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FILED
 IN COMBINED COURT
 GARFIELD COUNTY, CO
 AUG 24 1998
 CLERK

DISTRICT COURT, WATER DIVISION 5, COLORADO

Case No. 95CW354

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF POLE CREEK ASSOCIATES AND WINTER PARK ASSOCIATES,

IN GRAND COUNTY.

THIS APPLICATION having been filed with the Water Clerk, Water Division 5, on December 29, 1995, and all matters contained in the Application having been reviewed, and such testimony having been taken and evidence presented as was necessary, and being otherwise fully advised in the premises, it is hereby the Ruling of the Water Referee as follows:

FINDINGS OF FACT

1. Name and address of Applicants:

Pole Creek Associates & Winter Park Associates
 1660 South Corona
 Denver, CO 80210
 (303)

2. History of Case and Plan of Augmentation: On June 27, 1994, a decree was entered in Case No. 80CW067, Consolidated with Case Nos. 80CW456 and 84CW175 approving a plan of augmentation. This original plan for augmentation, as approved, allowed for the development of 173.3 acres described as shown on the attached Exhibit A located in Section 9, Township 1 South, Range 76 West into residential units and a golf course. Sewage treatment was to be provided by a central wastewater treatment.

In addition, by Stipulation and Agreement with the State, the Applicants agreed to store and release into Pole Creek, one acre-foot of water upstream from the proposed development from a location acceptable by the State. Applicants also obtained approval for the operation of two wells, the Ski Gate and PCA wells.

Exhibit A

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On December 29, 1995, Applicants filed an Application for Change of Water Rights, which was later amended on June 26, 1997 and June 27, 1997, in order to amend the augmentation plan to allow for additional acreage, a change in storage location and individual septic systems.

3. Statements of Opposition. Statements of Opposition to the Application were filed in a timely manner by the Office of the State Engineer of Colorado and the Division Engineer of Water Division 5 (the "State"), Municipal Subdistrict, Northern Colorado Water Conservancy District, The Fairways at Pole Creek Development, LLC and Fraser Valley Metropolitan Recreation District (the "District"), the Colorado Water Conservation Board (the "CWCB"), J. Scott Bradley, Hugh Arnold, and John Austin ("Bradley, et al."). No other Statements of Opposition have been filed and the time for filing such statements has expired.
4. Subject Matter Jurisdiction. Notice of the Application was given in the manner required by law and the Court has jurisdiction over the subject matter and over all who have standing to appear as parties, whether they have appeared or not.
5. Change in the Plan for Augmentation: The Applicant intends to develop approximately 208.3 acres of land in the East ½ of Section 9, Township 1 South, Range 76 West of the 6th P.M., which will consist of 48 residential units, a club house and a golf course maintenance facility. A nine hole golf course is planned for the development.
 - a. Applicants' augmentation plan was decreed in Case No. 5-80CW067 in Water Division 5. All of the lands that were planned for development under this plan are now being developed under the terms and conditions set forth in this decree. Only a portion of the water rights and augmentation waters subject to 5-80CW067 will be needed under the new plan. Applicants agree that any remaining water rights and augmentation waters from Case No. 5-80CW067 will be subject to a future change in water right and plan for augmentation.
 - b. An additional 35 acre tract of land shall be included in the area to be served under the plan for augmentation. Said land is the E ½ NE ¼ NW ¼, W ½ W ½ NW ¼ NE ¼, and the W ½ E ½ W ½ NW ¼ NE ¼, Section 9, Township 1 South, Range 76 West of the 6th P.M. Development on the original 173.3 acres will be reduced proportionally to allow development of the additional 35 acres.
 - c. Pursuant to Paragraph 5(c) of the decree entered in Case no. 80CW067, incorporated herein by reference, the Applicants agree to store and release into Pole Creek one acre-foot of water upstream from the proposed development from a location acceptable to the State. At the time the ruling in

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Case No. 80CW067 was entered, Applicants sought a contract for storage in Snow Mountain Reservoir No. 1 and No. 2, as described more fully therein.

- d. In place of the storage which was to be located at Snow Mountain Reservoir, Applicants acquired an undivided 2.105% interest in Nontributary Well No. 1, decreed in Case No. 81CW105, District Court, Water Division 5 as the source for the 1 acre-foot replacement water required to be available for release into Pole Creek, such location being acceptable to the State.
- e. It is planned that a special district will be formed to administer this decree. The special district shall have all the obligations under this augmentation plan including the provision of replacement of up to 1 acre-foot of water required to be available for release into Pole Creek at or above the YMCA well location by discharging from a location acceptable to the State which may include water in whole or in part from the nontributary well decreed in Case No. 81CW105, District Court, Water Division 5.
- f. Pursuant to Paragraph 17 B of the decree entered in Case No. 80CW067 Applicant will supply replacement water if necessary if the wells are pumped for a period greater than 100 years.
- g. Pursuant to C.R.S. §37-92-502(5), Applicants shall install, maintain, and monitor at locations determined by the Division Engineer, and at Applicants' expense, such measuring devices and implement such accounting procedures as may be required by the State and Division Engineers to administer the terms of this decree. The CWCB, the State and Division Engineers shall have access to any such measuring device(s) at reasonable times in order to make readings therefrom.
- h. Sewage treatment will be provided by individual non-evaporative septic/leach field systems, instead of the central sewage treatment plant intended in the original plan.
- i. Applicant's Amended Application in Case No. 95CW354 claimed junior spring and storage rights for 3 springs and 3 ponds on the development. Applicant has withdrawn these claims.
- j. The Ski Gate Well will not be used for the present development of approximately 208.3 acres.
- k. No other terms or conditions of the ruling are changed herein.

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6. Reduction of Water Requirements: Because of the reduced amount of proposed development in the current plan over that in the original decreed plan, the water requirements are significantly reduced as described below.

Total Available Decreed Water Supply (Case No. 80CWR067)	
PCA Well	99 acre-feet/year
Ski Gate Well	136.5 acre-feet/year

	Original Plan As Decreed	Current Plan
Number of Units	345 multi-family units	48 single family homes
Other	Club house, maintenance facility & sports center	Club house and maintenance facility
Golf Course	27 holes	9 holes
Total Demand	235.5 acre-feet/year	63.71 acre-feet/year
C.U.	54 acre-feet/year	39.9 acre-feet/year
Maximum Stream Depletions	52.9 acre-feet/year	14.85 acre-feet/year
Return Flow	23 acre-feet/year	21.4 acre-feet/year

7. Non-Injury. The Court finds that the terms and conditions in this augmentation plan as proposed are sufficient to prevent injury to senior water rights.

CONCLUSIONS OF LAW

8. The foregoing Findings of Fact are fully incorporated herein by reference.
9. This Court has jurisdiction over the subject matter of these proceedings and over all who may be affected thereby, whether they have chosen to appear or not pursuant to Sections 37-92-302, 37-92-304(6), and 37-92-305, C.R.S. Timely and adequate notice of the pendency of this action was given in the manner provided by law.
10. The request for change of water right and plan for augmentation comes within the definitions authorized by statute.

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11. The terms and conditions as set forth in this Decree are adequate to prevent injury to the owners of, or persons entitled to use, water under a vested water right or a decreed conditional water right pursuant to Section 37-92-305(8), C.R.S.
12. Except where amended herein, the plan for augmentation decreed herein is subject to the terms and conditions of Case No. 80CW067, Water Division 5, consolidated with Case Nos. 80CW456 and 84CW175, which are hereby incorporated by reference.
13. Pursuant to Section 37-92-305(8), C.R.S., the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.
14. This Decree is administrable by the water officials of the State of Colorado. Applicant will furnish to the Division Engineer or its representative, on a monthly basis, appropriate records evidencing Applicant's operation of a well under this Decree.

JUDGMENT AND DECREE

15. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein by reference.
16. Applicants' plan for augmentation is hereby approved, subject to the terms and conditions provided for herein. The State Engineer, Division Engineer for Water Division 5, and other water administration officials are ordered to administer the plan for augmentation in accordance with this decree and in accordance with the priorities awarded herein.
17. The State Engineer shall curtail all out of priority diversions, the depletions from which are not replaced, as set forth in C.R.S. Section 37-92-305(8).
18. Retained Jurisdiction: Upon proper petition the Court will reconsider its approval of the plan for augmentation. In the event Applicants or any party petition the Court for reconsideration on any of the elements of the plan, the Court shall order appropriate notice to be given to all the parties hereto. Such petition shall be made in good faith, under oath, and shall set forth with particularity the factual basis upon which the requested reconsideration is premised. The party lodging the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition. If a prima facie case of injury to vested water rights is established, Applicants shall thereupon bear the burden of proof to show (a) that

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any modification sought by any other party is not required to avoid injury to other appropriators, or (b) that any term or condition proposed by Applicants in response to the petition avoids injury to other appropriators.

DATED this 28 day of August, 1998.

Copy of the foregoing mailed to all
Council of record Water
Referee Div. Engineer and
State Engineer Date 08-28-98
[Signature]
Deputy Clerk, Water Div. No. 5
HOLDER SCHROEDER CAZIER
JOHNSON GIMBEL WITWER

[Signature]
Robert C. Cutter
Water Referee
Water Division 5

THE COURT DOTH FIND THAT NO PROTEST TO THE RULING OF THE REFEREE HAS BEEN FILED. THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Date: Sept 27 1998

[Signature]
Thomas W. Ossola
Water Judge
Water Division 5

Copy of the foregoing mailed to all
Council of record Water
Referee Div. Engineer and
State Engineer Date 08-27-98
[Signature]
Deputy Clerk, Water Div. No. 5
HOLDER SCHROEDER CAZIER
JOHNSON GIMBEL WITWER

SECTION 9, TOWNSHIP 1 SOUTH, RANGE 76 W, 6th P.M.



NOT TO SCALE

SHADED AREA
POLE CREEK ASSOCIATES
PROPERTY
approx. 173.3 acres

 Property Boundary

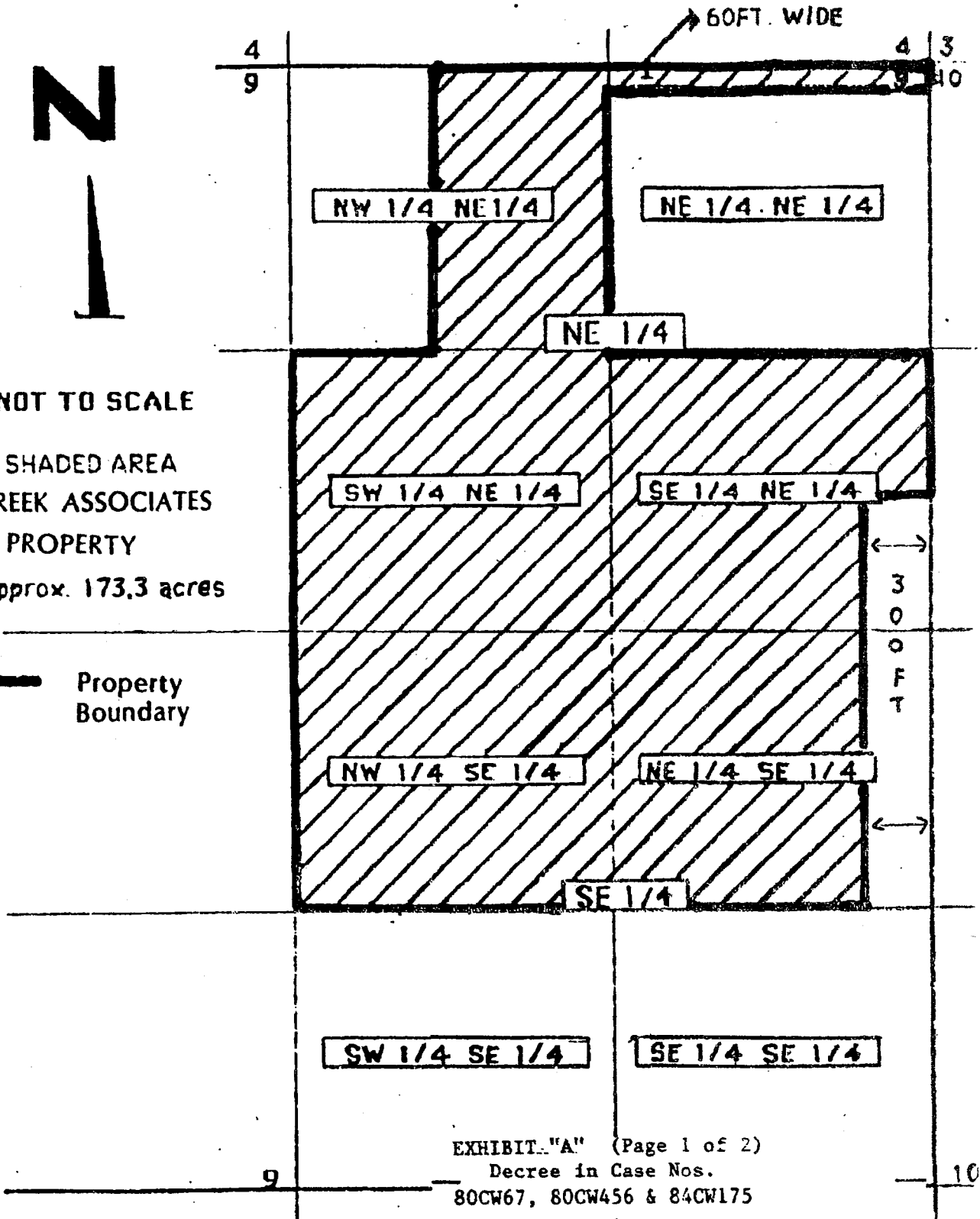


EXHIBIT "A" (Page 1 of 2)
Decree in Case Nos.
80CW67, 80CW456 & 84CW175

1-25-94

133.3

Jehn Water Consultants Inc.

1565 Gilpin Street

Denver, CO 80218

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PROPERTY LEGAL DESCRIPTION

SECTION 9, TOWNSHIP 1 SOUTH, RANGE 76 WEST 6TH P.M.

GRAND COUNTY

EAST 1/2 N.W. 1/4 N.E. 1/4	---	20.0 ACRES
EAST 1/2 E. 1/2 W. 1/2 N.W. 1/4 N.E. 1/4	---	5.0 ACRES
NORTH 1/2 S.W. 1/4 N.E. 1/4	---	20.0 ACRES
NORTH 1/2 S.E. 1/4 N.E. 1/4	---	20.0 ACRES
SOUTH 1/2 S.W. 1/4 N.E. 1/4	---	20.0 ACRES
SOUTH 1/2 S.E. 1/4 N.E. 1/4 EXCEPT THE EAST 300ft.	---	15.5 ACRES
NORTH 1/2 S.E. 1/4 EXCEPT THE EAST 300ft.	---	71.0 ACRES
NORTH 60ft. OF THE N.E. 1/4 N.E. 1/4	---	1.8 ACRES

TOTAL ACREAGE IS APPROXIMATELY 173.3 ACRES.

EXHIBIT "A" (Page 2 of 2)
--- Decree in Case Nos.
80CW67, 80CW456 & 84CW174