

COPY

IN THE DISTRICT COURT IN AND FOR  
WATER DIVISION NO. 3  
STATE OF COLORADO  
Case No. 80-CW-132

FILED IN DISTRICT COURT  
WATER DIVISION 3, COLORADO  
CAROL S. REDDING, CLERK

NOV 16 1981

IN THE MATTER OF THE APPLICATION )  
FOR WATER RIGHTS OF ) AMENDED  
JOHN HOWELL ) FINDINGS OF FACT,  
IN ALAMOSA COUNTY ) RULING OF THE REFEREE

THIS MATTER having been referred to the Water Referee upon the application of John Howell for approval of a plan of augmentation filed on December 31, 1980, and the Referee having reviewed the pleadings and evidence presented herein FINDS:

1. Timely and adequate notice has been given in the manner provided by law, and the Water Referee has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. No parties have appeared to object to this proceeding, and the time for filing statements of opposition has expired.

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

	<u>Ditch</u>	<u>Source</u>	<u>Decreed Amount</u>	<u>Priority Date</u>	<u>Location of Headgate (R73W, 6th P.M.)</u>
a.	Supply Ditch No. 4	S. Zapata Creek	5.0 cfs.	4/5/1908	NW 1/4 NE 1/4 SW 1/4, Sec. 9 T28S
b.	Zapata Ditch No. 3	S. Zapata Creek	16.0 cfs.	2/19/1909	NE 1/4 NW 1/4 NW 1/4, Sec. 16, T28S
c.	Shady Retreat Ditch	S. Zapata Creek	3.33 cfs. 3.33 cfs. 10.0 cfs.	4/1/1879 4/1/1882 1/1/1889	NW 1/4 NW 1/4 NW 1/4, Sec. 16, T28S

3. The above-listed water rights were originally decreed for irrigation purposes, and have been used historically to irrigate an average of 321 acres of native hay annually, with an average consumptive use of 408.9 acre-feet of water. These three water

rights were included in a plan of augmentation approved by the Court on April 10, 1975 (Case No. W-3345). Subsequent to that date the above mentioned water rights were conveyed to the Applicant herein. To the extent that these three water rights are used as a source to augment the diversions proposed in the plan described herein, such rights shall not be utilized for any other purposes.

4. The source of the above-listed water rights - the Zapata Creek - is tributary only to the closed basin. Based on current geologic and hydrologic data, water from the Zapata Creek drainage is considered to be a source of recharge to both the confined and unconfined aquifers. It is generally agreed that recharge to the confined aquifer from this drainage occurs east of the easternmost boundary of the confining clay layer. Water entering the unconfined aquifer is utilized in irrigation, or lost by evapotranspiration, or eventually reaches the sump area of the closed basin.

5. In addition to the above-listed water rights, Applicant is the owner of a portion of that land which is commonly known as the Zapata Ranch, which is located about 25 miles northeast of Alamosa. Applicant intends to develop 2126 acres of said land into 870 residential lots, including a 28.41 acre commercial area, a 50 unit dormitory type facility, and an 85 unit recreational vehicle park. A legal description of said 2126 acres is attached hereto as Appendix A, and incorporated herein by this reference.

6. The water supply for said development will be furnished as follows: A total of 870 residential lots will be served by on-site individual and domestic wells drilled into an area which has historically recharged both the confined and unconfined aquifers. (See general description map of Applicant's proposed development, Appendix B.) In addition, a 50 unit dormitory type facility will be built

utilizing a central water system, the source of such system being wells drilled into the recharge area for both aquifers. The 28.41 acre commercial area and the recreational vehicle area will be served by central water systems supplied by on-site shallow wells drilled into the unconfined aquifer. The source of water supply for all of the diversions noted above is groundwater located in the Zapata Creek drainage.

The residential lots will utilize individual septic systems, with 10% consumptive use. Lawn irrigation will not be permitted. The commercial area will be served by a central sewer system while the recreational vehicle area will utilize a central septic tank - field sewage disposal system. The 50 unit dormitory facility shall feature a lagoon type sewage disposal system.

The resulting annual consumptive use of water for the 870 single-family residential equivalent units, assuming three persons per unit, a daily water requirement of 100 gallons per person, and 100% year-around occupancy, is estimated to be 29.58 acre-feet. The annual amount of water consumed by the dormitory facility is estimated to be not more than 11.20 acre-feet, assuming 100% consumptive use rate. The annual consumptive use of water by the commercial area at full development is estimated to be not more than 3.83 acre-feet, while the corresponding consumptive use figure for the recreational vehicle area is 2.89 acre-feet. The resulting total projected annual consumptive use of water by the development, assuming 100% year-around occupancy, is 47.50 acre-feet, of which 22.30 acre-feet would have historically been recharged to the confined aquifer.

3. Applicant proposes to protect the annual historic recharge to the confined aquifer by constructing a pipeline

which will divert a portion of the water decreed to the water rights listed in paragraph 2 above and apply it to the land surface, thereby artificially recharging the confined and unconfined aquifers. The point of diversion for this pipeline shall be in the SE 1/4 of the SW 1/4 of Section 4, Township 28 South, Range 73 West, 6th P.M., at a point approximately 300 feet from the South section line and 1750 feet from the West section line. Applicant proposes to divert through this pipeline a sufficient quantity of water to compensate for the 22.30 acre-foot loss to the confined aquifer resulting from production of water to the wells contemplated herein, and it is estimated that the diversion of 90 acre-feet per year will satisfy this requirement. Applicant proposes to apply the 90 acre-feet to the land surface below the diversion location and infiltration of the water will recharge the confined aquifer.

9. The growth of the development is expected to proceed over several years. Not all the water rights owned by the Applicant and considered herein as part of this plan for augmentation will always be utilized in implementing the plan of augmentation even when the growth of the development and consequent consumptive use require larger replacements. Applicant's rights which are not required for implementation of the plan for augmentation at any given time or required to replace historic reservoir return flows, will be used for any lawful purposes, including those uses allowed by the decree entered in Case No. W-3345

10. Applicant has filed a Motion to Amend the decree in Case No. W-3345, with such amendment proposing to exclude from the operation of the decree in Case No. W-3345 those lands and water rights described in the application in Case

No. 80-CW-132, when such water rights are to be used to augment the diversions described in the application in Case No. 80-CW-132 (a copy of said motion is attached as Appendix C). The Water Referee hereby rules that said motion is granted. The Water Referee further finds that the exclusion of said water rights from the operation of the decree in Case No. W-3345 will not cause injury to the owners of or persons entitled to use vested water rights. The Water Referee rules that adequate statutory notice has been given that the water rights that are the subject of the application in Case No. 80-CW-132 were formerly included in the plan of augmentation decreed in Case No. W-3345, and no injury will result from the exclusion of the aforementioned water rights, therefore, it is not necessary to file and publish a petition to reopen and modify the decree in Case No. W-3345.

11. From the evidence submitted herein the Water Referee finds that the plan for augmentation proposed by Applicant will not cause injury to the confined aquifer. Applicant's proposed development will consume an estimated 47.50 acre-feet of water annually, of which 22.30 acre-feet would have historically been recharged to the confined aquifer. By diverting 90 acre-feet annually at the point specified above, Applicant will artificially recharge the confined aquifer.

12. The Water Referee finds as a matter of hydrological and geological fact, that pursuant to the operation of the plan for augmentation set forth herein, there is unappropriated water available for the groundwater withdrawals contemplated herein. The Water Referee finds, that pursuant to the operation of the plan for augmentation set forth herein, the groundwater withdrawals which are to provide a

domestic municipal supply to Applicant's proposed development will not cause injury to any vested water rights or decreed conditional water rights in Water Division No. 3, and Applicant may make the groundwater withdrawals contemplated in this plan of augmentation without the necessity of curtailing such withdrawals in time of shortage.

RULING

Based on the above findings, the Referee hereby rules:

1. The Application for a plan of augmentation filed herein is hereby granted and the findings of fact are incorporated herein.

2. The State Engineer in the discharge of responsibilities with respect to the processing of applications for permits to construct and utilize the wells contemplated herein with the provision of domestic and municipal water service to Applicant's proposed development, shall recognize the existence and operation of the plan for augmentation proposed herein, and shall not deny permits for such wells.

3. The water rights listed in paragraph 2 of the findings herein are hereby modified so as to provide an alternate place, type, time and use diverted pursuant to such rights in order to furnish a year-around domestic and municipal water supply to the proposed development as described herein, and for the other purposes contemplated in the plan for augmentation approved herein.

4. Water may be diverted pursuant to said water rights at the following alternate points of diversion:

A. The wells described herein.

B. Through the pipeline to be located in the SE 1/4 of the SW 1/4 of Section 4, Township 28 South, Range 73 West, 6th P.M. at a point approximately 300 feet from the South section line and 1750 feet from the West section line.

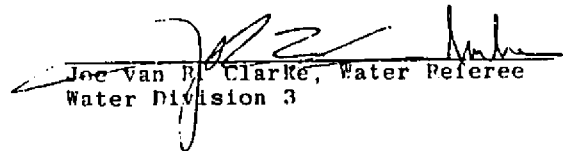
5. Not all the water rights considered herein as part of this plan for augmentation shall be required to implement said plan for augmentation at all times. Whenever water from one of said rights is not required for said implementation it may be used for any lawful purposes.

6. The Water Referee hereby rules that as a matter of hydrological and geological fact, pursuant to the operation of the plan of augmentation approved herein there is unappropriated water available for groundwater withdrawals contemplated herein, and that no injury to vested or decreed conditional water rights in Water Division No. 3 will result therefrom.

7. Neither the State Engineer nor the Division Engineer or their representatives shall curtail the diversion of groundwater through any of the wells contemplated in the plan for augmentation approved herein, so long as said plan for augmentation is being administered in accordance with this Ruling.

8. The approval of this plan for augmentation is subject to reconsideration by the Water Judge on the question of injury to the vested rights of others for a period of one year after the entry of a judgment and decree herein.

Dated this 11th day of November, 1981.

  
Joe Van B. Clarke, Water Referee  
Water Division 3

APPENDIX A

PARCEL NO. 1: All of the Zapata, being a Replat of The Hampton (Unit 1 of which was filed in the office of the County Clerk and Recorder of Alamosa County, Colorado, on December 15, 1975, under Reception No. 185643).

SAVING AND EXCEPTING THEREFROM the following described lots:

<u>Lot No.</u>	<u>Block No.</u>
1 through 16	1
1 through 30	2
1 through 30, 32, 33, 34	3
1 through 6	4
1 through 10	5
10 and 11	6
1	8
7	11
8	12
1 through 16	15
5	19

Tract D

That part of Tract C lying East of a North-South line, said North-South line described as follows: beginning at the Southwest corner of Lot 1, Block 16, thence South to the juncture of the Northeast corner of Lot 10, and the Northwest corner of Lot 11 in Block 1.

PARCEL NO. 2: All of the Zapata - Unit 2 which is filed in the office of the County Clerk and Recorder of Alamosa County, Colorado, on July 29, 1976, under Reception No. 188563, and Amended Final Plat filed June 9, 1977, under Reception No. 192727.

SAVING AND EXCEPTING THEREFROM the following described lots:

<u>Lot No.</u>	<u>Block No.</u>
1 through 37	50
1 through 48	49
1 through 80	48
1 through 79	45
51 through 98	47
1 through 17, 26 through 59	42
1 through 15	43
1 through 22	41
14	11
1 and 15	12
8 and 9	13
1 through 14	27
1 through 11	28
2 through 7	29
1	53 (containing a house type structure and all appurtenances thereto)
1	51
1 through 85	RV-1
1 through 35	RV-2
1 through 21 and Lake J	33
1 through 10	37
1 through 21	38
1 through 48	39
1 through 14	40
1 through 17	36
21 through 35	36
10	31
Tract A Lake	
Tract T	
Tracts E, F, G, H, K Greenbelt	
Tracts V, R, S, U Greenbelt	
Tract AA Greenbelt	
Tracts 1 through 8	



PARCEL NO. 1: All of the following lots as shown on the Plat of The Zapata (being a replat of the Hampton) Unit 1 which was filed in the office of the County Clerk and Recorder of Alamosa County, Colorado, on December 15, 1975, under Reception No. 185643, to-wit:

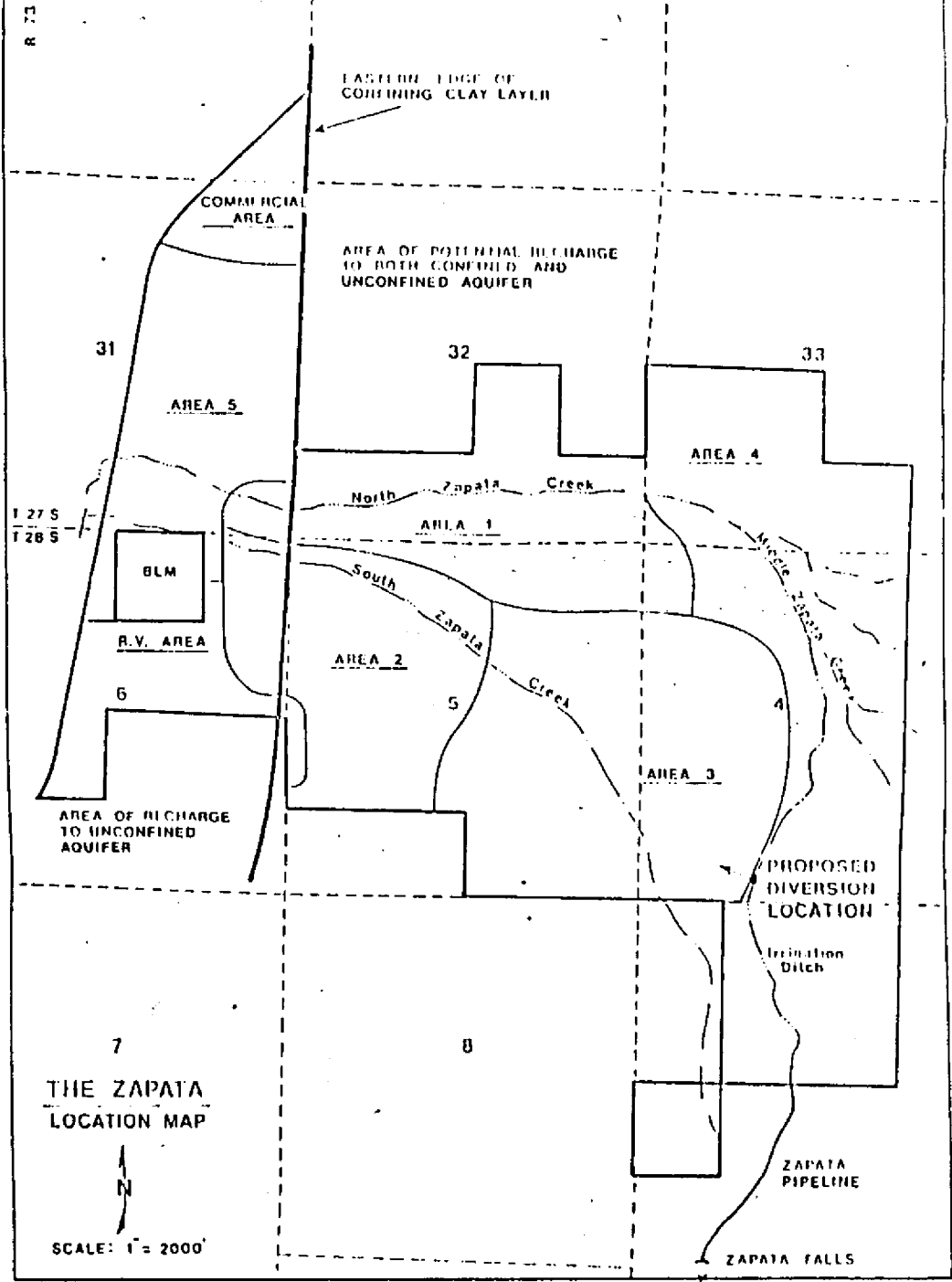
<u>Lot No.</u>	<u>Block No.</u>
5 through 11, 13 through 16	1 → 1-4, 12
1 through 29	2 → 30
1, 2, 4 through 30, 32, 33	3 → 3, 34
1 through 16	15
1 through 6	4
1 through 10	5

Tract D

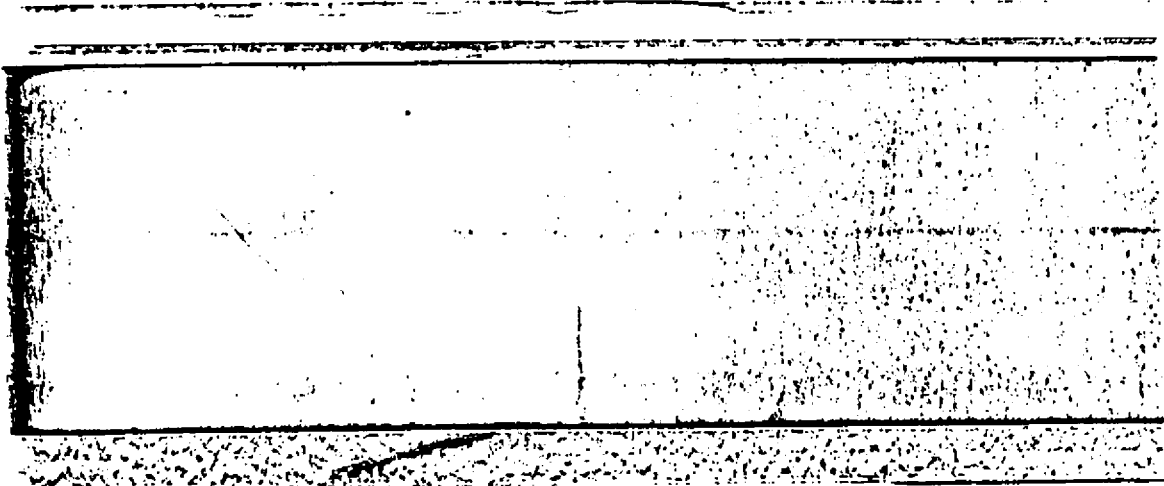
That part of Tract C lying East of a North-South line, said North-South line described as follows: beginning at the Southwest corner of Lot 1, Block 16, thence South to the juncture of the Northeast corner of Lot 10, and the Northwest corner of Lot 11 in Block 1.

PARCEL NO. 2: All of the following lots as shown on the Plat of The Zapata - Unit 2 which is filed in the office of the County Clerk and Recorder of Alamosa County, Colorado, on July 29, 1976, under Reception No. 188563, and amended final plat filed June 9, 1977 under Reception No. 192727, to-wit:

<u>Lot No.</u>	<u>Block No.</u>
1 through 37	50
1 through 48	49
1 through 80	48
1 through 79	45
51 through 98	47
1 through 17, 26 through 59	42
1 through 15	43
1 through 22	41
14	11
1 and 15	12
8 and 9	13
1 through 14	27
1 through 11	28
2 through 7	29
1	53 (containing a house type structure and all appurtenances thereto)
1	51
1 through 85	RV-1
1 through 35	RV-2
1 through 21 and Lake J	33
6 through 48	39
1 through 14	40
1 through 17	36
21 through 35	36
10	31
Tract A Lake	
Tract T	
Tracts E, F, G, H Greenbelt	
Tracts V, R, S, U Greenbelt	
Tract AA Greenbelt	
Tracts I through 8	



APPENDIX B



IN THE DISTRICT COURT IN AND FOR  
 WATER DIVISION NO. 3  
 STATE OF COLORADO  
 Case No. W-3345

IN THE MATTER OF THE APPLICATION )  
 FOR WATER RIGHTS OF )  
 MALCOLM G. STEWART, JR. )  
 IN ALAMOSA COUNTY )

MOTION TO AMEND

COMES NOW John Howell, by and through his attorneys, Moses, Wittemyer, Harrison and Woodruff, P.C., and moves that the decree in the above referred to case be amended to exclude from the operation of the decree those lands and water rights described in the application and the proposed decree in Case No. 80-CW-132, (a copy of such proposed decree is attached hereto as Appendix A) to the extent that such water rights are being utilized for the augmentation plan in Case No. 80-CW-132. If the water rights that are the subject of Case No. 80-CW-132 are not being used as a source of augmentation water for the diversions proposed by the plan in Case No. 80-CW-132, movant acknowledges that such water rights may be used for any purposes allowed pursuant to the decree entered in Case No. W-3345, including irrigation and other uses. In support of said motion, movant states that he has acquired the water rights that are the subject of the application in Case No. 80-CW-132, and thereby requests that the decree in Case No. W-3345, which had previously included such water rights, be modified accordingly.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of <sup>August</sup> ~~July~~, 1981.

MOSES, WITTEMYER, HARRISON AND  
 WOODRUFF, P.C.

By: Timothy J. Beaton  
 Timothy J. Beaton, #10403  
 Charles N. Woodruff, #2772  
 Attorneys for John Howell  
 P.O. Box 1440  
 Boulder, Colorado 80306  
 Telephone: 443-8782

APPENDIX C

DISTRICT COURT WATER DIVISION 3, STATE OF COLORADO

NOV 16 1981

CASE NO. 80CW132

O R D E R

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CONCERNING THE APPLICATION  
FOR WATER RIGHTS OF

JOHN HOWELL

IN ALAMOSA COUNTY

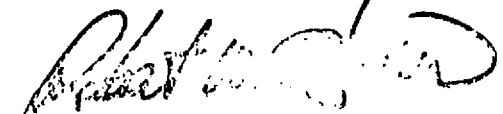
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THIS MATTER came to the attention of the Court on this date pursuant to Motion to Amend file on October 21, 1981, by Timothy J. Beaton, and the Court after having considered the same;

DOTH FIND that the Motion to Amend is well taken and should accordingly be granted.

IT IS, THEREFORE, ORDERED that the Judgment and Decree set forth on September 30, 1981, is vacated and an Amended Ruling enter in accordance with the above-stated findings.

DONE AND SIGNED this 1 th day of November, 1981.



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Robert W. Ogburn  
Water Judge  
Water Division 3