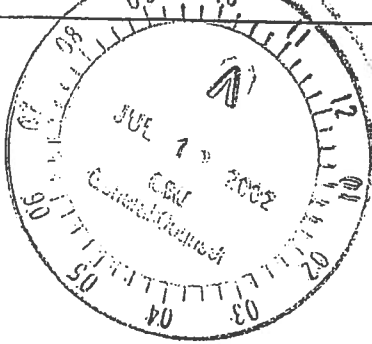


Homestake Scoping Comments on proposed Camp Hale Restoration and Enhancement Project

Exhibit 3: Case No. 88CW449

11-115 ~~11-115~~ *per test*

DISTRICT COURT, WATER DIVISION NO. 5 109 8 th Street, Suite 104 Glenwood Springs, CO 81601 (970) 945-5075		 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF COLORADO SPRINGS, COLORADO, IN EAGLE, LAKE AND PITKIN COUNTIES		
Mark T. Pifher, Esq., #12629 Trout, Witwer & Freeman, P.C. 1120 Lincoln Street, Suite 1600 Denver, Colorado 80203 Phone: (303) 861-1963 extension 128 Fax: (303) 832-4465 E-mail: mpifher@troutlaw.com		Case Number: 88CW449 Div.: 5 Ctrm.:
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE		

This matter has come before the Court on the application of the City of Colorado Springs, Colorado (hereinafter "Colorado Springs" or "Applicant") for a change of water rights, for conditional water rights (surface), for conditional water rights (underground), for conditional water storage rights (surface and underground), for conditional appropriative rights of exchange, and for approval of a plan for augmentation, including exchange. The Court, having considered the pleadings, the stipulations between the parties, and the evidence presented, and otherwise being fully advised in the premises, makes the following findings of fact and conclusions of law and enters a Judgment and Decree as set forth below.

FINDINGS OF FACT

I. Procedural Matters

A. Application:

Colorado Springs filed its original Application in this case in Water Division No. 5 on December 30, 1988. An amended Application, which related back to the same priority and

filing dates as were applicable to the original Application, was filed on January 5, 1989. The address of the City of Colorado Springs, Colorado is c/o Manager, Water Resources and Planning, 30 South Nevada Avenue, Suite 603, Colorado Springs, Colorado 80903.

B. Jurisdiction:

Timely and adequate notice of the Application was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over all persons who have standing to appear herein whether they have appeared or not.

C. Parties:

Statements of Opposition were timely filed in this case by the Upper Eagle Regional Water Authority, Avon Metropolitan District, Eagle-Vail Metropolitan District, Berry Creek Metropolitan District, Beaver Creek Metropolitan District, Edwards Metropolitan District, Arrowhead Metropolitan District, Mobile Oil Corporation, Arrowhead at Vail, Ltd., Colorado Water Conservation Board, Colorado River Water Conservation District, Vail Valley Consolidated Water District, Vail Associates, Inc., State Engineer's Office and the Board of County Commissioners of Eagle County. The Statement of Opposition of Vail Associates, Inc. was withdrawn by Order of this Court dated August 23, 1989.

II. Background

Applicant is the owner of numerous absolute and conditional water rights within Water Division No. 5, including those rights associated with what is known as the Homestake Project, a joint venture with the City of Aurora. The new water rights which are the subject of this Application are to be part of a single water system consisting of surface and underground water rights (absolute and conditional), exchanges and a plan for augmentation, within a reasonably compact geographic location known as Eagle Park also known as Camp Hale, in Eagle County, Colorado. The system will use water of the Eagle River and certain of its tributaries as identified in the amended Application. The rights sought herein are designed to expand and maximize the beneficial use of the water supplies of Applicant in a manner which will accommodate environmental concerns, including wetland creation and enhancement, while preventing injury to the vested water rights of others, including any lawfully decreed instream flow rights.

Exercise of the water rights, changes and exchanges of water rights, and the plan for augmentation approved in this decree shall be subject to and limited by the provisions of a 1997 Memorandum of Understanding (MOU) between the Cities and the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, Cyprus - Climax Metals Company, the Eagle River Water and Sanitation District and Vail Associates, a copy of which is attached hereto and incorporated herein as Exhibit A. Pursuant to the MOU, a volumetric limitation is placed upon the average annual yield of the remaining conditional Homestake

Project rights, including the rights to be decreed in this case and Case No. 95CW272, Water Division No. 5.

Pursuant to the MOA, the west slope signatories are to receive "up to 10,000 a/f of firm dry year yield" from the phased joint use project identified therein. MOU, paragraph iv(b)(1). The Cities are to receive 20,000 a/f of yield on a 25 year rolling average, MOU, paragraph iv(b)(2), with the possibility of receiving an additional increment of yield as allowed under MOU, paragraph IV.C.3.D, I.E., up to approximately 3,500 a/f. The above-referenced "CAP" is placed upon the Cities' diversions from the Eagle River Basin under existing decrees and the water right applications in Case No. 95CW272 and this case. It serves to limit the total amount of water available under the conditional water rights described in Section VII of this decree to such "capped" amount. The MOU is the subject of ongoing negotiations between the original signatories thereto and the Denver Water Board (DWB) so as to include the DWB therein without exceeding the overall limitation of 30,000 a/f. In any event, the total yield to Applicants will not exceed the total amount of water available to Applicants under the original MOU. The water exchange to be operated by the MOU parties as referenced in Paragraph VIII(b)(3) and (4) of the MOU, and which is the subject of Case No. 98CW270, is independent of the "CAP" concept and has no direct application thereto.

Diligence in the development of any conditional water rights or a portion of this single water system shall be considered diligence as to all conditional water rights and portions of this single water system. It is the intent of Applicant, relative to conditional water rights sought herein, to develop and utilize the same in phases. To the extent Applicant determines it to be reasonably efficient for operational purposes, the new appropriation shall be placed to beneficial use first and changes of existing rights will be used only to the extent such new appropriations are inadequate to fully meet the uses decreed herein due to downstream calls or the physical unavailability in priority of a sufficient quantity of water from the new appropriations.

Applicant acknowledges the ownership interest of the City of Aurora, Colorado, in the water rights decreed for the Homestake Project, and has executed an agreement with Aurora consistent with its interest in this Application.

III. Conditional Surface Storage Rights (Resolution Creek and Lower East Fork Reservoirs)

A. Resolution Creek Reservoir.

1. Legal Description: The dam is located within the NE1/4 of the NW1/4, the SE1/4 of the NW1/4, the NW1/4 of the NE1/4, and the SW1/4 of the NE1/4 of Section 11, T.7S, R.80W. of the 6th P.M. The center of the dam axis is located approximately 1510 feet south of the north section line and 2410 feet west of the east section line of said Section 11.

2. Source: Resolution Creek and Pearl Creek, tributaries to the Eagle River.
3. Date of Appropriation: December 19, 1988.
4. Amount Claimed: 5000 acre feet, conditional.
5. Uses: Wetland creation and irrigation, exchange, augmentation, recharge, municipal, commercial, industrial, snowmaking, recreation, fishery, wildlife and all other beneficial uses. More specifically, water in storage can be utilized for the replacement of out of priority consumptive water use associated with wetland restoration at Eagle Park; the augmentation of transbasin diversions; for purposes of developing vested or conditionally-decreed water rights, including the Homestake Project, by meeting federal, state, and local permit conditions which necessitate the use of water resources; and for in-basin use within the Eagle and Colorado River basins.
6. Surface Area of High Water Line: 85 acres.
7. Maximum Height of Dam in Feet: 180 feet.
8. Length of Dam in Feet: 1420 feet.
9. Total Capacity of Reservoir in Acre Feet: 5000 acre feet.
10. Conditions: Water will be stored only when the storage right is in priority. Appropriate instrumentation will be installed, as approved by the Division Engineer, to allow measurement of inflow, storage content, and outflow. This will allow documentation of instream flow bypasses necessary to meet currently existing CWCB instream flow decrees, the amount of storage release for augmentation of wetland depletions, and the amount of storage release for augmentation of Homestake Project diversions. Applicant shall provide the Division Engineer with an acceptable accounting form which reflects these measurements.

B. Lower East Fork Reservoir.

1. Legal Description: The dam is located within the NE1/4 of the SW1/4, the SE1/4 of the SW1/4, the NW1/4 of the SE1/4, and the SW1/4 of the SE1/4 of Section 24, T.7S., R.80W. of the 6th P.M. The center of the dam axis is located approximately 1065 feet north of the south section line and 2590 feet east of the west section line of said Section 24.
2. Source: East Fork of the Eagle River and Cataract Creek, tributaries to the Eagle River.
3. Date of Appropriation: December 19, 1988.

4. Amount Claimed: 2500 acre feet, conditional.
5. Uses: See Paragraph III.A.5. above.
6. Surface Area: 65 acres.
7. Maximum Height of Dam in Feet: 100 feet.
8. Length of Dam in Feet: 1,100 feet.
9. Total Capacity of Reservoir in Acre Feet: 2500 acre feet.

10. Conditions: Water will be stored only when the storage right is in priority. Appropriate instrumentation will be installed, as approved by the Division Engineer, to allow measurement of inflow, storage content, and outflow. This will allow documentation of instream flow bypasses necessary to meet currently existing CWCB instream flow decrees, the amount of storage release for augmentation of wetland depletions, and the amount of storage release for augmentation of Homestake Project diversions. Applicant shall provide the Division Engineer an acceptable accounting form which reflects these measurements.

IV. Conditional Surface and Underground Storage Rights. (Eagle Park Reservoir)

A. Name of Reservoir: Eagle Park Reservoir.

B. Legal Description: The Eagle Park Reservoir is (surface and underground) storage located entirely within T.7S., R.80W. of the 6th P.M. See maps attached hereto as Appendices "A" and "B" and incorporated herein. The lands occupy approximately 1450 surface acres, more or less, within the following sections:

- Section 3: Part of the SW1/4 of the SW1/4
- Section 4: Part of the SE1/4
- Section 9: Part of the E1/2
- Section 10: Part of the W1/2 of the NW1/4
Part of the NW1/4 of the SW1/4
Part of S1/2 of SW1/4
Part of the SW1/4 of the SE1/4
- Section 15: Part of the W1/2
Part of the W1/2 of the NE1/4
Part of the SE1/4

Section 16: Part of the E1/2 of the NE1/4
Part of the NW1/4 of the NE1/4

Section 22: Part of the E1/2
Part of the E1/2 of the NW1/4
Part of the NE1/4 of the SW1/4

Section 23: Part of the S1/2
Part of the S1/2 of the NW1/4
Part of the SW1/4 of the NE1/4

Section 24: Part of the SW1/4

Water will be stored in the Eagle Park Reservoir above the naturally occurring groundwater table by means of artificial recharge through the construction of numerous groundwater retention structures, check dams, and other facilities. Water will be stored within the surface stream channel and also within and/or above the alluvium and/or other surficial deposits adjacent to the Eagle River and its tributaries within the identified Eagle Park Reservoir site. Groundwater retention structures may include, but will not be limited to, the following locations within T.7S., R.80W. of the 6th P.M.:

Structure

No.	Section	Approximate Location
1	4	180 feet West of the East section line, 615 feet North of the South section line
2	3	50 feet East of the West section line, 50 feet North of the South section line
3	10	410 feet East of the West section line, 2250 feet South of the North section line
4	9	270 feet West of the East section line, 1500 feet North of the South section line
5	9	460 feet West of the East section line, 230 feet North of the South section line
6	10	660 feet East of the West section line, 310 feet North of the South section line
7	15	1040 feet East of the West section line, 1980 feet North of the South section line

8	15	2280 feet East of the West section line, 1660 feet North of the South section line
9	22	1210 feet West of the East section line 2310 feet South of the North section line
10	23	1090 feet East of the West section line, 840 feet North of the South section line
11	23	910 feet West of the East section line, 1230 feet North of the South section line
12	15	1610 feet East of the West section line, 1720 feet South of the North section line

C. Source: The Eagle River and all streams and other water sources tributary to the Eagle River within the identified reservoir boundary.

D. Date of Appropriation: December 19, 1988.

E. Amount Claimed: 3,500 acre feet, conditional.

F. Uses: See Paragraph III.(A).(5). above.

G. Surface Area of High Water Line: 1,000 acres.

H. Maximum Height of Structures (Dams) in Feet: 30 feet.

I. Length of Structures (Dams) in Feet: 50-150 feet.

J. Total Capacity of Reservoir in Acre Feet: 3500 acre feet.

K. Conditions:

1. In General: Prior to the diversion of any water pursuant to this Application, the applicant will develop and implement an Accounting and Monitoring Plan that is acceptable to the Division Engineer. This Plan, at a minimum, will provide the following accounting:

(A) the amount of diversions and/or storage by each water right and structure;

(B) the amount, location and timing of total stream depletions associated with the project facilities;

- (C) augmentation or release requirements to prevent injury to downstream water users;
- (D) the amount of water stored or released pursuant to all exchanges or plans of augmentation associated with this application;
- (E) estimates and/or measurements of evaporation and evapo-transpiration, using techniques acceptable to the Division Engineer;
- (F) the amount of water in storage at all developed storage facilities, including groundwater facilities;
- (G) estimates of the groundwater depletions and accretions calculated using an empirical technique acceptable to and approved by the Division Engineer;
- (H) measurements of discharge of the Eagle River downstream of Eagle Park;
- (I) measurements of the discharge of the East Fork Eagle River, of the South Fork Eagle River and of Resolution Creek upstream of the project facilities.

It is anticipated that a key component of any approved monitoring plan will include provisions to monitor stream flow at key sites upstream and downstream of the project facilities based on the monitoring results. In this regard, the applicant will install and operate such stream gages for a period of at least three years prior to any project operation, in order that suitable stream flow correlations can be established prior to the development of any project facilities.

2. Measurement of Augmentation Requirements: Appropriate monitoring devices and techniques, as approved by the Division Engineer and Federal Land Manager, will be installed to measure the increase in evaporation and evapotranspiration that occurs from the establishment of wetlands at Eagle Park. The monitoring system will provide a basis for determining the timing and amount of augmentation releases required to augment out of priority depletions by wetlands created at the site. Potential consumptive use through wetland irrigation will be calculated using the Blaney-Criddle method. The consumptive use coefficient employed to compute wetland evapotranspiration will be determined by the formula:

$$k = 1.08 \times 1/70 \times 1.27 = 1.96.$$

3. Accounting Form: An accounting form acceptable to the Division Engineer shall be prepared which reflects the above data and calculations and outlines a time frame for the collection and submission thereof. The form shall, in general, contain the information found on Appendix "C" hereto, though the exact nature of such information may be modified to reflect any subsequent change in conditions as disclosed by future data collection efforts, or any additional requirements imposed by the Division Engineer.

4. Measurement of Depletion and Accretion Timing: The timing of groundwater depletions and accretions to the river will be evaluated, where necessary, through the use of numerical groundwater models as approved by the Division Engineer, such as the MacDonald-Harbaugh model.

Applicants will survey, measure and quantify the amount of surface water and groundwater storage in the Eagle Park Reservoir at varying water surface elevations. Staff gauges, monitoring wells, and other necessary instrumentation will be installed and maintained by Applicant. Information therefrom will be combined with measures of aquifer properties determined from field and laboratory analysis. An empirical relationship will be established between surface and groundwater levels and groundwater discharge to the river. Once project operation commences, measurements from a stream monitoring station gauge above the project will be recorded. These measurements, in combination with the empirical relationships identified above, will allow the determination of pre-project groundwater discharge to the River. The measurements will specifically take into account any releases from storage pursuant to the provisions of this decree. All out of priority depletions will be replaced. The project will thus account for the naturally occurring groundwater discharge from the aquifer to the stream so as to prevent injury to senior downstream rights.

V. Conditional Surface Water Rights (Eagle Park Irrigation System)

A. Name of Structure: Eagle Park Wetland Irrigation System.

B. Background: The conditional rights attached to this portion of the Decree would be utilized to create and/or enhance wetland habitat at the Eagle Park site through the use of an irrigation system consisting of small retention structures, ditches and canals. However, such irrigation will be a secondary mechanism for wetlands creation, with primary reliance placed upon an elevation of the groundwater table. The claimed amount of direct flow (60 cfs) is based on an estimated application rate of 1 cfs for each 10 acres of newly created wetland area. All out of priority consumptive use associated with wetland evaporation or evapotranspiration would be fully replaced by storage releases from Homestake Reservoir or one of the alternate storage facilities identified herein.

C. Legal Description: The Eagle Park Wetland Irrigation System is located entirely within T.7S., R.80W. of the 6th P.M. It is estimated that the irrigation system will occupy up to 275 acres located within the following 1,450 acres, more or less, within the following sections:

- Section 3: Part of the SW1/4 of the SW1/4
- Section 4: Part of the SE1/4
- Section 9: Part of the E1/2
- Section 10: Part of the W1/2 of the NW1/4
Part of the NW1/4 of the SW1/4
Part of the S1/2 of the SW1/4
Part of the SW1/4 of the SE1/4
- Section 15: Part of the W1/2
Part of the W1/2 of the NE1/4
Part of the SE1/4
- Section 16: Part of the E1/2 of the NE1/4
Part of the NW1/4 of the NE1/4
- Section 22: Part of the E1/2
Part of the E1/2 of the NW1/4
Part of the NE1/4 of the SW1/4
- Section 23: Part of the S1/2
Part of the S1/2 of the NW1/4
Part of the SW1/4 of the NE1/4
- Section 24: Part of the SW1/4

Should there be more than 275 acres of wetlands, the same methodology shall be employed to determine those depletions which need to be augmented.

D. Points of Diversion: Points of diversion include the following, although such points may be relocated or added within the Eagle Park area (subject to Division Engineer approval) as described in paragraph V.C. above and Appendix "A", or deleted based upon actual conditions encountered upon the site and Forest Service or other requirements.

Structure No.	Section	Approximate Location
1	4	180 feet West of the East section line, 615 feet North of the South section line
2	3	50 feet East of the West section line, 50 feet North of the South section line
3	10	410 feet East of the West section line, 2250 feet South of the North section line
4	9	270 feet West of the East section line, 1500 feet North of the South section line
5	9	460 feet West of the East section line, 230 feet North of the South section line
6	10	660 feet East of the West section line, 310 feet North of the South section line
7	15	1040 feet East of the West section line, 1980 feet North of the South section line
8	15	2280 feet East of the West section line, 1660 feet North of the South section line
9	22	1210 feet West of the East section line 2310 feet South of the North section line
10	23	1090 feet East of the West section line, 840 feet North of the South section line
11	23	910 feet West of the East section line, 1230 feet North of the South section line
12	15	1610 feet East of the West section line, 1720 feet South of the North section line

E. Source: The Eagle River and all streams and other water sources tributary to the Eagle River within the identified irrigation system boundary.

F. Date of Appropriation: December 19, 1988.

G. Amount Claimed: 60 cubic feet per second, conditional.

H. Uses: Wetland creation and irrigation.

I. Total Number of Acres Proposed to be Irrigated: 275 acres. The 275 acre site is encompassed within the 1,450 acres identified above.

VI. Application for Conditional Underground Water Rights

A. Name of Structure: Eagle Park Aquifer Well Field.

B. Background: The groundwater identified below would be used in conjunction with proposed wetland creation, wetland irrigation, and wildlife habitat improvement in the Eagle Park area. Groundwater diversions may be made directly for wetland creation and irrigation to augment or replace out of priority depletions in the Eagle Park area, or to augment or replace out of priority depletions made by the Applicant at other diversion facilities within the Colorado River drainage. Water shall be placed in, and withdrawn from, the aquifer by other than natural means as more fully described herein. ?

C. Legal Description: The Eagle Park Aquifer Well Field is located entirely within T.7S., R.80W. of the 6th P.M. It produces water from the Eagle Park Aquifer which underlies approximately 1450 surface acres, more or less, within the following sections:

Section 3: Part of the SW1/4 of the SW1/4

Section 4: Part of the SE1/4

Section 9: Part of the E1/2

Section 10: Part of the W1/2 of the NW1/4
NW1/4 of the SW1/4
Part of the S1/2 of the SW1/4
Part of the SW1/4 of the SE1/4

Section 15: Part of the W1/2
Part of the W1/2 of the NE1/4
Part of the SE1/4

Section 16: Part of the E1/2 of the NE1/4
Part of the NW1/4 of the NE1/4

Section 22: Part of the E1/2
Part of the E1/2 of the NW1/4
Part of the NE1/4 of the SW1/4

Section 23: Part of the S1/2
 Part of the S1/2 of the NW1/4
 Part of the SW1/4 of the NE1/4

Section 24: Part of the SW1/4

D. Source: The Eagle Park Aquifer Well Field withdraws water from the alluvium of the Eagle River and from all streams and other underground and surface water sources tributary to the Eagle River within the area described in paragraph VI.C. above.

E. Depth of Wells: Up to 750 feet, more or less.

F. Name and Legal Description of Wells: Applicant intends to utilize the aforementioned groundwater through a series of wells operating as part of a well field. It is anticipated that there will be approximately 20 wells, though this number may be enlarged or diminished based upon specific site conditions and Forest Service requirements. Approximate legal descriptions are as follows:

<u>WELL NAME</u>	<u>APPROXIMATE LOCATION</u>
EP # 1	Located in NE1/4 of the NE1/4 Sec. 9 300 feet South of the North section line and 150 feet West of the East section line
EP # 2	Located in SW1/4 of the NE1/4 Sec. 10 1500 feet South of the North section line 300 feet East of the West section line
EP # 3	Located in NE1/4 of the SE1/4 Sec. 9 1900 feet North of the South section line and 400 feet West of the East section line
EP # 4	Located in SE1/4 of the SE1/4 Sec. 9 900 feet North of the South section line and 200 feet West of the East section line
EP # 5	Located in NW1/4 of the NW1/4 Sec. 15 200 feet South of the North section line and 1200 feet East of the West section line
EP # 6	Located in NE1/4 of the NW1/4 Sec. 15 1100 feet South of the North section line and 1500 feet East of the West section line

- EP # 7 Located in SE1/4 of the NW1/4 Sec. 15
 2100 feet South of the North section line and
 2000 feet East of the West section line
- EP # 8 Located in NE1/4 of the SW1/4 Sec. 15
 2200 feet North of the South section line and
 1900 feet East of the West section line
- EP # 9 Located in NW 1/4 of the SE1/4 Sec. 15
 1400 feet North of the South section line and
 2600 feet West of the East section line
- EP #10 Located in SE1/4 of the SW1/4 Sec. 15
 900 feet North of the South section line and
 2400 feet East of the West section line
- EP #11 Located in SW1/4 of the SE1/4 Sec. 15
 300 feet North of the South section line and
 2100 feet West of the East section line
- EP #12 Located in NW1/4 of the NE1/4 Sec. 22
 400 feet South of the North section line and
 2400 feet West of the East section line
- EP #13 Located in NW1/4 of the NE1/4 Sec. 22
 1100 feet South of the North section line and
 1500 feet West of the East section line
- EP #14 Located in SW1/4 of the NE1/4 Sec. 22
 2000 feet South of the North section line and
 1700 feet West of the East section line
- EP #15 Located in SE1/4 of the NE1/4 Sec. 22
 2100 feet South of the North section line and
 800 feet West of the East section line
- EP #16 Located in NE1/4 of the SE1/4 Sec. 22
 1900 feet North of the South section line and
 500 feet West of the East section line
- EP #17 Located in SE1/4 of the SE1/4 Sec. 22
 1200 feet North of the South section line and
 900 feet West of the East section line

- EP #18 Located in SW1/4 of the SW1/4 Sec. 23
1200 feet North of the South section line and
600 feet East of the West section line
- EP #19 Located in SE1/4 of the SW1/4 Sec. 23
1100 feet North of the South section line and
1900 feet East of the West section line
- EP #20 Located in SW1/4 of the SE1/4 Sec. 23
1300 feet North of the South section line and
2100 feet West of the East section line

Applicant shall provide exact locations for such wells at the time of application for well permits.

G. Pumping Rates: The estimated pumping rate of the wells is approximately 1350 gpm (3 cfs) each.

H. Amount Claimed: 60 cubic feet per second not to exceed 5000 acre feet per year, conditional.

I. Date of Appropriation: December 19, 1988.

J. Uses: Wetland creation and irrigation, exchange, augmentation, recharge, municipal, commercial, industrial, recreation, snowmaking, fishery, wildlife and all other beneficial uses. The total number of acres proposed to be irrigated is 600 acres. In addition, Applicant intends to utilize the requested water rights for purposes of developing its vested or conditionally-decreed water rights, including the Homestake Project, for transmountain diversions, and to meet federal, state, and local permit conditions which necessitate the use of water resources. Applicant may also use or sell water from this source, for municipal, commercial, industrial, snowmaking, recreation, fishery, wildlife, exchange, augmentation, and all other beneficial uses in the Colorado River basin. Finally, Applicant may use water withdrawn from the wells for purposes of augmenting out of priority depletions by direct replacement of water to the streams identified herein.

K. Conditions: Prior to any diversions from the Eagle Park Well Field, Applicant will perform the necessary hydrogeologic accounting analysis to identify the influence of groundwater diversions on stream flow of the Eagle River. The analysis will be subject to approval by the Division Engineer. The analysis will utilize, as necessary, groundwater flow modeling, a network of monitoring wells, and the measurement of surface water inflow and outflow from the Eagle Park area. Accounting will ensure that all groundwater diversions are curtailed or fully augmented during out of priority periods, such accounting to be subject to approval by the Division Engineer.

More specifically, applicant shall provide to the Division Engineer and Objectors, prior to the commencement of any groundwater pumping hereunder, accounting sheets for out of priority depletions which identify both lag factors and sources of replacement water to be released at the time and place of need. The Division Engineer, in consultation with applicant and objectors, may review the accounting proposal, including lag factor calculations, and order adjustments thereto. The Division Engineer shall make the final decision as to any replacement requirements.

VII. Conditional Appropriative Right of Exchange

A. Sources of Exchange: Applicant is the co-owner of water rights decreed for the Homestake Project described as follows:

(1) HOMESTAKE CONDUIT. The Homestake Conduit receives and delivers appropriated water to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the Reservoir from the following sources:

Stream or Other Source of Supply	Point of Diversion	Amount Cubic Feet per Second of Time
Unnamed Creek	S 86° 25'E 35,177 ft. to NW cor 6-7S-80W Alternate Point: S86°4.7'E, 35,286 ft. to NW cor 6-7S-80W	60C*
West Cross Creek	N 81° 58'E 36,256 ft. to NW cor 6-7S-80W Alternate Point: N79°52.5'E 38,572 ft. to NW cor 6-7S-80W	200C*
Cross Creek	N 81° 26'E 35,064 ft. to NW cor 6-7S-80W Alternate Point: N75°59.9'E 36,569 ft to NW cor 6-7S-80W	300C*
East Cross Creek	S 74° 11'E 26,649 ft. to NW cor 6-7S-80W Alternate Point: S74°52.9'E 25,882 ft. to NW cor 6-7S-80W	130C*
Fall Creek	S 82°55'E 12812 ft. to NW cor 6-7S-80W Alternate Point: N83°01.8'E 14,320 ft. to NW cor 6-7S-80W	260C*
Peterson Creek	S 64°05'E 6822 ft. to NW cor 6-7S-80W Alternate Point: S76°2.9'E 6,474 ft. to NW cor 6-7S-80W	50C*
Unnamed Creek	S 76°45'E 10572 ft. to SW cor 18-7S-80W Alternate Point: S73°26.5'E 10,896 ft. to SW cor 18-7S-80W	50C*
Whitney Creek	N 81°42'E 13489 ft. to SW cor 18-7S-80W Alternate Point: N83°27.8'E 13,879 ft to SW cor 18-7S-80W	80C*
French Creek	S 82°18.3'E 20988 ft. to NW cor 31-7S-80W	60.1 A* 119.9 C*
Fancy Creek	N 85°10.5'E 25280 ft. to NW cor 31-7S-80W	8.6 A* 91.4 C*

Missouri	N 77°12.4'E 28800 ft. to NW cor 31-7S-80W	39.8 A* 80.2 C*
Sopris Creek	N 74°7.6'E 29848 ft. to NW cor 31-7S-80W	41.3 A* 118.7 C*
Small unnamed streams, springs, seeps, sheet flows and ground waters along Homestake Conduit		120 C*
Total		<hr/> 179.8 A* 1,660.2 C*

* A = ABSOLUTE

* C = CONDITIONAL

Said amount from any and all sources, however, is limited by the capacity of Homestake Conduit to 1530 cubic feet per second of time.

(2) EAST FORK CONDUIT. The East Fork Conduit diverts water from the East Fork of Homestake Creek pursuant to its appropriation of 70.8 cubic feet per second of time absolute and 189.2 cubic feet per second of time conditional therefrom and conveys these waters to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the reservoir, said East Fork Conduit having a capacity of 260 cubic feet per second of time and a total length of approximately 3093 feet. The point of diversion of said conduit is on East Fork Homestake Creek at a point whence the Northwest Corner of Section 31, Township 7 South, Range 80 West bears North 55°40.5' East, 22,917 feet.

(3) HOMESTAKE TUNNEL. Homestake Tunnel crosses under the Continental Divide for the conveyance of water into the Arkansas River Basin, with its intake located at a point under Homestake Reservoir whence the Northwest corner of Section 10, Township 9 South, Range 81 West of the 6th P.M. bears South 15°27'08" East 26,173.03 feet. It appropriates a maximum amount of 10 cubic feet per second of time conditional of water seeping and percolating into Homestake tunnel from former Water District No. 37 areas and 300 cubic feet per second of time absolute from Middle Fork of Homestake Creek, at its said Northerly portal, its point of diversion; said tunnel has a length of 27,400 feet and a capacity of 700 cubic feet per second of time. The tunnel will convey out of former Water District No. 37 up to 700 cubic feet per second of time of waters appropriated by the tunnel from the Middle Fork of Homestake Creek, together with water appropriated by the tunnel from the Homestake Creek and East Fork Conduits and Homestake Reservoir, to an outlet at a point from where the Northwest corner of Section 10, Township 9 South, Range 81 West of the 6th P.M. bears North 6°40'52" East, a distance of 2,173.54 feet.

(4) HOMESTAKE RESERVOIR. Homestake Reservoir, also known as Elliott-Weers Reservoir, has a capacity of 83,338.98 acre feet conditional, is located on Homestake Creek with a dam whence Homestake Peak bears South 73° 26' East 10,477 feet from the easterly end thereof and South 74° 57' East 13,347 feet from the westerly end thereof, said dam

having a maximum height of 411.5 feet and a length of 3,380 feet. The sources of supply of said reservoir are Homestake Conduit (the sources of this conduit as hereinabove set forth), East Fork Conduit (the source of this conduit as hereinabove set forth), the Middle Fork of Homestake Creek and Homestake Creek and said reservoir has appropriated for storage 83,338.98 acre feet annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7 acre feet absolute and is located on Homestake Creek with a dam whence the NW Corner of Sec. 31 T7S R 80W of the 6th P.M. bears North 58° 30.6' East 24,659 feet from the East dam abutment and North 62° 25.8' East 25,746 feet from the West dam abutment. The dam has a maximum height of 265.0 feet and a length of 1996 feet. The sources of supply of said existing Homestake Reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 acre feet annually from said sources and also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel.

(5) EAGLE-ARKANSAS DITCH. The Eagle-Arkansas Ditch receives and delivers into the Tennessee Pass Tunnel for conveyance under the Continental Divide and out of former Water District No. 37 into the Arkansas River Basin the water appropriated from the following sources:

<u>Stream or Other Source of Supply</u>	<u>Point of Diversion</u> (Bearing and Distance to Land Corners of the Sections, Ranges and Townships Indicated, all refer to 6th P.M.)	<u>Amount Cubic Feet per Second of Time</u>
Cataract Creek	S54°46'35"W 3,147.15 ft. to W/4 Cor. Sec 24-7S-80W	90 C*
Sheep Gulch	S61°59'03"W 262.66 ft. to NW Cor. Sec 29-7S-79W	20 C*
East Fork Eagle River	N27°54'39"E 1,328.12 ft. to E/4 Cor. Sec 32-7S-79W	230 C*
Jones Gulch	N29°19'38"E 826.82 ft. to E/4 Cor. Sec 26-7S-80W	90 C*
Fiddler Creek	N83°20'47"W 1,360.22 ft. to NW Cor Sec 2-8S-80W	30 C*
Taylor Gulch	S9°55'55"W 6,128.68 ft. to SW Cor Sec 11-8S-80W	20 C*
Piney Creek	S52°18'04"W 2,193.82 ft to SW Cor Sec 11-8S-80W	20 C*

Small unnamed streams, springs, seeps, sheet flows and ground water along Eagle-Arkansas Ditch, one of which is located at a point on an unnamed tributary of the East Fork of The Eagle River whence the S/4 Cor of S/4 Cor of Sec 29-7S-79W of the 6th P.M. bears S60°9'47"W, a distance of 1,551.06 ft. 30 C*

Total.....530 C*

* A = ABSOLUTE

* C = CONDITIONAL

The component parts of the Homestake Project, as hereinafter set forth, were awarded conditional priorities as of the date September 22, 1952, and they were awarded and assigned the respective ditch or reservoir numbers and priority numbers as follows, to-wit:

Number of of Enlg.	Name of Ditch No.	Original		Water	Ditch	or Reservoir
		Construction	Priority			
		Allowed				
358 1/2A	Homestake Conduit	Original 1660.2 cfs	536 1/2A C*	179.8 cfs	A*	
358 1/2B	East Fork Conduit	Original 189.2 cfs	536 1/2B C*	70.8 cfs	A*	
358 1/2C	Homestake Tunnel	Original	536 1/2C	300 cfs	A*	
358 1/2D	Homestake Reservoir	Original 83,338.98AF	536 1/2D C*	43,504.7AF	A*	
358 1/2E	Eagle-Arkansas Ditch	Original	536 1/2E	530 cfs	C*	

* A = Absolute

* C = Conditional

B. Structures to be Utilized for Purposes of Exchange: See description of Resolution Creek Reservoir in Paragraph III.A.1.; description of Lower East Fork Reservoir in Paragraph III.B.1.; Eagle Park Reservoir as described in Paragraph IV.B.; Eagle Park Wetland Irrigation System as described in Paragraph V.C.; and Eagle Park Aquifer Wellfield as described in Paragraph VI.C.

C. Reaches of Streams Affected: The Eagle River and each of its tributaries between the points of diversion or storage described in paragraph VII.A. above as sources of exchange and the structures for diversion or storage by exchange as described in paragraph VII.B.

D. Priority Date: December 19, 1988.

E. Statement of the Plan for Exchange: Applicant seeks the right to divert or store by exchange at any combination of the structures described in paragraph VII.B., such amounts as would be available in priority for diversion or storage at decreed points of diversion or storage for the Homestake Project's conditional water rights as more fully described in paragraph VII.A. above. Also, Applicant specifically claims the right to exchange for diversion or storage at the structures described in paragraph VII.B. above, any amount required to be bypassed to maintain minimum flow levels within the stream or to meet conditions imposed by any federal, state or local permitting agency. The amounts now quantified are as follows:

<u>SOURCE***</u>	<u>POINT OF DIVERSION (CFS)</u>	<u>AMOUNT BYPASS</u>	
		<u>(CFS)</u>	
West Cross			
Creek	N83°38'E36256 ft. to NW cor 6-7S-80W	200	5
Cross Creek	N83°05'E35064 ft. to NW cor 6-7S-80W	300	4
East Cross			
Creek	N74°24'E26649 ft. to NW cor 6-7S-80W	130	3
Fall Creek	S82°55'E12812 ft. to NW cor 6-7S-80W	260	3
French Creek	S85°29'E20392 ft. to NW cor 31-7S-80W	60.1*	1.67
		119.9**	
Fancy Creek	S81°39'E24837 ft. to NW cor 31-7S-80W	38.6*	1
		91.4**	
Missouri	N76°12'E27880 ft. to NW cor 31-7S-80W	39.8*	3
		80.2**	
Sopris Creek	N75°25'E28166 ft. to NW cor 31-7S-80W	41.3*	2
		118.7**	
East Fork			
Homestake	A point whence the Northwest Corner of Section 31, Township 7 South, Range 80 West bears North 55°40.5' East, 22,917 feet		2.67
Middle Fork			
Homestake	A dam whence Homestake Peak bears South 73°26' East 10,477 feet from the easterly end thereof and South 74°57' East 13,347 feet from the westerly end thereof, said dam and having a maximum height of 411.5 feet and a length of 3,380 feet.		6

* = Absolute

** = Conditional

*** = Homestake Creek
At Gold Park

U.S. Geological Survey Gauging
Station Downstream Order No.
09064000 (Latitude 39°24'20",
Longitude 106°25'58")

24

The water which is not diverted or stored or is released at the points of diversion or storage described in paragraph VII.A. for the Homestake Project, including the bypasses described herein, shall be used to satisfy downstream rights in the Eagle or Colorado River basins in exchange for water being stored or diverted at the structures described in paragraph VII.B. above. All water diverted or stored by exchange may be used for such uses and at such places as described in Paragraphs III through VI herein and is specifically claimed for use, reuse and successive use to extinction for all beneficial uses as described therein including reuse and successive use to extinction of all return flows therefrom.

F. Water Quality: Evidence of water quality measurements demonstrates that the water to be exchanged is of a quality and continuity to meet the requirements of use to which downstream senior appropriations have normally been put in compliance with C.R.S. §37-80-120(3).

G. Rate of Exchange: Applicant shall operate the exchanges described above at an instantaneous flow rate not to exceed the decreed rates of flow or volumetric limits for all sources of exchange described herein.

H. Conditions: So as to assure the appropriate operation of this exchange plan, Applicant will install and maintain such water measuring devices and implement such accounting procedures as may be required to verify that the amount of water not diverted or stored or released for exchange at the points described in Paragraph VII.A. (less transit losses) equals the amount of water diverted or stored at the structures provided in Paragraph VII.B. above. Intervening senior water rights exercising any lawful call for water must be satisfied before the proposed exchange may be implemented.

VIII. Plan for Augmentation and Exchange

A. Water Rights to be Augmented: All rights absolutely or conditionally decreed to the Homestake Project as more specifically described in Paragraph VII.A. above.

B. Sources of Augmentation or Exchange: Water stored in Resolution Creek Reservoir, Lower East Fork Reservoir, or Eagle Park Reservoir, as described in Paragraphs III, IV, and V, herein, or available for release from the Eagle Park Aquifer Well Field as described in Paragraph VI. Applicant specifically claims the right to use water stored under new priorities for the structures to be decreed in Paragraphs III, IV, and V, and stored by exchange pursuant to Paragraph VII herein.

C. Reaches of Streams Affected: The exchange reaches shall be those segments of the Eagle River and each of its tributaries between the points of diversion or storage described in Paragraph VIII.B as sources of exchange and the structures for diversion or storage as described in Paragraph VIII.A.

D. Rate of Exchange: Applicant shall operate the exchanges described above at an instantaneous flow rate not to exceed the decreed rates of flow or volumetric limits for all sources of exchange described herein.

E. Priority Date: December 19, 1988.

F. Water Quality: Evidence of water quality measurements demonstrates that the water to be exchanged is of a quality and continuity to meet the requirements of use to which downstream senior appropriations have normally been put in compliance with C.R.S. §37-80-120(3).

G. Statement of Plan for Augmentation, Including Exchange: To the extent which Applicant diverts or stores water out of priority at the points of diversion or storage described in Paragraph VII.A. above when there is a lawful call placed upon Applicant's rights, Applicant may release an equivalent amount of water, up to the decreed amounts for each water right described in Paragraph VII.B., to the Eagle River from any combination of the sources described in Paragraph VII.B. above. Applicant will fully augment all out of priority diversions. Applicant acknowledges that all intervening vested or conditionally decreed senior water rights in stream reaches between the points described in Paragraph VII.A. and in Paragraph VII.B., which rights are lawfully calling for water, must be satisfied. No injury to downstream senior vested or conditionally decreed water rights shall occur by operation of this plan for augmentation, including exchange. Applicant shall notify the Water Commissioner prior to the operation of any such exchanges. The water diverted or stored out of priority at the points of diversion described in paragraph VII.A. above shall have the legal characteristics of water diverted for use outside of the Colorado River Basin as provided in the original Decree for the Homestake Project, Case No. 1193, Eagle County District Court, and for such additional uses and places of use as are approved for those water rights in this case. Applicant shall have the right to use, reuse and successively use to extinction all such water and the return flows therefrom. The water released from the sources described in Paragraph VII.B. shall be available to satisfy downstream water rights exercising a lawful call for water.

H. Conditions: Applicant shall account for and report such diversions and releases as required by the Division Engineer and will install such measuring devices as are reasonably necessary to administer this plan for augmentation, including exchange, without injury to other vested or conditionally decreed water rights. The reaches of streams affected will be the Eagle River and each of its tributaries between the points of diversion and storage described in Paragraph VII.A. above and the points of withdrawal, diversion or storage of the sources of augmentation described in Paragraph VII.B. above.

IX. Change of Conditional Water Storage Rights

A. Background: Applicant is the co-owner of water rights decreed for the Homestake Project as more fully described in Paragraph VII.A. above. Applicant seeks approval of additional uses and alternate places of use as to those rights previously decreed for the Homestake Project, including all those uses and places of use set forth in Paragraphs III, IV, and V above. Applicant specifically seeks approval for an alternate place of storage of up to 8,500 acre feet of such rights. Applicant further seeks approval of the right to store its conditional direct flow rights for the Homestake Project as described in Paragraph VII.A. above and the bypasses described in Paragraph VII.E. at the storage reservoirs described in Paragraphs III and IV herein for subsequent use, reuse and successive use. Since the above-referenced Homestake water rights are for transbasin diversion, and thus are 100% consumptive to the Eagle River and the Colorado River, Applicant seeks the right to use, reuse and successively use to extinction all water diverted or stored at the structures described in Paragraphs III, IV and V herein, including reuse and successive use to extinction of all return flows therefrom. Applicant does not intend to in any way abandon its original place of storage or any portion thereof by virtue of the approval of these alternate places of storage. To the extent Applicant does not store all or some portion of the 8,500 acre feet referenced above at the requested alternate sites, it retains the right to store such water at the originally decreed places of storage.

B. Legal Description of Alternate Places of Storage: Resolution Creek Reservoir as described in Paragraph III.A. above; Lower East Fork Reservoir as described in Paragraph III.B. above; Eagle Park Reservoir as described in Paragraph IV.B. above.

C. Sources: Sources for the alternate points of storage for Homestake Project rights are identified in Paragraph III.A.2. above for Resolution Creek Reservoir; in Paragraph III.B.2. for Lower East Fork Reservoir; and in Paragraph IV.C. above for Eagle Park Reservoir. Sources of supply for Homestake Reservoir include the Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek and Homestake Creek as further identified by Decree entered on August 10, 1988, in Case Nos. 85CW151, 85CW582, 85CW583 (Consolidated), Water Division No. 5, State of Colorado, and as more fully described in Paragraph VII.A. herein.

D. Date of Appropriation: June 8, 1962.

E. Amount Claimed: 8,500 acre feet, conditional.

F. Uses: Applicant seeks additional uses to those decreed for the Homestake Project as referenced in Paragraph VII.A. above so as to include those uses set forth in Paragraphs III.A.5 and V.K. above.

G. Reuse and Successive Use: All water decreed to the Homestake Project as identified in Paragraph VII.A., whether absolute or conditional, was intended for transbasin diversion, and thus was 100% depletive to the Eagle River and its various tributaries and the Colorado River.

Applicant thus seeks the right to use, reuse and successively use to extinction all water stored at the alternate places of storage sought herein and all return flows therefrom.

H. Conditions: Applicant shall install and maintain such water measuring devices as may be required to administer these changes of water rights so as to prevent injury to the vested water rights of others. The amount of water stored at the alternate places of storage shall not exceed the amount physically and legally available at the original location. Applicant will ensure that storage at the alternate places under the priority sought herein will not cause injury to any instream flow rights currently held by the Colorado Water Conservation Board on stream reaches within or below the places of storage.

X. General Conditions.

In order to accommodate the information needs of Objectors and ensure that the water rights are appropriately administered, Applicant agrees to the following:

a. An informal accounting group shall be established which shall consist of representatives from the Division Engineer's Office and State Engineer's Office, a representative of Objector, a representative of the Colorado River Water Conservation District, a representative of Applicant, and representatives from other objectors in this case or Case No. 95CW272, Water Division No. 5, who may request an opportunity to participate.

b. The group shall meet at least once annually on a date established by the group participants until such time as the Objectors no longer desire to meet or all periods of retained jurisdiction have expired, whichever occurs first.

c. At such meetings, Applicant's representative shall disclose and explain all pertinent monitoring and testing data and accounting information, including any data from test holes, any gauging/diversion records, groundwater measurements, or new modeling information gathered since the date of the last meeting and shall answer any questions related thereto. Applicant shall also identify any project configurations to be relinquished pursuant to paragraph 4.b.iii of the Stipulation with the Eagle County Board of County Commissioners.

d. Any participant in this group may request modifications to the monitoring and accounting procedures.

e. Any unresolved monitoring or administration concerns shall be subject to the retained jurisdiction provisions as outlined in the stipulations and decree entered herein.

CONCLUSIONS OF LAW, JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Findings of Fact set forth above are hereby incorporated into the terms of this Decree.

2. The Stipulations between Applicant and all Objectors are hereby approved and made a part of this decree as if set forth verbatim herein.

3. Applicant is entitled to the award of the conditional storage rights, both surface and underground, the changes of conditional water rights, including alternate places of storage, and the new conditional water rights, both surface and underground, identified above. All statutory prerequisites for the award thereof have been established. Applicant is further entitled to the previously identified rights of augmentation and exchange as authorized by statute.

4. Applicant is entitled to use the water rights decreed herein for those beneficial uses identified above, including but not limited to, wetland creation and restoration.

5. To the extent the water diverted under the water rights confirmed herein is exported from the Colorado River Basin, Applicant shall have the right to use, reuse, and successively use to extinction all such water, including the return flows therefrom, in accordance with applicable law.

6. Grant of this Decree and the exercise of water rights in accordance with all provisions thereof will not cause injury to the vested water rights of others, including the owners of, or persons entitled to use, water pursuant to vested water rights or decreed conditional water rights. The terms and conditions as set forth in this Decree are adequate to prevent any such injury.

7. This Decree shall be administered by the State Engineer's Office in a manner consistent with the Stipulations filed herein and such accounting forms as are found appropriate and acceptable by the State Engineer's Office, acting through the Division Engineer.

8. In order to ensure that the water rights of others are not injured by the use of the water rights decreed herein, the Court shall retain jurisdiction in this matter for the periods identified below, such being sufficient to satisfy the requirements of C.R.S. §37-92-304(6):

- a. For a period of 10 years after the date of the initial use of each of the sources of augmentation water as identified in Paragraph VIII.B.
- b. For a period of 10 years after the date of the initial use of each alternate place of storage.
- c. For a period of 10 years after the initial pumping of each of the wells drilled as part of the Eagle Park Aquifer Well Field.

- d. Though retained jurisdiction is not required by statute for the operation of exchanges, Objectors herein shall have the right to assert injury as a result of the operation of the exchange adjudicated herein for a period of 10 years after the initial operation of the exchange at each of the points of diversion or storage identified in Paragraphs VII.B. and VIII.B of the Decree.
- e. For such period of time as is necessary to afford Objectors the opportunity to seek judicial review of remaining components and methods of operation as referenced in paragraph 4.b. of the stipulation between Applicant and the Eagle County Board of County Commissioners.

The above-referenced periods of retained jurisdiction shall not commence to run until sixty (60) days after the Applicant has provided written notice to Objectors of the commencement of each period identified in subparagraphs (a) through (d) of this paragraph. The above notwithstanding, in no event shall the period of retained jurisdiction extend beyond a period of 10 years after Applicant has notified Objectors and the Court, in writing, that no additional development options shall be pursued under the Decree and no additional yield, beyond the maximum amount previously realized, shall be sought from those options developed prior to the date of the provision of such notice.

9. Nothing herein, including the establishment of surface and groundwater accounting methodologies, shall in any manner bind or prejudice the parties hereto with respect to positions they may choose to assert in any pending or future water right application proceeding, including Case No. 95CW272, Water Division No. 5. This decree shall not have any precedential effect as to pending or future water court adjudications.

10. The Colorado Water Conservation Board (CWCB) has been decreed instream flow water rights for the Upper Eagle River and other local tributaries potentially influenced by the rights decreed herein. The CWCB rights are identified as follows:

	Summer ¹	Winter ²
East Fork of Eagle River above Cataract Creek	1.5 cfs	1.5 cfs
East Fork of Eagle River between Cataract Creek and South Fork	2.0 cfs	2.0 cfs
Eagle River from East Fork to Resolution Creek	12.0 cfs	8.0 cfs
Eagle River from Resolution Creek to Homestake Creek	15.0 cfs	8.0 cfs
Resolution Creek	2.0 cfs	2.0 cfs
¹ May 1 through September 30		
² October 1 through April 30		

The above water rights are senior to the rights of the Eagle Park Project. The Eagle Park Project as decreed herein will not divert water under its 1988 water rights if the CWCB instream flow demands are not fully satisfied.

Prior to any storage of water by applicant which would inundate any of the Colorado Water Conservation Board instream flow rights, applicant shall obtain approval from the Board for such storage pursuant to the provisions of 2 CCR 408-2, Section 8. Inundation shall not be allowed absent such approval provided that the Board's decreed rights and the regulatory restrictions upon inundation remain in effect.

11. Any person entitled to invoke the retained jurisdiction of the Court shall file a verified petition with the Court setting forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to remedy any alleged injury. Except as otherwise provided in the Stipulation between Applicant and Eagle County Board of County Commissioners, the person filing the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition.

12. Pursuant to § 37-92-305(8) C.R.S., State Engineer shall curtail all out-priority diversions, the depletions from which are not replaced to prevent injury to vested water rights.

13. In the development and use of the water rights to be decreed herein, Applicant shall comply with all applicable federal, state or local water quality requirements in the construction and operation of the project.

14. If Applicant desires to maintain the conditional water rights awarded herein, an Application for sexennial findings of reasonable diligence should be filed on or before _____, or showing made that the conditional rights have become absolute by reason of the completion of the appropriation.

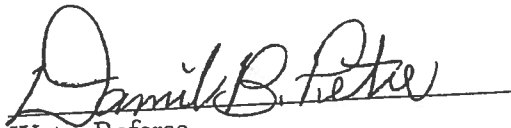
15. There being no just reason for delay, this Decree is a final judgment for appellate purposes as to all issues and claims in this case not excluded from the Decree.

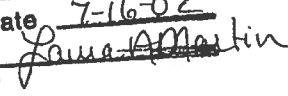
IT IS ORDERED that this ruling shall be filed with the Water Clerk subject to judicial review.

IT IS FURTHER ORDERED that a copy of this ruling shall be filed with the appropriate Division Engineer and the State Engineer.

Dated this 16th day of July, 2002.

BY THE REFEREE:


Water Referee

Copy of the foregoing mailed to all
Counsel of record - Water
Referee, Div. Engineer and
State Engineer - Date 7-16-02

Deputy Clerk, Water Div. No. 6

