DISTRICT COURT, WATER DIVISION 2, CO Court Address: 320 W. 10TH St., #203 Pueblo, CO 81003 Phone Number: (719) 583-7048 **CONCERNING THE APPLICATION FOR WATER RIGHTS OF:** **DAVID REED** **IN EL PASO COUNTY, COLORADO.**	EFILED Document – District Court 2006CW15 CO Pueblo County District Court 10th JD Filing Date: Jul 11 2007 2:32PM MDT Filing ID: 15537922 Review Clerk: Mardell Didomenico Δ COURT USE ONLY Δ
Attorneys for Applicant: Chris D. Cummins, #35154 Felt, Monson & Culichia, LLC 319 N. Weber St. Colorado Springs, CO 80903 Phone Number: (719) 471-1212 Fax Number: (719)471-1234 E-mail: cdc@fmcwater.com	Case No: **06CW15**

FINDINGS OF FACT AND RULING OF REFEREE GRANTING UNDERGROUND WATER RIGHTS AND PLAN OF AUGMENTATION

This matter comes before the Water Referee on the Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation filed by David Reed, and having reviewed said Application and the other pleadings on file and being fully advised on this matter, the following findings and orders are made:

FINDINGS OF FACT

General Findings

1. The Applicant in this case is David Reed, whose address is 5785 Tuckerman Drive, Colorado Springs, CO, 80918 (hereinafter "Applicant"). Applicant seeks the adjudication of his underground water rights from the Denver Basin aquifers and approval of a proposed plan for augmentation for the use of a portion of the underground water from the Denver aquifer.

2. The Application was filed with the Water Court on March 21, 2006. The Clerk of this Court has caused publication of said filing as provided by statute, and the publication costs have been paid. All notices of the Application have been given in the manner required by law.

3. Kettle Creek, LLC and the City of Colorado Springs both filed timely statements of Opposition to the Application. Both Kettle Creek, LLC and the City of Colorado Springs have consented to the entry of this decree based upon the language contained herein, as indicated by the respective Stipulations filed with the Court, and incorporated herein.

4. The Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether or not they have appeared in this action. The land and water rights involved herein are not included within the boundaries of any designated ground water basin. There

are no encumbrances of record on the property of the Applicant, hence the notice provisions of C.R.S. 37-92-302(2) and 37-92-305(6) are not applicable to this case.

5. A Determination of Facts was issued by the Office of the State Engineer on July 17, 2006, has been filed with the Court, and has been considered by the Referee in the entry of this ruling. A Consultation Report of the Division Engineer responding to this Application was issued on September 1, 2006, and has been considered by the Referee in the entry of this ruling.

6. Applicant requests the adjudication of his vested use rights to groundwater from the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property in El Paso County. Applicant also requests the adjudication of a plan for augmentation to replace any stream depletions caused by the pumping from up to four wells withdrawing water for residential purposes from the not-nontributary Denver aquifer underlying his property.

Underground Water Rights

7. The Applicant's Property consists of 23.95 acres located in the S1/2 SW1/4 of Section 14, Township 12 South, Range 66 West, 6th P.M., in El Paso County, Colorado, as more particularly described in the attached Exhibit A. 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, Denver and Arapahoe aquifers underlying the Applicant's property contain not-nontributary water, while the water of the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary.

8. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant's Property is as follows:

Aquifer	Saturated Thickness (Feet)	Depth (Feet)	Total Water Adjudicated (Acre Feet)	Annual Average Withdrawal (Acre Feet)[1]
Dawson	60	0-135	287	0.95
Denver	434	175-1015	1767	5.89
Arapahoe	272	1075-1575	1107	3.69
Laramie Fox Hills	190	1965-2255	682	2.27

9. There is one (1) existing exempt well permitted for use on the property represented by State Engineer Well Permit No. 268558, allowing production from the Denver aquifer. Well Permit No. 268558 will be repermitted for use under the augmentation plan decreed herein.

10. In determining the amount of ground water available for withdrawal annually from these aquifers, the provisions of C.R.S. 37-90-137(4) must be applied, and pursuant to C.R.S. 37-90-137(4)(b)(I), annual withdrawals shall be allowed on the basis of an aquifer life of 100 years. The allowed average annual amount of water available for withdrawal from the Denver aquifer underlying the lands claimed in the Application is 17.67 acre feet (the quantity of water which is considered available divided by the 100 year aquifer life). Current El Paso County Land Use regulations limit withdrawals of water based upon a three hundred year aquifer life. The allowed average annual amount of water available for withdrawal from the Denver aquifer underlying the Applicant's Property

[1] Based on a 300 year aquifer life.

assuming a 300 year aquifer life would be 5.89 acre feet per year and the quantities available from the other respective Denver Basin Aquifers are illustrated in paragraph 8 above.

11. Applicant shall be entitled to withdraw amounts of ground water in excess of the allowed average annual amounts decreed for withdrawal from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from all the wells in each of the Denver Basin aquifers 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 a decree herein, whichever comes first, and the allowed average annual volume of water which Applicant is entitled to withdraw from each of the Denver Basin aquifers underlying Applicant's Property, and further subject to the requirement that such 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 ground water decreed herein.

12. Applicant shall be entitled to produce the full legal entitlement from the Denver aquifer underlying Applicant's Property through the existing well plus up to three (3) additional wells proposed to be constructed into the Denver aquifer. These wells may be treated as a well field, and may be located at any point within the boundaries of the Applicant's Property without the necessity of filing an amendment to the Application, republishing, or petitioning the Court for the opening of this Decree. Applicant has waived the 600 foot spacing requirement for these wells within the Applicant's 23.95 acre parcel, but remains subject to the 600 foot spacing requirement for any wells located outside of the property pursuant to the provisions of C.R.S. 37-90-137(2). The pumping rates for each well may vary according to aquifer conditions and well production capabilities. The Applicant shall be entitled to withdraw ground water at rates of flow necessary to withdraw the entire decreed amount. All wells constructed shall be cased so as to prevent withdrawal of water from more than one aquifer.

13. Well permit applications for the wells to be drilled pursuant to this decree shall be applied for prior to drilling or re-drilling of the wells. Applicant shall apply for a new well permit for existing Permit No. 268558 pursuant to C.R.S. 37-90-137 and withdrawals of Denver aquifer ground water from the well shall be subject to the augmentation requirements set forth in this decree. No exact location is required to be set forth for the wells in this decree, as that information will be provided when the well permit applications are submitted.

14. The Applicant shall have the right to use the ground water adjudicated herein for those beneficial uses specifically authorized by this decree under the plan for augmentation decreed herein, or specifically authorized pursuant to modification of the plan for augmentation decreed herein under the Court's retained jurisdiction or pursuant to a separate plan for augmentation decreed by the Court.

15. Applicant is awarded a vested right to the use of ground water from the Denver aquifer underlying Applicant's Property, as quantified in paragraph 8 or as modified by the Court under its retained jurisdiction. Applicant may use such water by immediate application or by storage and subsequent application. Specifically, subject to the plan for augmentation set forth in this decree, Applicant shall have the right to withdraw and use 666 acre feet of the Denver aquifer ground water decreed herein for domestic, irrigation and stock-watering purposes. However, use of the 666 acre feet of Denver aquifer ground water for beneficial uses other than domestic, irrigation and stock-watering, to include commercial, industrial, fish and wildlife propagation, fire protection, and central water supply purposes, shall not be made until Applicant or his successors in interest have complied with the requirements of paragraph 14 above by obtaining a modification of the plan for augmentation decreed herein, or a separate plan for augmentation to address other beneficial

uses. Likewise, the remaining 1,101 acre-feet of Denver aquifer groundwater not included in the plan for augmentation decreed herein shall not be withdrawn unless or until a separate plan for augmentation covering its use is decreed, or the plan for augmentation decreed herein is modified to account for such withdrawals. Applicant's use of ground water from the Denver aquifer for irrigation and stock-watering purposes shall not be allowed on the individual lots unless the Denver aquifer ground water is also being pumped and used for in-house domestic purposes on the lot on which the irrigation or stock-watering will occur, and unless non-evaporative septic systems are in use to generate return flows to augment the irrigation and stock-watering uses.

16. Applicant is awarded a vested right to the use of ground water from the Dawson and Arapahoe aquifers underlying the Applicants' Property, as quantified in paragraph 8 or as modified by the Court under its retained jurisdiction. Applicant shall not construct a well or wells in to the Dawson or Arapahoe aquifers, and shall not withdraw and use any of the ground water adjudicated herein for the Dawson and Arapahoe aquifers, unless and until a separate plan for augmentation has been decreed by the Court to cover the replacement requirements for withdrawals from those aquifers. Said plan for augmentation will describe the allowable beneficial use(s) that can be made with Applicant's Dawson and Arapahoe aquifer ground water under such plan.

17. Applicant is awarded a vested right to the use of the ground water from the Laramie-Fox Hills aquifer underlying the Applicant's Property, as quantified in paragraph 8 or as modified by the Court under its retained jurisdiction. As a term and condition of this decree, Applicant has reserved the entire volume of Laramie-Fox Hills aquifer ground water decreed herein for the purpose of replacing depletions as described in this decree. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent (98%) of the amount withdrawn, Applicant's Laramie-Fox Hills aquifer ground water may only be used for augmentation and replacement purposes. Additional beneficial uses of this ground water shall not be made unless and until the Court has modified the reservation herein under its retained jurisdiction and approved such additional uses, as discussed herein at paragraphs 14, 25, and 26.

Plan for Augmentation

18. Monument Creek and the Arkansas River system are generally over-appropriated. As such, the water supply for the river system is generally insufficient to satisfy all of the decreed water rights senior to the appropriation of the Applicant, and therefore the depletions caused to the Arkansas River and its tributaries by Applicant's underground water rights must be replaced to the river in a manner so as not to cause material injury to any vested water rights or decreed conditional water rights.

19. The structures to be augmented are up to four (4) wells completed and to be completed into the not-nontributary Denver aquifer of the Denver Basin underlying the Applicant's Property including the well structure represented by State Engineer Well Permit No. 268558 and any replacement wells. The depletions attributed to Applicant's well pumping occur to Monument Creek, tributary to Fountain Creek, tributary to the Arkansas River. Applicant is the owner of the land upon which all structures are to be located and the place of use of water from the four (4) wells augmented herein.

20. Withdrawal of ground water from the Denver aquifer underlying the land claimed in the Application will, within one hundred years, deplete the flow of Monument Creek at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and therefore, the water is not-nontributary ground water as defined in C.R.S. 37-90-103(10.7). C.R.S. 37-90-137(9)(c)(I) states that judicial approval of a plan for augmentation shall be required prior to the use of ground

water of the type sought in this Application. The water rights to be used for augmentation during pumping are the return flows of the not nontributary Denver aquifer wells to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are Applicant's nontributary water rights in the Laramie-Fox Hills aquifer. Pursuant to C.R.S. 37-90-137(9)(c)(I), as the Applicant's Property is greater than one mile from any point of contact between the aquifer and any natural surface stream, including its alluvium, the augmentation obligation for the Denver aquifer wells requires the replacement to the affected stream system of a total amount of water equal to four percent of the amount of water withdrawn from the aquifer on an annual basis. Applicant, or his successors in interest, shall be required to replace depletions after withdrawal ceases to compensate for injurious stream depletions caused by prior withdrawals from the Denver aquifer wells.

21. Applicant shall provide for the augmentation of stream depletions caused by pumping the Denver aquifer wells approved herein for up to four (4) wells to service residential lots. Water use criteria for each of the wells are as follows:

A. Household Use Only: 0.30 acre feet annually per family dwelling with a ten percent consumptive use based upon non-evaporative septic leach field disposal systems. Any other type of waste water disposal shall require an amendment to this plan of augmentation.

B. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component.

C. Landscape and Garden Irrigation: 0.046 acre feet annually per 1,000 square feet (2.0 acre feet per acre) per year, with a ninety percent assumed consumptive use rate.

Based on these estimates of diversions and consumptive use components, and based upon a three hundred year aquifer life for each of the wells, the four (4) wells should be able to pump a combined 2.22 acre feet per year, which is sufficient to support use for in-house purposes, the watering of eight horses, and the irrigation of approximately 20,652 square feet of lawn or garden. Applicant may divide these amounts equitably between the lots at such time as a subdivision plan is developed. Total depletions from Applicant's withdrawals shall in no instance exceed the 668 acre-feet reserved and available for replacement in the Laramie-Fox Hills aquifer.

22. Pursuant to C.R.S. 37-90-137(9)(c)(I), the augmentation obligation for the Denver aquifer wells during the withdrawal period requires the replacement of an amount of water equal to four (4) percent of the amount of water withdrawn from the aquifer on an annual basis. Waste water from the in-house residential uses shall be disposed of through non-evaporative septic systems which are hereby determined to have return flows to the tributary stream system of ninety percent of the in-house residential pumping of 0.30 annual acre feet per unit. In-house consumptive use is ten percent of diversions and return flows for each in-house residential use is therefore ninety percent of the above 0.30 annual acre feet of pumping, or 0.27 acre feet per residence. Total return flows from the in-house use from the four (4) Denver aquifer wells will be 1.08 annual acre feet. These return flows will adequately augment the tributary stream system in excess of the statutorily required augmentation amount of 0.089 annual acre feet and will prevent material injury to other vested water rights. These in-house use return flows are committed to this plan for augmentation and cannot be otherwise used, sold, traded, or assigned, without a subsequent order of this Court under the Court's retained jurisdiction or under further water rights application filed with this Court.

23. The use of the remaining pumping allotment from the Denver aquifer beyond in-house use will be for the watering of horses or similar livestock and for the irrigation of lawns, gardens and landscaping. Applicant asserts that ten percent of irrigation water would accrue to the stream as return flows which could be used for additional augmentation. The irrigation return flows are not used as part of this augmentation plan, but Applicant preserves their claim to those return flows and does not waive his rights thereto.

24. This plan for augmentation shall have a pumping period of at least 300 years. It is necessary for the Applicant to address the replacement of any injurious post-pumping depletions which may be caused to the stream system after pumping of the Denver aquifer wells ceases.

25. In order to ensure the replacement of all injurious depletions that may occur to the Arkansas River and its tributaries as a result of the pumping of Applicant's Denver aquifer wells, including those which may occur post-pumping, Applicant shall reserve the entire 682 acre-feet of ground water from the nontributary Laramie-Fox Hills aquifer underlying the Applicant's' Property adjudicated by this decree (subject to the limitation of consuming only 98% of the 682 acre-foot total, 668 acre-feet). Pursuant to a request by the Applicant or the future well owner, as set forth in this paragraph 25 and in paragraphs 26 and 44, the amount of Laramie-Fox Hills water reserved under this decree may be reduced by the Court under its retained jurisdiction as follows: (1) to reflect the actual volume of water available to Applicant from the Laramie-Fox Hills aquifer, as adjusted by the Court under its retained jurisdiction; (2) to reflect the amount of actual replacements made under the augmentation plan decreed herein; or (3) if the Court has authorized use of other replacement sources under this plan for augmentation, pursuant to its retained jurisdiction.

26. This decree, upon recording, shall constitute a covenant running with the Applicant's Property, benefitting and burdening said land, and requiring construction of a well or wells into the nontributary Laramie-Fox Hills aquifer and pumping of water, as necessary to replace injurious stream depletions under this decree, and Applicant and his successors and assigns are bound by such covenants to bear the financial and infrastructure burdens of constructing such wells. 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 pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner of the Applicant's Property. In the event of a court action to specifically enforce the covenant as set forth above, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees and costs incurred in such enforcement action in addition to all other remedies available.

27. Applicant or his successors shall be required to initiate pumping of the Laramie-Fox Hills aquifer for the replacement of depletions when either (1) the absolute total amount of water available to be withdrawn from the Denver aquifer (666 acre-feet) has been withdrawn from the wells; (2) the Applicant or his successors in interest has acknowledged in writing that all withdrawals for beneficial use through the wells has permanently ceased; (3) for a period of ten (10) consecutive years no withdrawals of groundwater have occurred through the Denver aquifer wells; or, (4) the accounting shows that return flows from use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

28. In addition, to satisfy depletion obligations, upon application to and approval of this Court under its retained jurisdiction, Applicant may use other legally available augmentation supplies which, as determined by the Court, are sufficient in quantity, time, and location to meet injurious depletions, including those which may occur post-pumping. Accounting and responsibility for all injurious depletions shall continue until such time as all injurious depletions are replaced, unless the Court determines otherwise under its retained jurisdiction.

29. The intended period of pumping for the Denver aquifer wells is for a minimum of 300 years. However, the length of pumping for a particular well or wells may be extended beyond such time provided the total volume pumped does not exceed the amount allocated to such well or wells under this decree. Should the actual operation of this augmentation plan depart from the planned diversions described in paragraph 23, 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 under its retained jurisdiction, and must represent the water use under the plan for the entire term of the plan prior to the revised modeling. 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. This augmentation plan shall continue until all injurious depletions (pumping and post-pumping) have been adequately replaced, as discussed in paragraphs 24-27 herein.

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

31. It is determined that the timing, quantity, and location of replacement water and the protective terms outlined herein are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water is of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used and such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Applicant's Denver aquifer wells. As a result of the operation of this plan for augmentation, the diversions and net depletions from the Applicant's wells will not result in material injury to any owner of or person entitled to use water under a vested water right.

CONCLUSIONS OF LAW

32. This Application was filed with the Water Clerk, Water Division 2, pursuant to C.R.S. 37-92-302(1)(a) and C.R.S. 37-90-137(9)(c)(I) (2006).

33. Applicant is entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying Applicant's Property, and the right to use that water to the

exclusion of all others subject to the terms of this decree.

34. Applicant has complied with C.R.S. 37-90-137(4) (2006), and the 666 acre feet of the not-nontributary Denver aquifer subject to the plan for augmentation decreed herein is legally available for withdrawal from the requested not-nontributary Denver aquifer wells by entry of this decree approving an augmentation plan pursuant to C.R.S. 37-90-137(9)(c)(I) (2006). The withdrawal of such portion of the Denver aquifer water decreed herein in accordance with the terms of this decree will not result in material injury to vested water rights of others. The remaining 1,101 acre feet of Denver aquifer groundwater and the not-nontributary Dawson and Arapahoe aquifer ground water decreed herein shall not be withdrawn until such withdrawals are authorized pursuant to a court approved plan for augmentation. Applicant is entitled to a decree from this Court confirming such rights pursuant to C.R.S. 37-90-137(4) (2006).

35. The Denver Basin water rights applied for and decreed in this case are not conditional water rights, but are absolute water rights determined pursuant to C.R.S. 37-90-137 (2006). No applications for diligence are required. The claims for not-nontributary ground water meet the requirements of Colorado Law.

36. The determination of the nontributary ground water rights in the Denver Basin aquifers set forth herein is contemplated and authorized by law. C.R.S. 37-90-137 and C.R.S. 37-92-302 to 37-92-305 (2006).

37. The Applicant's request for approval of a plan of 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 Denver aquifer wells as described herein, without adversely affecting any other vested water rights in the Arkansas River and its tributaries and whenever curtailment would otherwise be required to meet a valid senior call for water. C.R.S. 37-92-305(3), (5), and (8) (2006).

38. The State Engineer may lawfully be required to administer this plan for augmentation in the manner set forth herein.

DECREE

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

39. All the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

40. The Application for Adjudication of Denver Basin Water Rights and for Approval of Plan for Augmentation which has been requested by the Applicant is granted and approved, subject to the terms of this decree.

41. The Applicant shall comply with C.R.S. 37-90-137(9)(b), requiring the relinquishment of the right to consume up to two percent of the amount of the nontributary ground water withdrawn. Ninety-eight percent of the nontributary ground water withdrawn may thereby be consumed. No plan of augmentation shall be required to provide for such relinquishment. Applicant shall be required to demonstrate to the State Engineer prior to the issuance of a well permit or permits that no more than ninety-eight percent (98%) of the ground water withdrawn annually will be consumed.

42. Applicant may withdraw up to 2.2 acre feet per year for 300 years and 666 acre feet total of not-nontributary ground water from the Denver aquifer under the plan for augmentation decreed herein pursuant to C.R.S. §37-90-137(9)(c) (2006). Applicant shall not be entitled to withdraw the allowed annual amounts adjudicated herein for the Dawson and Arapahoe aquifers, nor shall Applicant be entitled to withdraw the remaining 1,101 acre feet of Denver aquifer groundwater decreed herein, unless and until a separate plan for augmentation has been decreed by the Court to cover the replacement requirements for withdrawals from those aquifers. Neither shall Applicant be entitled to beneficial uses for the ground water from the Denver and Laramie-Fox Hills aquifers, other than those uses specifically authorized in this decree under the plan for augmentation decreed herein, until such time as that plan is modified under this Court's retained jurisdiction, or a subsequent plan for augmentation addressing such uses is decreed by this Court.

43. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not, at the request of other appropriators, or on their own initiative, curtail the diversion and use of water from the Denver aquifer wells drilled pursuant to this plan for augmentation, so long as the return flows from the annual diversions associated with the Denver aquifer wells through the individual septic leach fields of the Applicant's lots are of an amount at least equal to 4% of those diversions, as discussed herein. To the extent that Applicant or one of his successors or assigns is ever unable to provide the replacement water required, then the Applicant's Denver aquifer wells 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 regulations 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.

44. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers as adjudicated herein either upwards or downwards, to conform to actual local aquifer characteristics after at least one geophysical log is obtained, and that the Applicant need not refile, republish, or otherwise amend this Application and Decree to request such adjustments. Such retained jurisdiction shall allow the Applicant to later seek 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, or any other post pumping matters addressed in paragraphs 24-27 above. The Court further retains jurisdiction for the purposes of ensuring that the Laramie-Fox Hills well is constructed as necessary to replace post-pumping depletions following the pumping life of the Denver aquifer wells.

45. Pursuant to the provisions of C.R.S. 37-92-304(6) (2005), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to vested water rights, for a period of time necessary to preclude injury, and in this instance such period shall be three years from the date of this decree. Any person, within a three year 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 evaluate injury to 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 to be established, Applicant shall thereupon have the burden of proof to show: (a) that any modification sought by Applicant will avoid material injury to other appropriators, or (b) that any modification sought by the petitioner is not required to avoid material injury to other appropriators, or (c) that any term or condition proposed by Applicant in response to the petition does avoid material injury to other vested water rights. If no such petition is filed with in a three-year period and the retained jurisdiction period is not extended

by the Court in accordance with the provisions of the statute, this decree shall become final under its own terms.

46. The Court determines and orders that the State Engineer will process well permit applications pursuant to C.R.S. 37-92-137 pursuant to the terms of this decree. Should Applicant fail to construct any well prior to the expiration of the well permit, Applicant may reapply to the State Engineer for a new well permit and the State Engineer shall issue a new well permit with terms and conditions no more burdensome than those contained herein.

47. The wells shall be installed and metered as reasonably required by the Division Engineer and the State Engineer. Each well shall be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer or his representative on an annual basis or as otherwise required by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation.

48. This Decree 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. Copies of this ruling of referee, and the final decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 11th day of July, 2007.

BY THE REFEREE:

Mardell R. DiDomenico, Water Referee
Water Division 2
State of Colorado

EXHIBIT A

All that part of the S1/2 of the SW1/4 of Section 14 in township 12 South, Range 66 West of the 6th P.M., lying East of the following described line:

Beginning at a point on the North line of said S1/2 of the SW1/4, 1144 feet East from the Northwest corner thereof; thence Southerly parallel with the West line of said Section, 670 feet to the North line of a tract described in Book 2160 at Page 378, under reception No. 515889; thence Easterly along the North line of said Tract, 290.02 feet, more or less, to the Northeast corner thereof; thence Southerly along the East line of said tract and the extension thereof to a point on the South line of said SW1/3, 1434.02 feet Easterly from the Southwest corner of said Section;

Except that part thereof platted as Timber Lake Estates No. 2, El Paso County, State of Colorado.

Together with an easement for egress over the following described property:

That portion of the S1/2 of the SW1/4 of Section 14, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, described as follows:

Beginning at a point on the Northerly line of a tract of land as described in Book 2160 at Page 378 in the records of El Paso County, Colorado that is 48.00 feet Westerly thereon from the Northeast corner thereof; thence Southeasterly to intersect a point on the Easterly line of said recorded tract that is 48.00 feet Southerly from the Northeast corner thereof; thence Northerly 48.00 feet to the Northeast corner thereof; thence Westerly 48.00 feet to the point of beginning, El Paso County, State of Colorado.