

DISTRICT COURT, WATER DIVISION 1, STATE OF COLORADO MAR 30 1995

Case No. 84CW296  
(W-8109-75)

AMENDED  
FINDINGS AND RULING OF THE REFEREE AND JUDGMENT AND DECREE  
OF THE COURT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF RANCH OF THE  
ROCKIES ASSOCIATION, IN PARK COUNTY

This matter came on for hearing before the Water Referee on December 9, 1987, upon the original application of HAMDUN Corporation, Ranch of the Rockies Association, and Western Union Realty Corporation, for approval of a change of water right and of an amendment to the decreed plan for augmentation approved by this Court in Case No. W-8109-75 on August 26, 1977.

All matters contained in the application having been reviewed, all testimony and evidence having been taken where necessary, and the Referee being fully advised in the premises, the Referee hereby enters the following findings and ruling in accordance with C.R.S. § 37-92-303(1):

A. The original applicants were HAMDUN Corporation ("HAMDUN", formerly known as The Western Union Ranch, Inc.), Ranch of the Rockies Association ("RORA") and Western Union Realty Corp. ("WURC"). Their addresses are as follows:

HAMDUN  
c/o Jerry R. Dunn, Esq.  
P.O. Box 4426  
Englewood, Colorado 80155

RORA  
c/o Harley Hamilton  
Mountain Planning & Development  
P.O. Box 120  
Fairplay, Colorado 80440

WURC  
One Lake Street  
Upper Saddle River, New Jersey 07458

B. HAMDUN, RORA and WURC (collectively "Applicants") filed their original Application for Approval of Amendment to Decreed Plan for Augmentation ("Original Application")

on October 24, 1984. Subsequently, on October 21, 1986, Applicants filed their First Amended Application for Approval of Amendment to Decreed Plan for Augmentation ("Amended Application") which withdrew the Original Application in its entirety and substituted the Amended Application.

C. All notices required by law of the filing of the Original Application and of the Amended Application have been given in the manner required by law, and the Referee and this Court have jurisdiction over the Amended Application and these proceedings, and over all persons who have standing to appear as parties, whether they have appeared or not.

D. Timely statements of opposition to the Original Application were filed on behalf of the State Engineer and Division Engineer; the City and County of Denver, acting by and through its Board of Water Commissioners; Warm Springs Ranch Corporation; the City of Aurora; and the City of Thornton. Timely statements of opposition to the Amended Application were filed on behalf of Henrylyn Irrigation District; Burlington Ditch, Reservoir and Land Company; Farmers Reservoir and Irrigation Company; and Robert W. Walker. No other statement of opposition has been filed, and the time for filing additional statements of opposition has expired. On February 1, 1988, the Water Judge entered an Order allowing the Statement of Opposition by Warm Springs Ranch Corporation to be withdrawn.

E. At the time the Amended Application was filed, The Western Union Ranch, Inc. was a wholly owned subsidiary of WURC. On April 30, 1987, Jerry R. Dunn and Harley Hamilton acquired 100% of WURC's interest in The Western Union Ranch, Inc., and changed its name to HAMDUN Corporation.

F. On August 26, 1977, this Court entered its Findings of Fact, Conclusions of Law, Judgment and Decree in Case No. W-8109-75 (the "Original Decree"), approving the Application for Approval of Plan for Augmentation filed by WURC and a co-applicant no longer interested in this matter (J.T. McDowell & Sons, the former owner of certain water rights involved in the plan for augmentation).

The Original Decree contemplated that Applicants' development, The Western Union Ranch (the "Ranch"), at full development would contain 2,400 single family residential lots or single family residential equivalent units, of which 2,170 would be limited to in-house water use only and 230 would have lawn and garden irrigation of a maximum of 1,000 square feet per lot as well as in-house water use. Additionally, the Original Decree contemplated that the

Ranch would contain 500 recreational vehicle campground sites as well as a number of ancillary facilities. Changes in the Ranch's development plan subsequent to the date of the Original Decree have altered these projections. Current figures now show that at full development the Ranch will contain a maximum of 515 (rather than 500) recreational vehicle campground sites. Consequently, the number of residential lots or single family residential equivalent units has been reduced from 2,400 to 2,397 to accommodate the water needs of the 15 additional campsites. Of these 2,397 single family residential lots or single family residential equivalent units, no more than 230 will allow lawn and garden irrigation of 1,000 square feet maximum per lot.

G. The Original Decree was amended on November 14, 1990. On October 11, 1994, the Ranch of the Rockies Association filed a motion to amend the decree to eliminate Western Union Ranch, Inc., Western Union Realty Corporation and HAMDUN, as applicants, as a result of an agreement between the parties dated July 26, 1994. The Court has granted the motion, and the previous decree is hereby amended. For convenience, the substantive portions of the Original Decree are restated below, with the paragraphs numbered as in the Original Decree beginning with Paragraph 6 of the Findings, and with the approved amendments incorporated where appropriate.

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Restated and Amended Decree:

GENERAL STATEMENT OF PLAN FOR AUGMENTATION

6. HAMDUN owns The Western Ranch, formerly known as Rolling Hills Ranches, a proposed subdivision encompassing approximately 7,000 acres in Township 12 South, Range 77 West; Township 13 South, Range 77 West; Township 13 South, Range 76 West; and Township 14 South, Range 76 West of the Sixth P.M. in Park County, Colorado. The boundaries of The Western Union Ranch are identified in Exhibit A which was submitted to the Court in Case No. W-8109-75.

7. It is projected that at full development The Western Union Ranch will contain approximately 2,397 single family residential lots or single family residential equivalent units, 515 recreational vehicle campground sites, a lodge, swimming pool, launderette, sales office, quarters, bunkhouse, horse stable, 25 campsites and associated facilities. The residential lots will range from approximately 2 acres in size to approximately 5 acres, with the average size being approximately 3 acres.

8. The water supply for all domestic, commercial and irrigation uses within The Western Union Ranch will come from wells, diverting ground water which is tributary to the South Fork of the South Platte River.

9. Sewage resulting from the use of the wells is to be treated in disposal systems which preclude evaporation at the surface and shall be subject to applicable regulations of Park County and the State of Colorado.

10. Return flows from the sewage disposal systems permitted by this decree will return to the drainage of the South Fork of the South Platte River, which is the same source of supply to which the ground water providing water supply to the wells is tributary.

11. Applicants' plan for augmentation contemplates the providing of replacement water, based upon the historical consumptive use of certain water rights described hereafter, to compensate for depletions caused by the water use within The Western Union Ranch. Replacement shall be made by leaving certain water in the river at the historical points of diversion during the historical irrigation season for such rights and by storing additional water in the Applicants' Buffalo Creek Reservoir and releasing water therefrom. Appropriate transportation losses, as assessed by the Division Engineer, will be imposed from the historical point of diversion of the Guiraud 3T Ditch to the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River. Furthermore, the plan for augmentation shall be operated so as not to injure vested water rights entitled to water from the South Fork of the South Platte River between The Western Union Ranch and the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River. Applicants' Buffalo Creek Reservoir is located on Buffalo Creek with the axis of the dam in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 25, Township 12S, Range 77 W of the 6th P.M.

12. Applicants have provided for the formation of Ranch of the Rockies Association ("RORA or the "Association") with authority sufficient to implement the plan for augmentation and to perform the responsibilities required by this decree. The Association is a not-for-profit Colorado corporation, whose existence is evidenced by a Certificate of Incorporation, a copy of which was submitted to the Court as Exhibit B in Case No. W-8109-75. The water rights committed to this plan for augmentation were conveyed to the Association by deeds dated April 11, 1980, which were recorded at Book 310, Pages 18 and 19 of the

records in the office of the Clerk and Recorder of Park County, Colorado.

13. Applicant prepared protective covenants in the form of Exhibit C which was submitted to the Court in Case No. W-8109-75. These covenants provide the terms and conditions upon which the Applicants' including the Association, or owners of lots within The Western Union Ranch may obtain permits and drill and use wells, consistent with the requirements of this decree. These covenants also limit the type of sewage disposal systems as provided in this decree. Covenants containing these provisions with respect to well permits and sewage disposal systems were recorded November 23, 1977, at Book 272, Page 198 of the records in the office of the Clerk and Recorder of Park County, Colorado.

#### DIVISION REQUIREMENTS AND DEPLETIONS

14. The wells to be used for water supply for in-house purposes in up to 2,167 single family residences or residential equivalent units shall be limited at all times to in-house purposes only, without any right to use the water for any purpose outside the house at any time. A condominium unit shall be recorded as a single family residential equivalent unit. The maximum diversion requirement for in-house use for 2,167 single family residences or residential equivalent units is expected to be 680 acres feet per year, based upon assumptions of 100% occupancy year round of 2,167 units with an average of 3.5 persons per unit and each person utilizing 80 gallons per day.

15. An acceptable depletion factor for in-house use, utilizing non-evaporative sewage disposal systems, is 10%. Accordingly, Applicant proposes to replace the depletions attributable to such in-house use at a rate of 0.0314 acre feet per year for each single family residence or single family residential equivalent unit within The Western Union Ranch for which a water well has been drilled and not abandoned, together with those for which a building permit has been issued and remains in effect as of March 15 of the year for which replacement is made, but for which a water well has not been drilled. The maximum consumptive use at full development from in-house uses is projected not to exceed 68.04 acre feet per year.

16. Other wells serving no more than 230 single family residences or residential equivalent units will be used for the irrigation of lawns and gardens, as well as for in-house uses. The use of these wells will be limited to a maximum of 1,000 square feet of irrigated acre for

lot. The consumptive use for lawn and garden irrigation is expected to be 1.5 acre feet per acre, and the total consumptive use for lawn and garden irrigation at full development will be approximately 7.91 acre feet per year. Accordingly, the annual consumptive use attributable to these wells for in-house purposes plus the consumptive use for lawn and garden irrigation will be 0.0658 acre feet per lot. Applicant proposes to replace the depletions attributable to the use of such wells for in-house and irrigation purposes at the rate of 0.0658 acre feet per year for each single family residence or single family residential equivalent unit for which a water well to be used for such in-house and irrigation purposes has been drilled and not abandoned together with those for which a building permit has been issued and remains in effect as of March 15 of the year for which replacement is made, but for which a water well has not been drilled.

17. The maximum diversion requirement for the 515 recreational vehicle campsites is expected to be 33.6 acre feet per year, based upon assumptions of 3.5 people per campsite, occupying 515 campsites from May through September and occupying 50 campsites from October through April, with a per capita water requirement of 35 gallons per day. The consumptive use attributable to the wells serving the recreational vehicle campsites will be 10% of the amount pumped, or a maximum of 3.36 acre feet per year at full development. No evaporative disposal systems shall be used to treat effluent from the recreational vehicle campsites, and the effluent shall be returned to the stream or the stream alluvium.

18. The diversion requirement for the lodge is projected to be 0.84 acre feet per year and for the complex of sales office, quarters, bunkhouse, a 12-horse stable and 25 campsites, 4.25 acre feet per year. In each case, the annual consumptive use is projected to be 10% of the amount pumped. The diversion requirement for the swimming pool is projected to be 0.23 acre feet per year and for the launderette 1.12 acre feet per year, and the annual consumptive use for such uses is projected to be 50% of the amount so diverted.

19. Two commercial wells have been drilled, and meters have been installed on these wells to measure the commercial uses described in the foregoing Paragraphs 17 and 18. Applicant proposes to determine the annual depletions attributable to the foregoing commercial uses by applying the consumptive use percentages contained in Paragraphs 17 and 18 to the metered amounts diverted for such various commercial purposes and to replace that amount of depletions.

20. Evaporation losses from the Buffalo Creek Reservoir, to be utilized by Applicant for replacement purposes as described hereafter, must be taken into account and sufficient water committed to cover such losses, in addition to depletions resulting from well use. Applicant's Buffalo Creek Reservoir is the subject of an application for a conditional water right in Case No. 86CW287 in this Court. The amount of water actually stored will be a function of water availability and replacement requirements from time to time. Applicant shall have the ability to deliver from reservoir storage at least two seasons' worth of winter depletions after seepage and evaporation losses. Evaporation losses shall be determined and charged by the Division Engineer at times of call.

21. No well permits will be issued by the Colorado State Engineer until the Buffalo Creek Reservoir has been constructed and sufficient water either has been stored or is available for storage therein to meet anticipated replacement water requirements beyond those to be met by leaving a portion of Applicant's Guiraud 3T consumptive use credit in the river under Paragraph 34 of the Findings herein for operations at The Western Union Ranch at projected levels of development for the 12 months following issuance of the first such well permit.

22. The Court finds that the methods used for estimating diversion requirements for various purposes (subject to confirmation by metering for commercial purposes, as provided above) and for the resulting depletions are reasonable and acceptable.

23. The following table provides a summary of anticipated diversion requirements at maximum development for the various purposes, the resulting estimated consumptive use or depletions and the projected amounts of replacement water to be provided:

#### ANNUAL WATER DIVERSION AND REPLACEMENT REQUIREMENTS

##### IN-HOUSE USE

2397	Lots
x 3.5	People/Lot
8389.5	Total Population
x 80	Gallons/Person
671,160	Gallons/Day
x 365	Days
244,973,400	Gallons/Year
÷ 315,900	
751.68	AF/YR. In-House Use x 10%

Consumptive Use = 75.17

### OUTSIDE LAWN/GARDEN IRRIGATION

230	Lots
<u>x 0.344</u>	Acre Feet/Lot Consumptive Use
791	Acre Feet

Consumptive Use - 7.91

### COMMERCIAL WELLS

515	Campsites
<u>x 3.5</u>	People/Campsites
1802.5	Total/Campers
<u>x 35</u>	Gallons/Camper
63087.5	Gallons/Day
<u>x 153</u>	Days (May thru Sept.)
9,652,387.5	Gallons/Year
<u>÷ 325,900</u>	
29.62	AF/YR. Summer Commercial x 10%

Consumptive Use - 2.96

50	Campsites
<u>x 3.5</u>	People/Campsites
175	Total/Campers
<u>x 35</u>	Gallons/Camper
6,125	Gallons/Day
<u>x 212</u>	Days (Oct. thru April)
1,298,500	Gallons/Year
<u>÷ 325,900</u>	
3.98	AF/YR. Winter Commercial x 10%

Consumptive Use - 0.40

### LODGE (RESTAURANT & LOUNGE)

75	Seating Capacity
<u>x 10</u>	Gallons/Person
750	Gallons//Day
<u>x 365</u>	Days
273,750	Gallons/Year
<u>÷ 325,900</u>	
0.84	AF/YR. Commercial x 10%

Consumptive Use = 0.08



SALES OFFICE/QUARTERS/BUNKHOUSE/12-HORSE STABLE/25  
CAMPSITES (at entrance to subdivision)

3800	Gallons/Day
x 365	Days
1,387,000	Gallons/Year
÷ 325,900	
4.25	AF/YR. Commercial x 10%

Consumptive Use = 0.42

SWIMMING POOL (60' x 30')

50	Swimmers
x 10	Gallons/Swimmer
500	Gallons/Day
x 153	Days (May thru. Sept.)
76,500	Gallons/Year
÷ 325,900	
0.23	AF/YR. Commercial x 10%

Consumptive Use = 0.12

LAUNDERETTE (4 machines)

4	Machines
x 5	Washings/Machine/Day
20	Washings/Day
x 50	Gallons/Washing
1,000	Gallons/Day
365	Days
365,900	
1.12	AF/YR. Commercial x 50%

Consumptive Use = 0.56

Total = 87.62

NOTE: THE CONSUMPTIVE IN-HOUSE USE FOR A SINGLE FAMILY RESIDENCE IS 0.0314 ACRE FEET PER YEAR.

SOURCES OF REPLACEMENT WATER AND  
THEIR HISTORIC DEPLETIONS

24. The Association is the owner of 3.5 cubic feet per second from that water right decreed to the Guiraud 3T Ditch with an appropriation date of July 1, 1867 and an adjudication date of October 18, 1889, diverting from the Middle Fork of the South Platte River. This water right was historically diverted at a point in the NE¼NE¼ of Section 8, Township 11 South, Range 76 West of the 6th

P.M., whence the NE corner of the NE $\frac{1}{4}$  of said section bears N63°35'E 1,305 feet distant.

25. The Guiraud 3T Ditch historically has been used for irrigation purposes between May 1 and September 30 (153 days per year). Applicant's share of this water right has been used to irrigate 50.93 acres of land in Sections 9, 10, and 15, Township 11 South, Range 76 West of the Sixth P.M., described in Exhibit D which was submitted to the Court in Case No. W-8109-75. The net stream depletion to the Middle Fork of the South Platte River resulting from the consumptive use of irrigation water by the Guiraud 3T Ditch is 1.5 acre feet per acre. Historically, 1 c.f.s. of the Guiraud 3T diversions during an irrigation season has resulted in a consumptive use of 21.82 acre feet per year. None of the land irrigated by Applicant's share of this water right is sub-irrigated, and therefore there will be a net reduction of consumptive use of 76.40 acre feet per year by taking such lands out of irrigation. This is the amount available annually ("Applicant's Guiraud 3T consumptive use credit") to replace depletions resulting from well use within The Western Union Ranch, in the manner described hereafter. Applicant's Exhibit D and the tabulation which is Exhibit E, both submitted to the Court in Case No. W-8109-75, summarize how the water right decreed to the Guiraud 3T Ditch has been modified by the terms of prior decrees approving plans for augmentation utilizing portions of such water right and is modified by the terms of this Decree.

26. The Association also owns 11 cubic feet per second of that water right decreed to the Haver No. 3 Ditch, diverting from the South Fork of the South Platte River, with an appropriation date of May 1, 1887 and an adjudication date of October 18, 1889.

27. Applicant's share of this water right historically has been used to irrigate at least 72.01 acres of land in Sections 12 and 13, Township 12 South, Range 77 West of the Sixth P.M., described in Exhibit F submitted to the Court in Case No. W-8109-75. The average historical consumptive use attributable to Applicant's share of this water right is 0.51 acre feet per acre or 36.72 acre feet per year. This is the maximum amount available annually under this right ("Applicant's Haver No. 3 consumptive use credit") to replace depletions from well use within The Western Union Ranch, in the manner described hereafter; provided, however, that if it is subsequently determined by this Court, pursuant to the retained jurisdiction provisions hereof or otherwise, that some or all of the 72.01 acres described in Exhibit F submitted to the Court in Case No. W-8109-75 continue to be irrigated with Haver No. 3

water, whether through intentional surface application, leakage or otherwise, Applicants' consumptive use credit and the amount storable under Paragraph 36 of these Findings shall be reduced at the rate of 0.51 acre feet per acre so irrigated.

28. The lands historically irrigated by the Guiraud 3T Ditch and by the Haver No. 3 Ditch, for which consumptive use credit is claimed hereunder to the extent that said lands are taken out of irrigation, shown on Exhibits D and F in Case No. W-8109-75, respectively, have been surveyed, and the lands associated with the Guiraud 3T Ditch have been monumented by surveyor caps at all corners.

29. The Application for Approval of Plan for Augmentation in Case No. W-8109-75 described also Applicant's interest in water rights decreed to the Salt Creek Ditch and to the Spring Ditch. However, Applicant withdrew such rights from its plan for augmentation.

#### REPLACEMENT OF FUTURE DEPLETIONS

30. Depletions within The Western Union Ranch will vary seasonally, because of the use of water for lawn and garden irrigation during the summer months and because of greater use of the campsites and swimming pool during this same period. Depletions attributable to in-house use of well water are projected not to vary seasonally. Therefore, 153/365 or 41.9% of such depletions are treated herein as occurring from May 1 through September 30. All depletions attributable to the use of well water for lawn and garden irrigation are treated herein as occurring from May 1 through September 30. Depletions attributable to commercial uses of well water will be determined upon the metered amounts of water pumped and the application of the depletions percentages contained in Paragraphs 17 and 18 of the Findings herein. Accordingly, the seasonal distribution of depletions attributable to commercial uses can be determined from time to time with a high degree of accuracy. At full development of The Western Union Ranch, it is estimated that the consumptive use from May 1 through September 30 ("summer depletions") will be approximately 43.68 acre feet and that from October 1 through April 30, the consumptive use will be approximately 44.69 acre feet. In addition, reservoir evaporation will occur.

31. The following table provides a summary of the anticipated monthly distribution of depletions or consumptive use at maximum development:

MONTHLY AND ANNUAL CONSUMPTIVE  
USE OF WATER IN ACRE FEET

<u>MONTH</u>	<u>IN-HOUSE USE</u>	<u>COMMERCIAL USE</u>	<u>OUTSIDE IRRIGATION</u>
January	6.384	0.15	
February	5.776	0.12	
March	6.384	0.15	
April	6.178	0.15	
May	6.384	0.865	1.58
June	6.178	0.837	1.58
July	6.384	0.865	1.58
August	6.384	0.865	1.58
September	6.178	0.837	1.58
October	6.384	0.15	
November	6.178	0.15	
December	<u>6.384</u>	<u>0.15</u>	<u>      </u>
Annual	75.17	5.29	7.91 = <u>88.37</u>

May 1 to September 30 Consumptive Use 43.68 Ac. Ft.

October 1 to April 30 Consumptive Use 44.69 Ac. Ft.

88.37 Ac. Ft.

NOTES:

- (1) THE 43.68 ACRE FEET OF SUMMER CONSUMPTIVE USE SHOWN IN THE TABLE IS 0.75 ACRE FEET MORE THAN REQUIRED, BUT WAS USED TO ROUND OFF FOR REPLACEMENT WATER PURPOSES.
- (2) THE ABOVE TOTAL OF 88.37 AC. FT. DOES NOT INCLUDE TRANSPORTATION OR RESERVOIR EVAPORATION OR SEEPAGE LOSSES.

32. Depletions will increase toward the projected maximums as additional wells are drilled and put to use within The Western Union Ranch. Applicant annually will replace no less than the annual depletions to the river

resulting from the operation of wells, determined as provided herein. Applicant proposes to accomplish this in part by leaving a portion of the Association's Guiraud 3T Ditch water in the river at its present point of diversion to replace summer depletions, when in priority. Appropriate transportation losses, as assessed by the Division Engineer, will be imposed from the present point of diversion of the Guiraud 3T Ditch to the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River. To the extent that the historic consumptive use of such water right to be used for replacement purposes exceeds the well depletions and transportation losses then resulting, as determined under the procedures provided herein, Applicant will store such historic consumptive use in the Buffalo Creek Reservoir for subsequent release as replacement water. If the Guiraud 3T Ditch water right is unavailable to replace summer depletions, releases shall be made from storage as required by the Division Engineer.

33. The Division Engineer shall determine the depletions which must be replaced on the basis of the calculations, measurements and procedures provided herein for the various uses and upon the reports submitted to him by the Association and such independent measurements as he may make.

34. Summer depletions shall be charged against Applicant's Guiraud 3T consumptive use credit if available. Summer depletions shall be the sum of the following amounts:

(a) 0.0132 acre feet for each single family residence or single family residential equivalent unit within The Western Union Ranch for which a water well has been drilled and not abandoned together with those for which a building permit has been issued and remains in effect as of March 15 of the year for which replacement is made, but for which a water well has not been drilled; and

(b) 0.0344 acre feet additional for each such well or building permit which contemplates irrigation as well as in-house use; and

(c) The consumptive use attributable to commercial uses from May 1 through September 30, determined as provided in Paragraph 19 of the Findings herein.

35. The remainder of Applicant's Guiraud 3T consumptive use credit, less transportation losses, may be stored

in the Buffalo Creek Reservoir upon the priority date of the Guiraud 3T right, between April 15 and August 10 of each year, at a rate of flow of 2.0 c.f.s., up to an annual volume of 76.40 acre feet (i.e. the total consumptive use credit) less the amount of summer depletions which have been replaced by leaving all or a portion of the Guiraud 3T right in the stream; provided that such water may not be stored when Denver is storing in Antero Reservoir under its 1907 priority.

36. Applicant's entire Haver No. 3 consumptive use credit will be converted to storage in the Buffalo Creek Reservoir. This water may be stored, upon the priority date of the Haver No. 3 right, between April 15 and July 31, at a rate flow not to exceed 1 c.f.s., up to an annual volume of 36.72 acre feet; provided, however, that the volume storage shall be subject to the provisions of Paragraph 27 of the Findings herein.

37. Following the approval of this decree, neither the Association's 3.5 c.f.s. portion of the Guiraud 3T right nor its 11.0 c.f.s. portion of the Haver No. 3 right shall be diverted at the previously decreed points of diversion, but instead such water shall be left in the river for replacement of summer depletions and transportation losses for the Guiraud 3T right to the extent available and required herein, with the surplus available for storage by exchange in the Buffalo Creek Reservoir, to the extent permitted herein. If Applicants' consumptive use credit under the Guiraud 3T and the Haver No. 3 water rights exceeds the capacity of the Buffalo Creek Reservoir, the remainder of such consumptive use credit may be used to support water use within The Western Union Ranch so long as the use does not adversely affect vested water rights. Any question of injury or threatened injury resulting from such use may be presented to the Court under the retained jurisdiction provisions of this Decree or otherwise. If part or all of the consumptive use credit is to be used to support a subdivision development other than The Western Union Ranch or for purposes other than those associated with The Western Union Ranch, for a period of one year or more, than a separate plan for augmentation or other appropriate application must be filed. The Objectors herein must be provided at least 20 days written notice of any use of a part or all of the consumptive use credit other than under this plan for augmentation.

38. Water stored in the Buffalo Creek Reservoir shall be released therefrom upon the request of the Division Engineer at times and in amounts determined by him, consistent with the provisions of this Decree. If vested water rights entitled to water from the South Fork of the

South Platte River between The Western Union Ranch and the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River otherwise would not be injured by the operations of this plan for augmentation, the Division Engineer may require releases from such reservoir to prevent such injury.

39. The Association shall have the responsibility of reporting to the Division Engineer in a mutually agreeable form by April 1 of each year as to the number of water wells which have been drilled and not abandoned, the number of building permits issued and in effect for construction of single family residences or single family residential equivalent units at The Western Union Ranch, and which of such wells and/or building permits contemplate irrigation in addition to in-house use of water. The Association also shall report as required by the Division Engineer upon the amounts pumped for commercial uses by the wells in The Western Union Ranch. The Association shall further be responsible for providing means acceptable to the Division Engineer of measuring and for reporting upon the surface area, volume in storage and amounts of water released from the Buffalo Creek Reservoir, as requested by the Division Engineer, and for making releases from such reservoir as requested by the Division Engineer. The Association shall include in its annual report a report of its operations under this plan for augmentation during the preceding calendar year and a description of its anticipated operations thereunder during the current calendar year, including a tabulation of amounts pumped for commercial use, of wells and building permits for in-house use only and for in-house and irrigation use, of the calculated resulting depletions, of replacement water provided, of water stored, of water released from storage and of reservoir evaporation losses. A primary purpose of these annual reports and of more frequent reports required by the Division Engineer shall be to provide the Division Engineer with information in a form readily usable for water administration. Exhibits G-1 and G-2 which were submitted to the Court in Case No. W-8109-75 are the forms of annual report which Applicant currently plans to use. It is recognized that such forms may be modified in accordance with actual experience under this plan for augmentation; however, no such modification shall be made except with the approval of the Division Engineer. The Association shall be responsible for enforcing the provisions of this Decree and for assuring that replacement shall be adequate to compensate for well depletions in The Western Union Ranch, as determined hereunder; provided, however, that the Association's having such responsibility shall not preclude the State from enforcing the terms of this Decree, nor preclude Denver from seeking such enforcement. The

Association shall designate one or more individuals as its representatives to deal with the Division Engineer and on or before May 1st of each year shall advise the Division Engineer who its representatives will be, along with their addresses and phone numbers.

#### PROTECTIVE TERMS AND CONDITIONS

40. The Applicant, the State and Denver have agreed upon the following additional terms and conditions to be included in this Decree:

(a) Each well permit issued by the State Engineer pursuant to Applicants' plan for augmentation shall be subject to the limitations of this Decree and shall bear a notation so stating, referring to this case by number as follows: If issued after the entry of this restated and amended decree: 84CW296 (W-8109-75); if issued prior to the entry of this restated and amended decree: W-8109-75.

(b) Well permits allowing lawn and garden irrigation in addition to in-house use shall be issued for no more than 230 residences or residential equivalent units. The amount of land irrigated from such wells shall not exceed a maximum of 1,000 square feet per lot.

(c) Well permits for in-house use only shall be issued for no more than 2,167 residences or residential equivalent units. Such permits allow only in-house uses at all times.

(d) If, in the judgment of the Division Engineer, the Association will not have sufficient water to meet the requirements of compensating for depletions as they occur through the calendar year, the Division Engineer may notify the Association that a deficiency exists. It is expected that the Division Engineer will notify the Association if it comes to his attention that a deficiency may exist. However, such notice shall not be a prerequisite to the Division Engineer's administering water rights in accordance with the priority system. The Association shall have the responsibility to obtain such required amounts of water and/or to take other actions as are required to assure the continuation of an adequate supply of water for The Western Union Ranch. However, if and to the extent that the Association is unable to provide the replacement water required under this Decree to permit the operation of wells hereunder, such wells shall not be entitled to operate under the



protection of this plan for augmentation, but shall be subject to administration and curtailment in accordance with the priority system.

(e) The original decree in Case No. W-8109-75 and the protective covenants were previously recorded, and this restated and amended decree shall be recorded, in the office of the Clerk and Recorder of Park County, Colorado. Purchasers of lots within The Western Union Ranch shall be given a copy of the protective covenants.

41. The Court finds that Applicants' plan for augmentation, conditioned and operated and subject to priority administration as provided herein, will prevent injurious effect to the owners of or persons entitled to use water under vested water rights or decreed conditional water rights, which might otherwise result from the operation of wells at The Western Union Ranch, as contemplated herein.

42. The Court further finds that, upon the imposition of the conditions set forth herein, the Association's portion of the Haver No. 3 Ditch and the Guiraud 3T Ditch water rights may be modified to permit their storage in the Buffalo Creek Reservoir, to the extent permitted herein, without injurious effect to the owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

#### CONCLUSIONS OF LAW

1. Subject to the terms and conditions contained herein, Applicants' plan for augmentation permits the installation and operation of the proposed wells without injurious effect to the owners or persons entitled to use water under vested water rights or decreed conditional water rights.

2. Applicants or lot owners in The Western Union Ranch upon proper application are entitled to the issuance of well permits by the State Engineer to the extent provided herein.

3. Applicants are entitled to a decree approving their plan for augmentation, as provided herein, and are further entitled to a decree directing the state water officials not to curtail wells constructed under permits issued pursuant hereto, so long as Applicants' plan for augmentation, as decreed herein, is operational and operated in accordance herewith.

4. Applicants are entitled to a change of water rights for 3.5 c.f.s. decreed to the Guiraud 3T Ditch and for 11 c.f.s. decreed to the Haver No. 3 Ditch, so as to permit the use of such water rights in Applicants' plan for augmentation:

(a) by release of water at the present point of diversion of the Guiraud 3T Ditch; and

(b) by storage of Guiraud 3T Ditch and Haver No. 3 Ditch waters in the Buffalo Creek Reservoir, as provided herein, and subsequent release therefrom.

5. The use of such water in Applicants' plan for augmentation does not constitute an abandonment thereof.

#### DECREE

NOW, THEREFORE, it is decreed as follows:

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

2. Following:

(a) The entry of this restated and amended Decree;

(b) The recording of this restated and amended Decree in the office of the Clerk and Recorder of Park County, Colorado; and

(c) The construction of the Buffalo Creek Reservoir and the storage or availability for storage therein of sufficient water to meet anticipated replacement water requirements, beyond those to be met by leaving a portion of Applicants' Guiraud 3T consumptive use credit in the river under the terms of Paragraph 34 of the Findings herein, due to operations at The Western Union Ranch at projected levels of development for the 12 months following issuance of the first well permit by the State Engineer,

then the State Engineer, upon application from time to time, shall issue permits for in-house use only for wells sufficient to serve 2,167 single family residences or residential equivalent units; shall issue permits for wells to serve no more than 230 single family residences or residential equivalent units, which permits shall also allow the use of such wells for irrigation purposes, but not to exceed a total of 1,000 square feet of irrigated ground per lot; and shall issue permits for wells suffi-

cient to serve 515 recreational vehicle campsites, a lodge, a swimming pool, a launderette, a sales house, quarters, a bunkhouse, a 12-horse stable and 25 campsites. However, should it be subsequently determined by this Court that some or all of the 71.01 acres described in Exhibit E which was submitted to the Court in Case No. W-8109-75 continue to be irrigated with Haver No. 3 water, and the Applicants' Haver No. 3 consumptive use credit is to be reduced pursuant to the terms of Paragraph 27 of the Findings herein, then the Applicants' shall provide, from other sources of replacement water, sufficient water to replace the depletions caused by the wells permitted or to be permitted by the State Engineer, unless and until such acreage is no longer so irrigated or an equivalent amount and source of replacement water is approved by the Court.

3. As a condition precedent to the issuance of any well permit contemplated hereunder, the State Engineer shall require the applicant for such well permit to provide a receipt from the Water Clerk of the Water Court, Water Division No. 1, showing payment herein of a \$5.00 supplemental docket fee to the Court for inclusion of the proposed well or wells within the plan for augmentation which is the subject of this Decree.

4. Each well permit issued by the State Engineer under this plan for augmentation shall bear a notation stating that it is subject to the limitations of this Decree, referring to this case by number as follows: If issued after the entry of this restated and amended decree: 84CW296 (W-8109-75); if issued prior to the entry of this restated and amended decree: W-8109-75.

5. Each well permit allowing in-house use only shall contain a provision permitting revocation of the permit if the well is used for other purposes.

6. Sewage resulting from the use of wells permitted hereunder shall be treated in disposal systems which return the effluent to the stream system or alluvium and which preclude evaporation at the surface and, further, shall be subject to the applicable resolutions of Park County and the State of Colorado.

7. The State Engineer, the Division Engineer for Water Division No. 1 and their respective subordinates and representatives shall not curtail the operation of wells constructed under permits issued pursuant to this Decree, or of replacement wells therefor, even though such wells otherwise would be out of priority, in order to provide water to other water rights, so long as such wells are used in a manner consistent with this Decree and replacement

water is provided in the manner and amounts decreed herein. However, if and to the extent that replacement water is not provided in the manner and in the amounts required by this Decree, such wells shall be subject to administration and curtailment in accordance with the priority system.

8. Applicants' plan for augmentation shall be implemented by Ranch of The Rockies Association (the "Association"), or its successor, subject to the general supervision of the Division Engineer for Water Division No. 1 and consistent with the requirements of this Decree. The Association shall be responsible for reporting to the Division Engineer as provided in Paragraph 39 of the Findings herein.

9. Notwithstanding the provisions of the foregoing Paragraph 8, the Division Engineer or his duly authorized representatives may make independent meter readings or water measurements at any reasonable time and place. Furthermore, the responsibilities imposed upon the Association by this Decree shall not preclude the State of Colorado from enforcing the terms of this Decree, nor preclude Denver from seeking such enforcement.

10. Depletions resulting from in-house uses shall be determined by the Division Engineer on the basis of 0.0314 acre feet per year for each single family residence or single family residential equivalent unit, as provided in Paragraph 15 of the Findings herein. Depletions resulting from lawn and garden irrigation in addition to in-house uses shall be determined on the basis of 0.0658 acre feet per year for each single family residence or single family residential equivalent unit, as provided in Paragraph 16 of the Findings herein. Depletions resulting from the commercial use described in Paragraphs 17 and 18 of the Findings herein shall be calculated applying the consumptive use percentages contained in said Paragraphs 17 and 18 to be metered amounts diverted for such commercial uses. Reservoir evaporation losses shall be determined and charged by the Division Engineer at times of call, at those times when Applicants choose to provide replacement water by released from storage.

11. In order for the wells at The Western Union Ranch to continue operating without curtailment by the water officials, sufficient replacement water must be provided to the river to compensate for depletions resulting from well use within The Western Union Ranch, determined as provided herein.

12. Replacement water may be provided for summer depletions by charging such summer depletions, determined

as provided in Paragraph 34 of the Findings herein, against Applicants' Guiraud 3T consumptive use credit, if available, to a maximum of 76.40 acre feet per year.

13. The remainder of Applicants' Guiraud 3T consumptive use credit, less transportation losses as determined pursuant to Paragraph 32 of the Findings herein, may be stored in the Buffalo Creek Reservoir on Buffalo Creek between April 15 and August 10 of each year, at a rate of flow of 2.0 c.f.s. (provided that such water may not be stored when Denver is storing in Antero Reservoir under its 1907 priority), as provided in Paragraph 35 of the Findings herein.

14. 3.5 cubic feet per second of water from the water right decreed to the Guiraud 3T Ditch with an appropriation date of July 1, 1867 and an adjudication date of October 18, 1989, diverting from the Middle Fork of the South Platte River, is hereby changed so as to permit its use in the Applicants' plan for augmentation, by release to the river at the present point of diversion and by storage in the Buffalo Creek Reservoir on Buffalo Creek.

15. Applicants' Haver No. 3 consumptive use credit of 36.72 acre-feet per year may be stored in the Buffalo Creek Reservoir on Buffalo Creek between April 15 and July 31 of each year, upon the priority date of the Haver No. 3 Ditch water right, at a rate of flow not to exceed 1.0 c.f.s., as provided in Paragraph 36 and subject to the provisions of Paragraph 27 of the Findings herein. 11.0 cubic feet per second of water from the water right decreed to the Haver No. 3 Ditch with an appropriation date of May 1, 1887 and an adjudication date of October 18, 1889, is hereby changed so as to permit storage of such water in the Buffalo Creek Reservoir on Buffalo Creek, subject to the limitations contained herein, and its subsequent release to provide water under Applicants' plan for augmentation.

16. Following the approval of this decree, neither the 3.5 c.f.s. of the Guiraud 3T Ditch water right nor the 11.0 c.f.s. of the Haver No. 3 Ditch water right changed hereby shall be diverted at the previously decreed points of diversion, but instead shall be left in the river for replacement purposes or stored in the Buffalo Creek Reservoir to the extent permitted herein, for subsequent release in Applicants' plan for augmentation. If Applicants' consumptive use credit under the Guiraud 3T and the Haver No. 3 water rights exceeds the capacity of the Buffalo Creek Reservoir, the remainder of such consumptive used credit may be used as provided in Paragraph 37 of the Findings herein.

17. Applicants or the Association shall have the ability to deliver from reservoir storage at least two seasons' worth of winter depletions after seepage and evaporation losses. Water stored in the Buffalo Creek Reservoir shall be released therefrom upon the request of the Division Engineer at times and in amounts determined by him, consistent with the provisions of this Decree. Evaporation losses shall be determined and charged against the amount in storage as provided in Paragraph 20 of the Findings herein.

18. The Association shall have the responsibility to obtain any required amounts of water and/or to take such other actions as are required to assure the continuation of an adequate supply of water for The Western Union Ranch.

19. The commitment of water from the Guiraud 3T Ditch water right and from the Haver No. 3 Ditch water right to Applicants' plan for augmentation pursuant to this decree, whether immediately required or not, does not constitute an abandonment of such water rights.

20. The water rights decreed to the Salt Creek Ditch and to the Spring Ditch, as described in the Application for Approval of Plan for Augmentation in Case No. W-8109-75, have been withdrawn from the plan for augmentation and are unaffected by this Decree.

21. The Court retains jurisdiction over this Decree until five years after 50% of the residential well permits contemplated herein have been issued by the State Engineer, subject to extension as provided in C.R.S. § 37-92-304(6), for consideration, upon motion of any party and appropriate notice to all other parties, of whether the provisions of this Decree are sufficient to prevent injury to the presently vested water rights or decreed conditional water rights of the Objectors herein or to the interests of the State of Colorado in the administration of water rights, specifically including, without limitation, consideration of matters raised pursuant to the provisions of Paragraphs 27 and 37 of the Findings herein and Paragraph 2 of the decretal portion hereof.

End Restated and Amended Decree

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H. Throughout the Original Decree, where not already amended and where appropriate, reference to "Applicants" should be changed to "Applicant", along with all necessary grammatical changes.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS  
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: March 31, 1991

Jonathan W. Hays  
Jonathan W. Hays  
Water Judge

DISTRICT COURT, WATER DIVISION 1, STATE OF COLORADO DISTRICT COURT

Case No. 84CW296  
(W-8109-75)

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FINDINGS AND RULING OF THE REFEREE AND  
JUDGMENT AND DECREE OF THE COURT

BY DISTRICT COURT  
WELD COUNTY COLO.

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE WESTERN UNION  
RANCH, INC., RANCH OF THE ROCKIES ASSOCIATION, AND WESTERN UNION  
REALTY CORPORATION, IN PARK COUNTY

This matter came on for hearing before the Water Referee on December 9, 1987, upon the application of HAMDUN Corporation, Ranch of the Rockies Association, and Western Union Realty Corporation, for approval of a change of water right and of an amendment to the decreed plan for augmentation approved by this Court in Case No. W-8109-75 on August 26, 1977.

All matters contained in the application having been reviewed, and testimony and evidence having been taken where necessary, and the Referee being fully advised in the premises, the Referee hereby enters the following findings and ruling in accordance with C.R.S. § 37-92-303(1):

A. The applicants are HAMDUN Corporation ("HAMDUN," formerly known as The Western Union Ranch, Inc.), Ranch of the Rockies Association ("RORA") and Western Union Realty Corp. ("WURC"). Their addresses are as follows:

HAMDUN  
c/o Jerry R. Dunn, Esq.  
P.O. Box 4426  
Englewood, CO 80155

RORA  
c/o Harley Hamilton  
Mountain Planning & Development  
P.O. Box 120  
Fairplay, CO 80440

WURC  
One Lake Street  
Upper Saddle River, NJ 07458

B. HAMDUN, RORA and WURC (collectively "Applicants") filed their original Application for Approval of Amendment to Decreed Plan for Augmentation ("Original Application") on October 24, 1984. Subsequently, on October 31, 1986, Applicants filed their First Amended Application for Approval of Amendment



to Decreed Plan for Augmentation ("Amended Application") which withdrew the Original Application in its entirety and substituted the Amended Application. It is the Amended Application which is now before the Referee and the Court.

C. All notices required by law of the filing of the Original Application and of the Amended Application have been given in the manner required by law, and the Referee and this Court have jurisdiction over the Amended Application and these proceedings, and over all persons who have standing to appear as parties, whether they have appeared or not.

D. Timely statements of opposition to the Original Application were filed on behalf of the State Engineer and Division Engineer; the City and County of Denver, acting by and through its Board of Water Commissioners; Warm Springs Ranch Corporation; the City of Aurora; and the City of Thornton. Timely statements of opposition to the Amended Application were filed on behalf of Henrylyn Irrigation District; Burlington Ditch, Reservoir and Land Company; Farmers Reservoir and Irrigation Company; and Robert W. Walker. No other statement of opposition has been filed, and the time for filing additional statements of opposition has expired. On February 1, 1988, the Water Judge entered an Order allowing the Statement of Opposition by Warm Springs Ranch Corporation to be withdrawn.

E. At the time the Amended Application was filed, The Western Union Ranch, Inc. was a wholly owned subsidiary of WURC. On April 30, 1987, Jerry R. Dunn and Harley Hamilton acquired 100% of WURC's interest in The Western Union Ranch, Inc., and changed its name to HAMDUN Corporation.

F. On August 26, 1977, this Court entered its Findings of Fact, Conclusions of Law, Judgment and Decree in Case No. W-8109-75 (the "Original Decree"), approving the Application for Approval of Plan for Augmentation filed by WURC and a co-applicant no longer interested in this matter (J.T. McDowell & Sons, the former owner of certain water rights involved in the plan for augmentation).

The Original Decree contemplated that Applicants' development, The Western Union Ranch (the "Ranch"), at full development would contain 2,400 single family residential lots or single family residential equivalent units, of which 2,170 would be limited to in-house water use only and 230 would have lawn and garden irrigation of a maximum of 1,000 square feet per lot as well as in-house water use. Additionally, the Original Decree contemplated that the Ranch would contain 500 recreational vehicle campground sites as well as a number of ancillary facilities. Changes in the Ranch's development plan subsequent

to the date of the Original Decree have altered these projections. Current figures now show that at full development the Ranch will contain a maximum of 515 (rather than 500) recreational vehicle campground sites. Consequently, the number of residential lots or single family residential equivalent units has been reduced from 2,400 to 2,397 to accommodate the water needs of the 15 additional campsites. Of these 2,397 single family residential lots or single family residential equivalent units, no more than 230 will allow lawn and garden irrigation of 1,000 square feet maximum per lot.

G. The Original Decree is hereby amended as follows. For convenience, the substantive portions of the Original Decree are restated below, with the paragraphs numbered as in the Original Decree beginning with paragraph 6 of the Findings, and with the approved amendments incorporated where appropriate.

\* \* \*

Restated and Amended Decree:

GENERAL STATEMENT OF PLAN FOR AUGMENTATION

6. HAMDUN owns The Western Union Ranch, formerly known as Rolling Hills Ranches, a proposed subdivision encompassing approximately 7,000 acres in Township 12 South, Range 77 West; Township 13 South, Range 77 West; Township 13 South, Range 76 West; and Township 14 South, Range 76 West of the Sixth P.M. in Park County, Colorado. The boundaries of The Western Union Ranch are identified in Exhibit A which was submitted to the Court in Case No. W-8109-75.

7. It is projected that at full development The Western Union Ranch will contain approximately 2,397 single family residential lots or single family residential equivalent units, 515 recreational vehicle campground sites, a lodge, swimming pool, launderette, sales office, quarters, bunkhouse, horse stable, 25 campsites and associated facilities. The residential lots will range from approximately 2 acres in size to approximately 5 acres, with the average size being approximately 3 acres.

8. The water supply for all domestic, commercial and irrigation uses within The Western Union Ranch will come from wells, diverting ground water which is tributary to the South Fork of the South Platte River.

9. Sewage resulting from the use of the wells is to be treated in disposal systems which preclude evaporation at the

surface and shall be subject to applicable regulations of Park County and the State of Colorado.

10. Return flows from the sewage disposal systems permitted by this decree will return to the drainage of the South Fork of the South Platte River, which is the same source of supply to which the ground water providing water supply to the wells is tributary.

11. Applicants' plan for augmentation contemplates the providing of replacement water, based upon the historical consumptive use of certain water rights described hereafter, to compensate for depletions caused by the water use within The Western Union Ranch. Replacement shall be made by leaving certain water in the river at the historical points of diversion during the historical irrigation season for such rights and by storing additional water in the Applicants' Buffalo Creek Reservoir and releasing water therefrom. Appropriate transportation losses, as assessed by the Division Engineer, will be imposed from the historical point of diversion of the Guiraud 3T Ditch to the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River. Furthermore, the plan for augmentation shall be operated so as not to injure vested water rights entitled to water from the South Fork of the South Platte River between The Western Union Ranch and the confluence of the Middle Fork of the South Platte River and the South Fork of The South Platte River. Applicants' Buffalo Creek Reservoir is located on Buffalo Creek with the axis of the dam in the NW1/4NW1/4, Section 25, Township 12S, Range 77 W of the 6th P.M.

12. Applicants have provided for the formation of Ranch of the Rockies Association ("RORA" or the "Association") with authority sufficient to implement the plan for augmentation and to perform the responsibilities required by this decree. The Association is a not-for-profit Colorado corporation, whose existence is evidenced by a Certificate of Incorporation, a copy of which was submitted to the Court as Exhibit B in Case No. W-8109-75. The water rights committed to this plan for augmentation were conveyed to the Association by deeds dated April 11, 1980, which were recorded at Book 310 Pages 18 and 19 of the records in the office of the Clerk and Recorder of Park County, Colorado.

13. Applicant prepared protective covenants in the form of Exhibit C which was submitted to the Court in Case No. W-8109-75. These covenants provide the terms and conditions upon which the Applicants, including the Association, or owners of lots within The Western Union Ranch may obtain permits and drill and use wells, consistent with the requirements of this

decree. These covenants also limit the type of sewage disposal systems as provided in this decree. Covenants containing these provisions with respect to well permits and sewage disposal systems were recorded November 23, 1977, at Book 272 Page 198 of the records in the office of the Clerk and Recorder of Park County, Colorado.

#### DIVERSION REQUIREMENTS AND DEPLETIONS

14. The wells to be used for water supply for in-house purposes in up to 2,167 single family residences or residential equivalent units shall be limited at all times to in-house purposes only, without any right to use the water for any purpose outside the house at any time. A condominium unit shall be regarded as a single family residential equivalent unit. The maximum diversion requirement for in-house use for 2,167 single family residences or residential equivalent units is expected to be 680 acre feet per year, based upon assumptions of 100% occupancy year round of 2,167 units with an average of 3.5 persons per unit and each person utilizing 80 gallons per day.

15. An acceptable depletion factor for in-house use, utilizing non-evaporative sewage disposal systems, is 10%. Accordingly, Applicant proposes to replace the depletions attributable to such in-house use at the rate of 0.0314 acre feet per year for each single family residence or single family residential equivalent unit within The Western Union Ranch for which a water well has been drilled and not abandoned, together with those for which a building permit has been issued and remains in effect as of March 15 of the year for which replacement is made, but for which a water well has not been drilled. The maximum consumptive use at full development from in-house uses is projected not to exceed 68.04 acre feet per year.

16. Other wells serving no more than 230 single family residences or residential equivalent units will be used for the irrigation of lawns and gardens, as well as for in-house uses. The use of these wells will be limited to a maximum of 1,000 square feet of irrigated area per lot. The consumptive use for lawn and garden irrigation is expected to be 1.5 acre feet per acre, and the total consumptive use for lawn and garden irrigation at full development will be approximately 7.91 acre feet per year. Accordingly, the annual consumptive use attributable to these wells for in-house purposes plus the consumptive use for lawn and garden irrigation will be 0.0658 acre feet per lot. Applicant proposes to replace the depletions attributable to the use of such wells for in-house and irrigation purposes at the rate of 0.0658 acre feet per year for each single

family residence or single family residential equivalent unit for which a water well to be used for such in-house and irrigation purposes has been drilled and not abandoned together with those for which a building permit has been issued and remains in effect as of March 15 of the year for which replacement is made, but for which a water well has not been drilled.

17. The maximum diversion requirement for the 515 recreational vehicle campsites is expected to be 33.6 acre feet per year, based upon assumptions of 3.5 people per campsite, occupying 515 campsites from May through September and occupying 50 campsites from October through April, with a per capita water requirement of 35 gallons per day. The consumptive use attributable to the wells serving the recreational vehicle campsites will be 10% of the amount pumped, or a maximum of 3.36 acre feet per year at full development. No evaporative disposal systems shall be used to treat effluent from the recreational vehicle campsites, and the effluent shall be returned to the stream or the stream alluvium.

18. The diversion requirement for the lodge is projected to be 0.84 acre feet per year and for the complex of sales office, quarters, bunkhouse, a 12-horse stable and 25 campsites, 4.25 acre feet per year. In each case, the annual consumptive use is projected to be 10% of the amount pumped. The diversion requirement for the swimming pool is projected to be 0.23 acre feet per year and for the launderette 1.12 acre feet per year, and the annual consumptive use for such uses is projected to be 50% of the amount so diverted.

19. Two commercial wells have been drilled, and meters have been installed on these wells to measure the commercial uses described in the foregoing Paragraphs 17 and 18. Applicant proposes to determine the annual depletions attributable to the foregoing commercial uses by applying the consumptive use percentages contained in Paragraphs 17 and 18 to the metered amounts diverted for such various commercial purposes and to replace that amount of depletions.

20. Evaporation losses from the Buffalo Creek Reservoir, to be utilized by Applicant for replacement purposes as described hereafter, must be taken into account and sufficient water committed to cover such losses, in addition to depletions resulting from well use. Applicant's Buffalo Creek Reservoir is the subject of an application for a conditional water right in Case No. 86CW287 in this Court. The amount of water actually stored will be a function of water availability and replacement requirements from time to time. Applicant shall have the ability to deliver from reservoir storage at least two seasons' worth of winter depletions after seepage and evaporation losses.

Evaporation losses shall be determined and charged by the Division Engineer at times of call.

21. No well permits will be issued by the Colorado State Engineer until the Buffalo Creek Reservoir has been constructed and sufficient water either has been stored or is available for storage therein to meet anticipated replacement water requirements beyond those to be met by leaving a portion of Applicant's Guiraud 3T consumptive use credit in the river under Paragraph 34 of the Findings herein for operations at The Western Union Ranch at projected levels of development for the 12 months following issuance of the first such well permit.

22. The Court finds that the methods used for estimating diversion requirements for various purposes (subject to confirmation by metering for commercial purposes, as provided above) and for the resulting depletions are reasonable and acceptable.

23. The following table provides a summary of anticipated diversion requirements at maximum development for the various purposes, the resulting estimated consumptive use or depletions and the projected amounts of replacement water to be provided:

ANNUAL WATER DIVERSION AND REPLACEMENT REQUIREMENTS

IN-HOUSE USE

2397	Lots
x 3.5	People/Lot
8389.5	Total Population
x 80	Gallons/Person
671,160	Gallons/Day
x 365	Days
244,973,400	Gallons/Year
+ 325,900	
751.68	AF/YR. In-House Use x 10%

Consumptive Use = 75.17

OUTSIDE LAWN / GARDEN IRRIGATION

230	Lots
x .0344	Acre Feet/Lot Consumptive Use
7.91	Acre Feet

Consumptive Use = 7.91

COMMERCIAL WELLS

515	Campsites
x 3.5	People/Campsite
1802.5	Total/Campers
x 35	Gallons/Camper
63087.5	Gallons/Day
x 153	Days (May thru Sept.)
9,652,387.5	Gallons/Year
+ 325,900	
29.62	AF/YR. Summer Commercial x 10%

Consumptive Use = 2.96

50	Campsites
x 3.5	People/Campsite
175	Total/Campers
x 35	Gallons/Camper
6,125	Gallons/Day
x 212	Days (Oct. thru April)
1,298,500	Gallons/Year
+ 325,900	
3.98	AF/YR. Winter Commercial x 10%

Consumptive Use = 0.40

LODGE (RESTAURANT & LOUNGE)

75	Seating Capacity
x 10	Gallons/Person
750	Gallons/Day
x 365	Days
273,750	Gallons/Year
+ 325,900	
0.84	AF/YR. Commercial x 10%

Consumptive Use = 0.08

SALES OFFICE / QUARTERS / BUNKHOUSE / 12-HORSE STABLE /  
25 CAMPSITES (at entrance to subdivision)

3800	Gallons/Day
x 365	Days
1,387,000	Gallons/Year
+ 325,900	
4.25	AF/YR. Commercial x 10%

Consumptive Use = 0.42

SWIMMING POOL (60' x 30')

50	Swimmers
x 10	Gallons/Swimmer
500	Gallons/Day
x 153	Days (May thru Sept.)
76,500	Gallons/Year
+ 325,900	
0.23	AF/YR. Commercial x 50%

Consumptive Use = 0.12

LAUNDERETTE (4 machines)

4	Machines
x 5	Washings/Machine/Day
20	Washings/Day
x 50	Gallons/Washing
1,000	Gallons/Day
365	Days
365,000	Gallons/Year
+ 325,900	
1.12	AF/YR. Commercial x 50%

Consumptive Use = 0.56

Total = 87.62

NOTE: THE CONSUMPTIVE IN-HOUSE USE FOR A SINGLE FAMILY RESIDENCE IS 0.0314 ACRE FEET PER YEAR.

SOURCES OF REPLACEMENT WATER AND  
THEIR HISTORIC DEPLETIONS

24. The Association is the owner of 3.5 cubic feet per second from that water right decreed to the Guiraud 3T Ditch with an appropriation date of July 1, 1867 and an adjudication date of October 18, 1889, diverting from the Middle Fork of the South Platte River. This water right was historically diverted at a point in the NE1/4NE1/4 of Section 8, Township 11 South, Range 76 West of the 6th P.M., whence the NE corner of the NE1/4 of said section bears N63°35'E 1,305 feet distant.

25. The Guiraud 3T Ditch historically has been used for irrigation purposes between May 1 and September 30 (153 days per year). Applicant's share of this water right has been used to irrigate 50.93 acres of land in Sections 9, 10, and 15, Township 11 South, Range 76 West of the Sixth P.M., described in



Exhibit D which was submitted to the Court in Case No. W-8109-75. The net stream depletion to the Middle Fork of the South Platte River resulting from the consumptive use of irrigation water by the Guiraud 3T Ditch is 1.5 acre feet per acre. Historically, 1 c.f.s. of the Guiraud 3T diversions during an irrigation season has resulted in a consumptive use of 21.82 acre feet per year. None of the land irrigated by Applicant's share of this water right is sub-irrigated, and therefore there will be a net reduction of consumptive use of 76.40 acre feet per year by taking such lands out of irrigation. This is the amount available annually ("Applicant's Guiraud 3T consumptive use credit") to replace depletions resulting from well use within The Western Union Ranch, in the manner described hereafter. Applicant's Exhibit D and the tabulation which is Exhibit E, both submitted to the Court in Case No. W-8109-75, summarize how the water right decreed to the Guiraud 3T Ditch has been modified by the terms of prior decrees approving plans for augmentation utilizing portions of such water right and is modified by the terms of this Decree.

26. The Association also owns 11 cubic feet per second of that water right decreed to the Haver No. 3 Ditch, diverting from the South Fork of the South Platte River, with an appropriation date of May 1, 1887 and an adjudication date of October 18, 1889.

27. Applicant's share of this water right historically has been used to irrigate at least 72.01 acres of land in Sections 12 and 13, Township 12 South, Range 77 West of the Sixth P.M., described in Exhibit F submitted to the Court in Case No. W-8109-75. The average historical consumptive use attributable to Applicant's share of this water right is 0.51 acre feet per acre or 36.72 acre feet per year. This is the maximum amount available annually under this right ("Applicant's Haver No. 3 consumptive use credit") to replace depletions from well use within The Western Union Ranch, in the manner described hereafter; provided, however, that if it is subsequently determined by this Court, pursuant to the retained jurisdiction provisions hereof or otherwise, that some or all of the 72.01 acres described in Exhibit F submitted to the Court in Case No. W-8109-75 continue to be irrigated with Haver No. 3 water, whether through intentional surface application, leakage or otherwise, Applicants' consumptive use credit and the amount storable under Paragraph 36 of these Findings shall be reduced at the rate of 0.51 acre feet per acre so irrigated.

28. The lands historically irrigated by the Guiraud 3T Ditch and by the Haver No. 3 Ditch, for which consumptive use credit is claimed hereunder to the extent that said lands are taken out of irrigation, shown on Exhibits D and F in Case

No. W-8109-75, respectively, have been surveyed, and the lands associated with the Guiraud 3T Ditch have been monumented by surveyor caps at all corners.

29. The Application for Approval of Plan for Augmentation in Case No. W-8109-75 described also Applicant's interest in water rights decreed to the Salt Creek Ditch and to the Spring Ditch. However, Applicant withdrew such rights from its plan for augmentation.

#### REPLACEMENT OF FUTURE DEPLETIONS

30. Depletions within The Western Union Ranch will vary seasonally, because of the use of water for lawn and garden irrigation during the summer months and because of greater use of the campsites and swimming pool during this same period. Depletions attributable to in-house use of well water are projected not to vary seasonally. Therefore, 153/365 or 41.9% of such depletions are treated herein as occurring from May 1 through September 30. All depletions attributable to the use of well water for lawn and garden irrigation are treated herein as occurring from May 1 through September 30. Depletions attributable to commercial uses of well water will be determined upon the metered amounts of water pumped and the application of the depletion percentages contained in Paragraphs 17 and 18 of the Findings herein. Accordingly, the seasonal distribution of depletions attributable to commercial uses can be determined from time to time with a high degree of accuracy. At full development of The Western Union Ranch, it is estimated that the consumptive use from May 1 through September 30 ("summer depletions") will be approximately 43.68 acre feet and that from October 1 through April 30, the consumptive use will be approximately 44.69 acre feet. In addition, reservoir evaporation will occur.

31. The following table provides a summary of the anticipated monthly distribution of depletions or consumptive use at maximum development:

<u>MONTHLY AND ANNUAL CONSUMPTIVE USE OF WATER</u> <u>IN ACRE FEET</u>			
<u>MONTH</u>	<u>IN-HOUSE USE</u>	<u>COMMERCIAL USE</u>	<u>OUTSIDE IRRIGATION</u>
January	6.384	0.15	
February	5.776	0.12	
March	6.384	0.15	
April	6.178	0.15	
May	6.384	0.865	1.58

<u>MONTH</u>	<u>IN-HOUSE USE</u>	<u>COMMERCIAL USE</u>	<u>OUTSIDE IRRIGATION</u>
June	6.178	0.837	1.58
July	6.384	0.865	1.58
August	6.384	0.865	1.58
September	6.178	0.837	1.58
October	6.384	0.15	
November	6.178	0.15	
December	<u>6.384</u>	<u>0.15</u>	
Annual	75.17	5.29	7.91 = <u>88.37</u>

May 1 to September 30 Consumptive Use 43.68 Ac. Ft.

October 1 to April 30 Consumptive Use 44.69 Ac. Ft.

88.37 Ac. Ft

NOTES:

- (1) THE 43.68 ACRE FEET OF SUMMER CONSUMPTIVE USE SHOWN IN THE TABLE IS 0.75 ACRE FEET MORE THAN REQUIRED, BUT WAS USED TO ROUND OFF FOR REPLACEMENT WATER PURPOSES.
- (2) THE ABOVE TOTAL OF 88.37 Ac. Ft. DOES NOT INCLUDE TRANSPORTATION OR RESERVOIR EVAPORATION OR SEEPAGE LOSSES.

32. Depletions will increase toward the projected maximums as additional wells are drilled and put to use within The Western Union Ranch. Applicant annually will replace no less than the annual depletions to the river resulting from the operation of wells, determined as provided herein. Applicant proposes to accomplish this in part by leaving a portion of the Association's Guiraud 3T Ditch water right in the river at its present point of diversion to replace summer depletions, when in priority. Appropriate transportation losses, as assessed by the Division Engineer, will be imposed from the present point of diversion of the Guiraud 3T Ditch to the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River. To the extent that the historic consumptive use of such water right to be used for replacement purposes exceeds the well depletions and transportation losses then resulting, as determined under the procedures provided herein, Applicant will store such historic consumptive use in the Buffalo Creek Reservoir for subsequent release as replacement water. If the Guiraud 3T Ditch water right is unavailable to replace summer

depletions, releases shall be made from storage as required by the Division Engineer.

33. The Division Engineer shall determine the depletions which must be replaced on the basis of the calculations, measurements and procedures provided herein for the various uses and upon the reports submitted to him by the Association and such independent measurements as he may make.

34. Summer depletions shall be charged against Applicant's Guiraud 3T consumptive use credit if available. Summer depletions shall be the sum of the following amounts:

(a) 0.0132 acre feet for each single family residence or single family residential equivalent unit within The Western Union Ranch for which a water well has been drilled and not abandoned together with those for which a building permit has been issued and remains in effect as of March 15 of the year for which replacement is made, but for which a water well has not been drilled; and

(b) 0.0344 acre feet additional for each such well or building permit which contemplates irrigation as well as in-house use; and

(c) The consumptive use attributable to commercial uses from May 1 through September 30, determined as provided in Paragraph 19 of the Findings herein.

35. The remainder of Applicant's Guiraud 3T consumptive use credit, less transportation losses, may be stored in the Buffalo Creek Reservoir upon the priority date of the Guiraud 3T right, between April 15 and August 10 of each year, at a rate of flow of 2.0 c.f.s., up to an annual volume of 76.40 acre feet (i.e. the total consumptive use credit) less the amount of summer depletions which have been replaced by leaving all or a portion of the Guiraud 3T right in the stream; provided that such water may not be stored when Denver is storing in Antero Reservoir under its 1907 priority.

36. Applicant's entire Haver No. 3 consumptive use credit will be converted to storage in the Buffalo Creek Reservoir. This water may be stored, upon the priority date of the Haver No. 3 right, between April 15 and July 31, at a rate of flow not to exceed 1 c.f.s, up to an annual volume of 36.72 acre feet; provided, however, that the volume storage shall be subject to the provisions of Paragraph 27 of the Findings herein.

37. Following the approval of this decree, neither the Association's 3.5 c.f.s. portion of the Guiraud 3T right nor its

11.0 c.f.s. portion of the Haver No. 3 right shall be diverted at the previously decreed points of diversion, but instead such water shall be left in the river for replacement of summer depletions and transportation losses for the Guiraud 3T right to the extent available and required herein, with the surplus available for storage by exchange in the Buffalo Creek Reservoir, to the extent permitted herein. If Applicants' consumptive use credit under the Guiraud 3T and the Haver No. 3 water rights exceeds the capacity of the Buffalo Creek Reservoir, the remainder of such consumptive use credit may be used to support water use within The Western Union Ranch so long as the use does not adversely affect vested water rights. Any question of injury or threatened injury resulting from such use may be presented to the Court under the retained jurisdiction provisions of this Decree or otherwise. If part or all of the consumptive use credit is to be used to support a subdivision development other than The Western Union Ranch or for purposes other than those associated with The Western Union Ranch, for a period of one year or more, then a separate plan for augmentation or other appropriate application must be filed. The Objectors herein must be provided at least 20 days written notice of any use of a part or all of the consumptive use credit other than under this plan for augmentation.

38. Water stored in the Buffalo Creek Reservoir shall be released therefrom upon the request of the Division Engineer at times and in amounts determined by him, consistent with the provisions of this Decree. If vested water rights entitled to water from the South Fork of the South Platte River between The Western Union Ranch and the confluence of the Middle Fork of the South Platte River and the South Fork of the South Platte River otherwise would be injured by the operation of this plan for augmentation, the Division Engineer may require releases from such reservoir to prevent such injury.

39. The Association shall have the responsibility of reporting to the Division Engineer in a mutually agreeable form by April 1 of each year as to the number of water wells which have been drilled and not abandoned, the number of building permits issued and in effect for construction of single family residences or single family residential equivalent units at The Western Union Ranch, and which of such wells and/or building permits contemplate irrigation in addition to in-house use of water. The Association also shall report as required by the Division Engineer upon the amounts pumped for commercial uses by the wells in The Western Union Ranch. The Association shall further be responsible for providing means acceptable to the Division Engineer of measuring and for reporting upon the surface area, volume in storage and amounts of water released from the Buffalo Creek Reservoir, as requested by the Division Engineer,

and for making releases from such reservoir as requested by the Division Engineer. The Association shall include in its annual report a report of its operations under this plan for augmentation during the preceding calendar year and a description of its anticipated operations thereunder during the current calendar year, including a tabulation of amounts pumped for commercial use, of wells and building permits for in-house use only and for in-house and irrigation use, of the calculated resulting depletions, of replacement water provided, of water stored, of water released from storage and of reservoir evaporation losses. A primary purpose of these annual reports and of more frequent reports required by the Division Engineer shall be to provide the Division Engineer with information in a form readily usable for water administration. Exhibits G-1 and G-2 which were submitted to the Court in Case No. W-8109-75 are the forms of annual report which Applicant currently plans to use. It is recognized that such forms may be modified in accordance with actual experience under this plan for augmentation; however, no such modification shall be made except with the approval of the Division Engineer. The Association shall be responsible for enforcing the provisions of this Decree and for assuring that replacement shall be adequate to compensate for well depletions in The Western Union Ranch, as determined hereunder; provided, however, that the Association's having such responsibility shall not preclude the State from enforcing the terms of this Decree, nor preclude Denver from seeking such enforcement. The Association shall designate one or more individuals as its representatives to deal with the Division Engineer and on or before May 1st of each year shall advise the Division Engineer who its representatives will be, along with their addresses and phone numbers.

#### PROTECTIVE TERMS AND CONDITIONS

40. The Applicant, the State and Denver have agreed upon the following additional terms and conditions to be included in this Decree:

(a) Each well permit issued by the State Engineer pursuant to Applicants' plan for augmentation shall be subject to the limitations of this Decree and shall bear a notation so stating, referring to this case by number as follows: If issued after the entry of this restated and amended decree: 84CW296 (W-8109-75); if issued prior to the entry of this restated and amended decree: W-8109-75.

(b) Well permits allowing lawn and garden irrigation in addition to in-house use shall be issued for no more than 230 residences or residential equivalent units.

The amount of land irrigated from such wells shall not exceed a maximum of 1,000 square feet per lot.

(c) Well permits for in-house use only shall be issued for no more than 2,167 residences or residential equivalent units. Such permits shall allow only in-house uses at all times.

(d) If, in the judgment of the Division Engineer, the Association will not have sufficient water to meet the requirements of compensating for depletions as they occur through the calendar year, the Division Engineer may notify the Association that a deficiency exists. It is expected that the Division Engineer will notify the Association if it comes to his attention that a deficiency may exist. However, such notice shall not be a prerequisite to the Division Engineer's administering water rights in accordance with the priority system. The Association shall have the responsibility to obtain such required amounts of water and/or to take other actions as are required to assure the continuation of an adequate supply of water for The Western Union ranch. However, if and to the extent that the Association is unable to provide the replacement water required under this Decree to permit the operation of wells hereunder, such wells shall not be entitled to operate under the protection of this plan for augmentation, but shall be subject to administration and curtailment in accordance with the priority system.

(e) The original decree in Case No. W-8109-75 and the protective covenants were previously recorded, and this restated and amended decree shall be recorded, in the office of the Clerk and Recorder of Park County, Colorado. Purchasers of lots within The Western Union Ranch shall be given a copy of the protective covenants.

41. The Court finds that Applicants' plan for augmentation, conditioned and operated and subject to priority administration as provided herein, will prevent injurious effect to the owners of or persons entitled to use water under vested water rights or decreed conditional water rights, which might otherwise result from the operation of wells at The Western Union Ranch, as contemplated herein.

42. The Court further finds that, upon the imposition of the conditions set forth herein, the Association's portion of the Haver No. 3 Ditch and Guiraud 3T Ditch water rights may be modified to permit their storage in the Buffalo Creek Reservoir, to the extent permitted herein, without injurious effect to the

owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

CONCLUSIONS OF LAW

1. Subject to the terms and conditions contained herein, Applicants' plan for augmentation permits the installation and operation of the proposed wells without injurious effect to the owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

2. Applicants or lot owners in The Western Union Ranch upon proper application are entitled to the issuance of well permits by the State Engineer to the extent provided herein.

3. Applicants are entitled to a decree approving their plan for augmentation, as provided herein, and are further entitled to a decree directing the state water officials not to curtail wells constructed under permits issued pursuant hereto, so long as Applicants' plan for augmentation, as decreed herein, is operational and operated in accordance herewith.

4. Applicants are entitled to a change of water rights for 3.5 c.f.s. decreed to the Guiraud 3T Ditch and for 11 c.f.s. decreed to the Haver No. 3 Ditch, so as to permit the use of such water rights in Applicants' plan for augmentation:

(a) by release of water at the present point of diversion of the Guiraud 3T Ditch; and

(b) by storage of Guiraud 3T Ditch and Haver No. 3 Ditch waters in the Buffalo Creek Reservoir, as provided herein, and subsequent release therefrom.

5. The use of such water in Applicants' plan for augmentation does not constitute an abandonment thereof.

DECREE

NOW, THEREFORE, it is decreed as follows:

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



2. Following:

(a) The entry of this restated and amended Decree;

(b) The recording of this restated and amended Decree in the office of the Clerk and Recorder of Park County, Colorado; and

(c) The construction of the Buffalo Creek Reservoir and the storage or availability for storage therein of sufficient water to meet anticipated replacement water requirements, beyond those to be met by leaving a portion of Applicants' Guiraud 3T consumptive use credit in the river under the terms of Paragraph 34 of the Findings herein, due to operations at The Western Union Ranch at projected levels of development for the 12 months following issuance of the first well permit by the State Engineer,

then the State Engineer, upon application from time to time, shall issue permits for in-house use only for wells sufficient to serve 2,167 single family residences or residential equivalent units; shall issue permits for wells to serve no more than 230 single family residences or residential equivalent units, which permits shall also allow the use of such wells for irrigation purposes, but not to exceed a total of 1,000 square feet of irrigated ground per lot; and shall issue permits for wells sufficient to serve 515 recreational vehicle campsites, a lodge, a swimming pool, a launderette, a sales house, quarters, a bunkhouse, a 12-horse stable and 25 campsites. However, should it be subsequently determined by this Court that some or all of the 72.01 acres described in Exhibit E which was submitted to the Court in Case No. W-8109-75 continue to be irrigated with Haver No. 3 water, and that Applicants' Haver No. 3 consumptive use credit is to be reduced pursuant to the terms of Paragraph 27 of the Findings herein, then the Applicants shall provide, from other sources of replacement water, sufficient water to replace the depletions caused by the wells permitted or to be permitted by the State Engineer, unless and until such acreage is no longer so irrigated or an equivalent amount and source of replacement water is approved by the Court.

3. As a condition precedent to the issuance of any well permit contemplated hereunder, the State Engineer shall require the applicant for such well permit to provide a receipt from the Water Clerk of the Water Court, Water Division No. 1, showing payment herein of a \$5.00 supplemental docket fee to the Court for inclusion of the proposed well or wells within the plan for augmentation which is the subject of this Decree.

4. Each well permit issued by the State Engineer under this plan for augmentation shall bear a notation stating that it is subject to the limitations of this Decree, referring to this case by number as follows: If issued after the entry of this restated and amended decree: 84CW296 (W-8109-75); if issued prior to the entry of this restated and amended decree: W-8109-75.

5. Each well permit allowing in-house use only shall contain a provision permitting revocation of the permit if the well is used for other purposes.

6. Sewage resulting from the use of wells permitted hereunder shall be treated in disposal systems which return the effluent to the stream system or alluvium and which preclude evaporation at the surface and, further, shall be subject to the applicable regulations of Park County and the State of Colorado.

7. The State Engineer, the Division Engineer for Water Division No. 1 and their respective subordinates and representatives shall not curtail the operation of wells constructed under permits issued pursuant to this Decree, or of replacement wells therefor, even though such wells otherwise would be out of priority, in order to provide water to other water rights, so long as such wells are used in a manner consistent with this Decree and replacement water is provided in the manner and amounts decreed herein. However, if and to the extent that replacement water is not provided in the manner and in the amounts required by this Decree, such wells shall be subject to administration and curtailment in accordance with the priority system.

8. Applicants' plan for augmentation shall be implemented by Ranch of The Rockies Association (the "Association"), or its successor, subject to the general supervision of the Division Engineer for Water Division No. 1 and consistent with the requirements of this Decree. The Association shall be responsible for reporting to the Division Engineer as provided in Paragraph 39 of the Findings herein.

9. Notwithstanding the provisions of the foregoing paragraph 8, the Division Engineer or his duly authorized representatives may make independent meter readings or water measurements at any reasonable time and place. Furthermore, the responsibilities imposed upon the Association by this Decree shall not preclude the State of Colorado from enforcing the terms of this Decree, nor preclude Denver from seeking such enforcement.

10. Depletions resulting from in-house uses shall be determined by the Division Engineer on the basis of 0.0314 acre feet per year for each single family residence or single family residential equivalent unit, as provided in Paragraph 15 of the Findings herein. Depletions resulting from lawn and garden irrigation in addition to in-house uses shall be determined on the basis of 0.0658 acre feet per year for each single family residence or single family residential equivalent unit, as provided in Paragraph 16 of the Findings herein. Depletions resulting from the commercial uses described in Paragraph 17 and 18 of the Findings herein shall be calculated applying the consumptive use percentages contained in said Paragraphs 17 and 18 to the metered amounts diverted for such commercial uses. Reservoir evaporation losses shall be determined and charged by the Division Engineer at times of call, at those times when Applicants choose to provide replacement water by releases from storage.

11. In order for the wells at The Western Union Ranch to continue operating without curtailment by the water officials, sufficient replacement water must be provided to the river to compensate for depletions resulting from well use within The Western Union Ranch, determined as provided herein.

12. Replacement water may be provided for summer depletions by charging such summer depletions, determined as provided in Paragraph 34 of the Findings herein, against Applicants' Guiraud 3T consumptive use credit, if available, to a maximum of 76.40 acre feet per year.

13. The remainder of Applicants' Guiraud 3T consumptive use credit, less transportation losses as determined pursuant to paragraph 32 of the Findings herein, may be stored in the Buffalo Creek Reservoir on Buffalo Creek between April 15 and August 10 of each year, at a rate of flow of 2.0 c.f.s. (provided that such water may not be stored when Denver is storing in Antero Reservoir under its 1907 priority), as provided in Paragraph 35 of the Findings herein.

14. 3.5 cubic feet per second of water from the water right decreed to the Guiraud 3T Ditch with an appropriation date of July 1, 1867 and an adjudication date of October 18, 1989, diverting from the Middle Fork of the South Platte River, is hereby changed so as to permit its use in the Applicants' plan for augmentation, by release to the river at the present point of diversion and by storage in the Buffalo Creek Reservoir on Buffalo Creek.

15. Applicants' Haver No. 3 consumptive use credit of 36.72 acre-feet per year may be stored in the Buffalo Creek

Reservoir on Buffalo Creek between April 15 and July 31 of each year, upon the priority date of the Haver No. 3 Ditch water right, at a rate of flow not to exceed 1.0 c.f.s., as provided in Paragraph 36 and subject to the provisions of Paragraph 27 of the Findings herein. 11.0 cubic feet per second of water from the water right decreed to the Haver No. 3 Ditch with an appropriation date of May 1, 1887 and an adjudication date of October 18, 1889 is hereby changed so as to permit storage of such water in the Buffalo Creek Reservoir on Buffalo Creek, subject to the limitations contained herein, and its subsequent release to provide water under Applicants' plan for augmentation.

16. Following the approval of this decree, neither the 3.5 c.f.s of the Guiraud 3T Ditch water right nor the 11.0 c.f.s. of the Haver No. 3 Ditch water right changed hereby shall be diverted at the previously decreed points of diversion, but instead shall be left in the river for replacement purposes or stored in the Buffalo Creek Reservoir to the extent permitted herein, for subsequent release in Applicants' plan for augmentation. If Applicants' consumptive use credit under the Guiraud 3T and the Haver No. 3 water rights exceeds the capacity of the Buffalo Creek Reservoir, the remainder of such consumptive use credit may be used as provided in Paragraph 37 of the Findings herein.

17. Applicants or the Association shall have the ability to deliver from reservoir storage at least two seasons' worth of winter depletions after seepage and evaporation losses. Water stored in the Buffalo Creek Reservoir shall be released therefrom upon the request of the Division Engineer at times and in amounts determined by him, consistent with the provisions of this Decree. Evaporation losses shall be determined and charged against the amount in storage as provided in Paragraph 20 of the Findings herein.

18. The Association shall have the responsibility to obtain any required amounts of water and/or to take such other actions as are required to assure the continuation of an adequate supply of water for The Western Union Ranch.

19. The commitment of water from the Guiraud 3T Ditch water right and from the Haver No. 3 Ditch water right to Applicants' plan for augmentation pursuant to this decree, whether immediately required or not, does not constitute an abandonment of such water rights.

20. The water rights decreed to the Salt Creek Ditch and to the Spring Ditch, as described in the Application for Approval of Plan for Augmentation in Case No. W-8109-75, have

been withdrawn from the plan for augmentation and are unaffected by this Decree.

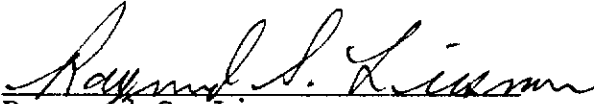
21. The Court retains jurisdiction over this Decree until five years after 50% of the residential well permits contemplated herein have been issued by the State Engineer, subject to extension as provided in C.R.S. § 37-92-304(6), for consideration, upon motion of any party and appropriate notice to all other parties, of whether the provisions of this Decree are sufficient to prevent injury to the presently vested water rights or decreed conditional water rights of the Objectors herein or to the interests of the State of Colorado in the administration of water rights, specifically including, without limitation, consideration of matters raised pursuant to the provisions of Paragraphs 27 and 37 of the Findings herein and Paragraph 2 of the decretal portion hereof.

End Restated and Amended Decree

\* \* \*

H. Throughout the Original Decree, where not already amended and where appropriate, references to "Applicant" should be changed to "Applicants," along with all necessary grammatical changes.

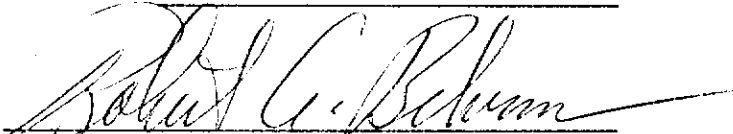
DATED this 30th day of September, 1988.

  
Raymond S. Liesman  
Water Referee

THE COURT FINDS: A PROTEST TO THE RULING WAS FILED BY WALKER RANCHES. APPLICANTS AND PROTESTANTS HAVE REACHED A SETTLEMENT OF THE ISSUES IN THIS CASE.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: **NOV 14 1990**

  
Robert A. Behrman  
Water Judge

I certify that copies hereof were  
mailed to the following persons at  
the addresses shown in the pleadings

Felicity Hanney, Shaun Sullivan,

Linda Preslon, John Cross

Jeri Pettit, Kim Greer, Robert Kravosa,

Ann Avery, Holly Heider,

State ID#:

Date of Mailing 11/15/90

Mauris Houtak

Deputy Water Clerk