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DISTRICT COURT, WATER
DIVISION 4, COLORADO

1200 North Grand Ave. Bin A
Montrose, CO 81401

CONCERNING THE APPLICATION
FOR WATER RIGHTS OF ROSCOE
DEVELOPMENT CORPORATION A
COLORADO CORPORATION, IN THE
WASHINGTON GULCH GUNNISON
COUNTY, COLORADO.

COURT USE ONLY

Case Number: 97CW92

Div.: Ctrm.:

FINDINGS OF FACT AND DECREE

Applicant, Roscoe Development Corporation, a Colorado corporation, c/o of their attorneys Wilderson, O'Hayre & Dawson, P.C., P.O. Box 179, Gunnison, Colorado 81230, requests a decree for conditional water rights by Application filed June 30, 1997 and an Amended Application filed August 19, 1999.

FINDINGS OF FACT

1. All notices required by law pertaining to the filing of this Application have been given. The Court has jurisdiction of this case. The time for filing of statements of opposition has expired and oppositions were filed by the Colorado Water Conservation Board, Dolores G. LaVigne, Michael A. Jachowski, Peter G. Esposito, Betty Barkman, the Crested Butte Land Trust, and Glacier Lily Association. All opposers have agreed to the entry of the following Findings of Fact and Decree.

GENERAL

2. Applicant is the owner of a 126.67 acre tract of land (the "Property") located in the SW1/4SE1/4, and the S1/2SW1/4 of Section 26, and the S1/2NE1/4, NW1/4NE1/4, and N1/2NW1/4 of Section 35, Township 13 South, Range 86 West, 6th Principal Meridian in Gunnison County, Colorado, being within the drainage of Washington Gulch, a tributary to the Slate River in old Water District 59 of Water Division 4, State of Colorado. Applicant intends to subdivide a portion of the Property into 18 single-family residential lots (the "Lots"), each of which will contain a single family residence with attached caretaker unit, and one additional lot that will contain an equestrian center with a 3 bedroom apartment. The remainder of the Property will be

agricultural and recreation open space, all to be known as the Saddle Ridge Ranch Estates (the "SRRE.").

A portion of the Property has historically been irrigated by the Rozich and Meridian Ditches, being ditch Nos. 155 and 226, respectively, in old Water District 59. Applicant intends to continue the historic irrigation on the majority of the Property, and to provide domestic water to each of the 18 residential lots and the equestrian center within SRRE by two independent water supply systems. The domestic water supply for in-house uses with the homes and equestrian center, including stock watering, will be from two wells situated on property lying to the south of the Property, at a point more particularly described below. The domestic water will be treated, pumped into storage and delivered via a buried pipeline system. Irrigation water within SRRE will be provided from the Rozich or Meridian Ditches. Distribution of irrigation water within SRRE will be by open ditch and/or pipeline with individual pumping systems.

To provide domestic water to SRRE, Applicant acquired certain easements and developed an alternate source of domestic water from two wells, known as the Saddle Ridge No. 5 and Saddle Ridge No. 7 Wells on certain lands lying south of SRRE and owned by Dolores G. LaVigne. As part of the consideration paid to acquire such easement, and the easements necessary to convey water to SRRE, Applicant has committed to supply up to 20 additional single family residential units on the lands described on Exhibit A with domestic water from the two new wells.

For lots within SRRE, water will be consumed for in-house domestic purposes on each of the 18 lots and Equestrian Center, and by livestock within the Equestrian Center. Sewage will be disposed by collection and transportation via buried pipeline to the Mt. Crested Butte Water and Sanitation District's wastewater treatment plant and returned to the Washington Gulch.

For each of the 20 lots outside of SRRE, water will be consumed for in-house domestic purposes only. Sewage will be disposed by an individual sewage disposal system for each lot.

All otherwise out-of-priority consumptive use will be augmented by direct exchange of credits resulting from dry-up of historically irrigated acreage under the Meridian Ditch brought about by construction of roads and structures when the Meridian Ditch is in priority, or by releases from the Saddle Ridge Pond or Blue Mesa Reservoir when the Meridian Ditch is not in priority or during the non-irrigation season.

The preliminary plat of SRRE depicting the roads, building envelopes, agricultural and recreation open space, pond, and the irrigation plan under the Meridian and Rozich Ditches is attached as Exhibit B.

UNDERGROUND WATER RIGHTS

3. Applicant has applied for underground water rights with respect to 2 wells, denominated Saddle Ridge No. 5 Well and Saddle Ridge No. 7 Well.

4. The legal descriptions of the wells, by bearing and distance to Section corner, are as follows:

<u>Name</u>	<u>Legal Description</u>
Saddle Ridge No. 5 Well	SW¼SE¼ Section 35, T 13 S, R 86 W, 6th P.M. at a point bearing 526 feet from the South Section Line and 2544 feet from the East Section Line of Section 35.
Saddle Ridge No. 7 Well	SW¼SE¼ Section 35, T 13 S, R 86 W, 6th P.M. at a point bearing 550 feet from the South Section Line and 2326 feet from the East Section Line of Section 35.

5. The source of water for each well is the alluvium of Washington Gulch and the Slate River at a depth of 17 feet, each.

6. Applicant claims an appropriation date of May 16, 1999 for the Saddle Ridge No. 5 and 7 Wells, which appropriation was initiated by location and completion of two wells, development of a water right plan by Applicant's engineers and attorneys, and the filing and publication of the application and amended application.

7. Applicant claims 39 gallons per minute for the Saddle Ridge No. 5 Well and 52 gallons per minute for the Saddle Ridge No. 7 Well, all conditional.

8. Within SRRE, water will be used for in-house domestic purposes on each of the 18 lots and Equestrian Center, and by livestock within the Equestrian Center. Outside of SRRE, water will be used for in-house domestic purposes only on up to 20 residences.

WATER STORAGE RIGHTS

9. Applicant has applied for a storage rights in a structure to be denominated the Saddle Ridge Pond.

10. The Saddle Ridge Pond is an off-channel reservoir, and will be filled by the Meridian Ditch, Ditch No. 226 in old Water District 59, having a decreed point of diversion on the right bank of the Washington Gulch Creek, a tributary to the Slate River, a tributary of the Gunnison River, at a point at whence the Northeast corner of Section 27, Township 13 South, Ranch 86 West, 6th P.M. bears South 71°7' East 3130



feet. The dam outlet point for the pond is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T 13 S, R 86 W, 6th P.M. at a point bearing 100 feet from the North Section Line and 2,500 feet from the West Section Line of Section 35.

11. Applicant claims an appropriation date of June 3, 1997, which appropriation was initiated by location of pond on maps, survey of the proposed development including lot layout, location of the pond and posting of notice of intent to appropriate, application to Gunnison County for subdivision approval, development of a water right plan by the applicants engineers and attorneys, the filing of this application, and the publication of notice of the application and the amended application.

12. Applicant claims 4.0 acre feet, conditional for the Saddle Ridge Pond. Water will be diverted by the Meridian Ditch to fill and refill (to the extent of evaporative losses) the reservoir at the rate of 0.25 c.f.s.

13. The Saddle Ridge Pond will be used for recreation, livestock watering, and augmentation purposes.

14. The surface area of the pond at its high water line will be 0.75 acres, and the dam will have a height of 10 feet and a length of 250 feet. Applicant claims that notice of intent to construct non-jurisdictional structures will be given to the Division 4 Engineer pursuant to the requirements of C.R.S. § 37-87-125.

15. The total capacity of the pond is 4.0 acre feet, all of which is active.

CHANGE OF WATER RIGHT

16. Applicant has applied for a change of the use of 0.25 c.f.s. of water in Priority No. 254 in the Meridian Ditch, Ditch No. 226, in old Water District 59, which was decreed on January 7, 1924, in Case No. 1714 with an appropriation date of June 17, 1910.

17. The decreed point of diversion of the Meridian Ditch is on the right bank of the Washington Gulch Creek, a tributary to the Slate River, a tributary of the Gunnison River, at a point at whence the Northeast corner of Section 27, Township 13 South, Ranch 86 West, 6th P.M. bears South 71°7' East 3130 feet. Its source is Washington Gulch, tributary to the Slate River, a tributary of the Gunnison River

18. The Meridian Ditch has been utilized for irrigation and stock watering during the historic irrigation season on approximately 120 acres of lands in Sections 26 and 35, Township 13 South, Ranch 86 West, 6th P.M., a portion of which lie within the Property. Diversion records indicate an average diversion for agricultural use (irrigation and livestock watering) from mid May through mid October.

19. Applicant proposes to build a pond named the Saddle Ridge Pond, described above, on SRRE for recreation, livestock watering, and augmentation

purposes. Applicant proposes to use 0.25 c.f.s. of water in Priority No. 254 in the Meridian Ditch solely to fill (a maximum of 4.0 acre feet) and refill (to the extent of evaporative losses, a maximum of 1.36 acre feet) the Saddle Ridge Pond to the extent and at such times that the Meridian Ditch diverts for its presently-decreed irrigation use. The place of use will be within SRRE. 2.9 acres of land historically irrigated within Applicants' development are associated with this change of water right, and will be dried up as a result of this change.

SURFACE WATER RIGHT

20. Applicant has applied for a surface water right to be denominated the Meridian Ditch Supplement.

21. The Meridian Ditch Supplement will divert at the point of diversion decreed to the Meridian Ditch, Ditch No. 226 in old Water District 59, as described in paragraph 17 above. The source for the Meridian Ditch Supplement is Washington Gulch, tributary to the Slate River, a tributary of the Gunnison River.

22. Applicant claims an appropriation date of June 3, 1997, which appropriation was initiated on by location of pond on maps, survey of the proposed development including lot layout, location of the pond and posting of notice of intent to appropriate, development of a water right plan by Applicant's engineers and attorneys, application to Gunnison County for subdivision approval, the filing of this application, and the publication of notice of the application and amended application.

23. Applicant claims 0.25 c.f.s., conditional, to be used solely to fill (a maximum of 4.0 acre feet) and refill (to the extent of evaporative losses, a maximum of 1.36 acre feet) the Saddle Ridge Pond to the extent and at such times that the Meridian Ditch does not divert for its presently-decreed irrigation use. Because the Meridian Ditch Supplement will change only the season of use of the existing Meridian Ditch, no new ditch construction will be required.

PLAN OF AUGMENTATION

24. Applicant proposes the following plan to augment all otherwise out-of-priority depletions from the Saddle Ridge No. 5 and No. 7 Wells and evaporative losses from the Saddle Ridge Pond.

25. Applicant has made the following assumptions in the development of their plan of augmentation, which are based upon a report prepared by Applicant's engineers, Bishop-Brogden Associates, Inc.

25.1 Applicant's development and the 20 additional single family residential units outside SRRE will require water for in-house uses, stock water, fire fighting and maintenance of the pond.

25.2 The 39 single family residential units, which includes 18 residential units within SRRE with attached caretaker's units, one 3 bedroom apartment unit within the Equestrian Center, and 20 single family residential units without caretaker units outside SRRE, will divert approximately 19.52 acre feet annually for in-house purposes. Calculations for in-house usage assumes 100% year around occupancy, that each residence plus caretaker unit within SRRE (except the Equestrian Center) will be occupied by an average of 5.5 people, and that each residential unit outside SRRE, plus the Equestrian Center will be occupied by an average of 3.5 people, with a per capita water use of 100 gallons per day. Calculations for usage by livestock within the Equestrian center assumes a maximum of 35 horses boarded from May through September, each consuming 12 gallons per day, all of which is consumptive.

25.3 Applicant will continue to irrigate the historic irrigated acreage within the Open Space and Effective Open Space, which are together a minimum of 77 acres, and portions of Lots not within building envelopes, and lawns and gardens within the building envelopes within the Lots, all as depicted on the preliminary Plat of Saddle Ridge Ranch Estates. The Open Space, Effective Open Space, and portions of Lots not within building envelopes will be irrigated by traditional flood irrigation from the Meridian or Rozich Ditches. Irrigation water for lawns and gardens within building envelopes on Lots will be by lined irrigation ditches or pipes and irrigated by sprinkler irrigation. Notwithstanding the above, Applicant shall not irrigate any land not historically irrigated by the Rozich and Meridian Ditches.

25.4 Applicant relies on diversion records maintained by the Colorado State Engineer for the Meridian Ditch for the years 1984 through 1998, which establish that its historic season of use is generally from late May or early June until mid October.

25.5 Evaporative losses from the water surface of the pond was estimated based upon the Evaporation Atlas of the Contiguous 48 United States, NOAA TR-33, and distributed monthly as recommended by the Colorado Division of Water Resources. The net evaporation loss is estimated to be 1.36 acre feet per year from the 0.75 surface acre pond.

25.6 Wastewater from SRRE will be collected by a central collection system and treated at the Mt. Crested Butte Water and Sanitation District wastewater treatment plant. The consumptive use associated with domestic water use is assumed to be 5%. Accordingly, the total annual consumptive use for in-house uses within SRRE is 0.57 acre feet. Wastewater from residences outside SRRE will be treated by individual sewage disposal treatment systems. The consumptive use associated with domestic water use is assumed to be 10%. Accordingly, the total annual consumptive use for in-house uses outside SRRE is 0.78 acre feet.



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25.7 The total water requirements for SRRE at full build-out, exclusive of irrigation, will be 17.04 acre feet annually, of which 11.48 acre feet is for in-house domestic use, 0.20 acre feet is for stock watering, and 5.36 acre feet is for the pond. The total water requirements for lots outside of SRRE will be 7.84 acre feet annually, of which all is for in-house domestic use. The following table sets forth in acre feet the anticipated demand for water per month:

	Water Requirements (In Acre Feet)												Total	
	Month													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
SRRE														
Domestic	0.97	0.88	0.98	0.94	0.97	0.94	0.98	0.98	0.94	0.98	0.94	0.98	11.48	
Pond			0.09	0.48	0.83	1.10	1.04	0.77	0.60	0.39	0.06		5.36	
Equestrian					0.04	0.04	0.04	0.04	0.04				0.20	
													Total SRRE	17.04
Outside SRRE														
Domestic	0.67	0.60	0.67	0.64	0.67	0.64	0.66	0.67	0.64	0.67	0.64	0.67	7.84	
Total	1.64	1.48	1.74	2.06	2.51	2.72	2.72	2.46	2.22	2.04	1.64	1.65	24.88	

25.8 Consumptive Use. The total consumptive use of water within SRRE at full build-out, exclusive of irrigation, is 2.13 acre feet, of which 0.57 acre feet is attributable to domestic use, 1.36 acre feet is attributable to pond evaporation, and 0.2 acre feet is attributable to stock watering. The total consumptive use of water for lots outside of SRRE will be 0.78 acre feet annually, of which all is for in-house domestic use. The following table sets forth in acre feet the anticipated consumptive use of water per month.

	Consumptive Use (In Acre Feet)												Total
	Month												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
SRRE													
Domestic	0.05	0.04	0.05	0.04	0.05	0.05	0.05	0.05	0.04	0.05	0.05	0.05	0.57
Pond			0.02	0.12	0.21	0.28	0.26	0.20	0.15	0.10	0.02	0.00	1.36
Equestrian					0.04	0.04	0.04	0.04	0.04				0.20

Total SRRE
2.13

Outside
SRRE

Domestic	0.07	0.06	0.07	0.06	0.07	0.06	0.07	0.06	0.06	0.07	0.06	0.07	0.78
Totals	0.12	0.10	0.14	0.22	0.37	0.43	0.42	0.35	0.29	0.22	0.13	0.12	2.91

26. In order to implement components of its augmentation strategy, Applicant has identified the following various potential calls upon the above described diversions:

26.1 During the non-irrigation season and from July to September during the irrigation season, a call could be placed from Washington Gulch, the Slate River or the Lower East River, requiring a release of stored water from Saddle Ridge Pond to augment depletions caused by the Saddle Ridge Ranch wells and pond.

26.2 The Gunnison Tunnel and Redlands Canal water rights located on the Gunnison River could originate a call in dry years that would require a release of stored water from Saddle Ridge Ranch Pond or Blue Mesa Reservoir.

26.3 The following chart sets forth a summary of the augmentation plan:

Water Balance and Summary of Augmentation Plan
(In Acre Feet)

	Month												Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
<u>Depletions</u>													
Domestic (SRRE)	0.05	0.04	0.05	0.04	0.05	0.05	0.05	0.05	0.04	0.05	0.05	0.05	0.57
Pond			0.02	0.12	0.21	0.28	0.26	0.20	0.15	0.10	0.02		1.36
Equestrian					0.04	0.04	0.04	0.04	0.04				0.20
Domestic (Outside)	0.07	0.06	0.07	0.06	0.07	0.06	0.07	0.06	0.06	0.07	0.06	0.07	0.78
Total Depletions	0.12	0.10	0.14	0.22	0.37	0.43	0.42	0.35	0.29	0.22	0.13	0.12	2.91

Dry Up Credits

Credits Available*	0.00	0.00	0.00	0.00	0.49	1.75	1.50	1.04	0.00**	0.00	0.00	0.00	4.78
Depletions	0.12	0.10	0.14	0.22	0.37	0.43	0.42	0.35	0.29	0.22	0.13	0.12	2.91
Net Credits	-0.12	-0.10	-0.14	-0.22	0.12	1.32	1.08	0.69	-0.29	-0.22	-0.13	-0.12	
Storage													
Amount in Storage	3.12	3.02	2.88	2.66	2.68	4.00***	4.00	4.00	3.71	3.49	3.36	3.24	
Releases from Storage	0.12	0.10	0.14	0.22	0.00	0.00	0.00	0.00	0.29	0.22	0.13	0.12	1.34

*These figures reflect historic depletions from the irrigation of 4.4 acres to be removed from irrigation.

**Credits in September were not included because of potential lack of available water in very dry years. Water will be available in September in most years.

*** The Storage pond can fill in June, remain full during the irrigation season, and releases can be made when the Meridian Ditch rights are out of priority.

27. Applicant's entire interest in the following water rights, all of which will be used to provide water for the augmentation, irrigation plans, and change of water rights proposed herein, are as follows:

27.1 7.83 c.f.s. of the Meridian Ditch, allocated among the three priorities as follows:

0.98	Priority No. 254 (1924)
0.98	Priority No. 255 (1924)
5.87	Priority No. 487 (1957)

27.2 0.248 c.f.s. of water in the Rozich among the two priorities as follows:

0.100	Priority No. 148 (1906)
0.145	Priority No. 481 (1957)

27.3 2.0 acre feet of water in the Blue Mesa Reservoir under contract with the Bureau of Reclamation, which contract has been applied for but not yet received.

27.4 4.0 acre feet of water in the Saddle Ridge Ranch Pond described above.



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28. Applicant proposes the following plan of augmentation:

28.1 The Saddle Ridge No. 5 and 7 Wells will operate under 1999 water right priorities. During periods that a valid downstream call is placed on the Washington Gulch during the May through September period, augmentation water to replace depletions from the in-house domestic and equestrian uses will be provided to the Washington Gulch by either or a combination of: 1) use of the historic consumptive use credits available from the dry-up of irrigated land under the Meridian Ditch or, 2) the release of water stored in the Saddle Ridge Pond. During the October through April period, augmentation supplies will be provided by releases from the stored water in Saddle Ridge Pond, or storage in Blue Mesa Reservoir through a water service contract with the Bureau of Reclamation. The amount of water released from storage will be equal to the depletions attributed to Applicant's wells and ponds.

28.2 The development of Applicant's property will result in the removal of 9.86 acres of land from historic irrigation under the Meridian Ditch. The removal of the irrigated land results from the construction of access roads, driveways and houses. This amount of water saving is calculated by Applicant's engineers to be 12.33 acre feet of water annually, and is based upon Blaney-Cridle high altitude consumptive use calculations and historic diversions. The dry-up of 1.5 acres of the land will be sufficient to augment the depletions associated with domestic uses within and outside of SRRE throughout the irrigation season. In addition, a maximum of 2.9 acres of the historically irrigated land will be sufficient to account for pond evaporation for the change of 0.25 c.f.s. in the Meridian Ditch as described herein for a total of 4.4 acres.

28.3 The savings from removing 4.4 acres of land from irrigation (consumptive water use credits) are sufficient to offset the depletions described in paragraph 25 throughout the irrigation season. Accordingly, so long as the Meridian Ditch water rights remain in priority and land is permanently removed from irrigation, Applicant's wells and pond will be protected from a call by downstream rights by the direct exchange for consumptive use credits.

28.4 If the Meridian Ditch priority is subject to a call during the late irrigation season of a drought year or during the non-irrigation season, augmentation water will be provided by the release of water from the Saddle Ridge Pond or Blue Mesa Reservoir. The pond, totaling approximately 4.0 acre feet in volume, will be filled in priority by diversions through the Meridian Ditch under the change of water rights described in paragraphs 16-19 or the Meridian Ditch Supplement.

28.5 The amount of Applicant's interests in the Meridian Ditch that will be dedicated to this plan for augmentation to replace depletions from the in-house domestic and equestrian uses is calculated by Applicant's engineers to be 0.130 c.f.s., allocated among the three priorities as follows:

Priority No. 254 (1924) 0.016 c.f.s.
 Priority No. 255 (1924) 0.016 c.f.s.
 Priority No. 487 (1957) 0.098 c.f.s.

Based upon depletions from 1.5 acres of land to be dried up to augment the depletions associated with the in-house domestic and equestrian uses for the proposed development throughout the irrigation season. This water will be measured and bypassed at the headgate of the Meridian Ditch on Washington Gulch.

29. In order to minimize the impact of the augmentation plan on vested water rights, applicant will continue to irrigate the Open Space, Effective Open Space and portion of Lots not within building envelopes in SRRE as shown on Exhibit B, all in accordance with their historic practices, the terms and conditions of this decree, and the following conditions:

29.1 Applicant's water rights remaining in the Meridian Ditch and the Rozich Ditch, following the changes and dedication to the augmentation plan above are as follows:

	Ownership (c.f.s.)	Change in use (¶¶ 16-19)	Dedicated to Augmentation Plan (¶ 28.5)	Remaining Rights (c.f.s.)
Meridan Ditch				
Priority 254	0.980	0.250	0.016	0.714
Priority 255	0.980		0.016	0.964
Priority 487	5.870		0.098	5.772
TOTAL	7.830			7.450
Rozich Ditch				
Priority 148	0.100			0.100
Priority 481	0.145			0.145
TOTAL	0.245			0.245

29.2 Such remaining rights in the Meridian and Rozich Ditches (the "Irrigation Water") are hereby dedicated to the irrigation plan within SRRE subject to the terms of this decree.

29.3 The full amount of the Irrigation Water will be turned on for irrigation purposes no later than June 1 of each year, and continued throughout the irrigation season, except as provided below, so long as water is available in priority.

29.4 The Irrigation Water may be turned off on or about July 15 of each year as is customarily necessary to prepare for the cutting of hay on any land irrigated by the ditches. Applicant shall use all reasonable efforts to complete the haying promptly in accordance with customary practices and the weather.

29.5 The Irrigation Water will be turned on promptly after haying has been completed.

29.6 The Irrigation Water shall be turned off no sooner than October 15 of each year, subject only to weather conditions and the availability of water in priority.

29.7 The Irrigation Water may be turned off temporarily to the extent necessary for the maintenance or repair of the Rozich or Meridian Ditches. Applicant shall use all reasonable efforts to complete such maintenance or repair promptly in accordance with customary practices and weather.

29.8 Applicant shall maintain the historic return flow of water to the lands that have historically benefitted from the irrigation of the Applicant's Property with Applicant's interests in the Rozich or Meridian Ditches. Those lands (the "Downslope Lands") include, without limitation, the parcels currently owned by the Crested Butte Land Trust, Rudolph R. Rozman and Lois J. Rozman, and Marsha Perkins located east of Gothic County Road and west of Washington Gulch in the S ½ SE ¼ of Section 26 and the N ½ of Section 35, T. 13 S., R. 86 W., 6th P.M. The historic return flows associated with the 4.4 acres of dry-up set forth in the following table shall be diverted at the headgate of the Meridian Ditch and delivered directly to Point 1 on the map attached as Exhibit B.

RETURN FLOW REQUIREMENT

Month											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
0.00	0.00	0.00	0.00	0.49	1.75	1.50	1.04	0.00	0.00	0.00	0.00

29.9 All remaining water associated with the change of 0.25 c.f.s. of the Meridian Ditch under paragraphs 16-19 shall be diverted at the headgate of the Meridian Ditch and delivered directly to Point 1 on the map attached as Exhibit B for use on the Downslope Lands whenever that water is not used to fill the Saddle Ridge Pond.

29.10 Due to the steepness and slope of the land and the susceptibility to soil erosion, Applicant may take reasonable steps to minimize erosion on the Property. To the extent that conditions, including rain and other moisture available for natural irrigation, make it improvident to use the full amount of the Irrigation Water then available in priority to irrigate the Open Space, Effective Open Space, and portions of Lots not within building envelopes, Applicant shall nonetheless divert the full amount of the Irrigation Water then available in priority and deliver that water directly to the Downslope Lands, provided such diversions may be made without damage to the ditch structure.

29.11 Applicant shall not interfere with the flow of waste water or return flows onto the Downslope Lands that results from irrigation of lands under this irrigation plan. Applicant shall not interfere with the lawful delivery of water owned by others through the existing ditches across Saddle Ridge Ranch Estates as shown on Exhibit B, or through such other delivery structures as may be provided by agreement with the Applicant.

29.12 In addition to the irrigation of the Open Space, Effective Open Space, and portions of Lots not within building envelopes, approximately 0.60 c.f.s. of the Irrigation Water, allocated proportionately among the respective priorities, may be utilized to irrigate the lawns and gardens within the building envelopes within the Lots subject only to the availability of irrigation water in priority and taking into consideration rain and other moisture available of natural irrigation. The Irrigation Water for such purpose will be delivered to the Lots by lined irrigation ditches or pipes, with the lawns to be irrigated by sprinkler irrigation.

29.13 Applicant has agreed to convey to the owners of those Downslope Lands described in paragraph 29.8 the Meridian Ditch water rights associated with the 5.46 acres of the land that will be removed by the construction of access roads, driveways and houses, but which are not required to augment the depletions associated with proposed development or to account for the change in the Meridian Ditch. These water rights (.06 c.f.s. of each of priorities 254 and 255 and .37 c.f.s. of priority 487) are not part of the Irrigation Water and will continue to be diverted through the Meridian Ditch and may be used directly on those Downslope Lands.

30. By virtue of each of the augmentation strategies, all otherwise out-of-priority diversions shall be replaced in such manner that the lawful requirements of all other water users shall be met at the time and location and to the extent that all other water users would otherwise be deprived of their lawful entitlement by the above described diversions.

31. The Court finds that:

31.1 The above statements are true;

31.2 The Meridian Ditch has been utilized for irrigation during the historic irrigation season for (i) approximately 9.86 acres the lands within the Saddle Ridge Ranch Estates which will be dried up by development, and (ii) the lands underlying the Open Space, Effective Open Space, portions of Lots not within building envelopes, and lawns and gardens within the building envelopes within the Lots, all as shown on the preliminary Plat of Saddle Ridge Ranch Estates;

31.3 The subject water rights can and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the water supply project can and will be completed with diligence and within a reasonable time; and

31.4 The Applicant is entitled to a decree as requested.

RULING AND DECREE

32. The findings of fact set forth above are expressly incorporated herein by reference.

33. Applicant is hereby granted a conditional underground water right for the Saddle Ridge Well No. 5 and Saddle Ridge Well No. 7 in the locations, with the sources, with an appropriation date of May 16, 1999, in the amounts, and for the beneficial uses set forth above.

34. Applicant is hereby granted a conditional water storage right for 4.0 acre feet of water for the Saddle Ridge Pond in the location, with the source, with an appropriation date of June 3, 1997, and for the beneficial uses set forth above.

35. Applicant is hereby granted a change in water right for 0.25 c.f.s. of water in Priority No. 254 of the Meridian Ditch, Ditch No. 226, in the location, with the source, with the appropriation date, and for the beneficial uses and subject to the terms and conditions set forth above.

36. Applicant is hereby granted a conditional water right for 0.25 c.f.s. of water in the Meridian Ditch Supplement, in the location, with the source, with an appropriation date of June 3, 1997, and for the beneficial uses set forth above.

37. Pursuant to C.R.S. § 37-84-112 and §37-92-502(5)(a), Applicant shall, at its own expense, install totalizing flowmeters on both wells, install a calibrated staff gage on the Saddle Ridge Pond, and install and maintain such meters, gages or other measuring devices as may be deemed necessary by the State or Division Engineer to allow administration of the terms of this decree. The Division Engineer and/or its agents shall have access to such measuring devices at reasonable times in order to make readings therefrom. The Colorado Water Conservation Board shall have access to those measuring devices located on Applicant's property at reasonable times in order to make readings therefrom.

38. Applicant shall appoint a designated representative responsible for reporting volumetric flow readings, the number of residential units constructed, and reservoir storage to the office of the Colorado State Engineer, the Division 4 Engineer, by the 15th of each month. Applicant shall record a copy of these Findings of Fact and Decree the terms and conditions of which shall be binding upon all owners and users of the water rights, change of water rights and augmentation plan adjudicated herein.

39. Applicant shall install a lockable outlet structure of the Saddle Ridge Pond with a Parshall Measuring Flume below the outlet to measure augmentation releases, and Applicant shall construct a ditch or pipeline from the Saddle Ridge Pond outlet to the natural drainage leading to Washington Gulch to convey augmentation waters back to the stream system in a timely and efficient manner.

40. It is further the decree of this Court that the plan of augmentation herein described is approved. The Colorado State Engineer, the Division 4 Engineer, and other water administration officials shall administer and comply with the plan of augmentation herein approved as follows:

40.1 By recognizing the existence, operation and effect of this plan of augmentation in the processing of the applications for well permits for the Saddle Ridge Well No. 5 and Saddle Ridge Well No. 7, and issuing such well permits, which permits shall incorporate by reference the provisions of this ruling and decree.

40.2 By recognizing the existence, operation and effect of this plan of augmentation in the administration of all water rights in Water Division 4.

40.3 By directing the Applicant to curtail all out-of-priority diversions the depletions from which are not augmented as contemplated herein, or in the event the decreed source of augmentation water is itself out of priority or not available to Applicant, in order to prevent injury to vested water rights. Such augmentation releases shall be made at the discretion, and upon such terms and conditions as may be requested by the Division 4 Engineer.

41. The Court shall retain jurisdiction in accordance with Section 37-92-304(6) C.R.S. until five years after the later of (i) the completion of construction of the water structures herein, or (ii) the required dry-up of historically irrigated lands and change of the Meridian Ditch water right to allow the Court to consider any additional evidence regarding consumptive use and return flow from the water rights granted herein and the operation and effect of the plan of augmentation or change of the Meridian Ditch water right approved herein, in order to further address future potential injury and protection of senior vested water rights and conditional water rights. Any party may at any time within the period of retained jurisdiction request a hearing before the Court for the purpose of reconsidering the question of injury to vested water rights or decreed conditional water rights. Any such request shall be made by petition to the Court, served on all parties

herein and made in good faith, stating with particularity the factual basis upon which is asserted that injury has occurred or will occur.

42. As required by law, at times when the Washington Gulch instream flow water right decreed to the Colorado Water Conservation Board in Case No. 80CW094 is not being satisfied immediately below the Applicant's point of depletion, Applicant agrees to curtail its out-of-priority depletions or to replace said out-of-priority depletions with a release of augmentation water from an upstream source in accordance with the augmentation plan set forth herein. Pursuant to C.R.S. § 37-92-502(4), the Division Engineer shall administer the movement of water involved in this augmentation plan.

43. Prior to or during the month of Aug. 2008, and in the same month of every sixth year thereafter until the conditional rights are decreed absolute, the owner or user thereof, if it is desired to maintain the same, shall file an application for finding of reasonable diligence with this Court. Upon the sale or other transfer of such conditional water rights, the transferee shall file with this Court a Notice of Transfer which shall state:

- 43.1 The title and case number of this case;
- 43.2 The description of the conditional water right transferred;
- 43.3 The name of the transferor;
- 43.4 The name and mailing address of the transferee.

The applicant shall notify any transferee of the requirements of this paragraph. The owner or owners of these conditional water rights shall notify the Clerk of this Court of any change in mailing address.

Dated this 27th day of Aug., 2002

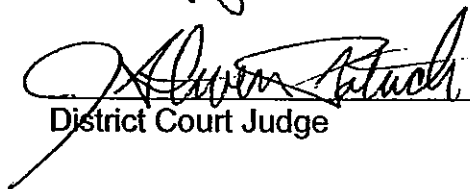

District Court Judge

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Applicant has committed to supply up to, but no more than 20 additional single family residential units on the following lands:

Lots 1 through 9, inclusive, MOON RIDGE SUBDIVISION, according to the official plat thereof bearing Reception No. 465167, recorded January 11, 1996 and the replat bearing Reception No. 471100.

Lots 1 through 20, inclusive, GLACIER LILY SUBDIVISION, according to the official plat thereof bearing Reception Nos. 385811, 405798 and 444060.

Tract 1

Township 13 South, Range 86 West, 6th P.M.

Section 35: A tract of land situated in the SE1/4NW1/4 and the SW1/4NW1/4 of said Section 35, being more particularly described as follows:

Beginning at the NE corner of the SE1/4NW1/4 of said Section 35; thence S 89°45'37" W 1606.33 feet along the North line of the S1/2NW1/4 of said Section 35 to the TRUE POINT OF BEGINNING; thence S 40°06'59" E 816.26 feet to a point on the North right of way of an existing county road; thence S 80°40'35" W 105.07 feet along the North right of way of said road to a point; thence S 10°01'04" E 4.25 feet to a point of curve; thence 187.58 feet along the arc of a non-tangent curve to the left having a delta of 51°10'44" and a radius of 210.0 feet and a chord of S 54°22'23" W 181.41 feet to a point; thence N 35°25'57" W 920.5 feet to a point on the North line of the S1/2NW1/4 of said Section 35; thence N 89°45'37" E 258.09 feet along the North line of the S1/2NW1/4 of said Section 35 to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM that portion of the subject property conveyed to the Board of County Commissioners of Gunnison County by Warranty Deed recorded July 8, 1983 in Book 594 at page 248,

County of Gunnison,
State of Colorado.



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Tract 2:

A tract of land located in the SE1/4NW1/4 and SW1/4NW1/4 of Section 35, Township 13 South Range 86 West, 6th P.M., more particularly described as follows:

Beginning at the NE corner of the SE1/4NW1/4 of said Section 35; thence S 89°45'37" W 1268.33 feet along the North line of the SE1/4NW1/4 of said Section 35 to the TRUE POINT OF BEGINNING; thence S 39°16'36" E 753.96 feet to a point on the North right of way of an existing county road; thence S 77°53'22" W 71.63 feet along the North right of way of said road to an angle point; thence S 83°21'38" W 190.28 feet along the North right of way of said road to an angle point; thence S 80°40'35" W 30.72 feet along the North right of way of said road to a point; thence N 40°06'59" W 816.26 feet to a point on the North line of the SW1/4NW1/4 of said Section 35; thence N 89°45'37" E 338.0 feet along the North line of the SW1/4NW1/4 of said Section 35 to the TRUE POINT OF BEGINNING.

Tract 3:

A tract of land within the SE1/4 NW1/4 of Section 35, Township 13 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado; said tract being more particularly described as follows:

Commencing at the northeast corner of said SE1/4 NW1/4; thence South 89 degrees 45' 37" West 569.83 feet along the northerly boundary of said SE1/4 NW1/4 (this line having a recorded course of S 89 degrees 45' 37" West) to the northeasterly corner of the Lock Ranch Inc. property, (as described in Exhibit A, Parcel 3, of the Amended Order of Partition from District Court of Gunnison County, recorded in Book 552 at Page 63 of the records of Gunnison County); said corner also being the POINT OF BEGINNING of the herein described tract; thence the following courses around said tract:

1. South 39 degrees 04' 30" East 507.15 feet along the northeasterly boundary of said Lock Ranch Inc. property to the northerly corner of the Board of County Commissioners of Gunnison County property, (as described in Book 594 at Page 256 of the records of Gunnison County);
2. South 67 degrees 20' 03" West 286.01 feet along the northwesterly boundary of said property to a point on the westerly boundary of said Lock Ranch Inc. property, (the recorded bearing for this leg is South 68 degrees 17' 13" West on a Colorado State Coordinate System Grid North basis);
3. North 36 degrees 02' 44" West 621.53 feet along said boundary to the northwest corner of said property;
4. South 89 degrees 44' 29" West 310.00 feet along the northerly boundary of the said SE1/4 NW1/4 to the northeasterly corner of said property (this course having a recorded bearing of North 89 degrees 45' 37" East), said corner also being the POINT OF BEGINNING of the herein described tract.

The above described tract is the same property described as Parcel 3, of the Amended Order of Partition recorded in Book 552 at Page 63 of the records of Gunnison County, less and except that parcel conveyed to the Board of County Commissioners of Gunnison County in a deed recorded in Book 594 at Page 256 of the records of Gunnison County.



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Tract 4:

TRACT A-1,

A TRACT OF LAND IN THE SE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 35, T.13S, R.86W., 6th PRINCIPAL MERIDIAN, TO WIT;

BEGINNING AT THE NE CORNER OF THE SE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SAID SECTION 35 COMMON TO THE NE CORNER OF SAID TRACT;

THENCE S0 $^{\circ}$ 11' 05" W. 296.17' ALONG THE EAST LINE OF THE SE $\frac{1}{4}$ NW $\frac{1}{4}$ TO THE NORTH RIGHT OF WAY OF THE EXISTING COUNTY ROAD.

THENCE S65 $^{\circ}$ 31' 35" W. 132.50' ALONG THE NORTH R.O.W. OF SAID ROAD;

THENCE N30 $^{\circ}$ 47' 57." W. 407.09' TO THE NORTH LINE OF THE SE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SAID SECTION 35;

THENCE N89 $^{\circ}$ 45' 37" E. 530.00' TO THE TRUE POINT OF BEGINNING, CONTAINING 1.73 ACRES MORE OR LESS.

Excepting therefrom:

Commencing at the north quarter corner of said Section 35 as marked by a 6LO brass cap monument; thence South 1 $^{\circ}$ 08' 08" West 1316.86 feet to the northeast corner of Parcel 1 as described in the Amended Order of Partition recorded in Book 552 at Page 63 of the records of the Gunnison County Clerk and Recorder's Office; thence South 1 $^{\circ}$ 08' 08" West 291.42 feet to the southeast corner of said Parcel 1 (this course being recorded as South 0 $^{\circ}$ 11' 05" West 296.17 feet), said corner being on the northerly ROW fence of the Crested Butte - Gothic County Road and said corner being the Point of Beginning for the tract herein described; thence the following courses around said tract:

1. South 56 $^{\circ}$ 46' 06" West 62.05 feet along said ROW fence;
2. South 66 $^{\circ}$ 23' 34" West 72.57 feet along said ROW fence to the southwest corner of said Parcel 1;
3. North 29 $^{\circ}$ 51' 46" West 22.84 feet along the westerly boundary of said Parcel 1;
4. 42.06 feet along the arc of a 730.00 foot radius curve to the left, said curve having a chord of North 57 $^{\circ}$ 53' 15" East 42.05 feet;
5. North 56 $^{\circ}$ 14' 13" East 114.28 feet to the easterly boundary of said Parcel 1;
6. South 1 $^{\circ}$ 08' 08" West 42.62 feet to the Point of Beginning.

This tract contains 0.105 acres more or less. Bearings used herein are relative to Colorado State Coordinate System Grid North.



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Tract 5:

Township 13 South, Range 86 West, 6th P.M.

Section 35: A tract of land located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 35, more particularly described as follows:

Beginning at the NE corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35; thence S 0°11'05" W. 825.00 feet along the East line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35 to a point; thence West 290.38 feet to the TRUE POINT OF BEGINNING; thence West 548.0 feet to a point; thence North 109.03 feet to a point on the South right of way of an existing county road; thence N 69°48'34" E. 297.45 feet along the South right of way of said road to a point; thence S 51°46'51" E. 342.17 feet to the TRUE POINT OF BEGINNING,

County of Gunnison,
State of Colorado.

Tract 6:

Township 13 South, Range 86 West, 6th P.M.

Section 35: A tract of land situated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35, being more particularly described as follows:

Beginning at the NE corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35, thence S 0°11'05" W 825.00 feet along the east line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35 to a point; thence West 99.38 feet to the TRUE POINT OF BEGINNING; thence West 191.0 feet to a point; thence N 51°46'51" W 342.17 feet to a point on the South right of way of an existing county road; thence N 69°48'34" E 297.45 feet along the South R.O.W. of said road to a point; thence S 29°53'07" E 362.57 feet to the TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM any portion of the above described property which may lie within that property conveyed to the Board of County Commissioners of Gunnison County in Warranty Deed from Frank S. Hoffman recorded July 8, 1983 in Book 594 at page 250,

County of Gunnison,
State of Colorado.

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Tract 7:

Township 13 South, Range 86 West, 6th P.M.

Section 35: A tract of land situated in the SE1/4NW1/4 of said Section 35, being more particularly described as follows:

Beginning at the NE corner of the SE1/4NW1/4 of said Section 35; thence S 0°11'05" W 414.16 feet to the TRUE POINT OF BEGINNING; thence S 0°11'05" W 410.84 feet along the East line of the SE1/4NW1/4 of said Section 35 to a point; thence West 99.38 feet to a point; thence N 29°53'07" W 362.57 feet to a point on the South right of way of an existing county road; thence N 69°48'34" E 65.68 feet along the South right of way of said road to an angle point; thence N 71°25'53" E 231.77 feet along the South right of way of said road to the TRUE POINT OF BEGINNING;

Tract 8:

Township 13 South, Range 86 West, 6th P.M.

Section 35: SE1/4

Excepting therefrom the metes and bounds description of the Moon Ridge Subdivision, according to the official plat thereof bearing reception no. 465167, recorded January 11, 1996, and the replat bearing reception no. 471100.

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Tract 9:

A tract of land situated in the SE1/4 NW1/4 of Section 35, T13S, R86W, 6TH P.M., to wit:

Beginning at the NE corner of the SE1/4 NW1/4 of said section 35, thence S 89 degrees 45' 37" W 879.83' along the north line of the SE1/4 NW1/4 of said section 35, to the true point of beginning; thence S 36 degrees 02' 44" E 630.27' along the west line of tract B to a point on the north right of way of an existing county road; thence S 70 degrees 16' 26" W 111.65' along the north R.O.W. of said road to an angle point; thence S 77 degrees 53' 22" W 180.99' along the east line of tract CD-2 to a point on the north line of the SE1/4 NW1/4 of said section 35; thence N 39 degrees 16' 36" W, 753.96' along the east line of tract CD-2 to a point on the north line of the SE1/4 NW1/4 of said section 35; thence N 89 degrees 45' 37" E 388.5' along the north line of the SE1/4 NW1/4 of said section 35 to the true point of beginning.

County of Gunnison, State of Colorado; according to the records of the Gunnison County Clerk and Recorder.

Tract 10:

A tract of land for County Road right-of-way purposes situate in the W1/2 of Section 35, Township 13 South, Range 86 West of the 6th P.M.; Gunnison County, Colorado, being a part of that certain tract described in Book 571 at Page 707-708 of the Gunnison County real property records, said right-of-way tract being more particularly described as follows:

Commencing at the N.E. Corner of the SE1/4NW1/4 of said Section 35; thence S00°11'05"W on the east line of the SE1/4NW1/4 of said Section 35 1404.07 feet; thence N90°00'00"W 1164.10 feet; thence N09°50'49"W 30.45 feet to the point of beginning; thence N09°50'49"W 492.04 feet; thence 62.90 feet on the arc of a 160.00 foot radius nontangent curve to the right (the chord of which bears N09°42'10"E 62.50 feet and the central angle of which is 22°31'31"); thence S78°28'37"W 25.82 feet; thence S09°41'40"E 549.08 feet; thence S90°00'00"E 6.44 feet to the beginning.

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Thence West 296.40 feet to a point on the East right of way of County Highway No. 135;

Thence North 09°50'49" West 492.04 feet along the East right of way of said Highway No. 135 to a point of curve;

Thence 204.80 feet along the arc of a non-tangent curve to the right on the East right of way of said Highway No. 135 having a radius of 160.0 feet and a delta of 73°20'14" and a chord bearing North 35°07'18" East 191.0 feet to a point of non-tangency;

Thence North 75°04'07" East 46.57 feet along the South right of way of said Highway No. 135;

Thence South 76°51'57" East 61.61 feet along the South right of way of said Highway No. 135;

Thence North 84°37'36" East 202.89 feet along the South right of way of said Highway No. 135;

Thence South 109.03 feet to the true point of beginning.

Parcel No. 4.

A tract of land located in the N/2 SW/4 of said Section 35, described as follows:

Beginning at the Northeast corner of the S/2 NW/4 of said Section 35;

Thence South 00°11'05" West 1,374.07 feet along the East line of the SE/4 NW/4 and the NE/4 SW/4 of said Section 35 to the true point of beginning;

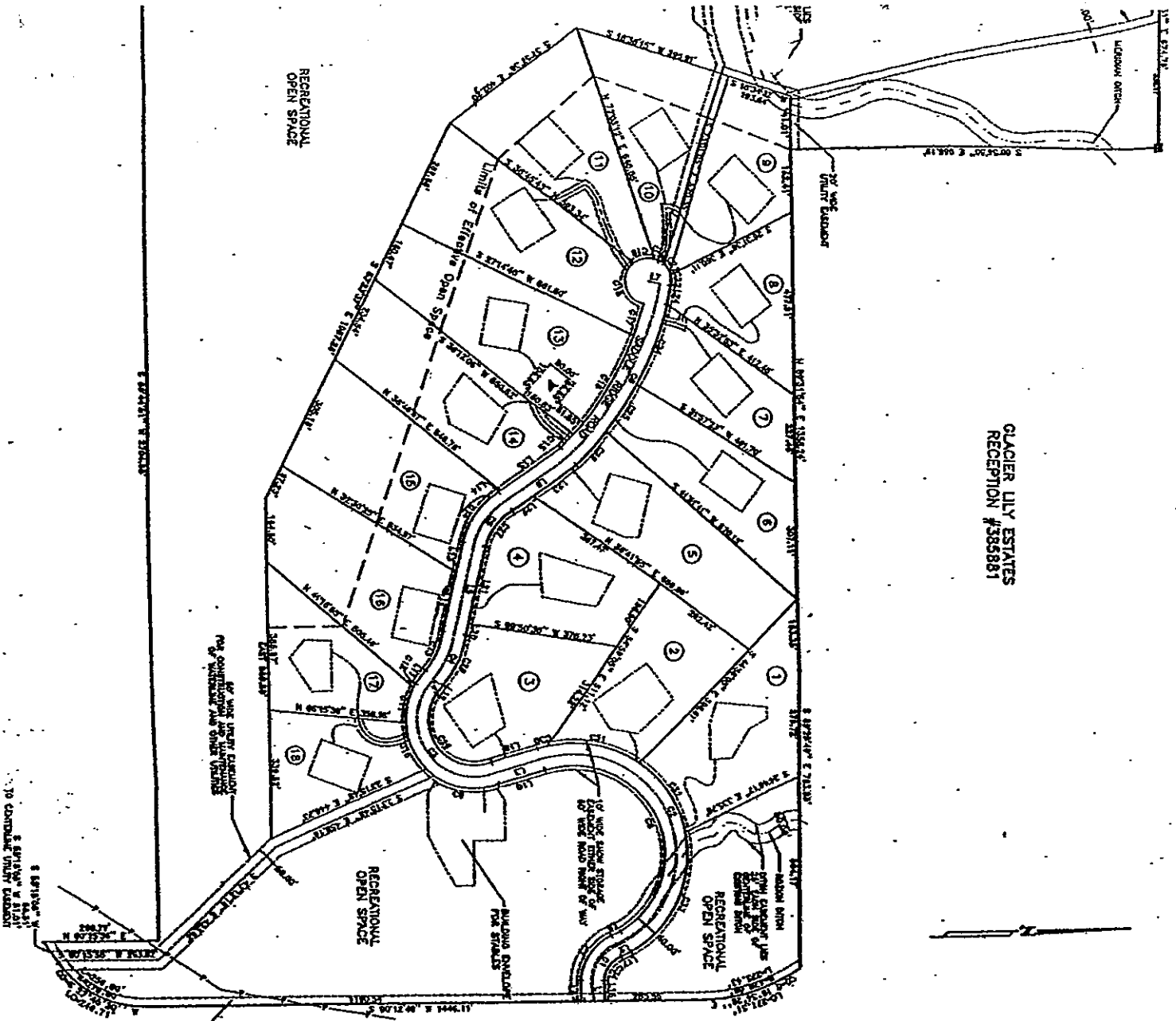
Thence West 1,169.40 feet to a point on the East right of way of an existing road;

Thence South 09°50'49" East 30.45 feet along said right of way to a point;

Thence East 1,164.10 feet to a point of the East line of the NE/4 SW/4 of said Section 35;

Thence North 00°11'05" East 30.0 feet along said East line to the true point of beginning.

GLACIER UTY ESTATES
RECEPTION #388881



GOTHIC ROAD (COUNTY ROAD #317)



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GA\DRAWINGS\980655.DWG
SADDLE RIDGE RANCH ESTATES
WITHIN
SECTIONS 26 AND 35,
TOWNSHIP 13 NORTH, RANGE 86 WEST, 6TH P.M.
GUNNISON COUNTY, COLORADO

PREPARATION DATE: 10/4/98
LATEST REVISION NO./DATE:
FURBY LAND SURVEYING, INC.
307 NORTH MAIN STREET
GUNNISON, CO 81230
970-641-2255

GENERAL NOTES:

1. Property located by field measurement from the southwest corner of Section 26 as marked by a 1/2" brass cap monument. Boundaries of adjacent sections north or westward by solar observation.
2. Reopened right of way and easements affecting subject property are not shown hereon as there were none shown on Title Commitment JUC2350 prepared by Dunham, County Abstract Co., dated 5/23/95, and provided by sheet.
3. The dedication and use of the public trail easement, and the 6' wide public access easement thereon in Section 10, 10 of this Township to the dedication instruments of Saddle Ridge Ranch East, Deed Instrument No. 2350, and provided by sheet.
4. There is hereby dedicated 10' wide utility easements along the lot lines shown hereon for the maintenance and installation of underground public utilities.

LEGEND

- ⑤ Lot number inside circle symbol
- Property line - subject plat
- Line of adjacent open space
- Footprint
- General line as noted hereon
- Building footprint
- 20' wide driveway easement
- Overhead utility line
- Underground utility line

EXHIBIT B
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