; Forest Lakes Metropolitan District; and the City of Colorado Springs. All Statements of Opposition were filed after amendment of the original Application in this case. The time in which to file additional Statements of Opposition has expired, and no other person has entered an appearance herein. HCB Willow Springs LLC was substituted in place of MHW, LLC by Order entered December 30, 2010.

Stipulations have now been entered into between Monument and the following opposers:

<u>Opposer</u>	<u>Filing Date</u>
Colorado Springs Utilities	June 30, 2011
Woodmoor Water & Sanitation District	May 13, 2013
HCB Willow Springs LLC	July 15, 2014
Forest Lakes Metropolitan District and Forest lakes, LLC	September 8, 2014

This Decree is consistent with those stipulations.

5. Water Referee. This matter was referred to the Water Referee on September 2, 2008 and was re-referred to the Water Judge on July 2, 2014.

6. Purpose of Case, Existing Decrees.

a. This application requests adjudication of the Town of Monument's undivided one-third interest in the groundwater in the Denver Aquifer underlying a parcel of about 1086 acres which has been known as the Residential Parcel of Forest Lakes, previously known as Beaver Creek Ranch, and which is referred to herein as the Property and further described in paragraph 12 hereof. Monument has previously adjudicated its undivided interest in the groundwater in the Arapahoe and Laramie-Fox Hills aquifers under the Property, in Case 83CW9. A decree was entered in that case by this court on August 13, 1987, which decree was recorded August 24, 1987 at reception number 0161103, Book 5412, page 788, records of El Paso County, copy attached hereto as Appendix A. Monument had originally, in that case, also requested adjudication of its Denver aquifer groundwater but that aquifer was withdrawn from Case 83CW9 by the amendment as approved by order entered in that case on February 26, 1986. Monument does not claim any interest in the undivided two-thirds interest in the groundwater in the Denver Aquifer under the Property owned by Forest Lakes, LLC (herein "Forest Lakes"). Forest Lakes' predecessor in interest, Great American Mortgage Services Corp., et al, adjudicated its two-thirds interest in the Denver aquifer under the Property in Case 83CW142, decree entered September 25, 1987.

b. In this case, Monument has also requested judicial approval to add its groundwater in the Denver aquifer under the Property, as decreed in this case, and Monument's groundwater in the Arapahoe and Laramie-Fox Hills aquifers under the Property as adjudicated in 83CW9, to the corresponding well fields which are the subject of Case 08CW45 in this Court. Monument has withdrawn so much of that request as would allow withdrawal of water from contiguous properties through wells on the Property. The application in Case 08CW45 was filed in this Court on June 30, 2008.

c. Monument's groundwater in the Denver Basin aquifers has been adjudicated, or quantified, by the following additional relevant decrees:

(1) Decrees entered by this Court on June 13, 1980, in consolidated Cases W-627 and W-4103;

(2) Decree entered by this Court on August 13, 1987, in Monument's Case No. 82CW211, and recorded August 24, 1987, at reception no. 01611040, Book 5412, page 801, records of El Paso County, Colorado;

(3) Decree in Case No. 94CW4 as entered by this Court February 6, 1996, upon the application of Zonta Partnership, Ltd. adjudicating rights to groundwater in all four Denver Basin aquifers; change of water rights of Zonta Partnership, Ltd., L.L.L.P., in Case No. 07CW67, as decreed April 30, 2008, allowing groundwater under the said Zonta parcel to be withdrawn from wells within the Monument 82CW211 area. Recorded May 7, 2008 at recep. No. 208053217.

(4) Decree in Case No. 94CW72, as entered by this Court November 15, 1995, upon the application of Fred Labib.

Nothing herein can, nor is it intended to, affect the finality of the said existing Decrees.

7. Not in Designated Basin. None of the lands or water rights involved herein is located within the boundaries of a designated groundwater basin.

8. Matters Considered. The Court has considered all matters provided by law for approval of well fields in the Denver Basin aquifers, as required at '37-90-137 and '37-92-302 through -305 C.R.S., and the State Engineer's "Statewide Non-Tributary Groundwater Rules," 2 CCR 402-7. The Court has also considered all matters provided by law for adjudication of groundwater in the Denver Basin Aquifers.

9. State Engineer=s Determination, Consultation. Pursuant to '37-92-302 C.R.S. the State Engineer made Determinations of Fact dated December 30, 2008 as to previously unadjudicated groundwater in all aquifers in this case as to the facts of the Application as amended, and such Determination has been considered by the Court. This decree is consistent with such Determination. This is not an application which will require the construction of a well within the meaning of '37-92-302(2), C.R.S. The Division Engineer provided a Summary of Consultation to the application dated December 30, 2008, which was served pursuant to statute.

10. Contiguity. Monument has established that the Property, which is the land that overlies the Denver aquifer groundwater adjudicated in this case as well as the groundwater in the Arapahoe and Laramie-Fox Hills aquifers adjudicated in Case

83CW9, has legal contiguity with the well fields adjudicated in above-mentioned cases 82CW211, 94CW4 and 08CW45. Such contiguity is as defined or provided in the Statewide Nontributary Groundwater Rules, 2 CCR 402-7, Rules 4.A.6 and 11.B.

11. General Location of Lands. The Property, and the area which is the subject of Case 08CW45, are located in Township 11 South, Range 67 West of the 6th P.M., in El Paso County, Colorado, and are fully shown on the maps attached as Appendix B of this decree, which Appendix is incorporated herein as if set out in full. Appendix B was produced using the El Paso County GIS system as a base.

12. Ownership, Description of Property. Pursuant to a Special Warranty Deed from Charles A. Helenberg recorded March 7, 1984 at Book 3842, page 1529, records of El Paso County (copy attached hereto as Appendix D), Monument owns all rights, including the rights of an overlying landowner, to an undivided one-third of the water recoverable from the Denver, Arapahoe and Laramie-Fox Hills aquifers under a tract of land comprising about 1086 acres, more particularly described as follows (all in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, Colorado):

Section 26 - metes and bounds tract of about 1.6 acres in SW/4. May be referred to as the "Metes and Bounds Tract", detailed map attached hereto as Appendix C and legal description attached as Appendix D hereof;

S/2 Section 27 (except tracts at Book 50, page 23 and Book 424, page 84, records of El Paso County);

S/2 Section 28;

SE/4 and E/2SW/4, Section 29;

E/2NW/4 Section 32; and

E/2NW/4 and SW/4NW/4 Section 33.

This overlying land is shown on the map attached hereto as Appendix B.

13. Res judicata effect of Decree in 83CW9. By way of example and not by way of limitation, the following provisions of the said decree in Case 83CW9 are res judicata

and have preclusionary effect in this case:

a. (From Finding of Fact paragraph 8). Pursuant to Special Warranty Deed from Charles A. Helenberg, recorded March 7, 1984, at Book 3842, page 1529, records of El Paso County, Monument owns all rights, including the rights of an overlying landowner, to an undivided one-third of the water recoverable from the Denver, Arapahoe and Laramie-Fox Hills aquifers under the Property. The Town of Monument does not own any interest in the water in the Dawson aquifer on the Property. Helenberg's successors in interest, presently Forest Lakes Metropolitan District and/or Forest Lakes, LLC, retain the other two-thirds of the water in the Denver, Arapahoe and Laramie-Fox Hills aquifers and rights to use the same under 1078.234 acres of the Property, and El Paso County has succeeded to ownership of two-thirds of the water in said aquifers and rights to use the same under the remaining 7.266 acres of the Property. Monument's ownership of an undivided one-third interest in the Denver aquifer under the Property is consistent with the intent of the parties to the Special Warranty Deed from Helenberg dated March 7, 1984 and recorded same date at reception number 01087925, Book 3842, page 1529.

b. Monument's water rights in the Denver aquifer under the Property were initiated by the authorization to file the application in Case No. 83CW9 on December 16, 1982, by Monument, with a date of initiation of the appropriation of December 16, 1982.

14. Adjudication and Quantification of Rights to Groundwater. Monument's request for a judicial determination of its rights to groundwater underlying the Property is granted, subject to the provisions stated herein.

a. The Denver aquifer characteristics and amounts of water therein owned by Monument are as follows:

Overlying Area (ac)	Saturated Thickness (ft)	Specific Yield	Appropriable Volume (ac-ft/yr)	Monument 1/3 Share (ac-ft/yr)	Status
780.1	165	0.17	218.8	72.6	NNT - 4%
305.9	315	0.17	163.8	54.4	NNT-actual

b. Pursuant to its undivided one-third interest in the groundwater in the Denver aquifer under the Property, Monument may withdraw an annual average of 72.9 acre feet

per year from the portion of the Denver aquifer which is subject to the 4% replacement requirement of C.R.S. 37-90-137(9), and Monument may withdraw an annual average of 54.6 acre feet per year from the portion of the Denver aquifer which is subject to the actual replacement requirement of C.R.S. 37-90-137(9).

c. The wells which will withdraw the water will operate at rates of flow from approximately 100 to 300 gpm.

d. This decree does not authorize Monument to recharge an aquifer through use of wells on the Property.

15. Wells Owned by Others/Pre-SB213 Wells. There are no Pre-SB213 cylinders affecting the Denver aquifer that overlap the Property.

16. Adjustment of Amounts of Water. Should additional data concerning local aquifer characteristics become available after a decree is entered, the Court shall retain jurisdiction under '37-92-305(11), C.R.S. to provide for the adjustment of the amounts of groundwater available for withdrawal by Monument from the wells or well fields under the procedure set forth at paragraph 33 of the decree in Case 83CW9. The Court finds that there has been full and adequate notice of such right to make adjustments and that no owner or person entitled to use water under a vested water right or a decreed conditional water right will be injured by Monument's rights decreed herein. Any adjustment based on actual aquifer conditions shall reflect that Monument owns one-third of the Denver aquifer groundwater underneath the Property.

17. Initiation of Rights, Need for Water, Can and Will. To the extent applicable, the Court finds that Monument's water rights in the Denver aquifer under the Property were initiated by the authorization to file the application in Case No. 83CW9 on December 16, 1982, by Monument, with a date of initiation of the appropriation of December 16, 1982. The Denver aquifer was originally a part of that application, but did not proceed to adjudication in that case. The steps taken and the work performed by Monument are sufficient to meet any applicable requirements for initiation of the water rights confirmed and adjudicated herein. Monument regularly authorized the filing of the Application in this case and has diligently pursued this case in the water court. Monument has demonstrated its intent and ability to divert, develop and beneficially use the groundwater requested herein with diligence and within a reasonable time. The water from the subject well fields is needed to support the present and reasonably anticipated future population of Monument. Withdrawing water from the sources specified is an economical and reasonable way for Monument to meet the requirements of its

inhabitants. Water is estimated to be available for appropriation and diversion in the quantities set forth herein, subject to the retained jurisdiction provisions of this Decree. Monument intends and is able financially and physically to complete the project within a reasonable time. The subject waters can and will be diverted, possessed and controlled and will be beneficially used.

18. Well Permits. No applications for well permits for wells on the lands described in paragraph 12 herein for which groundwater adjudication is requested have been filed by Monument with the State Engineer's office. The State Engineer has issued a Determination of Facts for this application under C.R.S. §37-92-302(2). When wells are required on the Property, application will be made pursuant to the provisions of this Decree. In any event, well permits will be applied for prior to construction of any wells on the Property.

19. Not-Nontributary Source of Water. The groundwater to be withdrawn from the not-nontributary Denver aquifer is not-nontributary as described in '37-90-137(9)(c), C.R.S. Prior to the use of any water which is decreed as not-nontributary groundwater, Monument will obtain judicial approval of a plan for augmentation in accordance with '37-90-137(9)(c), C.R.S.

20. Well Sites. Monument owns or has the right to use all well sites necessary to construct the wells described in the decrees referenced in paragraph 6 hereof, as well as all the wells necessary to withdraw all of the groundwater which is the subject of this case. The easements for Monument's wells and transmission lines shall be in accordance with the existing written agreements and conveyance documents between the parties and their predecessors. Such wells may be located on the Property consistent with such easements, or on other sites which have been lawfully acquired by Monument, except that Monument does not intend to construct wells within the high water lines of Bristlecone or Pinon Reservoirs so long as those sites are used for reservoir purposes.

21. Proposed Uses. The subject groundwater and wells will be used as sources of supply in a unified water system to serve the present and future service area of Monument. All of the groundwater may be used, reused and successively used, and otherwise disposed of for municipal, domestic, industrial, agricultural, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection and other beneficial uses including augmentation, substitution and exchange. Such water may be withdrawn 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 all other augmentation purposes including taking credit for all return flows as augmentation for or as offsets against out-of-priority tributary depletions as provided in augmentation plan decrees of this Court.

22. Groundwater Added to Well Fields. Monument has requested that its undivided one-third interest in the groundwater in the Denver, Arapahoe and Laramie-Fox Hills aquifers under the Property be added to its well fields which are the subject of pending case 08CW45. The Court finds that there is contiguity between the land overlying Monument's groundwater in the said aquifers under the Property and the area which is the subject of said Case 08CW45, and that all requirements for establishment of the requested well fields have been met. No injury will occur to any owner of vested or conditional water rights from the establishment of such well fields. Accordingly, the Court grants the request, as follows.

a. Approximately 34 acres of Parcel 22, Willow Springs, as described in the application as filed in said case 08CW45 overlaps the Property ("Overlap Area"). Monument has withdrawn that Overlap Area from Case 08CW45 so as to avoid any double counting, and it is not counted in the State Engineer's Determinations of Facts in that case. (An undivided one-third interest in the groundwater in the said aquifers under the said Overlap Area is owned by Monument, and the other two-thirds undivided interest in said groundwater is owned by Forest Lakes Metropolitan District or Forest Lakes, LLC.)

b. The groundwater in the Denver aquifer as adjudicated in this Decree should be and it is hereby added to the Denver aquifer groundwater which is the subject of Case 08CW45. Such groundwater may be withdrawn from any of Monument's Denver aquifer wells on the Property or within the 08CW45 well field area. However, this decree does not authorize Monument to withdraw water from the 08CW45 area, or from other contiguous areas outside the Property, through wells on the Property.

c. All of Monument's groundwater under the Property in the Arapahoe aquifer was adjudicated as nontributary in Case 83CW9, with the exception that the groundwater in the Arapahoe aquifer under the 1.6 acre parcel in Section 26 was not decreed in that case. The Arapahoe aquifer groundwater decreed in 83CW9 should be and it is hereby added to the groundwater in the Arapahoe aquifer which is the subject of case 08CW45, forming a single well field in the nontributary portion of the Arapahoe aquifer. Such groundwater may be withdrawn from any of Monument's Arapahoe aquifer wells on the Property or within the 08CW45 area, including by way of example and not by way of limitation, Monument Well No. 7 (permit 37502-RF), Monument Well No. 8 (Permit No.

47303-F) and Monument Well No. 9 (Permit No. 64303-F). However, this decree does not authorize Monument to withdraw water from the 08CW45 area, or from other contiguous areas outside the Property, through wells on the Property.

d. Monument’s groundwater in the Laramie-Fox Hills aquifer as adjudicated in Case 83CW9 should be and it is hereby added to the groundwater in the Laramie-Fox Hills aquifer which is the subject of case 08CW45, forming a single well field in the nontributary portion of the Laramie-Fox Hills aquifer. Such groundwater may be withdrawn from any of Monument’s Laramie-Fox Hills aquifer wells on the Property or within the 08CW45 well field area. All of Monument’s Laramie-Fox Hills aquifer groundwater is nontributary.

23. Amounts of Water Added to Well Fields. The following table summarizes the average annual amounts to be added pursuant to this Decree, and the resulting total average annual amounts in each well field once the water which is the subject of the adjudication of the Denver aquifer in the present Decree and adjudicated previously in case 83CW9 is added to Monument’s well fields as adjudicated in said case 08CW45. All values are in units of acre-feet.

Well Field	Well Field				
	82CW211	08CW45 ^{1,2)}	83CW9	08CW63	Total
Dawson NNT	N/A	493.7	N/A	N/A	493.7
Denver NNT	N/A	557.7	N/A	127	685.2
Arap NNT	N/A	68.2	N/A	N/A	68.2
Arap NT	396.6	394.7	227.3	N/A	1018.6
LFH NT	181.8	183.5	108.7	N/A	474.0

Total: 2739.7

Notes to above table:

1 - Water decreed in Case 94CW72 is included in the well field enlargement (Parcel 20 of Case 08CW45 - Trails End).

2 - Water decreed in case 94CW4 is included in the well field enlargement (Parcel 23 of Case 08CW45 - Zonta).

3 - Volumes reduced from previously adjudicated amounts due to CDOT parcel exclusions

24. Adjustment of Amount. The Court will retain jurisdiction to provide for the adjustment of the amounts of groundwater which are available for withdrawal under the parcels described herein, based on actual aquifer characteristics. Monument may invoke such retained jurisdiction at any time after such data becomes available. Any adjustment based on actual aquifer conditions shall reflect that Monument owns one-third of the Denver aquifer groundwater underneath the Property.

25. Additional, Alternate Point or Supplemental Wells. Each well in the above-described well fields, including additional and supplemental wells, is designated as an alternate point of diversion for all of the other wells in that well field. The well fields described herein shall automatically include each additional well, alternate point of diversion well, supplemental well or replacement well which is necessary to withdraw all of the groundwater in each well field, without the necessity to amend this Decree. The groundwater which is adjudicated herein may be withdrawn through such additional, alternate point of diversion, supplemental and replacement wells as necessary without publishing additional notice or filing additional pleadings with the Court.

a. Monument may need to construct additional wells, including supplemental, replacement, or alternate point of diversion wells, as those terms are defined by Rule 4 of the Statewide Nontributary Groundwater Rules, 2 CCR 402-7 or C.R.S. § 37-90-103, to recover the maximum amount of water available to it from each aquifer. Subject to the conditions contained herein, Monument shall have the right to construct such additional wells as necessary in order to maintain production of the amounts of water to which it is entitled. Such additional wells shall be located consistently with the existing written agreements and conveyance documents between the parties and their predecessors, as they may from time to time be revised, or on other sites which have been lawfully acquired by Monument.

b. Additional wells may be constructed within 200 feet of their permitted locations on any portion of the Property, subject to the 600 foot spacing requirements of C.R.S. § 37-90-137(2) from existing wells not owned by Monument and located outside the Property.

c. The standards of C.R.S. § 37-90-137(4) shall be applied to any permits for additional wells as if the applications for those well permits were filed on the dates that the original applications were filed, in accordance with the standards of C.R.S. § 37-90-137(10).

d. In the event the average annual amount of groundwater decreed herein is

modified under the Court's retained jurisdiction, as such provision is set forth below, any existing permits for wells shall be amended to reflect the modified average annual amount. Any new, supplemental or replacement permits for wells shall likewise reflect any such modification to the average annual amounts contained in this Decree.

26. Description of Lands Where Water to be Used. Any land served or committed to be served by Monument's municipal water system as it now exists or as it may grow in the future. Such land is generally contained in Township 11 South, Range 67 West of the 6th P.M., in El Paso County, but Monument may serve others outside its boundaries pursuant to contract or its Rules and Regulations.

27. Banking. Monument may withdraw from any combination of wells in any of its well fields, including additional wells, an amount of water in excess of the amounts decreed for average annual withdrawal for each well field, as long as the total amount of water withdrawn from each well field does not exceed the product of the number of years since the date of issuance of the original permit or the original decree for each water right described herein, whichever is earlier, times the decreed allowed average annual amount of withdrawal.

28. Pumping Rates. Monument may withdraw the amount of water provided herein for each well field from any combination of the wells in that well field. The pumping rates for each well in that well field may exceed the nominal pumping rates set forth herein or in any decree mentioned herein to the extent necessary to withdraw the full allocation of water from that well field.

29. Water Service Entitlements. Nothing herein is intended to create any implication that this Decree will affect the entitlement of any person to receive water service from Monument. Rights to water service will continue to be governed by the applicable Inclusion Agreements, other Contracts and Agreements, and Monument's Rules and Regulations.

30. Effective Dates. For purposes of applying '37-90-137(10), C.R.S., the original date of filing of well permit applications, the date of filing of the applications leading to this Decree or to the Decrees mentioned herein, whichever is earlier and applicable, is the date which shall be used by the State Engineer when considering permits for additional wells.

31. Non Injury. No legal injury will occur to the owner of any vested or conditionally decreed water right from the granting of the Application herein, as amended.

CONCLUSIONS OF LAW

101. Incorporation by Reference. The forgoing Findings of Fact are incorporated herein by this reference as if repeated verbatim.

102. The Application in this case was filed with the Water Court pursuant to §37-92-302(1)(a) C.R.S.

103. The determinations made herein are contemplated and authorized by law, and this Court has jurisdiction over this proceeding, the subject matter of this application and over all persons affected hereby, whether they have appeared or not pursuant to §§37-92-203 and 37-90-137(6), C.R.S.

104. Full and complete notice of the application herein, as amended, including the effect of this matter upon previously issued well permits and decrees for the wells and water rights comprised herein has been given in the manner provided by law. §37-92-302(3) C.R.S.

105. The groundwater rights herein are determined pursuant to §37-90-137(4) C.R.S. as "not-nontributary" water rights and shall be subject to administration by the State Engineer pursuant to the terms of this Decree, §37-90-137(4) C.R.S., other applicable law, the Statewide Rules, 2 CCR 402-7 and the Denver Basin Rules, 2 CCR 402-6.

106. Monument has complied with each of the requirements of §37-90-137(4), C.R.S. The State Engineer may lawfully be required under the terms of this Decree to issue permits for construction of Monument's wells to withdraw the groundwater from each of the well fields mentioned in this Decree.

107. The Court concludes the rights to groundwater determined herein are governed by §37-92-305(11), C.R.S. and that subsequent showings or findings of reasonable diligence shall not be required.

108. Monument is entitled as a matter of law to use, reuse, successively use and dispose of all not-nontributary groundwater decreed herein, the depletions from which are fully augmented in accordance with law. §37-82-106, C.R.S. This includes the right to the use of return flows from not-nontributary groundwater to replace out-of-priority

depletions under a plan for augmentation approved in compliance with applicable law. §37-82-106(2), C.R.S.

109. Stipulations entered in this case are approved and shall bind and benefit the parties to the Stipulations. Except as expressly provided in this Decree, the parties to this case, other than the signatories to said Stipulations, are not bound by those Stipulations.

DECREE

NOW, THEREFORE, IT IS HEREBY THE DECREE OF THE WATER COURT:

201. Incorporation by Reference. The foregoing Findings of Fact and Conclusions of Law, are incorporated herein and made part of the Court's judgment and Decree, as if set out in full.

202. Application Granted. The application herein, as amended, is granted subject to the limitations described herein, to the Applicant, Town of Monument, c/o Pamela Smith, Town Manager, P.O. Box 325, Monument, Colorado 80132.

203. Confirmation of Appropriations and Incorporation into Well Fields. Monument's appropriations for its wells and well fields, and requests for quantification and judicial determinations of rights to groundwater, as described above, are hereby approved, confirmed, granted and adjudicated, and the water in the Denver aquifer underlying the Property is quantified as provided in foregoing paragraph 14, and the groundwater in the Denver, Arapahoe and Laramie-Fox Hills aquifers under the Property is fully incorporated into the corresponding well fields established in Case 08CW45 as described in foregoing paragraphs 22 and 23. Water may be used for the purposes and in the manner set forth in paragraph 21 hereof.

204. Pumping Rates. Monument may withdraw the total annual average amount of water provided herein for each well field from any combination of the wells in that well field. The pumping rates for each well in that well field may exceed the nominal pumping rates set forth herein to the extent necessary to withdraw the full allocation of water from that well field.

205. Records. Monument will maintain such records and make such measurements of water as may be reasonably required by the Division Engineer.

206. Well Permits. In considering any well permit application hereunder, the State Engineer shall be governed by the Findings of Fact, Conclusions of Law, and Decree herein and shall promptly issue said permits in accordance with the provisions of this Decree and '37-90-137(10) C.R.S. Monument shall not be required to submit any additional proof or evidence of matters finally determined herein when making application for wells to withdraw the subject groundwater. The following provisions shall apply:

(a) The State Engineer shall consider the rights granted herein as valid and shall consider the water sought by Monument as appropriated until this Court orders that such rights are abandoned. The State Engineer is directed to forthwith issue, upon request of Monument, any and all permits for wells described herein in accordance with the terms of this Decree.

(b) If any permit should expire before the well has been completed, Monument may apply to the State Engineer for issuance of a new well permit at the time Monument is prepared to complete the well. The State Engineer shall promptly issue a new well permit with restrictions no more burdensome than are found in this Decree. Any failure to construct a well necessary to produce groundwater hereunder within the period of time specified in any well permit therefor shall not be deemed to extinguish the underlying right to water.

(c) In the event that any of the average annual appropriations decreed herein are modified in a proceeding held pursuant to paragraph 16 hereof, the existing permit(s) for the applicable structure(s) shall be amended to reflect such modified annual appropriation. New, replacement and supplemental permits shall likewise reflect any such modification to the annual appropriation approved herein.

(d) All of the provisions of the 83CW9 decree relating to additional, supplemental and alternate point of diversion wells shall apply to operations under this Decree.

(e) Nothing herein is intended to limit the authority of the State Engineer to include in any well permit, a requirement to relinquish consumption of up to two (2) per cent of the withdrawals of water from nontributary wells constructed pursuant to this decree as currently authorized by Rule 8 "Limit on Consumption" of the present Denver Basin Rules 2 CCR 402-8 and as limited by C.R.S. 37-90-137(b), so long as such requirement of Rule 8 remains in effect.

207. Augmentation Plan. Monument may not withdraw the not-nontributary

groundwater adjudicated herein until an augmentation plan is approved by this Court.


208. Meters. Unless otherwise authorized by the Division Engineer, Monument shall install a totalizing flow meter on each well. The meter shall be installed according to the manufacturer's recommendations and shall be inspected at least annually, and promptly repaired or recalibrated as needed. If any meter required hereunder becomes inoperable, it shall be repaired as soon as reasonably practicable so that measurements can continue.

209. Retained Jurisdiction - Injury. The court shall retain jurisdiction of this matter for a period of five years for the purpose of reconsidering the question of injury to the vested water rights of others arising out of the addition of the groundwater under the parcels which are the subject of this case to Monument's well fields, but as distinct from allegations of injury stemming from operations which would have been fully authorized solely under the decrees in Case Nos. 82CW211, 83CW9, 08CW45 and the decrees mentioned in the decree in 08CW45. Any person may invoke the court's retained jurisdiction pursuant to this paragraph by filing a petition with the court under the above caption and case number setting forth the substance of the relief sought and the basis for that relief with service of said petition upon all parties hereto.

210. Final Decree. Notwithstanding any retained jurisdiction provisions herein, this Decree is final and appealable upon entry. The Court expressly determines that there is no just reason for delay and expressly directs the entry of judgment.

Dated: September 30, 2014.

BY THE COURT:



LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2

DISTRICT COURT
WATER DIVISION NO. 2
STATE OF COLORADO

Certified to be a full, true and correct copy of original on file.

Dated: October 8, 2014


MARCELLA R. D'AMORE, CLERK

By: 
S Deputy Clerk

INDEX OF APPENDICES TO DECREE 08CW63

Appendix A- Decree Case No. 83CW9, entered August 13, 1987, which decree was recorded at reception number 0161103, book 5412, page 788, records of El Paso County

Appendix B- Maps of Parcel Added to Well Fields

Appendix C- Map of "Metes and Bounds Tract"

Appendix D- Legal Description of "Metes and Bounds Tract"

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ARDIS W. SCHMITT
El Paso County Clerk & Recorder

BOOK 5412 PAGE

Filed in the office of
Clerk, District Court
Division 2, State
Colorado



Mar 26 2010
12:06PM

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

AUG 13 1987

CASE NO. 83CW9

Russell J. Jones

Clerk

FINDINGS, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF MONUMENT, IN EL PASO COUNTY

39-

THIS MATTER came on for presentation of prima facie case, pursuant to regular setting and notice, on Aug. 13, 1987. Applicant Town of Monument (Monument) was represented by Special Water Counsel Robert F. T. Krassa. No other parties appeared.

The Court notes that a proposed decree in this matter, which bears signatures showing approval thereof by Monument and certain Objectors and Entrants of Appearance has been filed herein.

All matters contained in the application, as amended, having been reviewed, and such testimony and evidence having been taken as necessary, and being now fully advised in the premises, the Court hereby enters the following findings, judgment and decree in accordance with CRS 37-92-304(5):

1. The Application in this matter was filed with the Water Clerk, Water Division 2, on January 31, 1983. Pursuant to order dated February 26, 1986, an Amendment of the Application was filed on that date and published in the Water Resume. Pursuant to Order dated October 29, 1986, a Second Amendment of the Application was filed on that date and published in the Water Resume.

2. All notices required by law for the filing of this application have been fulfilled and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. Pursuant to C.R.S. 37-90-137(6), no republication is necessary, and the Court may determine the rights to the subject non-tributary groundwater in accordance with the procedures of C.R.S. 37-92-302 to 37-92-305.

3. A Statement of Opposition in this matter was timely filed by the City of Colorado Springs, which also filed a Supplemental Statement of Opposition to the First Amendment of the

APPENDIX A TO DECREE 08CW63

Rec'd # 01611039 8/24/1987

B. 5412 p. 788

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Application. Woodmoor Water and Sanitation District also filed a Statement of Opposition. Gary Construction, Inc., and the State Engineer and the Division Engineer for Water Division No. 2, and Woodmoor Water and Sanitation District entered their appearances. Charles A. Helenberg moved to intervene in this matter but then withdrew the said motion, per Order Dated March 22, 1984. Great American Mortgage Services Corporation on March 12, 1986, filed a motion to be substituted for said Helenberg as an Objector, which motion was granted by Order dated April 1, 1986. However, the Court now finds that said Order was based on the misapprehension that Helenberg was an Objector, and the Order is now rescinded. Subsequent to the first Amendment of the Application, First Maryland Savings and Loan timely filed a Statement of Opposition. The time in which to file Statements of Opposition herein has expired.

4. This matter was referred to the Water Referee on January 31, 1983, and was re-referred to the Water Judge on April 19, 1983. No ruling was entered nor other action taken by the Water Referee.

5. None of the lands or water rights involved herein are located within the boundaries of a designated groundwater basin.

6. The Court has considered all matters provided by law for approval of a water right to non-tributary underground water, particularly as found at C.R.S. 37-90-137 and 37-92-302 through 305.

7. Well permit applications for the subject wells were properly filed with the office of the State Engineer on or about February 24, 1983, and the State Engineer has neither granted nor denied such permits within six months thereafter. The State Engineer has filed a Determination of Facts dated June 9, 1986, and an amended Determination of Facts dated April 17th, 1987, concerning this matter with the Clerk of this Court.

8. Pursuant to Special Warranty Deed from Charles A. Helenberg, recorded March 7, 1984, at Book 3842, page 1529, records of El Paso County, Monument owns all rights, including the rights of an overlying landowner, to an undivided one-third of the water recoverable from the Denver, Arapahoe and Laramie Fox Hills aquifers under a tract of land comprising about 1086 acres on which the subject wells are located, which is more particularly described as follows (all in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, Colorado):

Section 26 - metes and bounds tract of about 1.6 acres.

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S 1/2, Section 27 (except 2.1 acre tract at Book 50, page 23 and Book 424, page 84, records of El Paso County);
S 1/2, Section 28;

SE 1/4 and E 1/2 SW 1/4, Section 29;

E 1/2 NW 1/4, Section 32;

E 1/2 NW 1/4 and SW 1/4 NW 1/4, Section 33;

containing 1085.5 acres more or less (hereinafter "the property"). The Town of Monument does not own any interest in the water in the Dawson aquifer on the property. Helenberg's successors in interest, First Maryland Financial Services Corporation, Great American Mortgage Services Corporation, and Lincoln Savings and Loan Association, who are the Applicants in Case 83CW142 in this Court, retain the other two-thirds of the water in the Denver, Arapahoe and Laramie-Fox Hills aquifers and rights to use the same under 1078.234 acres of the property, and El Paso County has succeeded to ownership of two-thirds of the water in said aquifers and rights to use the same under the remaining 7.266 acres of the property. However, Monument has withdrawn from this case its request to adjudicate the water in the Arapahoe aquifer in said Section 26. Monument is not in this case adjudicating its groundwater in the Denver aquifer under the property.

On December 16, 1982

9. Monument regularly authorized the filing of the application in this case and has diligently pursued this case in the water court.

10. The water from the subject wells is needed to support the present and reasonably anticipated future population of Monument. Withdrawing water from the sources specified is an economical and reasonable way for Monument to meet the requirements of its inhabitants. Actual construction of the wells and use of the water therefrom has received a great deal of careful thought. Water is estimated to be available for appropriation and diversion in the quantities requested. Monument intends, and is able financially and physically to complete the project within a reasonable time. The subject waters can and will be diverted, possessed and controlled and will be beneficially used. All of the subject wells are part of a single water system for purposes of reasonable diligence requirements.

11. Withdrawal of the water from the Arapahoe and the Laramie-Fox Hills aquifers underlying the subject property "will not within one hundred years deplete the flow of a natural stream . . . at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal" from the respective aquifers and therefore conforms to the definition of "Nontributary groundwater"

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as found at CRS 37-90-103 (10.5) (1986 Suppl). Applicant has 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 Applicant pursuant to and in accordance with C.R.S. Sections 37-90-137(4) and 37-90-137(6).

12. The State Engineer's Denver Basin Rules, 2CCR 402-6, as amended, provide that the groundwater in the Arapahoe and Laramie-Fox Hills aquifers underlying said land is non-tributary. The term "nontributary" as used herein has the meaning provided at CRS 37-90-103 (10.5) as amended. The saturated thickness of the subject aquifers, the specific yields of the sands of each aquifer, and the amounts in storage, are estimated to be as follows:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Specific Yield</u>	<u>Monument's Share of Amount in Storage</u>
Arapahoe	370 feet	17%	22,736 AF
Laramie-Fox Hills	200 feet	15%	10,870 AF

The Court finds that the saturated sand thicknesses of the respective aquifers can be reasonably estimated from the maps in the Denver Basin Rules, 2 CCR 402-6, and that, subject to the Court's retained jurisdiction as provided in CRS 37-92-305(11) and set forth in Paragraph 33, infra, the estimates contained above, which conform to the State Engineer's Determination of Facts, shall be used for purposes of this decree.

13. The said quantities of water will be considered to be unappropriated under C.R.S. 37-90-137(4) for purposes of this Application. The State Engineer has reported to the Court that his records do not disclose any existing wells or other water rights claiming or diverting groundwater from the said aquifers underlying the said lands.

14. The allowed average annual amount of withdrawal for all of the wells in a specific aquifer shall not exceed one percent of the total amount of water stored in the aquifers at the date of this decree, exclusive of artificial recharge, recoverable from that aquifer beneath the overlying land. However, the allowed annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn from the well or wells does not exceed the product of the number of years since the date or dates of issuance of the well permit or permits or the date or dates of determination or determinations of right to groundwater by the Water Court, whichever comes first, times the allowed average annual amount of withdrawal.

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15. The water rights decreed herein will be used, and the Applicant shall have the right to make a succession of uses pursuant to CRS Section 37-82-106(2), for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife and fire protection. The water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for all other augmentation purposes within the service area of Applicant's water system, which includes the property described in Paragraph 8 hereof. Such water may be conducted into and along any natural stream and taken out again at any point with due regard to the rights of others and due allowance for evaporation and other losses from natural causes as may be determined by the State Engineer. The rights approved and decreed herein include the rights of reuse, successive use and the right of disposition by sale, exchange or otherwise, to extinction, of all such water in accordance with CRS Section 37-82-106(2). However Applicant may not consume more than 98% of the annual quantity of the nontributary groundwater withdrawn from the aquifer(s) underlying its property unless otherwise permitted by the State Engineer. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicant, so long as Applicant can demonstrate to the reasonable satisfaction of the State Engineer prior to issuance of the permit that an amount equal to 2% of such annual withdrawals (by volume) will be relinquished to the stream system, by quantifiable return flows or otherwise.

CONCLUSIONS OF LAW

16. This application was filed with the Water Court pursuant to C.R.S. Section 37-92-302(1)(a).

17. The court concludes as a matter of law that the determination of groundwater rights as set forth in the decretal portion hereof is contemplated and authorized by law, and this Court has exclusive jurisdiction over this proceeding pursuant to C.R.S. Section 37-92-203 and 37-90-137(6).

18. The Court has jurisdiction of the subject matter of this application and over all persons affected hereby. C.R.S. Section 37-92-203(1).

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19. The groundwater rights herein are determined pursuant to C.R.S. Section 37-90-137(4) and shall be subject to administration by the State Engineer pursuant to the terms of this Decree, C.R.S. Section 37-90-137(4), and other applicable law, rules and regulations, as nontributary water rights.

20. The applicants have complied with each of the requirements of C.R.S. Section 37-90-137(4). The issuance of well permits by the Division of Water Resources for the appropriations of nontributary groundwater described herein is justified. Applicant is entitled to a Decree confirming its Arapahoe and Laramie-Fox Hills aquifer appropriations described herein, subject to the provisions of the decretal paragraphs below.

21. The Court concludes the rights to groundwater determined herein are governed by C.R.S. Section 37-92-305(11) and that subsequent showings or findings of reasonable diligence shall not be required.

DECREE

NOW, THEREFORE, IT IS HEREBY THE DECREE OF THE WATER COURT:

22. The application for determination of underground water rights from the Denver Basin aquifers is granted subject to the limitations described herein, to the Applicant, Town of Monument, a Colorado Municipal Corporation, Post Office Box "U", Monument, Colorado 80132.

23. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set out in full.

24. Applicant's appropriations for its wells, as described above, are hereby confirmed at the rates given herein, with an appropriation date of December 16, 1982. Water may be used for the purposes and in the manner set forth in Paragraph 15.

25. Names and Legal Descriptions of Location of Wells
(all in Township 11 South, Range 67 West of the 6th P.M. in El Paso County, Colorado):

- (a) Beaver Creek Well A-1: SW 1/4 of the SE 1/4, Section 27, being 2000 feet from the East line and 1250 feet from the South line of said Section 27.
- (b) Beaver Creek Well A-2: SW 1/4 of the SE 1/4, Section 28, being 2020 feet from the East line and 1200 feet from the South line of said Section 28.

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- (c) Beaver Creek Well A-3: SE 1/4 of the SE 1/4, Section 29, being 300 feet from the East line and 1200 feet from the South line of said Section 29.
- (d) Beaver Creek Well LFH-1: SW 1/4 of the SE 1/4, Section 27, being 2000 feet from the East line and 1200 feet from the South line of said Section 27.
- (e) Beaver Creek Well LFH-2: SW 1/4 of the SE 1/4, Section 28, being 2020 feet from the East line and 1220 feet from the South line of said Section 28.
- (f) Beaver Creek Well LFH-3: SE 1/4 of the SE 1/4, Section 29, being 320 feet from the East line and 1200 feet from the South line of said Section 29.

Wells numbered A-3 and LFH-3 in this case and the wells with the same numbers in Cases 83CW142 and 83CW144 (First of Maryland) in this Court will be within 600 feet of each other if constructed at their proposed locations. It is anticipated that only one of such wells A-3 and only one such Well LFH-3 will be constructed, and will be used jointly by Monument and First Maryland or its successors. If that is not the case, then the second party applying for a well permit shall obtain any necessary approvals to move its well an appropriate distance, or shall follow the procedure set forth at CRS 37-90-137(2) for obtaining a permit without regard to the 600 foot spacing limitation.

26. Depth and Source:

(a) Monument Wells A-1, A-2 and A-3 will draw water entirely from the Arapahoe aquifer, and their depths shall be to full penetration of said aquifer, estimated to lie at the following intervals below the land surface:

<u>Well No.</u>	<u>Depth to Top Feet</u>	<u>Depth to Bottom Feet</u>
A-1	970	1410
A-2	1070	1510
A-3	1110	1550

(b) Monument Wells LFH-1, LFH-2 and LFH-3 will draw water entirely from the Laramie-Fox Hills aquifer, and their

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depths shall be to full penetration of said aquifer, estimated to lie at the following intervals below the land surface:

<u>Well No.</u>	<u>Depth to Top Feet</u>	<u>Depth to Bottom Feet</u>
LFH-1	1600	1930
LFH-2	1600	2000
LFH-3	1680	2030

27. Date of Appropriation: December 16, 1982.

28. Amount of water:

(a) Flow Rates. Monument Wells A-1, A-2 and A-3 will each withdraw water at the rate of 150 gpm (0.333 cfs). Monument Wells LFH-1, LFH-2 and LFH-3 will each withdraw water at the rate of 75 gpm (0.167 cfs).

(b) Volumetric Limitations. The above flow rates are limited by the provision that subject to provisions of Paragraph 14 Monument shall not withdraw more than the following average annual amounts of water from each of the aquifers under the water rights granted herein:

Arapahoe	227.3 acre feet
Laramie-Fox Hills	108.7 acre feet

(c) The pumping rates for each well described above may exceed the nominal pumping rates set forth herein to the extent necessary to withdraw the full allocation of water from the Arapahoe and Laramie-Fox Hills aquifers pursuant to paragraph 14 hereof.

29. In addition to the wells described in Paragraph 25, Applicant may construct such additional wells as are required to recover the entire amount of groundwater in the Arapahoe and Laramie-Fox Hills aquifers underlying the property described in Paragraph 8, provided such additional wells are located within areas determined by the State Engineer's Denver Basin Rules to be nontributary for the respective aquifers. As additional wells are planned, permit applications shall be filed pursuant to CRS 37-90-137(10) and applications may be filed in accordance with law for the designation of these additional wells as alternate points of diversion. Wells A-1, A-2 and A-3, together with any such additional wells in the Arapahoe aquifer, shall comprise a well field as that term is defined in the Statewide Nontributary Groundwater Rules, 2CCR 402-7, and the Applicant may withdraw its total annual amount of withdrawal from the Arapahoe aquifer from any combination of such wells. Also, Wells LFH-1, LFH-2 and

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LFH-3 together with any such additional wells in the Laramie Fox-Hills aquifers, shall comprise a well field as that term is defined in the Statewide Nontributary Groundwater Rules, 2CCR 402-7, and the Applicant may withdraw its total annual amount of withdrawal from the Laramie-Fox Hills from any combination of such wells.

30. Applicant shall submit well permit applications to the State Engineer's Office for any additional or replacement wells. In considering such permit applications, the State Engineer shall be governed by the Findings of Fact, Conclusions of Law, and Decree herein. Any such permitting action may be reviewed by this Court pursuant to C.R.S. Section 37-92-305(6).

31. With respect to any well permits to be issued by the State Engineer's office pursuant to this decree, the following provisions shall apply:

- A. The State Engineer shall consider the rights granted herein as valid and shall consider the water sought by applicants as appropriated until this court orders that such rights are abandoned. The State Engineer is directed to forthwith issue any and all permits for wells decreed herein in accordance with the terms of this decree.
- B. If any permit should expire before the well has been completed, applicants shall apply to the State Engineer for issuance of a new well permit at the time applicants are prepared to complete the well. The State Engineer shall promptly issue a new well permit with restrictions no more burdensome than are found in this decree.
- C. In the event that any of the annual appropriations decreed herein are modified in a proceeding held pursuant to Paragraph 33 hereof, the existing permit for the structure shall be amended to reflect such modified annual appropriation. New permits shall likewise reflect any such modification to the annual appropriation approved herein.

32. In constructing and maintaining these wells, the applicants shall encase the wells with an impervious lining and seal all levels, except the level of the aquifer into which the well is completed, to prevent withdrawal of groundwater from other aquifers, or the mixing of water from different aquifers. Totalizing flow meters shall be installed on each well when it is put to beneficial use. Diversion records shall be maintained by the applicants and submitted to the Colorado Division of Water Resources upon request. After construction, applicants shall attach identification tags to each well specifying the name of the well, the permit number, and the aquifer from which the water is withdrawn.

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33. The water judge shall retain jurisdiction of this matter to provide for the adjustment of the annual amount of withdrawal allowed by each well to conform to actual local aquifer characteristics pursuant to C.R.S. 37-92-305(11) and other applicable law. Applicants shall obtain a geophysical log of each of the subject wells or a geophysical log of the applicable aquifer from another well located within 1320 feet of the decreed location of the subject well, and, within 60 days after completion of a well, or at such earlier time as applicants may elect, if the required geophysical information is available, applicant shall serve upon the parties copies of said geophysical log and well completion report. No later than six months after completion of the last well or at such earlier date as adequate data are available, any party may, by petition, invoke the court's retained jurisdiction under the above caption and case number and request a determination of the amount of water available to that well. The petition shall state the quantity of water which the moving party believes applicant is entitled to withdraw annually, based upon the saturated sand thickness as revealed by the geophysical log(s) and the other parameters determined herein. The State Engineer upon receipt of said petition shall utilize data available to him and make a final Determination of Water Rights Finding within 4 months and submit same to the Water Court. If no protest to such a filing is made within 60 days, the Final Determination of Water Right shall be incorporated into the decree by the Water Court. In the event of a protest, or in the event the State Engineer makes no determination within 4 months, such final determination shall be made by the Water Court after notice and hearing.

34. The nature and extent of the rights determined herein are defined by C.R.S. Section 37-90-137(4). No findings of reasonable diligence are required to maintain the water rights determined herein. C.R.S. Section 37-92-305(11). Pursuant to C.R.S. Section 37-90-137(6), this proceeding is for the determination of the right to use the water described herein for future uses.

35. Any well decreed herein which is drilled within 200 feet of the location decreed herein shall be deemed to have been drilled at the decreed well location and shall not require separate approval by this court of a change in point of diversion.

36. Applicant may not consume more than 98% of the annual quantity of the nontributary groundwater withdrawn from the aquifer(s) underlying its property unless otherwise permitted by the State Engineer. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicant, so long as Applicant can

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demonstrate to the reasonable satisfaction of the State Engineer prior to issuance of the permit that an amount equal to 2% of such annual withdrawals (by volume) will be relinquished to the stream system, by quantifiable return flows or otherwise.

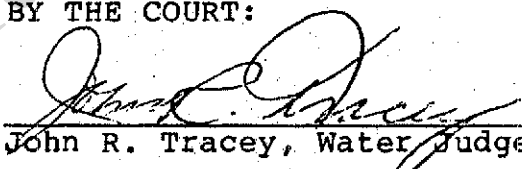
37. Determinations made herein are specific to the subject lands and shall not affect determinations made in other matters.

38. Applicant shall comply with any rules and regulations which have been lawfully promulgated by the State Engineer pursuant to C.R.S. Section 37-90-137, as amended by Senate Bill 5.

39. Applicant shall install and maintain such water measurement devices and recording devices as are deemed essential by the Division Engineer, and the same shall be installed and operated in accordance with instructions from the Division Engineer. In particular, Monument shall install a totalizing flow meter on each well, keep records of diversion and submit same to the Division Engineer annually. Each well shall be identified at the well head or pump house by well permit number, producing formation and name of owner.

DONE this 13 day of Aug., 1987.

BY THE COURT:



John R. Tracey, Water Judge

Monument
83CW9
Page 12

APPROVED AS TO FORM AND SUBSTANCE:

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Monument
83CW9
Page 12A

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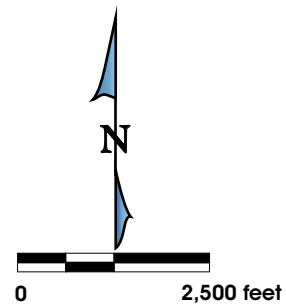
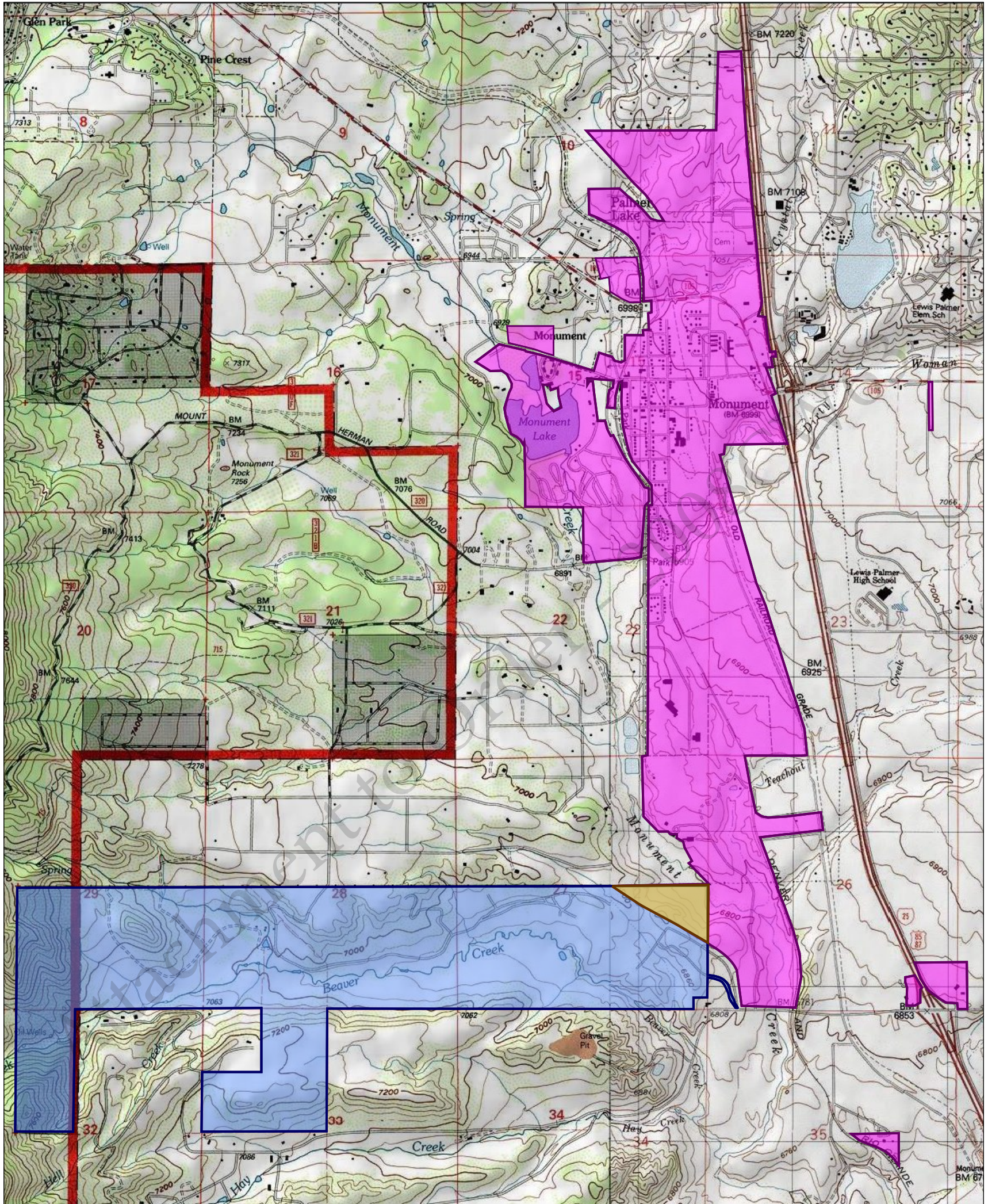
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FREDERICK A. FENDEL, III #10476

DISTRICT COURT
WATER DIVISION NO. 2
STATE OF COLORADO
Certified to be a full, true
and correct copy of original
on file. Date: AUG 13 1990
FRISCILLA S. LUCERO, CLERK
By: Francisco P. Pina
Deputy Clerk

R67W

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LEGEND

- TOWN OF MONUMENT (08CW45)
- BEAVER CREEK RANCH (08CW63)
- OVERLAP AREA

TOWN OF MONUMENT	
OVERLAP AREA BETWEEN 08CW63 PARCEL AND 08CW45 WELL FIELD	
File Name: OverlapArea.cdr	Date: 07/14/2014
Project No.: 1310-14	Drawn By: VAL
Fig. No. B-1	

FILED Document - District Court
 2008CW63

CO Pueblo County District Court 10th JD
 Filing Date: Aug 30 2008 1:07PM MDT

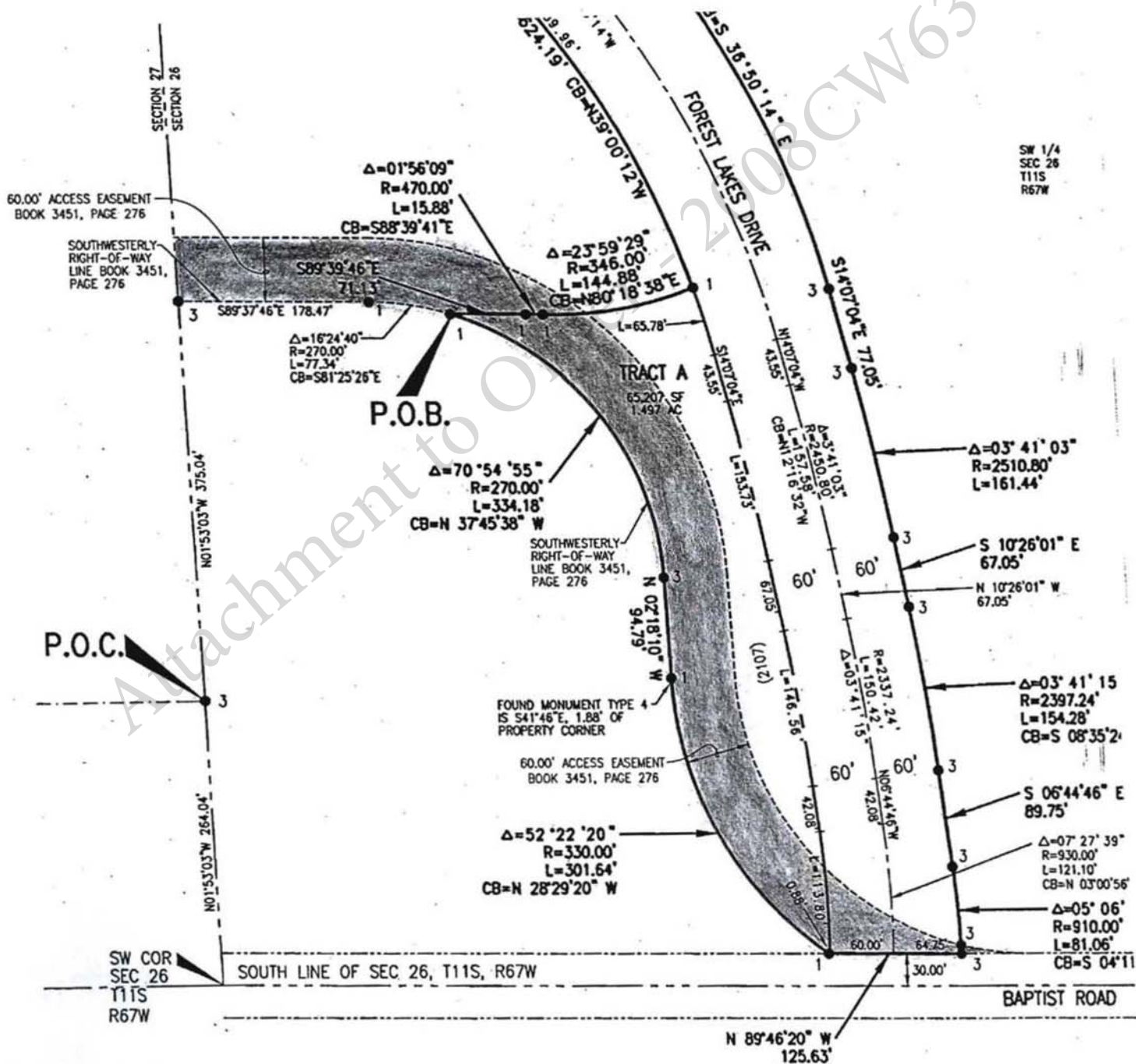
Filing ID: 21303879

Review Clerk: Mardell Didomenico

MAP OF METES AND BOUNDS TRACT IN SECTION 26

Tract is shaded area only.

Base map is Sheet 3 of 7 of the Plat of Forest Lakes
 Filing No. 1 dated 5/28/04 as recorded Sep.1, 2006 at
 Reception No. 206712407, records of El Paso County.



SW 1/4
 SEC 26
 T11S
 R67W



Mar 26 2010
12:06PM

LEGAL DESCRIPTION OF METES AND BOUNDS TRACT
IN SECTION 26

FILED Document - District Court
2008CW63
CO Pueblo County District Court 10th JD
Filing Date: Aug 30 2008 1:07PM MDT
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Review Clerk: Mardell Didomenico

that tract
of land in the Southwest quarter of the Southwest quarter
(SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 26, Township 11 South, Range 67 West
of the 6th P.M., El Paso County, Colorado, described as
follows: Beginning at a point on a line that is 30.0 feet
North of and parallel to the South line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$,
said point being 760.10 feet East of the West line of said
SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence angle right 43 degrees 47 minutes 50
seconds Northwesterly from said line to the tangent of a
curve to the right having a central angle of 87 degrees
35 minutes 40 seconds a radius of 270 feet, run thence along
said curve 412.70 feet; thence N 1 degree 33 minutes 30
seconds W on a tangent to the last mentioned curve 94.66
feet; thence along a curve to the left having a central
angle of 87 degrees 35 minutes 40 seconds a radius of 330
feet and an arc length of 504.41 feet; thence N 89 degrees
09 minutes 10 seconds W on the tangent to the last mentioned
curve 183.58 feet to intersect the West line of said SW $\frac{1}{4}$
SW $\frac{1}{4}$; thence S 1 degree 33 minutes 30 seconds E on said West
line 60.05 feet; thence S 89 degrees 09 minutes 10 seconds
E 181.06 feet; thence along a curve to the right having a
central angle of 87 degrees 35 minutes 40 seconds a radius of
270 feet and an arc length of 412.65 feet; thence S 1 degree
33 minutes 30 seconds E on a tangent to the last mentioned
curve 94.66 feet; thence along a curve to the left having a
central angle of 50 degrees 29 minutes 52 seconds a radius
of 330 feet and an arc length of 290.79 feet to intersect
said parallel line; thence S 89 degrees 09 minutes 10 seconds
E on said parallel line 189.74 feet to the point of Beginning,
all in El Paso County, Colorado.

EXHIBIT 2

TO

FOREST LAKE PRELIMINARY PLAN/PUD COMMENT LETTER

**Special Warranty Deed between Charles A. Helenberg
and the Town of Monument; Dated and Recorded on March 7, 1984**

Project Name: Forest Lakes Phase II PUD

Project Number: PUDSP 181

ARDIS W. SCHM
El Paso County Clerk & Recorder

Recorded at _____ o'clock _____ M., _____
Reception No. _____ Recorder _____

SPECIAL WARRANTY DEED

THIS DEED, Made this _____ day of _____, Recorder's Stamp
1984 between CHARLES A. HELENBERG of the
County of El Paso, State of Colorado,
hereinafter called "Helenberg", and the
Town of Monument, a statutory town of
Colorado, hereinafter called "Monument":

WITNESSETH, That Helenberg, for and in consideration of the
payment to him by Monument of the sum of \$62,500.00 and other good
and valuable considerations, the receipt whereof is hereby con-
fessed and acknowledged, has granted, bargained, sold and conveyed,
and by these presents does grant, bargain, sell, convey and con-
firm unto Monument, its successors and assigns forever, all the
following described property, situate, lying and being in the
County of El Paso, State of Colorado, to wit:

- (1) All of the water rights decreed to the following ditches,
which derive their supply from Beaver Creek in El Paso
County, Colorado in former Water District No. 10:

<u>Ditch Name</u>	<u>Cu.Ft./ SEC</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>
Welty	1.300	6-01-1867	2-15-1882
Schideler a.k.a. Shidler and Shideler	2.310	3-21-1872	2-15-1882
South Side	3.500	5-01-1884	6-02-1919
Waldron a.k.a. Waldron's Domestic	2.340	6-01-1884	6-02-1919
Keno	6.760	5-10-1889	6-02-1919

but not including any interest in land.

- (2) All rights, including the rights of an overlying landowner,
to an undivided one-third of the water recoverable from non-
tributary formations under the following described lands in
T11S, R67W of the 6th P.M. all in El Paso County, Colorado
(a) the south half of Section 27, except those parts thereof
conveyed by instruments of record in Book 50 at page 23 and
24 respectively of said El Paso County records; (b) the
South half of Section 28; (c) the Southeast quarter and the
East half of the Southwest quarter of Section 29; (d) the
East half of the Northwest quarter of Section 32; (e) the
East half of the Northwest quarter and the Southwest quarter
of the Northwest quarter of Section 33; (f) and that tract
of land in the Southwest quarter of the Southwest quarter
(SW ¼ SW ¼) of Section 26, Township 11 South, Range 67 West

5-11-1984
MAR 7 1984
FEE \$ 1.00

of the 6th P.M., El Paso County, Colorado, described as follows: Beginning at a point on a line that is 30.0 feet North of and parallel to the South line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$, said point being 760.10 feet East of the West line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence angle right 43 degrees 47 minutes 50 seconds Northwesterly from said line to the tangent of a curve to the right having a central angle of 87 degrees 35 minutes 40 seconds a radius of 270 feet, run thence along said curve 412.70 feet; thence N 1 degree 33 minutes 30 seconds W on a tangent to the last mentioned curve 94.66 feet; thence along a curve to the left having a central angle of 87 degrees 35 minutes 40 seconds a radius of 330 feet and an arc length of 504.41 feet; thence N 89 degrees 09 minutes 10 seconds W on the tangent to the last mentioned curve 183.58 feet to intersect the West line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence S 1 degree 33 minutes 30 seconds E on said West line 60.05 feet; thence S 89 degrees 09 minutes 10 seconds E 181.06 feet; thence along a curve to the right having a central angle of 87 degrees 35 minutes 40 seconds a radius of 270 feet and an arc length of 412.65 feet; thence S 1 degree 33 minutes 30 seconds E on a tangent to the last mentioned curve 94.66 feet; thence along a curve to the left having a central angle of 50 degrees 29 minutes 52 seconds a radius of 330 feet and an arc length of 290.79 feet to intersect said parallel line; thence S 89 degrees 09 minutes 10 seconds E on said parallel line 189.74 feet to the point of Beginning, all in El Paso County, Colorado.

- (3) easement of way in, through and across the above-described land insofar as reasonably necessary for Monument to recover said one-third of nontributary water as provided in that certain Agreement between the same parties as the Grantor and Grantee in this Deed, which Agreement has been heretofore recorded in the Public Records of El Paso County on January 27, 1984 in Book 3829 at pages 335 through 364.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of Helenberg, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances; TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto Monument, its successors and assigns forever.

And Helenberg, for himself, his heirs, and personal representatives or executors and administrators, does covenant, grant, bargain and agree to and with Monument, its successors and assigns, the above bargained premises in the quiet and peaceable possession of said Monument, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, by, through or under Helenberg to WARRANT AND FOREVER DEFEND.

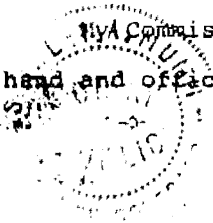
IN WITNESS WHEREOF, Helenberg has hereunto set his hand and seal this 7th day of March, 1984 by and through K. E. Stout, Attorney in Fact and Agent.

CHARLES A. HELENBERG
By *Charles A. Helenberg*
~~K. E. Stout,
Attorney in Fact and Agent.~~ *K.E.S.*

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 7th day of March, 1984.

My Commission expires July 27, 1986. Witness my hand and official seal.



Shirley A. Mumm
Notary Public
166 Second Street
Monument, CO 80132
Address