

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO Garfield County Courthouse 109 8 th Street, Suite 104 Glenwood Springs, CO 81601	RECEIVED JUL 19 '02 WATER RESOURCES STATE ENGINEER GLENWOOD ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF POLE CREEK ASSOCIATES, LLLP IN GRAND COUNTY, COLORADO	
Cynthia F. Covell, Esq. Alperstein & Covell, P.C. 1600 Broadway, Suite 2350 Denver, CO 80202 Tele: (303) 894-8191 Fax: (303) 861-0420 E-mail: cfc@alpersteincovell.com Atty. Reg. #: 10169	Case Number: 01CW217 Water Division No. 5
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND DECREE OF THE WATER COURT	

This matter comes before the Court, Water Division No. 5, on the application of Pole Creek Associates LLLP ("Pole Creek") for approval of additional wells to enable withdrawal of amounts decreed for withdrawal from the PCA Well pursuant to the decree in Case No. 80CW067 (consolidated with Case Nos. 80CW456 and 84CW175), as amended in Case No. 95CW354. The Referee has reviewed the Application and has obtained such other information as deemed necessary, and hereby finds as follows:

1. Applicant: The Applicant is

Pole Creek Associates, LLLP
 P.O. Box 1686
 Fraser, CO 80442
 Telephone: (970) 726-3077

2. Application and Jurisdiction. The Application was filed on August 31, 2001, and was duly published in the water resume for Water Division No. 5. All notices required by law have been given, and the Court has jurisdiction over this application, over the parties hereto, and over those who have

chosen not to appear. No statements of opposition were filed. The water right that is the subject of this Application is not located within a designated groundwater basin.

3. Background and Original Decrees. The PCA Well is registered under Permit No. 054335-F, and was originally decreed in Case No. 80CW67 (consolidated with Case Nos. 80CW456 and 84CW175) on June 23, 1994 (the "original decree"). The original decree was intended to provide a water supply for 348 multi-family units, a clubhouse, maintenance facility and sports center, and a 27-hole golf course. The plan for augmentation decreed in the original case provides for augmentation of depletions from the PCA Well and another well, the Skigate Well, by releases of stored water upstream from the proposed development, at a location acceptable to the State Engineer of the State of Colorado and the Division Engineer, Water Division No. 5 ("State"). The original augmentation plan was amended in Case No. 95CW354 (decreed September 21, 1998) to reflect a reduction in the scope of the development to 48 single-family homes, a clubhouse, maintenance facility and sports center, and a 9-hole golf course. The flow rate of the PCA well, 300 gpm, was not changed in Case No. 95CW354, but the total annual withdrawal was reduced from 99 acre-feet to 63.71 acre-feet per year, to be used for domestic uses, irrigation, uses related to club house and maintenance facility, fire protection, recreation, and golf course irrigation. Pursuant to the decree entered in Case No. 80CW67, the PCA Well is administered with a 1992 filing date.

4. Legal description of Original Well Location: The PCA Well is located in the NW1/4 SE1/4 of Section 9, Township 1 South, Range 76 West of the 6th P.M. in Grand County, Colorado, at a point 2090 feet north of the south section line and 1470 feet west of the east section line of said Section 9. See location map attached as Exhibit A.

5. Source: The water source for the PCA Well and the additional wells herein authorized is groundwater tributary to Pole Creek, which is tributary to the Fraser River in Grand County, Colorado.

6. Additional Wells. The PCA Well is not able to achieve a yield of 300 gpm. Therefore, Pole Creek seeks approval of up to four additional wells to enable it to withdraw the total volume of water (63.71 acre-feet) at a combined rate not to exceed the rate of 300 gpm decreed to the PCA Well.

All of the wells will be located in Section 9, Township 1 South, Range 76 West of the 6th P.M. and in the Troublesome formation. The impact of well withdrawals from Section 9 was modeled in connection with the earlier cases, and the impact of the additional wells in Section 9 will be the same as the impact of the PCA Well, so long as the total pumping rate does not exceed 300 gpm from all wells collectively, the total annual withdrawal does not exceed 63.71 acre-feet, and all wells are located in the Troublesome Formation. Pole Creek has identified four locations at which such additional wells may be drilled (described below, and shown on Exhibit A), and seeks to drill up to three additional wells in Section 9 at other locations as yet undetermined if necessary to obtain the full 300 gpm

pumping rate decreed to the PCA Well. **Pole Creek does not seek, by this decree, any new or additional water rights.**

Pole Creek may drill up to four additional wells at or within 200' of the following locations:

- Well T-2: SW1/4NE1/4, Section 9, Township 1 South, Range 76 West of the 6th P.M., 2000 feet from the north section line and 1850 feet from the east section line of said Section 9, in the Troublesome Formation.
- Well T-3: SE1/4NE1/4, Section 9, Township 1 South, Range 76 West of the 6th P.M., 1820 feet from the north section line and 640 feet from the east section line of said Section 9, in the Troublesome Formation.
- Well T-4: SE1/4NE1/4, Section 9, Township 1 South, Range 76 West of the 6th P.M., 1665 feet from the north section line and 940 feet from the east section line of said Section 9, in the Troublesome Formation.
- Well T-5: SE1/4NE1/4, Section 9, Township 1 South, Range 76 West of the 6th P.M., 2010 feet from the north section line and 910 feet from the east section line of said Section 9, in the Troublesome Formation.

Pole Creek may also drill up to three more additional wells in Section 9 in the Troublesome Formation in order to obtain the full yield of the PCA Well water right (300 gpm, subject to a maximum annual withdrawal of 63.71 acre-feet per year.) The final drilled location of each additional well will be provided to the Court, and attached as an addendum to this decree. The final location of each additional well will also be provided to the Division Engineer and the State Engineer.

7. Operating Requirements. All of the additional wells provided for herein will be operated as a single system, with a yield not to exceed 300 gpm, and an annual withdrawal not to exceed 63.71 acre-feet, regardless of what combination of wells is used. All wells will be metered, and meter readings will be provided to the Division Engineer annually, or more frequently if requested or required by the Division Engineer or by the provisions of Case No. 80CW67 or Case No. 95CW354. Augmentation will be provided as set forth in Case No. 80CW67 and Case No. 95CW354, and the terms and conditions of those decrees (including reporting requirements) will be applicable to all of the wells subject to this decree.

8. Finding of No Injury. No injury will result to other water rights as a result of this decree because withdrawals from the PCA Well and the other wells herein provided for (all of which will be operated as a unified system), will not exceed the 300 gpm overall yield or the 63.71 acre-foot annual

withdrawal limitation already decreed in Case No. 95CW354. Since all of the wells will be located within the same section and drilled into the surficial aquifer, the depletions as modeled will be the same as those modeled for the PCA well alone, and the requirements contained in Case Nos. 80CW67 and 95CW354 for augmentation of well depletions will prevent injury to owners of or persons entitled to use water under a vested water right or a decreed conditional water right pursuant to C.R.S. § 37-92-305(8).

CONCLUSIONS OF LAW

9. Jurisdiction. The Court has jurisdiction over the subject matter of this proceeding and over all who may be affected hereby, whether they have appeared or not. C.R.S. § 37-92-203 and 37-92-302.
10. Notice. Timely and adequate notice of the pendency of this proceeding was given in the manner required by law. C.R.S. § 37-2-302(3).
11. Lack of Injury. The terms and conditions as set forth in this decree are adequate to prevent injury to owners of, or persons entitled to use, water under a vested water right or a decreed conditional water right pursuant to C.R.S. § 37-92-305(8).

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED,

12. Incorporation of Findings of Fact and Conclusions of Law. The Findings of Fact and Conclusions of Law set forth above are incorporated herein by this reference.
13. Approval of Additional Wells. The application for additional wells to be operated as a single system for the withdrawal of no more than 63.71 acre-feet per year, at a rate not to exceed 300 gpm, is hereby approved, subject to the terms and conditions provided for herein.
14. Well Permits. The State Engineer is directed to issue new permits as necessary to comport with this decree, including re-issuance of Permit No. 054335-F, reflecting this decree, and permits for up to seven additional wells pursuant to C.R.S. § 37-90-137(2), on condition that such wells be located as provided herein, that the total yield from all of the wells taken together does not exceed 300 gpm, that the total production from all wells does not exceed 63.71 acre-feet per year, and that all such wells shall be subject to, and operated in accordance with, this decree and the decrees in Case Nos. 80CW67 and 95CW354.

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Review Clerk: Carol Abbott

such wells be located as provided herein, that the total yield from all of the wells taken together does not exceed 300 gpm, that the total production from all wells does not exceed 63.71 acre-feet per year, and that all such wells shall be subject to, and operated in accordance with, this decree and the decrees in Case Nos. 80CW67 and 95CW354.

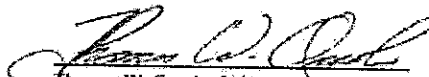
15. Measuring and Reporting. The PCA Well and all of the additional wells herein decreed will be metered, and reports made to the State and Division Engineers as provided in Case Nos. 80CW67 and 95CW354, or as otherwise requested by the State and Division Engineers.

16. Filing with Water Clerk. This judgment and decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review.

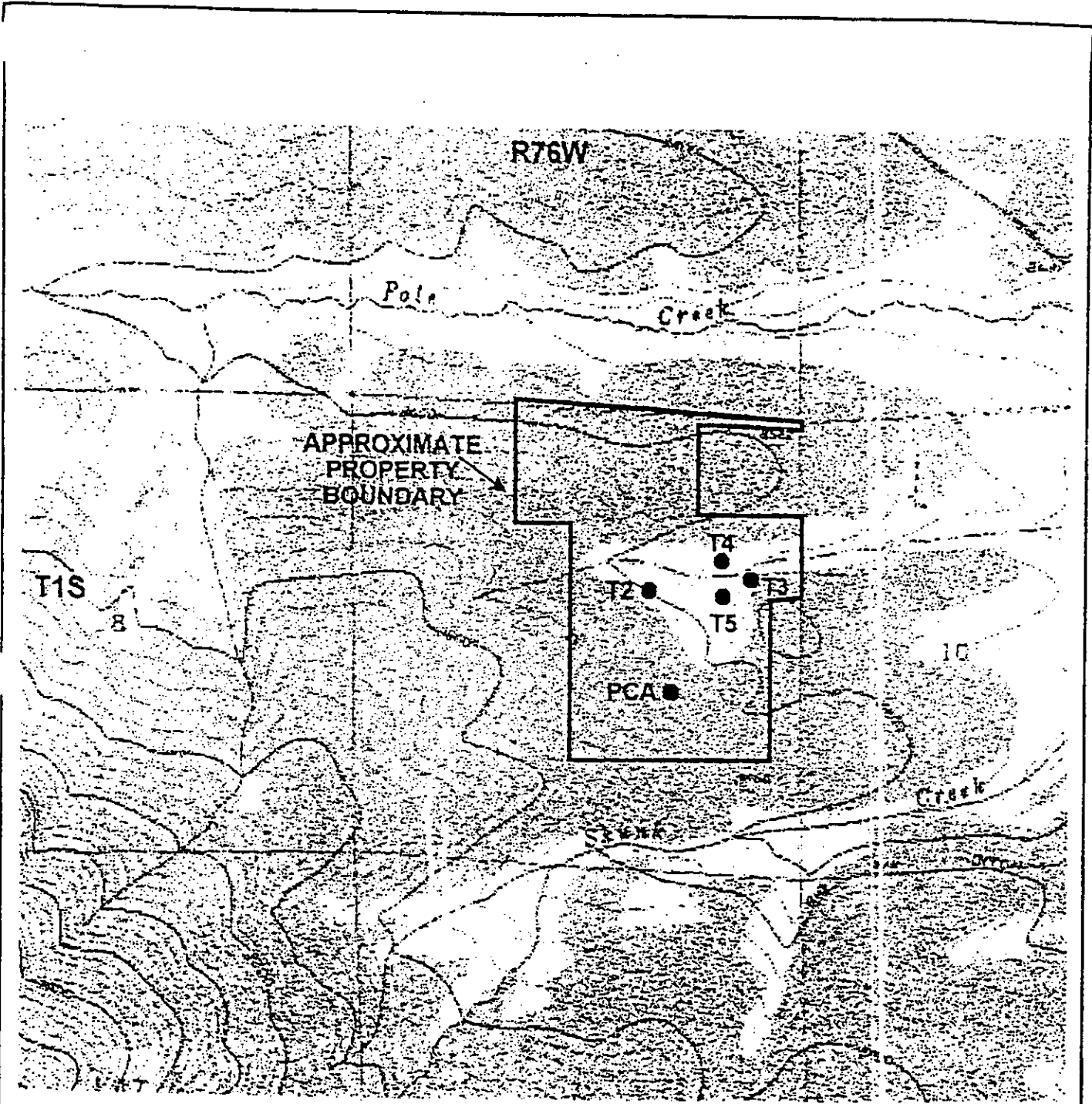
17. Filing with Division and State Engineers. A copy of this judgment and decree shall be filed with the Division Engineer, Water Division No. 5, and with the State Engineer.

Dated this 23rd day of August, 2003.

BY THE WATER COURT
Water Division No. 5


Thomas W. Ossola, Judge

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Source: USGS 7.5 Minute Quadrangle Bottle Pass 1957



● Approximate Well Locations

Scale: 1 inch = 1710 feet

EXHIBIT A

THE GREENS AT WINTER PARK WELL LOCATION MAP

Jehn Water Consultants, Inc.
 1565 Gilpin Street
 Denver, Colorado 80218

August 30, 2001

Job No. 133.7