

JUL 02 2007

WATER RESOURCES
STATE ENGINEER
COLO.**CENTRAL FILES**

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Court Address: 109 Eighth Street,
Glenwood Springs, CO 81601

Phone Number: (970) 945-5075

**CONCERNING THE APPLICATION FOR WATER
RIGHTS OF WEST DIVIDE WATER
CONSERVANCY DISTRICT, IN MESA COUNTY,
COLORADO.***Attorneys for Applicant:*

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▲ COURT USE ONLY ▲

Case No. 02CW165

FINDINGS OF FACT, RULING OF REFEREE AND DECREE OF COURT

West Divide Water Conservancy District filed an Application for Approval of Plan for Augmentation on June 27, 2002, and a First Amendment to Application and Claim for Conditional Appropriative Rights of Exchange on April 30, 2004 (herein collectively referred to as the "Application"). In accordance with C.R.S. §37-92-203(7), the Water Judge referred the subject Application to the Water Referee for Water Division No. 5, State of Colorado.

The Referee has made such investigations as are necessary to determine whether or not the Application should be granted, has become fully advised with respect to the subject matter of the Application, and has consulted with the Division Engineer for Water Division No. 5. The Referee hereby makes the following determinations and ruling as the referee in this matter.

FINDINGS OF FACT

1. The statements in the Application are true.
2. West Divide Water Conservancy District is the Applicant herein.
3. Neither the subject water right nor its source are located within a designated ground water basin.

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4. One Statement of Opposition was filed by SWD, LLC, a Colorado Limited Liability Company f/k/a CSCCN, LLC. The Statement of Opposition was withdrawn pursuant to Stipulation dated March 26, 2003. No other Statements of Opposition were filed and the time for filing Statements of Opposition has expired. Proper notice has been given as required by law.

5. Applicant proposes to augment various wells and surface diversions within Applicant's "Alsbury Reservoir Service Area" boundaries. Applicant's Alsbury Reservoir Service Area can generally be described as an area within the East Divide Creek water shed, upstream of the headgate of the Talmidge and Gibson Ditch, where no intervening calling water rights are present between the points of diversion and Alsbury Reservoir. Applicant's Alsbury Reservoir Service Area was developed by Applicant and the Division Engineer's Office. Points of diversion lying within the Alsbury Reservoir Service Area can be augmented using Alsbury Reservoir water without causing injury to other water rights. A map depicting the Alsbury Reservoir Service Area is attached as Exhibit A and incorporated herein by this reference.

6. The headgate of the Talmidge and Gibson Ditch is located at a point on East Divide Creek, within the SW ¼ of the NE ¼ Section 12, Township 7 South, Range 92 West of the 6th P.M., at a point 1365 ft west of the east section line and 260 ft south of the north section line. The Alsbury Service Area includes: 1) all of Sections 31 and 32, and portions of Sections 18, 19, 20, 28, 29, 30, 33 and 34, T. 7 S., R. 90 W., 6th P.M.; 2) all of Sections 23, and 36, and portions of Sections 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28 and 35, T. 7 S., R. 91 W., 6th P.M.; 3) portions of Sections 12 and 13, T. 7 S., R. 92 W., 6th P.M.; 4) all of Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20 and 30, and portions of Sections 3, 10, 15, 21, 22, 28, 29, 31, and 32, T. 8 S., R. 90 W., 6th P.M.; and 5) all of Sections 1, 12, 13 and 24, and portions of Sections 2, 11, 14, 23, 25, 26 and 36, T. 8 S., R. 91 W., 6th P.M.

7. Applicant has historically operated a temporary augmentation plan pursuant to a temporary substitute supply plan approved by the State Engineer's Office. The within Application adjudicates an umbrella augmentation plan to augment current and future depletions for structures located within Applicant's Alsbury Reservoir Service Area. Structures located in the Alsbury Reservoir Service Area will be augmented via releases from Alsbury Reservoir. Strict accounting and reporting requirements will be implemented to ensure proper administration by the State and Division Engineers.

8. Claim for Approval of Plan for Augmentation.

- a. Structures to be augmented: Wells, surface water rights, and reservoirs, located in the Alsbury Reservoir Service Area.
- b. Water rights to be used for augmentation: Alsbury Reservoir.

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Describe water right:

- i. **Date of Original Decree: July 9, 1965**
Case Nos.: 4954 (81CW118, 85CW130, 89CW095, 95CW093, 98CW054).
Court: Garfield County District Court/Water Division No. 5
- ii. **Location: The point of intersection of the centerline of the dam axis with the right abutment at high water line is located at a point whence the NE corner of Section 36, Township 8 South, Range 91 West of the 6th P.M. bears S45°54'W a distance of 4,428.08 feet.**
- iii. **Source: East Divide Creek, tributary to Divide Creek, tributary to the Colorado River.**
- iv. **Appropriation Date: June 15, 1961.**
Amount: 249.76 acre feet.
- v. **Uses: The 249.76 acre feet was originally decreed for irrigation.**
- vi. **Remarks: Case No. 98CW054: 1) changed 67.76 acre feet of this water from irrigation only to domestic, municipal, recreation, fire protection, irrigation, piscatorial, wildlife, augmentation, hydro-electric, and livestock watering; 2) changed 50 acre feet of water from a conditional right to an absolute right, to be used as a conservation pool for overwintering fishery; and 3) made 132 acre feet of irrigation water absolute. The firm yield of the reservoir is 135 acre feet.**

c. **Statement of Plan for Augmentation.**

Applicant seeks approval of a plan for augmentation to augment the out-of-priority depletions associated with various structures located in the Alsbury Reservoir Service Area. Augmentation will come via releases from Alsbury Reservoir. The depletions associated with the diversions at the various structures within the Alsbury Reservoir Service Area will be based upon the following assumptions:

Lawn and Garden Irrigation. Water requirements associated with lawn and garden irrigation have been determined from a modified Blaney-Criddle assessment adjusted for precipitation and temperature conditions and will vary by elevation. Irrigation efficiency of 80% will be assumed for all sprinkler irrigation applications. Irrigation consumptive use (acre feet) is as follows:

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Irrigation Consumptive Use Elevation Zone				
	4500' - 4999'	5000' - 5499'	5500' - 5999'	6000' - 6499'
April	0.169	0.118	0.087	0.058
May	0.335	0.318	0.301	0.285
June	0.477	0.461	0.444	0.427
July	0.525	0.508	0.490	0.473
August	0.415	0.400	0.385	0.370
September	0.294	0.283	0.272	0.260
October	0.082	0.075	0.068	0.054
Annual	2.298	2.162	2.047	1.926

Domestic In-house Use. In-house diversions for single and multi-family residences will be 300 gallons per day per residence. Consumptive water use will be 15% for non-evaporative ISDS systems and 5% for central wastewater treatment systems.

Livestock. Consumptive use for horses, cows and other types of livestock will be 11 gallons per day per animal.

Evaporation. Replacement water for evaporation from ponds or other water surfaces will vary by elevation zone and will be determined in accordance with the following tables:

Pond Evaporation (acre-ft) On-Channel Structures with Effective Precipitation Included Elevation Zone				
	4500' - 4999'	5000' - 5499'	5500' - 5999'	6000' - 6499'
January	0.00	0.00	0.00	0.00
February	0.06	0.05	0.05	0.00

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March	0.16	0.14	0.13	0.11
April	0.29	0.28	0.27	0.26
May	0.38	0.37	0.37	0.36
June	0.50	0.49	0.49	0.48
July	0.51	0.51	0.50	0.50
August	0.44	0.43	0.43	0.42
September	0.31	0.30	0.30	0.29
October	0.18	0.18	0.17	0.18
November	0.12	0.00	0.01	0.02
December	0.07	0.00	0.00	0.00
Annual	3.01	2.76	2.71	2.62

Pond Evaporation (acre-ft) On-Channel Structures without Effective Precipitation Included Elevation Zone				
	4500' - 4999'	5000' - 5499'	5500' - 5999'	6000' - 6499'
January	0.00	0.00	0.00	0.00
February	0.00	0.00	0.00	0.00
March	0.21	0.21	0.21	0.21
April	0.34	0.34	0.34	0.34
May	0.45	0.45	0.45	0.45
June	0.54	0.54	0.54	0.54
July	0.56	0.56	0.56	0.56
August	0.51	0.51	0.51	0.51
September	0.38	0.38	0.38	0.38
October	0.26	0.26	0.26	0.26
November	0.03	0.03	0.03	0.03
December	0.00	0.00	0.00	0.00

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Annual	3.27	3.27	3.27	3.27
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Office Buildings. Water use for office buildings will be based on 20 gallons per capita day. Consumptive water use will be 15% for non-evaporative ISDS systems and 5% for central wastewater treatment systems.

Water Hauling. All water hauled for commercial and industrial purposes is assumed to be 100 % consumptive.

Other Uses. Water requirements for other uses, including commercial and industrial, will be determined on a case-by-case basis. These case-by-case water use estimates will be subject to review and approval by the Division Engineer.

Delayed Depletions from Ground Water Diversions. Delayed depletions will be estimated for all ground water diversions in accordance with the following table:

Glover Method - Lagged Depletion Factors													
Geologic Zone		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
A1	Alluvial, (<1000 ft)	2.9%	2.8%	4.6%	6.5%	8.8%	11.8 %	15.0 %	14.4 %	12.3 %	9.6%	7.1%	4.0%
A2	Alluvial (1000-2000 ft)	5.0%	4.3%	4.5%	5.3%	6.9%	9.5 %	12.3 %	13.4 %	12.8 %	10.9 %	8.6%	6.6%
A3	Alluvial (>2000 ft)	6.8%	6.5%	6.3%	6.4%	7.0%	8.1 %	9.3%	10.4 %	11.0 %	10.7 %	9.5%	7.9%
B1	Bedrock (<1000 ft)	5.3%	4.4%	4.1%	4.4%	5.9%	8.3 %	11.5 %	14.0 %	13.8 %	12.2 %	9.2%	6.7%
B2	Bedrock (1000-2000 ft)	8.6%	8.3%	8.0%	7.7%	7.6%	7.6 %	7.8%	8.3%	8.8%	9.1%	9.1%	8.9%
B3	Bedrock (>2000 ft)	8.4%	8.5%	8.5%	8.5%	8.4%	8.3 %	8.3%	8.2%	8.2%	8.2%	8.3%	8.4%
Alluvial materials assume a Transmissivity of 100,000 GPD/FT and Storativity of 0.2 Bedrock materials assume a Transmissivity of 5,000 GPD/FT and Storativity of 0.15													

Transit Losses. Transit losses, are assumed to be 5% to 10%, but may be reasonably modified by the State and Division Engineers to reflect actual conditions in the Divide Creek drainage.

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Applicant will provide detailed accounting of diversions and depletions to the State and Division Engineers as required by the State and Division Engineers to administer the within augmentation plan. Measuring devices will be required for all surface and groundwater diversions.

Immediate notice of structures to be covered by Applicant's umbrella augmentation plan shall only be provided to those parties who have filed statements of opposition in the case and have requested such notification. Further notice of the structures covered by Applicant's umbrella augmentation plan shall be made in subsequent diligence cases related to Applicant's conditional appropriative right of exchange claimed below.

This plan for augmentation will be implemented over a period of time in a manner generally consistent with the following:

- A. West Divide Water Conservancy District contractees will submit to West Divide an application form for water allotment contract that shall identify this plan for augmentation as the source of replacement water. The form of the contract application may be supplemented or amended from time to time to meet continuing requirements of West Divide.
 - B. West Divide shall submit the application to the State and Division Engineers and afford the State and Division Engineers the opportunity to comment upon whether the proposed diversion is an authorized Alsbury Reservoir Service Area diversion and can be administered under this plan.
 - C. The exact locations of the authorized points of diversion and places of use will be determined in subsequent diligence cases as outlined below.
9. Conditions.

Unless enlarged by future Amendment, Applicant's Alsbury Reservoir Service Area shall be limited to the area within the East Divide Creek water shed, upstream of the headgate of the Talmidge and Gibson Ditch, where no intervening calling water rights are present between the points of diversion and Alsbury Reservoir. Points of diversion lying within the Alsbury Reservoir Service Area can be augmented using Alsbury Reservoir water without causing injury to other water rights. A map depicting the Alsbury Reservoir Service Area is attached as Exhibit A and incorporated herein by this reference. Water available for augmentation under this plan shall be limited to the firm yield of Alsbury Reservoir for augmentation purposes, 67.76 acre feet. This amount is derived from the available reservoir storage amount of 185 acre feet, less 50 acre feet

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dedicated to the conservation pool, and limited to 67.76 acre feet for augmentation purposes per the Decree in Case No. 98CW054, Water Division 5.

10. Claim for conditional appropriative right of exchange:
 - A. Applicant claims a conditional appropriative right of exchange within its Alsbury Reservoir Service Area. The general reach of the exchange shall be between East Divide Creek and the points of diversion for wells, surface water rights and reservoirs located within Applicant's Alsbury Reservoir Service Area. The specific stream reaches within the exchange are identified on Table 1, on page 9 of this decree. Table 1 describes the various tributaries within the Alsbury Service Area and identifies upper and lower termini for each reach. The rates of exchange shall be up to 1.0 cfs for each reach as described in Table 1, not to exceed a cumulative total of 5.0 cfs within the entire Alsbury Service Area. Annual depletions shall not exceed 67.76 acre feet.
 - B. The date of appropriation for Applicant's exchange shall be January 1, 2004. The appropriation was initiated by formation of intent to adjudicate exchange as claimed herein.
 - C. At timely intervals as required by statute, Applicant shall file an application for finding of reasonable diligence for the conditional appropriative right of exchange claimed herein. Applicant shall reference both conditional and absolute water rights covered by this augmentation plan in its filing for diligence on its conditional rights of exchange. In the diligence application(s), Applicant shall reference the structures covered by its umbrella plan for augmentation for all contractees covered by the plan. Applicant shall reference said structures by name, legal description and amount of water diverted from said structures. Applicant shall provide notice of diligence on the exchange right, regardless of whether the structure being augmented is an absolute or conditional water right. Structure information shall be published in the water resume with the diligence application.

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Summary of Exchange Reaches
Alsbury Reservoir

Reach	Lower Terminus			Upper Terminus			Amount (cfs)				
	Bearing / Distance	Section	Township	Range	P.M.	1/4 1/4		Section	Township	Range	P.M.
JUNE CREEK	2130 ft from North Section Line 1800 ft from East Section Line	SE 1/4 of NW 1/4	6S	91W	6th	NE 1/4 of SW 1/4	3	6S	91W	6th	1.0 cfs
EAR GULCH	645 ft south of the North Section Line 1760 ft west of the East Section Line	NW 1/4 of NE 1/4	7S	91W	6th	SW 1/4 of NW 1/4	15	7S	91W	6th	1.0 cfs
CORRAL CREEK	2310 ft south of the North Section Line 1920 ft east of the west section line	SE 1/4 of NW 1/4	7S	91W	6th	SE 1/4 of SW 1/4	35	7S	91W	6th	1.0 cfs
SPRUCE CROSSING GULCH	1150 ft south of the north section line 1400 ft west of the east section line	NW 1/4 of NE 1/4	7S	91W	6th	NE 1/4 of SW 1/4	26	7S	91W	6th	1.0 cfs
OOSTEN GULCH	1900 ft south of the north section line 1850 ft west of the east section line	SW 1/4 of NE 1/4	7S	91W	6th	NW 1/4 of SW 1/4	13	7S	91W	6th	1.0 cfs
DEAN GULCH	2500 ft south of the north section line 925 ft west of the east section line	SE 1/4 of NE 1/4	7S	91W	6th	SW 1/4 of SW 1/4	19	7S	90W	6th	1.0 cfs
TIMBER GULCH	1740 ft south of the north section line 2460 ft east of the west section line	SE 1/4 of NW 1/4	7S	91W	6th	SE 1/4 of SE 1/4	2	8S	91W	6th	1.0 cfs
BEAR GULCH	2310 ft south of the north section line 2020 ft west of the east section line	NW 1/4 of SE 1/4	7S	91W	6th	SW 1/4 of SW 1/4	1	8S	91W	6th	1.0 cfs
ROAD GULCH	1810 ft south of the north section line 2100 ft east of the west section line	SE 1/4 of NW 1/4	8S	90W	6th	SW 1/4 of SW 1/4	3	8S	90W	6th	1.0 cfs
LOG GULCH	450 ft west of the east section line	SE 1/4 of SE 1/4	7S	90W	6th	SW 1/4 of NW 1/4	15	8S	90W	6th	1.0 cfs
CAMP CREEK	990 ft north of the south section line 288 ft west of the east section line	SE 1/4 of SE 1/4	6S	90W	6th	SE 1/4 of NE 1/4	24	8S	91W	6th	1.0 cfs
GINRIGHT CREEK	200 ft south of the north section line 1830 ft east of the west section line	NE 1/4 of NW 1/4	20	90W	6th	NW 1/4 of NW 1/4	22	8S	90W	6th	1.0 cfs

TABLE 1

alsbury exchange reaches

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RULING OF REFEREE AND DECREE OF COURT

The Referee has examined the information submitted by the Applicant and has become advised with respect to the subject matter of the Application.

The Referee rules as follows:

1. The foregoing Findings of Fact are incorporated herein and made part of the Ruling of the Referee.
2. The plan for augmentation proposed by Applicant is such as is contemplated by law. If implemented and administered in accordance with this decree, the plan for augmentation, including exchange, described herein will provide water to Applicant's contractees without adversely affecting the owners or users of vested water rights or decreed conditional water rights. The plan for augmentation described herein may be lawfully decreed by this Court.
3. The Referee rules that the plan for augmentation described herein is approved.
4. The Referee rules that the conditional appropriative right of exchange is approved. Applicant shall file an application for finding of reasonable diligence for the conditional appropriative right of exchange awarded herein. In the diligence application(s), Applicant shall reference the structures covered by its umbrella plan for augmentation. Applicant shall reference said structures by name, legal description and amount of water diverted from said structures. Structure information shall be published in the water resume with the diligence application.
5. Pursuant to Colo. Rev. Stat. §37-92-305(8), the State Engineer shall curtail all out of priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.
6. Applicant shall install measuring devices, provide accounting, and supply calculations regarding the timing of depletions as required by the Division Engineer for the operation of this plan. The Applicant shall also file an annual report with the Division Engineer by November 15th of each year summarizing diversions and replacements made under this plan.
7. Prior to the construction and/or operation of the subject wells pursuant to this plan, Applicant's contractees shall obtain well permits issues pursuant to Colo. Rev. Stat. §37-

90-137(2) and this plan for augmentation, subject to and conditioned upon the rulings and findings made herein.

8. In consideration of the specific findings and conclusions made herein and in conformance with Colo. Rev. Stat. §37-92-304(6) (1990), as amended, the approval of the plan for augmentation decreed herein shall be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others for a period of five (5) calendar years after each individual exchange is made absolute. If no petition for reconsideration is filed within those five (5) years, retention of jurisdiction for this purpose shall automatically expire.

IT IS ACCORDINGLY ORDERED that this Ruling shall be filed with the Water Clerk subject to judicial review pursuant to Colo. Rev. Stat. §37-92-304.

IT IS FURTHER ORDERED that a copy of the Ruling shall be filed with the State Engineer and Division Engineer for Water Division No. 5.

Dated: June 26th 2007

Copy of the foregoing mailed to all Counsel
of Record, Water Referee, Div. Engineer
and State Engineer Date 6-29-07

[Signature]
Deputy Clerk Water Div. 5

Olsewski
Noto

BY THE REFEREE:

[Signature]

Water Referee, Water Division No. 5

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court, and the month and year for filing an Application for Finding of Reasonable Diligence shall be October, 2013.

Dated: October 8, 2007

Copy of the foregoing mailed to all Counsel
of Record, Water Referee, Div. Engineer
and State Engineer Date 10-11-07

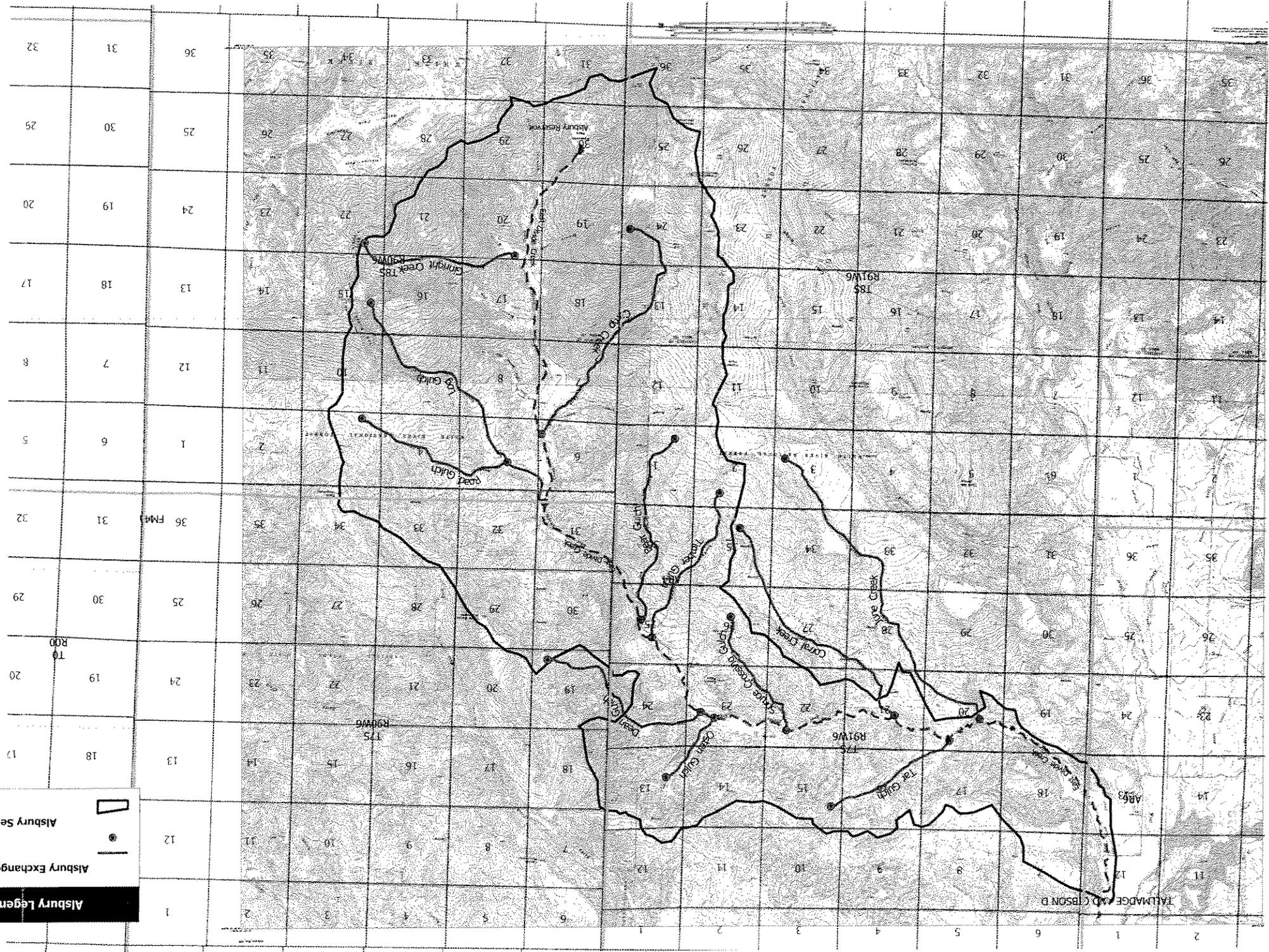
[Signature]
Deputy Clerk Water Div. 5

Olsewski
Noto

BY THE COURT:

[Signature]

Water Judge



Alsbury Legend

- Alsbury Exchange Reaches
- Alsbury Service Area
- Points
- Lines
- Areas