

Donald A. Carpenter
WATER JUDGE
Water Division No. 1
State of Colorado

The undersigned, on behalf of the objectors noted, hereby consent to the entry of this decree, and by evidencing their statements of opposition to the application in these proceedings.

The City and County of Denver acting
by and through its Board of Water
Commissioners

By Kenneth J. Broadhurst
Attorney

The State of Colorado acting by and
through C. J. Kuiper, State Engineer

By Donald A. Carpenter
Attorney

Dixon Johnston acting by and through
his attorneys, Holland and Hart

By Kendall T. Sanford
Attorney

11. Nothing herein shall be deemed to be a waiver of any rights under nor a release of any property, including the water right the subject hereof, from that certain note and deed of trust recorded March 27, 1972 in the Park County, Colorado real property records at Book 217, Page 863, which note and deed of trust are now held by the Colorado National Bank as Trustee Without Recourse.

DATED this 8th day of July, 1976.

State Engineer shall have the availability of all of the above referred to reports at any time upon reasonable request.

8. If at any time the State Engineer, the Division Engineer for Water Division No. 1, the applicant or any of the parties who have filed opposition in this matter shall determine that the factual basis upon which this decree is predicated has changed to the injury of other water rights, this Court shall retain jurisdiction to hear the contention of such person and reopen this matter for consideration of further terms and conditions. The State Engineer, the Division Engineer for Water Division No. 1, the applicant, or any of the parties who have filed opposition in this matter shall bear the burden of proof on all issues therein.

9. The State Engineer in the discharge of his responsibility with respect to the processing of applications for permits to drill wells to provide domestic and household-use-only water service for 500 single-family residential equivalent units within The Stagestop Filings 1 and 2, through individual on-lot wells sought under the provision of 1973 C.R.S. 37-92-602, shall recognize the existence and operation of this plan of augmentation, and shall require the applicant, as a condition precedent to the issuance of any such well permit, to file as an attachment to their application a receipt from the Water Clerk of the Water Court, Water Division No. 1 for the payment herein of a \$5.00 supplemental docket fee for the recording in these proceedings of each well applied for.

10. As a condition of the augmentation plan, well permits will not be issued until The Stagestop Reservoir is shown to be capable of storing the entire amount of 12.5 acre-feet of water decreed to it under this decree, and the land to be dried up has been monumented as required herein and irrigation water has been permanently withdrawn therefrom.

case may be, shall annually designate to the Division Engineer an individual as representative of said parties to be contacted by the Division Engineer for the purpose of complying with the provisions of this decree.

E. The State Engineer and Division Engineer of Water Division No. 1 shall not, at the request of senior appropriators, order the curtailment of diversion through wells used to provide domestic and household-use-only water service to the 500 single-family residential equivalent units for which this plan of augmentation has been approved so long as the plan of augmentation is being administered in accordance with the terms of this decree. If the plan of augmentation is not implemented in accordance with this decree, or if water is not available in Old House Creek and replacement is not made, the wells provided for shall not be allowed to divert.

6. This decree shall be recorded in the Office of the Clerk and Recorder of Park County and be a covenant running with the land to be developed under the augmentation plan set forth herein, and shall be specifically enforceable against the applicant as a land owner and against each subsequent lot purchaser and his transferees.

7. As a condition of this decree, the applicant shall report to the Court on a date four years from the date this decree is entered and quadrennially hereafter as to the operation of said plan and the development of said subdivision. Such report shall include, but not be limited to, monthly reservoir storage reports from April through October of each year, wells drilled, total diversions attributable to wells drilled, occupancy rate and reservoir releases. In addition, weekly reports shall be taken from a measuring device to be located on Old House Creek above the reservoir. Said reports shall designate the time of day that each report is taken. These reports shall be taken for the first four years after the decree on a weekly basis and a monthly basis after that time. The

and seepage losses. The remaining portion of the Crosier Ditch right, not used for storage, will be returned to Old House Creek.

B. During the period from October 1 to April 30 of each water year, the Division Engineer shall require the applicant, its successors or assigns to release from storage in The Stagestop Reservoir such amounts of water at such rates of flow as he deems necessary to offset the depletions resulting from the provision of domestic and household-use-only water service to the then existing number of single-family residential equivalent units being served within The Stagestop Filings 1 and 2. The total, aggregate amount of such releases required during that period shall not exceed 9.1 acre-feet.

C. The State Engineer, in the discharge of his responsibility with respect to the processing of applications for permits to drill wells and use ground water for the provision of domestic and household-use-only water service to 500 single-family residential equivalent units within The Stagestop Filings 1 and 2, either through 20 individual domestic on-lot wells sought under the provisions of 1973 C.R.S. 37-92-602 or through 480 individual on-lot household-use-only wells sought under the provisions of 1973 C.R.S. 37-92-602, may issue such permits if the provisions of this plan for augmentation are in operation. Well permits for 20 domestic wells shall limit water use to one single-family residential equivalent unit with outside use limited to not more than 1,000 square feet of lawn and/or garden space. Each permit shall provide for its revocation as to all outside use by the State Engineer if the permit holder is found to be using water in excess of the irrigation of 1,000 square feet.

D. The applicant and/or The Stagestop Owners Association, which is comprised of all lot owners in the subdivision described herein, shall be liable for the regulation and enforcement of the conditions of this decree and shall have the right to acquire necessary additional water to meet unexpected demands during periods of drought when consumption exceeds replacement. The Stagestop Owners Association or the applicant, as the

family residential equivalent units located or to be located within the boundaries of The Stagestop Filings 1 and 2.

3. All land lying under the Crosier Ditch which has historically been irrigated with water diverted from the exercise of the water right decreed to that ditch shall be permanently removed from irrigation with water from Old House Creek. The land thus removed from irrigation is located within Sections 15 and 16, Township 9 South, Range 74 West of the 6th P.M., identified by reference to the Certificate of Survey attached hereto and marked Exhibit B. This land shall not henceforth be irrigated by any water presently available to it, including any water released from the reservoir under the terms of this decree, or other waters transferred to the land until an appropriate proceeding is commenced in Water Court. The total land historically irrigated by the Crosier Ditch is identified by a Certificate of Survey, attached hereto and marked Exhibit B.

4. Water diverted under the Crosier Ditch water right which is to be used for depletion make up under this decree may not be used for any purpose other than to provide up to 9.1 acre-feet of water storage per year in The Stagestop Reservoir, plus an additional 3.4 acre-feet of water per year to offset expected evaporation and seepage losses in the reservoir, and to provide for summer depletion replacement.

5. The State Engineer, the Division Engineer of Water Division No. 1 and other water administrative officials charged with the responsibility of administering the waters of Tarryall River and the South Platte River shall administer the plan of augmentation approved herein in the following manner:

A. At such times during the period May 1 to September 30 as diversions under the water right decreed to the Crosier Ditch are in priority, the Division Engineer shall allow The Stagestop Reservoir to be filled to its capacity of 9.1 acre-feet, plus 3.4 acre-feet of water for expected evaporation

in the manner set forth herein and be required to recognize the decree approving the augmentation plan in the processing of applications for well permits for 500 single-family residential equivalent units including 20 domestic well permits under the provisions of 1973 C.R.S. 37-92-602 and for 480 in-house-only well permits provided the augmentation plan herein approved is carried into operation. Permits for the 20 domestic wells shall limit water use to one single-family residence with outside use limited to the irrigation of not more than 1,000 square feet of lawn and/or garden area. The permit shall provide that if outside use in excess of irrigation of 1,000 square feet of land occurs, the permit may be revoked by the State Engineer as to all outside use.

DECREE

IT IS THEREFORE ORDERED ADJUDGED AND DECREE AS FOLLOWS:

1. The entire flow of the water right decreed to the Crosier Ditch is modified to permit the diversion of that rate of flow for storage in The Stagestop Reservoir.

The accumulative amount for any yearly period shall not be more than 9.1 acre-feet of water, plus 3.4 acre-feet per year for expected evaporation and seepage losses.

Water under rights modified by this decree is to be held for release to Old House Creek and Tarryall River to offset depletions to the Tarryall River resulting from the provision of domestic and household-use-only water service to 500 single-family residential equivalent units located or to be located within the boundaries of The Stagestop Filings 1 and 2 as shown on the attached Exhibit A.

2. Such amounts as are not required for storage by this decree to fulfill the provisions of the plan for augmentation shall be returned to Old House Creek to compensate for the May 1 to September 30 depletions resulting from the provision of domestic and household-use-only water service to 500 single-

FINDINGS.

The Court finds that by the imposition of the conditions set forth in these findings, the Crosier Ditch water right may be modified without adversely affecting the water rights of any other appropriators in the Tarryall River. The Court finds that by the institution of the augmentation program herein approved, the applicant, its successors or assigns, may secure permits for and use of 20 on-site domestic wells and 480 household-use-only wells under the provisions of 1973 C.R.S. 37-92-602 without adversely affecting any other water right in the Tarryall River Basin. The Court finds that the water right sought to be modified herein has historically irrigated 20 acres of land which land is to be dried up according to the augmentation plan. The Court finds that the plan for augmentation, if carried out, will obviate the necessity of curtailing the diversions through the facilities required to serve the 500 single-family residential equivalent units, except to the degree that there is insufficient water in Old House Creek to provide for replacement, but in that case there may be a necessity for curtailing the use of water by the residential units or purchase and/or lease of additional water for the purpose of insuring that no injury occurs to the other vested rights.

CONCLUSIONS OF LAW

The Court concludes as a matter of law that:

1. The modifications sought for the water right decreed to the Crosier Ditch under the conditions set forth herein will not adversely affect any other water right in the Tarryall River Basin and may be lawfully decreed by this Court;
2. The plan of augmentation proposed by the application is one which is contemplated by law, and if administered in accordance with this decree will permit the depletions associated with the provision of domestic and household-use-only service, to 500 single-family residential equivalent units in The Stagesop Filings 1 and 2, all without adversely affecting any other water right in the Tarryall River Basin;
3. The State Engineer may lawfully be required under the terms of this decree to administer the plan of augmentation

shall be monumented by four-by-four wooden posts and surveyor caps at all corners, and a description of said land to be dried up will be evidenced by a Certificate of Survey, a copy of which is attached hereto and marked Exhibit B.

11. PROPERTY OWNERS ASSOCIATION.

Upon final approval of this decree by the Court, the applicant will forthwith convey title to the water rights involved herein to The Stagestop Owners Association, which association is a non-profit Colorado corporation and whose existence is evidenced by a Certificate of Incorporation, attached hereto and marked Exhibit C. Said conveyance will be for the benefit of the owners of each of the lots in the subdivision. The Stagestop Owners Association will have the right to enforce applicant's obligations to permanently remove land from irrigation, to supply storage of water as may be needed and otherwise to enforce the decree for and on behalf of The Stagestop Owners Association and the applicant, said entity to be entirely liable for the regulation and enforcement of the terms and conditions of this decree. The Association shall have the further right to acquire necessary additional water to meet unexpected demands during periods of drought when consumption exceeds replacement. Nothing herein shall be deemed to be a waiver of any rights under nor a release of any property, including the water right the subject hereof, from that certain note and deed of trust recorded March 27, 1972 in the Park County, Colorado real property records at Book 217, Page 863, which note and deed of trust are now held by the Colorado National Bank as Trustee Without Recourse.

12. PROTECTIVE COVENANTS.

Upon the approval of this decree by the Court, and immediately upon filing the plats of The Stagestop Filings 1 and 2 with the County, the applicant shall cause to be recorded in the County of Park, State of Colorado, protective covenants which shall provide the terms and conditions upon which owners may obtain and drill wells for the supply of water to their property. Said covenants shall also provide that the only acceptable sewage disposal system shall be sand filtration systems which preclude evaporation at the surface, or other acceptable absorption disposal systems. Said covenants shall provide that no other type of sewage disposal system shall be allowed. A copy of said covenants is attached

The entire amount of irrigated meadow land will be permanently removed from irrigation by the Crosier Ditch. The water thus freed from irrigation duty will be used to replace the expected depletions caused by The Stagestop Filings 1 and 2.

During the irrigation season there will be 7.5 acre-feet of water consumptively used by the subdivision, and during the non-irrigation season, there will be 9.1 acre-feet of water consumptively used. Since historically the Crosier Ditch did not take water for irrigation from October 1 through April 30, and since the subdivision will be using water during that time, a portion of the right will have to be changed to a storage right. The stored water will then be released at the direction of the State Engineer to offset the ongoing winter depletion period.

The proposed reservoir will be 2.0 surface acres with an average depth of 6 feet, and having a capacity of 12.5 acre-feet. Construction of The Stagestop augmentation reservoir will be across Old House Creek in the NW $\frac{1}{4}$, Section 15, Township 9 South, Range 74 West.

From an operating standpoint, the winter release water should be in the reservoir for only 6 months; however, evaporation and seepage losses will be figured on a year around basis. The 2.0 surface acres of the reservoir will cause 3.4 acre-feet of evaporation and seepage losses per year.

The augmentation plan therefore proposes to take the Crosier Ditch water, change the point of diversion to The Stagestop reservoir to include a storage right, not to exceed 9.1 acre-feet per year, plus the storage of 3.4 acre-feet per year expected evaporation and seepage losses. The rest of the Crosier Ditch right will be abandoned to the river to compensate for the summer depletion in the amount of 7.5 acre-feet.

10. LAND TO BE WITHDRAWN FROM IRRIGATION.

As referred to in paragraph 5 above, a total of 20.0 acres of land historically irrigated by the Crosier Ditch shall be permanently removed from irrigation. Said irrigated property

Because of the nature of the proposed domestic and household-use-only wells for the 50 single-family residential equivalent units planned for The Stagestop Filings 1 and 2, the consumptive use which is expected to occur, with full development of said 500 single-family residential equivalent units, is 16.6 acre-feet per year. Some of such depletion is expected to occur during the period from October 1 to April 30 when water has not been historically diverted through the exercise of the water right decreed to the Crosier Ditch.

7. SOURCE OF WATER.

The source of supply for the water service for the 500 single-family residential equivalent units is ground water occurring in the drainage basin of Tarryall River which is hydraulically connected with and supporting the flow of waters in Tarryall River. The means of diversion for the production of water for such service will be through individual, on-lot, domestic wells or household-use-only wells drilled under permits which may be issued by the State Engineer's Office under the provisions of 1973 C.R.S. 37-92-602.

8. REASON FOR PLAN OF AUGMENTATION.

If no augmentation program is instituted to offset depletions expected to result from the use of water for the 500 single-family residential equivalent units, material injury may occur to other water rights in the Tarryall River Basin. The augmentation program is proposed to eliminate the possible injury to other water rights in the Tarryall River Basin and to assure the granting of permits for wells under 1973 C.R.S. 37-92-602 and to prevent curtailment of diversions through facilities required to serve the 500 single-family residential equivalent units, except to the degree that there is insufficient water in Old House Creek to provide for replacement.

9. BRIEF DESCRIPTION OF PLAN OF AUGMENTATION.

The augmentation plan will provide water in the amount required and at the time needed to replace future depletions by The Stagestop Filings 1 and 2. This will require the release of water either through direct flow out of Old House Creek or through a contemplated augmentation storage reservoir on Old House Creek.

ship 9 South, Range 75 West, all in Park County, Colorado. Access to the project is from U. S. Highway No. 285 at Jefferson, then South approximately 7 miles on County Road #77, the Tarryall Road. The location of the proposed development is shown on Exhibit A, and will be known as The Stagestop Filings 1 and 2. The proposed project is planned for 500 single-family residential lots. The water supply for each lot will be obtained from individual wells, and sewage disposal will be by individual septic tanks and leaching fields. The lots will range from 2 acres in size to 5 acres, with the average size about 3 acres.

4. WATER RIGHTS OWNED OR TO BE USED BY APPLICANT.

The applicant owns the right to use the entire flow out of Old House Creek for irrigation purposes with date of appropriation of May 1, 1866 as decreed to the Crosier Ditch by the District Court of Park County on October 18, 1889.

The water right as described above is the subject of this application and will be modified to the extent necessary to implement the plan of augmentation approved herein.

The water right described above is held subject to the terms of a deed of trust, dated June 7, 1971 given by Morris Burk to the Public Trustee of Park County to secure to Mr. Dixon Johnston the payment of a note of even date. Said Deed of Trust was recorded March 27, 1972 in Book 217 at Page 863 of the Park County, Colorado records. Said note and Deed of Trust were assigned on June 27, 1972 to the Colorado National Bank as Trustee Without Recourse.

5. HISTORIC USE OF WATER.

The historic use of water diverted through the exercise of the water rights decreed to the Crosier Ditch has been for the irrigation of 20.0 acres of land within the water shed of Old House Creek. Net stream depletion to Old House Creek and the Tarryall River Basin resulting from the consumptive use of irrigation water by the Crosier Ditch is 1.0 acre-feet per acre. The 20.0 acre tract of land irrigated thus yields a transferable consumptive use of 20.0 acre-feet per year.

6. THE PROPOSED CHANGE OF USE.

IN THE DISTRICT COURT IN AND FOR THE

WATER DIVISION NO. 1

STATE OF COLORADO

CASE NO. W-8108 (75)

IN THE MATTER OF THE APPLICATION)
FOR WATER RIGHTS OF:)

THE STAGESTOP, a Colorado Limited)
Partnership, IN THE SOUTH PLATTE)
RIVER, TRIBUTARY INVOLVED: TARRYALL)
CREEK IN PARK COUNTY.)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECREE MODIFYING
WATER RIGHTS AND APPROVING
PLAN OF AUGMENTATION

THIS MATTER, having come on for hearing upon the application of THE STAGESTOP, a Colorado Limited Partnership, for change of water rights and aproval of plan for augmentation which was filed on December 31, 1975 and the Court having considered the pleadings, the files herein and the evidence DOTH FIND:

1. NOTICE AND JURISDICTION.

Timely and adequate notice of the pendency of these proceedings has been given in the manner required by law and the Water Judge sitting in this Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties, whether they have appeared or not.

2. OBJECTIONS AND CONSENT.

The City and County of Denver acting by and through its Board of Water Commissioners, and the State of Colorado acting by and through C. J. Kuiper, State Engineer, and Dixon Johnston acting by and through his attorneys, Holland and Hart, have appeared and filed statements of opposition. No others have appeared to object to the proceedings and the time for filing any other statements of opposition has expired.

3. THE PROPERTY INVOLVED.

The applicant owns approximately 1460 acres of land which lies in parts of Sections 1, 12, 13, 14, 23 and 24, Town-