

a portion of which tracts (approximately 369.79 acres) have been platted by recorded subdivision plats, The Retreat Filing No. 3, The Retreat Filing No. 4, and The Retreat Filing No. 5, consisting of 104 lots. The presently unplatted portion (approximately 724.97 acres) will be platted into approximately 145 lots.

3. Applicant owns the following water rights:

Two shares of the capital stock of the Handy Ditch Company out of the total outstanding 900 shares in the said company. The Handy Ditch headgate is located on the right bank of the Big Thompson River immediately downstream from the mouth of Big Thompson Canyon in the SW1/4 of Section 3, Township 5 North, Range 70 West of the 6th P.M. in Larimer County. These shares represent a 2/900 proportionate interest in each of the following described water rights owned by the Handy Ditch Company:

A. Handy Ditch, transferred from the Big Thompson Ditch and Manufacturing Company, all on the Big Thompson River, adjudicated by original decree of the District Court in and for Larimer County, entered May 28, 1883:

- 1) Priority No. 2, for 1.39 c.f.s., appropriation date April 1, 1863;
- 2) Priority No. 4, for 1.52 c.f.s., appropriation date May 1, 1864;
- 3) Priority No. 5, for 20.00 c.f.s., appropriation date February 25, 1865;
- 4) Priority No. 10-1/2, for 2.69 c.f.s., appropriation date March 1, 1867;
- 5) Priority No. 20, for 0.40 c.f.s., appropriation date May 1, 1872.

B. Handy Ditch, by original appropriation, from the Big Thompson River by decree of the District Court in and for Larimer County entered May 28, 1883:

- 1) Priority No. 39, for 31.2 c.f.s., appropriation date February 28, 1878;
- 2) Priority No. 47-1/2, for 141.234 c.f.s., appropriation date December 15, 1880.

C. The following reservoir storage rights in the Welch Reservoir located principally in the SE1/4 NW1/4 SW1/4 of Section 10, Township 4 North, Range 69 West of the 6th P.M. filled from the Big Thompson River as decreed by the District Court in and for Larimer County on April 1, 1931:

Welch Reservoir No. 2, Reservoir Priority No. 22, 662.01 acre-feet, appropriation date November 25, 1888;

Welch Reservoir No. 5, Reservoir Priority No. 23, 26.51 acre-feet, appropriation date November 25, 1888;

Welch Reservoir Nos. 1, 2 and 5, Reservoir Priority No. 24, 1262.62 acre-feet, appropriation date April 17, 1902;

Welch Reservoir Nos. 3 and 4, Reservoir Priority No. 25,
472.1 acre-feet, appropriation date February 1, 1904;

Welch Reservoir Nos. 1, 2, 3, 4 and 5, Reservoir Priority
No. 28; 630.83 acre-feet, appropriation date June 1, 1921.

D. The following reservoir storage rights in the Hertha Reservoir, located principally in the S1/2 SW1/4 of Section 7 and the NW1/4 NW1/4 of Section 18, Township 4 North, Range 69 West of the 6th P.M., filled from Kuaus Creek, as decreed by the District Court in and for Larimer County on April 1, 1931:

Reservoir Priority No. 26, 593.95 acre-feet, appropriation date November 9, 1909;

Reservoir Priority No. 29, 625.0 acre-feet, appropriation date May 18, 1925.

E. Ryan Gulch Reservoir, 39 of the 100 outstanding shares, filled from seepage and located principally in the SE1/4 NE1/4 NE1/4 of Section 27, Township 5 North, Range 69 West of the 6th P.M. as decreed by the District Court in and for Larimer County on June 29, 1916, for 729.96 acre-feet, appropriation date April 12, 1904.

4. The historic use of the above-described water owned by Handy Ditch Company has been for irrigation during the months of May through October. The consumptive use of each share of Handy Ditch Company stock has averaged 6.88 acre-feet per year; the two shares of such stock owned by applicant therefore represent an historic consumptive use of 13.76 acre-feet per year.

5. The source of supply for the domestic water service for the approximately 249 single-family residential equivalent units to be developed by applicant is from ground water occurring primarily in the fractured crystalline rock aquifer in the basins of Miller Fork, Dunraven Glacé and Black Creek, which are tributary to the North Fork of the Big Thompson River. The means of diversion of such water will either be through individual wells constructed pursuant to C.R.S. 148-21-45(1)(c), or through larger capacity wells to supply multi-family units or multiples of single-family units for residential and domestic purposes without irrigation.

6. The lands to be developed by applicant are not located within a designated ground water basin.

7. The estimated net depletion of the Big Thompson River resulting from applicant's development of the above-described residential units is 10.93 acre-feet per year, or an average of

.0439 acre-feet per unit per year. Since most of such residential units will be occupied only during a 100-day period in the summer months, most of such depletion will occur during that period, with minimal winter depletion to the ground water aquifer. The fractured granite aquifer system ordinarily does not recharge from the surface during the winter time due to freezing of upper soil strata. Thus any depletions to the aquifer will not result in significant depletion to the surface stream system until the spring thaw, at a time generally when the Handy Ditch direct flow rights are in use, and no injury will occur to water rights during the winter period so long as total annual depletions are replaced to the stream during the summer period. The total future depletion, 10.93 acre-feet per year, will be less than the 13.76 acre-feet per year total depletion presently and historically occurring pursuant to the use of the two shares of Handy Ditch Company owned by applicant. There will be no adverse effect to water rights on the North Fork of the Big Thompson River.

8. In order to avoid injury to vested water rights of appropriators from the Big Thompson River which would result from the above-described depletions caused by applicant's development, applicant has filed a proposed plan for augmentation herein. Under such plan, during the months of May through October, applicant will release to the Big Thompson River such portions of the water to which it is entitled by its ownership of two shares of Handy Ditch Company stock as are required to compensate for annual depletions caused by its development, and to prevent material injury to the owners or users of vested water rights. Such water will be released to the Big Thompson River by means of a turnout from the Handy Ditch to be constructed immediately below the headgate thereof, and will no longer be available for irrigation of the lands on which it has been historically used. The amounts and rates of flow of such water to be released during the months of May through October will be regulated so as to equal as nearly as possible the annual consumptive use occurring as a result of the use of water by the number of

single-family residential equivalent units which have been constructed in applicant's development.

9. The Court finds that by the imposition of the conditions set forth in these findings, wells for domestic purposes may be constructed and utilized without adversely affecting any vested water rights on the Big Thompson River or its tributaries, and that by the institution of the augmentation plan herein approved, the applicant, or its successors and assigns, may secure permits for and use domestic wells under the provisions of C.R.S. 148-21-45(1)(c), or, under other provisions of the law, larger capacity wells to serve multi-family residential units or multiples of single-family residential units without adversely affecting any vested water rights on the Big Thompson River or its tributaries, and without the necessity of administering or curtailing the withdrawal of water from any of such domestic wells in times of shortage.

CONCLUSIONS OF LAW

The Court concludes, as a matter of law:

1. The plan for augmentation proposed by applicant is one contemplated by law, and if administered in accordance with this decree, will permit the depletions associated with the provision of domestic water service without irrigation to approximately 249 single-family residential equivalent units by means of domestic wells in applicant's development without adversely affecting any other vested water rights in the Big Thompson River or its tributaries.

2. The determination made by this Court in this decree shall control the determination to be made by the State Engineer under C.R.S. 148-21-45(3)(b)(i).

3. The State Engineer may lawfully be required under the terms of this decree to administer the plan for augmentation in the manner set forth herein and to grant permits for wells to serve approximately 249 single-family residential equivalent units,

either for individual wells per unit under C.A.S. 148-21-45(1)(c), or for larger capacity wells for multi-family residential units or multiples of single-family residential units, and not to curtail diversions, in times of shortage, through any of such wells, the depletions for which are compensated by the operation of the augmentation plan herein approved.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

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

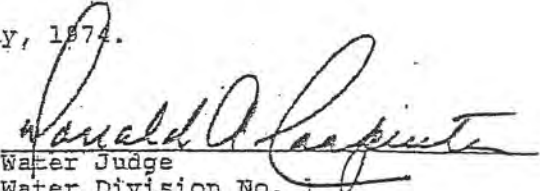
2. The State Engineer, the Division Engineer of Water Division No. 1, and other water administration officials shall administer the plan for augmentation herein approved by requiring applicant, during the months of May through October, to release to the Big Thompson River such portions of the water to which it is entitled by its ownership of two shares of Handy Ditch Company stock as are required to compensate for annual depletions caused by its development, and to prevent material injury to the owners or users of vested water rights, but in no case shall such releases be required to exceed the amount of water which is actually available to applicant by virtue of its ownership of such two shares. Such water shall be released to the Big Thompson River by means of a turnout from the Handy Ditch to be constructed immediately below the headgate thereof in accordance with the requirements of the Division Engineer, and shall no longer be available for irrigation of the lands on which it has been historically used. In the event that the Division Engineer and the Handy Ditch Company can agree on an alternate method of delivery of water, by means of a reduction in headgate diversions rather than a direct turnout, such may be permitted. In this event any reduction of diversions shall not be considered to be abandonment of any portion of the Handy Ditch water rights. The amounts and rates of flow of such water to be released during the months of May through October shall be regulated so as to equal as nearly as possible the annual consumptive

use occurring as a result of the use of water by the number of single-family residential equivalent units which have been constructed in applicant's development. Applicant shall, on or before April 1 of each year until its development has been completed, file a report with the Division Engineer showing the total number of such units which have been constructed at that time. For the purpose of regulating the releases to be made through the Handy Ditch turnout during the months of May through October of each year, the amount of annual consumptive use then occurring from single-family residential equivalent units constructed in applicant's development shall be determined by multiplying .0439 acre-feet times the number of such units which have been constructed at that time.

3. The State Engineer, in the discharge of his responsibilities with respect to the processing of applications for permits to construct and utilize wells for the provision of domestic and municipal water service to approximately 249 single-family residential equivalent units within applicant's development, either through individual wells applied for under C.R.S. 148-21-45 (1) (c), or through larger capacity wells applied for under other provisions of law to serve multi-family units or multiples of single-family units, shall recognize the existence and operation of the plan for augmentation herein approved, and shall not deny applications for such wells.

4. The State Engineer and Division Engineer of Water Division No. 1 shall not, at the request of senior appropriators or on their own initiative, curtail the diversion of water through any of the wells used to provide domestic and municipal service without irrigation to approximately 249 single-family residential equivalent units for which the plan for augmentation herein has been approved, so long as such plan is being administered in accordance with this decree.

DATED this 23rd day of May, 1974.


Water Judge
Water Division No. 1
State of Colorado