

Documents:

A list of relevant water decree documents are shown below:

- A. SEWD's Brief History from 1975 to 2007, distributed on 1/15/2007 by SEWD Board of Directors (M. Peterson)
- B. The Initial Water Decree, recorded 5/6/1975, case no. W-7540
- C. The Final Settlement Agreement between SEWD and The Timbers Estates Metropolitan District, case no. 96cw66, filed in Weld County District Court on 10/20/1997.
- D. The Administration of Augmentation Plan (WDID0902501) authored by Water Commissioner Timothy Buckley on 12/12/2013 is the final augmentation document that both SEWD and Timbers are required to use.
- E. SEWD's water attorney, Julia Robinson, reviewed the above documents on 10/8/2014 and concluded that augmentation plan according to item D above is correct one to use.

Summary:

Document A - This is a short history from 1975 to 2007 of SEWD's development written by a water district attorney, M. Petersen. The first water decree was issued on April 21, 1975 and included Evergreen Meadows units 8, 9, and 10 and Evergreen Highlands unit 5. Sometime prior to 1989, the developer abandoned responsibility for the development and in the fall of 1989 the local property owners formed South Evergreen Water District.

Document B - The original Water Decree was signed on April 21, 1975 and recorded on May 6, 1975. Over the years, it has been amended numerous times. The amendments have included domestic well count changes from 172 to 168, required augmentation changes from 7.7 AF to 7.5 AF and reservoir recharge requirement changes from "direct flow" to "storage". This means that, when filling in priority, 100% of a reservoir's volume can be put into storage each year.

Document C - The "Final Settlement Agreement between SEWD and the Timbers Estates Metro District" case no. 96cw66 was signed and recorded on October 20, 1997. This is the official document used by both entities for property separation, augmentation and other legal requirements. SEWD considers this the last amendment to the original water decree.

Document D - This is an official document written by Timothy Buckley, District 9 and 80 Water Commissioner, that clarifies the water year augmentation requirements for SEWD at 6.38 AF/year and for the Timbers at 1.12 AF/year. This is an 85% of the total augmentation for SEWD and a 15% of total requirement for Timbers. Timbers was also granted a 30% interest in overall water rights and SEWD was given 70% of the water rights.

Document E - This is SEWD's attorney's, Julia Robinson, review dated October 8, 2014 of the apparent questionable water rights/augmentation requirements. Our attorney agreed with the 85%/15% augmentation split.

SOUTH EVERGREEN WATER DISTRICT

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January 15, 2007

Property Owners within the South Evergreen Water District

Dear Property Owners:

When the Developer of Evergreen Meadows contemplated the development of Evergreen Meadows, Units 8, 9 and 10, and Evergreen Highlands, Unit 5, well permits were approved subject to the acquisition of water rights and diversion, storage, and release of water to augment the use of well water for the subdivision ("Augmentation Plan"). The Augmentation Plan became an order of the Court and required the Developer to organize a public entity to collect fees and maintain the reservoirs utilized for water collection and storage.

It appears that at some time prior to 1989, the Developer abandoned its responsibility for compliance with the Augmentation Plan. Subsequently, the Colorado State Division of Water Resources notified property owners within the subdivision that the provisions of the Augmentation Plan must be carried out or the Division would have no alternative but to shut down operating wells. In the fall of 1989, property owners within the subdivision formed a volunteer committee and began a process, that ended in the formation of the South Evergreen Water District, to assume the responsibility of carrying out the requirements of the Augmentation Plan.

Each property owner within the boundaries of the District was assessed an annual fee of \$360.00 in 1992. The current Board of Directors has set the current year's fee at \$130.00 and is committed to further reductions in future years if at all possible.

The Board of Directors of the South Evergreen Water District is aware that many property owners within the District's boundaries may not understand the reason for the District's existence. The Board is hopeful that this letter will provide some explanation; however, should you have questions, please call the administration office at 303-674-0800.

Board of Directors
South Evergreen Water District

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. I

STATE OF COLORADO

Case No. W-7540

LOIS DONLINGER
CLERK

*Recorded
5/6/75
2726/162*

IN THE MATTER OF THE APPLICATION)	
FOR WATER RIGHTS OF EVERGREEN)	
MEADOWS)	
IN THE SOUTH PLATTE RIVER BASIN)	FINDINGS OF FACT
IN JEFFERSON COUNTY)	CONCLUSION OF LAW
	JUDGMENT AND DECREE

This matter coming on for trial to the Court the 11th day of December, 1974 and 18th and 24th day of February, 1975, and the Court being advised in the premises, hereby finds:

1. The Application for Approval of a Plan for Augmentation was filed with the Water Clerk, Water Division I, on the 30th day of November, 1973.
2. All notices required by law for filing of this Application have been fulfilled and the Court has jurisdiction of this Application.
3. Statements of Opposition were filed by the Denver Water Board, through its attorney, Kenneth L. Broadhurst, and by the Public Service Company of Colorado, through its attorney, John Chilson. Time for filing additional Protests or Statements of Opposition has expired.
4. Entry of Appearance and Denial of Temporary Augmentation Plan was filed by the State Engineer through its Counsel Ben Wright and Don Hamburg, Special Assistant Attorney General. Applicant's objection to the continuation of the trial formerly scheduled for November 25, 1974, and Applicant's objection to the entry of appearance was overruled.
5. All matters contained in the Application were reviewed, and testimony was taken where such testimony was necessary.
6. Applicant is seeking a decree whereby the depletions occasioned upon the South Platte River System as a result of on-lot well use in a subdivision will be balanced against the consumptive use of existing and past irrigation and domestic use practices.

By this decree Applicant seeks a determination establishing the quantity of water available from prior consumptive use practices which can be made available as a result of discontinuing those prior irrigation and domestic use practices. Applicant proposes to store that quantity of water when in priority in Evergreen Meadows Reservoirs No. 1-4 located in the W $\frac{1}{2}$ Section 35, Township 5 South, Range 71 West, 6th P.M. Measuring flumes and staff gauges will be installed to provide for constant measurement of storage and releases from storage. The reservoirs are 61.8 acre feet in capacity with a surface area of 9.1 acres. The evaporation expected to occur from those reservoirs is at the rate of 1.7 acre feet per acre per year for a total of 15.5 acre feet per year. If Applicant adds to and does store the total consumptive use from the prior domestic and irrigation uses when in-priority assuming water is physically available and uses this water to make-up for the evaporation loss from the reservoirs as well as the out-of-priority depletion from the new uses as set forth in the application, the vested rights of other water users will be protected.

The evidence shows that sufficient water can probably be stored in priority in an average year so as to make up for the expected depletion occasioned upon the stream system as a result of the new consumptive use arising from the possible installation of the 175 wells. As a result therefore well permits, if requested, should be issued by the State Engineer, if the terms of this decree are fully complied with.

In order to insure that the quantity of water available under prior consumptive use irrigation practices may be stored in-priority for subsequent release to the stream to make-up for out-of-priority depletions by the new on lot wells, a management and operational program should be established for five years. If at any time during the five year program there is insufficient water to meet depletions Applicant shall add additional senior direct flow or storage water to this plan in order to prevent any deficiency, or in order to provide additional water for storage and later release because of a larger consumptive use by the development than was contemplated by the terms of this decree.

Should Applicant need to provide such additional water, rights located on Bear or Turkey Creek or their tributaries, with a first adjudication priority date of 1870 or senior will be satisfactory to prevent injury, or such other waters as may be required by the Division Engineer.

7. Applicant is the owner of the following water rights:

<u>Name</u>	<u>Appropriation Date</u>	<u>Adjudication Date</u>	<u>Priority</u>	<u>Amount</u>
<u>Tributary</u>				
Spruce Park Ditch No. 1	6/1/1873	9/24/1935	44 Irr. 15 Dom.	3.00 cfs. 1.00 cfs.
Spruce Park Ditch No. 2	6/1/1873	9/24/1935	45 Irr. 16 Dom.	.50 cfs. .50 cfs.
Spruce Park Ditch No. 4	6/1/1872	9/24/1935	39 Irr. 11 Dom.	.60 cfs. .60 cfs.
Spruce Park Ditch No. 5	6/1/1872	9/24/1935	40 Irr. 12 Dom.	2.70 cfs. 1.00 cfs.
Spruce Park Ditch No. 8	6/1/1874	9/24/1935	48 Irr.	1.20 cfs.
Spruce Park Ditch No. 9	6/1/1874	9/24/1935	49 Irr. 18 Dom.	.8 cfs. 0.28 cfs.
Berrian Ditch No. 10	6/1/1872	9/24/1935	42 Irr. 13 Dom.	5.00 cfs. 1.00 cfs.
<u>Nontributary</u>				
Berrian Spring No. 1	5/1/1872	9/24/1935	1 Dom.	0.005 cfs.
Earley Spring No. 1	6/1/1875	9/24/1935	1 Dom.	0.2 cfs.
Earley Spring No. 2	6/1/1875	9/24/1935	1 Dom.	0.2 cfs.

8. Some stream depletion to North Turkey Creek occurred year around due to the use of the domestic decrees for 10 family units and the watering of approximately 225 head of livestock. Net stream depletion also resulted from the consumptive use of the decreed irrigation water rights upon 50.0 acres described as follows:

Part of the W $\frac{1}{2}$ Section 35 lying East of Highway 73, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34 lying East of Highway 73; all in Township 5 South, Range 71 West, 6th P.M., Jefferson County, Colorado.

In addition consumptive use resulted from the use of non-decreed irrigation rights upon 61 acres described as follows:

Part of the W $\frac{1}{2}$ Section 2, Township 6 South, Range 71 West, 6th P.M., Jefferson County, Colorado.

9. New Consumptive Use Practice:

(a) Applicant is developing Evergreen Meadows Units 8, 9, 10, and Evergreen Highland Unit 5. These subdivisions envision the possibility of future water use through domestic wells of a capacity not to exceed 15 gpm and to be used for domestic use for in-house purposes only, not involving irrigation. The expected consumptive use resulting in net stream depletion occasioned by the future construction of domestic wells, numbered 1-~~172~~¹⁶⁸ is 7.7 acre feet per year. *→ Revised to 7.5*
The expected consumptive use for the commercial wells numbered 1-3, to be utilized for school purposes only excluding any landscaping or other outside uses is expected to be 2.03 acre feet per year. This is derived from an analysis of the expected diversions at 100% occupancy of 75 gallons per capita per day for 64.86 acre feet per year, occurring at the rate of 0.090 cubic feet per second where the range of consumptive use due to the design of on-lot septic systems is expected to be 15% of the actual diversions. The on-lot septic systems will be limited to non-evapotranspiration type systems and will be limited to types involving leach fields or excavated sand filter systems. Where septic tanks with leach fields or excavated systems are utilized the plats to the subdivisions will restrict them to an area where there is not a high water table and will be designed to prevent evapotranspiration.

(b) There appears to be an adequate transferable consumptive use from the old water use practices to make-up for the depletion to the stream system as a result of the new use, provided the appropriations when administered according to their priority will yield said consumptive use.

10. Old Consumptive Use Practices:

(a) Irrigation water rights.

(1) The consumptive use under the old water use practices is equal to 1.17 acre feet of water per acre per year, over 50 acres or an average of 58.50 acre

feet of consumptive use per year.

(b) Domestic water rights.

(1) The consumptive use attributable to the domestic use by 10 families was 0.4 acre feet per year, by the 225 head of cattle equal to 2.52 acre feet per year.

11. In order to insure that there will be no injury to other water uses as a result of the proposed discontinuance of prior consumptive use practices Applicant will:

(a) Create 61.8 acre feet of on site storage to store as much of the 61.42 acre feet of expected prior consumptive use water as available under the listed irrigation priorities when in-priority and release to the stream the 9.73 acre feet of depletion as may be required by the Division Engineer.

(b) Divert for storage at a rate not to exceed 0.25 c.f.s. under the domestic priorities and 5.0 under the irrigation priorities.

(c) Abandon to the stream system the Berrian Spring No. 1 and the Earley Spring Nos. 1 and 2.

(d) Discontinue all irrigation practices under both the decreed and non-decreed irrigation water rights and discontinue all water use practices under the decreed domestic water rights set forth herein.

(e) Construct a ditch to carry the waters for the source of the Spruce Park Ditches 8 and 9, to North Turkey Creek.

(f) Completely fill all irrigation ditches located on the subject property, except the use of Spruce Park Ditch No. 1 and Spruce Park Ditch No. 4 as needed to fill the reservoirs.

12. Because this plan involves the management and operation of water rights releases, the regulation of water use, septic tank location and non-irrigation, and the development of a five year operational program envisioning the possible purchase of

additional water rights at a future date, Applicant shall form a homeowners association, to include all lot purchasers constructing homes on the subdivisions described herein, to be responsible for the regulation and enforcement of the conditions of this decree. In order to provide for the compliance with the terms of this decree, the Applicant or the homeowners association, as the case may be, shall designate an individual as representative for said party to be contacted by the Division Engineer.

CONCLUSIONS OF LAW

13. This Application was filed before the Water Court, pursuant to C.R.S. 1973, §37-92-302(1)(a), and time for Opposition or Protest expired according to law. C.R.S. 1973, §37-92-302(1)(c).

14. The Court has considered all matters provided by law for the approval of a Plan for Augmentation, particularly as found in C.R.S. 1973, §37-92-307 (Session Laws 1974).

15. Individual lot purchasers are entitled to be issued permits for the wells for their own use described herein, should they so desire. C.R.S. 1973, §37-92-305(6); C.R.S. 1973, §37-92-302(2); C.R.S. 1973, §37-92-602(2) and (3)(b)(2).

16. Permits for the construction of commercial wells for in-school uses only not involving irrigation may be issued by the State Engineer pursuant to C.R.S. 1973, §37-90-137.

17. This decree may be subject to opening for subsequent review based upon conditions set out herein. C.R.S. 1973, §37-92-304(6).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

18. The plats for Evergreen Meadows Units 8, 9, and 10 and Evergreen Highlands Unit 5 shall restrict well water use to a capacity not to exceed 15 gpm for domestic use for in-house purposes only, not involving irrigation. Each of the individual lot purchasers as subsequent users and as successors of Applicant, if they desire a well for their own use, and the school district

which will construct the in-school wells, shall apply to the State Engineer for a permit to construct a well and shall file an application for a decree to the wells with the Water Court.

19. Wells Number 1-172 which may be utilized for on-lot in-house water use for Evergreen Meadows Units 8, 9, and 10 and Evergreen Highlands Unit 5 and commercial wells numbered 1-3 which may be utilized for in-school purposes only are described below:

EVERGREEN MEADOWS - UNIT 8, Sec. 35, T. 5 S., R. 71 W.,
JEFFERSON COUNTY, COLORADO.

<u>Lot #</u>	<u>Bearing</u>	<u>Distance</u>	<u>Loc. in Sec.</u>	<u>From</u>
1	N 88° 15' 26" W	882.868	SW $\frac{1}{4}$ SW $\frac{1}{4}$	S1/4 Cor. Sec. 35
2	N 58° 35' 00" W	799.697	"	"
3	N 73° 20' 52" W	1035.904	"	"
4	N 74° 35' 40" W	1268.021	"	"
5	N 62° 02' 09" W	1304.808	"	"
6	N 56° 05' 20" W	1123.576	"	"
7	N 51° 34' 43" W	960.430	"	"
8	N 46° 44' 40" W	827.210	"	"
9	N 19° 33' 53" W	1291.412	"	"
10	N 24° 49' 33" W	1649.261	NW $\frac{1}{4}$ SW $\frac{1}{4}$	"
11	N 27° 30' 37" W	1845.526	"	"
12	N 26° 40' 04" W	2010.747	"	"
13	N 27° 22' 23" W	2158.539	"	"
14	N 32° 23' 33" W	2281.920	"	"
15	N 38° 21' 59" W	1985.633	"	"
16	N 42° 52' 13" W	1605.754	SE $\frac{1}{4}$ SW $\frac{1}{4}$	"
17	N 44° 55' 33" W	2396.606	NW $\frac{1}{4}$ SW $\frac{1}{4}$	"
18	N 44° 43' 17" W	2092.573	"	"
19	N 47° 07' 49" W	2009.084	"	"
20	N 57° 59' 09" W	1748.353	SW $\frac{1}{4}$ SW $\frac{1}{4}$	"
21	N 69° 10' 01" W	1875.048	"	"
22	N 76° 04' 26" W	1898.255	"	"
23	N 83° 26' 22" W	1985.462	"	"
24	N 89° 04' 45" W	2062.726	"	"
25	N 86° 35' 16" W	2131.238	"	"
26	N 84° 17' 12" W	2278.779	"	"
27	N 80° 35' 23" W	2060.185	"	"
28	N 73° 55' 31" W	2011.090	"	"
29	N 72° 12' 37" W	2018.999	"	"
30	N 70° 27' 13" W	2740.386	"	"

<u>Lot #</u>	<u>Bearing</u>	<u>Distance</u>	<u>Loc. in Sec.</u>	<u>From</u>
31	N 56° 26' 29" W	2942.992	NW¼ SW¼	S1/4 Cor. Sec. 35
32	N 47° 56' 09" W	3114.870	"	"
33	N 44° 41' 39" W	3231.036	NW¼ SW¼	S1/4 Cor. Sec. 35
34	N 43° 00' 33" W	3346.147	"	"
35	S 42° 41' 24" W	3077.004	SW¼ NW¼	N1/4 Cor. Sec. 35
36	S 44° 46' 59" W	2876.535	"	"
37	S 49° 27' 48" W	2495.172	"	"
38	S 52° 17' 48" W	2308.308	"	"
39	S 37° 08' 41" W	2925.177	"	"
40	S 40° 38' 07" W	2558.666	"	"
41	S 42° 55' 53" W	2358.328	SW¼ NW¼	"
42	S 44° 54' 08" W	2233.050	"	"
43	S 48° 38' 25" W	2000.202	NW¼ NW¼	"
44	S 56° 33' 57" W	1709.136	"	"
45	S 63° 39' 01" W	1535.881	"	"
46	S 66° 21' 10" W	1475.173	"	"
47	S 49° 26' 08" W	1002.147	NE¼ NW¼	"
48	S 47° 53' 23" W	1046.438	"	"
49	S 44° 24' 49" W	1409.341	"	N1/4 Cor. Sec. 35
50	S 44° 00' 36" W	1448.374	"	"
51	S 36° 52' 14" W	1827.143	SE¼ NW¼	"
52	S 22° 01' 00" W	1884.099	"	"
53	S 22° 34' 20" W	2113.610	"	"
54	S 21° 41' 41" W	2181.202	"	"
55	S 20° 51' 48" W	2516.715	"	"
56	S 20° 35' 46" W	2576.371	"	"
57	N 25° 32' 36" W	2556.751	NE¼ SW¼	S1/4 Cor. Sec. 35
58	N 28° 54' 04" W	2612.181	"	"
59	N 33° 17' 01" W	2592.032	NW¼ SW¼	"
60	N 41° 38' 49" W	2591.960	"	"
61	N 21° 23' 22" W	1843.848	NE¼ SW¼	"
62	N 18° 55' 14" W	2258.899	"	"
63	N 16° 36' 03" W	2563.710	"	S1/4 Cor. Sec. 35
64	N 15° 13' 48" W	2712.103	"	"
65	S 11° 40' 19" W	2477.939	SE¼ NW¼	N1/4 Cor. Sec. 35
66	S 10° 52' 34" W	2206.332	"	"
67	S 11° 21' 53" W	2011.134	"	"
68	S 07° 50' 36" W	1768.242	"	"
69	S 10° 51' 53" W	1518.927	"	"
70	S 16° 18' 07" W	1340.598	NE¼ NW¼	"
71	S 01° 23' 35" W	1082.020	"	"
72	S 26° 21' 24" W	1117.909	"	"
73	S 07° 06' 44" W	697.063	"	"
74	S 08° 58' 16" W	649.647	"	"

<u>Lot #</u>	<u>Bearing</u>	<u>Distance</u>	<u>Loc. in Sec.</u>	<u>From</u>
75	S 09° 02' 28" W	421.942	"	N1/4 Cor. Sec. 35
76	S 62° 52' 20" W	585.566	"	"
77	S 72° 00' 07" W	879.333	"	"
78	S 70° 10' 48" W	1096.244	"	"
79	S 75° 19' 53" W	1329.642	"	"
80	S 80° 06' 48" W	1640.670	"	"
81	S 76° 41' 40" W	1701.992	NW¼ NW¼	"
82	S 58° 38' 58" W	2021.436	"	"

EVERGREEN MEADOWS - 9 Sec. 35, T. 5 S., R. 71 W., JEFFERSON COUNTY, COLOARDO

<u>Lot #</u>	<u>Bearing</u>	<u>Distance</u>	<u>Loc. in Sec.</u>	<u>From</u>
1	N 16° 22' 00" W	1747.668	NE¼ SW¼	S1/4 Cor. Sec. 35
2	N 10° 00' 36" W	2027.717	"	"
3	N 06° 47' 18" W	2474.196	"	"
4	N 02° 56' 13" W	2780.502	SE¼ NW¼	"
5	N 72° 58' 05" W	2529.334	SW¼ NE¼	E1/4 Cor. Sec. 35
6	N 66° 17' 28" W	1854.958	SW¼ NE¼	"
7	N 62° 56' 27" W	1727.498	"	"
8	N 49° 09' 50" W	1154.401	SE¼ NE¼	"
9	N 31° 20' 59" W	1130.973	"	"
10	N 08° 10' 47" W	480.751	"	"
11	N 69° 56' 47" W	337.885	"	"
12	N 63° 45' 21" W	533.382	"	"
13	S 76° 29' 53" W	1088.484	NE¼ SE¼	"
14	S 74° 21' 04" W	1535.311	NW¼ SE¼	"
15	S 63° 46' 22" W	1525.445	"	"
16	S 57° 26' 25" W	1326.957	NE¼ SE¼	"
17	S 52° 55' 03" W	1151.212	"	"
18	S 51° 43' 38" W	991.501	"	"
19	S 42° 53' 43" W	688.154	"	"
20	S 37° 21' 52" W	722.379	"	"
21	S 17° 52' 37" W	939.500	NE¼ SE¼	"
22	S 35° 48' 36" W	1176.553	"	"
23	S 31° 37' 29" W	1331.929	"	"
24	S 43° 56' 26" W	1366.746	"	"
25	N 39° 08' 10" E	2071.624	NE¼ SE¼	S1/4 Cor. Sec. 35
26	N 28° 10' 37" E	1879.595	NW¼ SE¼	"
27	N 24° 11' 03" E	1849.143	"	"
28	N 22° 05' 40" E	1960.844	"	"
29	S 64° 07' 24" W	1865.436	"	E1/4 Cor. Sec. 35
30	S 75° 40' 06" W	1794.239	"	"
31	S 87° 28' 15" W	1680.037	"	"
32	N 84° 44' 23" W	1263.722	SE¼ NE¼	"
33	N 56° 55' 58" W	1000.439	"	"
34	N 45° 08' 17" W	745.477	"	"

<u>Lot #</u>	<u>Bearing</u>	<u>Distance</u>	<u>Loc. in Sec.</u>	<u>From</u>
35	N 56° 10' 08" W	1213.943	SE½ NE½	E1/4 Cor. Sec. 35
36	N 77° 07' 00" W	1506.320	SW½ NE½	"
37	N 80° 33' 13" W	1924.497	"	"
38	N 79° 28' 58" W	2113.914	"	"
39	N 01° 18' 35" E	2517.508	NW½ SE½	S1/4 Cor. Sec. 35
40	N 00° 44' 06" E	2147.027	"	"
41	N 05° 48' 12" W	1705.592	NE½ SW½	S1/4 Cor. Sec. 35
42	N 05° 02' 00" W	1281.793	SE½ SW½	"
43	N 10° 54' 26" W	964.270	"	"
44	N 20° 56' 19" W	510.566	"	"
45	N 48° 41' 09" W	402.689	"	"
46	N 70° 00' 38" W	385.696	"	"

EVERGREEN MEADOWS - UNIT 10, Sec. 26, T. 5 S., R. 71 W., JEFFERSON COUNTY, COLORADO.

<u>Lot #</u>	<u>Bearing</u>	<u>Distance</u>	<u>Loc. in Sec.</u>	<u>From</u>
1	N 73° 44' 15" W	3146.835	SE½ NW½	E1/4 Cor. Sec. 26
2	N 71° 38' 30" W	2893.175	"	"
3	N 71° 06' 05" W	2844.250	"	"
4	N 70° 42' 05" W	2575.656	SW½ NE½	"
5	N 65° 36' 03" W	2230.098	"	"
6	N 65° 41' 58" W	2019.892	"	"
7	S 06° 58' 48" W	995.224	NE½ NE½	NE Cor. Sec. 26
8	S 08° 32' 31" W	1352.855	SE½ NE½	"
9	S 16° 33' 20" W	1301.815	NE½ NE½	"
10	S 34° 11' 54" W	1629.615	SE½ NE½	"
11	S 49° 24' 09" W	1179.959	NE½ NE½	"
12	S 56° 48' 34" W	1219.978	"	"
13	S 57° 45' 11" W	1082.987	"	"
14	S 47° 20' 35" W	572.380	"	"
15	S 41° 04' 20" W	587.423	"	"
16	S 44° 19' 02" W	1003.308	"	"
17	S 32° 25' 21" W	412.085	"	"
18	S 71° 15' 19" W	444.521	"	"
19	S 68° 44' 00" W	848.741	"	"
20	S 82° 50' 54" W	1114.598	NE½ SE½	E1/4 Cor. Sec. 26
21	N 81° 40' 00" W	905.487	SE½ NE½	"
22	N 77° 17' 35" W	846.663	"	"
23	N 50° 36' 56" W	648.106	"	"
24	N 57° 29' 41" W	914.133	"	"
25	N 59° 30' 57" W	1057.041	"	"
26	N 72° 34' 46" W	1290.100	"	"
27	N 63° 24' 31" W	1499.547	SW½ NE½	"
28	N 63° 15' 32" W	1680.676	"	"
29	N 64° 19' 31" W	1826.233	"	"
30	N 79° 31' 54" W	1465.315	"	"
31	N 84° 47' 39" W	1225.983	SE½ NE½	"

EVERGREEN HIGHLANDS - UNIT 5, Sec. 25, T. 5 S., R. 71 W.
Sixth P.M., JEFFERSON COUNTY, COLORADO.

Lot #	Bearing	Distance	Loc. in Sec.	From
1	S 37° 32' 55" E	317.025	NW¼ SW¼	W¼ Cor. Sec. 25
2	S 66° 02' 34" E	742.142	"	"
3	S 56° 59' 15" E	993.625	"	"
4	S 31° 16' 40" E	844.019	"	"
5	S 25° 47' 09" E	984.365	"	"
6	S 41° 28' 41" E	1129.654	"	"
7	S 50° 37' 50" E	1310.621	"	"
8	S 52° 27' 20" E	1372.469	"	"
9	S 68° 37' 32" E	1361.877	"	"
10	S 68° 53' 09" E	1155.800	"	"
11	S 80° 24' 54" E	758.799	"	"
12	S 79° 07' 09" E	430.954	"	"
13	N 88° 40' 47" E	1243.536	"	"

COMMERCIAL WELLS

Lot #	Distance	Distance	Loc. in Sec.	From
Tract B	N 89° 17' 00" W	3696.215	SE¼ NW¼	E¼ Cor.-
Tract C	N 80° 11' 21" W	1797.209	SW¼ NE¼	Commercial Wells in School Site
Tract C	W 86° 18' 32" W	1844.753	NW¼ SE¼	

20. The plats for these units shall restrict sewage disposal systems to septic tanks with leach fields or excavated sand filter systems; evapotranspiration systems shall not be used. The septic tanks utilizing leach fields or excavated sand filter systems shall not be constructed in an area of high water table or in any other way permit evapotranspiration to occur.

21. The individual lot purchasers are entitled to be issued well permits for their own use upon application as provided by C.R.S. 1973, 37-92-602, should they so desire. Similarly the school district is entitled to be issued the Commercial Wells for in-school use only, should they so desire.

22. Applicant shall discontinue prior decreed consumptive use practices for the following decreed domestic and irrigation water rights:

Spruce Park Ditch No. 1	4.00 cfs.
Spruce Park Ditch No. 2	1.00 cfs.
Spruce Park Ditch No. 4	1.20 cfs.
Spruce Park Ditch No. 5	3.70 cfs.
Spruce Park Ditch No. 8	1.20 cfs.
Spruce Park Ditch No. 9	1.08 cfs.

Berrian Ditch No. 10	6.00 cfs.
Berrian Spring No. 1	0.005 cfs.
Earley Spring No. 1	0.20 cfs.
Earley Spring No. 2	0.20 cfs.
	<hr/>
	18.585cfs.

and on the following described real property:

Part of $W\frac{1}{2}$ Section 35 lying East of Highway 73, $SE\frac{1}{4}$ $SE\frac{1}{4}$ Section 34 lying East of Highway 73; all in Township 5 South, Range 71 West, 6th P.M. Jefferson County, Colorado.

23. Applicant shall discontinue all prior non-decreed consumptive use practices for irrigation or otherwise on the following described real property:

$W\frac{1}{2}$ of Section 35 lying East of Highway 73, Township 5 South, Range 74 West, 6th P.M. and the $W\frac{1}{2}$ Section 2, Township 6 South, Range 71 West, 6th P.M., Jefferson County, Colorado.

24. Applicant shall fill in and otherwise eradicate all ditches utilized for irrigation or domestic use of the subject property. Applicant may continue to use Spruce Park Ditch No. 1 and Spruce Park Ditch No. 4 to be used as filler ditch only for Evergreen Meadows Reservoirs 1-4, as necessary.

25. Applicant shall abandon to the stream system the Berrian Spring No. 1 and Earley Spring Nos. 1 and 2.

26. Applicant shall create 61.8 acre feet of storage in Evergreen Meadows Reservoirs Nos. 1-4 and utilize these reservoirs for the storage of Applicants in-priority diversions equal to prior consumptive use practices. The decreed rights set forth in paragraph 22 hereof shall be changed from direct flow to storage in these four reservoirs. Applicant shall construct measuring flumes and staff gauges to provide for constant measurement and control releases. Releases from these reservoirs shall be made, when ordered by the Division Engineer, to make-up for the 9.73 acre feet per year of depletion under the new uses.

27. Applicant shall construct a ditch to carry the source of supply of Spruce Park Ditches 8 and 9, to North Turkey Creek.

28. Applicant shall form a homeowners association, included in which shall be all lot purchasers constructing houses on the subdivision described herein to be liable for the regulation and

← Can Fill when in priority
 to 100% Capacity of the Reservoirs = 4311F 58742.8

enforcement of the conditions of this decree. The homeowners association or the Applicant, as the case may be, shall designate an individual as representative for said party to be contacted by the Division Engineer for the purpose of complying with the provisions of this decree.

29. Applicant shall provide additional water rights for the prevention of injury to other water users should the operational program reveal the inability of Applicant to store sufficient waters in-priority, or in order to provide additional water for storage and later release because of a larger consumptive use by the development than was contemplated by the terms of this decree. This additional water shall be senior rights of the first adjudication with a priority date of 1870 or more senior, and located on Bear or Turkey Creek or their tributaries, or such other waters as may be required by the Division Engineer.

30. Applicant has a consumptive use under the old water use practices of 61.42 acre feet of water per year. Applicant shall store as much of this water as is available in-priority at the rate of 0.25 c.f.s. under the domestic priority and 5.0 cfs. under the irrigation priority. *

*MAX RATE = 1.6 FT ON FLOWING OR
1.6 CFS (5 CFS ALLOWED MAX)*

31. The consumptive use under the new water use practices is not to exceed 7.70 acre feet per year as the result of the construction of on-lot wells, and 2.03 acre feet of water per year as a result of the construction of the three in-school commercial wells. All waters stored in Evergreen Meadows Reservoirs 1-4 under the decree listed in Paragraph 22 are to be utilized for the purpose of replacement water as provided for by the decree herein.

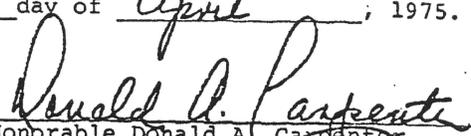
Revised to 7.5 or 168 residents

32. Applicant or its successors in interest shall submit to this Court pursuant to the within styled caption proof of the terms of the operational program set forth in this decree five years from the date hereof.

33. If at any time the requirements and limitations of this decree are not met, through action or inaction by Applicant or his successors or assigns, said household wells shall be administered

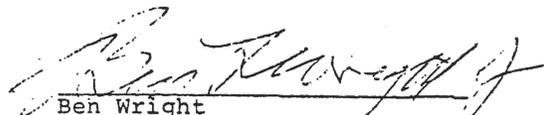
by the State Engineer under the priority system with the priority date for each individual well being the date each well permit was granted, until such time as the requirements and limitations of this decree are met.

DONE IN OPEN COURT this 21st day of April, 1975.

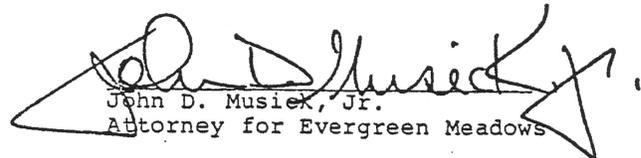

Honorable Donald A. Carpenter
Water Judge
Water Division No. 1

Approved as to substance and form:

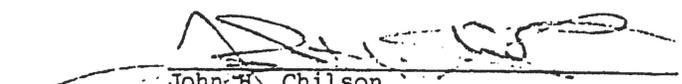

John Chilson
Attorney for Public Service Co.


Ben Wright
Attorney for State Engineer


Kenneth Broadhurst
Attorney for Denver Water Board


John D. Musiek, Jr.
Attorney for Evergreen Meadows

Public Service Company of Colorado approves of the conditions imposed upon the applicant by the terms of this Decree. However, this Objector submits that the applicant has failed to meet its burden of proof to establish that the applicant is the owner of water rights sufficient in quantity and seniority to compensate North Turkey Creek for the depletions which will be caused by ground water withdrawals permitted by this Decree. This Objector waives its right to any further evidentiary hearing on the matter.


John H. Chilson
Attorney for Public Service Co.

Certified to be a full, true and correct copy of the original in my custody.
April 21, 1975
John Bahleuder
CLERK WATER BOARD, DIV. 1
STATE OF COLORADO

*Always Keep This File Document C
Dist. Court Filing Part I
Final SEWD/Timbers Agreement*

FILED IN
DISTRICT COURT
OCT 20 97
WELD COUNTY, COLO.

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

Case No. 96CW66

ORDER

TIMBERS ESTATES METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,

Plaintiff,

v.

SOUTH EVERGREEN WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; and the BOARD OF DIRECTORS OF SOUTH EVERGREEN WATER DISTRICT,

Defendants.

THIS MATTER, having come before the Court on the Joint Motion for Entry of Order, and the Court having reviewed the motion, and being fully advised in the premises,

IT IS THEREFORE ORDERED:

1. This Court has jurisdiction over the subject matter of this lawsuit.
2. As a result of the Parties agreement to settle all differences arising out of this lawsuit, and as further set forth in the Settlement Agreement, each party will have separate ownership of specific property, water rights, and storage facilities and will be responsible for the administration of their respective portions of the augmentation plan pursuant to Case No. W-7540 (hereinafter "the Evergreen Meadows Augmentation Plan"). The Timbers Estates Metropolitan District will be responsible for the augmentation plan pursuant to Case Nos. 84CW222 and 86CW080 (hereinafter "the Timbers Augmentation Plan").
3. It is the desire of each Party to properly administer their respective portions of the Evergreen Meadows Augmentation Plan without need for amendment of such plan. The Court finds that no amendment to the Evergreen Meadows Augmentation Plan is necessary or required by virtue of the Settlement Agreement and the division of interests set forth therein. The rights to be conveyed to the Timbers Estates Metropolitan District are the equivalent of the contractual delivery rights described in the Timbers Augmentation Plan, and the Court also finds that no

MB1201

OCT 24 1997

amendment of the Timbers Augmentation Plan is necessary or required by the Settlement Agreement or the division of interests set forth therein.

4. The Parties agree to administer their respective water rights in accordance with the Settlement Agreement, the Evergreen Meadows Augmentation Plan, and for the Timbers Estates Metropolitan District, the Timbers Augmentation Plan, and in compliance with all orders of the State Engineer, the Division Engineer, and the Water Commissioner, or his representative, provided that such orders are consistent with such augmentation plans and the Settlement Agreement.

5. Each Party shall pay its costs, expenses, and attorneys' fees incurred in this action.

6. This Court shall retain jurisdiction over the Parties concerning any disputes arising out of the implementation of the Settlement Agreement or this Order.

7. The Settlement Agreement between the Parties is hereby approved in all regards and made a part of this Order.

IT IS FURTHER ORDERED, that this Action shall be dismissed, with prejudice.

Dated this _____ day of OCT 20, 1997.

BY THE COURT:



Water Court Judge

I certify that copies hereof were
transmitted by facsimile to the
following persons at the addresses
given in the pleadings

M. Brauning ~~JP~~ ~~Actual~~
R. Tassaint
SEO
DEO

Date of mailing 10/23/97
Shi
Clerk

1997 SEWD/
Timbers
Agreement

Document C.
Part II

(Separated
1991 Agreement)

SETTLEMENT AGREEMENT

This Settlement Agreement, dated this ___ day of July, 1997, is between Timbers Estates Metropolitan District, a quasi municipal corporation and political subdivision of the State of Colorado ("Timbers") and South Evergreen Water District, a quasi-municipal corporation and political subdivision of the State of Colorado ("South Evergreen").

RECITALS

A. Timbers is a special district serving the property within its boundaries.

B. South Evergreen is a special district serving the property within its boundaries, and within a large portion of Timbers.

C. Evergreen Meadows Associates, the original developer of the property within South Evergreen and a portion of the property within Timbers, obtained judicial approval of a plan for augmentation and change of water rights in Case No. W-7540 by decree therein dated April 21, 1975 (the "Evergreen Meadows Aug Plan"). This augmentation plan originally was to augment the depletions from individual wells to be located on 175 lots, with expected depletions of 9.73 acre feet annually. By amendment to such decree dated October 28, 1981, the number of wells was reduced to 168 and the amount of depletions reduced to 7.5 acre feet annually.

D. The augmentation water used in the Evergreen Meadows Aug Plan was certain water rights decreed to the Spruce Park Ditch Nos. 1, 2, 4, 5, 8, 9 and 10 described in paragraph 7 of such decree (the "Ditch Rights"). In total the Ditch Rights allow diversion at the decreed rate of 5.00 cfs for the irrigation priorities and 0.25 cfs for the domestic priorities. The decree determined that the historic use of the Ditch Rights had consumed 61.42 acre feet of water annually. It permitted this amount of water to be stored annually, when in priority, in Evergreen Meadows Reservoirs Nos. 1-4 (the "Reservoirs"). The Reservoirs were decreed their own more junior water rights by decrees entered in Case No. W-8002-75 and 82CW019 (the "Reservoir Rights"). The Reservoir Rights were also decreed as sources of augmentation water in the Evergreen Meadows Aug Plan.

E. In 1974, the developer of Timbers purchased a portion of the property served by the Evergreen Meadows Aug Plan and acquired corresponding interests in the Evergreen Meadows Aug Plan and Reservoirs. This property was replatted into 25 lots which are now within the boundaries of Timbers, and the decreed location of the corresponding wells under the Evergreen Meadows Aug Plan was changed by decree in Case No. 88CW245 dated May 5, 1989. As a result, 143 lots within South Evergreen and 25 lots within Timbers are augmented under the Evergreen Meadows Aug Plan.

F. The developer of Timbers also purchased the additional right to the delivery of 2.23 acre feet annually of water from the Reservoirs. Timbers was conveyed this right by Special Warranty Deed dated December 11, 1989, recorded in Jefferson County at Reception No. 9C011731 (the "Deed to 2.23 AF"). The Deed to 2.23 AF was used in an augmentation plan decreed in Case Nos. 84CW222 and 86CW080 which augmented the depletions from 3 additional lots within Timbers not covered by the Evergreen Meadows Aug Plan, certain irrigation uses described therein, and certain evaporative losses described therein (the "Timbers Aug Plan"). Storage rights for Timbers Estates Ponds Nos. 1, 2 and 3 were adjudicated in Case Nos. 84CW223 and Case No. 94CW146 (the "Pond Rights")

G. Timbers and South Evergreen entered into a Water Service Agreement dated August 15, 1991 (the "1991 Agreement"); under which South Evergreen was to hold the parties' respective interests in the Ditch Rights, Reservoirs, Reservoir Rights and the Deed to 2.23 AF in trust, and to administer the Evergreen Meadows Aug Plan. Timbers was obligated to make certain payments to South Evergreen for such services, as set forth in the 1991 Agreement.

H. Disputes arose between the parties concerning the 1991 Agreement and in 1995 South Evergreen terminated the 1991 Agreement. By Complaint filed as Case No. 96CW66 in the District Court in and for Water Division No. 1, Timbers brought suit to determine the parties' post termination rights and responsibilities and for other relief. South Evergreen counterclaimed for various relief including monetary damages for alleged under-payments by Timbers under the 1991 Agreement. The lawsuit Case No 96CW66 and all claims made or related thereto are referred to herein as the "Lawsuit"

I. The parties desire to settle the Lawsuit, their differences with respect to 1991 Agreement, and to agree upon their respective interests in the various water rights, reservoirs and decrees described above, all as set forth herein and in the various implementing documents referred to herein.

J. Of the total of 168 wells, whose depletions for in-house uses are augmented by the Evergreen Meadows Aug Plan, the 25 lots in Timbers represent 15%. Timbers' ownership of water rights and facilities is somewhat greater than 15%, however, due to Timbers purchase of the 2.23 AF for operation of its supplemental augmentation plan. For the purposes of making the computations to divide the water rights in this settlement agreement, the parties agree that the total amount of water that can be stored in any single year pursuant to the water rights dedicated to the Evergreen Meadows Aug Plan is 60.12 AF. Only one of the Evergreen Meadows Reservoirs, Reservoir No. 1, is situated such that it can be filled and operated separately from the others. The decreed capacity of Reservoir No. 1 is 18.6 AF, which represents 30.9% of the total storage capacity decreed to the Evergreen Meadows Reservoirs Nos. 1 - 4.

K. References herein to "the parties," "the districts," "Timbers" or "South Evergreen" shall include the officers, directors, employees and agents thereof.

Accordingly, in consideration of the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENTS

1. 1991 Agreement Superseded. The parties agree that the mutual promises and covenants embodied in this document supersede the 1991 Agreement. The 1991 Agreement, including its termination provisions, has been and is hereby terminated in all respects and shall have no further force or effect.

2. Division of Property Interests. The parties agree that each district should be the sole and exclusive owner of certain portions of the property interests involved in the 1991 Agreement. Each district will have both legal and beneficial ownership of specific property, divided as set forth below, and neither district will hold title to property interests in trust for the other. In order to separate their ownership of land, water conveyance and storage facilities, and water rights as cleanly and completely as possible, the parties agree that the following division of ownership of those property interests is reasonable:

a. Land

- i. Timbers shall be conveyed all of South Evergreen's interest in Lots 76 and 77, Evergreen Meadows Unit 8, Jefferson County, Colorado, together with any other land upon which Evergreen Meadows Reservoir No. 1 or any of its appurtenances are located.
- ii. South Evergreen shall be conveyed all of Timber's interest in Lots 26 through 31, inclusive, and in Park Tract D, Evergreen Meadows Unit 8, Jefferson County, Colorado, together with any other land upon which Evergreen Meadows Reservoirs No. 2, 3 or 4 or any of their appurtenances are located.

b. Water Conveyance and Storage Facilities.

i. Timbers shall own the following structures, including the easements, rights of way, and rights of access appurtenant thereto:

- (1) Evergreen Meadows Reservoir No. 1, located in the W $\frac{1}{2}$ Section 35, Township 5 South, Range 71 West, 6th P.M. more

specifically described as follows: Beginning at the NW corner of the high waterline of said Reservoir No. 1, from which the NW corner of said Section 35 bears S 89°20'14" W 1836.56'; thence N 71°33'54" E 110.68'; thence S 87°08'15" E 300.38'; thence S 21°02'15" E 69.64'; thence S 39°05'38" W 309.23'; thence S 60°38'32" W 91.79'; thence N 84°55'13" W 225.89'; thence N 9°09'44" W 157.00'; thence N 31°30'15" E 181.80' to the point of beginning, containing 3.15 acres, more or less. Bearings are based on the recorded plat of Evergreen Meadows - Unit 8.

(2) Spruce Park Ditch No. 4, the headgate of which is located on the West bank of the North Fork of Turkey Creek in the NW¼ SW¼ Section 35, Township 5 South, Range 71 West of the 6th P.M., Jefferson County, Colorado, at a point whence the West quarter corner of said section bears North 54°50' West 815 feet, and from its headgate flows generally north into Evergreen Meadows Reservoir No. 1.

(3) The outlet ditch from Evergreen Meadows Reservoir No. 1, the course of which is generally east from said reservoir back to North Turkey Creek

ii. South Evergreen shall own the following structures, including the easements, rights of way, and rights of access appurtenant thereto:

(1) Evergreen Meadows Reservoir No. 2, located in the W½ Section 35, Township 5 South, Range 71 West, 6th P.M. more specifically described as follows: Beginning at the NW corner of the high waterline of said Reservoir No. 2, from which the SW corner of said Section 35 bears S 10°10'48" W 1895.93'; thence S 41°11'06" E 145.34'; thence S 00°00'00" E 165.00'; thence S 2°12'09" E 130.10'; thence S 21°02'15" W 69.64'; thence N 83°39'35" W 90.55'; thence N 59°44'37" W 138.92'; thence N 56°18'36" W 36.06'; thence N 14°02'10" E 103.08'; thence N 26°06'50" E 283.99' to the point of beginning, containing 1.85 acres, more or less. Bearings are based on the recorded plat of Evergreen Meadows - Unit 8.

(2) Evergreen Meadows Reservoir No. 3, located in the W½ Section 35, Township 5 South, Range 71 West, 6th P.M. more specifically described as follows: Beginning at the NW corner of the high waterline of said reservoir No. 3, from which the SW corner of said Section 35 bears S 7°42'35" W 1454.23'; thence S

63°26'06" E 201.25'; thence S 6°42'35" E 85.59'; thence S 20°16'57" E 245.20'; thence S 14°37'15" W 118.85'; thence S 67°14'56" W 168.08'; thence N 65°33'22" W 60.42'; thence N 52°15'12" W 196.02'; thence N 15°15'18" E 456.07' to the point of beginning, containing 3.40 acres, more or less. Bearings are based on the recorded plat of Evergreen Meadows - Unit 8.

(3) Evergreen Meadows Reservoir No. 4, located in the W½ Section 35 and the E½ of Section 34, Township 5 South, Range 71 West, 6th P.M. more specifically described as follows: Beginning at the NW corner of the high waterline of said Reservoir No. 4, from which the SW corner of said section 35 bears S 2°07'27" W 946.74'; thence S 57°25'33" E 213.60'; thence S 47°51'45" W 141.60'; thence S 32°00'19" W 141.51'; thence S 77°54'19" W 71.59'; thence S 37°24'19" W 214.01'; thence N 36°52'12" W 50.00'; thence N 21°02'15" E 417.85'; thence N 43°15'51" E 116.73' to the point of beginning, containing 1.74 acres, more or less. Bearings are based on the recorded plat of Evergreen Meadows - Unit 8

(4) Spruce Park Ditch No. 1, the headgate of which is located on the West bank of the North Fork of Turkey Creek in the NE¼ NE¼ Section 3, Township 6 South, Range 71 West of the 6th P.M., Jefferson County, Colorado, at a point whence the Southwest corner of Section 35, Township 5 South, Range 71 West bears North 41°50' East 480 feet, and from its headgate flows generally north into Evergreen Meadows Reservoir Nos. 2, 3 and 4.

(5) The outlet ditch from Evergreen Meadows Reservoir No. 2, the course of which is generally east from said reservoir back to North Turkey Creek.

c. Water Rights. In general, the parties agree that an equitable division of the water rights subject to the Evergreen Meadows Aug Plan is 30% to Timbers and 70% to South Evergreen. Specifically, the water rights will be divided as follows:

i. Timbers shall own the following water rights:

(1) A 30% divided interest in the Ditch Rights, as described above. Thus, Timbers is entitled to a maximum of 0.075 c.f.s. of the domestic priorities at such times as water is available in priority to satisfy the domestic priorities, and 0.15 c.f.s. of the irrigation priorities at such times as water is available in priority to satisfy the

irrigation priorities. When insufficient water is available in priority to satisfy the domestic or irrigation priorities, Timbers shall be entitled to divert 30% of the amount legally and physically available.

(2) The storage right decreed to Evergreen Meadows Reservoir No. 1 in Case No. W-8002-75, as made absolute in Case No. 82CW019. When insufficient water is available in priority to satisfy the flow rates decreed for filling the Reservoir Rights, Timbers shall be entitled to divert 30% of the amount legally and physically available.

(3) A 30% divided interest in the Evergreen Meadows Aug Plan, which interest does not include any interests in the Ditch Rights or Reservoir Rights other than the interests described in paragraphs 2.c.i.(1) and 2.c.i.(2)

(4) The Timbers Aug Plan, as described above, however, such ownership of the Timbers Aug Plan does not include any interests in the Ditch Rights or Reservoir Rights in addition to the interests described in paragraphs 2.c.i.(1) and 2.c.i.(2).

ii. South Evergreen shall own the following water rights:

(1) An 70% divided interest in the Ditch Rights, as described above. Thus, South Evergreen is entitled to a maximum of 0.175 c.f.s. of the domestic priorities at such times as water is available in priority to satisfy the domestic priorities, and 3.5 c.f.s. of the irrigation priorities at such times as water is available in priority to satisfy the irrigation priorities. When insufficient water is available in priority to satisfy the domestic or irrigation priorities, South Evergreen shall be entitled to divert 70% of the amount legally and physically available.

(2) The storage rights decreed to Evergreen Meadows Reservoirs Nos. 2, 3 and 4 in Case No. W-8002-75, as made absolute in Case No. 82CW019. When insufficient water is available in priority to satisfy the flow rates decreed for filling the Reservoir Rights, South Evergreen shall be entitled to divert 70% of the amount legally and physically available.

(3) An 70% divided interest in the Evergreen Meadows Aug Plan, which interest does not include any interests in the Ditch Rights or Reservoir Rights other than the interests described in paragraphs 2.c.ii.(1) and 2.c.ii.(2).

3. Conveyance. Within 10 days of entry of the Final Order, as defined in paragraph 10 below, the parties will exchange deeds, to be attached hereto as Exhibits A, A-1, & B, such that each party obtains sole and exclusive ownership of water rights and facilities, or divided interests therein, as set forth above. The parties acknowledge that they are aware of the current condition of all of the facilities, and agree that, except for the payment of \$9,351.85 specified in paragraph 7.a., below, neither party shall have any obligation to the other for upkeep, maintenance or repair, whether accruing in the past or future. The parties further agree that each district shall pay its own fees and costs in connection with the development of this agreement, the deeds attached hereto, and the closing of the transaction

a. Use of Property. The conveyance of lots 76 and 77, Evergreen Meadows Unit 8, shall be subject to the following covenants: Lots 76 and 77 will be used only for the storage of water in Evergreen Meadows Reservoir No. 1 for the benefit of Timbers in operating the Timbers Aug Plan and Timbers' divided interest in the Evergreen Meadow's Aug Plan. Further, Timbers shall not erect a fence on or around lots 76 and 77, without first submitting plans and specifications for such fence to South Evergreen and obtaining the approval of South Evergreen with regard to the aesthetic appearance of such fence. South Evergreen's approval shall not be unreasonably withheld, and Timber's plans and specifications shall be deemed approved if South Evergreen does not respond in writing within 45 days of submission of the plans and specifications to South Evergreen. Any fence erected or constructed by Timbers must be in conformance with the plans and specifications approved by South Evergreen. No structures other than a fence and those structures now in existence or subsequently required by the Water Court or Division Engineer for operation of such reservoir or administration of the Evergreen Meadows or Timbers Aug Plans shall be placed or constructed on lots 76 and 77. Timbers will maintain lots 76 and 77 to the extent reasonably necessary to avoid a nuisance and to substantially preserve the currently existing aesthetic quality of the property.

4. Supplemental and Additional Water Rights. The parties agree that the "Deed to 2.23 AF" conveyed by Timbers in trust to South Evergreen in the 1991 Agreement is subsumed within the interests in water rights and facilities which Timbers will own in accordance with paragraph 2, above. Timbers agrees that it is not entitled to, and will make no claim for, delivery of water pursuant to the "Deed to 2.23 AF." Timbers further agrees that to the extent it owned the right to acquire an additional 3.77 acre feet of water per year diverted under the Ditch Rights and/or Reservoir Rights, it also is subsumed within the interests in water rights and facilities which Timbers will own in

accordance with paragraph 2, above, and Timbers waives and disclaims any further right to acquire such water other than its pro rata divided interests in such rights pursuant to this Settlement Agreement. Timbers sole claim to water diverted under the Ditch Rights and Reservoir Rights subsequent to this agreement will be only that water which Timbers is allowed to divert pursuant to its divided interests set forth in paragraph 2, above

5 Operation of Augmentation Plans.

a. Evergreen Meadows Aug Plan. The parties shall each have sole control over and responsibility for their respective property interests. The parties shall each have the sole responsibility for operation of their respective interests under the Evergreen Meadows Aug Plan in a manner which satisfies all replacement obligations caused by the wells within the respective districts subject to the Evergreen Meadows Aug Plan. Neither district shall be liable or otherwise responsible for the failure of the other district to meet its share of the annual replacement obligation under the Evergreen Meadows Aug Plan. In the event one of the parties does fail to meet its share of replacement obligations, it shall indemnify and hold the other district harmless as provided in paragraph 9.

b. Timbers Aug Plan. South Evergreen obtained no interest in the Timbers Estates Ponds, or the water rights decreed thereto in Case No. 84CW223, and does not claim any interest in the Ponds, the Pond Rights or the Timbers Aug Plan. Timbers shall have sole ownership of the Timbers Estates Ponds and Pond rights and sole control over and responsibility for the Timbers Aug Plan. South Evergreen and Timbers agree that the rights to be conveyed to Timbers hereunder are the functional equivalent of the Deed to 2.23 AF and that the Timbers Aug Plan need not be amended to reflect the replacement of the Deed to 2.23 AF with the rights to be conveyed to Timbers hereunder. However, if such an amendment should ever be required, South Evergreen will cooperate with Timbers in obtaining judicial approval of such amendment, provided that such cooperation shall be at no expense to South Evergreen.

c. Administration. Each party hereto shall be responsible for installing, at its own sole cost, devices to measure the flow diverted and the volume stored, in a manner acceptable to the Division Engineer. Each party hereto shall take such measurements, maintain such records and submit such accounting forms regarding their respective diversions, storage, and release of water as may be required by the Division Engineer, and as is necessary to demonstrate compliance with this agreement. Each party shall be solely responsible for making the augmentation releases required under the Evergreen Meadows Aug Plan relating to lots within their respective boundaries. Each party shall designate their own representative who shall cooperate

with and may be contacted by the Division Engineer regarding operations under and compliance with their respective obligations under the Evergreen Meadows Aug Plan.

6. Future Change of Water Rights. The parties hereto mutually covenant that neither party will seek to change any portion of the water rights to be owned by them without the concurrence of the other party that the change sought will not injure or impair the water rights or property values of the other party. The term "change" is used in this paragraph as it is defined in 15 C.R.S. § 37-92-103(5) (1990 Repl. Vol.). It is the intent of the parties that this covenant bind and run with the property interests described in paragraph 2.

7. Monetary Claims and Encumbrances.

a. Timbers agrees to pay to South Evergreen within 10 days of entry of the Final Order and in conjunction with the exchange of deeds, as described in paragraph 3, a stipulated amount of \$9,351.85 (which represents \$12,000.00 less \$2,648.15 paid by CJS&K Company Ltd. to South Evergreen to clear its property of South Evergreen's purported lien). South Evergreen agrees to provide to Timbers within 10 days of entry of the Final Order and upon receipt of payment of the above amount a resolution releasing and revoking any and all liens or other documents that it has filed or recorded asserting that Timbers or lot owners within Timbers owe South Evergreen any money. The resolution releasing and revoking such liens is attached hereto as Exhibit C. South Evergreen further agrees not to assert or to certify to the Jefferson County Treasurer that Timbers or any lots or lots owners therein owe any amounts to South Evergreen through or after the date of this Settlement Agreement.

b. South Evergreen warrants that it has taken no actions to lien or in any manner encumber the water rights or facilities to be conveyed to and owned by Timbers in accordance with this agreement. South Evergreen agrees that it will not take any action to lien or in any manner encumber such water rights or facilities subsequent to this agreement. Timbers warrants that it has taken no actions to lien or in any manner encumber the water rights or facilities to be conveyed to South Evergreen in accordance with this agreement. Timbers agrees that it will not take any action to lien or in any manner encumber such water rights or facilities subsequent to this agreement.

8. Mutual Releases. Subject to paragraph 9, below, Timbers hereby releases and discharges South Evergreen, and South Evergreen hereby releases and discharges Timbers, from and against any and all claims, demands, causes of action, damages, costs or expenses or other liability of any kind, or nature, whether known or unknown, liquidated or unliquidated, which the releasing party may have, or claim in the future to have, arising from or based in whole or in part upon any act, omission, event or transaction occurring prior to the date hereof, including but not limited to any matters

set forth in the Lawsuit or arising out of the 1991 Agreement. This paragraph, however, shall not limit or impair the ability of either party to enforce the terms of this Settlement Agreement or the documents executed simultaneously herewith.

a. Specifically, but without limiting the generality of the foregoing paragraph 8, both parties agree that the interests in water rights and facilities allocated to each by this agreement comprise all of the water rights and other property interests to which each is entitled pursuant to the South Evergreen Aug Plan and Timbers Aug Plan. Both districts disclaim and waive any claim against the other district for any ownership in the water rights and facilities which are the subject of this agreement in excess of the ownership interests allocated by this agreement.

9. Hold Harmless. In the event of a claim or claims against one district occasioned by any action or inaction of the other district, the district causing the claim agrees to indemnify and hold the other district harmless from and against any and all damages, claims of damages, and costs or expenses incurred in defending against such claims. The obligations created by this paragraph include, but are not limited to, claims for negligence in the operation or maintenance of the facilities described in paragraph 2, as well as civil or administrative claims brought by the State or Division Engineer, or other water users, for failure to operate the water rights in accordance with the requirements of the augmentation plan decrees, or otherwise in a manner which avoid injury to other water rights.

10. Dismissal of Lawsuit. Simultaneously herewith, the parties agree to execute and promptly file in the Lawsuit, a Joint Motion for Entry of Final Order in the form attached hereto as Exhibit D (the "Final Order") whereby the lawsuit would be dismissed with prejudice and the Court would authorize and approve the terms of this Settlement Agreement, including the parties' separate ownership of, and allocation of responsibility for administration of, the Evergreen Meadows Aug Plan in the future, and would retain jurisdiction over any disputes related thereto. The Final Order would also find that no amendment to either the Evergreen Meadows or Timbers Aug Plans were required by virtue of the division of interests set forth in this Settlement Agreement, including the termination of the Deed to the 2.23 AF and the substitution therefore of the rights to be conveyed to Timbers hereunder. Each party shall bear its own costs and expenses incurred in the Lawsuit.

11. Advice and Authority. Each of the parties hereto acknowledges and agrees that they have sought and received the legal advice of attorneys of their own choosing as to the fairness and propriety of this Settlement Agreement and the other documents between the parties attached as Exhibits hereto (the "Documents"). Each party executes the Documents with full knowledge of their effect and consequences. Each of the parties covenants to the other that their execution and performance of the Documents has been duly approved by their respective Boards and by any other

person or group whose consent is required. The individuals signing the Documents on behalf of their district individually represent, warrant and covenant that they have full power and authority to execute such Documents on behalf of their respective district.

12. Miscellaneous

a. This Settlement Agreement and the documents attached hereto are the complete agreement of the parties with respect to the subject matter hereof, and all prior agreements, negotiations and understandings are merged herein and therein.

b. This Settlement Agreement may not be amended or modified except by a written instrument executed by both parties which have been formally approved by their respective boards.

c. In interpreting this Settlement Agreement, it shall be deemed to have been drafted by both sides and shall not be interpreted against either party as the author of the document.

d. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Agreement.

e. The headings of each of the paragraphs of this Agreement are included herein for the convenience and reference of the Parties only and shall not be considered or referred to in resolving any questions of interpretation.

f. In any action to enforce the terms of this Settlement Agreement or any of the Documents attached hereto as Exhibits, the prevailing party shall be entitled to recover its costs and expenses of litigation, including reasonable attorneys' and expert witness fees.

g. The rights and obligations created by this Agreement shall survive the deeds given in accordance herewith, and shall not merge into the deeds attached as Exhibits A, A-1, & B.

(Signatures on following page.)

Executed as of the date first above written.

TIMBERS ESTATE METROPOLITAN DISTRICT

SOUTH EVERGREEN WATER DISTRICT

George L. Donahoe, Jr.
By: GEORGE L. DONAHOE, JR.
Its: PRESIDENT

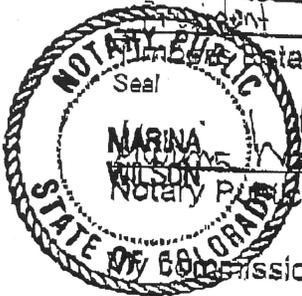
Carl D. Wahlstrom
By: CARL D. WAHLSTROM
Its: TREASURER

State of Colorado)
County of Jefferson) ss

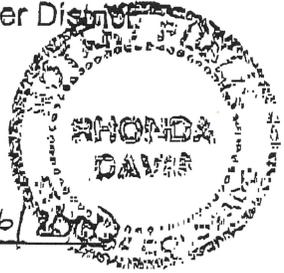
State of Colorado)
County of Jefferson) ss

Subscribed and sworn to before me this 24th day of September, 1997 by George L. Donahoe, Jr. as President for Timbers Estate Metropolitan District.

Subscribed and sworn to before me this 8 day of September, 1997 by Carl D. Wahlstrom as Treasurer for South Evergreen Water District.



Therese Sai
Notary Public



My Commission Expires: 8/13/2000
Set of 507 070997

My commission expires: 7/26/2000



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

R E C E I V E D
DEC 13 2013

John W. Hickenlooper
Governor
Mike King
Executive Director
Dick Wolfe, P.E.
Director/State Engineer
David L. Nettles, P.E.
Division Engineer

Simonson & Associates

December 12, 2013

South Evergreen Water District
c/o Simonson & Associates, Inc
2922 Evergreen Parkway, Suite 320
Evergreen, Colorado 80439

Re: Administration of Augmentation Plan (WDID 0902501)

This letter is written in response to the September 25, 2013 letter written by Julia O. Robinson, P.C. at the request of Board Member Louise Decker, on behalf of South Evergreen Water District.

Based upon our review of decrees and orders of the Water Court, the administration of the Evergreen Meadows Aug Plan will continue to be administered as it has historically been by previous District 9 Water Commissioners Roger Mlozdik and Dan Garner.

The augmentation plan decreed in Case No. W-7540-73 was amended in Case No. 88CW245 by the Water Court to include 168 lots and 7.5 acre feet per year to be released for the augmentation of all 168 wells at full development. In Case No. 96CW66 the Water Court approved a settlement agreement between Timbers Estates Metropolitan District ("Timbers") and South Evergreen Water District ("Evergreen") in an Order dated October 20, 1997. The Settlement Agreement divided the 168 wells proportionately and stated that "[t]he parties" shall each have the sole responsibility for operation of their respective interests under the Evergreen Meadows Aug Plan in a manner which **satisfies all replacement obligations caused by the wells within the respective districts** subject to the Evergreen Meadows Aug Plan..." (see paragraph 5.a.). Evergreen's proportional interest obligates them to replace 143 out of 168 wells, or 6.38 af per year.

$$7.5 \text{ af} \times (143 \text{ wells} / 168 \text{ Wells}) = \underline{6.38} \text{ af per year or } 0.045 \text{ af per well per year}$$

Likewise, Timbers is responsible for the replacement of depletions from 25 out of 168 wells, or 1.12 af per year.

$$7.5 \text{ af} \times (25 \text{ wells} / 168 \text{ Wells}) = \underline{1.12} \text{ af per year or } 0.045 \text{ af per well per year}$$

The Settlement Agreement also divided the replacement supplies and stated that "Timbers shall own the following water rights: (1) A 30% divided interests in the Ditch Rights..." (see paragraph 2.c.i.) for replacement of depletions associated with the 25 lots in the Timbers Augmentation Plan (see paragraph 5.b. and recital E.). Evergreen was awarded the remainder of the Ditch Rights (70%) for replacement of depletions associated with the remaining 143 lots.

It is my sincerest wish that this explanation will put to rest any questions dealing with the administration of the Shared Evergreen Meadows Augmentation Plan.

Sincerely



Timothy S. Buckley, Districts 9 & 80 Water Commissioner

cc: Dean Santistevan, Assistant Division Engineer
Gina Burke, Sr. PM/Principle, Jehn Water Supply
Laserfiche WDID 0902501

Document E

JULIA O. ROBINSON, P. C.
ATTORNEY AND COUNSELOR AT LAW

75 MANHATTAN DRIVE
SUITE 201
BOULDER, COLORADO 80303

JULIA O. ROBINSON
julia@jorpc.com

TELEPHONE: (303) 442-8038
TELEFAX : (303) 440-7972

6.4 AF
Augmentation
Req'd for SEWD

October 8, 2014 ✓

South Evergreen Water District
c/o Simonson & Associates, Inc.
2922 S. Evergreen Parkway, Suite 320
Evergreen, Colorado 80439

Re: Administration of Water Court Decrees

Ladies and Gentlemen:

I have again reviewed the decrees affecting your water rights. The original decree in case no. W-7540 dated April 21, 1975 as amended by the order in case no. W-7540-73 dated October 21, 1981 establishes an augmentation requirement of 7.5 acre feet for replacement of diversions by 168 residential wells. These decrees do not contain any measuring requirements for the individual wells.

The decree in 96CW66, of which I do not have a signed copy, incorporates the Settlement Agreement between SEWD and Timbers Estates Metropolitan District (TEMD). In paragraph 4, the decree states:

Per Buckley's 12/12/13 letter the water court did approve. ALSO SEE DOCUMENT C

"The Parties agree to administer their respective water rights in accordance with the Settlement Agreement, the South Evergreen Augmentation Plan, and for the Timbers Estates Metropolitan District, the Timbers Augmentation Plan *and in compliance with all orders of the State Engineer, the Division Engineer, the Water Commissioner, or his representative.*" [Emphasis added]

This language, assuming it is in the signed decree, makes you subject to Tim Buckley's ✓ requirements even though these requirements were not part of the original decree.

With respect to the issue of how the water rights under the original decree are to be split, the Settlement Agreement with TEMD is incorporated into the decree in 96CW66. The Settlement Agreement starts by stating that SEWD has 85% of the wells and TEMD has 15%. See Recital J. Recital J goes on to say that Reservoir 1 contains 30.9% of the total storage capacity decreed in case no. W-7540, as amended. Paragraph 2.c. goes on to say "the parties agree that an equitable division of the water rights subject to the Evergreen Meadows Aug Plan is 30% to Timbers and 70% to South Evergreen," and proceeds to allocate the water rights in that proportion.

Paragraph 5.c. of the Settlement Agreement states:

"Each party hereto shall be responsible for installing, at its own sole costs, devised to measure the flow diverted and the volume stored, in a manner acceptable to the Division Engineer. ✓ Each party hereto shall take such measurements, maintain such records and submit such accounting forms regarding their respective diversions, storage, and release of water as may be required by the Division Engineer, and as is necessary to demonstrate compliance with this agreement. Each party shall be solely responsible for making the augmentation releases required under the Evergreen Meadows Aug Plan relating to lots within their respective boundaries. Each party shall designate ✓ their own representative who shall cooperate with and may be contacted by the Division Engineer regarding operations under and compliance with their respective obligations under the Evergreen Meadows Aug Plan."

I see that there was a cash payment by TEMD to SEWD which I assume included some compensation for the fact that TEMD received 30% of the augmentation water to serve 15% of the houses. I find it odd that this issue is not addressed in either the Settlement Agreement or the decree in 96CW66, but it appears that the court approved a settlement agreement that obliged SEWD to make releases for 85% of the houses while owning only 70% of the augmentation water and storage facilities. *If the unsigned decree I have was entered by the court, I believe the water commissioner is correct that SEWD has to replace all of the depletions associated with its 143 wells, or 6.375 acre-feet per year.

Very truly yours,


Julia O. Robinson

* SEE Document C. THIS IS A COPY OF THE
SIGNED DECREE