

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO  901 Ninth Avenue PO Box 2038 Greeley, CO 80632-2038	<b>FILED Document – District Court</b> <b>2010CW124</b> <b>CO Weld County District Court 19th JD</b> <b>Filing Date: Jan 21 2011 7:08AM MST</b> <b>Filing ID: 35495108</b>
CONCERNING THE APPLICATION FOR WATER RIGHTS FOR BOX ELDER ESTATES HOMESITE SUBDIVISION HOMEOWNERS’ ASSOCIATION AND BOX ELDER ESTATES HOMESITE SUBDIVISION, LLC  IN ADAMS COUNTY, COLORADO	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
	Case Number <b>10CW124</b>  Division 1
<b>RULING OF THE REFEREE AND DECREE OF THE WATER COURT</b>	

The application in this case was filed on April 22, 2010. This matter was referred to the undersigned as Water Referee for the District Court in and for Water Division No. 1, State of Colorado (“Water Court”) by the Water Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969.

The Court, having made such investigations as are necessary to determine whether or not the statements in the application are true, and having become fully advised with respect to the subject matter of the application, does hereby make the following determinations of fact and law and enters this ruling and decree in this matter.

**FINDINGS OF FACT**

1. **The Application.** This matter involves the Application for Approval of Plan for Augmentation filed by Box Elder Estates Homesite Subdivision Homeowners Association, c/o Homeowners’ Concerns LLC, 2200 E. 104<sup>th</sup> Avenue, Suite 111, Thornton, Colorado 80233, (303) 450-0910.
  
2. **Jurisdiction.** All notices required by law have been duly given, and the Water Court has jurisdiction over the application and all parties affected thereby, whether or not they have chosen to appear.

3. Objectors. A statement of opposition to the application was timely filed by Henrylyn Irrigation District, which withdrew its statement of opposition on December 23, 2010. The time for filing additional statements of opposition has expired.

4. Background:

The Box Elder Homesite Subdivision Homeowners Association (the "Association") is composed of a total of 95 lots within in the Box Elder Estates Homesite Subdivision Filing No. 1 (the "South Subdivision") and Box Elder Estates North Homesite Subdivision (the "North Subdivision"). See **Figure 1** attached hereto. Water service to the 95 lots is by individual wells withdrawing water from the non-tributary Upper Arapahoe and Lower Arapahoe aquifers. Quantification of and approval for the use of water for in-house use from those aquifers and of the non-tributary Laramie Fox-Hills aquifer were approved by the District Court in and for Water Division No. 1 ("Water Court") in Case No. 00CW55, decreed on December 28, 2000 (North Subdivision) and in Case No. 08CW38, decreed on November 4, 2008 (South Subdivision). Wastewater resulting from the in-house use of such water is by individual septic system.

In Water Court Case No. 01CW89, entered on June 9, 2003, the Court approved a plan for augmentation by which out of priority depletions resulting from the irrigation of the 52 lots in the North Subdivision are replaced by the return flows from the in-house use of the non-tributary wells on the 95 lots located in the Association. Such irrigation water is withdrawn by three tributary wells (the "Kraft Wells") described below. Pursuant to the decree entered in Case No. 01CW89, a total of up to 487,872 square feet of lawn and gardens can be irrigated by the Kraft Wells and augmented by the wastewater return flows from the 95 individual non-tributary wells.

On October 20, 2003, the Association filed an Application to Amend Plan for Augmentation ("Application to Amend") in Water Court Case No. 03CW50. By the Application to Amend, the Association seeks approval to irrigate lawns and gardens in both the North Subdivision and the South Subdivision by the tributary Kraft Wells with the same replacement supply adjudicated in Case No. 01CW89, i.e., return flows from the in-house use of non-tributary Denver Basin groundwater on the 95 lots within the Association. Because this additional area to be irrigated would be relying on the same replacement source and amount as decreed in Case No. 01CW89 (limited to a total of 487,872 square feet of lawns and gardens), the amount of irrigated lawns and gardens per lot in both subdivisions would be reduced accordingly.

5. Plan for augmentation:

By this Application, the Association seeks to increase the total amount of irrigation allowed beyond that permitted by the decree in Case No. 01CW89 (as amended in Case No. 03CW350). Such increase in irrigation water use will be augmented by diverting the non-tributary Laramie-Fox Hills water available to the Association and delivering such non-tributary Laramie-Fox Hills water to Box Elder Creek in such amounts and at such times as is necessary to replace the increased out of priority depletions resulting from the increased irrigation.

A. Augmented structures:

The following three Kraft Wells will be augmented under this plan for augmentation:

1. Kraft Well No. 1 (048471-F) is located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T. 1 S., R. 65 W. of the 6<sup>th</sup> P.M., Adams County, Colorado at a point 50 feet north and 1,840 feet west of the southeast corner of said Section 14, for 1.7 cfs with an appropriation date of April 11, 1963.
2. Kraft Well No. 2 (048470-F) is located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T. 1 S., R. 65 W. of the 6<sup>th</sup> P.M., Adams County, Colorado at a point 1300 feet north and 2,140 feet west of the southeast corner of said Section 14, for 0.77 cfs, with an appropriation date of June 7, 1950.
3. Kraft Well No. 3 (048469-F) is located in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T. 1 S., R. 65 W. of the 6<sup>th</sup> P.M., Adams County, Colorado at a point 2,200 feet north and 1,200 feet west of the southeast corner of said Section 14, for 1.13 cfs, with an appropriation date of April 3, 1963.

The three Kraft wells were adjudicated in Water Court Case No. W-3663 on May 20, 1975 for the irrigation of 160 acres. These wells were included in Water Court Case No. 97CW127 for use in the South Subdivision (and other land), and in Case No. 01CW89 for use in the North Subdivision.

B. Augmentation source:

Non-tributary Laramie-Fox Hills water underlying the Association. The total amount of non-tributary Laramie-Fox Hills water available to the Association by virtue of the decree entered in Water Court Case No. 00CW55 is 40.4 acre-feet per year, and in Water Court Case No. 08CW38 is 24.5 acre-feet per year. Accordingly, the Association will divert up to 64.9 acre-feet per year from the Laramie-Fox Hills aquifer and place such water in Box Elder Creek to replace out of priority depletions resulting from the increased irrigation. The Association has completed the Laramie-Fox Hills augmentation well pursuant to well permit no. 68058-F.

C. Detailed plan for augmentation:

Water will be pumped from the tributary Kraft Wells described above in paragraph 3(A), and then delivered to the lots within the two subdivisions for irrigation use. Out of priority depletions resulting from such irrigation will be replaced by pumping water from the underlying non-tributary Laramie-Fox Hills aquifer in such amounts and at such times as is necessary to replace out of priority depletions, and such non-tributary water will be delivered directly to Box Elder Creek. Pursuant to C.R.S. § 37-90-137(9)(b) and the Denver Basin Rules, the Association may consume 98% of the amount diverted, relinquishing 2% of the amount diverted to the stream.

The amount of water from the non-tributary Laramie-Fox Hills aquifer available to the Association is equal to 64.9 acre-feet per year. After relinquishing 2% of this amount, the annual amount of water available to replace out of priority depletions resulting from the additional irrigation will total up to 63.6 acre-feet per year. Such annual replacement water will permit the irrigation of an additional 27.2 acres, or 1,183,938 square feet of lawns and gardens, based on irrigation consumption of 2.34 acre-feet per acre. (This amount of irrigation is in addition to the amount of irrigation permitted by the decree in Case No. 01CW89). As a result, each of the 95 lots will be entitled to irrigate an average of 12,399 square feet (0.285 acre) of lawns and gardens, one of which will be entitled to irrigate up to 18,417 square feet (0.423 acre) pursuant to this decree and the decree in Case No. 01CW89, as amended by Case No. 03CW350. A map showing the Association boundaries, which includes the area to be irrigated, and the location of the Laramie-Fox Hills well (permit no. 68058-F) is attached as Exhibit A.

6. Terms and Conditions: The plan for augmentation shall be subject to the following terms and conditions:

A. So as to ensure the operation and administration of the augmentation plan, the Association shall install and maintain such water measuring devices and implement such accounting procedures as may be required by the Division Engineer to verify that the amount of augmentation water equals or exceeds the amount of out of priority depletions resulting from the use of water under this plan for augmentation. A proposed accounting form is attached hereto as **Table 1**.

B. Pursuant to C.R.S. § 37-92-305(8), the State Engineer shall curtail all out of priority diversions, the depletions of which are not so replaced as to prevent injury to vested water rights.

7. Findings: The Water Court finds that, subject to the provisions of this decree, the subject plan for augmentation is sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water. If operated and administered pursuant to the terms of this decree, the plan for augmentation and exchange will prevent injury to vested water rights and decreed conditional water rights, and they will provide replacement water necessary to meet the lawful requirements of senior diverters at the time and location and to the extent such seniors would be deprived of their lawful entitlements by the diversions hereunder. Accordingly, the Water Court finds that the plan for augmentation as described herein should be, and hereby is approved, subject to the terms and conditions set forth herein.

### **CONCLUSIONS OF LAW, RULING AND DECREE**

8. Incorporation. The foregoing Findings of Fact are fully incorporated into this Ruling and Decree by this reference.

9. Legal Plan. The plan for augmentation decreed herein is, as a matter of law, permissible and comes within the definitions authorized by statute.

10. No Injury. The terms and conditions as set forth in this decree are adequate to prevent injury to the owners of, or persons entitled to use, water under a vested water right or a decreed conditional water right pursuant to C.R.S. § 37-92-305.

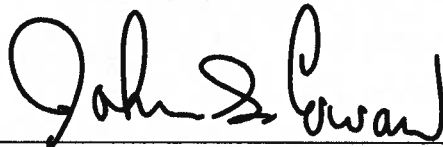
11. Administration. This decree is administrable by the water officials of the State of Colorado provided that the Applicants furnish to the Division Engineer or his representative upon request, appropriate records evidencing diversions and replacements pursuant to this decree.

12. Beneficial Uses. Applicant is entitled to use the water rights that are the subject of this decree for the beneficial uses set forth herein.

13. Retained Jurisdiction. The Water Court shall retain jurisdiction over the plan for augmentation pursuant to C.R.S. § 37-92-304(6) for reconsideration of injury to the vested rights of others for a period of five (5) years from the date of this decree. Any party desiring the Water Court to reconsider the question of injury must file a verified petition with the Water Court, setting forth the facts that cause such injury or are alleged to likely cause such injury, and the claimed injury. The party lodging the petition shall have the burden of proof to establish the facts and injury alleged in the petition.

It is accordingly ORDERED that this ruling will be filed with the Water Clerk subject to judicial review. It is further ORDERED that a copy of this Decree will be filed with the appropriate Division Engineer and with the State Engineer.

Dated: December 28, 2010



John S. Cowan  
Water Referee  
Water Division 1

This document was e-filed pursuant to C.R.C.P. 121 §1-16. A printable version of the electronically signed document is available in the court's electronic file.

No protests having been filed, the foregoing ruling is confirmed and approved and is made the judgment and decree of this Water Court, subject to the Water Court's period of retained jurisdiction set forth herein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT:

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James F. Hartmann  
Water Judge  
Water Division No. 1

This document constitutes a ruling of the court and should be treated as such.

**File & Serve**

**Transaction ID:** 35089263

**Current Date:** Jan 21, 2011

**Case Number:** 2010CW124

**Case Name:** In the interest of: BOX ELDER

**Court Authorizer**

**Comments:**

**ORDER:**

There has been no protest filed to the Ruling of the Water Referee. The foregoing Ruling of the Water Referee is confirmed and approved and is hereby entered as the judgment and decree of this court. Figure 1 and Table 1, filed by the Applicant, are hereby incorporated into and made a part of this decree.

Dated: January 21, 2011

/s/ James F. Hartmann  
Water Judge, Division No. 1

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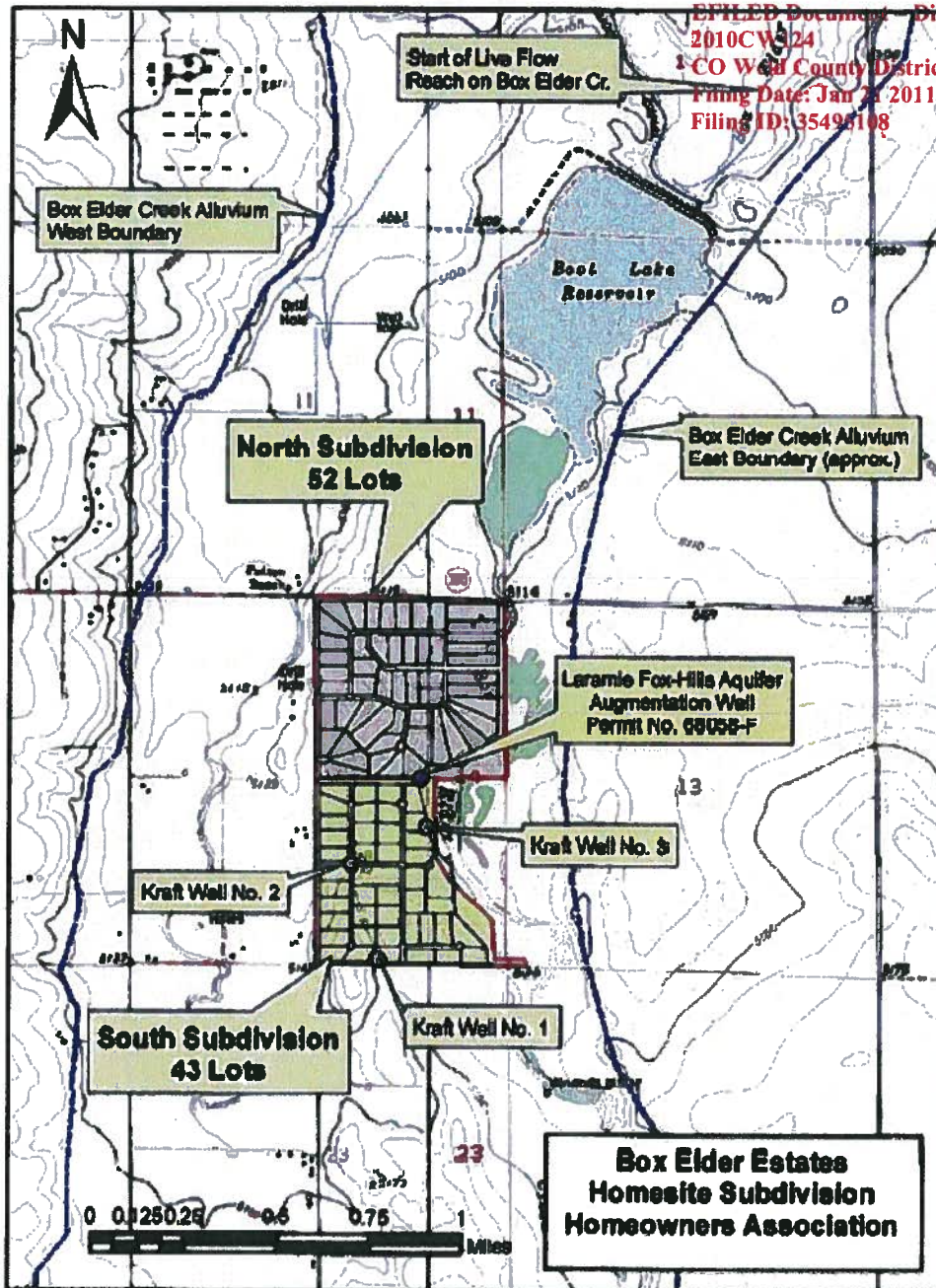


Figure 1

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Figure 1, filed by the Applicant, is hereby incorporated into and made a part of the decree.

Dated: January 21, 2011

/s/ James F. Hartmann  
Water Judge, Division No. 1

**Table 1**  
**Box Elder Effluents - Example Accounting Form With LFH Well**  
**Projected Stream Depletions and Return Flow Accretions**  
**Based Upon 2009-2010 Actual Water Uses and ANAG Timing Analysis**  
**(all values in acre-feet)**

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	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Total
<b>Kraft Well No. 2 - Projected Net Pumping (2009 actual and projected for 2010-2012)</b>													
2009				0.41	1.01	0.69	1.55	2.09	1.78	1.50	0.27		8.00
2010				0.38	0.87	3.85	3.18	1.48	1.72	0.27			11.73
2011				1.58	1.72	3.85	3.18	1.48	1.72	0.27			13.28
2012				1.06	1.72	3.85	3.18	1.48	1.72	0.27			13.28
<b>Projected Stream Depletions</b>													
2009	-0.13	-0.15	-0.16	-0.17	-0.18	-0.18	-0.19	-0.20	-0.21	-0.23	-0.25	-0.26	-3.33
2010	-0.31	-0.39	-0.33	-0.34	-0.34	-0.34	-0.34	-0.35	-0.37	-0.41	-0.45	-0.48	-4.36
2011	-0.52	-0.53	-0.54	-0.54	-0.54	-0.54	-0.54	-0.55	-0.56	-0.62	-0.65	-0.68	-6.94
2012	-0.71	-0.73	-0.73	-0.73	-0.72	-0.71	-0.70	-0.71	-0.74	-0.77	-0.80	-0.83	-8.88
<b>Projected Return Flows from North Subdivision Upper Arapahoe Aquifer Wells (2009 - March, 2010 actual)</b>													
2009	0.24	0.25	0.26	0.27	0.28	0.30	0.31	0.32	0.33	0.34	0.35	0.36	3.81
2010	0.37	0.38	0.39	0.39	0.40	0.41	0.41	0.42	0.43	0.43	0.44	0.45	4.82
2011	0.48	0.48	0.48	0.48	0.48	0.48	0.47	0.47	0.47	0.48	0.49	0.49	5.91
2012	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.49	0.50	0.50	0.51	0.51	6.92
<b>Projected Return Flows from South Subdivision Upper Arapahoe Aquifer Wells (2009 - March, 2010 actual)</b>													
2009	0.11	0.12	0.14	0.15	0.16	0.17	0.18	0.19	0.20	0.21	0.22	0.23	2.08
2010	0.24	0.25	0.26	0.26	0.27	0.28	0.28	0.29	0.30	0.30	0.31	0.31	3.24
2011	0.32	0.33	0.33	0.34	0.34	0.35	0.35	0.36	0.36	0.36	0.37	0.37	4.18
2012	0.39	0.39	0.39	0.39	0.39	0.39	0.40	0.40	0.40	0.40	0.41	0.41	4.73
<b>Proposed LFH Well No. 68058-F Augmentation Release Credits</b>													
2009													0.00
2010													0.00
2011													0.00
2012													0.00
<b>Calculated Total Return Flow Accretions from North &amp; South Subdivisions and LFH Well</b>													
2009	0.34	0.37	0.40	0.42	0.45	0.47	0.49	0.51	0.54	0.55	0.57	0.59	5.89
2010	0.61	0.63	0.64	0.65	0.67	0.68	0.69	0.71	0.73	0.73	0.75	0.76	8.20
2011	0.77	0.78	0.79	0.80	0.80	0.81	0.82	0.83	0.83	0.84	0.85	0.86	9.79
2012	0.87	0.87	0.87	0.88	0.88	0.88	0.89	0.89	0.90	0.90	0.91	0.92	10.89
<b>Projected Net Stream Impact</b>													
2009	0.21	0.22	0.24	0.25	0.27	0.29	0.30	0.31	0.32	0.32	0.32	0.31	3.36
2010	0.20	0.31	0.31	0.31	0.33	0.35	0.35	0.36	0.36	0.35	0.35	0.37	3.87
2011	0.25	0.25	0.25	0.26	0.26	0.27	0.28	0.28	0.28	0.28	0.29	0.29	2.88
2012	0.18	0.14	0.14	0.15	0.15	0.17	0.18	0.18	0.18	0.18	0.11	0.09	1.78

Notes: Projection has been updated to include actual Kraft Well No. Pumping and subdivision return flows through May, 2010.  
 Negative value = stream depletion  
 Positive value = stream accretion  
 Laramie Fox-Halls Aquifer Well No. 68058-F Credit = pumping - 2% relinquishment

Box Elder Creek Alluvial Timing Analysis Parameters						
	Type	Boundary W (feet)	T (GPD/ft)	BY	X (feet)	
Kraft Well No. 2	Irrigation	Alluvial	16,200	150,000	0.2	12,000
North Subdivision (approx. centroid)	Recharge	Alluvial	12,000	150,000	0.2	8,500
South Subdivision (approx. centroid)	Recharge	Alluvial	14,700	150,000	0.2	12,000
LFH Well Augmentation Discharge	Recharge	Alluvial	12,300	150,000	0.2	10,300

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**Court Authorizer**

**Comments:**

Table 1, filed by the Applicant, is hereby incorporated into and made a part of the decree.

Dated: January 21, 2011

/s/ James F. Hartmann  
Water Judge, Division No. 1