

DISTRICT COURT, STATE OF COLORADO
WATER DIVISION NO. 7

Case No. 83CW19

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE
FOR CHANGE OF WATER RIGHTS AND APPROVAL OF PLAN FOR AUGMENTATION

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF
RANCHO DURANGO, LTD.

IN LA PLATA COUNTY

THIS MATTER, having come on for consideration on this 6th day of
September, 1983, upon the application of Rancho Durango, Ltd. for
the change of water rights and approval of plan for augmentation;
and the court being fully advised in the premises, DOES FIND:

1. Parties to this action:

a. The applicant is: Rancho Durango, Ltd.
62 Terrace Place
Durango, Colorado 81301

having filed its application with this Court on
February 28, 1983.

b. The objectors are: The City of Durango
c/o Robert F. Ledger,
City Manager
P.O. Box 2428 -
Durango, Colorado 81301

Robert Lindner
c/o Howard Elliot
201 County Road 306
Durango, Colorado 81301

Niles H. Thim and Minnie J. T. ...
c/o Yates and Crane
P.O. Box 2433
Durango, CO 81301

Ray Self
3232 County Road 234
Durango, CO 81301

having filed their statements of opposition with this
Court on in accordance with 1973 C.R.S. § 37-92-302.

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c. All other persons affected by this action, whether appearing or not, are parties to and bound by this Decree, all notices required by law having been filed and this Court having jurisdiction over the subject matter of this proceeding.

2. Scope of this decree:

This decree is limited in scope to the following:

- a. The determination of applicant's interest in the Harris-Patterson Ditch, the McCluer and Murray Ditch, and the Ogden-Shirmer Ditch water rights including the diversion rates, the diversion seasons, the total annual consumptive use, and the consumptive use rate which applicant is entitled to transfer for each of the above water rights.
- b. The transfer of applicant's water rights in the Harris-Patterson and McCluer and Murray Ditches to a new point of diversion at the Edgemont Ranch Pumping Station; the change in place of use of those water rights to applicant's subdivision known as the Edgemont Ranch; and the change in nature of use to residential and commercial.
- c. The transfer of applicant's Ogden-Shirmer Ditch water right to a new point of diversion at the Spring Valley Lake Pipeline, the change in place of use to the Spring Valley Lake Reservoir, and the change in nature of use to storage and augmentation.
- d. The approval of applicant's plan for augmentation.
- e. The determination of conditions on the above change of water rights which are required to prevent injury to other vested water rights.

3. Determination of Applicant's water rights:

Applicant herein claims interests in the Harris-Patterson Ditch (priority No. F-9), the McCluer and Murray Ditch (priority No. F-10), and the Ogden-Shirmer Ditch (priority Nos. F-30 and F-40). This Court now makes the following findings on the extent of the use of those water rights to

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which applicant is entitled, as based on the decreed and historic uses:

a. Harris-Patterson Ditch (priority No. F-9):

The Harris-Patterson Ditch, Florida River Priority No. F-9, was adjudicated on November 8, 1923 in the Water District 30 General Adjudication, Case No. 1751 in the District Court of La Plata County, to be as follows:

The appropriation date was June 20, 1880.

The diversion rate was 2.5 c.f.s.

The area irrigated was 150 acres.

Applicant herein has applied for the transfer of 0.25 c.f.s. of the above water right. The average annual historic use of this 0.25 c.f.s. has been as follows:

The first day of the diversion season has been May 15.

The last day of diversion season has been October 14.

The length of diversion season has been 150 days.

The land historically irrigated is described as follows:

All of Tract C and portions of Tracts A and B of CATEGORY 1 - PROJECT NO. 81-227, La Plata County, Colorado as more particularly described as follows:

Beginning at a point on the West line of said Tract A whence the NW corner of the SE 1/4 NE 1/4 Section 31, T35N, R8W, N.M.P.M., La Plata County, Colorado, bears N 23°56'15" W, 280.58 feet; Thence S 8°24'00" E, 355.19 feet;
Thence S13°49'00" E, 470.23 feet;
Thence S 42°13'00" E, 392.07 feet;
Thence N 35°59'00" E, 35.63 feet;
Thence N 63°24'00" E, 757.60 feet;
Thence N 18°56'35" W, 50.00 feet;
Thence S 82°28'13" W, 300.00 feet;

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Thence N 22°00'00" W, 150.00 feet;
Thence N 14°20'00" W, 88.45 feet;
Thence N 59°00'00" W, 130.00 feet;
Thence S 83°30'00" W, 186.03 feet;
Thence N 44°07'05" W, 629.15 feet
to the point of beginning and
containing 10.48 acres more or
less.

Because this transfer will result in the removal of the above described land from irrigation under the Harris-Patterson Ditch (priority No. F-9) water right and a corresponding reduction of consumptive use of water, applicant may make an equivalent consumptive use of this water right with its new point of diversion, place of use, and type of use as described below. Although the above described land contains 10.48 acres, 5.48 acres thereof have historically been irrigated by subirrigation and the consumptive use thereon will not cease as a result of this transfer. Therefore applicant herein may take credit for the consumptive use of only 5.0 irrigated acres of the above described 10.48 acres.

The consumptive use on the above described 5.0 acres has been 1.49 acre feet per acre per year, or 7.45 acre feet per year total.

Because of the historic reliance of other water users on the return flows from the Harris-Patterson Ditch and because this transfer is to a point where the physical supply may be less than was available at the original point of diversion, the maximum rate of diversion must be reduced from 0.25 c.f.s. to 0.19 c.f.s. in order to prevent injury to other water rights.

It is therefore the finding of this Court that the extent of use which applicant may make after transfer of this water right is limited to (1) a diversion rate of 0.19 c.f.s.; (2) a diversion season beginning on May 15 and ending on October 14; (3) a total annual consumptive use of 7.45 acre feet; and (4) a consumptive use rate of 0.025 c.f.s.

- b. McCluer and Murray Ditch (priority No. F-10):

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The McCluer and Murray Ditch, Florida River Priority No. F-10, was adjudicated on November 8, 1923 in the Water District 30 General Adjudication, Case No. 1751 in the District Court of La Plata County, to be as follows:

The appropriation date was May 15, 1881.

The diversion rate was 2.33 c.f.s..

The area irrigated was 140 acres.

Applicant herein has applied for the transfer of ~~0.33~~ ^{0.30} c.f.s. of the above water right. The average annual historic use of this 0.33 c.f.s. has been as follows:

The first day of the diversion season has been May 1.

The last day of diversion season has been September 27.

The length of diversion season has been 150 days.

The lands historically irrigated are described as follows:

~~8.2~~ ^{8.2} The south ~~9.0~~ acres of that part of the S 1/2 of the S 1/2 of Section 9, T34N, R8W, N.M.P.M., La Plata County, Colorado as bounded by the McCLUER-MURRAY DITCH on the west and Florida River on the east. (This land is referred to hereinafter as the "Green" land.) and

~~9.0~~ ^{9.0} A tract of land in Section 16, T34N, R8W, N.M.P.M., La Plata County, Colorado, containing ~~9.9~~ acres (958 feet east-west by 450 feet north-south, more or less), bounded on the west by the McCluer and Murray Ditch, and on the south by the south line of said Section 16. (This land is referred to hereinafter as the "Glover" land.)

Because this transfer will result in the removal of the above described land from irrigation under the McCluer and Murray Ditch (priority No. F-10) water right and a corresponding reduction of consumptive use of water, applicant may make an equivalent consumptive use of this water right with its new

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point of diversion, place of use, and type of use as described below.

This court takes notice of the fact that the "Green" land described above is within the 50 acre parcel of land previously removed from irrigation under the McCluer and Murray Ditch (priority No. F-10) water right in Case Nos. W-1286-74 and W-1287-74. This 50 acre parcel is described as being under the McCluer and Murray Ditch and located to the west of the Florida River in the SW $\frac{1}{4}$, Section 9, T34N, R8W, of the NMPM. This court now finds that there will be a sufficient reduction in consumptive use on this 50 acre parcel so as to allow the transfer decreed herein along with the transfers in Case Nos. W-1286-74 and W-1287-74 without injury to other water rights. No determination is made as to whether further credit for reduction in consumptive use can be had after the transfer decreed herein for the above described 50 acre parcel.

The lands described above as the Green land and the Glover land contain a total of ~~18.9~~ acres.

The consumptive use on the above described ~~18.9~~ ^{17.2} acres has been 1.49 acre feet per acre per year, or ~~28.16~~ acre feet per year total.
^{25.63}

Because of the historic reliance of other water users on the return flows from the McCluer and Murray Ditch and because this transfer is to a point where the physical supply may be less than was available at the original point of diversion, the maximum rate of diversion must be reduced from ~~0.33~~ ^{0.20} c.f.s. to ~~0.25~~ ^{0.23} c.f.s. in order to prevent injury to other water rights.

It is therefore the finding of this Court that the extent of use which applicant may make after transfer of this water right is limited to (1) a diversion rate of ~~0.25~~ ^{0.23} c.f.s.; (2) a diversion season beginning on May 1 and ending on September 27; (3) a total annual consumptive use of ~~28.16~~ ^{25.63} acre feet; and (4) a consumptive use rate of 0.095 c.f.s.

c. Ogden-Shirmer Ditch:

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The Ogden Ditch, Florida River Priority No. F-30, and the Shirmer Ditch, Florida River Priority No. F-40 were adjudicated on November 8, 1923 in the Water District 30 General Adjudication, Case No. 1751 in the District Court of La Plata County. The Ogden-Shirmer Ditch was consolidated from the Ogden Ditch and the Shirmer Ditch on February 26, 1976 by decrees of the District Court of Water Division No. 7 in Case Nos. W-1381-75 and W-1382-75. The decreed water rights of those ditches are as follows:

The appropriation date of the Ogden Ditch was April 15, 1894.

The appropriation date of the Shirmer Ditch was April 25, 1894.

The diversion rate of the Ogden Ditch was 0.5 cubic feet per second.

The diversion rate of the Shirmer Ditch was 0.5 cubic feet per second.

The area irrigated under the Ogden Ditch was 20 acres.

The area irrigated under the Shirmer Ditch was 20 acres.

Applicant herein has applied for the transfer of all of the 1.0 cubic feet per second of the above water rights. The average annual historic use of these water rights has been as follows:

The first day of the diversion season has been May 16.

The last day of diversion season has been July 4.

The length of diversion season has been 50 days.

The land historically irrigated is described as follows:

That part of the S 1/2 of Section 8 and the NW 1/4 NW 1/4 of Section 17 and the NE 1/4 NE 1/4 of Section 18 all in T35N, R8W, N.M.P.M., La Plata County, Colorado, as bounded by the

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former SHIRMER DITCH to the southeast and the Florida River to the northwest and containing 42.7 acres more or less.

Because this transfer will result in the removal of the above described land from irrigation under the Ogden-Shirmer Ditch water right and a corresponding reduction of consumptive use of water, applicant may make an equivalent consumptive use of this water right with its new point of diversion, place of use, and type of use as described below. Although the above described land contains 42.7 acres, 10.7 acres thereof have historically been irrigated by subirrigation and the consumptive use thereon will not cease as a result of this transfer. Therefore applicant herein may take credit for the consumptive use of only 32.0 irrigated acres of the above described 42.7 acres.

The consumptive use on the above described 32.0 acres has been 1.0 acre feet per acre per year, or 32.0 acre feet per year total.

It is therefore the finding of this Court that the extent of use which applicant may make after transfer of this water right is limited to (1) a diversion season beginning on May 16 and ending on July 4; (2) a total annual consumptive use of 32.0 acre feet; and (3) a diversion rate of 1.0 c.f.s.

4. Change Of Water Rights Owned By Applicant:

Applicant owns property in Section 12 of T35N, R9W; and Sections 7, 8, 17, 18 of T35N, R8W of the NMPM; in the County of La Plata, State of Colorado. Applicant plans to develop this property into the Edgemont Subdivision which will be used for residential and commercial purposes. This court now makes the following findings concerning the use of the water rights which are the subject hereof for the Edgemont Subdivision:

a. New points of diversion:

The new point of diversion for applicant's interest in the Harris-Patterson and McCluer and Murray Ditches will be on the Florida River at a facility referred to herein as the "Edgemont Ranch Pumping Station". The location of this point of diversion is:

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at a point on the Florida River whence the N $\frac{1}{2}$ corner of Section 18, T35N, R8W, NMPM (an original stone) bears N 83°34'31" W, a distance of 2414.43 feet.

It is noted that although this location is the same as for the point of diversion for the Spring Valley Lake Pipeline, which is the subject of a separate decree in this same action, these are independent water rights with separate metering requirements.

The new point of diversion at the Edgemont Ranch Pumping Station is upstream from the old points of diversion. There are water rights which divert from the Florida River above the old points of diversion and below the new point of diversion. The physical supply of the water rights being transferred herein has historically been provided for in part by (1) return flows from upstream senior water rights and (2) the natural gain of the river between the old and new points of diversion. The entire decreed direct flow amount of the water rights being transferred herein cannot be diverted at the new point of diversion without injury to other water rights. Therefore a portion of the decreed diversion rate will not be diverted at the new point of diversion but will be left in the stream and delivered past the Florida River gauging station immediately downstream from the headgate of the Florida Farmers Ditch. The portions of the decreed diversion rates so required to be left in the stream are found to be 0.06 c.f.s. out of the 0.25 c.f.s. of the Harris-Patterson Ditch (priority No. F-9) and ~~0.08~~ 0.07 c.f.s. out of the ~~0.33~~ c.f.s. of the McCluer and Murray Ditch (priority No. F-10). $\rightarrow 0.30$

The new point of diversion for the Ogden-Shirmer Ditch water right will be on the Florida River at the Spring Valley Lake Pipeline. The location of this point of diversion is:

at a point on the Florida River whence the N $\frac{1}{2}$ corner of Section 18, T35N, R8W, NMPM (an original stone) bears N 83°34'31" W, a distance of 2414.43 feet.

It is noted that although this location is the same as for the Edgemont Ranch Pumping Station, described above, these are independent water rights with separate metering requirements.

b. New places of use:

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The new place of use for the Harris-Patterson and McCluer and Murray water rights will be within the boundaries of the Edgemont Ranch Subdivision more fully described in the application in this action.

The new place of use for the Ogden-Shirmer Ditch water right will be the Spring Valley Lake Reservoir.

c. New type of use:

The new use of water under the Harris-Patterson and McCluer and Murray Ditch water rights will be residential and commercial by way of a central water supply and wastewater treatment system. Individual wells and sewage disposal systems will not be used. All water will be supplied through the Edgemont Ranch Pumping Station and Water Treatment Plant. All wastewater will be collected in a sewage network and carried to the Edgemont Ranch Wastewater Treatment Plant which will be located at a point whence the E $\frac{1}{2}$ corner of Section 18, T35N, R8W, NMF $\frac{1}{2}$ M, bears N 75°36'33" E, 2885.54 feet. The treated wastewater will be discharged from this wastewater treatment plant to the Florida River. The sewage network will be designed and constructed so as not to allow infiltration of ground water and so that surface runoff is not discharged into this system.

If necessary for administration, the Division Engineer may use the following presumptions for the determination of the consumptive use of water in the Edgemont Ranch Subdivision:

- (1) The residential consumptive use will be five percent of the total in-house use. The total residential in-house use will be 90 gallons per day per capita and the average occupancy will be 3.0 people per unit.
- (2) The commercial in-house consumptive use will be five percent of the total in-house use. The total commercial in-house use will be 90 gallons per day per capita and the average occupancy will be 3.0 people per equivalent dwelling unit. The number of equivalent dwelling units for commercial areas will be four equivalent dwelling units per gross acre.

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- (3) Consumptive use for lawn and garden irrigation will be 1.61 acre feet per acre per year. This figure takes into account effective precipitation.
- (4) The consumptive use for greenhouse areas will be 2.0 acre feet per acre per year.
- (5) The consumptive use for any open water areas such as swimming pools, ponds or sewage lagoons will be 4.0 acre feet per acre per year.

These consumptive use figures are presumptive and may be modified by adequate showing in this Court by the Division Engineer or by any party to this action.

The new use of water under the Ogden-Shirmer Ditch water right will be storage in and augmentation from the Spring Valley Lake Reservoir. Water will be pumped to the reservoir from the Florida River through the Spring Valley Lake Pipeline. The pumping rate will be not greater than the decreed diversion rate of 1.0 c.f.s. Pumping under this water right will be limited to the historic diversion season of May 16 through July 4. The total annual volume of water pumped under this water right will be limited to the cessation of historic annual consumptive use which is 32.0 acre feet.

- d. It is found that the change of water rights described herein will not cause injury to other vested water rights if these water rights are exercised in accordance with the terms set forth herein.

5. Plan for Augmentation:

Under this plan for augmentation, applicant may divert water at the Edgemont Ranch Pumping Station in amounts which exceed the diversion rates, diversion seasons, total annual consumptive use, and consumptive use rates allowed under the water rights transferred thereto. These excesses will be compensated by releases to the river of like amounts from the Spring Valley Lake Reservoir as required by the Division Engineer. This court now finds that injury to other vested water rights will not occur provided such releases are made as described above.

Evidence has been submitted that the water rights transferred in this decree together with the plan for augmentation approved in this decree will provide an adequate water supply

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for applicant's planned phased development described as follows:

Phase 1 will consist of equivalent dwelling units 1 thru 460.

Phase 2 will consist of equivalent dwelling units 461 thru ~~1133~~ 1053

Phase 3 will consist of equivalent dwelling units ~~1134~~ 1054 thru ~~2384~~ 2304

It is anticipated that Phases 1 and 2 will use the McCluer and Murray and the Harris-Patterson water rights transferred herein; and that Phase 3 will rely on the plan for augmentation approved herein. The adequacy of this water supply, however, will depend on the subdivision's actual consumptive use of water as determined by the Division Engineer, and the legal and physical availability of water under these water rights.

It is found that the plan for augmentation described herein will not cause injury to other vested water rights if this plan is exercised in accordance with the terms set forth herein.

6. Conditions Required to Prevent Injury:

This Court now finds that the following conditions are required to prevent injury to other vested water rights and as such are conditions precedent to diversion or use of water under this decree:

a. Responsible entity:

Applicant herein will incorporate, under the Special District Act, 1973 C.R.S. §32-1-101 et seq., a district to be known as the Edgemont Ranch Metropolitan District and referred to herein as the "District". The District will have all the powers of a water and sanitation district as set forth in 1973 C.R.S. § 32-1-1006. Applicant will transfer to the District ownership of all water rights which are the subject of this decree and ownership of the water system including all diversion and storage structures. The District will be responsible for the operation of the water system and will be bound by the terms and conditions of this decree.

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b. Metering requirements:

The District will install and thereafter will maintain in its water system, metering devices of a type acceptable to the Division Engineer of Water Division No. 7. The minimum required metering devices include (1) totalizing and recording flow meters at the Edgemont Ranch Pumping Station which will measure the amounts and rates of water diverted from the Florida River to the Edgemont Ranch water system (this metering being independent of the metering required for the Spring Valley Lake Pipeline); (2) a totalizing and recording flow meter at the effluent discharge point of the Edgemont Ranch Wastewater Treatment Plant which will measure the amounts and rates of return flows to the Florida River; and (3) a totalizing and recording flow meter at the Spring Valley lake Pipeline which will measure the amounts and rates of water diverted from the Florida River to the Spring Valley Lake Reservoir. Additional metering devices may be required by the Division Engineer as per the duties and powers enumerated in the applicable statutes.

c. Reporting requirements:

The District will record the flow rate and volume measurements of the above metering devices on a regular basis as required by the Division Engineer. The District will allow the Division Engineer access to inspect and record the meters, and will provide copies of the records of the above required meter readings at reasonable times. The District will submit to the Division Engineer statements showing the above described recorded measurements on a regular basis as required by the Division Engineer.

d. Administration:

Diversion and use of water under Harris-Patterson Ditch and McCluer and Murray Ditch water rights transferred herein will be administered by the Division Engineer so that:

0.23

- (1) The diversion rates do not exceed (a) 0.19 c.f.s. under the Harris-Patterson (Priority No. F-9) water right; (b) ~~0.25~~ c.f.s. under the McCluer and Murray (Priority No. F-10) water right; and (c) 1.0 c.f.s. under the Ogden-Shirmer water right.

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- (2) The remaining 0.06 c.f.s. of the Harris-Patterson (Priority No. F-9) water right; the remaining ~~0.08~~ 0.07 c.f.s. of the McCluer and Murray (Priority No. F-10) water right; and the return flows from the Edgemont Ranch Wastewater Treatment Plant are delivered past the Florida River Gauging Station. The required return flows are determined as the diversion rate less the consumptive use rate. (The Florida River Gauging Station referred to herein is the station which is located immediately downstream from the headgate of the Florida Farmers Ditch.)
- (3) The diversions under the Harris-Patterson (Priority No. F-9) water right do not occur except when in priority and during the historic diversion season which is May 15 through October 14. The diversions under the McCluer and Murray (Priority No. F-10) water right do not occur except when in priority and during the historic diversion season which is May 1 through September 27. The diversions under the Ogden-Shirmer water right do not occur except when in priority and during the historic diversion season which is May 16 through July 4.
- (4) The annual consumptive use does not exceed (a) 7.45 acre feet under the Harris-Patterson (Priority No. F-9) water right; (b) ~~28.16~~ 25.63 acre feet under the McCluer and Murray Ditch (Priority No. F-10) water right; and (c) 32.0 acre feet under the Ogden-Shirmer water right.
- ~~(5) The consumptive use rate does not exceed (a) 0.025 c.f.s. under the Harris-Patterson (Priority No. F-9) water right; and (b) 0.095 c.f.s. under the McCluer and Murray Ditch (Priority No. F-10) water right.~~

It is contemplated that diversions or consumptive uses in excess of the amounts listed above or at times other than the diversion season described above will be either Edgemont Ranch Pumping Station or Spring Valley Lake Pipeline diversions under their own priorities or will be augmented by releases from the Spring Valley Lake Reservoir under the plan for augmentation decreed herein.

For the purposes of the administration described above, diversion rates and total annual diversions will be determined from the measurements at the Edgemont Ranch Pumping Station or Spring Valley Lake Pipeline as

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applicable. Except as stated in the paragraph below, the annual consumptive use under the McCluer and Murray Ditch water right and the Harris-Patterson Ditch water right will be determined as the difference between the volume diverted from the Florida River at the Edgemont Ranch Pumping Station and the volume of return flows discharged to the Florida River by the Edgemont Ranch Wastewater Treatment Plant. Except as stated in the paragraph below, the consumptive use rate under the McCluer and Murray Ditch water right and the Harris-Patterson on Ditch water right will be determined as the difference between the flow rate diverted from the Florida River at the Edgemont Ranch Pumping Station and the return flow rate discharged to the Florida River by the Edgemont Ranch Wastewater Treatment Plant. The consumptive use rate under the Ogden-Shirmer Ditch water right will be determined as the diversion rate at the Spring Valley Lake Pipeline.

It is recognized that inaccuracies in the return flow measurements can occur due to infiltration of ground water or surface runoff from storm water into the sewer lines and that return flow credit cannot be had for the amounts of return flows resulting from such infiltration. It is also recognized that inaccuracies in the return flow measurements can occur due to leaks from the sewer lines or because of return flows from lawn and garden irrigation which may reach the river and not be measured by the metering device at the wastewater treatment plant. The presumption will be that the consumptive use is the difference between the measured diversion and the measured return flow; however, the return flows may be determined by the Division Engineer using accepted engineering practices which take into account the presumptive unit consumptive uses determined in the Findings above, if the Division Engineer determines that the above described inaccuracies are occurring.

e. Recording:

The terms of this decree are binding on all users of water under this decree. Therefore this decree shall be recorded by applicant with the La Plata County Clerk and Recorder in such a way as to give notice to any subsequent purchasers of land within the Edgemont Ranch Metropolitan District.

f. Retained Jurisdiction:

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Pursuant to 1973 C.R.S. § 37-92-304(6), this court will retain jurisdiction over matters listed in the decretal portion hereof for a period of three years. This period may be extended by parties hereto in accordance with 1973 C.R.S. § 37-92-304(6).

CONCLUSIONS OF LAW

1. The changes of water rights described herein are contemplated by law.
2. The Division Engineer is lawfully required to administer the storage, diversion and use of the water rights which are the subject of this Decree according to the terms and conditions set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Applicant's water right in the Harris-Patterson Ditch (Florida River Priority No. F-9) is hereby changed (1) to the new point of diversion at the Edgemont Ranch Pumping Station which is located at a point on the Florida River whence the N $\frac{1}{2}$ corner of Section 18, T35N, R8W, NMPM (an original stone) bears N 83°34'31" W, a distance of 2414.43 feet; (2) to the new place of use within the Edgemont Ranch Metropolitan District as described more fully in part 4. of the Findings herein; and (3) to the new type of use of residential and commercial. The use which can now be made of this water right without injury to other water rights is hereby determined to be limited to (1) a diversion rate of 0.19 c.f.s.; (2) a diversion season beginning on May 15 and ending on October 14; (3) a total annual consumptive use of 7.45 acre feet; and (4) a consumptive use rate of 0.025 c.f.s.
2. Applicant's water right in the McCluer and Murray Ditch (Florida River Priority No. F-10) is hereby changed (1) to the new point of diversion at the Edgemont Ranch Pumping Station which is located at a point on the Florida River whence the N $\frac{1}{2}$ corner of Section 18, T35N, R8W, NMPM (an original stone) bears N 83°34'31" W, a distance of 2414.43 feet; (2) to the new place of use within the Edgemont Ranch Metropolitan District as described more fully in part 4. of the Findings herein; and (3) to the new type of use of residential and commercial. The use which can now be made of this water right without injury to other water rights is hereby determined to be limited to (1) a diversion rate of ~~0.25~~ c.f.s.; (2) a

0.23

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Total for H-P +
M-M = 32.08

diversion season beginning on May 1 and ending on September 27; (3) a total annual consumptive use of ~~28.16~~ acre feet; and (4) a consumptive use rate of 0.095 c.f.s. **25.63**

3. Applicant's water right in the Ogden-Shirmer Ditch is hereby changed (1) to the new point of diversion at the Spring Valley Lake Pipeline which is located at a point on the Florida River whence the N $\frac{1}{4}$ corner of Section 18, T35N, R8W, NMPM (an original stone) bears N 83°34'31" W, a distance of 2414.43 feet; (2) to the new place of use in the Spring Valley Lake Reservoir; and (3) to the new type of use of storage for subsequent releases under applicants plan for augmentation. The use which can now be made of this water right without injury to other water rights is hereby determined to be limited to (1) a diversion rate of 1.0 c.f.s.; (2) a diversion season beginning on May 16 and ending on July 4; and (3) a total annual consumptive use of 32.0 acre feet.
4. The portions of the decreed diversion rates which shall not be diverted at the new point of diversion [those being equal to 0.06 c.f.s. for the Harris-Patterson Ditch (Florida River Priority No. F-9) and ~~0.06~~ c.f.s. for the McCluer and Murray Ditch (Florida River Priority No. F-10)] and all required return flows from the Edgemont Ranch Wastewater Treatment Plant [those being equal to the diversion rate less the consumptive use rate] shall be delivered past the Florida River Gauging Station. **0.07**
5. Applicant's plan for augmentation is hereby approved. This plan allows applicant to divert water at the Edgemont Ranch Pumping Station in amounts which exceed the diversion rates, diversion seasons, total annual consumptive use, and consumptive use rates allowed under the water rights transferred herein. These excesses will be compensated by releases to the river of like amounts from the Spring Valley Lake Reservoir as required by the Division Engineer.
6. Prior to diversion or use of water under this decree, applicant (1) shall incorporate as per part 5.a. of the Findings herein the Edgemont Ranch Metropolitan District which shall have all the powers of a water and sanitation district as set forth in 1973 C.R.S. § 32-1-1006; (2) shall transfer thereto all of the water rights and structures which are the subject of this decree; (3) shall install the metering devices as more fully described in part 5.b. of the Findings herein; and (4) shall record this decree with the La Plata County Clerk and Recorder in such a way as to put on notice any

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and Approval of Plan for Augmentation
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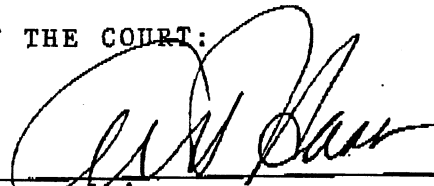
subsequent purchasers of land within the Edgemont Ranch Metropolitan District.

7. The continued diversion or use of water under this decree is conditioned upon the maintenance of the above metering devices, the recording and reporting of metered flows and volumes as more fully described in part 5. of the Findings herein.
8. Diversion of water under the water rights transferred herein shall be administered by the Division Engineer in accordance with the requirements set forth in the Findings herein.
9. All findings stated above shall be incorporated in this decreta. portion as if set forth verbatim.
10. Pursuant to 1973 C.R.S., § 37-92-304(6), this court shall retain continuing jurisdiction over this matter for the period of three years for the purpose of the determination of issues including but not limited to the following:
 - (1) The presumptive consumptive uses listed in part 4.c. of the Findings herein;
 - (2) The adequacy and accuracy of the metering requirements as described in part 5 of the Findings herein;
 - (3) The adequacy of the required conditions, as described in the Findings herein, to prevent injury to vested water rights;
 - (4) The actual cessation of historic consumptive uses of water under the water rights transferred herein.

This period of retained jurisdiction may be extended by any party hereto in accordance with 1973 C.R.S., § 37-92-304(b).


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DCNE this 7th day of September 1983.

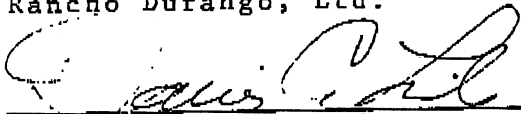
BY THE COURT:


Water Judge,
Water Division No. 7

THIS DECREE IS APPROVED AS TO FORM AND CONTENT BY:



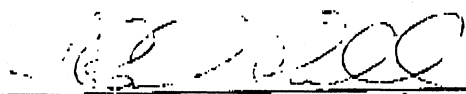
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Division Engineer
Water Division No. 7

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Alan G. Hill, (#11343)
Attorney for objectors
Niles H. Thim and Minnie J. Thim



District Court, Durango, Colorado
State of Colorado
Water Division No. 7
Certified to be a full, true and correct
copy of original in my custody.
Dated SEP 8 - 1983
Clerk Debbie Bannister
Deputy