

District Court, Water Division No. 5, Colorado Garfield County Courthouse 109 8th St. Ste. 104 Glenwood Springs, Colorado 81601	▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO,  IN THE COLORADO RIVER AND ITS TRIBUTARIES,  IN SUMMIT AND GRAND COUNTIES	
<p style="text-align: center;"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE OF THE WATER COURT</b></p>	

Case No.: 95CW122  
 Division: 5  
 Courtroom:

THIS MATTER has come before the Court on an Application for Approval of Plan for Augmentation and Exchange (the "Application") filed by the Applicant, the Board of County Commissioners of Summit County ("Summit County"). The Court, having reviewed the Application and the other pleadings in this case, and now being fully advised with respect to this matter, enters the following Findings of Fact, Conclusions of Law, Decree of the Water Court (the "Decree"):

**I. FINDINGS OF FACT**

1. **Introduction.** The purpose of this plan for augmentation and exchange (the "Augmentation Plan") is to provide augmentation of out-of-priority depletions attributable to the use of both surface water and groundwater from the Blue River basin by Summit County and its residents. Water diverted pursuant to this plan may be placed to beneficial use within Summit County's water service area for the purposes allowed herein pursuant to Summit County's water service policy, as it may be amended from time to time. The currently projected uses include use by the County for public purposes and, pursuant to contracts between Summit County and the water users, use for the augmentation of out-of-priority depletions from surface diversions and groundwater withdrawals from individual wells. The individual well owners that are currently planned to be served by Summit County are those existing owners that are out-of-compliance with their exempt well permits, or future owners that are unable to obtain an exempt well permit, as a result of accessory living units, landscape irrigation, or domestic livestock watering.

This coordinated, county-wide plan will avoid the costs and administrative difficulties associated with numerous adjudications of individual structures, thereby offering further protections against injury to other vested water users. The plan also implements and will be operated in accordance with numerous agreements which Summit County has reached with various water users, beginning with an agreement dated September 18, 1985 with the City and County of Denver, acting by and through its Board of Water Commissioners.

2. Filing and Jurisdiction. A properly verified Application was filed in this matter by Summit County on June 28, 1995. The Application was amended on March 28, 1997. Timely and adequate notice of the Application was given in the manner provided by statute. See § 37-92-302, 10 C.R.S. (2000). All notices required by law of the filing of the Application have been given, and the Court has jurisdiction over the Application. By Order dated April 23, 2004, the Application was re-referred to the Water Judge.

3. Name, Address and Telephone Number of Applicant.

Board of County Commissioners of Summit County  
c/o County Manager  
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208 East Lincoln Avenue  
Breckenridge, Colorado 80424  
(970) 453-2561

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4. Statements of Opposition. Statements of Opposition were filed in this case by the Town of Silverthorne, the Town of Frisco, the Colorado Water Conservation Board, the City and County of Denver, acting by and through its Board of Water Commissioners, the City of Colorado Springs, the State and Division Engineers, the Colorado River Water Conservation District, and Copper Mountain, Inc. The time for filing additional statements of opposition has expired. The Statement of Opposition of the Colorado River Water Conservation District was withdrawn on May 6, 1996, and the Statement of Opposition of

the City of Colorado Springs was withdrawn on March 16, 2000. A stipulation between Summit County and the Town of Frisco was approved by this Court by order dated November 19, 2001. A stipulation between Summit County and Copper Mountain, Inc. was approved by this Court by order dated June 6, 2002. A stipulation between Summit County and the town of Silverthorne was approved by this Court by order dated June 10, 2003. A Stipulation between Summit County and the State and Division Engineers was approved by this Court by order dated June 10, 2003. A stipulation between Summit County and the City and County of Denver, acting by and through its Board of Water Commissioners, was approved by this Court by order dated April 26, 2002. The terms of said stipulations are incorporated herein.

5. All Persons Bound. All persons affected by the Application, whether appearing or not, are parties hereto and are bound by this Decree, all notices required by law having been given and the Court having jurisdiction over the subject matter of this proceeding. See §§ 37-92-203, 37-92-302, 10 C.R.S. (2000).
6. Description of Structures to be Augmented. The right to divert, store and/or pump water for domestic, municipal, commercial, irrigation and all other beneficial purposes from the facilities and sources described below, provided that depletions are replaced by operation of this plan. When depletions are replaced with water by exchange from downstream sources, the total exchange amounts under this plan shall be limited to a total of 208.4 consumptive acre feet per year, at a rate up to 6 c.f.s. (2700 g.p.m.), with a priority date of September 18, 1985. Water may be used by Summit County for county purposes, as further described below, or by individual owners of wells or other diversion structures located within Summit County that have applied for and received approval from Summit County for inclusion within the Augmentation Plan decreed herein. The facilities and sources to be augmented are as follows:
  - a. Upper Blue River Diversion and Storage, consisting of a series of surface diversions, storage facilities, groundwater wells or infiltration galleries which divert water from the following segments of the Blue River and its tributaries, and groundwater tributary thereto:
    - (i) Blue River from the confluence of Monte Cristo and Bemrose Creeks at Lat. 39°23'13" North, Long. 106°03'08" West downstream to the confluence with Dillon Reservoir in the SE1/4 of Section 31, T. 5 S., R. 77 W., 6th P.M.

- (ii) Spruce Creek from the headwaters at a natural lake at Lat. 39°53'53" North, Long. 106°24'53" West downstream to the confluence with the Blue River at Lat. 39°26'32" North, Long. 106°02'13" West.
  - (iii) Blue River from its headwaters in the vicinity of Lat. 39°21'30" North, Long. 106°03'30" West downstream to its confluence with Monte Cristo Creek at Lat. 39°23'13" North, Long. 106°03'08" West.
  - (iv) Monte Cristo Creek from its headwaters in the vicinity of Lat. 39°23'00" North, Long. 106°08'00" West downstream to its confluence with the Blue River at Lat. 39°23'13" North, Long. 106°03'08" West.
- b. Swan River Diversion and Storage, consisting of a series of surface diversions, storage facilities, groundwater wells or infiltration galleries which divert water from the following segments of the Swan River and its tributaries, and groundwater tributary thereto:
- (i) South Fork Swan River from the headwaters in the vicinity of Lat. 39°27'35" North, Long. 105°54'51" West downstream to the confluence with the Middle Fork Swan River at Lat. 39°29'48" North, Long. 105°56'42" West.
  - (ii) Middle Fork Swan River from the headwaters in the NW1/4NW1/4 of Section 23, T. 6 S., R. 76 W., 6th P.M., downstream to the confluence with the North Fork Swan River at Lat. 39°30'46" North, Long. 105°56'48" West.
  - (iii) North Fork Swan River from the headwaters in the vicinity of Lat. 39°33'00" North, Long. 105°53'32" West downstream to the confluence with the Middle Fork Swan River at Lat. 39°30'46" North, Long. 105°56'48" West.
  - (iv) Swan River from the confluence with Middle and North Forks Swan River at Lat. 39°30'46" North, Long. 105°56'48" West downstream to the confluence with the Blue River at Lat. 39°32'17" North, Long. 106°02'15" West.

c. Snake River Diversion and Storage, consisting of a series of surface diversions, storage facilities, groundwater wells or infiltration galleries which divert water from the following segments of the Snake River and its tributaries, and groundwater tributary thereto:

- (i) Deer Creek from the headwaters in the vicinity of Lat. 39°31'21" North, Long. 105°52'16" West downstream to the confluence with the Snake River at Lat. 39°33'49" North, Long. 105°51'37" West.
- (ii) Snake River from the confluence with Deer Creek at Lat. 39°32'49" North, Long. 105°51'37" West downstream to the confluence with Dillon Reservoir in the SE1/4NE1/4 of Section 21, T. 5 S., R. 77 W., 6th P.M.
- (iii) North Fork Snake River from the confluence of an unnamed tributary of Lat. 39°38'25" North, Long. 105°52'52" West downstream to the confluence with the Snake River at Lat. 39°36'18" West.
- (iv) Keystone Gulch from the headwaters in the vicinity of Lat. 39°32'51" North, Long. 105°54'26" West downstream to the confluence with the Snake River in the SE1/4NW1/4, Section 23, T. 5 S., R. 77 W., 6th P.M.
- (v) Snake River from its headwaters in the vicinity of Lat. 39°32'00" North, Long. 105°50'30" West downstream to its confluence with Deer Creek at Lat. 39°33'49" North, Long. 105°51'37" West.
- (vi) Peru Creek from its headwaters in the vicinity of Lat. 39°37'30" North, Long. 105°47'15" West downstream to its confluence with the Snake River at Lat. 39°35'30" North, Long. 105°52'30" West.

d. Ten Mile Creek Diversion and Storage, consisting of a series of surface diversions, storage facilities, groundwater wells or infiltration galleries which divert water from the following segments of the Snake River and its tributaries, and groundwater tributary thereto:

- (i) North Ten Mile Creek from the headwaters in the vicinity of Lat. 39°35'53" North, Long. 106°11'42" West downstream to the

39 27.844°N  
106 13.777°W

confluence with Ten Mile Creek at Lat. 39°34'28" North, Long. 106°06'35" West.

- (ii) West Ten Mile Creek from the headwaters in the vicinity of Lat. 39°30'01" North, Long. 106°09'53" West downstream to the confluence with Ten Mile Creek at Lat. 39°30'34" North, Long. 106°08'32" West.
  - (iii) Ten Mile Creek from the headwaters in the vicinity of Lat. 39°30'34" North, Long. 106°08'32" West downstream to the confluence with Dillon Reservoir in the NE1/4NW1/4 Section 35, T. 5 S., R. 77 W., 6th P.M.
- e. Lower Blue River Diversion and Storage, consisting of a series of surface diversions, storage facilities, groundwater wells or infiltration galleries which divert water from the Lower Blue River and its tributaries, and groundwater tributary thereto, from the outlet of Dillon Reservoir in the SE1/4NE1/4 of Section 13, T. 5 S., R. 78 W., 6th P.M., to the inlet of Green Mountain Reservoir in the SE1/4NW1/4 of Section 34, T. 2 S., R. 79 W., 6th P.M.
- f. Miners Creek diversion and storage, consisting of a series of surface diversions, storage facilities, ground water wells or infiltration galleries which divert water from Miners Creek and its tributaries from its headwaters in the vicinity of Lat. 39°31'30" North, Long. 106°07'00" West downstream to the confluence with Dillon Reservoir at Lat. 39°34'30" North, Long. 106°05'00" West. The following structures are explicitly included without limitation within the segment:
- (i) Blumenheim Well No. 1. The well is decreed at a location in the SE1/4SW1/4 of Section 35, T. 5 S., R. 78 W. of the 6th P.M. at a point 2,000 feet east of the west-line and 1,000 feet North of the South line of said Section 35. The well was decreed for 0.5 cfs conditional to be used for domestic, mechanical, municipal, industrial and irrigation purposes, with an appropriation date of June 26, 1972 (Case No. W-1204).
  - (ii) Blumenheim Well No. 2. The well is decreed at a location in the NW1/4SE1/4 of Section 35, T. 5 S., R. 78 W. of the 6th P.M., at a point

3,000 feet east of the West line and 1,500 feet north of the South line of said Section 35. The well was decreed for 0.5 cfs conditional to be used for domestic, mechanical, municipal, industrial and irrigation purposes, with an appropriation date of June 26, 1972 (Case No. W-1204).

- (iii) County Well No. 1. The well is located in the NE1/4SE1/4 of Section 35, T. 5 S., R. 78 W. of the 6th P.M., at a point 1,470 feet from the South line and 500 feet from the East line of said section 35. This well is claimed for 15 g.p.m. with an appropriation date of October 3, 1973, which is the date this well was drilled.
- (iv) County Well No. 2. The well is located in the NE1/4SE1/4 of Section 35, T. 5 S., R. 78 W. of the 6th P.M., at a point 1,470 feet from the South line and 500 feet from the East line of said section 35. This well is claimed for 15 g.p.m. with an appropriation date of October 3, 1973, which is the date this well was drilled.

g. Supplemental wells: In the event that any supplemental or replacement wells are required or desired for any of the wells described in this paragraph, such supplemental or replacement wells shall be automatically incorporated into this Augmentation Plan and shall be subject to all the terms and conditions set forth herein.

7. Decreed Water Rights to be Used for Augmentation. Under this plan, Summit County shall replace out-of-priority depletions to the stream with water available to it from the water rights listed below. Summit County may also use for augmentation purposes any other water rights that it later acquires in the listed structures, without further Water Court approval, provided such water can be fully consumed, is decreed for augmentation and replacement use, and is deliverable at suitable replacement points as set forth herein. Summit County may include additional augmentation sources in this Augmentation Plan only with further Water Court approval of an amendment to this Decree.

- a. Clinton Gulch Reservoir. Initially decreed by the District Court in and for Water Division No. 5 in Case No. W-2559 for 4,250 acre feet for industrial, domestic, irrigation, recreation, and fish and wildlife propagation uses, and subsequently decreed in Case No. 92CW65 for an enlarged use and second filling for domestic,

municipal, irrigation, industrial, snowmaking, recreation, fish and wildlife propagation, and augmentation purposes, both on the Western and Eastern slopes of Colorado. The Clinton Gulch Reservoir is operated pursuant to and entitled to the benefits of the Clinton Reservoir-Fraser River Water Agreement dated July 21, 1992 (the "Clinton Agreement") between Summit County, the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver"), and other parties (further described in Paragraph 11 below). The source of Clinton Gulch Reservoir is Clinton Creek, tributary to Ten Mile Creek, a tributary of the Blue River, and the dam is located at a point in the SW1/4 NW1/4 of Section 25, T. 7 S., R. 79 W., 6th P.M., at a point whence the North quarter corner of said Section 25 bears N. 33°51'50" E. 2840.44 feet. As the owner of 1,550 shares of stock in the Clinton Ditch & Reservoir Company, Summit County is entitled to the annual release of 155 acre feet of water from Clinton Gulch Reservoir.

- b. Windy Gap Project. 51.705 acre feet out of the 3000 acre feet of water per year produced from the Windy Gap Project and stored in Granby Reservoir pursuant to Paragraph 17 of the April 30, 1980 agreement between the Municipal Subdistrict of the Northern Colorado Water Conservancy District and, among other parties, the Middle Park Water Conservancy District ("Middle Park"), as assigned in part by water allotment contract dated April 24, 1984 and quitclaim deed dated April 1, 1986, between Middle Park and Summit County. The Windy Gap Project diverts at a point on the North bank of the Colorado River whence the NW corner of Section 25, T. 2 N., R. 77 W., 6th P.M., bears North 17°30' West a distance of 2380 feet. Granby Reservoir is located on the Colorado River upstream of its confluence with the Fraser River, in all or parts of Sections 25, 26, 27, 34, 35 and 36, T. 3 N., R. 76 W.; Sections 29, 30 and 32, T. 3 N., R. 75 W.; Sections 1, 2, 3, 10, 11, 12, 13 and 15, T. 2 N., R. 76 W.; and Sections 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 21, 22 and 23, T. 2 N., R. 75 W., 6th P.M., Grand County, Colorado.
- c. Wolford Mountain Reservoir. Up to 330 acre feet out of the 3,000 acre feet of water per year in Wolford Mountain Reservoir, a/k/a Gunsight Pass Reservoir, a/k/a Muddy Creek Reservoir, in which Middle Park has an interest by virtue of an agreement dated December 17, 1992 between the Colorado River Conservation District, the Board of County Commissioners of Grant County, and

Middle Park. Wolford Mountain Reservoir was decreed in Case No. 87CW283, District Court in and for Water Division No. 5, in the amount of 59,993 acre feet. The dam is located in the SW1/4 NE1/4 of Section 25, T.2N., R.81W. of the 6<sup>th</sup> P.M., Grand County, Colorado. The source of Wolford Mountain Reservoir is Muddy Creek and its tributaries, all tributary to the Colorado River. Middle Park has agreed that Summit County may use up to 30 acre feet of Wolford Mountain Reservoir water under a Windy Gap standby contract to supplement the yield of the Windy Gap water allocated to Summit County as described in Paragraph 7(b) above. Middle Park has also agreed that Summit County may use an additional 300 acre feet of Wolford Mountain Reservoir water for augmentation purposes under this plan and for replacement water to Denver as set forth in Paragraphs 9 and 11 below.

- d. Dillon Reservoir. Decreed by the District Court of Summit County, Water District No. 36, in Civil Action Nos. 1805 and 1806, dated March 10, 1952, and confirmed by the United States District Court for the District of Colorado in Consolidated Case Nos. 2782, 5016 and 5017, dated October 12, 1955, in the amount of 252,678 acre feet for irrigation and municipal uses, including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds. The sources of Dillon Reservoir are the Blue River, the Snake River, and Ten Mile Creek, all tributaries of the Colorado River. A refill right for the Dillon Reservoir was adjudicated in Case No. 87CW376, District Court in and for Water Division No. 5, dated February 13, 1997, in the amount of 175,000 acre feet for all municipal uses, including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds, and flood control.

Pursuant to Paragraph 6(b) of the agreement dated September 18, 1985 between Summit County and Denver, as amended by letter agreement dated November 13, 1986 (the "Summit County Agreement"), recorded at Reception No. 357033 of the Summit County real property records (further described in Paragraph 9 below), Denver has agreed to release to the Blue River from Dillon Reservoir augmentation water to satisfy calls placed by downstream water users with priorities senior to Summit County or its designees. Summit County has retained 35.31 acre feet of said Dillon Reservoir storage water. In addition, pursuant to the Clinton Agreement and to the Future Dillon/6(B) Agreement dated December 3,

2003 between Summit County and Denver (the "Future Dillon Agreement"), Summit County has converted 98.14 acre feet of the water available to it under the Summit County Agreement to "Future Dillon Water" as a source of year-round augmentation water. Summit County's Dillon Reservoir water may be used under this Augmentation Plan to directly replace depletions in the Blue River basin below Dillon Reservoir, or by "bookover" from Summit County's storage account to Denver, in order to replace depletions to Denver's Dillon Reservoir and Roberts Tunnel water rights when such rights are unsatisfied.

- e. Green Mountain Reservoir. Decreed by the United States District Court for the District of Colorado in Consolidated Case Nos. 2782, 5016 and 5017, dated October 12, 1955, in the amount of 154,645 acre feet, with an appropriation date of August 1, 1935, for the purposes specified in Senate Document No. 80, 75<sup>th</sup> Congress, 1<sup>st</sup> Session under the heading Manner of Operation of Project Facilities and Auxiliary Features. The sources of Green Mountain Reservoir are the Blue River and all tributaries of the Blue River upstream from the dam, and Elliott Creek by means of its diversion canal, which waters are tributary to the Colorado River. Summit County intends to obtain an allocation contract for these augmentation purposes.
- f. Old Dillon Reservoir First Enlargement. Decreed by the District Court in and for Water Division No. 5 in Case No. 93CW288, dated February 10, 1996, in the amount of 150 acre feet conditional, with an appropriation date of August 24, 1992, for municipal, domestic, irrigation, industrial, snowmaking, augmentation, recreation and all other beneficial uses. The source of the Old Dillon Reservoir is Salt Lick Gulch, a/k/a Salt Lick Creek, a tributary of the Blue River, a tributary of the Colorado River. Summit County owns an undivided 80% interest in the Old Dillon Reservoir First Enlargement pursuant to a Water Agreement dated August 24, 1992 with the Town of Dillon.

In its discretion, Summit County may utilize any of the foregoing augmentation sources or combination of such sources, provided such source is suitable for replacement, given the timing, amounts and location of the stream depletions and the priority of the calling water right.

8. Statement of Augmentation Plan. Summit County shall augment out-of-priority depletions arising from the use of the water rights described in Paragraph 6 above by releasing or otherwise committing to the Blue River basin water from the water rights described in Paragraph 7 above. Required replacements shall be calculated in accordance with the water use assumptions contained in Paragraph 8(c) below. The augmentation water will also be used to provide replacement water to Denver as set forth in Paragraphs 9 and 11 below. The precise timing, amount, and location of replacements shall be subject to administration by the Division Engineer for Water Division No. 5.
- a. County use. County uses as described herein shall include without limitation the following:
- (i) Blumenhein Wells No. 1 and 2. Described above in Paragraphs 6(f)(i) and (ii) above. The priority of the Blumenhein Wells, which are located in the Miners Creek drainage, is senior to the instream flow rights of the Colorado Water Conservation Board in Miners Creek, adjudicated in Case No. 85CW649, Water Division No. 5, and therefore the wells can be augmented without replacement to Miners Creek. If the Blumenhein Well water rights are used for domestic and irrigation uses, their depletions shall be calculated in accordance with the water use assumptions set forth in Paragraph 8(c) below for those purposes. Calculation of depletions from other uses shall be made in accordance with usage assumptions decreed by this Court under the retained jurisdiction provision of this Decree.
  - (ii) County Wells Nos 1 and 2. Described in Paragraphs 6(f)(iii) and (iv) above. Depletions from the County Wells are to Dillon Reservoir rather than to Miners Creek, and therefore such wells can be augmented by Summit County without replacement to Miners Creek. Summit County plans to use such wells for lawn and landscape irrigation at the County Commons, and the depletions resulting from such usage shall be calculated in accordance with the irrigation use assumptions set forth in Paragraph 8(c) below.
  - (iii) Blue River Park. Located in portions of the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, T.5S., R.78W. of the Sixth Principal Meridian, the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of

Section 18 , T.5S., R.78W. of the Sixth Principal Meridian, the SW¼ SW¼ of Section 7, T.5S., R.77W. of the Sixth Principal Meridian, and the SE¼ SE¼ of Section 12, T.5S., R.78W. of the Sixth Principal Meridian. Depletions resulting from irrigation of the Blue River Park will be to the Blue River below Dillon Reservoir and shall be calculated in accordance with the irrigation use assumptions set forth in Paragraph 8(c) below.

- b. Application for inclusion of structures. Any well owner or owner of a surface diversion located within Summit County and wishing to be covered by this Augmentation Plan must submit an application to Summit County describing the location of the well or other diversion structure and the proposed amount and uses of the well or other diversion structure (the "Augmentation Application"). If Summit County determines that there is sufficient unallocated augmentation water available under this Augmentation Plan, and that the proposed uses fall within Summit County's water service policies, it shall forward the Augmentation Application to all objectors in this case that previously have requested such notification. Any objectors requesting notification of Augmentation Applications shall have thirty days to review the application and to submit to Summit County in writing any objections to the inclusion of the well or surface diversion in this Augmentation Plan.

Once the said thirty-day objection period is expired, with respect to an Augmentation Application involving a well, Summit County may elect either to deny the Augmentation Application or to forward the Augmentation Application to the State and Division Engineers along with any objection letters and a well permit application completed either by the well owner or, at Summit County's election, by Summit County. The State Engineer shall issue a well permit if there is sufficient unallocated augmentation water available and if the well permit application and Augmentation Application comply with the terms and conditions of this Decree and with applicable Colorado law. Upon issuance of the well permit, Summit County will add the well to the accounting forms designed for the implementation of this Augmentation Plan.

Once the said thirty-day objection period is expired, with respect to an Augmentation Application involving a surface diversion structure, the County may

elect either to approve or deny the Augmentation Application. If the County approves the Augmentation Application, the County will forward the Augmentation Application to the State and Division Engineers along with any objection letters, and the County will add the structure to the accounting forms designed for the implementation of the Augmentation Plan.

Nothing in this paragraph shall be deemed to supercede the provisions of Paragraphs 17(i) and 17(j) below.

- c. Water use assumptions. Demands and depletions arising from the uses adjudicated herein shall be calculated according to the following water use assumptions:

- (i) Irrigation water consumptive use: Annual demand of 1.81 acre-feet per acre and annual depletion of 1.45 acre-feet per acre, based on an irrigation efficiency of 80%. Seasonal distribution of irrigation depletion:

MONTH	PERCENT OF ANNUAL CONSUMPTIVE USE
May	9.4
June	25.2
July	26.6
August	21.0
September	14.8
October	2.9

- (ii) Wastewater treatment by a central treatment plant: 5% consumptive.
- (iii) Wastewater treatment by a septic/leachfield system: 10% consumptive.
- (iv) In-house use:

Type of Dwelling	Annual Demand (acre-feet/year)	Annual Depletion on Septic/Leachfield System (acre-feet/year)	Annual Depletion on Central Treatment Plant (acre-feet/year)
Primary residence	0.314	0.031	0.016
Accessory unit	0.269	0.027	0.013
Apartment unit	0.179	0.018	0.009
Motel/hotel room or cabin	0.179	0.018	0.009

The figures listed above are based upon an assumed demand of 80 gallons per person per day, with 3.5 persons per primary residence, 3 persons per accessory unit, and 2 persons per apartment unit and motel/hotel room or cabin.

- (v) Commercial use: Annual demand of 0.179 acre-feet per 1000 square feet for commercial office space, with depletions of 0.018 acre-feet on a septic/leachfield system and 0.009 acre-feet on a central treatment plant; annual demand of 0.090 acre-feet per 1000 square feet of commercial warehouse space, with depletions of 0.009 acre-feet on a septic/leachfield system and 0.004 acre-feet on a central treatment plant. For all other commercial uses, diversions will be metered and consumptive use calculations will be based upon the type of wastewater treatment pursuant to Paragraphs 8(c)(ii) and (iii) above. A restaurant shall be a commercial use under this section. Any use for which the wastewater is not returned to a central treatment plant or septic/leachfield system shall not be a commercial use under this section. Any commercial use for which wastewater is not returned to a central treatment plant or septic/leachfield system will be considered under Section 8(x)
- (vi) Combined commercial/domestic use: Demands and depletions attributable to a well used for drinking and sanitary facilities in an individual commercial business and for domestic use in a related accessory unit shall be

calculated in accordance with the assumptions in Paragraphs 8(c)(iv) and (v) above.

- (vii) Domestic livestock demand: Annual demand and depletion of 0.012 acre-feet per animal, based upon an assumed demand of 11 gallons per day per animal (100% consumptive).
- (viii) Pond evaporation: 1.92 feet, April to November (100% consumptive).  
Seasonal distribution of pond evaporation:

MONTH	NET EVAPORATION (FEET)
April	0.13
May	0.19
June	0.32
July	0.36
August	0.34
September	0.27
October	0.20
November	0.11

- (ix) Delayed well pumping impacts: For purposes of this plan, the lagging and attenuation of stream depletions from well pumping shall be determined as a function of the distance of the well from the stream. The majority of water use (domestic and commercial) shall be treated as uniform and shall be presumed to result in uniform stream depletions. Irrigation and pond storage will be the principal uses that vary seasonally.

Lagging factors for irrigation use of alluvial wells and for evaporation of water withdrawn from wells and stored in ponds shall be based upon the location of the well within one of three delayed impact "bands": from 0 to

750 feet from the stream, from 750 feet to 1,750 feet from the stream, and more than 1,750 feet from the stream. The lagged stream depletions factors to be applied for each of these bands are described in the following table as a percentage of annual irrigation diversion and storage diversion:

Depletion - Wells S = .1, T = 2000 gpd/ft			
	<u>d = 500'</u> use for: 0' to 750'	<u>d = 1000'</u> use for: 750' - 1750'	<u>d = 2500'</u> use for: > 1750'
January	5.5%	8.6%	8.3%
February	4.8%	7.8%	8.4%
March	4.2%	7.2%	8.5%
April	3.8%	6.6%	8.5%
May	4.5%	6.2%	8.5%
June	7.8%	6.4%	8.4%
July	11.8%	7.4%	8.3%
August	14.6%	8.9%	8.3%
September	15.0%	10.2%	8.2%
October	12.6%	10.9%	8.2%
November	8.8%	10.5%	8.2%
December	6.7%	9.5%	8.3%
TOTAL	100.0%	100.0%	100.0%

- (x) Other: Water used for any purpose not described in this Paragraph 8(c) will be determined by Summit County and the State Engineer and will be subject to review under the retained jurisdiction provisions of this Decree.
- d. Well spacing requirement. For purposes of this Decree, the State Engineer may interpret Section 37-90-137(2)(b)(III), 10 C.R.S. (2000), which exempts a proposed well serving an individual residential site and not exceeding a pumping rate of fifteen gallons per minute from the requirement for notification to nearby well owners and/or a hearing when the well will be located less than 600 feet from another well, as including without limitation within the definition of an "individual residential site" any lot that holds one single-family dwelling and one accessory living unit.
9. Summit County Agreement. The subject Augmentation Plan is being undertaken in part pursuant to the Summit County Agreement, which provides for the release by Denver of up to 100 acre feet of augmentation water per year from Dillon Reservoir for the benefit of Summit County or its designees (the "Dillon Storage Water"). In return, 1.4 acre feet of replacement water from agreed sources is to be furnished to Denver for each acre foot of Storage Water released from Dillon Reservoir or "booked over" to Denver. At this time, Summit County has retained ownership of 35.31 acre feet out of the 100 acre feet of Dillon Storage Water.
10. 1988 Instream Flow Agreements. Summit County is a party to the Upper Blue River Basin Memorandum of Agreement and the Lower Blue River Basin Memorandum of Agreement, both dated October 25, 1988, between Summit County and the Colorado Water Conservation Board (the "CWCB"), recorded at Reception Nos. 447107 and 447108 of the Summit County real property records (the "MOAs"). The Upper Blue River MOA provides as follows:

Any decrees entered by the Water Court in [Consolidated Case Nos. 85CW627, 85CW632, 85CW638, 85CW640, 85CW641, 85CW643, 85CW647, 85CW650, 86CW92, 86CW93, 86CW204, 86CW205, 86CW209, 86CW210, 86CW211, 86CW215, 86CW217, 86CW223, and 86CW224, as consolidated in Case No. 85CW627] shall provide that the Upper Blue instream flow rights shall not be used as the basis to oppose, shall not prevent the operation of, will not be injured by, and need not be protected from injury in connection with

any application for a water right, change of water right, or plan for augmentation or exchange involving (directly or by exchange) the County Users Pool, irrespective of the augmentation or replacement source, so long as the following conditions are met:

- (a) The applicant for a water right, change of water right, plan for augmentation, or exchange has contract with the County or its successors, assigns or designees for a portion of the County Users Pool and is in compliance with the terms of such contract; and
- (b) The relevant terms and conditions of paragraphs 3 through 6 of the Summit County Agreement are met and incorporated into any future applications and decrees involving the County Users Pool; and
- (c) either, (1) the application involving the County Users Pool is in compliance with the terms and conditions of Appendix C and Table 1 thereof; or, (2) such application either does not injure the Upper Blue instream flow rights, or includes terms and conditions and, if necessary, provides augmentation water to prevent injury within any segment of the Upper Blue instream flow rights. . . .

The Lower Blue River MOA applies the same language to the CWCB's Lower Blue instream flow rights. The County Users Pool was defined to include the 155 acre feet of Exchange Water and 71.45514 acre feet of Dillon Storage Water then remaining to the County pursuant to the Summit County Agreement, which totaled 226.45514 acre feet. [The Summit County Agreement provides in relevant part that Denver will exercise its water rights and system to permit Summit County or its designees to divert and consume, directly or by exchange, up to 3100 acre feet of water per year at points of diversion or places of storage upstream of Green Mountain Reservoir.] Appendix C and Table 1 of the MOAs set forth allowable annual depletions by Summit County and its designees in particular stretches of the Blue River and its tributaries. The Augmentation Plan adjudicated herein shall comply with these and all other applicable terms of the MOAs. Summit County shall account for all depletions under this plan by stream segment to ensure that the allowable depletions in each segment are not exceeded, to the extent not replaced by upstream replacements. By stipulation in this case, the CWCB has agreed that Summit County may use up all of its allowable depletions under the MOAs during the months of

September through April, provided that during the months of May through August it shall either curtail depletions or provide upstream replacement water whenever necessary to prevent injury to the CWCB's instream flow rights on the Blue River and its tributaries. See also paragraph 11 below.

11. Clinton Reservoir - Fraser River Water Agreement. Paragraph 7 of the Clinton Agreement provided that Summit County could convert some or all of its consumptive use water under Paragraphs 3 and 4(c) of the Summit County Agreement ("Additional Water") into Dillon Reservoir water ("Future Dillon Water") which may be used by Summit County and its designees as a source of year-round augmentation water. By letter dated July 17, 2002, Summit County elected to convert all of its remaining Additional Water, consisting of 98.14 acre feet, to Future Dillon Water, subject to the Future Dillon Agreement. Under the Clinton Agreement, 1.58 acre feet of replacement water is to be furnished to Denver for every acre foot of Future Dillon Water used by Summit County. By stipulation in this case, the CWCB has agreed that the use of such Future Dillon Water is the equivalent of Additional Water and shall be considered part of the County Users Pool for purposes of the MOAs. Including the Future Dillon Water and the Dillon Storage Water, Summit County now has the right to use a total of up to 133.45 acre feet of water from Dillon Reservoir, subject to its replacement obligations to Denver.
12. No Injury. The Augmentation Plan adjudicated herein will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. See § 37-92-305(3), 10 C.R.S. (2000). The Augmentation Plan is sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water. See § 37-92-305(8), 10 C.R.S. (2000).
13. Administration. The Augmentation Plan described herein is capable of administration by the State water officials.

## II. CONCLUSIONS OF LAW

14. The Application is, as a matter of law, permissible and authorized by statute. See §§ 37-92-103(9), 37-83-104, 37-92-302, 10 C.R.S. (2000).
15. The Water Court has jurisdiction over the subject matter of this proceeding. See § 37-92-203, 10 C.R.S. (2000).

16. The terms and conditions as set forth in this decree are adequate to prevent injury to the vested rights of others, including the owners of, or persons entitled to use, water under a vested water right or a decreed conditional water right. See §§ 37-92-305(3), (4), 10 C.R.S. (2000).

### III. JUDGMENT AND DECREE

The foregoing Findings of Fact and Conclusions of Law are hereby incorporated in this Decree by this reference, and the Application is hereby granted, subject to the terms and conditions set forth in this Decree.

17. Adjudication of Augmentation Plan. The Augmentation Plan described herein is hereby approved, subject to the following terms and conditions:
- a. Summit County shall tabulate by stream segment, on a monthly and annual basis, those depletions that are covered by this Augmentation Plan in accordance with the usage assumptions and lagging factors set forth herein. Summit County shall replace any such depletions that are out-of-priority and not covered by the MOAs on a monthly basis or as directed by the Division Engineer.
  - b. At times when depletions are occurring under this Augmentation Plan above Dillon Reservoir, and Denver is bypassing through Dillon Reservoir no more water than the 50 c.f.s. minimum required outflow under Denver's federal permits, Summit County shall augment such depletions by "booking over" its Dillon Storage Water and Future Dillon Water to Denver, or by releasing to Denver its water from Clinton Reservoir or Old Dillon Reservoir.
  - c. At times when depletions are occurring under this Augmentation Plan and Denver is bypassing through Dillon Reservoir more water than the 50 c.f.s. minimum required outflow under Denver's federal permits, Summit County may replace any out-of-priority depletions with its Windy Gap water, Wolford Mountain water, or Green Mountain water. Under such conditions, Summit County may only cause depletions above Dillon Reservoir to the extent that Denver is bypassing water at Dillon Reservoir in excess of the 50 c.f.s. minimum required outflow. When Green Mountain is the unsatisfied right, depletions under this Augmentation Plan will be

credited toward the fill of Green Mountain Reservoir when Windy Gap or Wolford Mountain or Green Mountain Reservoir waters are being used as a source of replacement water.

- d. When it is replacing out-of-priority depletions within stream segments that are subject to the CWCB's instream flow rights, Summit County shall be limited to the amount of depletions set forth in the MOAs for each such stream segment, and it shall be further limited by the amounts available to it from the County Users Pool. To the extent that return flows resulting from diversions from augmented structures do not return to the stream segment in which the diversion was made, all of the diversions shall be considered to be fully depletive to that segment. However, such return flows may be used to offset depletions in the stream segment to which the return flows accrue, provided that such depletions occur downstream or from downstream tributaries of where the return flows accrue. Summit County may use up all of its allowable depletions under the MOAs during the months of September through April, provided that during the months of May through August it shall either curtail depletions or provide upstream replacement water whenever necessary to prevent injury to the CWCB's instream flow rights on the Blue River and its tributaries.
- e. If Summit County is replacing to Denver depletions originating upstream of Dillon Reservoir from sources upstream of Denver (e.g., Clinton Reservoir), it shall not exceed the amount equivalent to its County Users Pool for purposes of calculating the allowable depletions under the Upper Blue River MOA. In said event, however, Summit County does not owe Denver any replacement water over such actual depletions because the County Users Pool water is not otherwise being utilized by Summit County.
- f. Depletions in Ten Mile Creek or on the lower Blue River and its tributaries below Dillon Reservoir shall not be counted against the MOA limitations on such segments if the County replaces these depletions with Clinton Reservoir water, or with respect to the lower Blue River, with Dillon Storage Water, or Future Dillon Water, or Old Dillon Reservoir Water, or other such replacement source at or above Dillon Reservoir.

- g. In the operation of this Augmentation Plan, the County shall comply with, and benefit from, the terms of the 1985 Summit County Agreement, the MOAs, the Clinton Reservoir Agreement, and the Future Dillon Agreement.
- h. Some stream reaches covered by this Augmentation Plan are at times controlled internally by water rights located on the stream reach. No diversion located upstream of such controlling water rights shall be augmented under this Augmentation Plan unless the augmentation source is located upstream of such diversion, or unless the owner of the affected internally controlling water right consents to the use of the augmentation water described in Paragraph 7 above for replacement of out-of-priority depletions attributable to such diversion. For illustrative purposes, the approximate locations of the internally controlling water rights that are the subject of this condition are identified on the attached Exhibit A. The Town of Breckenridge ("Breckenridge") is the owner of internally controlling water rights on the Upper Blue River, including the Goose Pasture Tarn. As a beneficiary of the Summit County Agreement, Breckenridge consents to the use of the augmentation water described in Paragraph 7 above to be credited to Breckenridge for replacement of out-of-priority depletions from diversions covered under this Augmentation Plan and located above Breckenridge's water rights, at times when Breckenridge's water rights are the calling water rights on the Upper Blue River. Nothing in this decree will be construed as a selective subordination by Breckenridge, nor shall it in any manner limit the ability of Breckenridge to place a call for its water rights under the priority system of administration.
- i. A copy of each application received by Summit County for the augmentation of a structure pursuant to the Decree in this case that is otherwise acceptable to Summit County shall be forwarded to the Town of Frisco ("Frisco") for its review and approval if the structure involved would withdraw water from or tributary to North Ten Mile Creek. If Frisco denies approval of an application, augmentation of the structure at issue shall not be approved by Summit County and the structure shall not be included in this Augmentation Plan. Frisco may deny approval of an application only if it reasonably believes that approval of such application would result in material injury to Frisco's water rights in the North Ten Mile Creek drainage.

- j. A copy of each application received by Summit County for the augmentation of a structure pursuant to the Decree in this case that is otherwise acceptable to Summit County shall be forwarded to Copper Mountain, Inc. ("Copper") for its review and approval if the structure involved would withdraw water from or tributary to the following stream reaches: (i) West Ten Mile Creek; or (ii) Ten Mile Creek from its headwaters to the stream gauge located below the confluence of Ten Mile Creek and West Ten Mile Creek ("Upper Ten Mile Segment"); with the exception that Copper's review and approval shall not be required for the augmentation of a structure located in the Upper Ten Mile Segment if the depletions from such structure will be replaced by releases from Clinton Gulch Reservoir. If Copper denies approval of an application, augmentation of the structure at issue shall not be approved by Summit County and the structure shall not be included in this Augmentation Plan. Copper may deny approval of an application only if it reasonably believes that approval of such application would result in material injury to Copper's water rights in the West Ten Mile Creek or Ten Mile Creek drainages. Copper may recommend reasonable conditions upon its approval designed to prevent material injury to Copper's water rights.
- k. A copy of each application received by Summit County for the augmentation of a structure pursuant to the Decree in this case that is otherwise acceptable to Summit County shall be forwarded to the Town of Silverthorne ("Silverthorne") for its review and approval if the structure involved would withdraw water from or tributary to the Lower Blue River within the area depicted on the attached Exhibit B. If Silverthorne denies approval of an application, augmentation of the structure at issue shall not be approved by Summit County and the structure shall not be included in this Augmentation Plan. Silverthorne may deny approval of an application only if it reasonably believes that approval of such application would result in material injury to Silverthorne's water rights in the Lower Blue River drainage.
- l. Summit County shall not operate the exchange adjudicated herein to any point located above Dillon Reservoir, except as allowed pursuant to the Summit County Agreement and the MOAs, if such operation would reduce the inflow into Dillon Reservoir below 50 c.f.s.

- m. No more than 133.45 acre feet of depletions annually shall be augmented using Future Dillon Water or Dillon Storage Water.
18. Priority of Administration. The Application was filed in the Water Court in the year 1995, and the exchange rights described herein shall be administered as having been filed in that year, shall be junior to all priorities having been filed in previous years, except for the CWCB instream flow rights subject to the MOAs, and shall be senior to all rights filed in subsequent years. As between all rights filed in 1995, priority shall be determined by historical date of appropriation and not affected by the entry of the decree; for these purposes, the date of appropriation of the subject exchange rights shall be September 18, 1985.
19. Measurement and Accounting. Summit County will tabulate its depletions, replacements, and available replacement water under this Augmentation Plan pursuant to accounting forms acceptable to the State Engineer and its representatives. The accounting forms shall tabulate depletions by stream segment to ensure compliance with the MOAs. Summit County shall file a report annually with the Water Court, the Division Engineer, Denver, and the Town of Silverthorne listing all facilities covered by this Augmentation Plan and summarizing the total allocations of augmentation water for the previous year, the amount of unallocated augmentation water remaining under each of the listed sources, and the amount dedicated to Denver as replacement pursuant to the Summit County Agreement. The accounting system shall be revised as necessary to accommodate changed circumstances.
20. State and Division Engineers. The State and Division Engineers shall administer the Augmentation Plan as set forth herein and not curtail diversions by any of the water diversion and storage facilities described herein as long as such diversions or storage occur in accordance with this Decree. Pursuant to Section 37-92-305(8), 10 C.R.S. (2000), the State and Division Engineers shall curtail all out-of-priority diversions under the Augmentation Plan described herein, the depletions from which are not so replaced as to prevent injury to vested water rights.
21. Well Permits. Prior to the construction of each new well and any additional uses of each existing well subject to this plan, the well owners or Summit County, at its option, will apply to the State Engineer for well permits in accordance with §37-90-137(2), 10 C.R.S. (2000), which shall be issued subject to and in accordance with the terms of this Decree.

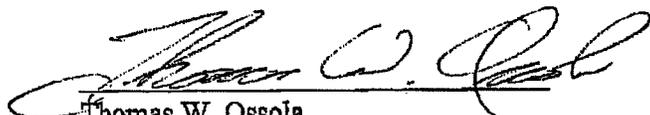
The State Engineer issued Guideline 2003-5 (Regarding the Use of Wells Within Water Service Area) on September 16, 2003. Approval of this Augmentation Plan does not qualify Summit County as a water supplier under Guideline 2003-5. Accordingly, the Decree in Case No. 95CW122 will not preclude the issuance of exempt well permits for wells in Summit County that otherwise qualify under Section 37-92-602, C.R.S.

22. Diligence Filing. An application for finding of reasonable diligence shall be filed within six years from the entry of this decree if the Applicant desires to maintain the conditional exchange rights described in paragraph 6 herein, or a showing shall be made on or before said date that such rights have been made absolute by completion of the appropriation. Each application to make a portion of the exchange right absolute shall include, in addition to any other information required by law, a description of each of the specific exchange reaches that have been utilized during the preceding diligence period as well as the rate of exchange for each such exchange reach. By making the exchange rights or any portion thereof absolute, Summit County shall not limit its right to change its replacement source for an existing structure or to add new structures to the Augmentation Plan in accordance with the terms of this Decree and to operate additional exchanges to accommodate such different sources or new structures.
23. Filing. This Decree shall be filed with the Water Clerk and a copy filed with the State Engineer and Division Engineer.
24. Retained Jurisdiction. Pursuant to Section 37-92-304(6), 10 C.R.S. (2000), the Court shall retain continuing jurisdiction over the Augmentation Plan decreed herein on the question of injury to vested water rights or decreed conditional water rights of others until ten years after the date of entry of this Decree. This period of continuing jurisdiction may be extended by the Court, prior to its expiration, upon a showing that the non-occurrence of injury has not been conclusively established. Any aggrieved person may request at any time within the period of retained jurisdiction a hearing before the Court for the purpose of reconsideration of the question of injury to vested water rights or decreed conditional water rights. Any such request shall be made by petition to the Court, served on all parties herein and made in good faith, stating with particularity the factual basis upon which it is asserted that injury has occurred or will occur. The party lodging the petition shall have the burden of proof to establish the prima facie facts and injury alleged in the petition. If a prima facie case of injury to vested water rights is established, the Applicant shall bear the burden to show (a) that no injury claimed by the other party has occurred or will occur, or

(b) that any modification to this Decree sought by the other party is not required, or (c) that any term or condition proposed by Applicant in response to the petition is adequate to avoid injury. The retained jurisdiction period may also be invoked by Summit County for purposes of establishing water use assumptions for uses not described in Paragraph 8(c) above, in which event Summit County will provide such notice of the invocation as the Court shall order.

An application for a finding of reasonable diligence or to make the conditional exchange right absolute shall be filed on or before the last day of the month in 2010 MAY, 2010.

Dated: May 10, 2004



Thomas W. Ossola  
Water Judge  
Water Division No. 5  
State of Colorado

Copy of the foregoing mailed to all Counsel  
of Record, Water Referee, Div. Engineer  
and State Engineer Date 5-11-04

J. Martin  
Butterfield      Hallford  
Wagner            Balcomb  
Carter             Cyran  
Dude  
Walker

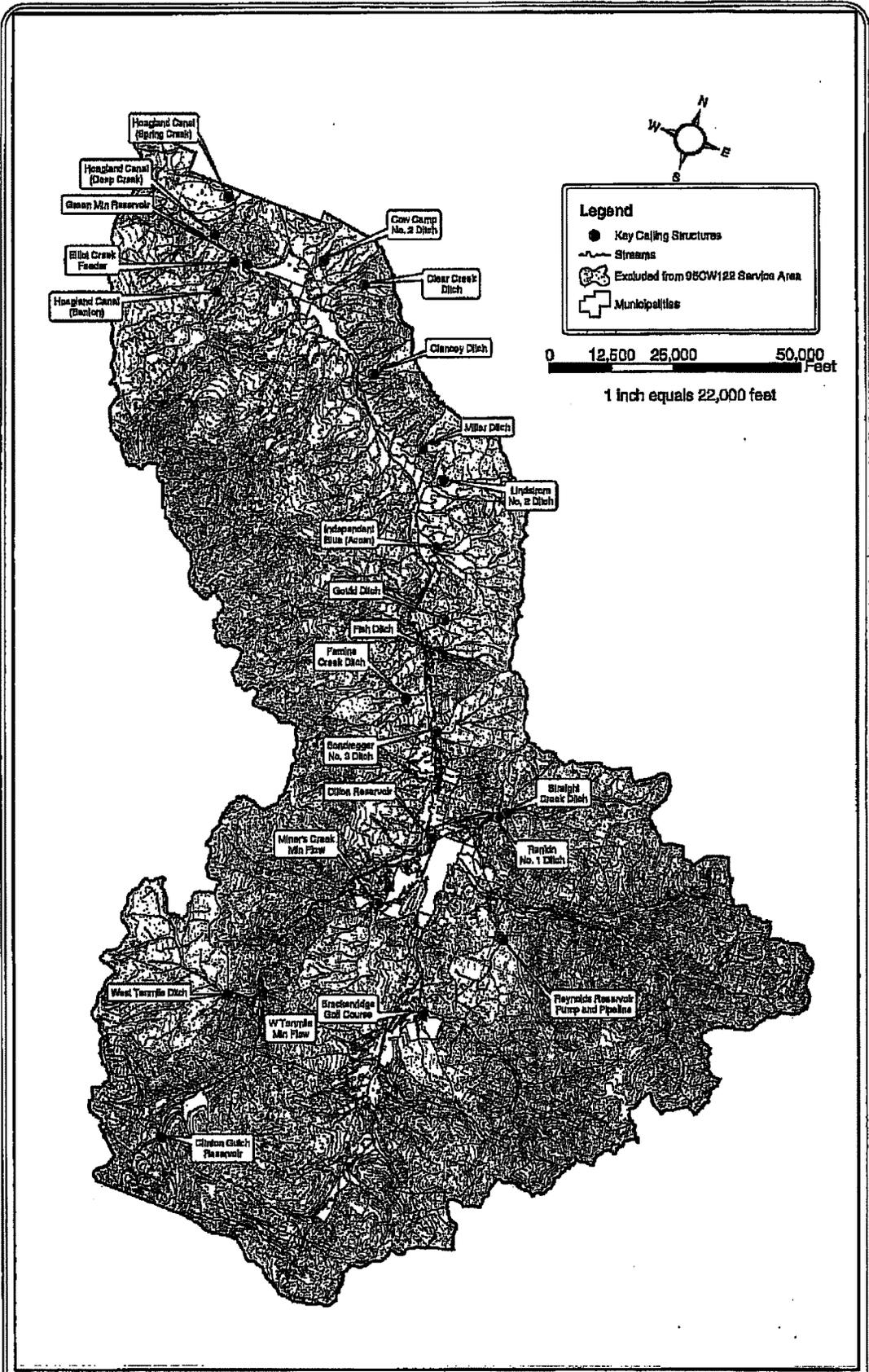
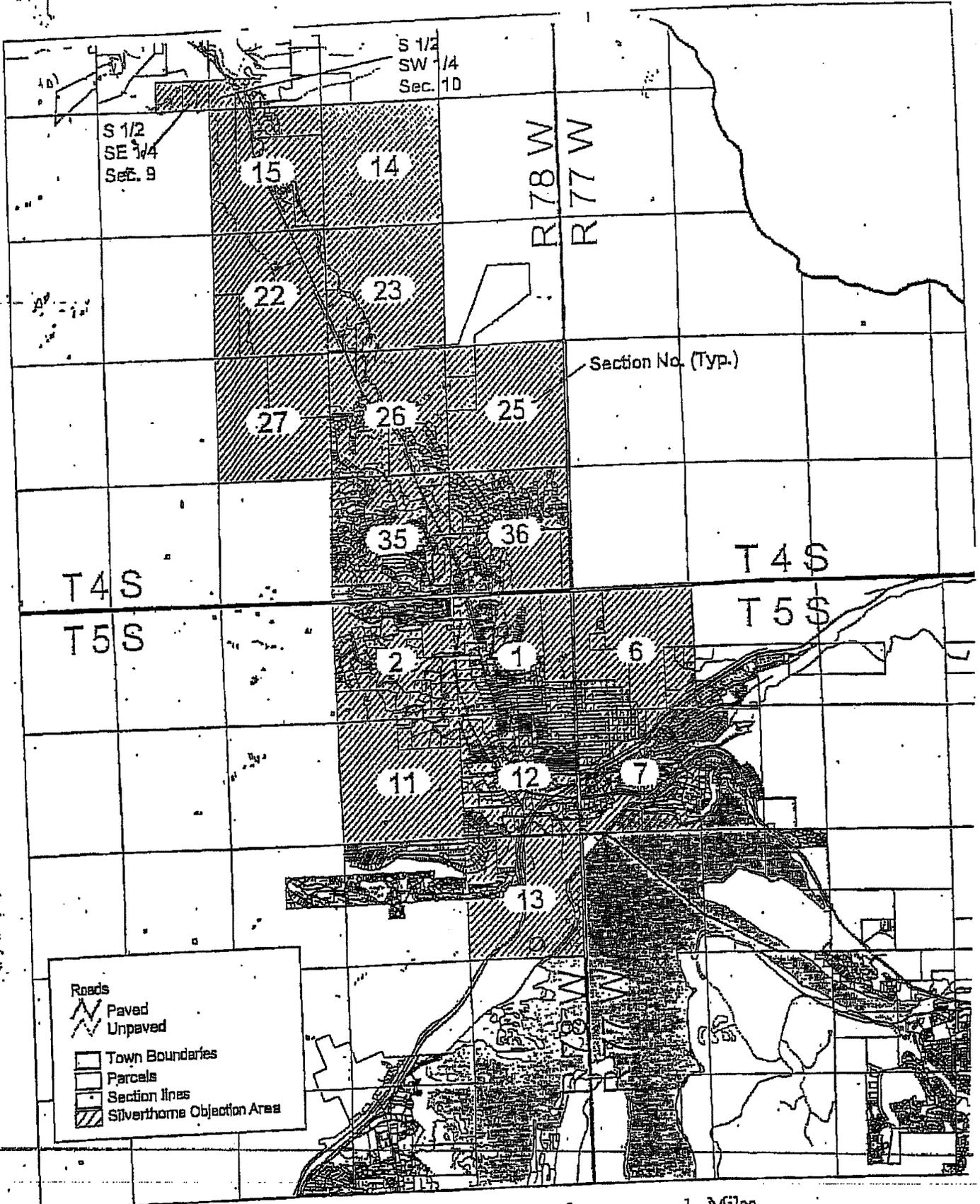


Exhibit A: Summit County  
 95CW122 Water Service Area

Date: 12/11/2003      File: 805-1.7

**RESOURCE**  
 ENGINEERING, INC

3000 Colorado Avenue  
 Greenwood Springs, CO 81623  
 (970) 845-8777 Voice (970) 845-1107 Facsimile



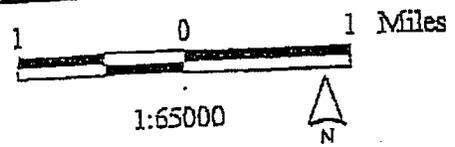
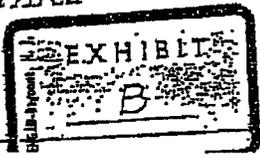
**Roads**  
 Paved  
 Unpaved

**Town Boundaries**  
 Town Boundaries  
 Parcels  
 Section lines  
 Silverthorne Objection Area

**Silverthorne Objection Area**

Prepared by R. Ferris,  
Summit County Government

Map printed 4/18/2003



This map is for display purposes only.  
Do not use for legal conveyance.  
Not necessarily accurate by surveying  
standards, and does not comply with  
National Mapping Accuracy Standards

Silverthorne Objection Area

Township 4 South, Range 78 West of the Sixth Principal Meridian, Summit County,  
Colorado

S ½ SE ¼ Section 9  
S ½ SW ¼ Section 10  
Section 14  
Section 15  
Section 22  
Section 23  
Section 25  
Section 26  
Section 27  
Section 35  
Section 36

Township 5 South, Range 78 West of the Sixth Principal Meridian, Summit County,  
Colorado

Section 1  
Section 2  
Section 11  
Section 12  
Section 13

Township 5 South, Range 77 West of the Sixth Principal Meridian, Summit County,  
Colorado

Section 6  
Section 7, except those portions of said Section 7 located within the corporate limits of  
the Town of Dillon, Colorado