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FILED IN DISTRICT COURT

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DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO

CASE NO. 90CW058

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE
WATER COURT APPROVING A PLAN FOR AUGMENTATION AND CHANGE OF WATER
RIGHTS

BOOK 6253 PAGE 597

CONCERNING THE APPLICATION FOR WATER RIGHTS OF EDNA R. ENSOR,
KENTON C. ENSOR, JR., MARY EDITH WILKINS, BARBARA F. ENSOR, THE K.
C. ENSOR, JR., TRUST AND THE K. C. ENSOR REALTY COMPANY

IN ARAPAHOE COUNTY

THIS MATTER, having come on for consideration upon the Application of Edna R. Ensor, Kenton C. Ensor, Jr., Mary Edith Wilkins, Barbara F. Ensor, the K. C. Ensor, Jr., Trust and the K. C. Ensor Realty Company (hereinafter referred to as "Ensors") for Approval of a Plan for Augmentation and Change of Water Rights and the Court having considered the pleadings, the files herein, the evidence presented and the comments of the Division Engineer, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, Judgment and Decree.

The Application was filed with the Water Clerk, Water Division No. 1 on March 29, 1990. All notices required by law of the filing of this Application have been fulfilled, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. The land and water rights involved herein are not included within the boundaries of any designated groundwater basin.

Statements of Opposition to the Application were filed by the City of Littleton; the City of Englewood; the Centennial Water and Sanitation District; the City and County of Denver, acting by and through its Board of Water Commissioners; the Willows Water District; the City of Thornton; the State Engineer and the Division Engineer. No other Statements of Opposition have been filed and the time for filing such statements has expired.

FINDINGS OF FACT

1. Ensors are the owners of approximately 121 acres of property located in the W 1/2 of Section 32 and the E 1/2 E 1/2 of Section 31, Township 5 South, Range 68 West, 6th P.M., Arapahoe County, Colorado. Historically, the property has been used for agricultural purposes. At the present time, a commercial turf business is operated on a portion of the property. Ensors propose to develop the property into a mix of commercial, industrial and residential units which will be designated as the Santa Fe Park Subdivision. The mailing address for the Ensors is as follows:

c/o Kenton C. Ensor, Jr.
7755 South Santa Fe Drive
Littleton, Colorado 80120

2. Water for the irrigation of open space throughout the proposed Santa Fe Park Subdivision, as described in Paragraph No. 1, above, will be supplied from a series of existing alluvial wells. All in-building water requirements for the subdivision will be supplied from the municipal water utility system operated and maintained by the City of Littleton or the Southwest Metropolitan Water and Sanitation District and are not covered by this plan for augmentation.

ALLUVIAL WATER RIGHTS TO BE AUGMENTED

3. Several alluvial wells exist on the property. All were adjudicated on May 5, 1978, in Case No. W-5771-72 for domestic and irrigation purposes. Pursuant to the terms of the decree, the wells have supplied water to irrigate up to 282 acres of land throughout portions of Sections 29, 30, 31 and 32 of Township 5 South, Range 68 West, 6th P.M. The source of water for the alluvial wells is groundwater tributary to the South Platte River. The wells can be more particularly described as follows:

- (a) Ensor Well No. 20034-1. Said structure is located in the NE 1/4 SE 1/4, Section 31, Township 5 South, Range 68 West, 6th P.M., at a point approximately 3,090 feet from the North Section Line and 240 feet from the East Section line of said Section 31. Pursuant to C.R.S. §37-92-306, the well is administered with a priority date of November 30, 1954, for 1.61 cubic feet per second.
- (b) Ensor Well No. 20034-2. Said structure is located in the NE 1/4 SE 1/4, Section 31, Township 5. South, Range 68 West, 6th P.M., at a point approximately 2,740 feet from the North Section line and 250 feet from the East Section

line of said Section 31. Pursuant to C.R.S. §37-92-306, the well is administered with a priority date of November 30, 1954, for 2.0 cubic feet per second.

- (c) Ensor Well No. U-20034 RF-4. Said structure is located in the SE 1/4 NE 1/4, Section 31, Township 5 South, Range 68 West, 6th P.M., at a point approximately 2,250 feet from the North Section line and 250 feet from the East Section line of said Section 31. Pursuant to C.R.S. §37-92-306, the well is administered with a priority date of November 30, 1954, for 2.34 cubic feet per second.
- (d) Ensor Well No. 20309-6. Said structure is located in the SW 1/4 NW 1/4, Section 32, Township 5 South, Range 68 West, 6th P.M., at a point approximately 1,890 feet from the North Section line and 230 feet from the West Section line of said Section 32. Pursuant to C.R.S. §37-92-306, the well is administered with a priority date of February 23, 1955, for 0.8 cubic feet per second.
- (e) Ensor Well No. 20309-7. Said structure is located in the NE 1/4 SE 1/4, Section 31, Township 5 South, Range 68 West, 6th P.M., at a point approximately 3,560 feet from the North Section line and 60 feet from the East Section line of said Section 31. Pursuant to C.R.S. §37-92-306, the well is administered with a priority date of February 28, 1955, for 3.3 cubic feet per second

STREAM DEPLETIONS

4. Depletions to the stream system attributable to usage of Ensors' alluvial wells will be a function of the quantity of water pumped, the type of vegetation irrigated and the efficiency of irrigation. A portion of the water pumped by the Ensors' alluvial wells will return to the South Platte River by surface or subsurface flow. Engineering studies of irrigation efficiencies for sprinkler irrigation of lawn grass indicate that total return flows of fifteen percent for subsurface flow and two percent for surface flow, or a total of seventeen percent (17%) of the water pumped, is reasonable under the facts of this case. The remainder is consumed by evaporation and evapotranspiration by vegetation.

5. The location of the alluvial wells and the property irrigated are in close proximity to each other and to the South Platte River. Ensors' engineering consultants have performed a Glover analysis on the effect of flows in the South Platte River associated with both pumping of the alluvial wells and return flows attributable to deep percolation from irrigation of the subject property. The Court finds that for each acre foot of alluvial

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groundwater which is pumped, the calculated depletions to the South Platte River are approximately as follows:

<u>Week (Assumes 1 AF is Pumped During Week One)</u>	<u>Net Stream Depletion Associated with Each Acre Foot Pumped</u>
1	0.37
2	0.24
3	0.09
4	0.08
5	0.05

SOURCES OF AUGMENTATION WATER

6. Out-of-priority stream depletions attributable to pumping of the alluvial wells described in Paragraph No. 3 will be replaced using one or any combination of the following sources of augmentation water. The maximum amount of augmentation water available each year from all sources is 134 acre feet.

- (a) Nontributary groundwater from the Arapahoe formation of the Denver Basin. This water will be supplied by pumping water decreed to the Ensor Well No. 14054R directly to the stream system. The Ensor Well No. 14054R is located in the NW 1/4 SW 1/4, Section 32, Township 5 South, Range 68 West, 6th P.M., at a point approximately 2,600 feet from the South Section line and 1,240 feet from the West Section line of said Section 32. The well was originally decreed in Case No. W-5771-72 with a date of appropriation of October 31, 1952, in the amount of 0.22 cubic feet per second for irrigation purposes. In Case No. 80CW234 the source of water was determined to be from the nontributary Arapahoe formation and, as such, annual pumping was limited to 33 acre feet. The Court finds that up to 33 acre feet of water is available from this well for replacement and augmentation purposes.
- (b) Not nontributary groundwater from the Laramie-Fox Hills formation of the Denver Basin. This water will be supplied by pumping the Ensor Well LFH-1 directly to the stream system. The Ensor Well LFH-1 is proposed to be located in the NE 1/4 NW 1/4 SW 1/4, Section 32, Township 5 South, Range 68 West, 6th P.M., at a point approximately 2,610 feet from the South Section line and

1,180 feet from the West Section line of said Section 32. An application to adjudicate the Well is pending in Case No. 90CW035. Ensors anticipate that allowable withdrawals from this well will be approximately 31 acre feet per year. Such water is available for all beneficial purposes. Pursuant to the requirements set forth in §37-90-137(9)(c), 15 C.R.S. (1990), a total amount of water equal to four percent of the amount of water withdrawn annually from the Ensor Well LFH-1 shall be replaced to the stream system under this plan in accordance with the provisions set out in Paragraph No. 9, supra, as well as any post pumping depletions that may be required. Ensors have agreed not to use the well until the issue of post pumping depletions of this non-tributary supply are further defined. The Court will retain jurisdiction over this limited issue as described in Paragraph No. 22.

(c) Pursuant to an Agreement between Ensors and the Centennial Water and Sanitation District, (hereinafter referred to as "Centennial"), Ensors are entitled to receive up to 70 acre feet of replacement water per year from any of the water rights and water sources available to Centennial, specifically including, but not limited to treated effluent discharged from Centennial's Marcy Gulch wastewater treatment plant. The following water rights, which were adjudicated by the District Court for Water Division No. 1 in Case Nos. W-6072, W-9192-78, 80CW445, 82CW479, 82CW480, 83CW237, 84CW482, 84CW483, 84CW411 and 85CW415, are owned by Centennial and may be used to fulfill Centennial's obligation:

- (1) 11.0 cfs of water decreed to the Lower Plum Creek Ditch out of Plum Creek by decree of the District Court of Douglas County, dated December 10, 1883, with an appropriation date of December 30, 1870.
- (2) Water from the Laramie-Fox Hills Formation of the Denver Basin Aquifer.
- (3) Water from the Arapahoe Formation of the Denver Basin Aquifer.
- (4) Water from the Denver Formation of the Denver Basin Aquifer.
- (5) Water from the Dawson-Arkose Formation of the Denver Basin Aquifer.

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- (6) Storage rights in Chatfield Reservoir.
- (7) Storage water from McClellan Reservoir.
- (8) Irrigation and in-building return flows from the Highlands Ranch Development pursuant to the decree in Case No. 85CW415.

Only that portion of Centennial's water supplies which are legally available for replacement or augmentation purposes will be used in this plan. Further, such replacement water received by Ensors from Centennial shall be used to replace out-of-priority pumping from only those wells contained in this decree. Nothing set forth herein shall modify the above referenced decrees.

7. If the Ensor Well No. 14054R or the Ensor Well LFH-1 are pumped for augmentation credit, such water shall be released directly to Dad Clark Gulch at a point in the NW 1/4 SW 1/4 of Section 32, Township 5 South, Range 68 West, 6th P.M. Dad Clark Gulch intersects the South Platte River in the SE 1/4 SE 1/4, Section 31, Township 5 South, Range 68 West, 6th P.M. Augmentation water supplied from Centennial will be released to the stream system within the following reach. The downstream point shall be the intersection of the South Platte River with Ken Caryl Avenue, a/k/a Mineral Avenue, located in the NW 1/4 NW 1/4 of Section 32, Township 5 South, Range 68 West, 6th P.M. The upper point of augmentation water delivery shall be no further upstream than five miles above the intersection of Dad Clark Gulch and the South Platte River, located in the SE 1/4, Section 31, Township 5 South, Range 68 West, 6th P.M. The maximum rate at which water will be delivered to Ensors by Centennial is 1.0 cubic foot per second. The maximum rate of augmentation water delivery from all sources is 1.9 cubic feet per second, subject to the availability of those sources described in Paragraph No. 6, supra. All deliveries of augmentation water shall be subject to the assessment of transit losses as determined by the Division Engineer.

TERMS AND CONDITIONS FOR PLAN

8. Ensors shall install and maintain totalizing flow meters on all of the wells which are described in Paragraph Nos. 3, 6(a) and 6(b), supra. Each meter shall be read on a weekly frequency; provided, however, that readings of the alluvial wells described in Paragraph No. 3 shall be read on a daily basis when the wells are in priority but the call on the river is fluctuating such that the well(s) are projected by the local Water Commissioner to be called out-of-priority within seven days or less. All readings shall be properly recorded on a form which is acceptable to the Division Engineer or his designated agent and which is in

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conformity with the requirements set forth in the accounting form attached as Exhibit "A." Depletions to the stream system attributable to pumping from the alluvial wells shall be calculated using the factors set forth in Paragraph No. 5, supra. Replacement water shall only be required under this plan when the call on the South Platte River below Chatfield Reservoir is senior to the priority date decreed to the alluvial well being pumped. Total combined out-of-priority pumping of the alluvial wells under this plan for augmentation shall not exceed 160 acre feet per year, and depletions caused by such pumping shall not exceed available replacement supplies.

9. Each year that the Ensor Well LFH-1 is pumped, Ensors shall document that an amount of water, equal to four percent (4%) of the total volume of water which is physically diverted from the Well is released to the stream system. If Ensors rely upon direct pumping from the Well, Ensors shall properly document such deliveries, and the volume of water from the well available for augmentation purposes shall be adjusted accordingly.

10. The source of all water which Centennial provides to Ensors pursuant to the provisions of Paragraph No. 6, infra., shall be properly documented. Centennial and Ensors shall apprise the Division Engineer or his designated agent regarding the location of delivery of augmentation water by Centennial, the rate and amount of delivery and the source of the water. Any augmentation water released by Centennial for Ensors' use shall be noted in Centennial's accounting records and subtracted from the supply available for use by Centennial.

11. The Court finds that the source of replacement water and the protective terms outlined above are sufficient to protect the vested rights of other water users in the South Platte River Basin.

CONCLUSIONS OF LAW

12. This Application was filed with the Water Clerk, Water Division No. 1, pursuant to §37-92-302(1)(a), 15 C.R.S. (1990). Statements of Opposition were filed by the City of Littleton, the City of Englewood, the Centennial Water and Sanitation District, the City and County of Denver, acting by and through its Board of Water Commissioners, the Willows Water District, the City of Thornton, the State Engineer and the Division Engineer. As is specified in §37-92-302(1)(c), 15 C.R.S. (1990), the time for filing Statements of Opposition has expired.

13. The Plan for Augmentation and Change of Water Rights described herein is contemplated and authorized by law, and if

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administered in accordance with this decree, will permit the uninterrupted utilization of the alluvial wells described in Paragraph No. 3, supra, without adversely affecting any other vested water rights in the South Platte River or its tributaries.

14. The State Engineer may lawfully be required to administer this Plan for Augmentation and Change of Water Rights in the manner set forth herein, and in times of shortage shall not curtail out-of-priority diversions through the diversion facilities set forth above, the depletions of which are compensated by the operation of the plan.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

15. The Plan for Augmentation and Change of Water Rights proposed by Ensors is approved.

16. The State Engineer, the Division Engineer and/or the Water Commissioner for former Water District No. 8 shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of water by Ensors so long as the out-of-priority depletions associated with diversions are replaced to the stream system pursuant to the conditions contained herein. To the extent that Ensors are ever unable to provide the replacement water required, then the diversion facilities described in Paragraph No. 3, supra, shall not be entitled to operate under the protection of this Plan, and shall be subject to administration and curtailment in accordance with the laws, rules and regulations of the State of Colorado.

17. All of the foregoing Findings of Fact and Conclusions of Law are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

18. Ensors shall make available for release to the stream system, a sufficient quantity of water to replace out-of-priority depletions associated with pumping of the alluvial wells. In addition, four percent (4%) of the water pumped each year from the Ensor Well LFH-1, as well as any post pumping depletions, shall be replaced to the stream system in accordance with the requirements set forth in §37-90-137 (9)(c), 15 C.R.S. (1990), and Paragraph No. 22, infra.

19. The required replacement water shall be provided from any one or a combination of the following sources:

- (a) Up to 70 acre feet of augmentation water deliveries from the Centennial Water and Sanitation District, in

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accordance with the conditions above described and the terms of Centennial's decrees.

- (b) Ensor Well No. 14054R.
- (c) Ensor Well LFH-1, subject to the requirements of Paragraph No. 6(b), supra. and Paragraph No. 22, infra.

20. Ensors shall designate an individual who shall be responsible for taking, or supervising the taking of all measurements required under this plan and properly recording same, and who shall coordinate with the State Water Administration officials to determine when the depletions associated with pumping of Ensors' alluvial wells are out-of-priority and when any necessary releases of augmentation water must be made to the stream system. Records of the operation of this augmentation plan shall be submitted to the Division Engineer or his designated agent, on a monthly frequency during the months of April through November inclusive, unless otherwise directed by the Division Engineer. Ensors have agreed to provide copies of such records to Centennial in order that Ensors and Centennial will be better able to coordinate augmentation water deliveries and their respective water accounting operations. On or before December 1 of each year, Ensors shall submit a report to the Division Engineer which summarizes the monthly diversions from the alluvial wells, and the operation of the plan over the immediately preceding water year (i.e. November 1 through October 31), on an accounting form acceptable to the Division Engineer. An example of a proposed accounting form to be used to monitor and verify the operation of this plan for augmentation is attached as Exhibit "A." It is not the Court's intention to mandate the use of Exhibit "A" in its existing format. Exhibit "A" has been included to provide an illustration of the information that must be gathered and recorded by the Ensors and their agents. Any augmentation water which the Centennial Water and Sanitation District provides to the Ensors pursuant to the agreement described in Paragraph No. 6(c) supra., shall be noted by source, volume and date of delivery in the records maintained by the Centennial Water and Sanitation District.

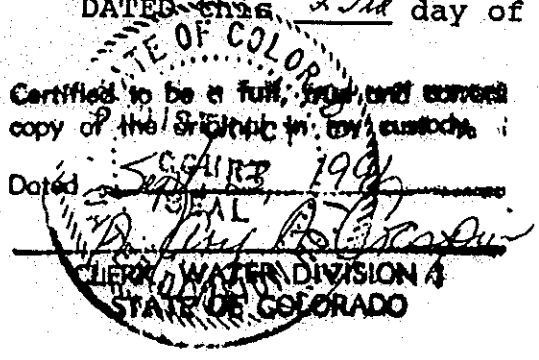
21. Pursuant to the provisions contained in §37-92-304(6), 15 C.R.S. (1990), the decree herein shall be subject to the reconsideration of this Court for the purpose of evaluating injury to vested water rights. For a period of five years from the date of this decree, any person may request a hearing by filing a petition with the Court Clerk, served upon all parties, stating with particularity the factual basis for requesting that the Court evaluate injury to vested rights associated with the operation of this decree. If no such petition is lodged within the five year

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period, and the retained jurisdiction period is not extended by the Court, this decree shall become final under its own terms.

22. Ensors shall be allowed to petition this Court at any time for a determination of if, and to what extent, it is necessary to compensate for injurious stream depletions attributable to the projected use of the Ensor Well LFH-1 after withdrawals from the well cease, and if so, the acceptability of a plan to compensate the stream system. Such a Petition shall be filed with the Court under the above case number and shall be served on all counsel of record for all parties who have appeared herein. If not resolved by stipulation, the issue shall be decided by the Court at a trial which shall be limited in scope to a determination of whether injurious stream depletions will occur, the magnitude and duration of same and whether Applicants' plan to provide replacement water is adequate to prevent such injury.

DATED this 23rd day of August, 1991.



BY THE COURT

Robert A. Behrman
ROBERT A. BEHRMAN
WATER JUDGE
WATER DIVISION NO. 1
STATE OF COLORADO

APPROVED AS TO FORM AND SUBSTANCE:

KRASSA, LINDHOLM, KUMLI & MADSEN

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HUTCHINSON, BLACK, HILL & COOK

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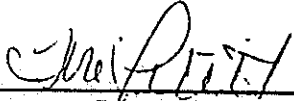
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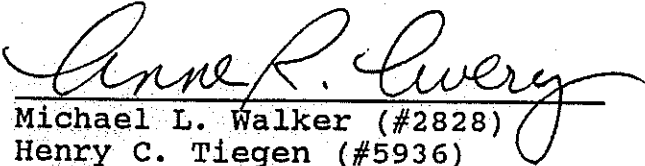
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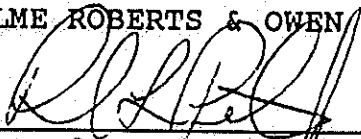
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CASE NO. 90CW058

SANTA FE PARK/ENSOR

SUMMARY OF WATER OPERATIONS

REPORTING PERIOD: (To be completed weekly whenever the tributary wells are pumped)

A. DIVERSIONS FROM TRIBUTARY WELLS

(1) Total Diversions from all wells during reporting period _____ Gallons
 (Acre feet = gallons ÷ 325,850) _____ Acre feet

B. DEPLETIONS ASSOCIATED WITH TRIBUTARY WELL PUMPING

(2) Total acre feet of water diverted from 1 to 7 days prior to reporting period x 0.37 _____ Acre feet

(3) Total acre feet of water diverted from 7 to 14 days prior to reporting period x 0.24 _____ Acre feet

(4) Total acre feet of water diverted from 14 to 21 days prior to reporting period x 0.09 _____ Acre feet

(5) Total acre feet of water diverted from 21 to 28 days prior to reporting period x 0.08 _____ Acre feet

(6) Total acre feet of water diverted from 28 to 35 days prior to reporting period x 0.05 _____ Acre feet

(7) Total depletions to the stream system during the reporting period
 Item (2) + Item (3) + Item (4)
 + Item (5) + Item (6) _____ Acre feet

C. AUGMENTATION REQUIREMENTS

(8) Number of days during the reporting period that the tributary wells are in priority: _____

(9) Augmentation requirements equal Item (7) [1- Item (8)]
 7 _____ Acre feet

D. REPLACEMENT WATER PROVIDED

- (10) Volume of water pumped to Dad Clark Gulch from Ensor Well No. 14054R during reporting period (Acre feet = gallons ÷ 325,850) _____ Gallons
 _____ Acre feet
- (11) Volume of water pumped to Dad Clark Gulch from Ensor Well LFH-1 during reporting period (Acre feet = gallons ÷ 325,850) _____ Gallons
 _____ Acre feet
- (12) Water from LFH-1 for which augmentation credit can be claimed (Item (11) × 0.96) _____ Acre feet
- (13) Volume of water provided by the Centennial Water and Sanitation District ("Centennial"), during the reporting period _____ Acre feet
- (14) Source of Centennial's water and location of delivery _____

- (15) Total volume of augmentation water delivered to the stream system during the reporting period (Item (10) + Item (12) + Item (13)) _____ Acre feet

E. SUMMARY OF OPERATION FOR THE WATER YEAR (November 1 - October 31)

- (16) Total volume of water pumped from the tributary wells during the water year (Item (1) + Item (16) from the immediately preceding reporting period) _____ Acre feet
- (17) Total volume of out-of-priority stream depletions during the water year (Item (9) + Item (17) from the immediately preceding reporting period) _____ Acre feet
- (18) Total volume of augmentation water delivered to the stream system during the water year. (Item (15) + Item (18) from the immediately preceding reporting period) _____ Acre feet