

DISTRICT COURT, WATER DIVISION 1, CO Court Address: 901 9 th 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
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: SHAY MILES	
IN EL PASO COUNTY	
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE	

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.

CENTRAL FILES

FILED IN COMBINED COURTS
FREMONT COUNTY, COLORADO

DISTRICT COURT, WATER DIVISION 2, COLORADO

RECEIVED MAR - 6 1997

Case No. 96CW68

MAR 25 1997

DISTRICT COURT, WATER DIVISION 1, COLORADO

WATER RESOURCES
STATE ENGINEER
FILED IN THE OFFICE OF THE CLERK,
DISTRICT COURT WATER DIV. NO. 2
STATE OF COLORADO

Case No. 96CW146

MAR 00 1997

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

MARDELL TRIVISONNO
CLERK

CONCERNING THE APPLICATION FOR WATER RIGHTS OF TERRA FIVE
DEVELOPMENT, LLC, AND NORTHGATE COMPANY,

IN EL PASO COUNTY.

THIS MATTER having come before the Water Judge upon the application of Willard E. Neugebauer, Cornerstone Development, LLC, and Northgate Company, for groundwater rights and approval of plan for augmentation (Terra Five Development, LLC, subsequently purchased the Subject Property). The Water Judge, having considered the pleadings, the stipulations of the parties, and the evidence presented, and being fully advised in the premises, it is hereby the Judgment and Decree of the Court.

FINDINGS OF FACT

1. Name and Address of Applicants. Terra Five Development, LLC, 8987 Village Pine Circle, Franktown, Colorado 80116 (303) and Northgate Company, 3720 Sinton Road, Colorado Springs, Colorado 80907. As used below, "Applicant" refers only to Terra Five Development, LLC, and its successors and assigns, including the Property Owners Association described in paragraph 13, and "Applicants" refers to the same, including the Northgate Company.

2. History of Case. The Applicant is represented by Holly I. Holder, P.C. The applications for underground water rights and approval of a plan for augmentation were filed in Case No. 96CW68 in Water Division 2 and in Case No. 96CW146 in Water Division 1 in June, 1996. Statements of opposition were filed City of

Colorado Springs in Case No. 96CW68 and the City of Thornton in Case No. 96CW146. The Objectors have stipulated to the entry of this decree. No other statements of opposition have been filed and the time for filing such statements has expired. A motion to consolidate the cases was filed before the Panel on Consolidated Multidistrict Litigation in Case No. 96MDL18, and an order consolidating the cases in Water Division 2 was entered on February 19, 1997. An Order rereferring the cases to the Water Judge for Water Division 2 was entered on March 3, 1997.

3. Subject matter jurisdiction: Timely and adequate notice of the applications were published as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over the parties affected hereby, whether they have appeared or not.

APPROVAL OF GROUNDWATER RIGHTS

4. Aquifers and location of ground water: Applicant seeks a decree for rights to all ground water recoverable from the not nontributary Dawson and nontributary Denver, Arapahoe and Laramie-Fox Hills aquifers underlying approximately 240 acres of land, located in the parts of Section 29 and Section 32, T11S, R65W, 6th P.M., as more particularly described and shown on Attachment A hereto ("Subject Property"). The Subject Property is not located within the boundaries of a designated ground water basin.

5. Well locations, pumping rates and annual amounts: The ground water may be withdrawn at rates of flow necessary to efficiently withdraw the amounts decreed herein so long as the permitted rates are not exceeded. The ground water will be withdrawn through any number of wells necessary, to be located at any location on the Subject Property, so long as each well is located within 200 feet of its permitted location, in the following annual amounts.

<u>Aquifer</u>	<u>Amount</u>
Dawson	240.0 acre-feet (NNT)
Denver	192.0 acre-feet (NT)
Arapahoe	97.9 acre-feet (NT)
Laramie-Fox Hills	68.4 acre-feet (NT)

The amounts conform with the values and amounts referenced in the State Engineer's Determination of Facts dated October 4, 1996.

6. Proposed Use: The water withdrawn from the subject aquifers will be used, reused, successively used, and after use leased, sold, or otherwise disposed of for the following beneficial purposes: municipal, domestic, industrial, commercial, irrigation, stock watering, recreational, fish and wildlife, and any other beneficial purpose, both on and off the Subject Property. Said water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for augmentation purposes.

7. Final average annual amounts of withdrawal:

A. Final determination of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicant will be made pursuant to the retained jurisdiction of this Court, as described in paragraph 26 below. The court shall use the acre-foot amounts in paragraph 5 herein in the interim period, until a final determination of water rights is made.

B. The allowed annual amount of ground water which may be withdrawn through the wells specified above and any additional wells, pursuant to 37-90-137(10), C.R.S., may exceed the average annual amount of withdrawal decreed herein for that aquifer, as long as the total volume of water withdrawn through such wells and any additional wells therefor subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of any well permits or the date of this decree, whichever is earliest in time, multiplied by the average annual amount of withdrawal decreed herein for that aquifer, as specified above or as determined pursuant to the retained jurisdiction of the Court. However, amounts set forth in well permits will not be exceeded.

8. Source of ground water and limitations on consumption:

A. The ground water to be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers is "nontributary groundwater" as defined in 37-90-103(10.5), C.R.S., and in the Denver Basin Rules, the withdrawal of which will not, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in 37-82-101(2) and 37-92-102(1)(b), C.R.S., at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal. The ground water to be withdrawn from the Dawson aquifer is "not nontributary" as defined in 37-90-137(9)(c), C.R.S. and such water may be withdrawn pursuant to the plan for augmentation approved herein.

B. Applicant may not consume more than 98% of the annual quantity of water withdrawn from the nontributary Denver, Arapahoe and Laramie-Fox Hills aquifers. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicant and accepted as satisfactory to the State Engineer, so long as Applicant can demonstrate that an amount equal to 2% of such withdrawals (by volume) have been relinquished to the stream system.

C. There is unappropriated groundwater available for withdrawal from the subject aquifers beneath the Subject Property, and the vested water rights of others will not be materially injured by such withdrawals as described herein. Withdrawals hereunder are allowed on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years. No material injury to vested water rights of others will result from the issuance of permits for wells which will withdraw nontributary groundwater or the exercise of the rights and limitations specified in this decree.

9. Additional wells and well fields:

A. Applicant may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of groundwater in the subject aquifers underlying the Subject Property. As

additional wells are planned, applications shall be filed in accordance with 37-90-137(10), C.R.S.

B. Two or more wells constructed into a given aquifer shall be considered a well field. In effecting production of water from such well field, Applicant may produce the entire amount which may be produced from any given aquifer through any combination of wells within the well field.

C. In considering applications for permits for wells or additional wells to withdraw the groundwater which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with provisions of 37-90-137(10), C.R.S.

D. In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicant shall obtain permits to reflect such adjusted average annual amounts prior to withdrawing the adjusted amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

E. The water in the Dawson aquifer is not nontributary and up to 40 acre-feet per year and no more than 12,000 acre-feet total may be withdrawn pursuant to the augmentation plan decreed herein.

APPROVAL OF PLAN FOR AUGMENTATION

10. Description of Plan for Augmentation:

A. Structures to be augmented: Up to 40 individual wells in the not nontributary Dawson aquifer decreed herein. The wells will withdraw Dawson aquifer groundwater at rates of flow not to exceed 15 gpm or an annual amount of 1 acre-foot annually per well. The maximum total annual withdrawal shall be limited to 40 acre-feet per year under this decree.

B. Consumptive Use: This plan for augmentation provides for sewage treatment on approximately 20 of the lots by non-evaporative septic systems and on approximately 20 of the lots by evaporative type systems (if necessary based on actual soil

conditions). Inhouse use for the 40 lots is estimated to be 12 acre-feet annually (0.30 acre-feet per lot). Consumptive use for inhouse uses is estimated to be 10% of use for lots utilizing non-evaporative septic systems or approximately 0.03 acre-feet annually per lot. Evaporative type systems will consume 100% of inhouse use. Before any other type of sewage treatment is proposed in the future, including incorporation of the lots into a central sewage collection and treatment system, Applicant, or its successors and assigns, will amend this decree prior to such change and thereby provide notice of the proposed change to other water users by publication in the resume for Water Division 1 and Water Division 2.

Outside irrigation shall be limited to an average of 13,000 square feet per lot based on a use of 0.65 acre-feet per lot (26 acre-feet per year total), for an irrigation consumptive use of approximately 20.8 acre-feet annually (0.52 acre-feet per lot). Each well will water up to four horses (0.05 acre-feet per year) and consumptive use associated with stockwatering is assumed to be 100% of use. Total annual consumptive use for the 40 lots is estimated to be a maximum of 29.4 acre-feet per year (6.6 acre-feet for inhouse use based on 20 nonevaporative and 20 evaporative septic systems, 20.8 acre-feet for irrigation use, and 2 acre-feet for stockwatering use).

C. Water rights to be used for augmentation:

1. Applicant has contracted with Northgate Company for the purchase of 1 acre-foot of nontributary water from well U.D. No. 1-17798-F, from the Dawson aquifer decreed for use for domestic, municipal, commercial, industrial and irrigation purposes. Northgate Company's Well U.D. No. 1-17798-F is further described as :

Well U.D. No. 1-17798-F

Decreed: December 30, 1976

Case No. W-8269-76, 80CW369, and 84CW621

Court: Water Division 1

Type of water right: Nontributary well

Legal description of the structure: Located in the NE¼ of the NE¼, of Section 17, Township 11 South, Range 66 West of the 6th P.M., El Paso County at a point 100 feet South and 75 feet West of the Northeast Corner of said Section 17.

Source: Nontributary Dawson Arkose aquifer
Pumping rate: 0.167 cfs (75 gpm) with an annual limitation of 121 acre-feet.
Decreed uses: domestic, municipal, commercial, industrial, and irrigation.
Owned by Northgate Company, 3720 Sinton Road, Suite 106D, Colorado Springs, Colorado 80907

Northgate Company also owns rights to Denver aquifer water described below. Applicant understands that Northgate Company may choose to substitute this water at some time in the future for the water from Well U.D. No. 1-17798-F, and such substitution is approved subject to continued compliance with the terms of this decree.

Northgate Well A-D-3

Decreed: November 23, 1983

Case No.: 82CW295 and 87CW193

Court: Water Division 1

Type of water right: nontributary well

Legal description of the structure:

In the SW1/4 of the NW1/4 of Section 20, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado, at a point approximately 1640 feet south of the north section line and 460 feet east of the west section line of said Section 20.

Decreed uses: Municipal, domestic, commercial, industrial, irrigation, recreational including fishery and wildlife, fire protection, stockwatering, and the maintenance of adequate storage systems and reserves.

Source: Nontributary Denver aquifer

Pumping rate: 0.222 cfs, 50 acre-feet annually.

The point of release to the Arkansas River drainage is to an unnamed tributary of Jackson Creek at a point from which the northwest corner of Section 20, T11S, R66W, bears North 12 degrees West, a distance of 1600 feet, more or less.

2. Should the Northgate Company source of water fail for any reason, Applicant may use 40 acre-feet per year of its nontributary Arapahoe and/or Laramie-Fox Hills aquifer decreed herein or any other legally available augmentation supply that is in sufficient quantity, quality, time and place to meet the requirements of this decree. Applicant shall give notice to the State Engineer and the parties herein identifying such other

legally available augmentation supply, its nature, quantity, quality, and method of delivery. The parties receiving such notice shall have 60 days to file objections with the Court to such proposed other legally available augmentation supply. The Court retains jurisdiction in this matter to determine if the supply is adequate. Applicant shall reserve in any deeds of the property, 12,000 acre-feet total of its nontributary Arapahoe and Laramie-Fox Hills groundwater for possible use in this augmentation plan; and shall convey by recorded deed the reserved nontributary Arapahoe and Laramie-Fox Hills aquifer water described above to the Property Owners Association to be created in connection with subdivision of the property pursuant to paragraph 13 below.

3. During the pumping phase, Applicant will also utilize return flows from the not nontributary rights as described in paragraph 10.B above to replace depletions to the Cherry Creek drainage only.

D. Replacement during pumping: During 300 years of pumping, Applicant will replace depletions to the affected stream systems in an amount of water equal to the actual depletions pursuant to §37-90-137(9)(c). A graph showing the estimated stream depletions is attached hereto as Attachment B.

i. South Platte/Cherry Creek.

In the 300th year, depletions to the South Platte/Cherry Creek stream system is approximately 12.64% of the Dawson aquifer water withdrawn from the wells. Return flows from the use of the water on at least 20 lots utilizing non-evaporative septic systems accrue to the Cherry Creek stream system and those return flows in combination with return flows from irrigation use are sufficient to replace to Cherry Creek actual depletions caused by pumping of up to 40 acre-feet per year from the Dawson aquifer wells while the wells are being pumped. Because return flows from all uses are estimated rather than measured, Applicant agrees that such return flows shall be used only to replace depletions under this plan for augmentation, and will not be sold, traded or assigned in whole or in part for any other purpose.

ii. Arkansas River/Monument Creek

In the 300th year, depletions to the Arkansas River/Monument Creek stream system is approximately 8.18% of the Dawson aquifer water withdrawn from the wells. Replacements in an amount equal to these percentages shall be made to Monument Creek via the Northgate water supply for at least the first 138 years of pumping. Applicant will replace depletions associated with pumping from years 138 to 300 by utilizing nontributary groundwater, or any other legally available augmentation supply that is in sufficient quantity, quality, time and place to meet the requirements to the stream system.

E. Postpumping Depletion Augmentation: Assuming maximum pumping of 40 acre-feet per year from the Dawson aquifer for three hundred years, the maximum depletion to Monument Creek from pumping of the wells will be approximately 8.71% of pumping or 3.48 acre-feet in the 351st year and the maximum depletion to Cherry Creek from pumping of the wells will be approximately 12.64% of pumping or 5.0 acre-feet in the 300th year. Year to year depletions shall be calculated according to the State Engineer's model and the stream depletion curve attached as Attachment B, and replacements will be made to Monument Creek as described above and to Cherry Creek on the Subject Property. It is the Applicant's position that depletions which occur after pumping ceases are not injurious, pursuant to Danielson v. Castle Meadows, 791 P.2d 1106 (Colo. 1990), State Engineer v. Castle Meadows, 856 P.2d 496 (Colo. 1993), and State Engineer v. Yale Investments, Inc., 886 P.2d 689 (Colo. 1994). Nevertheless, in order to meet a schedule for plat approval in the County and obtain favorable referral to the County from the State Engineer on the water supply, Applicant has purchased 1 acre-foot per year of water from the Northgate Company which will be reserved for and will provide augmentation water to replace depletions during at least the first 138 years of pumping to the Arkansas River System. Applicant shall replace depletions from year 138 to 300 and post-pumping depletions to Monument Creek and post-pumping depletions to Cherry Creek by pumping of the reserved nontributary Arapahoe and/or Laramie-Fox Hills aquifer water to those stream systems, or by utilizing any other legally available augmentation supply that is in sufficient quantity, quality, time and place to meet the requirements to either stream system of this decree, directly to the stream to meet the requirements of

this decree. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.

F. Applicant shall replace post-pumping depletions for the shortest of the following periods: the period provided by C.R.S. 37-90-137(9)(c); the expressed period specified by the Colorado Legislature, should it specify one and providing the Applicant obtain water court approval for such modification; the period determined by the State Engineer, should he choose to set such a period and have jurisdiction to do so; the period established through rulings of the Colorado Supreme Court on relevant cases, or until Applicant petitions the water court and after notice to parties in the case and proves that he has complied with any statutory requirement.

11. Administration of Plan for Augmentation.

A. Reporting Frequency. Applicant shall report to the Division Engineers for both Water Division 1 and Water Division 2 no later than January 30 of each year on an accounting form acceptable to the Division Engineer for Water Division No. 1. The annual reporting shall include the number of wells operating in the development, the number of wells utilizing nonevaporative and evaporative type septic systems, the area irrigated on each lot, and the number of stock watered by each well.

B. Meters. All well withdrawals from structures described in this decree will be metered and collected by the Property Owners Association, which will summarize and forward the data to the Division Engineer for Water Division 1 and 2 and the Water Commissioner by the 30th of January for each year.

C. Timing of Replacements. Applicant agrees to make the replacements required hereunder when required by the Division Engineer for Water Division No. 1 and 2 pursuant to the chart as shown on Attachment B.

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

12. Applicant and its successors in interest shall pay the cost imposed by operation of this augmentation plan, and the Northgate Company contract(s) so long as an obligation for augmentation of depletions exists.

13. Property Owners Association: Upon subdivision of the property, Applicant shall create a Property Owners Association which all purchasers of lots shall be required to join. Applicant shall assign to the property owners association Applicant's interest and rights and responsibilities in and under the Northgate Contract and this plan for augmentation; Applicant shall also assign to the the Property Owners Association the amount of 12,000 acre-feet of their Arapahoe and Laramie-Fox Hills aquifer water as decreed herein. Applicant shall also create restrictive covenants upon and running with the property, which shall obligate the individual purchasers and the Property Owners Association to carry out the requirements of the Northgate Contract and of this decree. This decree and the restrictive covenants shall be recorded in the real property records of El Paso County so that a title examination of the property, or any part thereof, shall reveal to all future purchasers the existence of this decree and the restrictive covenants.

14. Retained jurisdiction for plan for augmentation:

A. Pursuant to 37-92-304(6), C.R.S. the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also has jurisdiction for the purposes of determining compliance with the terms of the augmentation plan.

B. Any person seeking to invoke the retained jurisdiction of the Court shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the Decree shall set forth with particularity the factual basis upon which the requested decretal language to effect the petition. The party lodging the petition shall have the burden of going forward to establish prima facie facts alleged in the petition. If the court finds those facts to be established, Applicant shall thereupon have the burden of proof to show:
(1) that any modification sought by Applicant will avoid injury

to other appropriators, or (2) that any modification sought by Objector is not required to avoid injury to other appropriators or (3) that any term or condition proposed by Applicant in response to the Objectors' petition does avoid injury to other appropriators.

CONCLUSIONS OF LAW

15. The Water Court has jurisdiction over this proceeding pursuant to 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. Section 37-90-137(4), C.R.S. The application for a decree confirming Applicant's right to withdraw and use all unappropriated ground water from the nontributary aquifers beneath the property as described herein pursuant to 37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree. The application for a decree confirming Applicant's right to withdraw and use ground water from the Dawson aquifer should be granted pursuant to 37-90-137(4) and (9)(c), C.R.S., subject to the provisions of this decree. The withdrawal of up to 40 acre-feet annually of the Dawson aquifer water in accordance with the terms of this decree will not result in material injury to vested water rights of others.

16. This plan for augmentation satisfies the requirements of 37-90-137(9)(c), C.R.S. for replacement of actual depletions to the affected stream systems for withdrawals of up to 40 acre-feet per year and no more than 12,000 acre-feet total from the Dawson aquifer.

17. The rights to ground water determined herein shall not be administered in accordance with priority of appropriation. Such rights are not "conditional water rights" as defined by 37-92-103(6), C.R.S., requiring findings of reasonable diligence are not applicable to the ground water rights determined herein. The determination of ground water rights herein need not include a date of initiation of the withdrawal project. See 37-92-305(11), C.R.S

JUDGMENT AND DECREE

The Findings of Fact and Conclusions of Law set forth above are hereby incorporated into the terms of this Ruling and Decree as if the same were fully set forth herein.

18. Full and adequate notice of the application was given and the Court has jurisdiction over the subject matter, and over the parties whether they have appeared or not.

19. For purposes of jurisdiction in this case, § 37-92-302(2), C.R.S., does not require that the application be supplemented with a well permit or evidence of its denial.

20. The Applicant may withdraw the subject ground water herein through wells to be located anywhere on the Subject Property, in the average annual amounts and at the estimated average rates of flow specified herein, subject to paragraph 5 above, and the retained jurisdiction by this Court.

21. Applicant may withdraw up to 40 acre-feet per year and no more than 12,000 acre-feet total of not nontributary ground water from the Dawson aquifer under the plan for augmentation decreed herein pursuant to § 37-90-137(9)(c), C.R.S.

22. Applicant has complied with all requirements and met all standards and burdens of proof, including but not limited to §§37-90-137(9)(c), 37-92-103(9), 37-92-302, 37-92-304(6), 37-92-305(1), (2), (3), (4), (6), (8) and (9), C.R.S., to adjudicate their plan for augmentation, and are therefore entitled to a decree confirming and approving their plan for augmentation as described in the findings of fact.

23. Pursuant to Section 37-92-305(5), C.R.S., the replacement water herein shall be of a quality so as to meet the requirements for which the water of the senior appropriator has normally used.

24. The plan for augmentation as described in the findings of fact, is hereby approved, confirmed and adjudicated, including and subject to the terms and conditions specified herein.

25. No owners of, or person entitled to use water under a vested water right or decreed conditional water right will be injured or

injuriously affected by the operation of the plan for augmentation as decreed herein.

26. Retained Jurisdiction:

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of groundwater available under the property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to § 37-92-305(11), C.R.S. Within 60 days after completion of any well decreed herein, or any test hole(s), Applicant or any successor in interest to these water rights shall serve copies of any geophysical or other log(s) obtained from such well or test hole(s) upon the State Engineer.

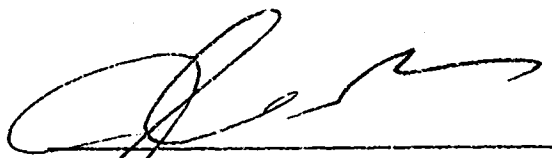
B. At such time as adequate data is available, any person including the State Engineer may invoke the Court's retained jurisdiction to make a finding and determination of water rights availability. Within four months of notice that the retained jurisdiction for such purpose has been invoked, the State Engineer shall use the information available to him to make a final finding and determination of water rights availability. The State Engineer shall submit such finding to the Water Court and to the Applicant.

C. If no protest to such finding is made within 60 days, the Final Determination of Water Rights shall be incorporated into the decree by the Water Court. In the event of a protest, or in the event the State Engineer makes no determination within four months, such final determination shall be made by the Water Court after notice and hearing.

27. Continuing Jurisdiction.

A. Pursuant to § 37-92-304(6), C.R.S. the court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The court also retains continuing jurisdiction for the purposes of determining compliance with the terms of the augmentation plan, or for the purpose of amending this decree to provide for a different type of wastewater treatment, pursuant to paragraph 10.B above.

ENTERED this 6th day of March, 1997



John E. Anderson, III
Water Judge
Water Division 2

THE FOREGOING IS HEREBY APPROVED AS TO CONTENT AND FORM AND
APPROVED FOR ENTRY BY THE WATER JUDGE.

HOLLY I. HOLDER, P.C.

Date: 3-5-97

By Margaret O'Donnell
Holly I. Holder, #10216
Margaret O'Donnell, #21145
518 - 17th Street, #1500
Denver, Colorado 80202
(303) 534-6315

ATTORNEYS FOR APPLICANT

ANDERSON, DUDE, PIFHER &
LEBEL, P.C.

Date: 3-6-97

By William Kelly Dude
William Kelly Dude, #13208
104 S. Cascade Ave., #204
P.O. Box 240
Colo. Sprgs., CO 80901-0240
(719) 632-3545

ATTORNEYS FOR OBJECTOR CITY OF
COLORADO SPRINGS

Attachment A

A TRACT OF LAND BEING A PORTION OF SECTIONS 29 AND 32, TOWNSHIP 11 SOUTH, RANGE 85 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS:

THE WEST LINE OF SECTION 32, TOWNSHIP 11 SOUTH, RANGE 85 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTHWEST CORNER OF SAID SECTION 32 BY A 3-1/4" ALUMINUM SURVEYOR'S CAP STAMPED "EL PASO COUNTY DPU LS 17496" AND AT THE NORTHWEST CORNER OF SAID SECTION 32 BY A NO. 8 REBAR AND 3-1/4" ALUMINUM SURVEYOR'S CAP STAMPED "JRI ENG LTD RLS 10377" IS ASSUMED TO BEAR $N00^{\circ}58'34"E$, A DISTANCE OF 5312.20 FEET.

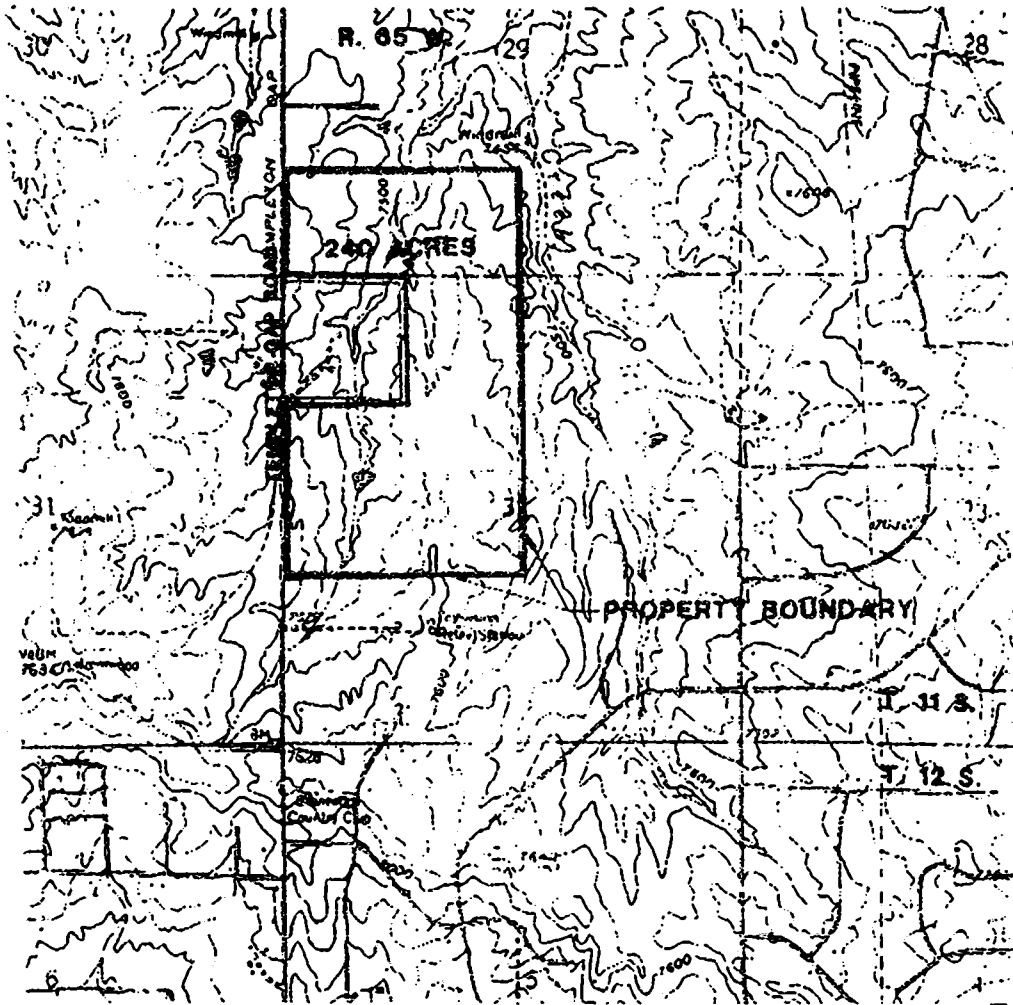
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE $S89^{\circ}47'03"E$ AND ON THE SOUTH LINE OF SAID SECTION 29, A DISTANCE OF 30.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BLACK FOREST ROAD, SAID POINT BEING THE POINT OF BEGINNING; THENCE $N00^{\circ}59'09"E$, ON SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1298.08 FEET TO A POINT ON THE SOUTHERLY LINE OF A TRACT OF LAND DESCRIBED IN BOOK 8918 AT PAGE 819, RECORDS OF EL PASO COUNTY, COLORADO; THENCE EASTERLY ON THE SAID SOUTHERLY LINE, THE FOLLOWING THREE (3) COURSES:

1. $S89^{\circ}45'54"E$, A DISTANCE OF 1678.14 FEET;
2. $S00^{\circ}59'09"W$, A DISTANCE OF 8.50 FEET;
3. $S89^{\circ}45'34"E$, A DISTANCE OF 345.48 FEET TO A POINT ON THE WESTERLY LINE OF WILDWOOD VILLAGE UNIT 4, RECORDED IN PLAT BOOK M-3 AT PAGE 48, RECORDS OF EL PASO COUNTY, COLORADO;

THENCE $S00^{\circ}59'51"W$, ON SAID WESTERLY LINE, A DISTANCE OF 1238.69 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 29; THENCE $S01^{\circ}02'35"W$ AND ON THE WESTERLY LINE OF SAID WILDWOOD VILLAGE UNIT 4 AND THE WESTERLY LINE OF WILDWOOD RANCH ESTATES FILING NO. 3, RECORDED IN PLAT BOOK G-2 AT PAGE 77, RECORDS OF EL PASO COUNTY, COLORADO; A DISTANCE OF 3287.88 FEET TO THE NORTHEASTERLY CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 5780 AT PAGE 872, RECORDS OF EL PASO COUNTY, COLORADO; THENCE $N89^{\circ}52'28"W$, ON THE NORTHERLY LINE OF SAID TRACT, A DISTANCE OF 2819.61 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BLACK FOREST ROAD; THENCE $N00^{\circ}58'34"E$, ON SAID RIGHT-OF-WAY LINE, A DISTANCE OF 1790.82 FEET; THENCE $S89^{\circ}47'03"E$, A DISTANCE OF 1208.03 FEET; THENCE $N00^{\circ}58'34"E$, A DISTANCE OF 1481.13 FEET, TO A POINT ON THE SOUTH LINE OF SAID SECTION 29; THENCE $N89^{\circ}47'03"W$, ON SAID SOUTH LINE, A DISTANCE OF 1208.03 FEET TO THE POINT OF BEGINNING; COUNTY OF EL PASO, STATE OF COLORADO

TERRA RIDGE VICINITY MAP

PLOT SCALE 1=2000, DATE 09/26/96, TIME 14:05, FILE X:\370400\ACAD\VICINITY.DWG



VICINITY MAP
TERRA RIDGE
DATE 09/30/96

2000 1000 0 2000 4000

SCALE: 1" = 2000'

JR

Engineering, Ltd.

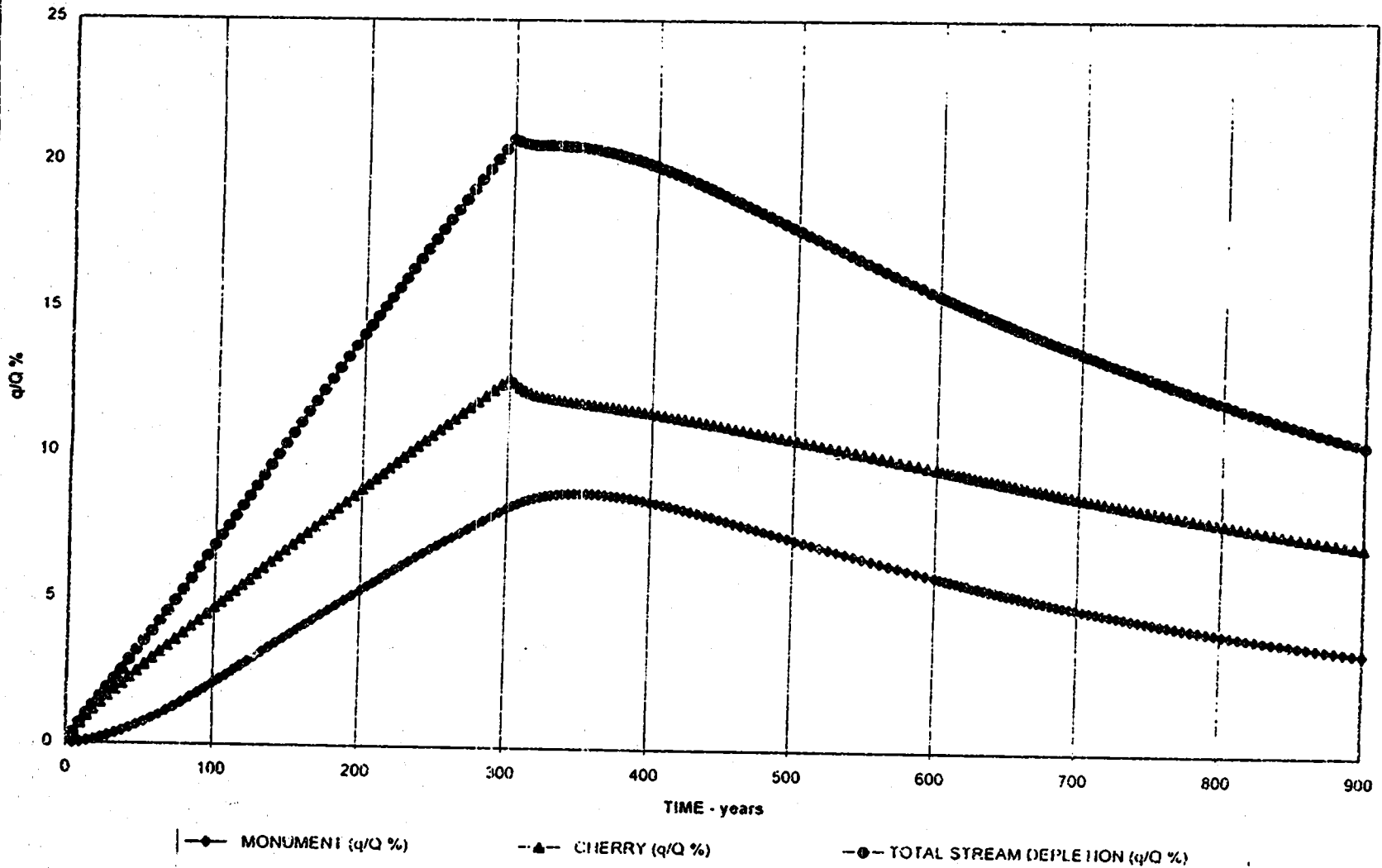
6110 Greenwood Plaza Blvd.
Englewood, Colorado 80111
Tel. (303) 740-9383
FAX (303) 721-9018

A-2

Figure 2 - Vicinity Map

Stream System	q/Q % @ Year 300	Max. q/Q %	Year
Monument Creek	8.18	8.71	351
Cherry Creek	12.64	12.64	300

TERRA RIDGE
Stream Depletions - 300 Years Pumping



Attachment

**TERRA RIDGE SUBDIVISION
STREAM DEPLETIONS**

TIME (years)	5	10	15	20	25	30	35	40	45	50
(q/Q)%	0.013	0.042	0.088	0.149	0.222	0.306	0.399	0.501	0.610	0.725
TIME (years)	55	60	65	70	75	80	85	90	95	100
(q/Q)%	0.846	0.972	1.103	1.240	1.380	1.523	1.670	1.819	1.972	2.126
TIME (years)	105	110	115	120	125	130	135	140	145	150
(q/Q)%	2.284	2.439	2.597	2.758	2.918	3.079	3.240	3.404	3.565	3.727
TIME (years)	155	160	165	170	175	180	185	190	195	200
(q/Q)%	3.887	4.048	4.208	4.369	4.529	4.687	4.846	5.003	5.159	5.314
TIME (years)	205	210	215	220	225	230	235	240	245	250
(q/Q)%	5.469	5.622	5.775	5.926	6.074	6.225	6.373	6.520	6.664	6.808
TIME (years)	255	260	265	270	275	280	285	290	295	300
(q/Q)%	6.951	7.092	7.232	7.371	7.508	7.644	7.781	7.914	8.046	8.177

<p>DISTRICT COURT, WATER DIVISION 1, COLORADO</p> <p>Court Address: 901 9th Avenue Suite 116 Greeley, CO 80631 970-475-2510</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>SHAY MILES</p> <p>IN EL PASO COUNTY</p>	
<p>Attorneys for Applicant: Chris D. Cummins, #35154 Emilie B. Polley, #51296 Monson, Cummins & Shohet, LLC 13511 Northgate Estates Drive, Suite 250 Colorado Springs, CO 80921 Phone Number: (719) 471-1212 Fax Number: (719) 471-1234 E-mail: cdc@cowaterlaw.com ebp@cowaterlaw.com</p>	<p>Case No.: 18CW3226</p>
<p>NOTICE OF CHANGE OF APPLICANT ADDRESS</p>	

PLEASE TAKE NOTICE, effective as of January 25, 2021, the Applicant's address is 15630 Fox Creek Lane, Colorado Springs, CO 80908. All other contact information remains unchanged.

Dated this 25th day of January, 2021.

MONSON, CUMMINS & CULICHIA, LLC
(Pursuant to C.R.C.P. 121, the signed original shall be kept on file at the offices of Monson, Cummins & Shohet, LLC)

By: /s/ Emilie Polley
Emilie B. Polley

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2021 I have electronically served a copy of the foregoing Notice of Change of Applicant Address, via ICCES, upon all parties of record as indicated in the ICCES electronic record.

MONSON, CUMMINS & SHOHET, LLC

(Pursuant to CRCP 121 §1-26(9), the signed original

Shall be kept on file at the offices of Monson, Cummins & Shohet, LLC)

/s/ Maria C. Gray

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 SW¼ of Section 29, Township 11 South, Range 65 West of the 6th 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.

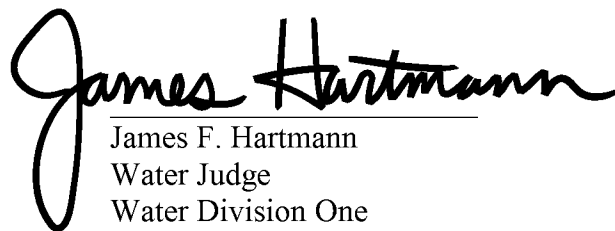
Date: June 19, 2019



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 6th 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

Shay Miles
18CW3226

EXHIBIT B

El Paso County Assessor's Office

0 29-11-65

SCHEDULE: 5 129 300002

OWNER: MILES PHILLIP SHAY

MILES JENNIFER



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