

COPY

DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

CASE NO. 91CW5

JUDGMENT AND DECREE ADJUDICATING CHANGE OF WATER RIGHT AND PLAN
OF AUGMENTATION

CONCERNING THE APPLICATION
FOR WATER RIGHTS OF:

QUINLAN GROUP, INC.

IN CONEJOS COUNTY.

*Filed in District Court
Water Division 3, Colorado*

AUG 26 1991

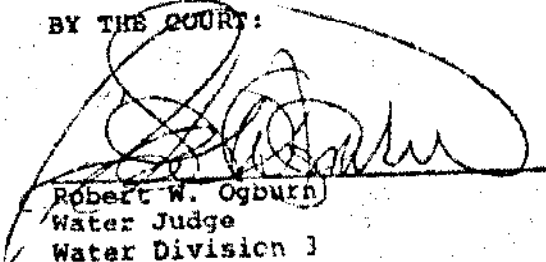
*Carol S. Redding
Clerk Of The Water Court*

THE COURT FINDS that no protest has been filed to
the Ruling(s) of the Water Referee in the above case within
the time provided by law, and that the said Ruling(s) should
be confirmed, approved and adopted;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Ruling(s) of the Water Referee, entered on August 2,
1991 be and the same is incorporated herein by reference
and is hereby confirmed, approved and adopted as the Judgment
of this Court.

Done this 26th day of August, A.D., 1991.

BY THE COURT:


Robert W. Ogburn
Water Judge
Water Division 3

cc: Steve Vandiver, Division Engineer
Jeris A. Danielson, State Engineer
Quinlan Group, Inc.
Conejos Water Conservancy District
Michael E. Quinlan

COPY

*Filed in District Court
Water Division 3, Colorado*

AUG - 2 1991

DISTRICT COURT, WATER DIVISION 3, COLORADO
CASE NO. 91CW5

*Caryl S. Ridding
Clerk Of The Water Court*

RULING OF REFEREE

**CONCERNING THE APPLICATION FOR APPROVAL OF CHANGE OF WATER
RIGHT AND PLAN OF AUGMENTATION OF**

**QUINLAN GROUP, INC., a Colorado Corporation in
CONEJOS COUNTY, COLORADO**

Pursuant to Order of Referral filed and entered in the Court on January 31, 1991, and an Order Transferring and Assigning Case dated January 31, 1991, the undersigned Water Referee, investigated the matter of the application on file herein, hereby, makes the following findings of fact, and ruling thereon:

FINDINGS OF FACT

1. That the said application was filed on January 31, 1991.
2. That the Clerk of the Water Court caused publication of filing as provided by statute; publication costs have paid; the time for filing Statements of Opposition expired on the last day of March, 1991; and that one Statement of Opposition was filed on March 28, 1991 by the Conejos Water Conservancy District.
3. That the Application filed herein concerns a request for a change of water right and plan of augmentation in connection with a proposed subdivision in Conejos County, Colorado, hereinafter referred to the Bear Creek Subdivision.
4. That the Applicant is the contract purchaser of a 120 acre ranch and a Joint Venture Partner on the remaining 120 acres with the current owner, William W. Hamilton, the legal description of which is as follows:

Conejos County, Colorado

Township 33 North, Range 6 East of the N.M.P.M.

Section 26: S 1/2 NW 1/4; N 1/2 NW 1/4 SW 1/4; SW 1/4
NW 1/4 NW 1/4

Section 27: SW 1/4 NE 1/4; NW 1/4 NE 1/4 NE 1/4; W 1/2
NE 1/4 NE 1/4 NE 1/4; SE 1/4 NE 1/4; S 1/2
NE 1/4 NE 1/4; E 1/2 NW 1/4 NE 1/4 SE 1/4;
NE 1/4 NE 1/4 SE 1/4

5. That the Applicant is the contract purchaser from Quinlan Ranches, Inc. of 11 acre feet of water rights (consumptive use) in and to that portion of the An Con/Chacon #3 Irrigation Ditch No. 36, Priority # 38, being 9.15 cubic feet of water per second of time applied to beneficial use on lands located in the S 1/2 of Section 15 and NW 1/4 of Section 15, all in Township 33 N., Range 9, E., N.M.P.M.; this being one-half of the total of 18.31 cubic feet of water per second of Priority #38.
6. That the above described water rights which have historically irrigated the Quinlan Ranches, Inc. property were all decreed by the District Court for Conejos County, Colorado, in the matter of the priorities of water and adjudicate thereof in Water District No. 22, Water Division 3, of the State of Colorado as follows:

Name of Ditch	Amount (cfs)	Appro. Date	Adj. Date	Number of Irrigated Acres
An Con/Chacon No. 3	9.15	July 1 1872	Oct 22, 1883	500

This being one-half of the total decreed amount of 18.31 cubic feet per second.

7. That the Applicant proposes a change of water rights for a portion (10.99 acre feet) of the water rights set forth above for the beneficial uses of water including domestic and municipal use of the consumptive use factor adjudicated herein. Applicant asks that 10.99 acre feet of the consumptive use water be adjudicated in this degree from these water rights to be utilized for an augmentation plan upon the Bear Creek Subdivision, which will be subdivided into a residential subdivision containing less than 170 year-round and vacation single family residence sites.

All residences constructed thereon will be served by not more than two central wells and a distribution system. An Application to Construct a well(s) has been filed by the Applicant and said structure(s) shall be subject to the restrictions and limitations of this decree. Said well(s) will be drilled pursuant to permits issued under C.R.S. 37-90-137 and will intercept tributary ground water sources located on Bear Creek Subdivision. The well(s) will be located as follows:

Conejos County, Colorado

Township 33 North, Range 6 East, N.M.P.M.
SE 1/4 of the NW 1/4 Section 27, 1500 feet
from the North Section line and 3150 feet
from the East Section line.

- Water use will be restricted to in-house use only. Individual septic tanks and leach fields, which provide recharge to the river, will provide waste treatment for all lots. Two one acre storage and augmentation ponds will be established on Lot 80, Filing No. 1, and Lot 134, Filing No. 2. The ponds will be sealed to prevent losses from the bottom of said ponds. Said ponds will be filled by water piped from Bear Creek and emptied by pipe into the Conejos River. A small waterfall will be created as the water descends over the embankment into the river. A continuous flow through the ponds shall take place throughout the spring, summer and early fall. Water stored in the ponds shall be released to the Conejos River throughout the season to replace depletion from the wells and evaporation. A headgate structure or a headgate type of mechanical device that can be adjusted to establish and maintain different water levels in the ponds shall be installed to prevent the recapture of water previously released for the purposes of this plan.
- 8. That an examination of the An Con/Chacon water rights demonstrate that they have a priority of July 1, 1872 and an adjudication date of October 22, 1883. The historic use evidence from Division 3 water records indicates that water has been available every year of the period of analysis (1970-1989). The average number of diversions days was 60 and the average amount of water diverted was 1664 acre feet for the 4 priorities in the An Con/Chacon. Priority #38 has the highest decreed flow rate and is the most senior on the ditch.

Each year when the An Con/Chacon priority #38 comes in, the first water the ditch is entitled to will be diverted for the purposes of this augmentation plan on a flow rate or volume basis as instructed by the Division of Water Resources. The owners of the subject water right as described in paragraph 6 above shall bypass the amount of water historically used for consumption on dried up land. This will provide a reliable source of water for augmentation on a yearly basis.

9. That the acreage (grass/alfalfa mix) to be dried up on the Quinlan Ranches, Inc. property, to offset depletions from in-house use and pond evaporation on Bear Creek Subdivision, will be 12 acres described as follows:

Conejon County, Colorado

Section 15, Township 33 North, Range 9 East of the N.M.P.M.

Beginning at the SW corner of the SE 1/4 of the SW 1/4, North 396 feet, then East 1320 feet, then South 396 feet, then West 1320 feet to the point of beginning.

10. That the Applicant will dry up and take out of production said 12 acres and construct a containment berm or similar structure around this area so as to withdraw this land from irrigation.
11. Using the Hargreaves equation, considering water availability, crop type and soil water storage, actual net consumptive use from irrigation is 11.11 inches per acre or 0.92 acre-feet/acre. $10.99 \text{ ac-ft/year} \div 0.92 \text{ ac-ft/year/acre} = 11.95$ or rounded 12.0 acres. At full production potential, water use is 21.40 inches. That an examination of the historical use of this ditch and comparisons of potential consumptive use with actual consumptive use, indicate that the consumptive use is dependable and subject to being decreed as available each year upon the cessation of the specified irrigation upon the Quinlan Ranches, Inc. property.
12. That the proposed uses and consumption requirements for the subdivision are as follows:
 - A. Domestic Use for single family residences, in-house use only, is computed on the basis of 3.5 persons per single family residence, 75 gallons of water per person per day usage and a 10% of demand in-house

consumptive use of water utilizing a septic leach field sewage disposal type of system. The year-round consumptive use for 185 lots would be 5.44 acre-feet. If vault systems are required for sewage disposal, an amendment to this decree shall be requested by the owners.

- B. Consumptive Use for evaporation is calculated using pan evaporation data and multiplying by 0.7 to convert to pond evaporation for the period when the ponds are not frozen (8 months). Evaporation from March to October is 33.3 inches per year or 2.775 ac-ft/acre/acre year X 2 surface acres= 5.55 acre-feet.
- C. Total Consumptive Use Estimate 10.99 acre-feet, if septic tanks and leach fields are used.
13. That an annual consumptive use accounting report shall be provided to the Division Engineer by October 31 of each year. This accounting report shall set forth the total diversion from the structures augmented, an identification of each of the consumptive components, total consumptive use for the year, and shall be in affidavit form.
14. That the water withdrawal from all well(s) drilled pursuant to this plan will be used only for the uses as set forth in Paragraph 12 above.
15. That domestic sewage and waste water from residences in the subdivision will be returned to the soil through septic tanks and leaching fields constructed below the ordinary root zones of common plants or other evapotranspirative systems .
16. That Applicant or his successors shall create covenants which will run with the land which will incorporate this plan of augmentation by reference and require compliance herewith. A copy of said covenants will be recorded. No covenant shall be allowed which is inconsistent with the terms hereof without modification to this plan by appropriate amendment.

17. A homeowner's association shall be formed as a successor in interest to the Applicant. The water use restrictions as appearing in the protective covenants and herein shall likewise be adopted and appear in the Articles of Incorporation of said association. The home-owners' association shall enforce the restrictions and protective covenants running with the land, including but not limited to the terms and conditions of this decree. The association shall be empowered to begin, prosecute and seek such legal remedies that it deems necessary to enforce the performance and adherence to said covenants by its constituent property owners or other persons. The association, by acceptance of the conveyance of the common property within subject subdivision, shall be empowered to be sued on behalf of its constituent property owners by any person entitled to enforce this judgment and decree.
18. That each well drilled pursuant to this plan for augmentation shall have installed a totaling flow water meter or other measuring device satisfactory to the Division Engineer.
19. That this plan for augmentation shall be recorded in Conejos County, Colorado. Assuming that this plan of augmentation is operated and administered as set forth herein, the Conejos River system will be augmented, both in time and place, by 10.99 acre feet of water per annum. This is equal to or more than the amount of water required to replace the depletion expected to result from supplying water to Bear Creek Subdivision. Therefore, the water to be diverted upon the Bear Creek Subdivision, which would otherwise be considered appropriated and unavailable for use will now be available for appropriation without injuring or adversely affecting the owners of any vested water rights or conditionally decreed water rights in the Conejos River system.
20. That in order to comply with C.R.S. 37-92-305(6), the following findings and conclusions are made:
 - A. The historic use for which the water rights herein used for augmentation were previously used for irrigation as more particularly described in Paragraph 6 above.

- B. The proposed future use of the water rights involved herein is as set forth in Paragraph 12 above.
 - C. The Referee has considered the depletions from the Applicant's use and proposed use of water in quantity and in time, the amount and timing of augmentation water which will be provided by the Applicant and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right and finds that this plan of augmentation will be sufficient to permit the subject diversions.
 - D. The approval or award made herein shall be and is hereby made subject to reconsideration by the Water Judge on the question of injury to the vested rights of others for five (5) years after the date of the decree herein, upon the filing of a pleading by any person claiming injury, which period is necessary or desirable to preclude or remedy such injury.
21. That the Applicant has furnished acceptable proof as to claims made.

IT IS, THEREFORE, ORDERED AS FOLLOWS: That the Plan of Change of Water Right and Plan of Augmentation as outlined and described in the preceding Findings of Fact be, and is hereby, approved.

IT IS FURTHER ORDERED that the Applicant shall comply with this Plan Of Augmentation and Change of Water Right in accordance with the State Engineer's directions and the decree herein and shall comply with this Plan of Augmentation by performing as follows:

- A. Installation on pipe of appropriate measuring devices upon each well structure servicing the Bear Creek Subdivision.
- B. Construction of the storage ponds on the Bear Creek Subdivision as specified.

- C. Construction of berms or similar structures enclosing 12 acres for dry up on the Quinlan Ranches, Inc. property.
- D. Installation of appropriate measuring devices on the An Con/Chacon Ditch.
- E. Construction of a headgate structure or headgate type of mechanical device to maintain different water levels in the ponds and to measure inflows and outflows.
- F. The initial determination of loss and seepage from said ponds will be made by Applicant and the Division Water Engineer within ninety (90) days after completion of construction and filling of said ponds. Said parties will make further determinations each six (6) month period thereafter. If it is determined that seepage has occurred, the Applicant will place sufficient sealing material on the bottom of the ponds to prevent seepage and losses and conduct periodic loss measurement tests to ensure compliance, all to the satisfaction of the State Engineer.
- G. Filing with the Water Court and the Division Engineer copies of all well permits issued pursuant to this decree.
- H. Recordation of this judgment and decree.
- I. Providing the Division Engineer, by October 31 of every year, an annual accounting of consumptive use and a total of diversions as set forth in the findings.
- J. That Applicant should immediately cease forthwith the historical irrigation of 12.0 acres from the An Con/Chacon ditch.

IT IS FURTHER ORDERED That the award made herein is hereby made subject to reconsideration by the water judge on the question of injury to the vested rights of others for five (5) years after the date of the decree herein, upon the filing of a pleading by any person claiming injury, which period is necessary or desirable to preclude or remedy such injury.

IT IS FURTHER ORDERED That Applicant shall install and maintain such water measurement devices, recording devices, content gauges and inlet and outlet measurement and recording devices, as the case may be, as are deemed essential by the Office of the State Engineer, and the same shall be installed and operated in accordance with instructions from such office.

IT IS FURTHER ORDERED That copies of this ruling shall be mailed as provided by statute.

Dated and filed with the Water Clerk this 2nd day of August. A.D. 1991.

BY THE REFEREE



George W. Woodard, Water Referee
Water Division No. 3
State of Colorado