

<b>DISTRICT COURT, WATER DIVISION 1,          CO</b> Court Address: 901 9 <sup>th</sup> Avenue, Suite 116 Greeley, CO 80631-1113	DATE FILED: July 11, 2019 11:13 AM CASE NUMBER: 2018CW3226
Phone Number: (970) 475-2510	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No.: 18CW3226
<b>CONCERNING THE APPLICATION FOR WATER          RIGHTS OF:</b>  <b>SHAY MILES</b>	
<b>IN EL PASO COUNTY</b>	
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND          DECREE</b>	

THIS MATTER comes before the Water Referee on the Application filed by Shay Miles on December 28, 2019. Having reviewed said application and other pleadings on file, and being fully advised on this matter, the Water Referee makes the following findings and orders:

**FINDINGS OF FACT**

1. The applicant in this case is Shay Miles, whose address is 7330 Matthews Road, Colorado Springs, CO 80908 (“Applicant”). Applicant is the owner of the land totaling approximately 39.72 acres on which the structures sought to be adjudicated herein are located, and are the owners of the place of use where the water will be put to beneficial use.
2. The Applicant filed this Application with the Water Courts for both Water Divisions 1 and 2 on December 28, 2018. The Application was referred to the Water Referees in both Divisions 1 and 2 on or about January 2, 2019.
3. The time for filing statements of opposition to the Application expired on the last day of February 2019. No Statements of Opposition were timely filed.
4. A Motion for Consolidation of the Division 1 and Division 2 cases into Water Division 1 was filed with the Colorado Supreme Court on March 1, 2019. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on March 6, 2019. Chief Justice, Nathan B. Coats, granted the Motion for Consolidation by Order dated April 2, 2019.
5. On January 2, 2019, the Division 2 Water Court, on Motion from Applicant, ordered that consolidated publication be made by only Division 1. On or near January 2nd, 2019, the Water Court, Division 1 ordered that publication occur in *The Transcript* within El Paso County.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On January 17, 2019, proof of publication in *The Transcript* was filed with Water Court Division 1. All notices of the Application have been given in the manner required by law.

7. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each aquifer with this Court on March 18, 2019.

8. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division No. 1 filed its Consultation Report dated March 31, 2019, and a Response to the Consultation Report was filed by the Applicant on April 1, 2019. Both the Consultation Report and Response have been considered by the Water Referee in the entry of this Ruling.

9. The Water 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. The land and water rights involved in this case are not within a designated groundwater basin.

### **GROUNDWATER RIGHTS**

10. The Applicant requested the adjudication of underground water rights for Miles Wells Nos. 1 through 7, as may be constructed to the Dawson aquifer, and additional or replacement wells associated therewith for withdrawal of Applicant's full entitlements of supply under the plan for augmentation decreed herein. Applicant also requested quantification and adjudication of water uses from the Denver, Arapahoe, and Laramie-Fox Hills aquifers. The following findings are made with respect to such underground water rights:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 39.72 acres located in the SW $\frac{1}{4}$  of Section 29, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, as more particularly described on the attached **Exhibit A**, and depicted on the attached **Exhibit B** map ("Applicant's Property"). Applicant intends to subdivide the property into up to seven (7) lots. All groundwater adjudicated herein shall be withdrawn from the overlying land.

12. In accordance with the notice requirements of C.R.S. § 37-92-302, lienholders of the Applicant's property were sent a Letter of Notice dated January 25, 2019. A Certificate of Notice was filed with the District Court, Water Divisions 1 and 2, on January 31, 2019.

13. Miles Wells Nos. 1 through 7: Miles Well Nos. 1 through 7 will be located on the Applicant's Property. Applicant is awarded the vested right to use Miles Well Nos. 1 through 7, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, the State Engineer shall issue a well permit for Miles Well Nos. 1 through 7 pursuant to C.R.S. §37-90-137(4), consistent with and references the

Plan for Augmentation decreed herein.

14. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Dawson aquifer underlying the Applicant's Property contains not-nontributary water, while the water of the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicant's Property are nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant's Property is as follows:

AQUIFER	NET SAND (ft)	DEPTH (ft)		Annual Average Withdrawal 100 Years (Acre Feet)	Total Withdrawal (Acre Feet)
		Bottom	Top		
Dawson (NNT)	510	1010	0	40.5	4,050
Denver (NT)	470	1885	990	31.7	3,170
Arapahoe (NT)	245	2430	1920	16.5	1,650
Laramie-Fox Hills (NT)	190	3030	2725	11.3	1,130

15. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirements for wells in the Dawson aquifer require the replacement to the effected stream systems of actual stream depletions on an annual basis, to the extent necessary to prevent injurious effect, based upon actual aquifer conditions. Applicant shall not be entitled to construct a well or use water from the not-nontributary Dawson aquifer except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9)(c.5), including as decreed herein as concerns the Dawson aquifer.

16. Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts can be withdrawn over the 300-year life of the aquifers as set forth in El Paso County, Colorado Land Development Code §8.4.7(C)(1) which requirements also satisfy the 100-year life for the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or Applicant's water needs. The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, based upon the 300-year aquifer life is determined and set forth above, based upon the March 18, 2019 Office of the State Engineer Determination of Facts.

17. Applicant shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of the decree herein, whichever comes first, and the annual volume of water which Applicant is entitled to withdraw from the aquifer underlying Applicant's Property, subject to the requirement that such banking and excess withdrawals do not violate the terms and conditions of the plan for augmentation decreed herein and any other plan for augmentation decreed by the Court

that authorizes withdrawal of the Denver Basin groundwater decreed herein.

18. Subject to the terms and conditions in the plan for augmentation decreed herein and final approval by the State Engineer's Office pursuant to the issuance of well permits in accordance with C.R.S. §§37-90-137(4) or 37-90-137(10), the Applicant shall have the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, hot tub, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and for storage and augmentation associated with such uses. The amount of groundwater decreed for such uses upon the Applicant's Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicant's Property and is to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided however, as set forth above, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

19. Withdrawals of groundwater available from the nontributary aquifers beneath the Applicant's Property in the amounts determined in accordance with the provisions of this decree will not result in material injury to any other vested water rights or to any other owners or users of water.

### **PLAN FOR AUGMENTATION**

20. The structures to be augmented are Miles Well Nos. 1 through 7 to be constructed in the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith.

21. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation obligation for Miles Well Nos. 1 through 7, and any additional or replacement wells constructed to the Dawson aquifer requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary Miles Well Nos. 1 through 7, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are a reserved portion of Applicant's nontributary water rights in the Laramie-Fox Hills aquifers. Applicant shall provide for the augmentation of stream depletions caused by pumping the Miles Well Nos. 1 through 7 as approved herein. Water use criteria as follows:

A. Use: The Miles Well Nos. 1 through 7 may each pump up to 0.59 acre feet of water per year, for a maximum total of 4.13 acre feet being withdrawn from the Dawson aquifer annually, though should fewer than seven lots be developed on Applicant's Property, each well thereon shall be entitled to withdraw its proportional share of the total 4.13 acre feet available.

Households will utilize an estimated 0.25 acre feet of water per year per residence, with remaining pumping entitlements available for other uses on the property, including, for example, irrigation of approximately 5,920 square feet of lawn and garden and the watering of up to four horses or equivalent livestock, per residence. The foregoing figures assume the use of seven individual septic systems, with resulting return flows from each. Should Applicant subdivide Applicant's property into fewer than seven lots, both depletions and return flows for the replacement of the same will be correspondingly reduced, though pumping for uses other than household use may be increased provided at all times septic return flows shall replace the maximum depletions resulting from pumping (20.78%) as described in this Paragraph 21.

B. Depletions: Maximum stream depletions over the 300-year pumping period will amount to approximately twenty point seven eight percent (20.78%) of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.858 acre feet in year 300. Should Applicant's pumping be less than the total 0.59 annual acre feet described herein, or should fewer lots be developed, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the maximum seven residential Dawson aquifer wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At the household use rate of 0.25 acre feet per residence per year, total of 1.75 acre feet (assuming seven residences), 1.575 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented.

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Miles Well Nos. 1 through 7, Applicant will reserve up to 1,130 acre feet of water from the nontributary Laramie Fox Hills aquifer (subject to the 2% relinquishment requirement), accounting for actual stream depletions replaced during the plan pumping period, calculated at 128.93 acre feet, as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Miles Well Nos. 1 through 7 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

22. Because depletions occur to both the South Platte and Arkansas River systems

under the State's groundwater flow model, the Application in this case was filed in both Water Divisions 1 and 2. The return flows set forth above as augmentation will accrue to only the South Platte River system where most of the depletions will occur and where the Applicant's Property is located. Under this augmentation plan, the total amount of depletions will be replaced to the South Platte River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan subject to Paragraphs 42-46 herein.

23. This decree, upon recording, shall constitute a covenant running with Applicant's Property, benefitting and burdening said land, and requiring construction of well(s) to the nontributary Laramie-Fox Hills aquifer and pumping of water to replace any injurious post-pumping depletions under this decree. Subject to the requirements of this decree, in order to determine the amount and timing of post-pumping replacement obligations, if any, under this augmentation plan, Applicant or its successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time. Pursuant to this covenant, the water from the nontributary Laramie-Fox Hills aquifer reserved herein may not be severed in ownership from the overlying subject property. This covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights who would be materially injured by the failure to provide for the replacement of post-pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner of the Applicant's Property.

24. Applicant or its successors shall be required to initiate pumping from the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions when either: (i) the absolute total amount of water available from the Dawson aquifer allowed to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Miles Well Nos. 1 through 7 have permanently ceased, (iii) a period of 10 consecutive years where either no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

25. Accounting and responsibility for post-pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (i) the period provided by statute; (ii) the period specified by any subsequent change in statute; (iii) the period required by the Court under its retained jurisdiction; (iv) the period determined by the State Engineer; or (v) the period as established by Colorado Supreme Court final decisions. Should Applicant's obligation hereunder to account for and replace such post-pumping stream depletions be abrogated for any reason, then the Laramie-Fox Hills aquifer groundwater reserved for such a purpose shall be free from the reservation herein and such groundwater may be used or conveyed by its owner without restriction for any post-pumping depletions.

26. The term of this augmentation plan is for a minimum of 300 years, however, the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated to such well or wells is not exceeded. Should the actual operation of

this augmentation plan depart from the planned diversions described in Paragraph 21 such that annual diversions are increased or the duration of the plan is extended, the Applicant must prepare and submit a revised model of stream depletions caused by the actual pumping schedule. This analysis must utilize depletion modeling acceptable to the State Engineer, and to this Court, and must represent the water use under the plan for the entire term of the plan to date. The analysis must show that return flows have equaled or exceeded actual stream depletions throughout the pumping period and that reserved nontributary water remains sufficient to replace post-pumping depletions.

27. Consideration has been given to the depletions from Applicant's use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicant, and the existence, if any, injury to any owner of or person entitled to use water under a vested water right.

28. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Miles Well Nos. 1 through 7. As a result of the operation of this plan for augmentation, the depletions from the Miles Well Nos. 1 through 7 and any additional or replacement wells associated therewith will not result in material injury to the vested water rights of others.

### **CONCLUSIONS OF LAW**

29. The application for adjudication of Denver Basin groundwater and approval of plan for augmentation was filed with the Water Clerks for Water Divisions 1 and 2, pursuant to C.R.S. §§37-92-302(1)(a) and 37-90-137(9)(c). These cases were properly consolidated before Water Division 1.

30. The Applicant's request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings pursuant to C.R.S. §§37-92-302(1)(a), 37-92-203, and 37-92-305.

31. Subject to the terms of this decree, the Applicant is entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicant's Property, and the right to use that water to the exclusion of all others subject to the terms of this decree.

32. The Applicant has complied with C.R.S. §37-90-137(4), and the groundwater is legally available for withdrawal by the requested nontributary well(s), and legally available for withdrawal by the requested not-nontributary well(s) upon the entry of this decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). Applicant is entitled to a decree from

this Court confirming its rights to withdraw groundwater pursuant to C.R.S. §37-90-137(4).

33. The Denver Basin water rights applied for in this case are not conditional water rights, but are vested water rights determined pursuant to C.R.S. §37-90-137(4). No applications for diligence are required. The claims for nontributary and not-nontributary groundwater meet the requirements of Colorado Law.

34. The determination and quantification of the nontributary and not-nontributary groundwater rights in the Denver Basin aquifers as set forth herein is contemplated and authorized by law pursuant to C.R.S. §§37-90-137, and 37-92-302 through 37-92-305.

35. The Applicant's request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the Miles Well Nos. 1 through 7 without adversely affecting any other vested water rights in the Arkansas River and South Platte River or their tributaries and when curtailment would otherwise be required to meet a valid senior call for water pursuant to C.R.S. §§37-92-305(3),(5), and (8).

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

36. All of the foregoing Findings of Fact and Conclusions of Law are incorporated herein by reference and are considered to be a part of this decretal portion as though set forth in full.

37. The Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation proposed by the Applicant is approved, subject to the terms of this decree.

38. The Applicant has furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Groundwater and Plan for Augmentation, as requested by the Applicant, is granted and approved in accordance with the terms and conditions of this decree. Approval of this Application will not result in any material injury to senior vested water rights.

39. The Applicant shall comply with C.R.S. §37-90-137(9)(b), requiring the relinquishment of the right to consume two percent (2%) of the amount of the nontributary groundwater withdrawn. Ninety-eight percent (98%) of the nontributary groundwater withdrawn may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment.

40. The Applicant recognizes and affirms that The City of Colorado Springs owns senior water rights in the Arkansas River system that may be injured by the operation of this decree wherein depletions to the Arkansas River system will not be made to the Arkansas River system, but rather will be replaced to the South Platte River System. Colorado Springs reserves the right to claim that the cumulative impacts of this and other similar decrees constitute injury to its senior

Arkansas River system water rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by so doing, Colorado Springs does not waive its right to claim injury and to seek relief in the future pursuant to this paragraph, and Applicant does not waive any rights it has to claim that no injury is occurring, or that any such injury is de minimus.

41. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the Miles Well Nos. 1 through 7 so long as the return flows from the annual diversions associated with the Miles Well Nos. 1 through 7 accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or one of its successors or assigns is ever unable to provide the replacement water required, then the Miles Well Nos. 1 through 7 shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulation of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein, as appropriate, shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

42. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristic, and that the Applicant need not refile, republish, or otherwise amend this application to request such adjustments. The Court further retains jurisdiction should the Applicant later seek to amend this decree by seeking to prove that post-pumping depletions are noninjurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 21.D.

A. At such time as adequate data may be available, Applicant or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 42 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to effect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicant, and the petitioning party.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty (60) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 42 concerning adjustments to the Denver Basin ground water rights based upon local aquifer conditions shall no longer be applicable. In the event of a protest being timely filed, or should the State Engineer's

Office make no timely determination as provided in Paragraph 42.A., above, the “final determination of water rights” sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court’s reasonable discretion.

43. Pursuant to C.R.S. §37-92-304(6), the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

44. As pertains to the Denver Basin groundwater supplies, the court shall retain continuing jurisdiction for so long as Applicant is required to replace depletions to the South Platte stream system, to determine whether the replacement of depletions to the South Platte stream system instead of the Arkansas stream system is causing material injury to water rights tributary to the Arkansas stream system.

45. Any person may invoke the Court's retained jurisdiction at any time that Applicant is causing depletions, including ongoing post-pumping depletions, to the Arkansas River system and is replacing such depletions to only the South Platte River system. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for the alleged material injury and to request that the Court reconsider material injury to petitioners’ vested water rights associated with the above replacement of depletions under this decree, together with the proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof going forward to establish a prima facie case based on the facts alleged in the petition and that Applicant’s failure to replace depletions to the Arkansas River system is causing material injury to water rights owned by that party invoking the Court's retained jurisdiction, except that the State and Division Engineer may invoke the Court's retained jurisdiction by establishing a prima facie case that material injury is occurring to any vested or conditionally decreed water rights in the Arkansas River system due to the location of Applicant’s replacement water. If the Court finds that those facts are established, the Applicant shall thereupon have the burden of proof to show (i) that petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others.

46. Except as otherwise specifically provided in Paragraphs 42-45, above, pursuant to the provisions of C.R.S. §37-92-304(6), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of others, for a period of three years, except as otherwise provided herein. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with

particularity the factual basis for requesting that the Court reconsider material injury to petitioner's vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (i) that the petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not extended by the Court in accordance with the revisions of the statute, this matter shall become final under its own terms.

47. Pursuant to C.R.S. §37-92-502(5)(a), the Applicant shall install and maintain such water measurement devices and recording devices as are deemed essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meters on all Miles Wells or any additional or replacement wells associated therewith. Applicant is also to maintain records and provide reports to the State Engineer or Division Engineers as instructed by said entities, on at least an annual basis.

48. The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicant may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement.

49. Groundwater production shall be limited to the subject aquifers. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

50. Each well shall be permanently identified by its permit number, this Water Court Case Number, and the name of the producing aquifer on the above-ground portion of the well casing or on the pump house.

51. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses which can be made of the groundwater to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the well permit application or which would be inconsistent with the requirements of this decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

52. This Ruling of Referee, when entered as a decree of the Water Court, shall be recorded in the real property records of El Paso County, Colorado. Copies of this ruling shall be mailed as provided by statute.

Date: June 19, 2019



John S. Cowan  
Water Referee  
Water Division One

The court finds that no protest was filed in this matter. The foregoing ruling is confirmed and approved and is made the judgment and decree of this Court.

Date: July 11, 2019



James F. Hartmann  
Water Judge  
Water Division One

## **EXHIBIT A**

**Property Description.** All wells will be located on Applicant's approximately 39.72 acre property ("Applicant's Property") anticipated to be subdivided into seven lots of +/-5 acres each, more particularly described as follows:

A portion of the SW¼ of Section 29, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M. described as: Beginning at the northwest corner of the SW¼ SW¼, thence S89°46'29"E along the south line of Whispering Hills Estates as recorded in Plat Book Z-2 at Page 2 of said county records, 1,407.75 feet to the southeast corner thereof, thence N00°58'34"E, 1,327.96 feet to the northeast corner thereof; thence S89°47'26"E 1,246.16 feet to the northeast corner of said SW¼, said northeast corner also being on the west line of Wildwood Village Unit 3 as recorded in Plat book H-3 at Page 57 of said county records; thence S00°59'16"W along the east line of said SW¼ and the west line of said Wildwood Village Unit 3 and Wildwood Village Unit 4 as recorded in Plat Book M-3 at Page 46 of said county records, 1,366.81 feet; thence N89°46'29"W, 945.48 feet; thence N00°58'34"E 8.50 feet; thence N89°46'29"W 1,708.14 feet to a point on the west line of said SW¼; thence N00°58'34"E, 30.00 feet to the point of beginning, El Paso County, State of Colorado.

Shay Miles  
18CW3226

EXHIBIT A

