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DISTRICT COURT, WATER DIVISION NO. 2, CONSENT DECREE

AUG 26 1984

CASE NO. 79 CW 139

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND CONSENT DECREE

Clerk

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF PAN-ARK
LAND AND CATTLE CORPORATION, A COLORADO CORPORATION, IN LAKE
COUNTY.

THIS MATTER coming on to be heard this 26 day
of Aug., 1984 by the Water Court and the Court having reviewed
the file herein and evidence presented in behalf of the Applicant
and specifically having noted that the within decree has been
approved in substance and form by all of the Objectors herein
and the Court having further advised itself in the premises
makes the following Findings and Ruling.

FINDINGS OF FACT

1. That the said Application was filed on August 9, 1979.
2. That the Water Clerk caused publication of such filing as provided by statute; that the time for filing Statements of Opposition expired on the last day of October, 1979, and that three such statements were timely filed by Charles J. Zeise, attorney at law, on behalf of the Southeastern Colorado Water Conservancy District; by Timothy J. Flanagan and Fletcher Thomas, Kelly, Stansfield and O'Donnell, on behalf of Public Service Company of Colorado; and John U. Carlson, Holland and Hart, on behalf of Twin Lakes Reservoir and Canal Company.
3. That said Application concerns a claim for Approval of Plan of Augmentation in connection with three platted subdivision, namely, Twin Lakes Addition No. 1-A, No. 1-B, and No. 1-C, all being part of Mt. Elbert Plamor Ranch, located in the vicinity of Twin Lakes, Colorado, hereinafter identified as "Pan-Ark Estates", and hereinafter more particularly described in Lake County, Colorado.
4. That on March 24, 1980 the Referee re-referred this case to the Water Judge.
5. That the Water Judge has been presented with this proposed Decree and finds that the same has been approved

in substance and form by the Applicant and all appearing Objectors.

6. Pan-Ark Estates consists of the Twin Lakes Addition No. 1-A, No. 1-B, and No. 1-C, which are three duly platted subdivisions of Mt. Elbert Plamor Ranch, all located in Sections 9 and 10, Township 11 South, Range 80 West, of the 6th P.M., Lake County, Colorado, and are more particularly described as follows:

Twin Lakes Addition No. 1-A

NW 1/4, Sec. 9, T 11 S, R 80 W, of the 6th P.M., containing 160 acres more or less.

Twin Lakes Addition No. 1-B

SW 1/4, Sec. 10, T 11 S, R 80 W, of the 6th P.M., containing 160 acres more or less.

Twin Lakes Addition No. 1-C

NE 1/4, Sec. 9, T 11 S, R 80 W, of the 6th P.M., containing 160 acres more or less.

The Applicant, Pan-Ark Land and Cattle Corporation, was and is the developer of Pan-Ark Estates and is the present owner of various unsold lots within Pan-Ark Estates. The remaining lots are owned by various individual or other legal entities. At the date of filing the Application there were 49 residences connected to the Applicant's water system and that at this date there are 65 residential units connected to the water system.

The number of platted lots in Pan-Ark Estates is 1,156 with an estimated maximum developable homesites of 400.

7. Pan-Ark Estates is not within a designated groundwater basin and all water and water courses within Pan-Ark Estates are tributary to the Arkansas River or its tributaries.

8. That the Application concerns a Plan for Augmentation for two wells, Huntzinger Well No. 1 (presently existing) and Huntzinger Well No. 2 (proposed to be constructed), hereinafter called "Well No. 1" and "Well No. 2", and the use claimed is for municipal, including in-house domestic use, to include campers, trailers and mobile homes; construction of homes; bleeding of mains to prevent freezing and stagnation and line losses.

9. That the Applicant anticipates the equivalent

for in-house water consumption use purposes of 400 residential units at the time that Pan-Ark Estates is fully developed.

10. That the Applicant contemplates for its development per residential unit (or the equivalent thereof) 90 gallons use per day per unit computed on a year around basis with the understanding that significant variations of use per unit will occur by reason of the seasonal and sporadic nature of the occupancy.

11. That the source of water supply at present consists of Huntzinger Well No. 1, located on Lot 675 of Twin Lakes Addition No. 1-A; further described as being in the SW 1/4 NW 1/4 of Section 9, T 11 S, R 80 W of the 6th P.M. and being 2600 feet from the north line of and 150 feet from the west line of said Section 9. The proposed location of Huntzinger Well No. 2 is 80 feet north of Well No. 1 and, likewise, is in Lot 675 of Twin Lakes Addition No. 1-A.

12. That the terrain of Pan-Ark Estates is mountainous, consisting of steep slopes, ridges and drainage courses and other areas of flat level ground. Forest cover consists of sparse, medium and dense areas of trees. Pan-Ark Estates is underlaid with glacial morain, consisting mostly of boulders, unconsolidated gravels, with a relatively thin covering of top soil, thus, providing excellent means of sewage disposal by the installation of septic tanks and non-evaporative leach fields.

13. That sewage disposal presently and for the contemplated future for each of the residential units is and is to be by means of septic tanks with non-evaporative leach fields.

14. That by reason of the nature of the sewage disposal by septic tanks and non-evaporative leaching fields and by reason of the character of the terrain and underlying soil conditions and because of the Protective Covenants (hereinafter described) imposed upon the land prohibiting irrigation as well as evaporative transpiration sewage disposal systems, only 20% of the annual water supply requirements will normally be consumptively used.

15. That the water supply requirements for the full 400 unit development level of Pan-Ark Estates are estimated to be 36,000 gallons per day with an annual demand of 40.4 acre feet per year. Accordingly, the total consumptive use is anticipated to be 8.08 acre feet per year.

16. That the Applicant owns 8 shares of stock of

Twin Lakes Reservoir and Canal Company, which shares of stock have historically and do realistically yield an average of 8.08 acre feet per year.

17. That by operation of the within Plan of Augmentation the Applicant will replace the expected depletion of the development by present and permanent assignment of its 8 shares of stock of Twin Lakes Reservoir and Canal Company referred to above and the use of the water represented by said 8 shares of stock to the Division Engineer, Water Division No. 2.

18. That if the Plan for Augmentation is operated and administered in accordance with the above detailed description, it will have the effect of replacing water in the stream at the time and places and in the amounts of the depletions caused by the Pan-Ark Estates use of water. As a result of the underground water to be diverted by the two domestic supply wells, which would otherwise be considered as appropriated and unavailable for use, will now be available for appropriation without adversely affecting the vested water rights or conditionally decreed rights in the Arkansas River or its tributaries.

19. That all of the lot owners, lot purchasers, and future property owners of land in Pan-Ark Estates will be bound by the terms of the Decree in this matter and the Decree shall be filed of record in Lake County, Colorado, and thereby constitute a covenant running with the land. The Protective Covenants recorded December 11, 1978 in Book 433 at Page 137, Lake County records, shall be amended to provide that the use of Huntzinger Well No. 1 and Well No. 2 water will be expressly limited to domestic and in-house purposes only and further that the amended Protective Covenants shall be recorded in Lake County, Colorado, which shall constitute a covenant running with the land. No further amendment to the Protective Covenants shall be made inconsistent with the terms of this Ruling absent further Order of the Water Court.

20. That the obligations and rights attendant upon this Plan for Augmentation shall be assumed by and assigned to Mount Eibert Water Association (a non-profit corporation) duly incorporated in the State of Colorado on October 8, 1963, (hereinafter called "MEWA"). Said MEWA shall have the legal capacity to sue its member property owners in Pan-Ark Estates and be sued by the State Engineer and all affected water users, to enforce compliance with the terms of this Plan. The Articles of Incorporation of said corporation shall be duly amended and proper filing made with the Secretary of State for the State of Colorado to specifically require and empower MEWA to enforce the terms of this Plan and the Protective Covenants,

as amended, identified above. MEWA shall report to the Division Engineer on or before January 1st of each year of its existence, the name and address of the President of the corporation, the number of equivalent dwelling units then constructed and available for occupancy.

21. That the Court finds that five years operation of this Plan for Augmentation at a level of 400 residences is sufficient to determine the actual water requirements for Pan-Ark Estates and that at any time thereafter, Applicant or its successors may file an Application for Approval of a Plan for Augmentation for the purpose of expanding or changing the uses decreed herein or other making use of that part of the Twin Lakes Reservoir and Canal Company shares subject to this Decree which, based on such operation, appears to be in excess of the actual water requirements for the Pan-Ark Estates in the manner herein provided subject to the express limitation that said shares are permanently committed to Pan-Ark Estates and may not be used in whole or in part on property other than Pan-Ark Estates.

22. That in order to comply with C.R.S. 1973, 37-92-304(6) the following Findings and Conclusions are made:

(a) The historic use to which the water rights involved were put is set forth as follows: the 8 shares of Twin Lakes water to be used for augmentation herein have historically derived their water from decrees appurtenant to the Twin Lakes Reservoir from whence stored water was released to the Arkansas River and travelled down to the diversion works of the Colorado Canal east of Pueblo from whence it was conveyed some fifty miles east to provide irrigation water for some 50,000 acres of land in Crowley County, Colorado.

(b) The proposed future use of said Twin Lakes shares is to augment well depletions by Pan-Ark Estates subdivision legally identified as: Twin Lakes Addition No. 1-A, No. 1-B, and No. 1-C, all being in the Mt. Elbert Plamor Ranch, Lake County, Colorado and being part of Sections 9 and 10, T 11 S, R 80 W of the 6th P.M.

(c) Any approval of award herein should be made and is hereby made subject to reconsideration by the Water Judge on the question of injury to vested rights of others for five years after the date the subdivision is built to a level of 400 units, herein which period is necessary or desirable to preclude or remedy such injury.

23. That the Court finds that by the imposition

of the conditions set forth in these Findings, wells existing and contemplated herein may be utilized without adversely affecting any vested water rights or decreed conditional water rights in the Arkansas River or its tributaries.

24. That the Applicant has furnished acceptable proof as to all claims made.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

That the Applicant be and the same hereby is awarded approval of its Plan for Augmentation, to-wit:

NAME AND ADDRESS: Pan-Ark Land and Cattle Corporation
a Colorado corporation
P. O. Box 285
Leadville Colorado 80461

NAME OF STRUCTURE: Huntzinger Well No. 1
Huntzinger Well No. 2

LOCATION OF WELLS: Huntzinger Well No. 1 is located on Lot 675 of Twin Lakes Addition No. 1-A of the Mt. Elbert Plamor Ranch, being further described as being in the SW 1/4 NW 1/4 of Section 9, T 11 S, R 80 W, of the 6th P.M., Lake County, Colorado and being 2600 feet from the north line and 150 feet from the west line of said Section 9.

Huntzinger Well No. 2 is to be located in Lot 675 of Twin Lakes Addition No. 1-A of the Mt. Elbert Plamor Ranch being in the SW 1/4 NW 1/4 of Section 9, T 11 S, R 80 W, of the 6th P.M., Lake County, Colorado and being 2520 feet from the north line of and 150 feet from the west line of said Section 9.

AMOUNT OF WATER: 40.4 acre feet per year of gross diversions, of which not more than 8.08 acre feet per year may be consumptively used.

USE OF WATER: Domestic, for in-house use only, with no irrigation or any other outside use allowed.

MEANS OF DIVERSION: Two wells - Huntzinger Well No. 1 and Huntzinger Well No. 2.

IT IS FURTHER ORDERED that to replace, or to augment, the consumptive use of 8.08 acre feet of said wells the Applicant will permanently assign on or before October 1, 1984 to the Division Engineer, Water Division No. 2, the right to use, for augmentation purposes, the water represented by 8 shares

of stock of Twin Lakes Reservoir and Canal Company, evidenced by a stock certificate. Further that the Applicant shall be responsible for all annual assessments attributable to said shares of stock. The Division Engineer shall release from Twin Lakes or the Arkansas River the water represented by 6 shares at an even rate or as close to it as is administratively practical.

IT IS FURTHER ORDERED that the water diverted from Huntzinger Well No. 1 and Huntzinger Well No. 2 pursuant to this Plan of Augmentation is subject to the following express limitations and restrictions:

(a) That not more than 40.4 acre feet of water shall be diverted each year, and not more than 8.08 acre feet of water shall be consumptively used each year.

(b) That not more than 400 residential units shall be serviced with water from Huntzinger Well No. 1 and Huntzinger Well No. 2.

(c) That all water subject to this Plan for Augmentation shall be used in Pan-Ark Estates, to-wit: Twin Lakes Addition No. 1-A, No. 1-B and No. 1-C, all being part of Mt. Elbert Plamor Ranch, being located in parts of Section 9 and 10, T 11 S, R 80 W, of the 6th P.M., Lake County, Colorado.

(d) That water useage is restricted to domestic in-house use and shall be deemed to include campers, trailers, mobile homes, construction of homes, bleeding of mains to prevent freezing and stagnation, and line losses, subject to the limitation that no water shall be used for irrigation purposes and the same is expressly prohibited.

(e) All sewage disposal shall be by septic tanks with non-evaporative leach fields.

IT IS FURTHER ORDERED that the Applicant shall install totalizing flow meters on both wells. Further Applicant shall install and maintain such other water measurement devices, recording devices, flow meters, constant gauges, and in-let and out-let measurement and recording devices as the case may be, as are deemed essential by the office of the State Engineer and the same shall be installed and operated in accordance with the instructions from said office. Applicant shall also keep a monthly report of pumpage from all wells and shall provide the same to the Division Engineer quarterly. If pumping exceeds a quarterly rate of 10.1 acre feet of water, the pumping shall be curtailed to that level and so as not to exceed 40.4 acre feet of water in any four consecutive quarters.

IT IS FURTHER ORDERED that the Applicant shall prepare and record in Lake County an amendment to the Protective Covenants affecting all Pan-Ark Estates, which covenants as amended, shall expressly prohibit out of house use of water from Huntzinger Well No. 1 and No. 2 and which covenants shall run with the land and contain adequate provisions for the enforcement of the water restriction, including granting the Division Engineer, Water Division No. 2, the Southeastern Colorado Water Conservancy District, and other affected water users, the right to enforce said covenants. The covenants shall be binding not only on the Applicant, but on all land owners and subsequent purchasers in Pan-Ark Estates and the same shall be bound by this Decree in this manner and when this Decree is filed of record in Lake County, it shall constitute a covenant running with the land.

IT IS FURTHER ORDERED that the Mount Elbert Water Association, a Colorado non-profit corporation, shall enforce the restrictions in the Protective Covenants running with the land and shall be required to do so by its Articles of Incorporation, as amended. It shall be empowered to be sued on behalf of its members and property owners by any person entitled to enforce the Decree and covenants and it shall sue, if needed, its member property owners or other persons in use to enforce compliance with the terms of said Decree and covenants. On or before January 1 of each year of its existence, the Association (MEWA) shall report to the Division Engineer the name and address of the President, the number of residences then constructed and available for occupancy and the Association (MEWA) and the Applicant shall pay the Twin Lakes Reservoir and Canal Company annual assessment.

IT IS FURTHER ORDERED that the Decree shall become effective as to Pan-Ark Estates when:

(a) The Protective Covenants have been duly amended to expressly prohibit out of house use of water from Huntzinger Well No. 1 and Well No. 2 as above provided.

(b) The Articles of Incorporation of Mount Elbert Water Association (MEWA) have been duly amended and filed with the Secretary of State's Office specifically requiring and enabling said Association (MEWA) to enforce the terms of the subject Protective Covenants as well as the terms and provisions of this Decree.

(c) This Decree has been recorded in the records of Lake County and a copy thereof filed with the Clerk of this Court; and

(a) The Applicant has assigned to the Division Engineer, Water Division No. 2, the right to use for augmentation purposes the water represented by 8 shares of stock of Twin Lakes Reservoir and Canal Company evidenced by a stock certificate, subject only to the above ordered stipulation.

IT IS FURTHER ORDERED that proof of compliance with Paragraphs (a), (b), (c), and (d), above, shall be sent to the Southeastern Colorado Water Conservancy District, Division and State Engineer.

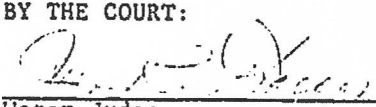
IT IS FURTHER ORDERED that Applicant will apply to the Colorado Division of Water Resources for a permit to drill Huntzinger Well No. 2, making reference to the Plan of Augmentation as herein approved and the State Engineer shall issue permits for the construction of Huntzinger Well No. 2 as proposed to be constructed as an integral part of this Plan of Augmentation and the State Engineer is further ordered to issue such permit within a reasonable time following the entry of a Decree herein.

IT IS FURTHER ORDERED that the preceding award is made subject to a reconsideration by the Water Judge on the question of injury to vested rights of others until five years after the date of the Decree and the subdivision is built to a level of 400 residences, or until June 30, 2004, whichever is first, which period is necessary, or desirable, to preclude or remedy such injury.

IT IS FURTHER ORDERED that copies of this ruling shall be mailed as provided by statute.

DONE AND ENTERED in Open Court this 28th day of August, 1984.

BY THE COURT:


Water Judge

APPROVED AS TO SUBSTANCE AND FORM:

FAIRFIELD AND WOODS

By  7/20/84
Howard Holme
1600 Colorado National Building