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IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 1

STATE OF COLORADO

Case No. W-7389

IN THE MATTER OF THE APPLICATION	)	
FOR WATER RIGHTS OF MERIDIAN	)	FINDINGS OF FACT, CONCLUSIONS
PROPERTIES, INC., in the SOUTH	)	OF LAW AND DECREE MODIFYING
PLATTE RIVER, TRIBUTARY INVOLVED:	)	WATER RIGHTS AND APPROVING
TARRYALL CREEK in PARK COUNTY.	)	PLAN OF AUGMENTATION

THIS MATTER, having come on for hearing upon the application of Meridian Properties, Inc. for change of water rights and approval of plan for augmentation which was filed on May 31, 1973, and the Court having considered the pleadings, the files herein and the evidence DOTH FIND:

1. Timely and adequate notice of the pendency of these proceedings has been given in the manner required by law and the Water Judge sitting in this Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties, whether they have appeared or not.

2. The City and County of Denver acting by and through its Board of Water Commissioners and the Central Colorado Water Conservancy District have appeared and filed statements of opposition; the consent of those objectors to the entry of this amended decree, and the withdrawal of their statements of opposition is evidenced by their authorized signatures on the original decree entered October 4, 1973. The amendments made to this amended decree are procedural in nature and do not affect the substantive rights of objectors and their withdrawal as evidenced by their authorized signatures on the original decree apply to this amended decree. No others have appeared to object to the proceedings and the time for filing any other statements of opposition has expired.

3. The applicant owns approximately 10,000 acres of land located in Township 9 South, Ranges 75 and 76 West of the 6th P.M. in Park County, Colorado, the boundaries of which are identified in the attached Exhibit A; the applicant proposes to develop the land it owns, which is called Indian Mountain, for various residential uses which plan proposes the ultimate development of 5,250 single-family residential equivalent units within the boundaries of the development.

4. The applicant owns the following described water rights, to wit:

A. The right to the use of 27 c.f.s. out of Tarryall Creek for irrigation purposes with date of appropriation of May 20, 1880 as decreed to the Slater Ditch by the District Court of Park County of October 18, 1889.

B. The right to store 33.65 acre-feet of the water of Tarryall Creek in the Tarryall Ranch Reservoir No. 1 for use for irrigation purposes with date of appropriation of December 31, 1923 as decreed by the District Court of Park County on March 24, 1953.

C. The right to store 32.93 acre-feet of water from Tarryall Creek occurring as waste water from the Slater Ditch in the Tarryall Ranch Reservoir No. 2 with date of appropriation of December 31, 1938 as decreed by the District Court of Park County of March 24, 1953.

The water rights thus owned by the applicant are the subject of this application and will be modified to the extend necessary to implement the plan of augmentation approved herein.

5. The Tarryall Ranch Reservoirs Nos. 1 and 2 are off-channel reservoirs which are filled with water diverted through the Slater Ditch. The place of storage of the Tarryall

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Ranch Reservoir No. 1 is behind a dam, the southwest end of which is located at a point whence the Northwest corner of Section 12, Township 9 South, Range 76 West of the 6th P.M. bears North  $37^{\circ} 35'$  West a distance of 2096 feet more or less. The place of storage of the Tarryall Ranch Reservoir No. 2 is behind a dam, the midpoint of which is located at a point whence the Northwest corner of Section 12, Township 9 South, Range 76 West of the 6th principal meridian bears North  $46^{\circ} 15'$  West a distance of 1109.8 feet more or less. Water withdrawn from storage in the said reservoirs is released to Park Gulch, a tributary of Tarryall Creek, which is used to convey water from said reservoirs to Tarryall Creek for the purposes contemplated by the plan approved herein.

6. The historic use of water diverted through the exercise of the water right decreed to the Slater Ditch has been for the irrigation of 230 acres of land within the water shed of Park Gulch; the duty of water resulting from that historic use is represented by the ratio of 1 c.f.s. to each 8.51 acres of land irrigated with an average consumptive use resulting from evapotranspiration and other losses of 6.96 acre-feet per c.f.s. per year or approximately .66 acre-feet per acre of irrigated land per year.

7. Because of the nature of the proposed domestic use of water for the 5,250 single-family residential equivalent units planned for the Indian Mountain development, the consumptive use which is expected to occur, with full development, without irrigation of the land developed, is expected to equal 33.1 acre-feet per year or 2055 gallons per unit per year; some depletion from such use is expected to occur during the period from November 1 to May 1 when water has not been historically diverted through the exercise of the water right decreed to the Slater Ditch.

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8. The source of supply for the domestic water service for the 5,250 single-family residential equivalent units, is from ground water occurring in the alluvium of Tarryall Creek and Park Gulch which is hydraulically connected with and supports the flow of water in Tarryall Creek and Park Gulch; the means of diversion for the production of water for such service will either be through individual, on-lot, domestic wells drilled under permits issued by the State Engineer's Office under the provisions of '63 C.R.S. 148-21-45 or through larger capacity wells required to produce water for multiple unit structures for domestic water service without irrigation.

9. If no augmentation program is instituted to offset depletions expected to result from the use of water for the 5,250 single-family residential equivalent units, material injury would occur to other water rights in the South Platte River, for the protection of which the State Engineer of Colorado has indicated a predisposition to deny applications for well permits for this project and, through various sets of proposed rules and regulations has indicated that diversions through wells other than those drilled pursuant to permits issued under '63 C.R.S. 148-21-45 would be curtailed with a resultant inadequate water supply for the development. It is to eliminate the projected injury to other water rights in the South Platte River, to assure the granting of permits for wells under '63 C.R.S. 148-21-45 and other provisions of the law and to prevent curtailment of diversions through facilities required to serve the 5,250 single-family residential equivalent units that the applicant has presented its plan of augmentation to this Court for approval.

10. The applicant's proposed plan of augmentation contemplates the permanent removal from irrigation of enough of the lands historically irrigated by use of the Slator Ditch

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water right to reduce the consumptive use resulting from the exercise of that right in an amount necessary to offset the consumptive use expected to occur as a result of the provision of domestic water service for the 5,250 single-family residential equivalent units. To accomplish this result, it is necessary to modify a portion of the Slater Ditch water right so as to permit storage in Tarryall Ranch Reservoir No. 2 of 33.42 acre-feet of water per year, a result which can be accomplished by permanently removing from irrigation 42.55 acres of land historically irrigated by the exercise of that water right. The waters to be stored as a result of such modification will be stored in the Tarryall Ranch Reservoir No. 2 at a rate of flow not to exceed 5.00 c.f.s. The waters thus stored will be released, under the supervision of the Division Engineer of Water Division No. 1, at times and in amounts when, by reason of senior calls on the river, the Slater Ditch water is not in priority or, during the period from November 1 to May 1, when the Slater Ditch has not historically been used. The amounts and rates of flow of withdrawal of water stored under the modified portion of the Slater Ditch water right as well as water stored under the water rights originally decreed to the Tarryall Ranch Reservoirs Nos. 1 and 2, shall be ordered by the State Engineer so as to meet, as nearly as possible, the simultaneous consumptive use occurring as a result of the use of water for the number of single-family residential equivalent units being used, from time to time, in the Indian Mountain development; provided that the total aggregate sum of such withdrawals during the period from May 1 to November 1 shall not exceed 22.4 acre feet and during the period from November 1 to May 1 shall not exceed 10.7 acre-feet. In addition, the applicant will permanently remove from irrigation an additional 34.04 acres of land historically irrigated by use of the Slater Ditch water right and abandon to Tarryall Creek 4.0 c.f.s. of the Slater Ditch water right so as to more than

offset 22.4 acre-feet of consumptive use expected to occur as a result of the production of water for domestic and municipal water service for 5,250 single-family residential equivalent units during those periods from May 1 to November 1 when the Slater Ditch water right is in priority.

11. The Court finds that by the imposition of the conditions set forth in these findings, a portion of the Slater Ditch water right and the storage rights originally decreed to the Tarryall Ranch Reservoirs Nos. 1 and 2, may be modified without adversely affecting the water rights of any other appropriators in the South Platte River, and that by the institution of the augmentation program herein approved, the applicant, its successors or assigns, may secure permits for and use on-site domestic wells under the provisions of '63 C.R.S. 148-21-45 or, under other provisions of the law, larger capacity wells required to serve multiple unit structures or multiple units in separate structures, all without adversely affecting any other water right in the South Platte River Basin and without the necessity for diversions through the facilities required to serve the 5,250 single-family residential equivalent units to be curtailed in times of shortage to make water available for rights more senior than the rights created by the use of the structures required to supply those single-family residential equivalent units.

#### CONCLUSIONS OF LAW

The Court concludes as a matter of law that:

1. The modifications sought for the portion of the water right decreed to the Slater Ditch and for the water rights originally decreed to the Tarryall Ranch Reservoirs Nos. 1 and 2 under the conditions set forth herein will not adversely affect

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any other water right in the South Platte River Basin and may be lawfully decreed by this Court;

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2. The plan of augmentation proposed by the application is one which is contemplated by law, and if administered in accordance with this decree will permit the depletions associated with the provision of domestic and municipal water service, without irrigation, to 5,250 single-family residential equivalent units in the Indian Mountain subdivision, all without adversely affecting any other water right in the South Platte River Basin;

3. The State Engineer may lawfully be required under the terms of this decree to administer the plan of augmentation in the manner set forth herein and to grant permits for wells for 5,250 single-family residential equivalent units either for individual wells per unit under the provisions of '63 C.R.S. 148-21-45 or for larger wells for multiple-family units or multiple units of single-family dwellings, and not to curtail diversions, in times of shortage, through any of the wells used to provide domestic water service for the 5,250 residential equivalent units, the depletions for which are offset by the operation of the augmentation plan herein approved.

4. While the precise location of each well to be augmented by this plan is not presently known, the recording, in these proceedings, of the location for each such well at the time application for a permit therefor is made, will provide the certainty required to assure the proper implementation of the plan herein approved. In the case of this plan, such recording can satisfactorily occur by requiring that the applicant for each well to be augmented, notify the Water Clerk of the location of the proposed well by reference to a specific lot delineated on the applicable Indian Mountain Subdivision plat, 24 of which have been admitted as exhibits in this case for that purpose.

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5. The current interpretation by the Water Judges of the State of the provisions of '63 C.R.S. 148-21-18(1) (d) as requiring a payment of a docket fee of \$5.00 for each facility to be augmented recognizes the cost to the judicial system of making an adequate record of the implementation of an augmentation plan as that implementation may occur over a period of time; but since that recording cost does not occur all at once upon the initial entry of the decree approving the plan of augmentation but, instead, occurs over an extended period of time as the wells to be augmented are constructed, there is no need to require the payment of docket fee for each structure at the time the application for approval of the plan is filed so long as provision is made for the subsequent payment as the wells are constructed and their location identified and recorded in the Court records.

DECREE

IT IS THEREFORE ORDERED ADJUDGED AND DECREED AS FOLLOWS:

1. The water rights decreed to the Tarryall Ranch Reservoirs Nos. 1 and 2 are modified so as to include the storage of water thereunder and subsequent withdrawal therefrom for domestic and municipal uses to offset depletions resulting from the provision of domestic and municipal water service to 5,250 single-family residential equivalent units within the boundaries set forth on the attached Exhibit 1.

2. The right to 5.0 c.f.s. out of the water right decreed to the Slater Ditch is modified to permit the diversion of that rate of flow for storage in the Tarryall Ranch Reservoir No.

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2 of a total amount of not more than 33.42 acre-feet of Tarryall Creek water per year in addition to such water as may be available for storage under the right originally decreed to that facility, such water to be held for release to Park Gulch and Tarryall Creek for domestic and municipal purposes in offsetting depletions to Tarryall Creek and the South Platte River resulting from the provision of domestic and municipal water service to 5,250 single-family residential equivalent units located or to be located within the boundaries of the Indian Mountain development as shown on the attached Exhibit A.

3. There is hereby abandoned to Tarryall Creek and the South Platte River out of the water right decreed to the Slater Ditch the right to 4.0 c.f.s. of flow representing at least the historic consumptive use during the irrigation season of 22.4 acre-feet per year.

4. 76.59 acres of land lying under the Slater Ditch which has historically been irrigated with water diverted from the exercise of the water right decreed to that ditch, shall be permanently removed from irrigation with water from Tarryall Creek, Park Gulch, their tributaries or underflow. The land thus removed from irrigation is located within Section 13, Township 9 South, Range 76 West and Section 18, Township 9 South, Range 75 West of the 6th P.M., identified by reference to the crosshatched area within the irrigated acreage boundaries shown on Exhibit B attached hereto. This decree shall be recorded in the public records of Park County, Colorado and this order drying-up the portion of the land historically irrigated under the Slater Ditch shall constitute a covenant running with the title to that land which shall be specifically enforceable upon the application of the objectors herein.

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5. Water may not be diverted under the 5.0 c.f.s. portion of the Slater Ditch water right which has been converted to storage for any purpose other than to provide up to but not more than 33.42 acre-feet of water storage per year in the Tarryall Ranch Reservoir No. 2, and once that volume of water shall have been stored through the exercise of that modified portion of the Slater Ditch water right in a given year, the amount of headgate diversion thereafter lawfully available for diversion under that right during the remainder of the season from May 1 to November 1 shall not exceed a rate of flow of 18 cubic feet per second of time.

6. The applicant, its successors and assigns may not divert, for irrigation of land under the Slater Ditch, more than 18.0 c.f.s., and water thus diverted may not be applied to the irrigation of more than 153.41 acres of land lying under that ditch and described by reference to the shaded portion of the historic irrigated area set forth on the attached Exhibit B. The use of the 18.0 c.f.s. of the Slater Ditch water right for irrigation may not be enlarged for the irrigation of more than 153.41 acres without injuring other water rights on the South Platte River.

7. The State Engineer, the Division Engineer of Water Division No. 1 and other water administrative officials charged with the responsibility of administering the waters of Tarryall Creek and the South Platte River shall administer the plan of augmentation approved herein in the following manner:

A. At such times during the period May 1 to November 1 as diversions under the water right decreed to the Slater Ditch are reduced or curtailed to make water available for more senior rights, the applicant, its successors or assigns shall be ordered to release from the waters stored in the Tarryall Ranch

Reservoirs Nos. 1 or 2 a volume of water at a rate of flow determined by the Division Engineer of Water Division No. 1 to be adequate to offset depletions then simultaneously occurring as a result of the provision of domestic and municipal water service to the number of single-family residential equivalent units then being served within the Indian Mountain development. The total, aggregate amount of such releases for that season shall not exceed 22.4 acre-feet.

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B. During the period from November 1 to May 1 of each water year, the Division Engineer shall require the applicant, its successors or assigns to release from storage in the Tarryall Ranch Reservoirs Nos. 1 and 2 such amounts of water at such rates of flow as may be found necessary to offset the then occurring simultaneous depletions resulting from the provision of domestic and municipal water service to the then existing number of single-family residential equivalent units being served within the Indian Mountain development. The total, aggregate amount of such releases required during that period shall not exceed 10.7 acre-feet.

C. The State Engineer, in the discharge of his responsibility with respect to the processing of applications for permits to drill wells and use ground water for the provision of domestic or municipal water service to 5,250 single-family residential equivalent units within the Indian Mountain development, either through individual on-lot wells sought under the provisions of '63 C.R.S. 148-21-45 or through wells applied for under other provisions of the law which may be required to supply multi-family units or multiples of single-family units shall recognize the existence and operation of this plan of augmentation and shall not deny applications for wells for the

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purposes herein mentioned and within the amounts herein contemplated, but shall require the applicant, as a condition precedent to the issuance of any such well permit, to file, as an attachment to his application, a receipt from the Water Clerk of Water Division No. 1 for the payment herein of a \$5.00 supplemental docket fee for the recording in these proceedings of each well applied for.

D. The State Engineer and Division Engineer of Water Division No. 1, shall not, at the request of senior appropriators, order the curtailment of diversion through wells used to provide domestic and municipal water service to the 5,250 single-family residential equivalent units for which this plan of augmentation has been approved so long as the plan of augmentation is being administered in accordance with the terms of this decree.

DATED THIS 2nd day of January, 1974,  
nunc pro tunc as of the 1st day of October, 1973.

Ronald A. Casper  
WATER JUDGE  
Water Division No. 1  
State of Colorado