4-mile Aug Plan

FILED
IN COMBINED COURT
DELTA COUNTY, CO
97 JUL 23 AM 11:46

Filed in the Combined Court
Delta County, Colorado
JUL 17 1997
CLERK
Dennis R. Blaine, Clerk

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 94CW344

AMENDED DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF WEST DIVIDE WATER CONSERVANCY DISTRICT AND WILLIAM ZILM IN GARFIELD, PITKIN AND EAGLE COUNTIES,

in Garfield County, Colorado.

On July 14, 1997, West Divide Water Conservancy District and William Zilm filed a Petition to Correct Clerical Errors in Decree for the purpose of correcting the amounts of the Sunlight Well No. 1 and Sunlight Well No. 2 stated in the 94CW344 Decree entered August 5, 1996. The Court has considered that Petition and hereby finds that correction of the errors is proper under C.R.S. § 37-92-304 (10).

1. Accordingly, the Court hereby amends the decreed amounts for the said wells as follows:

Structure Name	Amount (c.f.s.)	Case No.	Adj. Date	App. Date	Anticipated Consumptive Use	Depletion Location (A,B or C)	Maximum EQR to be augmented under existing contracts
Sunlight Well No. 1	0.100	80CW546/ 81CW413	12/31/1980	08/03/1966	25%	A	100
Sunlight Well No. 2	0.025	80CW546/ 81CW413	12/31/1980	05/18/1967	25%	A	

2. The said amounts shall replace the amounts set forth in paragraph 7 as shown on page 3 of the August 5, 1996 Decree. All other provisions of the Decree entered August 5, 1996 in this Case No. 94CW344 shall remain unchanged.

IT IS ACCORDINGLY ORDERED that this Amended Decree 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 this Amended Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

DATED: July 22, 1997.

Copy of the foregoing mailed to all Counsel of record ✓—Water Referee——Div. Engineer ✓—and State Engineer——Date 7-25-97

BY THE COURT:

Robert A. Lowe

Signed by judge

DISTRICT COURT, WATER DIVISION 5, COLORADO

Case No. 94CW344

JUDGMENT AND DECREE OF WATER COURT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF WEST DIVIDE WATER CONSERVANCY DISTRICT AND WILLIAM ZILM IN GARFIELD, PITKIN, AND EAGLE COUNTIES

The Applicants, West Divide Water Conservancy District (the "District") and William Zilm, have applied for a surface water right for the Zilm Transfer Ditch, a change of water right for the Atkinson Ditch, and approval of a plan for augmentation and exchange.

The Water Judge referred the Application to the Water Referee for Water Division No. 5, State of Colorado, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, 1973, known as the Water Rights Determination and Administration Act of 1969. The Referee ordered re-referral of the Application to the Water Judge on March 15, 1995.

I. FINDINGS OF FACT

1. Applicants filed their Application in Case No. 94CW344 in District Court, Water Division No. 5, on December 28, 1994. Applicants filed an Amended Application on November 29, 1995.

2. All notices required by law have been made.

3. Statements of Opposition were filed by Ray D. Walker, James P. Mahan, Jr., Edmund Prehm, Lazy Diamond A Homeowners Association Ltd., the State and Division Engineers, Richard Hilleary, John M. Traul, Sr., Russell William Coletti, Jr., May S. Duncan, John H. Quinn, Jr., Faye B. Faas, Betty Byers-Coates, Brenda P. Zegarski, and Alan Wolf. Springridge Place Homeowners' Association was substituted as a party for Traul, Coletti, Zegarski, and Wolf. Duncan, Quinn, Hilleary, and Faas have withdrawn their Statements of Opposition. The Water Court summarily dismissed the Statement of Opposition filed by Walker and Mahan. Prehm, Springridge Place Homeowners' Association, Lazy Diamond A Homeowners' Association, and the State and Division Engineers have stipulated to entry of this Decree.

Signed by the judge

RECEIVED JUL 24 1996

CLAIM FOR SURFACE WATER RIGHT

4. The Applicants claim a surface water right for the Zilm Transfer Ditch, more particularly described as follows:

a. Legal description: The Zilm Transfer Ditch diverts from the left bank of Zilm Draw at a point whence the SE corner of Section 3, T. 7 S., R. 89 W. at the 6th P.M. bears S. 41° East a distance of 4100 feet.

b. Source: Zilm Gulch and return flow from diversions from Fourmile Creek, tributary to the Roaring Fork River

c. (1) Date of initiation of appropriation: 6/1/1969

(2) How appropriation was initiated: construction of ditch and application of water to beneficial use

d. Amount claimed: 2.0 cfs, absolute

e. Use: Augmentation

CLAIM FOR CHANGE OF WATER RIGHTS

5. Name of structure: Atkinson Ditch
See paragraphs 8 and 9.

6. Proposed change: The District requests the right to use its interest in the Atkinson Ditch for augmentation purposes in addition to the currently decreed irrigation use.

CLAIM FOR APPROVAL OF PLAN FOR AUGMENTATION AND EXCHANGE

7. Structures to be augmented (hereinafter "the augmented rights"):

OWNER/ ADDRESS	STRUCTURE NAME	AMOUNT (CFS)	CASE NO.	ADJUDICATION DATE	APPROPRIATION DATE	ANTICIPATED CONSUMPTIVE USE[1]	DEPLETION LOCATION (A, B, OR C)[2]	MAXIMUM EQR TO BE AUGMENTED[3] UNDER EXISTING CONTRACTS
Ski Sunlight 10901 117 Rd. Glenwood Spgs CO 81601	Sunlight Well No. 1	0.022	80CW546/ 81CW413	12/31/1980	08/03/1966	25%	A	100[4]
	Sunlight Well No. 2	0.022	80CW546/ 81CW413	12/31/1980	05/18/1967	25%	A	
	Sunlight Well No. 3	0.006	80CW546/ 81CW413	12/31/1980	08/08/1966	25%	A	
	Sunlight Well Nos. 4-12	0.045 ea.	80CW546/ 81CW413	12/31/1981	06/29/1981	25%	A	
	Sunlight Spring Nos. 1-7	0.02 ea.	81CW414	12/31/1981	11/18/1980	25%	A	
	Sunlight Feeder Ditch	1.5	85CW331	12/31/1985	09/25/1985	25%	A	
Dr. William Zilm 0090 Sunlight Dr. Glenwood Spgs CO 81601	Zilm Well No. 1	0.17	W1680	12/31/1972	05/04/1972[5]	15%	C	90
	Zilm Well No. 2	0.22	W2380	12/31/1973	06/30/1973	15%	C	
	Zilm Well No. 3	0.22				15%	C	
Dr. William Flood 4339 Rd 117 Glenwood Spgs CO 81601	Flood Water Well	0.03	W3570	12/31/1977	06/29/1972	15%	B	2
	Flood Well No. 2	0.033	95CW115	12/31/95	06/01/95	15%	B	

Owner/ Address	Structure Name	Amount (CFS)	Case No.	Adjudication Date	Appropriation Date	Anticipated Consumptive Use[1]	Depletion Location (A, B, or C)[2]	Maximum EQR to be Augmented[3] under Existing Contracts
Greenwald Trust c/o United Airlines PO Box 66100 Chicago IL 60666	Springridge Well No. 1	0.156	93CW51	12/31/1993	11/15/1990[6]	15%	B	125
	Springridge Well No. 2	0.156	93CW51	12/31/1993	02/04/1993	15%	B	
	Springridge Well No. 3[7]	0.156				15%	B	
	Springridge Well No. 4 [8]	0.156				15%	B	
	Bershenyi Spring & Pipeline	0.015	4033	10/24/1952	04/15/1912	15%	B	
Sunlight Hollow c/o Thomas Adkison Krabacher, Hill & Edwards, P.C. 242 Main, #B Carbondale, CO 81623	Sunlight Hollow Well No. 1	0.11	94CW319	12/31/1994	10/03/94	25%	A	40
	Sunlight Hollow Well No. 2	0.11	94CW319	12/31/1994	10/03/94	25%	A	
	Sunlight Hollow Pond	10.0 AF	94CW319	12/31/1994	10/03/94	25%	A	
	Sunlight Hollow Ditch	2.0	94CW319	12/31/1994	10/03/94	25%	A	
Bruce Gentry 4613 Cty Rd 117, Glenwood Springs, CO 8160	Gentry Well No. 1	0.033	95CW015	12/31/1995	11/01/1993	15%	B	2
	Gentry Well No. 2	0.033	95CW015	12/31/1995	12/01/1994	15%	B	

(1) As a percent of in-house diversions.
(2) Location A: Above Atkinson Ditch.
Location B: Below Atkinson Ditch and above Fourmile Ditch.
Location C: Between Fourmile Ditch and Smart & Green Ditch.
(3) Depletions are not limited to standard units. Other uses can be covered as long as the depletions do not exceed the depletions associated with E(currently identified, unless in accordance with paragraph 13.
(4) Ski Sunlight's existing contract with West Divide is for 9.9 AF.
(5) Part of Sunlight View Augmentation Plan (W1804).
(6) Part of Springridge Augmentation Plan (93CW51).
(7) Located in the SE1/4 of the NE1/4, Section 10, T. 7 S., R. 89 W. of the 6th P.M., at a point 2450 feet from the North section line, and 650 feet from the East section line of said Section 10.
(8) Located in the SW1/4 of the SW1/4, Section 11, T. 7 S., R. 89 W. of the 6th P.M., at a point 1190 feet from the South section line, and 730 feet from the West section line of said Section 11.

The Springridge Well Nos. 3 and 4 and the Zilm Well No. 3 are not decreed water rights. They are included within this decree to confirm that when an(if they are developed, they will be included under the augmentation plan decreed herein.

8. Water rights to be used for augmentation:

Structure	Adjudication Date	Appropriation Date	Case No.	Decreed Amount	Source
Atkinson Ditch[1]	05/11/1889	05/24/1882	C.A.132	4.0 cfs	Fourmile Creek
Green Mountain Reservoir[2]	10/12/1955	08/01/1935	2782, 5016, 5017	154,645 af	Blue River
Ruedi Reservoir	06/20/1958	07/29/1957	C.A.4613, W-789-76	140,697.3 af 101,369 af	Frying Pan River
Zilm Transfer Ditch	12/31/1994	06/01/1969	94CW344	2.0 cfs	Zilm Gulch

(1) Refer to paragraph 11bA for amount of Atkinson Ditch dedicated to plan for augmentation.
(2) The District's contracts for Ruedi Reservoir and Green Mountain Reservoir releases are described in paragraph 11bC.

9. Legal description of point of diversion or place of storage of water rights to be used for augmentation.

Atkinson Ditch: The headgate is located on the East Bank of Fourmile Creek about three miles from the mouth of said creek.

Green Mountain Reservoir: The reservoir is located approximately 16 miles southeast of the town of Kremmling in Summit County, Colorado and more particularly in all or parts of Sections 11, 12, 13, 14, 15, and 24 of Township 2 South, Range 80 West in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M.

Ruedi Reservoir: An on-channel reservoir located in the NW¼ NE¼ of Section 18, Township 8 South, Range 84 West of the 6th P.M.

Zilm Transfer Ditch: Please refer to paragraph 4 above.

10. Uses:

a. Atkinson Ditch — irrigation and augmentation

b. Green Mountain Reservoir — in accordance with paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80

c. Ruedi Reservoir — generation of electric energy, domestic, municipal, industrial, irrigation, and stock watering

d. Zilm Transfer Ditch — augmentation

11. Statement of plan for augmentation:

a. Background

The District intends to provide water to contract users within the Fourmile Creek basin for domestic, recreational, municipal, and commercial purposes. The District has consequently developed this augmentation plan to provide such a water supply for up to 500 equivalent residential units (EQR) within the Fourmile Creek basin.

For purposes of this plan for augmentation, one EQR is based on the assumptions that 3.5 people live in each residence and use 100 gallons per day per capita for in-house use, and that 3500 square feet of lawn and garden will be irrigated at each residence.

Depletions to the stream system vary depending upon the type of waste water disposal system used: approximately 5% to 25% of in-house diversions are consumed when the waste water is centrally collected and treated, and approximately 15% of in-house diversions are consumed when the waste water is collected and treated by individual waste water treatment systems (septic tank—leach field). Irrigation depletions are estimated to be 80% of diversions, with a unit consumptive-use value of 1.99 acre feet per acre at lower elevations in the Fourmile Creek basin.

Diversions and depletions for a single EQR are tabulated below (values in acre feet):

Type of Wastewater Treatment System	Irrigation Season (values in acre feet[1])						Non-Irrigation Season	
	Diversions			Depletions				
	In-House	Irrigation	Total	In-House	Irrigation	Total	Diversions	Depletions
Central Wastewater Treatment (5%)	0.199	0.20	0.399	0.010	0.160	0.170	0.193	0.010
Central Wastewater Treatment (25%)	0.199	0.20	0.399	0.050	0.160	0.210	0.193	0.048
Septic Tank — Leach field or central wastewater treatment (15%)	0.199	0.20	0.399	0.030	0.160	0.190	0.193	0.029
No Return to Fourmile Creek (100%)	0.199	0.20	0.399	0.199	0.160	0.359	0.193	0.193

(1) The irrigation season is typically April 15 - October 15 in the lower Fourmile Creek area.

b. Operation of plan for augmentation

When the augmented rights are out-of-priority, augmentation will be provided first through diversions at the Zilm Transfer Ditch. When said Ditch is out-of-priority, augmentation will occur through dry-up of lands historically irrigated by the Atkinson Ditch and associated bypasses or storage releases from Ruedi Reservoir and/or Green Mountain Reservoir. This preferred order of augmentation and the actual augmentation source (or any combination of sources) may vary, depending upon the location of the call and the time of year.

Each year the Applicant will report to the Division Engineer the number of units augmented by this plan and the type of sewage treatment by unit. Using the depletion information described in paragraph 11.a. of this decree, the Applicant will propose a plan of operation by April 1 for the upcoming administrative year (April 1 through March 31). Applicant will provide a copy of the plan to the Objectors Lazy Diamond A Homeowners Association, Springridge Place Homeowners' Association and Edmund Prehm upon their request. The plan will include at least diversions at the Zilm Transfer Ditch, a quantity of bypass water at the headgate of the Atkinson Ditch and/or releases from storage facilities as necessary to meet projected calls and as necessary to conform with the preferred order of augmentation described above. If the Division Engineer accepts said plan of operation, including proposed diversions at the Zilm Transfer Ditch, bypass and

releases, then administration the following year shall be in accordance with such. however, the Division Engineer may adjust the said plan of operation as he deems appropriate in consideration of the actual calls and stream conditions, if the actual call is different from the projected call estimated by Applicant.

A. IRRIGATION SEASON - AVERAGE YEAR

Irrigation-season depletions will be augmented by the cessation of, use of Applicant's interest in the senior priority in the Atkinson Ditch. The portions of the Atkinson Ditch dedicated to this plan are as follows:

1.00 cfs owned by the Applicant, West Divide of the senior priority (priority no. 33) of the Atkinson Ditch, described more fully in paragraph 8 above;

Dry up of 50 acres of lands historically irrigated by the senior priority of the Atkinson Ditch as depicted in the attached Exhibit A; and

99.5 acre feet of consumptive use associated with the said 1.00 cfs and dry up of 50 acres. See footnote 1, page 6.

The monthly distribution of consumptive-use credits associated with the portion of the Atkinson Ditch dedicated to the plan for augmentation is as follows:

MONTH	UNIT OF CONSUMPTIVE-USE CREDIT (FEET)	TOTAL CONSUMPTIVE-USE CREDIT (ACRE FEET)
APR	0.06	3.0
MAY	0.38	19.0
JUN	0.48	24.0
JUL(1)	0.45	22.5
AUG	0.29	14.5
SEP	0.25	12.5
OCT	0.08	4.0
TOTAL	1.99	99.5

(1) July, August, and September consumptive-use credits may not be expected to be available in dry years. However, even in dry years, one-half of Applicant's interest in the Atkinson Ditch is made more dependable for purposes of this augmentation plan by virtue of the

District's long term contract with the owner of a one-half interest in the senior Fourmile Ditch priority no. 19. See paragraph 11bB below.

B. IRRIGATION SEASON - DRY YEAR

At times in the past, the Atkinson Ditch has been out of priority to the Four Mile Ditch, Priority No. 19, with an adjudication date of May 11, 1889, and an appropriation date of November 11, 1886. In order to minimize the repetition of this circumstance in the future, the West Divide Water Conservancy District has entered into a long-term (40 years) contract (Exhibit B hereto) with the owner of a one-half interest in that Fourmile Ditch priority. The said agreement allows the Applicants to divert 0.5 cfs of the Applicants' interest in the Atkinson Ditch, Priority No. 33, out of priority to the said Fourmile Ditch, thereby making one-half of Applicants' interest in the Atkinson Ditch more dependable for purposes of this decree. The Court hereby approves said agreement and agrees that Applicant's interest in the Atkinson Ditch is thereby made more secure. The Applicants understand that this contract is of limited duration and if such contract expires, fails to be renewed, is terminated, or alternative sufficient sources of replacement water are not included in a temporary substitute supply plan or in this decree by proper amendment prior to such expiration, curtailment of all out-of-priority diversions will occur.

During the irrigation season when the physical supply at the Atkinson Ditch headgate is 1.0 cfs or less, the Fourmile Ditch call (up to 0.5 cfs) shall be deferred to the Atkinson Ditch for Applicants under this plan.

When the augmented rights are out of priority, Applicants will whenever possible (as a preferred order of augmentation) provide water to the Fourmile Ditch by diversions into the Zilm Transfer Ditch and by releasing such diversions to Fourmile Creek above the headgate of the Fourmile Ditch. Applicants may obtain a credit for said releases that may be applied directly to benefit the augmented rights or to improve the reliability of the Applicants' interest in the Atkinson Ditch.

SMART AND GREEN AND GRISTY DITCHES

Two ditch headgates on Fourmile Creek below the Fourmile Ditch and above the confluence with the Roaring Fork River have

historically received a supply of water from ground water accretions to Fourmile Creek below the headgate of the Fourmile Ditch. Historically the supply available to such ditches has varied depending on the overall water supply in any given water year. At times the full decreed allocation has not been available to the Smart and Green Ditch, which derives its source of supply both from Fourmile Creek and the same unnamed tributary upon which the Zilm Transfer Ditch is located. Because Applicants' plan contemplates the replacement of 100% of depletions either to Fourmile Creek or the unnamed tributary above the Smart and Green Ditch, no injury should accrue to either downstream headgate. However, Applicants' proposal for augmentation releases is a complex system that may vary from year to year and season and season. In the evaluation of Applicants' annual proposal of operation and in the administration of such plan, the Division Engineer may consider that adequate water is made available to the Smart and Green Ditch, for example, by making deliveries to the Smart and Green Ditch via the Atkinson Ditch and the Zilm Gulch.

C. NON-IRRIGATION SEASON

Some non-irrigation season calls affecting the augmented rights are expected to come from outside the Fourmile Creek basin. Thus, Green Mountain Reservoir and Ruedi Reservoir releases may be used pursuant to this plan for augmentation during the non-irrigation season to augment depletions to the Roaring Fork River and the Colorado River.

Green Mountain Reservoir: The District currently has a temporary water-service contract with the United States Bureau of Reclamation for delivery of up to 100 acre feet. As necessary, releases may be made from Green Mountain Reservoir to augment depletions pursuant to this plan.

Ruedi Reservoir: The District currently has a water-service contract with the United States Bureau of Reclamation for release of up to 200 acre feet per year. As necessary, releases may be made from Ruedi Reservoir to augment depletions pursuant to this plan.

The Applicants understand that these water service contracts are of limited duration and if such contracts expire, fail to be renewed, are terminated, or alternative sufficient sources of

replacement water are not included in a temporary substitute supply plan or in this decree by proper amendment prior to such expiration, curtailment of all out-of-priority diversion will occur.

The most probable source of non-irrigation season calls affecting the augmented rights from within the Fourmile Creek basin is the Zilm hydropower right. In order to prevent injury to this hydropower right, Applicant has entered into an agreement (Exhibit C hereto) with the owner of the Zilm hydropower water right. Under that agreement, Zilm has agreed to accept payment (as described in the agreement) in lieu of augmentation replacement releases.

12. Pursuant to C.R.S. § § 37-84-112 and 113, the Applicants shall install headgates and measuring devices, provide accounting, and supply calculations regarding the timing of depletions as may be required by the Division Engineer for the operation of this plan. The Applicants shall also file an annual report with the Division Engineer by November 15th of each year summarizing diversions, depletions, and replacements made under this plan. Applicant will provide a copy of the report to the Objector Lazy Diamond A Homeowners Association, Springridge Place Homeowners' Association upon their request.

A proposed accounting form is attached hereto as Exhibit D. The accounting shall include an accounting of upstream out-of-priority depletions covered under this plan for augmentation, so that a corresponding amount of water, when required, will not be called at the Atkinson Ditch headgate under Priority No. 33. The proposed accounting form may be modified as required by the Division Engineer.

13. Upon its own initiation or at Springridge Place Homeowners' Association's and/or Lazy Diamond A Homeowners' Association's request, West Divide will be responsible for making improvements to the Atkinson Ditch to allow for accurate measuring of any necessary bypasses at the headgate of such ditch in accord with the plan for augmentation decreed herein. West Divide shall have two years from the time of such request (if any) by Springridge Place Homeowners' Association and/or Lazy Diamond A Homeowners Association, to respond with the said improvements.

14. Furthermore, to ensure that no injury occurs to others, the District shall observe the following conditions during the operation of its augmentation plan:

a. Each year the Applicants will submit to the Division Engineer a statement in the format generally represented in Exhibit D which contains calculations of depletions which would be tributary to Fourmile Creek upstream of the headgate of the Atkinson Ditch. The annual statement will also include a calculation of the depletions that are expected to occur between the headgate of the Atkinson Ditch and the headgate of the Fourmile Ditch. The Applicants will also annually submit calculations of projected depletions to be made to that unnamed tributary of Fourmile Creek which has been referred to as Zilm Gulch, on which the Zilm Transfer Ditch headgates.

b. When the Atkinson Ditch is being used as the augmentation source, out-of-priority depletions will be charged to West Divide's proportionate share of the Atkinson Ditch. Under circumstances where those depletions do not fully consume West Divide's proportionate share, West Divide can call for and leave its unconsumed share in the ditch for use by the ditch co-owners.

c. Out of priority depletions will be replaced to other users so that water users on Fourmile Creek, including other users of the Atkinson Ditch priorities, may receive, through actual diversions, the amounts of water they would have otherwise received if not for the out of priority depletions.

d. This decree contemplates that West Divide will add to the augmentation service plan (as described in this decree) additional points of diversion and/or water rights and/or EQR (above those currently represented in paragraph 7, Section I). In the event such future points of diversion and/or water rights and/or additional EQR are added, and approval of a substitute supply is requested from the State Engineer, notice will be given by the Applicant to the Objectors Edmund Prehm, Springridge Place Homeowners' Association and Lazy Diamond A of said substitute supply plan, and an opportunity to object thereto. Future points of diversion and/or water rights and/or additional EQR would be added on a permanent basis to the augmentation plan herein decreed only after the filing of an application in Water Court, notice of which is published in the resume, and an opportunity

given to all, including Objectors Edmund Prehm, Springridge Place Homeowners' Association, and Lazy Diamond A, to object on the basis of injury to water rights or for such other basis as may be provided for by law.

II. CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are fully incorporated herein.

2. The Court has jurisdiction over the Amended Application and over all who had standing to appear in this action, whether they actually appeared or not.

3. The surface water right, change of water right, and plan for augmentation described herein are such as are contemplated by the law. If implemented and administered in accordance with this decree and the stipulations set forth herein, the change of water right and plan for augmentation described herein will provide water to contract users within the Fourmile Creek drainage basin without adversely affecting the owners or users of vested water rights or decreed conditional water rights. The change of water right and plan for augmentation described herein may be lawfully decreed by this Court.

III. JUDGMENT AND DECREE

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

2. The Zilm Transfer Ditch described herein is decreed an absolute water right. The change of water right for the Atkinson Ditch and the plan for augmentation described herein are approved, subject to the terms and conditions set forth herein.

3. The State Engineer and Division Engineer may lawfully be required under the terms of this decree to:

a. Administer the plan for augmentation in the manner set forth herein.

b. Refrain from curtailing out-of-priority diversions of the augmented rights when the depletions are offset by the operation of the plan for augmentation approved herein.

c. In conformance with Colo. Rev. Stat. § 37-92-305(8), curtail out-of-priority diversions by the augmented rights at any time when the consumptive use associated with Applicants' provision of water as approved herein exceeds the net amount of replacement water available under the plan for augmentation.

4. 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 change of water right and 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 five years commencing upon completion of the structures identified in paragraph I.7. Applicants agree not to assert the defenses of res judicata or collateral estoppel with respect to any future claim made during the said 5-years retained jurisdiction period by Springridge Place Homeowners' Association and/or Lazy Diamond A Homeowners Association that the agreement between Bershenyi and West Divide Water Conservancy District (Exhibit B to this Decree) fails to operate to prevent injury to Springridge Place Homeowners' Association and/or Lazy Diamond A Homeowners Association or their successors or assigns.

IT IS ACCORDINGLY ORDERED that this Decree 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 Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Dated: August 5, 1996

BY THE JUDGE:

Robert A. Behrs

Water Judge

Copy of the foregoing mailed to all Counsel of record ✓ Water Referee —— Div. Engineer ✓ and State Engineer ✓ Date 08-09-96

D Jordan

Deputy Clerk, Water Div. No. 5

Saltzfeld Fahrney Georgi Miller Burchfield Dennis

WDWCD.F32
July 17, 1996

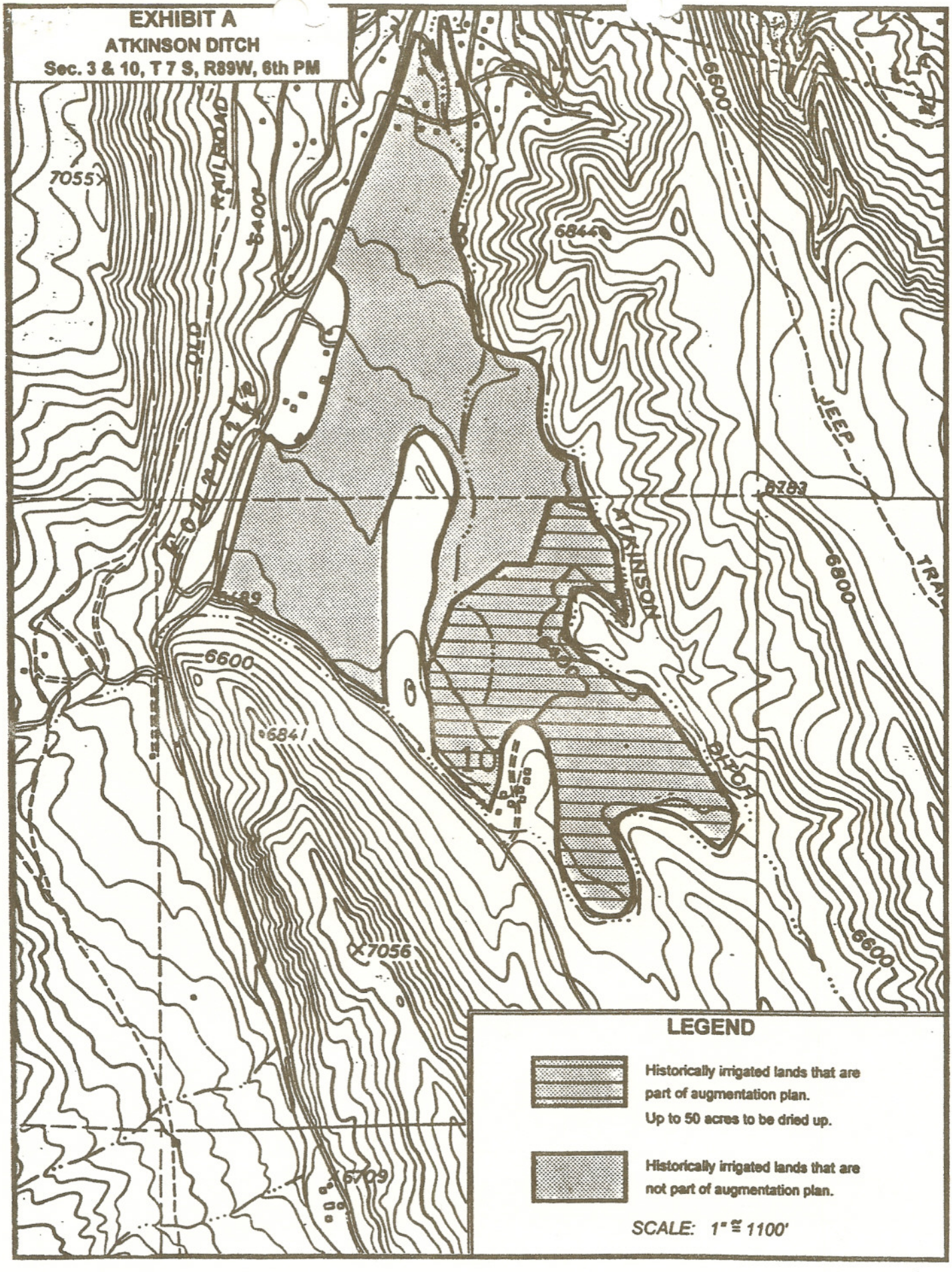
EXHIBIT A
ATKINSON DITCH
Sec. 3 & 10, T 7 S, R89W, 6th PM
OLD RAILROAD
7055
6400
6600
6844
6783
JEEP
ATKINSON
6800
6600
6841
DITCH
7056
6709
6600
LEGEND
Historically irrigated lands that are part of augmentation plan.
Up to 50 acres to be dried up.
Historically irrigated lands that are not part of augmentation plan.
SCALE: 1" ≅ 1100'

WATER AGREEMENT

THIS AGREEMENT is made this 28th day of Dec, 1994 by and between JOHN W. BERSHENYI and ALICE BERSHENYI, hereinafter referred to as "Bershenyi," and the WEST DIVIDE WATER CONSERVANCY DISTRICT, a quasi-municipal entity formed pursuant to Colorado statute, hereinafter referred to as "West Divide."

WITNESSETH Bershenyi is the owner of those certain water rights described on Exhibit A, which exhibit is attached hereto and incorporated herein as those fully set forth; and

WITNESSETH Bershenyi has, in the past, been forced to participate in litigation in Water Court in order to protect the yield of water available to said water rights; and

WHEREAS West Divide is desirous of furthering its water allocation program in the Four Mile Creek region whereby it allocates water pursuant to C.R.S. 37-45-101 et. seq. to water users in need thereof, primarily for domestic and lawn irrigation type uses; and

WHEREAS West Divide wishes to implement its program in cooperation with Bershenyi and in a manner that does not cause Bershenyi injury as set forth in this Agreement.

FOR AND IN CONSIDERATION of the payments and promises to be made hereunder, the parties agree as follows:

1. Bershenyi agrees that he will accept payment as hereinafter described in lieu of replacement releases that otherwise would be made to meet calls made pursuant to the priorities listed on Exhibit A to the extent of 0.5 c.f.s., which 0.5 c.f.s. may be included in an allocation and augmentation program by West Divide.

2. West Divide shall pay to Bershenyi in consideration for the foregoing agreement not to call, the minimum annual sum of Five Hundred Dollars ($500.00), together with an additional annual sum in the amount of Twenty Dollars ($20.00) per acre foot for each and every acre foot allocated by West Divide pursuant in whole or in part to the water rights leased hereunder under its Four Mile Creek allocation program.

3. The term of this Water Agreement shall begin on the first day of January, 1995, and extend to and include the 31st day of December, 2035.

EXHIBIT B

4. Each anniversary during the term hereof, the minimum annual rental and the per-acre-foot annual rental described herein shall be subject to modification. The minimal annual rental and the per-acre-foot rental shall be modified on the 1st day of January of each year of the term of this Agreement by the percentage of the rent which is equal to the percentage that the cost of living for the preceding twelve-(12) month period increased or decreased. The cost of living shall be computed upon the basis of the Consumer Price Index, All Urban Consumers, U.S. City Average 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics. The base index number shall be the latest month available prior to January 1, 1995. The current index number shall be the same month of each year thereafter. Commencing on the second year of this Agreement and each thereafter, the rental shall be adjusted by computing the increase or decrease in the cost of living for the preceding twelve (12) month period and adding or deducting the same from the rental. The increase or decrease between the base index number and the current index number (expressed as a percentage) shall be multiplied by the rental. Any resulting positive or negative product shall be added to or deducted from the rental and the total thereof shall be paid in equal, successive, monthly installments. If at any time the Consumer Price Index is no longer published, the parties shall use such other index as is generally recognized or accepted for the purpose of making similar determinations of purchasing power.

5. As additional consideration for the agreement herein, West Divide agrees to investigate means by which Bershenyi's Reynolds Ditch may be rehabilitated and placed to efficient beneficial use in accordance with its decrees. Bershenyi is the owner of irrigated land under said Reynolds Ditch that is in need of irrigation from the ditch.

6. West Divide acknowledges Bershenyi's title to the water rights described in Exhibit A and exclusive use thereof except for the term of and pursuant to the terms of this Agreement. Further, West Divide agrees that it will appear in Water Court, as necessary, in order to protect Bershenyi's and West Divide's rights under this Agreement.

7. Bershenyi's agreement not to exercise an administrative call shall be conditioned upon West Divide's ability to cause either a bypass at the headgate of the Adkinson Ditch on Four Mile Creek, an amount of 1.0 c.f.s., or West Divide's ability, through agreement with others, to cause return flows from an unnamed gulch immediately east of Four Mile Creek proper to be

returned to Four Mile Creek above the gate of the Four Mile Ditch in the amount of 1.0 c.f.s, or a combination of the bypass and return flow to Four Mile Creek to occur in a total amount of 1.0 c.f.s.

8. West Divide shall be solely responsible for the installation of any and all measuring devices, recording devices, and administrative requirements associated with this Agreement.

9. West Divide agrees to hold Bershenyi harmless for and on account of any damages that may occur to Bershenyi and/or third party users contractees of West Divide's allocation program resulting from water use derived under this Agreement.

10. West Divide shall be solely responsible for obtaining all local, state, and judicial approvals necessary to accomplish water use pursuant to this Agreement.

11. West Divide may terminate the within arrangement should West Divide no longer need to rely on this Agreement to implement the allocation plan.

THIS AGREEMENT is done this 28 day of December 1994, and shall be binding upon the heirs, successors, and assigns of the parties hereto.

John W. Bershenyi
JOHN W. BERSHENYI

Alice Bershenyi
ALICE BERSHENYI

WEST DIVIDE WATER CONSERVANCY DISTRICT

By Kelly Coney

Attest:

Susan Gong
Secretary

EXHIBIT A

FOUR MILE DITCH

Stream	Ditch	Priority No.	Amt.	APP.DATE	ADJ.DATE
Four Mile	Four Mile	19	1.6	11/6/1881	5/11/89

WATER AGREEMENT

This Agreement made this 24th day of April, 1995, by and between JOHN W. BERSHENYI AND ALICE BERSHENYI, hereinafter referred to as Bershenyi, and the WEST DIVIDE WATER CONSERVANCY DISTRICT, a quasi-municipal entity performed pursuant to Colorado Statute, hereinafter referred to as "West Divide."

WITNESSETH, Bershenyi and West Divide entered into a Water Agreement dated December 28, 1994; and

WHEREAS, the parties have determined that one paragraph of said Agreement should be amended.

FOR AND IN CONSIDERATION of the payment and promises to be made hereunder, the parties agree as follows:

1. The parties agree that paragraph 7 of the Agreement of December 28, 1994 should be amended so that it will provide as follows:

   7. West Divide shall cause either a bypass at the headgate of the Atkinson Ditch on Four Mile Creek or West Divide shall cause return flows from an unnamed gulch immediately west of Four Mile Creek to be returned in the Zilm Transfer Ditch to Four Mile Creek above the headgate of the Four Mile Ditch. The obligation to provide bypasses at either point shall be limited in that the amount of cumulative bypass at both points shall be that quantity of water available for bypass in excess of 0.5 cfs.

2. In all other respects, the Agreement between West Divide and Bershenyi shall remain in full force and effect.

WEST DIVIDE WATER CONSERVANCY DISTRICT

By Kelly Conn

ATTEST:

Russell George
Secretary

John W. Bershenyi
JOHN W. BERSHENYI

Alice Bershenyi
ALICE BERSHENYI

WATER AGREEMENT

THIS AGREEMENT is made this 28th day of Dec, 1994 by and between WILLIAM M. ZILM and CHARLOTTE B. ZILM, hereinafter referred to as "Zilm," and the WEST DIVIDE WATER CONSERVANCY DISTRICT, a quasi-municipal entity formed pursuant to Colorado statute, hereinafter referred to as "West Divide."

WITNESSETH Zilm is the owner of those certain water rights described on Exhibit A, which exhibit is attached hereto and incorporated herein as those fully set forth; and

WITNESSETH Zilm has, in the past, been forced to participate in litigation in Water Court in order to protect the yield of water available to said water rights; and

WHEREAS West Divide is desirous of furthering its water allocation program in the Four Mile Creek region whereby it allocates water pursuant to C.R.S. 37-45-101 et. seq. to water users in need thereof, primarily for domestic and lawn irrigation type uses; and

WHEREAS West Divide wishes to implement its program in cooperation with Zilm and in a manner that does not cause Zilm injury as set forth in this Agreement.

FOR AND IN CONSIDERATION of the payments and promises to be made hereunder, the parties agree as follows:

1. Zilm agrees that he will accept payment as hereinafter described in lieu of replacement releases that otherwise would be made to meet calls made pursuant to the priorities listed on Exhibit A. This Agreement may be included in an allocation and augmentation program by West Divide.

2. West Divide shall pay to Zilm in consideration for the foregoing agreement not to call, the minimum annual sum of Five Hundred Dollars ($500.00), together with an additional annual sum in the amount of Twenty Dollars ($20.00) per acre foot for each and every acre foot allocated by West Divide under its Four Mile Creek allocation program pursuant in whole or in part to the water rights leased hereunder.

3. The term of this Water Agreement shall begin on the first day of January, 1995, and extend to and include the 31st day of December, 2035.

EXHIBIT C

4. Each anniversary during the term hereof, the minimum annual rental and the per-acre-foot annual rental described herein shall be subject to modification. The minimal annual rental and the per-acre-foot rental shall be modified on the 1st day of January of each year of the term of this Agreement by the percentage of the rent which is equal to the percentage that the cost of living for the preceding twelve-(12) month period increased or decreased. The cost of living shall be computed upon the basis of the Consumer Price Index, All Urban Consumers, U.S. City Average 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics. The base index number shall be the latest month available prior to January 1, 1995. The current index number shall be the same month of each year thereafter. Commencing on the second year of this Agreement and each thereafter, the rental shall be adjusted by computing the increase or decrease in the cost of living for the preceding twelve (12) month period and adding or deducting the same from the rental. The increase or decrease between the base index number and the current index number (expressed as a percentage) shall be multiplied by the rental. Any resulting positive or negative product shall be added to or deducted from the rental and the total thereof shall be paid in equal, successive, monthly installments. If at any time the Consumer Price Index is no longer published, the parties shall use such other index as is generally recognized or accepted for the purpose of making similar determinations of purchasing power.

5. West Divide acknowledges Zilm's title to the water rights described in Exhibit A and exclusive use thereof except for the term of and pursuant to the terms of this Agreement. Further, West Divide agrees that it will appear in Water Court, as necessary, in order to protect Zilm's and West Divide's rights under this Agreement.

6. West Divide shall be solely responsible for the installation of any and all measuring devices, recording devices, and administrative requirements associated with this Agreement.

7. West Divide agrees to hold Zilm harmless for and on account of any damages that may occur to Zilm and/or third party users contractees of West Divide's allocation program resulting from water use derived under this Agreement.

8. West Divide shall be solely responsible for obtaining all local, state, and judicial approvals necessary to accomplish water use pursuant to this Agreement.

9. West Divide may terminate the within arrangement should West Divide no longer need to rely on this Agreement to implement the allocation plan.

THIS AGREEMENT is done this 28th day of Dec, 1994, and shall be binding upon the heirs, successors, and assigns of the parties hereto.

William M. Zilm
WILLIAM M. ZILM

Charlotte B. Zilm
CHARLOTTE B. ZILM

WEST DIVIDE WATER CONSERVANCY DISTRICT

By Kelly Coney

Attest:
Secretary

EXHIBIT A

ATKINSON DITCH

Stream	Ditch	Priority No.	Amt.	App.Date	Adj.Date
Four Mile Creek	Atkinson Ditch		2.0	9/29/1977	12/31/1979
Four Mile Creek	Atkinson Ditch		2.0	03/24/1983	12/31/1985
Four Mile Creek	Atkinson Ditch		2.0	03/24/1983	12/31/1985

EXHIBIT D1

West Divide Augmentation Plan

Fourmile Creek 94CW344

List of Water Contract Users for the Year _____

	Contract		Diversion Structure		Location						Depletion Location			Notes
	Name of Contractee	No. of EQR's	Name	ID No.	1/4	1/4	1/4	Sec	T	R	Above Atkinson Ditch	Below Atkinson Above Fourmile Ditch	Below Fourmile Above Smart & Green Ditch	
01														
02														
03														
04														
05														
06														
07														
08														
09														
10														

EXHIBIT D2

WEST DIVIDE AUGMENTATION PLAN

(Fourmile Creek - 94CW344)

CALCULATED DEPLETIONS

Values in 1/1000 cfs

Month	Number of Units	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Ann (ac
Unit Depletions														
(1) 5% central	1	0.027	0.027	0.027	0.027	0.027	0.111	0.522	0.753	0.619	0.460	0.364	0.132	[illegible]
(2) 15% leach field	1	0.081	0.081	0.081	0.081	0.081	0.165	0.576	0.807	0.673	0.514	0.418	0.186	[illegible]
(3)100% ET no return	1	0.541	0.541	0.541	0.541	0.541	0.625	1.036	1.267	1.133	0.974	0.878	0.646	0.
Above Atkinson D.														
(4) 5%														
(5) 15%														
(6) 100% ET														
(7) TOTAL														
Above Atkinson but														
Below Fourmile D.														
(8) 5%														
(9) 15%														
(10) 100% ET														
(11) TOTAL														
Between Fourmile &														
Smart and Green														
(12) 5%														
(13) 15%														
(14) 100% ET														
(15) TOTAL														

c:\941-032\WDIVRLV WB1A