



DISTRICT COURT, WATER DIVISION 2, COLORADO

CONSOLIDATED CASE NOS. 96CW134 (WATER DIVISION NO. 2) AND  
96CW225 (WATER DIVISION NO. 1)

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE  
WATER COURT APPROVING AN APPLICATION FOR A PLAN FOR AUGMENTATION**  
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CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE NORTHGATE  
COMPANY, A COLORADO GENERAL PARTNERSHIP, AND THE GREAT DIVIDE WATER  
COMPANY, A COLORADO NONPROFIT CORPORATION,  
FILED IN THE OFFICE OF THE CLERK  
DISTRICT COURT WATER DIV NO. 2  
STATE OF COLORADO

IN EL PASO COUNTY

APR 30 1998

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MARDELL TRIVISONNO  
CLERK

THIS MATTER, having come on for consideration upon the Application of The Northgate Company, a Colorado general partnership, and The Great Divide Water Company, a Colorado nonprofit corporation, for Approval of a Plan for Augmentation, and the Court having considered the pleadings, the files herein, the stipulations of the parties, the evidence presented and the comments of the Division Engineer, does find.

**FINDINGS OF FACT**

1. The Application herein was filed in Water Division No. 2 on September 30, 1996. A substantially similar application was also filed with the District Court for Water Division No. 1 on October 1, 1996. Applications were filed with both Courts because the depletions attributable to pumping from a portion of the wells described herein will impact both the South Platte River drainage basin and the Arkansas River drainage basin. The Application was published in the September, 1996 Water Resume for Water Division No. 2 and the October, 1996 Water Resume for Water Division No. 1. All notices required by law of the filing of this Application have been fulfilled.

2. Statements of Opposition were filed to the Application filed in Water Division No. 1 by the City of Thornton and the State Engineer and the Division Engineer for Water Division No. 1. Statements of Opposition were filed to the Application filed in Water Division No. 2 by the City of Colorado Springs and the State Engineer and the Division Engineer for Water Division No. 2. No other statements of opposition have been filed and the time for filing such statements has now expired.

3. On July 25, 1997, Applicants filed a motion with the Panel on Consolidated Multidistrict Litigation requesting an order

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transferring the case filed in Water Division No. 1 (96CW225) to Water Division No. 2, and for assignment of the Water Judge for Water Division No. 2 to hear the consolidated cases. On August 27, 1997, an Order was entered in Case No. 97MDL19 by the Chief Justice of the Colorado Supreme Court pursuant to C.R.C.P. 42.1(i), appointing John E. Anderson, III, Water Judge of Water Division No. 2, to hear the consolidated cases. Therefore, this court has exclusive jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties whether they have appeared or not.

4. The land and water rights involved herein are not included within the boundaries of any designated groundwater basin.

5. The Northgate Company ("Northgate"), is the primary applicant in this matter. The mailing address for Northgate is as follows:

The Northgate Company  
3720 Sinton Road, #106-D  
Colorado Springs, Colorado 80907

6. Northgate and the Arrowwood Development Corporation are developing a residential subdivision located on approximately 794 acres in portions of Sections 17, 19 and 20, Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado. The subdivision is known as Bent Tree. The water supply for the residences is from individual wells constructed into the Dawson Aquifer of the Denver Basin. Pursuant to the Decree entered in Case Nos. 82CW370 (Water Division No. 1) and 82CW180 (Water Division No. 2), 221 individual wells are authorized to be constructed within the Bent Tree Subdivision. However, as a result of changes to the original layout, a total of 257 individual wells will be needed. This decree will allow for the construction of the additional thirty-six wells that are needed to accommodate full build out of the Fourth Filing of the Bent Tree Subdivision. The lots which are covered by this augmentation plan are 197 through 232 of the Fourth Filing.

7. In addition to using water for domestic requirements, the owners of each of the additional thirty-six lots will be allowed to irrigate up to 2,000 square feet of turf grass, or other types of vegetation having an equivalent level of water consumption. No other outside water uses will be allowed.

8. Each of the additional wells to be constructed will obtain water from the Dawson Aquifer of the Denver Basin, and will divert water at a maximum flow rate of 15 gallons per minute. The

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gross annual water requirements for the thirty-six lots will be approximately 13.77 acre feet per year. This figure is based on an average year around occupancy of the single family residences of 3.5 persons per residence and a per capita water usage of 80 gallons per day. The irrigation of turf grass will require an application of approximately 1.50 acre feet of water per irrigated acre.

9. The total consumption attributable to water used by the owners of the additional thirty-six lots is projected to be 3.11 acre feet per year. Wastewater from all in-building uses of water will be treated by non-evaporative septic tank soil absorption systems. All return flows from the septic tank leach fields and outside irrigation will be to the Dawson Aquifer of the Denver Basin. Ten percent (10%) of the water used for in-building purposes is assumed to be consumed. The possibility exists that a community mechanical wastewater treatment system that consumes less than ten percent (10%) of the water used for in-building purposes may be constructed in the future. Before such a system is implemented, Applicants, or their successors and assigns, shall amend this decree and thereby provide notice of the proposed change to other water users by publication procedures required by then existing law. To the extent that evapotranspiration type wastewater treatment systems are required on any of the lots, an amendment of this decree shall be obtained so that the return flow figures stated herein can be adjusted to reflect the reduced return flows to the Dawson Aquifer of the Denver Basin. Eighty percent of the water used for irrigation purposes is assumed to be consumed. The irrigation figures described herein are the result of negotiations and settlement discussions between the Applicants, the State Engineer and the Division Engineers for Water Division No. 1 and Water Division No. 2, ("State water administration officials"). The figures are based on the specific facts and circumstances of this case. By stipulating to the entry of this Decree, the parties do not intend that the figures become a precedent in any future case, and the State water administration officials specifically reserve the right to challenge similar irrigation figures in any other matter.

10. The Application contained a request that fifteen of the additional thirty-six wells be operated as alternate points of diversion for Well U.D. 1-17798F, due to the fact that the lots upon which the fifteen wells are to be constructed appear to be within the "cylinder of appropriation" of Well U.D. 1-17798F. As a result of negotiations between Northgate and the State and Division Engineers, the request for alternate points of diversion has been withdrawn. All thirty-six wells shall be considered to deplete the flow of a natural stream at an annual rate greater than

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one-tenth (1/10) of one percent (1%) of the annual rate of withdrawal from the Dawson Aquifer within 100 years. Therefore, such ground water is "not nontributary ground water" as that term is defined in §37-90-103(10.5), C.R.S. (1990). Northgate has obtained a judicial quantification of the volume of ground water in the Dawson Aquifer which underlies the Fourth Filing of the Bent Tree Subdivision, (i.e. Case No. 97CW262, filed in Water Division No. 1). Northgate has agreed not to pursue its claim to use, reuse and successively use to extinction, all of the return flows which are attributable to pumping of the thirty-six wells; provided, however, that Northgate and its successors and assigns shall be allowed to take credit for such return flows to replace the pumping of water from the Dawson Aquifer.

11. Northgate's engineering consultants have analyzed the extent of depletions to surface streams associated with the diversion of water from the thirty-six wells. A computer model, which is based upon the best information currently available from the State Engineer's data files, was used for this purpose. At the end of three hundred years of pumping, depletions to the South Platte River Basin are projected to be 0.39 of an acre foot per year and depletions to the Arkansas River Basin are projected to be 0.33 of an acre foot per year. Out-of-priority depletions will be augmented in accordance with the criteria outlined below.

12. In order to replace projected depletions, The Great Divide Water Company (Great Divide) will deliver the required volume of nontributary ground water to the South River and Arkansas River basins each year. Northgate will assign to the Bent Tree Property Owners Association for use in this augmentation plan, 0.72 of an acre foot of nontributary ground water administered by Great Divide. The nontributary water rights administered by Great Divide were decreed by the District Court for Water Division No. 1 in Case Nos. W-8269-76, 80CW369, 84CW621, 82CW295 and 87CW193. The water is presently being delivered using Well AD-3, Permit No. 43217-F, and Well U. D. No. 1-17798F. A description of the wells is as follows:

a. Well U. D. No. 1-17798F:

i. Legal Description: Located in the NE 1/4 NE 1/4, Section 17, Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado, at a point approximately 100 feet South and 75 feet West of the Northeast corner of said Section 17.

ii. Source: Nontributary Dawson-Arkose Aquifer of the Denver Basin.

