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WATER RIGHTS
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IN THE DISTRICT COURT IN AND FOR
MAY 15 1978
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WATER DIVISION NO. 1

STATE OF COLORADO

CASE NO. W-8568-77

IN THE MATTER OF THE APPLICATION
FOR WATER RIGHTS AND PLAN FOR
AUGMENTATION OF THE CHATFIELD EAST
DEVELOPMENT COMPANY, IN DOUGLAS
COUNTY, COLORADO.

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND DECREE APPROVING
) PLAN FOR AUGMENTATION
) AND AMENDMENT OF
) DECREE IN CASE W-7590,
) WATER DIVISION NO. 1

THIS MATTER having been considered by the court on May 15, 1978, upon setting, the applicant in W-8568-77 appearing by its counsel, Kenneth L. Broadhurst, Esq.; and the applicant in W-7590, Arnold C. Harms by David L. Harrison and the protestants, City and County of Denver, acting by and through its Board of Water Commissioners, by Michael L. Walker, Esq.; and the City of Aurora, a Colorado municipal corporation, by Leland M. Coulter, City Attorney, and the court having considered the proposed Consent Decree as signed by the parties hereto, and having examined the records and files herein, and being now fully and sufficiently advised in the premises,

DOIT FIND:

1. That the application herein was filed in May of 1977. That due and sufficient notice was given of this matter by publication in the June, 1977 Resume for Water Division No. 1 outlining said plan for augmentation of the applicant herein; that due and sufficient notice was given of this proceeding and that the time for filing statements of opposition and entry of appearance has expired, and the water judge sitting in this court has jurisdiction over the

subject matter of these proceedings and over all parties affected hereby, whether they have appeared or not. Statements of opposition have been filed herein by the City and County of Denver, acting by and through its Board of Water Commissioners and the City of Aurora, a Colorado municipal corporation. No other parties have entered their opposition in this proceeding and the time for filing statements of opposition has expired.

2. The applicant is the owner of approximately 600 acres located in Section 21 and adjacent parts of Section 28, Township 6 South, Range 68 West of the 6th P.M., all in Douglas County, Colorado. These lands are in the process of being platted as residential subdivisions.

Applicant intends to develop these lands into residential tracts containing approximately 100 single-family residential lots consisting of approximately 5 acres per residential lot. When fully developed the residential uses will require the construction of approximately 100 on-site domestic wells for the withdrawal of ground water for domestic in-house beneficial use.

Each lot would use a septic waste disposal system, and based on an average occupancy of 3-1/2 persons per household, plus an average per capita water use of approximately 90 gallons per day when fully developed, exclusive of lawn irrigation, the annual gross household water requirements would result in the use of approximately 11-1/2 million gallons or about 35 acre feet annually. Utilizing a depletion allowance of 20 percent as a basis of project formulation which in this matter is an accurate depletion assumption, this would result in a total annual consumptive use requirement for in-house use only of approximately

7 acre feet. The geologic structure underlying the particular property involved could cause some increased detention and delay in return flow to the alluvial formation in excess of the time that would normally be expected through a uniform soil. Therefore, the applicant has estimated a depletion allowance of 20 percent as a basis for this project formulation.

Applicant has assumed for planning purposes an average lawn area 1300 square feet per residence, or a total of 3 acres for the project. Gross lawn watering requirements, assuming an application of 3 acre feet per acre would be 9 acre feet. Estimated water consumption for the 3 acres would approximate 6 acre feet assuming an irrigation application efficiency of two thirds as could reasonably be expected for this type of sprinkler lawn irrigation.

Therefore, the summary of annual project water requirements for in-house and lawn uses is as follows:

<u>Use</u>	<u>Gross Requirement</u> <u>Acres feet</u>	<u>Consumptive Use</u> <u>Acres feet</u>
In-house	35	7
Lawn	9	6
Total	44	13

3. In Case No. W-7590, Water Division No. 1, previously referred to in the application, this court allowed the transfer of approximately 10.92 acre feet of consumptive use credit of the Guiraud 2T water right which has an appropriation date of July 1, 1867 to a subdivision located on the North Fork of the South Platte River known as Ravenswood. The decree entered in W-7590 required 7.28 acres of land to be withdrawn from irrigation, which had been heretofore historically used for irrigation in South

Park, Colorado. With the dry-up of the previously irrigated acreage having already been accomplished pursuant to the terms and conditions of Case W-7590, applicant herein proposes to utilize 8.43 acre feet of consumptive use credit that was previously decreed to be allowed to the Ravenswood subdivision, and credit said consumptive use amount to the Chatfield East Development as proposed by applicant herein. This would result in the 8.43 acre feet of consumptive use credit being no longer available to the Ravenswood subdivision as decreed in Case W-7590, which decree will be accordingly amended herein by the tender and order of this court.

The applicant in W-7590, Arnold C. Harms, has entered into a purchase and sale agreement with the applicant herein to sell the 8.43 consumptive use credit to the applicant. Arnold C. Harms has consented to the amendment of the decree as previously entered in W-7590, as evidenced by his signature hereto, said applicant therein still being the owner of the Ravenswood subdivision.

There would be no injury to the vested rights of other appropriators from the South Platte River to allow the transfer of the consumptive use amount of 8.43 from the Ravenswood subdivision located in the North Fork of the South Platte to the Chatfield East subdivision located on Plum Creek, also a tributary to the South Platte River, so long as no more than 20 residential units are developed in the Ravenswood Subdivision, and the use of that water is restricted to in-house use only.

Following is an accounting of the present and proposed disposition of the .50 c.f.s. of Guiraud JT water right originally purchased by Arnold Harms, seller to ap-

applicant herein of the amount as listed and identified below.

	Cubic feet Per Second	Acres Irrigated	Historic Consumptive Use in Acre Feet
Originally under purchase contract by Harms	1.25	18.19	27.29
Actually purchased by Harms	0.50	7.28	10.92
Required by W-7590 as decreed	0.421	6.13	9.20
Sold to Third Party	0.074	1.08	1.62
Under purchase contract with Chatfield East Development Company, and in W-8568	0.386	5.62	8.43
Total sold or under purchase contract	0.460	6.70	10.05
Presently re- maining and required for Ravenswood	0.040	0.58	0.87

Due to the amount of carriage loss associated with the Guiraud 3T headgate to a point near Chatfield Reservoir, the 8.43 acre feet of consumptive use amount to be transferred from the 8.43 as previously decreed in Case W-7590 in this Water Court should be reduced to 8.055 resulting in an additional amount of water to be replaced to the stream system from the non-tributary well of 4.945 acre feet per year.

Applicant will cause to be constructed a well to withdraw water from the non-tributary aquifer known as the Arapahoe formation, at a point near the center of Section 21, Township 6 South, Range 68 West of the Sixth P.M. in

Douglas County, Colorado. The well will be drilled to a depth of 850 to 1000 feet to reach the water-bearing sands.

(a) It's anticipated that the yield would be approximately 300 gallons per minute maximum with the anticipated total annual withdrawal allowable based upon the ownership of 600 acres to be approximately 300 acre feet. Applicant proposes to withdraw from the well during those times that the Guiraud JT water right is out of priority during the irrigation season, for release into the Plum Creek drainage to offset the consumptive use requirements of the subdivision during those times that the Guiraud JT water is incapable of meeting the depletion requirements of the subdivision. Additionally, replacement must be made for non-irrigation season depletions, those which will occur during the period from April to October. Present anticipation is for the pumping of 4.945 acre feet per year, such pumping to be made at the direction of the Division Engineer, to replace the on-site domestic well depletions.

(b) The well and property it's located upon will be deeded to the Chatfield East Homeowners Association to be formed, along with a right to use an additional 10 acre feet from said well for additional replacement purposes, should the same be so needed by the Homeowners Association.

4. All subsequent lot purchasers will be bound by the terms of this decree and the decree will be filed of record in Douglas County, thereby constituting a covenant running with the land. Additionally the restrictive covenants of the property will prohibit yard irrigation of more than 1300 square feet per residence in order to facilitate enforcement of this decree. Although the decree will limit lawn irrigation, and will constitute a covenant

running with the land because of recording with the Clerk & Recorder of Douglas County, in order to facilitate the enforcement of this condition, any obligations and rights attendant to this plan for augmentation will be transferred and assigned to the Chatfield East Homeowners Association when formed. The Association will be empowered by the restrictive covenants to seek such appropriate legal relief as may be necessary to force compliance with the terms hereof, however, the Association's having such responsibility shall not preclude the State Water officials from enforcing the terms of this decree. Should the applicant herein or Homeowners Association desire to accommodate a greater amount of lawn irrigation than is set forth herein a subsequent plan of augmentation or other proper legal application to allow said increased lawn irrigation must be first approved through the water court with notice to the parties heretofore.

5. The court finds that by the imposition of the conditions set forth in these findings, wells for domestic, in-house purposes plus limited lawn irrigation, may be constructed and utilized without adversely affecting any vested water rights in the South Platte River or its tributaries, that by the institution and operation of the augmentation plan as herein approved, the applicant, or its successors and assigns, may secure permits for and use domestic wells under the provisions of C.R.S. 1973 Section 37-92-602(1)(b), as amended, without adversely affecting any vested water rights in the South Platte River or its tributaries and without the necessity of administering, or curtailing the withdrawal of water from any of such domestic wells in times of shortage.

6. Use of water from the wells covered by this plan shall be immediately curtailed if applicant's plan is not operated in accordance herewith, or if there is not adequate water available for replacement.

CONCLUSIONS OF LAW

The court concludes, as a matter of law:

1. The plan for augmentation proposed by applicant is one contemplated by law, and if administered in accordance with this decree, will permit the depletions associated with the provision of water service for domestic, in-house purposes, and limited lawn irrigation use to approximately 100 single-family residential units by means of exempt on-lot domestic wells without adversely affecting any other vested rights in the South Platte River or its tributaries.

2. The determination made by this court and this decree shall control the determination to be made by the State Engineer under C.R.S. 1973 Section 37-92-602(3)(b)(1) as amended.

3. The State Engineer may lawfully be required under the terms of this decree to administer the plan of augmentation in the manner set forth herein and not to curtail diversions, in times of shortage, through any of such wells, the depletions for which are compensated by the operation of the augmentation plan herein approved.

DECREE

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The plan for augmentation proposed by applicant herein is hereby approved.

2. The State Engineer, the Division Engineer of Water Division No. 1 or other water administration officials

shall administer the plan for augmentation herein approved by requiring the cessation of irrigation and diversion of a portion of the Guiraud JT water right pursuant to the Decree entered by this court in Case W-7590 and additionally by limiting the number of well permits on the Ravenswood subdivision to twenty eight (28).

3. The State Engineer, in the discharge of his responsibilities with respect to the processing of applications for permits to construct and utilize wells for the provision of domestic water supply to 100 single-family residential units within applicant's development through individual wells applied for under C.R.S. 37-92-602(1)(b), shall recognize the existence and operation of the plan for augmentation herein approved.

4. All subsequent lot purchasers shall be bound by the terms of this decree including the Findings hereof, and the decree shall be filed of record in Douglas County thereby constituting a covenant running with the land. A plat showing the legal description of the 6.13 acres formerly historically irrigated land to be dried-up has previously been filed in the Park County records and is of record in this water court in Case W-7590.

5. Water diverted under this plan shall be restricted to domestic, in-house uses plus limited lawn irrigation of no more than 1300 square feet per residential unit.

6. All waste water resulting from the use of water under this plan shall be returned to the underground aquifer from which it was originally obtained through septic systems discharging into soil absorption fields. Evaporative type sewage disposal systems will be restricted by covenant.

covenant.

7. The previously issued decree in Case W-7590 shall be and is hereby amended to disallow the use of 8.43 acre feet of annual consumptive use under the terms of that decree, and said decree is hereby so modified to disallow the plan of augmentation therein as it applies to the consumptive use of 8.43 acre feet. This court hereby allows the gross amount of 8.43 acre feet annually, or 8.055 acre feet after carriage loss, to be credited and used by applicant herein for purposes of the development of the Hatfield East subdivision. The decree in Case No. W-7590 shall further be modified so as to limit the number of single-family residential units to twenty eight (28). The vested rights of other appropriators from the South Platte River and its tributaries will not be injured by the granting of this decree allowing this plan of augmentation.

8. Applicant will cause to be constructed a well to withdraw water from the nontributary aquifer known as the Arapahoe formation, at a point near the center of Section 21, Township 6 South, Range 68 West of the 6th P.M. in Douglas County, Colorado. The well will be drilled to a depth of 850 to 1000 feet to reach the water-bearing sands.

(a) Applicant or its successor or assign shall withdraw from the well and release into the Plum Creek drainage at the direction of the Division Engineer to offset the depletions of the subdivision during those periods when the Guiraud JT water right is, during the irrigation season, out of priority. Applicant shall also make replacements to the Plum Creek drainage during the non-irrigation season of October 1 to April 30 of each year to offset those depletions.

(b) The well and property it's allocated upon will be deeded to the Chatfield East homeowners Association to be formed, along with a right to use an additional 10 acre feet from said well for replacement purposes should the same be needed by the Homeowners Association.

9. This decree shall be filed of record in Douglas County, thereby constituting a covenant running with the land. Additionally the restrictive covenants of the property will prohibit yard irrigation of more than 1300 square feet per residence. Although the decree will limit lawn irrigation, and will constitute a covenant running with the land bec use of recording with the Clerk & Recorder of Douglas County, in order to facilitate the enforcement of this condition, any obligations and rights attendant to this plan for augmentation will be transferred and assigned to the Chatfield East Homeowners Association when formed. The Association will be empowered by the restrictive covenants to seek such appropriate legal relief - may be necessary to force compliance with the terms hereof. Should the applicant herein or Homeowners Association desire to accommodate a greater amount of lawn irrigation than is set forth herein a subsequent plan of augmentation or other proper legal application to allow said increased lawn irrigation must be first approved through the water court with notice to the parties hereto.

10. Use of water from the wells covered by this plan shall be immediately curtailed if applicant's plan is not operated in accordance herewith, or if there is not adequate water available for replacement.

11. The State Engineer and the Division Engineer of Water Division No. 1 or other appropriate water of-

officials, shall not, at the request of senior appropriators or on their own initiative curtail the diversion of water through any of the wells provided for herein so long as such plan is being administered in accordance with this decree, so long as such wells are used in a manner consistent with this decree and replacement water is provided in the manner and amounts as decreed herein.

12. The appropriate water officials of the State of Colorado shall have continuing ongoing duty to administer the terms of this Decree and the Water Court in and for Water Division No. 1, shall have continuing jurisdiction to act upon any allegation that the terms and conditions as set forth in the Decree are not being properly complied with, or whether the terms of this decree are sufficient to prevent injury to the presently vested water rights of the objectors herein.

13. As a condition of this augmentation plan, no well permits will be issued until the Applicant, its successors or assigns shall have secured a permit to withdraw water from a non-tributary aquifer, and such well has the capability of providing for the amount of replacement water provided for by this decree.

IT IS FURTHER ORDERED:

1. That a certified copy of this Decree be and is hereby ordered to be filed in Case No. W-7590 in Water

Division No. 1, as an amendment to that decree and final order.

DATED this 15th day of May

1978.

Donald A. Carpenter

Donald A. Carpenter
Water Judge
Water Division No. 1
State of Colorado

APPROVED AS TO FORM AND CONTENT:

Michael Lubalke

City and County of Denver
acting by and through its
Board of Water Commissioners
Reg. No. 2828

Robert L. Heber

City of Aurora
Reg. No. 8301

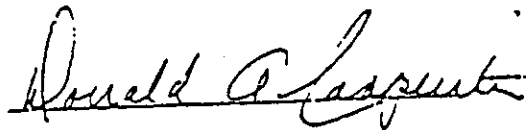
Kenneth L. Broadhurst

Chattfield East
Reg. No. 1659

Attorney for Harms-Ravenswood
(signature appears on next page,
page 14)

Division No. 1, as an amendment to that decree and final
order.

DATED this 15th day of May
1978.



Donald A. Carpenter
Water Judge
Water Division No. 1
State of Colorado

APPROVED AS TO FORM AND
CONTENT:

City and County of Denver
acting by and through its
Board of Water Commissioners

City of Aurora

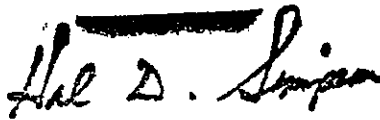
Chatfield East

David Hansen
Attorney for Harms-Ravenswood
Reg. No. 2590

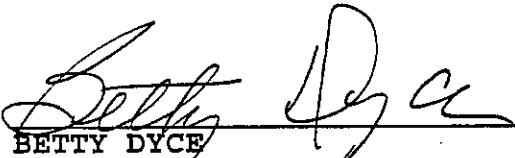
STATE OF COLORADO)
) SS
CITY AND COUNTY OF DENVER)

I, Hal D. Simpson, State Engineer for the State of Colorado, and legal custodian of all records in my office, do hereby certify that the attached one (1) print, bearing the State Engineer's stamp of certification, is duly certified as a correct copy of the records and files of the State Engineer for the State of Colorado.

Given under my hand and official seal of the Office of the State Engineer, State of Colorado, this 31st day of January, A.D., 1995.



HAL D. SIMPSON
STATE ENGINEER

BY: 
BETTY DYCE
RECORDS SECTION SUPERVISOR

lp/jc