IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 2 STATE OF COLORADO

Case No. W-4447

In the Matter of the Application for Water Rights of WALTER O. IRELAND and E. LUCILLE IRELAND, in Fremont County	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE ACRES OF IRELAND FILING No. 2

This matter came on for hearing on April 29, 1977, on the Amended Application for Approval of Plan of Augmentation Including Exchange and for Changes in Water Right Required for Operation of the Plan, filed by Walter O. Ireland and E. Lucille Ireland, and referred to as the applicant represented by Robert G. Fredrickson of Fredrickson, Johnson and McDermott, P.C.; and a statement of opposition filed by Southeastern Colorado Water Conservancy District represented by its counsel, Charles J. Beise and Howard K. Holme of Fairfield and Woods.

Based upon the testimony and exhibits this court hereby issues the following Findings of Fact, Conclusions of Law and Decree for Acres of Ireland Filing No. 2 and the Court Finds:

1. The Amended Application for Approval of Plan of Augmentation Including Exchange and for Changes in Water Right Required for Operation of the Plan was filed by Walter O. Ireland and E. Lucille Ireland on November 19 76, 1976.

2. 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.

3. A statement of opposition designated Objection was filed within the time provided by statute by Southeastern Colorado Water Conservancy District. The time for filing statements of opposition by others has expired.

4. Opponent Southeastern Colorado Water Conservancy District is the repayment entity for the Fryingpan Arkansas Project. It is the holder of numerous decrees on the Arkansas River and alleged that the application, if granted, would result in injury to its rights, and to the aquifer of the Arkansas River.

5. Applicant's Plan is to convert 0.054 c.f.s. of its Allen Ditch, Cherry Creek, Priority No. 1 also known as Arkansas River Priority No. 190 (out of a total of 1.2 c.f.s. owned by the applicant), priority date June 30, 1877, presently diverted from Cherry Creek, a tributary of the Arkansas River for irrigation, as a source of water of in-house wells for 129 single family lots, located in Acres of Ireland, Filing No. 2, subdivision near Howard. Subdivision lot purchasers are to obtain "Household Use Only" well permits; the subdivision plat, restrictive covenants and this decree prohibit transevaporative type septic systems.

6. The Plan requires Applicant to replace in the Arkansas River stream system, by exchange the consumptive use of the

subdivision through such wells, by permanently removing from irrigation 3.6 acres of applicant's lands together with 6.18 acres of lands used for roads in the Subdivision, and permanently terminating use of said 0.054 c.f.s. on such lands, thus balancing the household consumptive use with that of the lands removed from irrigation. To the extent household use depletions do not correspond with the time of occurrence of the historic irrigation depletions, applicant proposes to store a portion of the water which would be available under the priority and make releases from such storage to assure no loss to the river. Applicant owns a pond known as Ireland Lake No. 2, located on out Lot 3, Acres of Ireland Filing No. 2. This pond or lake has a surface area of 1.00 acre feet with a capacity of 6.0 acre feet. This reservoir to the extent of 6.0 acre feet is to be devoted to the plan and to be subject to the order. The plan calls for diversion of sufficient water out of the 0.054 c.f.s. to storage in this Lake during the summer months to enable applicant to make winter releases of such stored water as necessary to balance winter subdivision depletions.

7. The proposed operating plan is to place a suitable discharge devise in Ireland Lake No. 2 so that the amount of subdivision consumptive use (average daily rate of 0.011 c.f.s.) is constantly released to Cherry Creek. In addition, the 0.054 c.f.s. which is to be removed from irrigation will be returned to and measured into Ireland Lake No. 2. The Lake or reservoir will act as a equalizer to assure that the replacement rate of 0.011 c.f.s. is always available to Cherry Creek. Any excess flow into the reservoir will be released to Cherry Creek through a service spillway.

8. Applicant has conveyed title to the 0.054 c.f.s. water right, the lake having a storage capacity of 6.0 acre feet and out Lot 3, containing 4.96 acres, 3.6 acres of which were historically irrigated as alfalfa land, to the Trustee, Ireland Domestic Development Water Corporation, a Colorado corporation. In addition to the 3.6 acres transferred to the Trustee, the roads in the subdivision which have been historically irrigated contain 6.18 acres which will be permanently removed from irrigation. Historically, the 0.054 c.f.s. has been used to irrigate the 3.6 acres of alfalfa. The Trustee holds the property described for the benefit of the owner and owners of the subdivision and the lot purchasers, with the obligation permanently to remove the lands involved for irrigation, supply storage water from Ireland Lake No. 2, and to enforce any decree entered here. The Trustee is bound by the provisions of this decree. It is required to make available to each lot owner his entitlement to a water supply hereunder.

FURTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND DECREE RELATING TO ACRES OF IRELAND,
FILING NO. 2

Subdivision Water Requirements

9. The water requirements for the subdivision was determined using the following criteria:

129 Lots with single family dwellings
65 gallons per person per day
3.5 persons per dwelling
365 day occupancy (100%)

The water requirement per dwelling is 84,000 gallons per year or 0.25 acre feet.

The annual subdivision requirement is 10.8 million gallons or 32.25 acre feet. This amount is an average daily rate of 0.045 c.f.s.

The annual consumptive use of the in-house water usage for the subdivison was estimated at 15% based upon estimates by the office of the State Engineer and other engineering reports on similar subdivisions. This estimate yields an annual amount of 4.84 acre feet and an average rate of 0.0068 c.f.s.

Additional Consumptive Use Due to Operation of Plan

10. The plan anticipates the use of an existing reservoir, known as Ireland Lake No. 2, located on outlot 3 Acres of Ireland, to equalize the release rate of the exchange water from the Allen Ditch. The evaporation from this reservoir will be a consumptive use in the operation of the plan. This evaporation amount is estimated as:

Surface Area	1.0 acres
Estimated Evaporation Rate	3.0 feet per year
Evaporative Use	3.0 acre feet per year
Average Daily Rate	0.0041 c.f.s.

Total Subdivision Consumptive Use

11. The toal consumptive use from the subdivision and the reservoir is:

4.84 + 3.0 = 7.84 acre feet per year
Average daily rate = 0.011 c.f.s.

Present Consumptive Use

12. The applicant is the owner of the total amount decreed to the Allen Ditch of 1.2 c.f.s. and 2.0 c.f.s. This water has been historically diverted from Cherry Creek and used to irrigate 80 acres of alfalfa by the applicant. This irrigated land is included within the acre to be subdivided.

The annual crop consumptive use for alfalfa at Howard, Colorado was calculated using the Blaney-Criddle formula. The result is 2.1 feet per year.

To replace the consumptive use of the subdivision and the reservoir, the applicant proposes to permanently remove from irrigation sufficient land served by the Allen Ditch to balance 7.84 Acre feet per year.

The land to be removed is $\frac{7.84 \text{ acre feet}}{2.1 \text{ feet}}$ = 3.6 acres.

The applicant also proposes to return to Cherry Creek a proportionate share of the Allen Ditch water right which was used upon the said 3.6 acres of irrigated land. This amount is:

$$\frac{3.6 \text{ acres}}{80 \text{ acres total}} \quad X \ 1.2 \text{ c.f.s.} = 0.054 \text{ c.f.s.}$$

Proposed Operation of Exchange

13. The proposed operating plan is to place a suitable discharge devise in Ireland Lake No. 2 so that the amount of subdivision consumptive use (average rate of 0.011 c.f.s.) is constantly released to Cherry Creek. In addition, the 0.054 c.f.s. which is to be removed from irrigation will be returned to and measured into Ireland Lake No. 2. The Lake or reservoir will act as a equalizer to assure that the replacement rate of 0.011 c.f.s. is always available to Cherry Creek. Any excess flow into the reservoir will be released to Cherry Creek through a service spillway.

14. The owners under various contractual and security arrangements and developers of this subdivision are: Walter O. Ireland and E. Lucille Ireland, Star Route, Box 245, Howard, Colorado 81233.

15. The covenants for Acres of Ireland, Filing No. 2, recorded in Book 596 at Page 473 of the Records of said County, contain the following restrictions:

> "The type of septic system used shall be determined on an individual lot basis in accordance with the Fremont County Sanitation Code. TRANSEVAPORATIVE TYPE SEPTIC SYSTEMS SHALL BE PROHIBITED"
>
> "In-house use only type wells will be allowed within the subdivision, subject to changes in the water augmentation program for the subdivision providing additional water for domestic pursuits."

Notes on the recorded plat states:

> 1. TRANSEVAPORATIVE SEPTIC SYSTEMS SHALL BE PROHIBITED.
>
> 2. WELLS SHALL BE RESTRICTED TO IN-HOUSE USE ONLY.

Description of the Subdivision Area

16. The Acres of Ireland subdivision, Filing No. 2, is located in Fremont County, Colorado, near the town of Howard and covers portions of SEctions 10, 11, 12 and 14; Township 48 North; Range 10 East; of the New Mexico Principal Meridian. The entire subdivision consists of 480 acres, more or less, as illustrated in Figure 1.

The area is situated on the eastern slope of the Northern Sangre De Cristo Mountain Range at elevations ranging between 6700 and 7300 feet above sea level. It consists primarily of a slightly sloping plateau above the Arkansas River with some areas of severe slopes, these being located primarly in drainage gulches. A good portion of the land is wooded with several large irrigated meadows interspersed.

Precipitation is usually moderate averaging approximately 15 inches per year, most of which occurs in the spring and summer. Snowfall varies from moderate to heavy but accumulation over the winter months in generally light.

Surface Soils

17. The surface soils on the subdivision have been mapped according to the Cooperative Soil Survey of the Soil Conservation Service.

Soil types present on the subdivision are deep and well drained and include Cascajo, Kim Loan, and the Kim-Cascajo Complex. The Cascajo is a very gravelly sandy loam and as a soil type limits the use of septic tanks slightly. However, this type of soil is found in the subdivision's steepest areas where the slope varies between 20% and 40% and as such this area has severe limitations for building sites.

The Kim Loan consists of uniform loam profiles usually underlain by gravelly sandy loan at various depths below 40 inches. This type of soil has slight limitations for septic tanks and slopes 0% to 8%, and has moderate limitations for acres where the slope varies between 9% and 15%. It is found where slopes range between 0% and 9% and thus is quite suitable for light buildings using septic tanks.

The rest of the area consists of a combination of the above two soil types and is known as the Kim-Cascajo Complex. The areas where this soil type is found consists of loamy hilltops and foot slopes underlain by sand, gravel, and cobble. Limitations on dwelling and septic tank filter fields are

moderate due to slopes where most of this soil is found, 9% to 15%. Where slopes are less than 9%, the limitations are slight.

For the most part, the area's soils are of a type suitable for the type of subdivision being planned, single family dwellings using coventional septic tanks with filter beds for waste disposal. In the determination of the consumptive water use by the subdivision, calculations are based on conventional septic tanks being used for all dwellings.

18. Walter O. Ireland and E. Lucille Ireland own 1.2 c.f.s. out of Cherry Creek Priority No. 1 which is also Arkansas River Priority No. 190 decreed by the District Court of Fremont County, Colorado, June 30, 1877. Said 1.2 c.f.s. has been used and is being used to irrigate their ranch property. 0.054 c.f.s. thereof was conveyed to the Trustee. Walter O. Ireland and E. Lucille Ireland remain entitled to delivery 1.146 c.f.s. of its 1.2 c.f.s. for irrigation, ranch and other purposes. 0.054 c.f.s. out of said 1.2 c.f.s. is subject to this decree. The remainder of said 1.2 c.f.s. (1.146 c.f.s.) is not subject to this decree.

19. The Allen Ditch is tributary to the Arkansas River near Howard, Colorado. The headgate of the above described ditch is situate at a point 84 rods East of the Quarter Section corner between sections 14 and 15 in Township 48 North, Range 10 East of the New Mexico Principal Meridian, in Fremont County. The Arkansas River is over-appropriated. Priority

No. 1 is of such an early date that water may be and has been diverted under it for irrigation generally from April or May into October each year except for a very few days occasionally and has provided a full ranch supply. On the average it has been diverted 181 days each year. The 0.054 c.f.s. is suitable for the use in this plan for augmentation.

20. The 3.6 acre tract of land to be permanently removed from irrigation is located on a part of out lot 3, Acres of Ireland, Filing No. 2. Out lot 3 contains 4.96 acres in its entirety and is owned by the Trustee. Said tract historically has been irrigated with the 0.054 c.f.s. during the months of April or May into October. Said tract, if perpetually removed from irrigation, is suitable for the purposes of this Plan of Augmentation. Said tract is subject to this order. 6.18 acres of roads located in said subdivision will also be permanently removed from irrigation.

21. The property subject to this Decree is (i) the 3.6 acre tract, (ii) the 0.054 c.f.s. and (iii) the 6.0 acre-feet of reservoir capacity in the lake also located on out lot 3, all described above. Said property is held by the Trustee for the benefit of the developers and lot owners of Acres of Ireland Filing No. 2. The remainder of the property held by the Trustee that is not subject to this order may be used by it for any purpose.

22. Approval of the plan described herein will not injuriously affect the owner of or persons entitled to use water, with respect to quantity of water, quality of water or time of use, under any vested water right or decreed conditional water right, including Southeastern Colorado Water Conservancy District. Said plan should be approved.

Decree

IT IS ORDERED, ADJUDGED, AND DFCREED that

1. The plan of Walter O. Ireland and E. Lucille Ireland for Acres of Ireland, Filing No. 2 as herein modified is approved.

2. This plan is effective as to 129 lots in said subdivision. Each lot is restricted to a single family dwelling. Each dwelling may be served by a well and more than one dwelling may be served by a single well. Each household is restricted to using the water for in-house use only without any right to use the water for any purpose outside the house. Each dwelling shall be equipped with a non-evaporative sewage discharge system, and if a leaching field is used, the discharge pipes shall be buried 30 inches or more below ground level.

3. The property subject to this Decree is (i) the 3.6 acre tract, (ii) the 0.054 c.f.s. and (iii) the 6.0 acre-feet of reservoir capacity in Ireland Lake No. 2, all described in the Findings above. Said property is held by the Trustee for the benefit of the developers and lot owners of Acres of Ireland, Filing No. 2. The remainder of the property held by the Trustee is not subject to this order may be used by it for any purpose.

4. The Trustee shall permanently and on a perpetual basis cease the irrigation of the 3.6 acre tract of land described in the findings above, and shall, upon order of the Division Engineer, set concrete monuments at the four corners of said tract.

5. The Trustee on orders of the Division Engineer shall place a suitable discharge device in Ireland Lake No. 2 so that the amount of subdivision consumptive use at the average daily rate of 0.011 c.f.s. is constantly released to Cherry Creek. The 0.054 c.f.s. which is to be reused for irrigation will be returned to and released into Ireland Lake No. 2 any excess flow into the reservoir will be released to Cherry Creek through a service spillway. For administrative convenience the Division Engineer may vary the amounts being delivered into storage and to the stream provided the total of both amounts does not exceed 0.054 c.f.s.

6. The Trustee shall install and maintain such other works and devices and shall accurately measure and control waters stored in said Ireland Lake No. 2 received from 0.054 c.f.s. of the Allen Ditch Decree and the waters released from said Lake and such other works as shall accurately measure and control all waters subject to this decree, at such points as the Division Engineer shall require. Said facilities shall be installed, operated, and maintained at all times to the satisfaction of the Division Engineer.

7. Each lot owner shall install a water meter or other measuring device satisfactory to the Division Engineer. The Trustee shall supply the Division Engineer with readings therefrom semiannually and at such other times as the Division Engineer may require. The Division Engineer, or his agents, may read any meter at any time. The total amount of consumptive use by the subdivisions shall not exceed 7.84 acre-feet each water year. A water year is the 12 months period

commencing each successive April 1st. The total amount of water withdrawn by a single-family well shall not exceed 83,037 gallons in any water year. The total amount of water used in any one house if one well serves more than one house shall not exceed 83,037 gallons in any water year.

8. This decree is based upon the assumption that the 0.054 c.f.s. water right may lawfully be diverted 181 days per year. Based on such assumption, each house shall be entitled to use for its in-house use 83,037 gallons of water each water year. If during any water year said 0.054 c.f.s. priority may not legally be diverted for at least 181 days then the entitlement of each lot owner to a water supply of 83,037 gallons shall be determined by multiplying 83,037 gallons by a fraction the numerator of which is the number of days said 0.054 c.f.s. was in priority and the denominator of which is 181. After ascertaining that there is less than 83,037 gallons per house available for use in the current water year the Trustee shall take immediate steps to curtail household use so that the use in each house shall not exceed the total number of gallons available to it during that water year.

9. Any user who withdraws or uses water in violation of this decree shall be subject to all administrative and legal sanctions provided by law and by this decree including (i) shut-down orders issued by state water officials and (ii) loss of well permit for violations of conditions or provisions set forth in such permit or in this decree. No user diverting or using water under the authority of this decree shall rely or be entitled to rely upon the exemptions or presumptions set forth in 1973 C.R.S. Sec. 37-92-602 as amended.

10. Lot purchasers in the subdivisions may demonstrate their entitlement to participate in the benefits of the plan of augmentation, through the use of the Notices described in the findings. Where a single well may be required to serve residences on more than one lot, two or more Notices of Participation in the Plan of Augmentation may be filed in support of an application for a permit for such a common well, and the State Engineer may accept such notices as proving entitlement to the benefits of this plan.

11. The State Engineer and the Division Engineer of Water Division No. 2 shall not order the curtailment of diversion through any well used to provide water for such in-house use to any of the 129 lots for which this Plan is approved so long as diversions through any such well are in accordance with the terms of this decree, and there is water available under this decree to supply the substitute water required hereby. The State Engineer or Division Engineer shall curtail well diversions at all times when well use is not in accordance with the terms of this decree, or whenever substitute water is unavailable under this decree or from other legal sources to balance subdivision depletions.

12. The 0.054 c.f.s. water right, the 6.0 acre-feet of pond capacity, and the 3.6 acre tract all described above is the property held by the Trustee and shall be devoted to and subject to the provisions of this Decree.

13. Anytime after this plan has been in operation for five years and experience has been gained from actual operation, the Trustee may file an application for approval of a plan for augmentation in behalf of the subdivision for the purpose of

expanding or changing the decreed uses or otherwise making use for the subdivision of that part of the property subject to this Decree which, based on such experience, appears to be in excess of the ultimate in-house use requirements for the subdivision.

14. This decree shall become effective when (A) it has been recorded in the records of Fremont County, Colorado and (B) restrictive covenants binding the subdivision reading as set forth below have been adopted and proof thereof filed with the Clerk of this Court. (C) A duly executed and acknowledged deed conveying the 3.6 acres tract and the water rights set forth above have been placed of record. Copies of the recorded decree deed and covenants showing the recording information therefrom shall be sent to Southeastern Colorado Water Conservancy District and filed with the Water Clerk of this Water Court. The restrictive covenants with respect to each such subdivision shall state:

> (1) Wells restricted to in-house use only, without any right to use the water outside the house will be allowed within the subdivision, subject to change in the water augmentation program for the subdivision providing additional water for domestic and other pursuits, as authorized by competent authority.
>
> (2) Leaching fields within the subdivision shall be buried to a depth of at least 30 inches from the surface of the ground. There shall be no evapotranspiration sewage treatment units.

15. If any lots are sold prior to the recording of this decree and the restrictive covenants, the owners thereof must give written consent to and approve this decree and copies of such consent shall be filed with this Court and with the Southeastern Colorado Water Conservancy District.

Dated June 3, 1977 nunc pro tunc

as of April 29th, 1977.

BY THE COURT:

JOHN C. STATLER, WATER JUDGE

APPROVED:

Southeastern Colorado Water Conservancy District

By: _____
Attorney

WALTER O. IRELAND and E. LUCILLE IRELAND

By: _____
Attorney

DISTRICT COURT
WATER DIVISION NO. 2
STATE OF COLORADO
Certified to be a full, true and correct copy of original on file.
Date: JUN - 7 1977
PRISCILLA S. LUCERO, CLERK
By: _____
Deputy Clerk

Filed in the office of the Clerk, District Court Water Division No. 2, State of Colorado

JUN 3 1977

Priscilla A. Lyons
Clerk

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 2 STATE OF COLORADO

Case No. W-4447

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Based upon the testimony and exhibits this court hereby issues the following Findings of Fact, Conclusions of Law and Decree for Acres of Ireland Filing No. 2 and the Court Finds:

1. The Amended Application for Approval of Plan of Augmentation Including Exchange and for Changes in Water Right Required for Operation of the Plan was filed by Walter O. Ireland and E. Lucille Ireland on November 19th, 1976.

2. 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.

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6. The Plan requires Applicant to replace in the Arkansas River stream system, by exchange the consumptive use of the

subdivision through such wells, by permanently removing from irrigation 3.6 acres of applicant's lands together with 6.18 acres of lands used for roads in the Subdivision, and permanently terminating use of said 0.054 c.f.s. on such lands, thus balancing the household consumptive use with that of the lands removed from irrigation. To the extent household use depletions do not correspond with the time of occurrence of the historic irrigation depletions, applicant proposes to store a portion of the water which would be available under the priority and make releases from such storage to assure no loss to the river. Applicant owns a pond known as Ireland Lake No. 2, located on out Lot 3, Acres of Ireland Filing No. 2. This pond or lake has a surface area of 1.00 acre feet with a capacity of 6.0 acre feet. This reservoir to the extent of 6.0 acre feet is to be devoted to the plan and to be subject to the order. The plan calls for diversion of sufficient water out of the 0.054 c.f.s. to storage in this Lake during the summer months to enable applicant to make winter releases of such stored water as necessary to balance winter subdivision depletions.

7. The proposed operating plan is to place a suitable discharge devise in Ireland Lake No. 2 so that the amount of subdivision consumptive use (average daily rate of 0.011 c.f.s.) is constantly released to Cherry Creek. In addition, the 0.054 c.f.s. which is to be removed from irrigation will be returned to and measured into Ireland Lake No. 2. The Lake or reservoir will act as a equalizer to assure that the replacement rate of 0.011 c.f.s. is always available to Cherry Creek. Any excess flow into the reservoir will be released to Cherry Creek through a service spillway.

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FURTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW
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The land to be removed is $\frac{7.84 \text{ acre feet}}{2.1 \text{ feet}}$ = 3.6 acres.

The applicant also proposes to return to Cherry Creek a proportionate share of the Allen Ditch water right which was used upon the said 3.6 acres of irrigated land. This amount is:

$$\frac{3.6 \text{ acres}}{80 \text{ acres total}} \quad X \text{ 1.2 c.f.s.} = 0.054 \text{ c.f.s.}$$

Proposed Operation of Exchange

13. The proposed operating plan is to place a suitable discharge devise in Ireland Lake No. 2 so that the amount of subdivision consumptive use (average rate of 0.011 c.f.s.) is constantly released to Cherry Creek. In addition, the 0.054 c.f.s. which is to be removed from irrigation will be returned to and measured into Ireland Lake No. 2. The Lake or reservoir will act as a equalizer to assure that the replacement rate of 0.011 c.f.s. is always available to Cherry Creek. Any excess flow into the reservoir will be released to Cherry Creek through a service spillway.

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Surface Soils

17. The surface soils on the subdivision have been mapped according to the Cooperative Soil Survey of the Soil Conservation Service.

Soil types present on the subdivision are deep and well drained and include Cascajo, Kim Loan, and the Kim-Cascajo Complex. The Cascajo is a very gravelly sandy loam and as a soil type limits the use of septic tanks slightly. However, this type of soil is found in the subdivision's steepest areas where the slope varies between 20% and 40% and as such this area has severe limitations for building sites.

The Kim Loan consists of uniform loam profiles usually underlain by gravelly sandy loan at various depths below 40 inches. This type of soil has slight limitations for septic tanks and slopes 0% to 8%, and has moderate limitations for acres where the slope varies between 9% and 15%. It is found where slopes range between 0% and 9% and thus is quite suitable for light buildings using septic tanks.

The rest of the area consists of a combination of the above two soil types and is known as the Kim-Cascajo Complex. The areas where this soil type is found consists of loamy hilltops and foot slopes underlain by sand, gravel, and cobble. Limitations on dwelling and septic tank filter fields are

moderate due to slopes where most of this soil is found, 9% to 15%. Where slopes are less than 9%, the limitations are slight.

For the most part, the area's soils are of a type suitable for the type of subdivision being planned, single family dwellings using coventional septic tanks with filter beds for waste disposal. In the determination of the consumptive water use by the subdivision, calculations are based on conventional septic tanks being used for all dwellings.

18. Walter O. Ireland and E. Lucille Ireland own 1.2 c.f.s. out of Cherry Creek Priority No. 1 which is also Arkansas River Priority No. 190 decreed by the District Court of Fremont County, Colorado, June 30, 1877. Said 1.2 c.f.s. has been used and is being used to irrigate their ranch property. 0.054 c.f.s. thereof was conveyed to the Trustee. Walter O. Ireland and E. Lucille Ireland remain entitled to delivery 1.146 c.f.s. of its 1.2 c.f.s. for irrigation, ranch and other purposes. 0.054 c.f.s. out of said 1.2 c.f.s. is subject to this decree. The remainder of said 1.2 c.f.s. (1.146 c.f.s.) is not subject to this decree.

19. The Allen Ditch is tributary to the Arkansas River near Howard, Colorado. The headgate of the above described ditch is situate at a point 84 rods East of the Quarter Section corner between sections 14 and 15 in Township 48 North, Range 10 East of the New Mexico Principal Meridian, in Fremont County. The Arkansas River is over-appropriated. Priority

No. 1 is of such an early date that water may be and has been diverted under it for irrigation generally from April or May into October each year except for a very few days occasionally and has provided a full ranch supply. On the average it has been diverted 181 days each year. The 0.054 c.f.s. is suitable for the use in this plan for augmentation.

20. The 3.6 acre tract of land to be permanently removed from irrigation is located on a part of out lot 3, Acres of Ireland, Filing No. 2. Out lot 3 contains 4.96 acres in its entirety and is owned by the Trustee. Said tract historically has been irrigated with the 0.054 c.f.s. during the months of April or May into October. Said tract, if perpetually removed from irrigation, is suitable for the purposes of this Plan of Augmentation. Said tract is subject to this order. 6.18 acres of roads located in said subdivision will also be permanently removed from irrigation.

21. The property subject to this Decree is (i) the 3.6 acre tract, (ii) the 0.054 c.f.s. and (iii) the 6.0 acre-feet of reservoir capacity in the lake also located on out lot 3, all described above. Said property is held by the Trustee for the benefit of the developers and lot owners of Acres of Ireland Filing No. 2. The remainder of the property held by the Trustee that is not subject to this order may be used by it for any purpose.

22. Approval of the plan described herein will not injuriously affect the owner of or persons entitled to use water, with respect to quantity of water, quality of water or time of use, under any vested water right or decreed conditional water right, including Southeastern Colorado Water Conservancy District. Said plan should be approved.

Decree

IT IS ORDERED, ADJUDGED, AND DECREED that

1. The plan of Walter O. Ireland and E. Lucille Ireland for Acres of Ireland, Filing No. 2 as herein modified is approved.

2. This plan is effective as to 129 lots in said subdivision. Each lot is restricted to a single family dwelling. Each dwelling may be served by a well and more than one dwelling may be served by a single well. Each household is restricted to using the water for in-house use only without any right to use the water for any purpose outside the house. Each dwelling shall be equipped with a non-evaporative sewage discharge system, and if a leaching field is used, the discharge pipes shall be buried 30 inches or more below ground level.

3. The property subject to this Decree is (i) the 3.6 acre tract, (ii) the 0.054 c.f.s. and (iii) the 6.0 acre-feet of reservoir capacity in Ireland Lake No. 2, all described in the Findings above. Said property is held by the Trustee for the benefit of the developers and lot owners of Acres of Ireland, Filing No. 2. The remainder of the property held by the Trustee is not subject to this order may be used by it for any purpose.

4. The Trustee shall permanently and on a perpetual basis cease the irrigation of the 3.6 acre tract of land described in the findings above, and shall, upon order of the Division Engineer, set concrete monuments at the four corners of said tract.

5. The Trustee on orders of the Division Engineer shall place a suitable discharge device in Ireland Lake No. 2 so that the amount of subdivision consumptive use at the average daily rate of 0.011 c.f.s. is constantly released to Cherry Creek. The 0.054 c.f.s. which is to be reused for irrigation will be returned to and released into Ireland Lake No. 2 any excess flow into the reservoir will be released to Cherry Creek through a service spillway. For administrative convenience the Division Engineer may vary the amounts being delivered into storage and to the stream provided the total of both amounts does not exceed 0.054 c.f.s.

6. The Trustee shall install and maintain such other works and devices and shall accurately measure and control waters stored in said Ireland Lake No. 2 received from 0.054 c.f.s. of the Allen Ditch Decree and the waters released from said Lake and such other works as shall accurately measure and control all waters subject to this decree, at such points as the Division Engineer shall require. Said facilities shall be installed, operated, and maintained at all times to the satisfaction of the Division Engineer.

7. Each lot owner shall install a water meter or other measuring device satisfactory to the Division Engineer. The Trustee shall supply the Division Engineer with readings therefrom semiannually and at such other times as the Division Engineer may require. The Division Engineer, or his agents, may read any meter at any time. The total amount of consumptive use by the subdivisions shall not exceed 7.84 acre-feet each water year. A water year is the 12 months period

commencing each successive April 1st. The total amount of water withdrawn by a single-family well shall not exceed 83,037 gallons in any water year. The total amount of water used in any one house if one well serves more than one house shall not exceed 83,037 gallons in any water year.

8. This decree is based upon the assumption that the 0.054 c.f.s. water right may lawfully be diverted 181 days per year. Based on such assumption, each house shall be entitled to use for its in-house use 83,037 gallons of water each water year. If during any water year said 0.054 c.f.s. priority may not legally be diverted for at least 181 days then the entitlement of each lot owner to a water supply of 83,037 gallons shall be determined by multiplying 83,037 gallons by a fraction the numerator of which is the number of days said 0.054 c.f.s. was in priority and the denominator of which is 181. After ascertaining that there is less than 83,037 gallons per house available for use in the current water year the Trustee shall take immediate steps to curtail household use so that the use in each house shall not exceed the total number of gallons available to it during that water year.

9. Any user who withdraws or uses water in violation of this decree shall be subject to all administrative and legal sanctions provided by law and by this decree including (i) shut-down orders issued by state water officials and (ii) loss of well permit for violations of conditions or provisions set forth in such permit or in this decree. No user diverting or using water under the authority of this decree shall rely or be entitled to rely upon the exemptions or presumptions set forth in 1973 C.R.S. Sec. 37-92-602 as amended.

10. Lot purchasers in the subdivisions may demonstrate their entitlement to participate in the benefits of the plan of augmentation, through the use of the Notices described in the findings. Where a single well may be required to serve residences on more than one lot, two or more Notices of Participation in the Plan of Augmentation may be filed in support of an application for a permit for such a common well, and the State Engineer may accept such notices as proving entitlement to the benefits of this plan.

11. The State Engineer and the Division Engineer of Water Division No. 2 shall not order the curtailment of diversion through any well used to provide water for such in-house use to any of the 129 lots for which this Plan is approved so long as diversions through any such well are in accordance with the terms of this decree, and there is water available under this decree to supply the substitute water required hereby. The State Engineer or Division Engineer shall curtail well diversions at all times when well use is not in accordance with the terms of this decree, or whenever substitute water is unavailable under this decree or from other legal sources to balance subdivision depletions.

12. The 0.054 c.f.s. water right, the 6.0 acre-feet of pond capacity, and the 3.6 acre tract all described above is the property held by the Trustee and shall be devoted to and subject to the provisions of this Decree.

13. Anytime after this plan has been in operation for five years and experience has been gained from actual operation, the Trustee may file an application for approval of a plan for augmentation in behalf of the subdivision for the purpose of

expanding or changing the decreed uses or otherwise making use for the subdivision of that part of the property subject to this Decree which, based on such experience, appears to be in excess of the ultimate in-house use requirements for the subdivision.

14. This decree shall become effective when (A) it has been recorded in the records of Fremont County, Colorado and (B) restrictive covenants binding the subdivision reading as set forth below have been adopted and proof thereof filed with the Clerk of this Court. (C) A duly executed and acknowledged deed conveying the 3.6 acres tract and the water rights set forth above have been placed of record. Copies of the recorded decree deed and covenants showing the recording information therefrom shall be sent to Southeastern Colorado Water Conservancy District and filed with the Water Clerk of this Water Court. The restrictive covenants with respect to each such subdivision shall state:

> (1) Wells restricted to in-house use only, without any right to use the water outside the house will be allowed within the subdivision, subject to change in the water augmentation program for the subdivision providing additional water for domestic and other pursuits, as authorized by competent authority.
>
> (2) Leaching fields within the subdivision shall be buried to a depth of at least 30 inches from the surface of the ground. There shall be no evapotranspiration sewage treatment units.

15. If any lots are sold prior to the recording of this decree and the restrictive covenants, the owners thereof must give written consent to and approve this decree and copies of such consent shall be filed with this Court and with the Southeastern Colorado Water Conservancy District.

Dated June 3, 1977 nunc pro tunc

as of April 29th, 1977.

BY THE COURT:

John C. Statler

JOHN C. STATLER, WATER JUDGE

APPROVED:

Southeastern Colorado Water Conservancy District

By: Charles J. Beise
Attorney

WALTER O. IRELAND and E. LUCILLE IRELAND

By: Robert G. Jackson
Attorney