

AUGMENTATION CERTIFICATE AND AGREEMENT #COM-005

An Explanation

After Reading the Bear Creek Subdivision's Water Augmentation Plan (WAP), the question immediately arises: "Where is the second sealed-pond required by Section 7 in the WAP?"

The answer is simple: The General Partner of the Bear Creek Land Company stopped trying to seal the second the pond when the pond would not retain water without using an expensive liner like the one used to seal the current pond. Instead, the developers filled in the hole dug on Lot 134 and convinced the members of the Bear Creek Land Owners Association to (a) join the Conejos Water Conservancy District (CWCD), and (b) purchase annually and in perpetuity enough water to offset the 2.75-acre fee the second pond would have release back into the Conejos River. The following documents are the only paperwork that has been located regarding the implementation of this decision.

Background

In 1999 the CWDC acquired permission of the Conejos County Water Court to enter into agreements with members of the CWCD to purchase and use CWCD-water appropriated and stored in the Platoro Reservoir in order to:

... furnish augmentation water to wells and ponds located within the boundaries of the District in the Conejos Canyon to replace stream depletions caused by pumping of said wells, *for stock watering and specific commercial uses, including lawn and landscaping irrigation* and by pond evaporation.

Pursuant to this authority and using a set of forms approved by the Court, ¹in 2000 the CWDC entered into the *Augmentation Certificate and Agreement #COM-005* allowing the Bear Creek Home Owners Association to purchase annually up to 3.25 acre-feet of water from the CWCD. The language in italics in the section quoted above does **not** apply to Bear Creek because the Bear Creek WAP and the Declaration of Covenants were not amended to include watering stock, commercial purposes, or lawn and landscaping irrigation, each of which are expressly excluded in the WAP and the Declaration. The Augmentation Certificate's sole purpose was to furnish augmentation water for the second pond and to offset water produced by Bear Creek's two water wells.

¹ The Water Court Order creating the CWCD contains court- approved form documents referenced on the attachment as "Appendix B" (Augmentation Information Sheet) and "Appendix C" (Augmentation Certificate and Agreement) can be found in Water Court Case No. 95 CW0 24. The Order permitting the BCLOA to join the CWCD is in the file of the case designated Case 99 CV 14. On the Information Sheet (Appendix B) submitted in December 2000, the only use of the water requested above the signature line is for "Pond Evaporation."

Bear Creek

APPENDIX B

Case No. 95CW24
Certificate # COM005
Permit #
Water Dedicated MAXIMUM 3.25
ACRE FEET
IN ANY ONE YEAR

AUGMENTATION PLAN INFORMATION SHEET

Participant BEAR CREEK SUBDIVISION HOME OWNERS ASSOCIATION
aka BEAR CREEK LANDOWNERS ASSOCIATION

Property Address Lot 80, Bear Creek Subdivision
Mailing Address Home Owners Association,
Antonito, Colorado, 81120

Telephone Number 719-376-5763

Legal description of property to which water will be attached (all lands must be located within the District's boundaries)

Lots 65, 80 and 134 of the Bear Creek Subdivision were included in the District boundaries April 1, 1999 case 99CV14 Pond on Lot 80. Known as the "Commons Area" Conejos County Reception No's 2597001270 and 2597001269.

SEE ATTACHED

Location of existing proposed well. 1/4 of the 1/4 of Section , Township N or S, Range E or W, N.M.P.M.

Distance from N or S section line feet.
Distance from E or W section line feet.

SEE ATTACHED

() Application for New Well (Purchaser agrees to furnish to Conejos Water Conservancy District a copy of the well permit and well log upon completion of the well).

() Application for Existing Well: Permit No.
Depth (in feet):
(Copy of existing well permit and well log must be attached and new permit furnished to the District upon approval.)

Location of existing XX proposed pond. Lot 80 of the Bear Creek Subdivision as recorded and accepted in the County of Conejos June 13, 1997. (attach map)

Type of Use

() COMMERCIAL (describe type)

- () MAY 1 THROUGH OCTOBER 31 ONLY
- (XX) YEARROUND
- () STOCK WATERING (type of animal and average number of head)

- () LAWN AND LANDSCAPE IRRIGATION (number of square feet)
- (XX) POND EVAPORATION (surface area of pond in acres) (.)

- Type of Sewage Disposal
- () Septic tank and leach field
 - () Central system with return to river
 - () Other describe

I certify that the above information is complete and true to the best of my knowledge.

BEAR CREEK LANDOWNERS ASSOCIATION

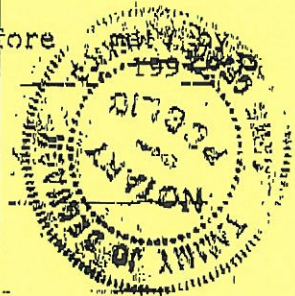
[Signature]
Participant Herbert Bohannon, Jr.
Chairman of the Board

Date December 22, 2000

NEW MEXICO
STATE OF ~~COLORADO~~)
COUNTY OF Sandoval) ss.

The foregoing was acknowledged before me, Herbert Bohannon, Jr. this 22 day of December 1999.
Witness my hand and official seal.

[Signature]
Notary Public

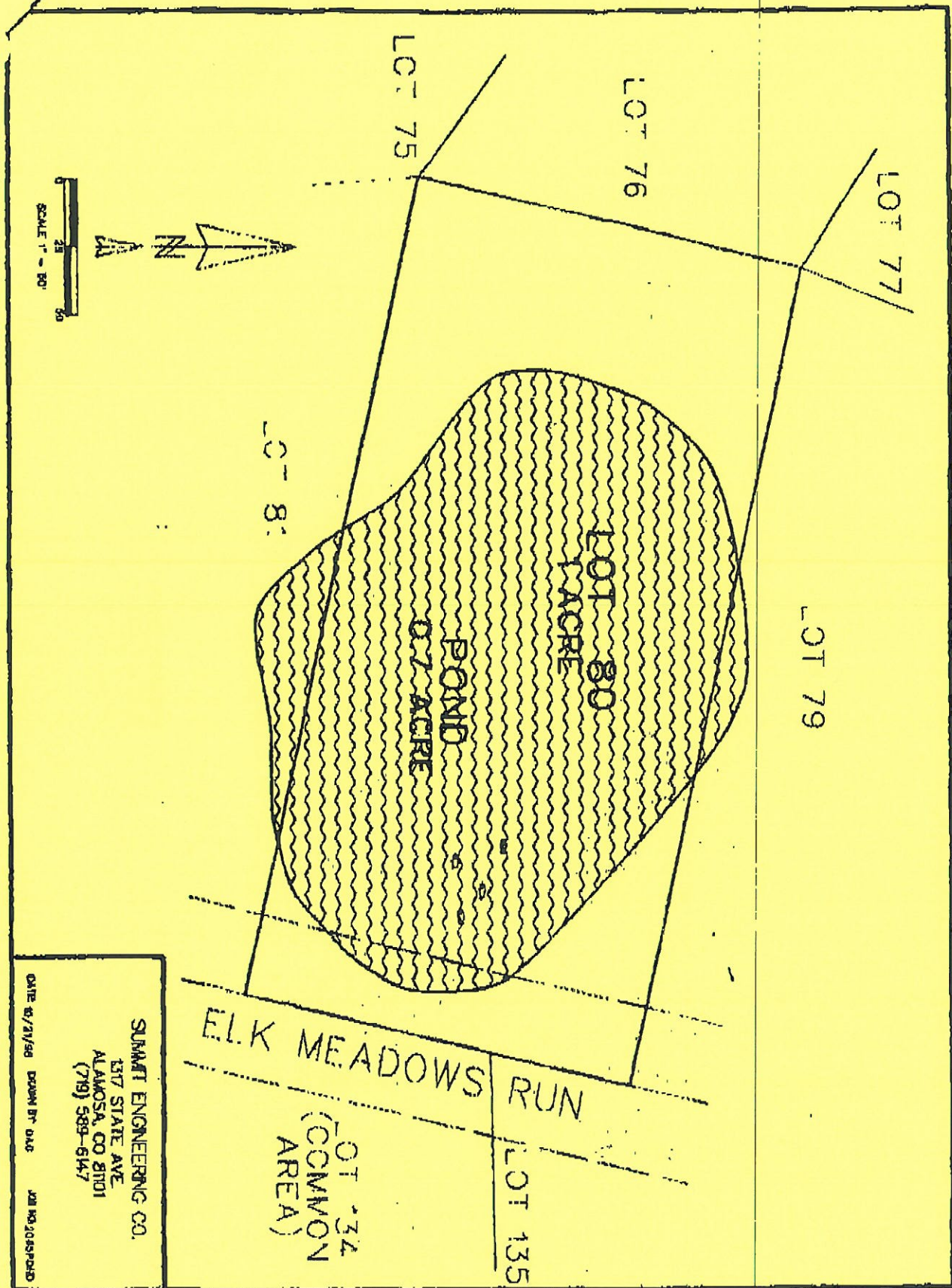


My commission expires: 8/21/02

Address: _____

The above-described property was included in the District's boundaries by order of the court dated 1 April 1999 Case 99CV14

District Secretary _____



DATE 05/21/99 DRAWN BY GAC JAL RD 2005.P000

SUMMIT ENGINEERING CO.
1317 STATE AVE.
ALAMOSA, CO 81001
(719) 589-6147

APPENDIX C

Case No. 95CW24

Certificate #COM005

Permit #

Amount of Water Dedicated MAXIMUM 3.25 ACRE-FEET
IN ANY ONE YEAR

AUGMENTATION CERTIFICATE AND AGREEMENT

This agreement and certificate entered into by and between the Conejos Water Conservancy District (District) and BEAR CREEK SUBDIVISION HOME OWNERS ASSOCIATION (participant) aka BEAR CREEK LANDOWNERS ASSOCIATION

WITNESS

WHEREAS, participant owns the following described land on which a pond to be covered by this agreement is located or is to be located: Lot 80 of the Bear Creek Subdivision, as recorded in the Conejos County records dated June 13, 1997. Property included in the boundaries of the Conejos Water Conservancy District, by order of the court April 1, 1999 case 99CV14

WHEREAS, District has heretofore filed a non-agricultural augmentation plan with the Water Court in Case No. 95CW024, which plan has been approved by the Water Court and a decree entered, and

WHEREAS, the decree allows the District to furnish augmentation water to wells and ponds located within the boundaries of the District in the Conejos Canyon, to replace stream depletions caused by pumping of said wells, for stock watering and specific commercial uses, including lawn and landscape irrigation, and by pond evaporation, and

WHEREAS, the State Engineer requires that applicants for well permits provide replacement (augmentation water) before the Engineer will grant a well permit, and

WHEREAS, in a situation involving the subdivision of a tract of ground into smaller tracts less than 35 acres, Conejos County is required to make a determination that there is a water supply which is "sufficient in terms of quality, quantity and dependability." (C.R.S. § 30-28 133(3)(d) and Conejos County Subdivision Regulations § 2.2.2.5.)

WHEREAS, participant desires to obtain necessary augmentation water from District to replace depletions to be caused by pumping participant's proposed well(s) or by maintaining participant's proposed pond(s) and represents to the District that the attached information correctly represents the situation regarding said well(s) or pond(s).

NOW, THEREFORE, the parties do hereby agree as follows

1 Participant hereby registers the well(s)/pond(s) described on the attached information sheet as part of the District augmentation plan approved by the Water Court in Case No. 95CW024, subject to the terms set forth herein

2. Participant hereby pays and District acknowledges receipt of payment in the amount of \$ _____ as an initial registration fee for participant's well(s)/pond(s). Participant further agrees to pay an annual operation fee approved by the District. The annual operation fee for the first year is due and payable at registration and annually thereafter on or before prior to release each year. If subsequent payment of the annual operation fee is not received by the District by the deadline specified above, this agreement shall automatically terminate and the Division Engineer shall be notified that participant's well(s)/pond(s) is/are no longer covered by District's augmentation plan. In that event, such wells/ponds will be subject to separate administrative and enforcement action by the State Engineer. Any renewal of coverage by participant after a lapse of payment and coverage will require reimbursement for intervening years of non-coverage, or such lesser reimbursement as negotiated with the District.

3. This agreement and certificate shall be provided by the District to the Division Engineer for a determination of whether the proposed well(s)/pond(s) is (are) of a type and in a location such that the well(s) may be included in the District's plan for augmentation in Case No. 95CW024. The District shall adhere to the findings of the Division Engineer regarding participant's eligibility to participate in the plan.

4 Participant shall be responsible for filing any well permit applications with the Division and State Engineers and for obtaining any well permits required by the State for construction and use of the well(s)/pond(s)

5. Pursuant to the Court's decree, the State Engineer will consider the findings and recommendations of the Division Engineer and the information contained in this agreement in evaluating participant's application for well permit(s). Participant specifically acknowledges that the State Engineer's evaluation will be based upon the criteria decreed in Case No. 95CW024 and his authority under §37-90-137(2), C.R.S. including the design, construction, location, and permitting of such wells, including minimum spacing requirements, in order to prevent injury to other wells and water rights. This agreement does not guarantee that a well permit will be issued.

6. If a well permit or other approval is issued by the State Engineer recognizing the right of the participant to construct and use such well(s)/pond(s) pursuant to the District's augmentation plan, then the District will provide augmentation water to replace the consumptive use

depletions from such well(s)/pond(s). No augmentation water will be provided except for permitted uses on participant's property located within the boundaries of the District and within the augmentation plan area described in Case No. 95CW024 as described on the attached information sheet

7 The developer is responsible for insuring an adequate water supply to comply with Conejos County Subdivision Regulations § 2.2.2.5, if an adequate supply in quantity and quality is determined, then this plan is sufficient to offset surface depletions when other conditions of this plan are met. When a subdivision as a whole has been approved by the County, it is presumed to have met the requirements of state and county subdivision regulations. This certificate and agreement then provides for replacement of any injurious effect to surface water rights in the Conejos River system, it does not deal with site specific availability of water or potential injury by one well on another due to aquifer conditions or well spacing.

8 **PARTICIPANT HEREBY AGREES TO INSTALL A WATER METER ON THE WELL(S)** and to provide the District with periodic records of water use from the well(s)/pond(s) as may be required by the State Engineer or Division Engineer. Participant further agrees to permit access to representatives of the District or Division Engineer upon participant's property to make meter readings, verify meter readings submitted by participant, verify irrigated area information supplied by participant or verify the non-use of any well/pond which is no longer covered by payment for any year.

9 The District reserves the right to restrict water use to indoor commercial use only, if the District and the Division Engineer project that the quantity of augmentation water in storage may be inadequate to supply the demands of all participants in the plan.

10 Participant further recognizes that the availability of augmentation water and the use of Platoro Reservoir are subject to the terms of the decree in Case No. 95CW024, contracts between the District and the Bureau of Reclamation, and the Rio Grande Compact. The District shall not be liable to participant for any failure to deliver augmentation water if the District is prevented from operating Platoro Reservoir or releasing augmentation water pursuant to the terms of such decrees, contracts, or the Compact.

11 It is understood that the decree in Case No. 95CW024 requires the District to provide notice of this augmentation agreement to certain parties of wells/ponds to be located within the following areas:

E1/2 of Section 25, T33N, R6E
Section 30 and N1/2 of Section 31, T33N, R7E
Sections 1 and 2, T33N, R5E
SW1/4 of Section 35, T34N, R5E
N1/2 of Section 6, T33N, R6E

The wells/ponds subject to this agreement are _____ or are not XX located within this area and special notice is _____ or is not XX being sent concurrently with execution of this agreement.

12 This agreement shall run with the land on which the subject well/pond is located or to be located and shall bind the heirs, successors and assigns thereof This agreement is intended to be recorded in the real property records of Conejos County

BEAR CREEK LANDOWNERS ASSOCIATION CONEJOS WATER CONSERVANCY DISTRICT

Participant (print name)

[Handwritten Signature]

Participant Signature
Herbert Bohannon, Jr.
Chairman of the Board

Date 12/22/00

By *[Handwritten Signature]*
District Manager

Date 12/20/00

Division Engineer's Approval

The proposed well(s)/pond(s) included on this Certificate are XX are not ___ in a location that is able to be augmented by the District's augmentation plan decreed in Case No. 95CW024.

Division Engineer
Division III

PLEASE BE ADVISED: THE APPROVAL BY THE DIVISION ENGINEER OF THIS CERTIFICATE IS NOT AN OPINION BY THE DIVISION OR STATE ENGINEERS THAT A WATER SUPPLY IS "SUFFICIENT IN TERMS OF QUALITY, QUANTITY AND DEPENDABILITY" FOR ANY PROPOSED SUBDIVISION PURSUANT TO C.R.S. § 30-28-133(3)(d) AND THE CONEJOS COUNTY SUBDIVISION REGULATIONS § 2.2.2.5, NOR IS THIS APPROVAL A STATEMENT PURSUANT TO C.R.S. § 30-28-136(1)(h)(I). FURTHER, THIS APPROVAL IN NO WAY LIMITS THE DETERMINATIONS OF THE STATE ENGINEER PURSUANT TO C.R.S. §§ 30-28-136(1)(h)(I), 37-90-137(2), 37-92-602(3)(b)(III), OR THE DECEMBER 5, 1972 MEMORANDUM OF THE STATE ENGINEER REGARDING "SUBDIVISION EVALUATION CRITERIA UNDER SB-35," WHICH CONSTITUTES APPENDIX B TO THE CONEJOS COUNTY SUBDIVISION REGULATIONS § 2.2.2.5.



[Handwritten Signature]

Conejos Water Conservancy District
318 Main Street
Manassa, Colorado 81141-0550
(719) 843-5261

DATE: 11/28/05

FAX#: 589-6685

We are transmitting 8 pages, including this cover page.

TO: Pat McDermott

FROM: Bob

REGARDING: Bear Creek Pond.

COMMENTS: I have the original of the enclosure order of
the judge if you want that.
Bob

Please call 719-843-5261 if you do not receive all of the pages.