

District Court, Water Division 1, State of Colorado Court Address: 901 9 th Ave P. O. Box 2038 Greeley, CO 80632	EFILED Document – District Court 2004CW299 CO Weld County District Court 19th JD Filing Date: May 7 2007 9:57AM MDT Filing ID: 14741746 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: SEARLE RANCH, INC. IN EL PASO AND DOUGLAS COUNTIES	Case Number: 04CW299 (Division 1) 04CW104 (Division 2)
NOTICE OF REFEREE RULING	

Steven Monson
 319 N. Weber St.
 Colorado Springs, CO 80903

William Dude
 111 S. Tejon St. #400
 Colorado Springs, CO 80903

Division Engineer

State Engineer

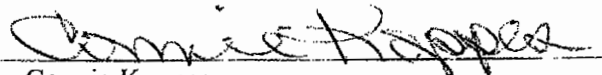
The Water Court Referee for Water Division No. 1 has instructed me to forward a copy of this Ruling. Please check the Ruling carefully. If any errors are found, notify the Water Clerk's Office immediately. If you have any questions regarding this matter, please direct them to the Water Referee at (970) 351-7300, ext. 5406 or by e-mail to ray.liesman@judicial.state.co.us.

You have twenty days after the above mailing to file with the Water Clerk any pleading in protest to or in support of the Referee's Ruling. Any such pleading must be filed on or before **May 29, 2007**, plus any additional time allowed by Rule 6(e) C.R.C.P. In the absence of any pleading, the Judge of the Water Court will enter the Referee's Ruling as a Decree the day after **May 29, 2007**.

Certificate of Service

I hereby certify that I served via LexisNexis File & Serve, a true and correct copy of the foregoing Ruling to the parties listed above.

Dated: May 7, 2007

By: 
 Connie Koppes
 Water Clerk, Water Division 1

This ruling was filed electronically pursuant to Rule 121, §1-26. The original is in the Court's file.

Case No. 04CW299, Div. 1
Case No. 04CW104, Div. 2
Consolidated in Div. 1, 05MDL 04
Application of Searle Ranch, Inc.

<p>DISTRICT COURT, WATER DIVISION 1 STATE OF COLORADO</p> <p>Court Address: 901 9th Street Greeley, CO 80631 (970) 351-7300</p> <p>CONCERNING THE APPLICATION OF:</p> <p>Searle Ranch, Inc.</p> <p>IN EL PASO AND DOUGLAS COUNTIES</p> <p>Attorney for Applicant:</p> <p>Steven T. Monson Felt, Monson & Culichia, LLC 319 N. Weber St., Colorado Springs, CO 80903 Phone Number: (719) 471-1212 Fax Number: (719) 471-1234 E-mail: stm@fmcwater.com Atty. Reg. #: 11329</p>	<p>COURT USE ONLY</p> <p>Case No.:04CW299 Division 1 04CW104 Division 2 Consolidated in Div. 1 05 MDL 04</p>
<p>FINDINGS OF FACT, RULING OF REFEREE, JUDGMENT AND DECREE GRANTING UNDERGROUND WATER RIGHTS AND PLAN FOR AUGMENTATION</p>	

THIS MATTER comes before the Court on the Application for Underground Water Rights and Plan for Augmentation filed by Searle Ranch, Inc. and, having reviewed said Application and other pleadings on file and the stipulation of the parties, and being fully advised on this matter, the following findings and orders have been made:

FINDINGS OF FACT

General Findings

1. The applicant in this case is Searle Ranch, Inc. ("Applicant"). This case involves the adjudication of Denver Basin ground water underlying Applicant's Property in El Paso County. It also involves the adjudication of a plan for augmentation to replace stream depletions caused by pumping from up to 46 wells in the not nontributary Dawson Aquifer. The water

rights application was filed in both Water Divisions 1 and 2 because stream depletions occur in both the South Platte River and Arkansas River drainages under the State Engineer's Denver Basin Ground Water Flow Model.

2. The water rights Applications in this case were filed in Water Division 1 on November 30, 2004 and in Water Division 2 on November 30, 2004.

3. Case No. 04CW299, Water Division 1, was referred to the Water Referee as of the date of the filing of the Application on November 30, 2004. By Order of Referral from Water Division 2, dated December 2, 2004, Case No. 04CW104 was referred to the Water Referee.

4. By a March 15, 2005 Order of the Panel on Consolidated Multidistrict Litigation in Case No. 05MDL 04, the Division 1 and Division 2 cases were consolidated into this Division 1 case, Case No. 04CW299.

5. The Division Engineer's Office for Division 1 has filed with the State a Consultation Report dated March 4, 2005. Due consideration has been given to such Consultation Report.

6. 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 groundwater basin.

7. A Statement of Opposition to the Application was filed by the City of Colorado Springs in Case No. 04CW104, Division 2. No other statements of opposition were filed in this consolidated case and the time for filing statements of opposition has expired. A May 2, 2007 Stipulation has been entered into with the City of Colorado Springs consenting to the entry of a decree in accordance with the provisions of this Findings of Fact and Ruling of Referee. This Stipulation has been confirmed by an Order of the Court dated May 4, 2007.

Ground Water Rights

8. The land overlying the ground water which is the subject of this case is owned by the Applicant and consists of approximately 231 acres within the E1\2 of Section 9 Township 11 South, Range 66 West, 6th P.M., El Paso County, Colorado ("Applicant's Property"). The Applicant's Property is more particularly described in the attached Exhibit A legal description, and a plat of the Applicant's Property is attached hereto as Exhibit B.

9. The lienholders on the Applicant's Property have been provided with notice of this

Application pursuant to C.R.S. §37-92-302 as demonstrated by the December 9, 2004 Certificate of Mailing to Lienholders as filed with the Court.

10. The Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property have already been classified and quantified as part of Case No. 85CW230, District Court for Water Division 1. Case No. 85CW230 concerned a larger tract of 2,041 acres that included the 231 acres of the Applicant's Property. Based upon a pro rata allocation of the quantified and adjudicated ground water rights under Case No. 85CW230 to the acreage of the Applicant's Property, the Denver, Arapahoe and Laramie-Fox Hills aquifer rights attributable and decreed to the Applicant's Property are as follows under Case No. 85CW230:

<u>Aquifer</u>	<u>Acres</u>	<u>Saturated Thickness (feet)</u>	<u>Specific Yield (%)</u>	<u>Aquifer Storage (Acre Feet)</u>	<u>Annual Average Withdrawal (Acre Feet)</u>
Denver	231	550	17	21,569	215.7
Arapahoe	231	275	17	10,797	108
Laramie-Fox Hills	231	200	15	6,930	69.3

11. The Dawson aquifer of the Denver Basin underlying the Applicant's Property is not nontributary. The Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property are nontributary as determined in Case No. 85CW230. Pursuant to C.R.S. 37-90-137(9)(c)(1), 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 material injury. Applicant shall not be entitled to construct a well or use water from the not nontributary Dawson aquifer until an augmentation plan has been decreed by the Court in accordance with C.R.S. §37-90-137(9)(c).

12. Applicant shall be entitled to withdraw all legally available ground water in the Denver Basin aquifers underlying Applicant's Property. Said amounts can be withdrawn over the 100 year life of the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer time based upon local governmental regulations or Applicant's water needs. The average annual amounts of ground water available for withdrawal from the underlying Dawson aquifer of the Denver Basin is determined and set forth as follows based upon the March 5, 2007, Office of the State Engineer Determination of Facts:

<u>Aquifer</u>	<u>Acres</u>	<u>Saturated Thickness (Feet)</u>	<u>Specific Yield (%)</u>	<u>Aquifer Storage (Acre Feet)</u>	<u>Annual Ave. Withdrawal (Acre Feet)</u>
Dawson	231	430	20	19,826 ¹	198.3

Applicant has an interest in the Dawson aquifer ground water under Case No. 99CW214 by reason of the July 31, 2006 Quit Claim Deed recorded with the El Paso County Clerk and Recorder on August 31, 2006 at Reception No. 206129803. To obtain the full adjudication of the Applicant's Dawson aquifer ground water under its 231 acre parcel within a single decree under this Case No. 04CW299, Applicant vacates its decreed Dawson aquifer ground water under Case No. 99CW214 obtained pursuant to said Quit Claim Deed (6.48 annual acre feet) relating to 8 acres of the Applicant's 231 acre parcel. The 19,866 acre feet of storage and 198.7 annual acre feet available for appropriation are decreed solely under this decree in Case No. 04CW299, and relate to the entire 231 acres of Applicant's Property.

13. The depth to the base of the Dawson aquifer underlying the Applicant's Property is approximately 800 feet below land surface. The depth of the Dawson aquifer underlying Applicant's Property is based upon the best information presently available. The actual depth of each well to be constructed within the respective aquifers will be determined by topographic conditions.

14. Applicant shall be entitled to withdraw an amount of ground water in excess of the average annual amount decreed from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from all the 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 a decree herein, whichever comes first, and the annual volume of water which Applicant is entitled to withdraw from the aquifer underlying Applicant's Property.

15. Applicant shall be entitled to produce the full legal entitlement from the respective Denver Basin aquifers underlying Applicant's Property through any combination of wells constructed into each 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

¹ As Applicant will be re-permitting exempt well structure nos. 198116 and 215996 located upon the Property as nonexempt structures under the plan for augmentation (See ¶20), the full amount of Dawson aquifer ground water underneath the Property is available for quantification.

decree. 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 amounts.

16. The Applicant has waived the 600 foot well spacing requirement of C.R.S. §37-90-137(2)(b) with respect to the well spacing of Applicant's wells in relation to one another on the Applicant's Property.

17. Well permit applications for the wells to be drilled pursuant to this decree shall be applied for prior to drilling wells into the Denver Basin aquifers. No exact location is required for the wells in this decree, as that information will be provided when the well permit applications are submitted.

18. The Applicant shall have the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial (i.e., in home occupations), irrigation, stock water, recreation, wildlife, fire protection, central water supply for such uses, and also for exchange and augmentation purposes. The amount of ground water 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 are to establish and provide for adequate water reserves. The nontributary water 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 no more than 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 not be entitled to construct a well or use water from the not nontributary Dawson aquifer until a decreed augmentation plan has been entered by the Court.

19. Water is available from the nontributary aquifers beneath the Applicant's Property and the withdrawal of that water from wells in the amounts of water 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 up to 46 wells to be completed in the not nontributary Dawson aquifer of the Denver Basin underlying the Applicant's Property, including any replacement wells ("Dawson Aquifer Wells"). Two domestic exempt wells are in place on Applicant's Property being Well Permit Nos. 198116 and 215996, which exempt wells shall be re-permitted as nonexempt structures under this plan for augmentation. Applicant shall also have the right to have a central well system as an alternative for all or part of the water allotment for

the individual wells.

21. The Dawson Aquifer Wells are to be used for the water supply for up to 46 single family residences upon the Applicant's Property. The maximum annual diversions from the wells shall not exceed 1.0 acre feet per well for a total of 46 annual acre feet for all 46 wells. The Applicant's consultant has operated the State Engineer's Denver Basin Ground Water Flow Model for the determination of stream depletions from the Dawson aquifer pumping. The actual stream depletions are a maximum of 24.38 percent of the Dawson Aquifer Well pumping, assuming 300 years of withdrawal under this plan. The actual stream depletions are, therefore, found to be a maximum of 0.2438 annual acre feet per residence, with a total depletion under this plan from all 46 wells of 11.21 annual acre feet. Attached hereto as Exhibit C is the Dawson Aquifer stream depletion factors under the ground water flow model. Nontributary ground water from the Denver aquifer may be used to the extent necessary to meet the water supply for the Applicant's property.

22. The water rights to be used for augmentation during pumping are the return flows of the not nontributary Dawson 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 Arapahoe and Laramie-Fox Hills aquifers. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation obligation for the Dawson Aquifer Wells requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect.

23. Waste water from the in-house residential uses shall be disposed of through a nonevaporative septic system which is hereby determined to have return flows to the tributary stream system of ninety percent of the in-house residential pumping of 0.3 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 0.3 annual acre feet of pumping, or 0.27 acre feet per residence. Total return flows from the in-house use from the 46 Dawson Aquifer Wells will be 12.42 annual acre feet. These return flows will adequately augment the tributary stream system in excess of the maximum actual stream depletion amount of approximately 11.04 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 used for any purpose without a subsequent order of this Court under the Court's retained jurisdiction or under further water rights application filed with this Court.

24. Applicants use of the remaining pumping allotment will be for stock watering, recreational use, wildlife, commercial (i.e., in home occupation), fire protection, and/or for the irrigation of lawns, gardens and landscaping. Applicant asserts that fifteen 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 to be used as part of this augmentation plan, but Applicant preserves his claim to those return flows and does not waive his rights thereto.

The total number of augmented units and the total pumping per well may vary depending upon the development considerations for the property, provided however that the total annual pumping of 46 annual acre feet shall not be exceeded and septic return flows from in-house use, as calculated above, shall equal or exceed maximum stream depletions. The allocation of water for uses within the maximum pumping limit may vary provided that there shall always be adequate return flows through the septic system to provide adequate replacement water to cover stream depletions from the wells.

25. The return flows set forth above will accrue to only the Cherry Creek system where the Applicant's Property is located, tributary to the South Platte River. The Court finds that these replacements are sufficient under this augmentation plan.

26. This Application was filed in both Water Divisions 1 and 2 because depletions occur to both divisions under the ground water flow model. The return flows set forth above as augmentation will accrue to only the South Platte River system where most depletions occur. 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.

27. This plan for augmentation shall have a pumping period of three hundred years. It is necessary for the Applicant to address the replacement of injurious post-pumping depletions which may be caused to the stream system by the Dawson Aquifer Wells beyond the operation of the wells. For the replacement of such post-pumping depletions, the Applicant shall reserve up to 14,082 acre feet of water from the nontributary Laramie-Fox Hills and Arapahoe Aquifers underlying the Applicant's Property, less the amount of actual replacements made during the three hundred year plan pumping period. This reservation shall consist of 6,930 acre feet of the Laramie-Fox Hills aquifer and 7,152 acre feet of the Arapahoe aquifer. This leaves 3,648 acre feet of the Arapahoe aquifer not committed to the plan for augmentation. Ninety-eight percent of this reserved amount equals the maximum pumping under the life of this plan. Provided, however, this reservation for post pumping depletions shall not exceed the total amount of Dawson Aquifer plan pumping, less the amount of actual replacements made during the period of plan pumping. The Applicant's entitlement to the Laramie-Fox Hills and Arapahoe aquifers shall be reduced by this amount in order to reflect this reservation. The reserved nontributary water will be used to replace injurious post-pumping depletions. This decree, upon recording, shall constitute a covenant running with the Applicant's Property, benefitting and burdening said land, and requiring construction of the well to the nontributary Laramie-Fox Hills and Arapahoe aquifers and pumping of water to replace injurious post-pumping stream depletions under this decree. 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. 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 fees and costs incurred in such enforcement action in addition to all other remedies available. Applicant claims that post-pumping depletions will be noninjurious and need not be replaced. To preserve the ability to prove such claim at a later point, the Applicant is allowed the right to invoke the Court's retained jurisdiction to prove that post-pumping depletions are noninjurious, or that a lesser amount of replacement water is required than reserved herein. Applicant shall have the burden of proof on these matters.

28. In addition, to satisfy post-pumping depletion obligations, upon application and approval of this Court under its retained jurisdiction pursuant to paragraph 44 herein, Applicant may use other legally available augmentation supplies which are sufficient in quantity, time, and location to meet injurious depletions as determined by the Court. Accounting and responsibility for post pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (1) the period provided by statute; (2) the period specified by any subsequent change in statute; (3) the period required by this Court under its retained jurisdiction; (4) the period determined by the State Engineer; or (5) 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 and Arapahoe aquifer ground water reserved for such purposes shall be free from the reservation herein and such ground water may be used or conveyed by its owner without restriction for any post-pumping obligations.

29. 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. The Court further finds that the post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping.

30. 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, of injury to any owner of or person entitled to use water under a vested water right.

31. 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 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 Dawson Aquifer Wells. As a result of the operation of

this plan for augmentation, the depletions from the Dawson Aquifer Wells will not result in material injury to the vested water rights of others.

32. The City of Colorado Springs ("Colorado Springs") owns senior water rights on Monument Creek that it asserts could be negatively impacted by the operation of this decree wherein depletions to the Arkansas River will not be replaced to the Arkansas River, but rather will be replaced to the Platte River. Colorado Springs reserves the right to claim that the cumulative negative impacts of this and other similar decrees constitutes injury to its senior Monument Creek water rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by doing so, Colorado Springs does not waive its right to claim injury and to seek relief in the future according to the provisions of Paragraph 44. Applicant does not admit by this paragraph that any material injury will occur to Colorado Springs or that a cumulate impact analysis is appropriate, but only that the right to assert those positions under Paragraph 44 is reserved by Colorado Springs.

Conclusions of Law

33. The application for augmentation filed by the Applicant was filed with the Water Clerks in Division No. 1 and Division No. 2, pursuant to C.R.S. §37-92-302(1)(a) and C.R.S. §37-90-137(9)(c). These cases were properly consolidated before Water Division 1.

34. 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 and Case No. 85CW230.

35. The Applicant has complied with C.R.S. §37-90-137(4), and the ground water is legally available for withdrawal by the requested nontributary wells, and legally available for withdrawal by the requested not nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c). Applicant is entitled to a decree from this Court confirming its rights to withdraw ground water pursuant to C.R.S. §37-90-137(4).

36. The Denver Basin water rights applied for in this claim are not conditional water rights, but are absolute water rights determined pursuant to C.R.S. §37-90-137. No applications for diligence are required. The claims for nontributary and not nontributary ground water meet the requirements of Colorado law.

37. The determination of the nontributary ground water rights in the Denver Basin aquifers as set forth herein and in Case No. 85CW230 is contemplated and authorized by law. C.R.S. §37-90-137 and C.R.S. §37-92-302 to §37-92-305.

38. 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 for the Dawson Aquifer Wells as described herein, 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. C.R.S. §38-92-305(3), (5), and (8).

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 Underground Water Rights and Plan of Augmentation proposal by the Applicant is 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 of 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.

42. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of water covered by the Dawson Aquifer Wells and plan for augmentation, so long as the return flows from the annual diversions associated with the Dawson Aquifer Wells 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 Dawson 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. In order for this plan for augmentation to operate, return flows from the septic systems shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

43. 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 characteristics, and that the Applicant need not refile, republish, or otherwise amend this application to request such adjustments. The Court further retains jurisdiction for 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, and other post pumping matters addressed in paragraphs 27 and 28 above.

44. The Court shall retain jurisdiction for so long as depletions occur to the Arkansas River system in order to reconsider whether the replacement of depletions to only the South Platte River system, instead of the Arkansas River system, is causing material injury to the vested water rights tributary to the Arkansas River. 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 for requesting 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 of 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 (a) that petitioner is not materially injured, or (b) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (c) 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.

45. Pursuant to the provisions of §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 from the build out of 34 homes. 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: (a) that the petitioner is not materially injured, or (b) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (c) 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.

46. The Court determines and orders that the State Engineer shall issue well permits in accordance with the decree entered herein. 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 requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation, a representative copy of which accounting is attached hereto as Exhibit D.

48. Transfer of Water Rights:

The ground water rights decreed herein are vested property rights decreed to the applicant. The ground water rights decreed herein shall be owned by the applicant or the applicant's successors until such time as the applicant or the applicant's successors expressly convey all or a portion of the water to another entity through a deed that identifies this case number, the specific aquifer, and the annual volume (based on a 100-year aquifer life) or total volume of ground water that is being conveyed.

49. 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 decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 17th day of May, 2007.

BY THE REFEREE:


Raymond S. Liesman

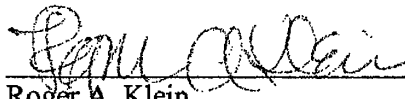
Water Referee
Water Division 1

Case No. 04CW299, Div. 1
Case No. 04CW104, Div. 2
Consolidated in Div. 1, 05MDL 04
Application of Searle Ranch, Inc.
CO Weld County District Court 19th JD
Filing Date: May 31 2007 2:45PM MDT
Filing ID: 15069003

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

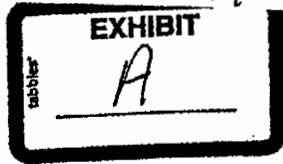
THE FOREGOING RULING OF REFEREE IS CONFIRMED AND APPROVED, AND IS
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: MAY 31 2007, 2007



Roger A. Klein
Water Judge
District Court, Water Division 1
State of Colorado

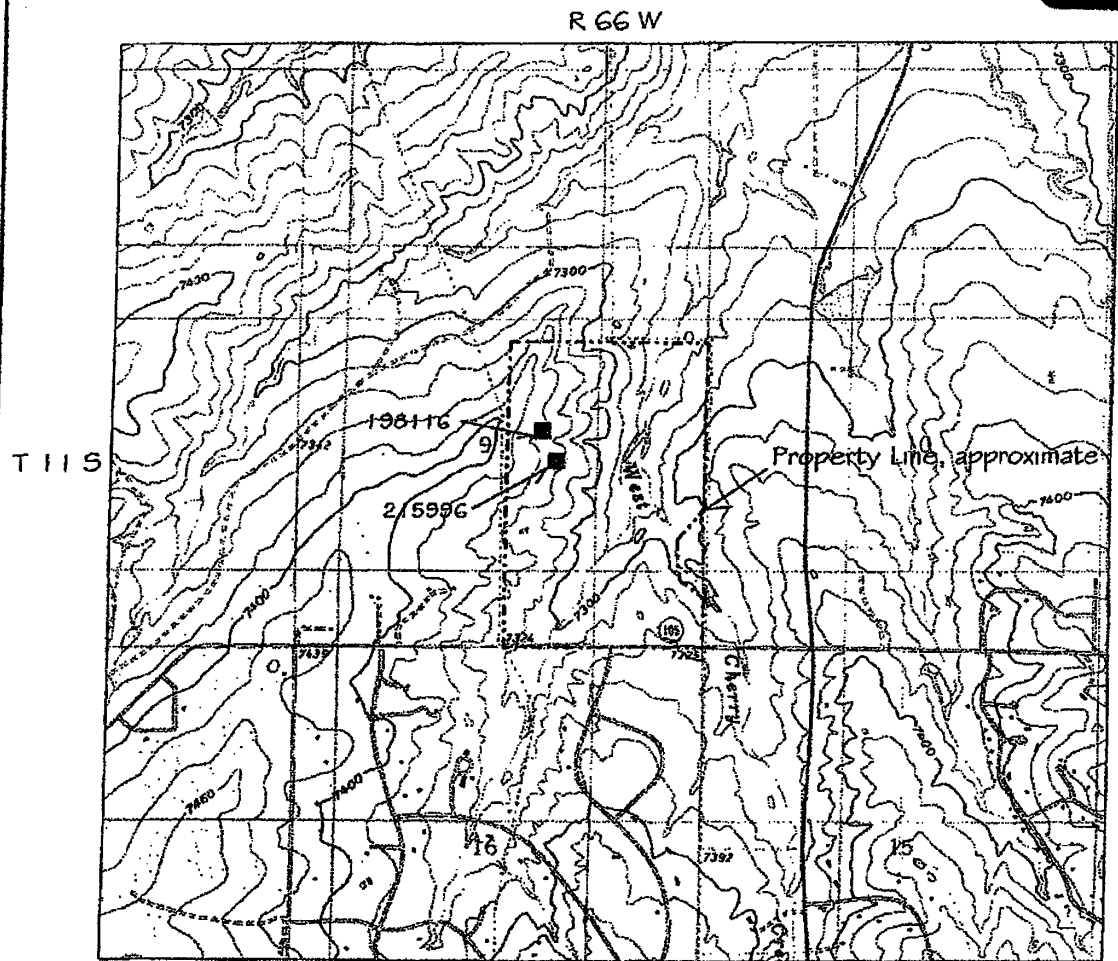
04CW299



LEGAL DESCRIPTION:

The South Half of the Northeast quarter and the Southeast Quarter of Section 9, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado EXCEPT that portion of said Southeast Quarter described as follows:

Commencing at the Southeast corner of said Southeast Quarter of Section 9; thence N 00 degrees 14' 44" West (on an assumed bearing to which all others in this description are relative) on the East line of said Southeast Quarter, 860.27 feet to the POINT OF BEGINNING of the tract to be described hereby; thence along an existing fence for the next four (4) courses; (1) North 57 degrees 33' 53" West, 496.57 feet; (2) thence North 13 degrees 00' 29" East, 60.34 feet; (3) thence North 10 degrees 55' 18" West, 383.28 feet; (4) thence North 34 degrees 58' 51" East, 823.72 feet to intersect said Easterly line of said Southeast Quarter; thence South 00 degrees 14' 44" East, on said East line, 1376.39 feet to the Point of Beginning.



■ Domestic Well, permit no.



Scale 1" = 2000'

Location Map

Searle Ranch

Wm Curtis Wells & Co.
consulting ground water geologists

Figure 1

04CW299



Table II
 Dawson Aquifer Stream Depletion Factors
 Searle Property
 (as % of pumping)

YRS	South Platte River	Arkansas River	Total	YRS	South Platte River	Arkansas River	Total
10	1.15	0.08	1.23	310	15.48	8.35	23.83
20	2.01	0.22	2.23	320	15.03	8.46	23.49
30	2.75	0.40	3.15	330	14.71	8.51	23.22
40	3.42	0.63	4.05	340	14.46	8.51	22.97
50	4.04	0.89	4.93	350	14.26	8.47	22.73
60	4.62	1.18	5.80	360	14.09	8.40	22.49
70	5.18	1.49	6.67	370	13.93	8.32	22.25
80	5.74	1.78	7.52	380	13.77	8.24	22.01
90	6.29	2.08	8.37	390	13.64	8.13	21.77
100	6.80	2.41	9.21	400	13.51	8.02	21.53
110	7.31	2.73	10.04	410	13.38	7.91	21.29
120	7.83	3.04	10.87	420	13.26	7.79	21.05
130	8.32	3.36	11.68	430	13.14	7.67	20.81
140	8.82	3.67	12.49	440	13.02	7.55	20.57
150	9.32	3.98	13.30	450	12.90	7.42	20.32
160	9.82	4.27	14.09	460	12.80	7.28	20.08
170	10.28	4.60	14.88	470	12.68	7.16	19.84
180	10.77	4.89	15.66	480	12.57	7.03	19.60
190	11.23	5.21	16.44	490	12.44	6.93	19.37
200	11.70	5.50	17.20	500	12.33	6.80	19.13
210	12.18	5.78	17.96	510	12.23	6.66	18.89
220	12.63	6.07	18.70	520	12.11	6.55	18.66
230	13.09	6.35	19.44	530	12.01	6.41	18.42
240	13.55	6.62	20.17	540	11.88	6.31	18.19
250	14.00	6.90	20.90	550	11.76	6.20	17.96
260	14.46	7.15	21.61	560	11.65	6.09	17.74
270	14.89	7.43	22.32	570	11.54	5.97	17.51
280	15.33	7.69	23.02	580	11.43	5.86	17.29
290	15.77	7.93	23.70	590	11.31	5.76	17.07
300	16.20	8.18	24.38	600	11.21	5.64	16.85

Accounting Form
 Searle Property
 Water Court Case 04-CW-299



Lot No.	Well Permit No.	This Oct. 31	Last Year Oct. 31	Total	From	To
		col. a	col. b	col. a - col. b	af	
1						
2						
3						
46						
1	Total Number of Homes					
2	Total					

Table 1
(as %)

Yrs.	Depletion	Yrs.	Depletion
10	1.23	160	14.09
20	2.23	170	14.88
30	3.15	180	15.66
40	4.05	190	16.44
50	4.93	200	17.20
60	5.80	210	17.96
70	6.67	220	18.70
80	7.52	230	19.44
90	8.37	240	20.17
100	9.21	250	20.90
110	10.04	260	21.61
120	10.87	270	22.32
130	11.68	280	23.02
140	12.49	290	23.70
150	13.30	300	24.38

1	Total Pumps [2]	+		af
2	Stream Depletion Factor From Table 1 rounded up to next 10 years since pumping began	*		
3	Stream Depletion	=	1/100	af

1	Return Flows [1]	+		
2	Stream Depletion [3]	-	0.27	af
3	Net Accretion (Depletion)	=		af

1	Withdrawal From Last Year [4]	+		af
2	Withdrawal This Year [2]	+		af
3	Total Withdrawal Since Pumping Began	=		af
4	Average Annual Withdrawal	=		af/yr
5	Year Pumping Began			

04CW299

existence of this decree. Copies of this decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 24 day of February, 2009.

BY THE REFEREE:



John Cowan, Water Referee
Water Division 1
State of Colorado

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.
THE FOREGOING RULING OF REFEREE IS CONFIRMED AND APPROVED, AND IS
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: February 24, 2009



Roger A. Klein
Water Judge
District Court, Water Division 1
State of Colorado

District Court, Water Division 1, State of Colorado Court Address: 901 9 th Ave P. O. Box 2038 Greeley, CO 80632	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: SEARLE RANCH, INC. IN EL PASO COUNTY	▲ COURT USE ONLY ▲
	Case No. 08CW188 Div 1 08CW62 Div 2 Consolidated in Div 1 08MDL32
NOTICE OF REFEREE RULING	

Steven Monson
 Michael Gustafson
 319 N. Weber
 Colorado Springs, CO 80903

Division Engineer

State Engineer

The Water Court Referee for Water Division No. 1 has instructed me to forward a copy of this Ruling. Please check the Ruling carefully. If any errors are found, notify the Water Clerk's Office immediately. If you have any questions regarding this matter, please direct them to the Water Referee at (970) 351-7300, ext. 5405 or by e-mail to john.cowan@judicial.state.co.us

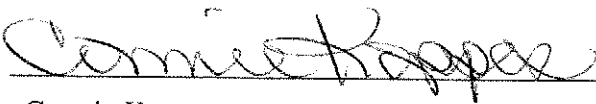
You have twenty days after the above mailing to file with the Water Clerk any pleading in protest to or in support of the Referee's Ruling. Any such pleading must be filed on or before

February 23, 2009, plus any additional time allowed by Rule 6(e) C.R.C.P. In the absence of any pleading, the Judge of the Water Court will enter the Referee's Ruling as a Decree the day after **February 23, 2009**.

Certificate of Service

I hereby certify that I served via LexisNexis File & Serve, a true and correct copy of the foregoing Ruling to the parties listed above.

Dated: February 3, 2009

By: 
 Connie Koppes
 Water Clerk, Water Division 1

This ruling was filed electronically pursuant to Rule 121, §1-26. The original is in the Court's file.

<p>DISTRICT COURT, WATER DIVISION 1 STATE OF COLORADO</p> <p>Court Address: 901 9th Avenue Greeley, CO 80631 (970) 351-7300</p> <hr/> <p>CONCERNING THE APPLICATION OF:</p> <p>SEARLE RANCH, INC.</p> <p>IN EL PASO COUNTY</p>	<p>COURT USE ONLY</p> <hr/> <p>Case No.:08CW188 Division 1 08CW62 Division 2 Consolidated in Div. 1 08 MDL 32</p>
<p align="center">FINDINGS OF FACT, RULING OF REFEREE, JUDGMENT AND DECREE GRANTING MODIFICATION OF AUGMENTATION PLAN</p>	

THIS MATTER comes before the Court on the Application for Modification of Plan for Augmentation filed by Searle Ranch, Inc. Having reviewed said Application and other pleadings on file and the stipulation of the parties, and being fully advised on this matter, the following findings and orders have been made:

FINDINGS OF FACT

General Findings

1. The Applicant in this case is Searle Ranch, Inc. ("Applicant"), whose address is 2500 East Highway 105 Monument, CO 80132-8366.
2. This case involves the adjudication of a modification of the plan for augmentation decreed in Water Court, Division 1, Case No. 04CW299 and Water Court, Division 2, Case No. 04CW104, which were consolidated into consolidated Case No. 05MDL04. On May 31, 2007, Applicant received a final decree for underground water rights and a plan for augmentation in consolidated Case No. 05MDL04, Water Court Division 1 Case No. 04CW299 and Water Court Division 2 Case No. 04CW104 ("Augmentation Plan").
3. The Augmentation Plan adjudicated Applicant's water rights in the Dawson aquifer

underlying a 231 acre parcel described in Exhibit A hereto ("Applicant's Property") and an augmentation plan for up to 46 wells to be drilled into the Dawson aquifer underlying Applicant's Property. Applicant's water rights in the Denver, Arapahoe, and Laramie-Fox Hills aquifers of the Denver Basin were adjudicated in Case No. 85CW230 District Court for Water Division 1. The water rights were decreed for domestic, commercial (i.e. in home occupations), irrigation, stock water, recreation, wildlife, fire protection, central water supply, exchange, and augmentation purposes.

4. Under the Augmentation Plan, depletions resulting from the diversions from the 46 wells were to be replaced by septic return flows associated with in-house uses from up to 46 single family residences to be built on Applicant's Property. Post pumping depletions associated with the 46 wells were to be replaced with water Applicant reserved in the nontributary Laramie-Fox Hills and Arapahoe aquifers underlying the Applicant's Property.

5. El Paso County informed the Applicant that it will only approve a maximum of 42 lots on Applicant's Property. Thus, in this case Applicant requested a modification to the Augmentation Plan allowing it to remove the water from the Dawson, Arapahoe and Laramie-Fox Hills aquifers associated with 4 of the 46 lots from dedication to the Augmentation Plan.

6. This water rights Application requesting modification of the Augmentation Plan was filed in both Water Divisions 1 and 2 on August 29, 2008 because stream depletions occur in both the South Platte River and Arkansas River drainages under the State Engineer's Denver Basin Ground Water Flow Model.

7. Case No. 08CW188, Water Division 1, was referred to the Water Referee as of the date of the filing of the Application on August 29, 2008. By Order of Referral from Water Division 2, dated August 29, 2008, Case No. 08CW62 was referred to the Water Referee.

8. By a January 20, 2009 Order of the Chief Justice of the Colorado Supreme Court in Case No. 08MDL32, the Division 1 and Division 2 cases were consolidated into this Division 1 case, Case No. 08CW188. Case No. 08CW188, Water Division 1, was referred to the Water Referee as of the date of the filing of the Order of the Chief Justice on January 23, 2009.

9. The Division Engineer's Office for Division 1 has filed a Consultation Report dated December 18, 2008 and Applicant has filed a response to the Consultation Report. Due consideration has been given to such Consultation Report and Applicant's response.

10. 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 groundwater

basin.

11. No statements of opposition were filed in this consolidated case and the time for filing statements of opposition has expired.

Ground Water Rights

12. The adjudication of the Denver Basin ground water rights underlying Applicant's Property adjudicated in consolidated Case No. 05MDL04 and in Case No. 85CW230, are not impacted by this decree. The portions of the decrees in consolidated Case No. 05MDL04 and Case No. 85CW230 concerning the adjudication of such Denver Basin ground water rights, as set forth in paragraphs 1 through 19 of Case No. 05MDL04, are expressly incorporated into this decree.

Modified Plan for Augmentation

13. The amended augmentation plan for the subject 42 lots is restated in its entirety in the remainder of this decree.

14. The structures to be augmented are up to 42 wells to be completed in the nontributary Dawson aquifer of the Denver Basin underlying the Applicant's Property, including any replacement wells ("Dawson Aquifer Wells"). Two domestic wells are in place on Applicant's Property being Well Permit Nos. 66227 and 66228, which wells have been permitted as augmented structures under the Augmentation Plan. Applicant shall also have the right to have a central well system as an alternative for all or part of the water allotment for the individual wells.

15. The Dawson Aquifer Wells are to be used for the water supply for up to 42 single family residences upon the Applicant's Property. The maximum annual diversions from the wells shall not exceed 1.0 acre feet per well for a total of 42 annual acre feet for all 42 wells. The Applicant's consultant has operated the State Engineer's Denver Basin Ground Water Flow Model for the determination of stream depletions from the Dawson aquifer pumping. The actual stream depletions are a maximum of 24.38 percent of the Dawson Aquifer Well pumping, assuming 300 years of withdrawal under this plan. The actual stream depletions are, therefore, found to be a maximum of 0.2438 annual acre feet per residence, with a total depletion under this plan from all 42 wells of 10.23 annual acre feet. Attached hereto as Exhibit B is the Dawson aquifer stream depletion factors under the ground water flow model. Nontributary ground water from the Denver aquifer may be used to the extent necessary to meet the water supply for Applicant's Property.

16. The water rights to be used for augmentation during pumping are the return flows

of the not nontributary Dawson 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 Arapahoe and Laramie-Fox Hills aquifers. Pursuant to C.R.S. §37-90-137(9)(c), the augmentation obligation for the Dawson Aquifer Wells requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect.

17. Waste water from the in-house residential uses shall be disposed of through a nonevaporative septic system which is hereby determined to have return flows to the tributary stream system of ninety percent of the in-house residential pumping of 0.3 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 0.3 annual acre feet of pumping, or 0.27 acre feet per residence. Total return flows from the in-house use from the 42 Dawson Aquifer Wells will be 11.34 annual acre feet. These return flows will adequately augment the tributary stream system in excess of the maximum actual stream depletion amount of approximately 10.23 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 used for any other purpose without a subsequent order of this Court under the Court's retained jurisdiction or under further water rights application filed with this Court.

18. Applicants use of the remaining pumping allotment will be for stock watering, recreational use, wildlife, commercial (i.e., in home occupation), fire protection, and/or for the irrigation of lawns, gardens and landscaping. Applicant asserts that fifteen 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 to be used as part of this augmentation plan, but Applicant preserves its claim to those return flows and does not waive its rights thereto. The total number of augmented units and the total pumping per well may vary depending upon the development considerations for the property, provided however that the total annual pumping of 42 annual acre feet shall not be exceeded and septic return flows from in-house use, as calculated above, shall equal or exceed maximum stream depletions. The allocation of water for uses within the maximum pumping limit may vary provided that there shall always be adequate return flows through the septic system to provide adequate replacement water to cover stream depletions from the wells.

19. The return flows set forth above will accrue to only the Cherry Creek system where the Applicant's Property is located, tributary to the South Platte River. The Court finds that these replacements are sufficient under this augmentation plan.

20. This Application was filed in both Water Divisions 1 and 2 because depletions occur to both divisions under the ground water flow model. The return flows set forth above as augmentation will accrue to only the South Platte River system where most depletions occur.

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.

21. This plan for augmentation shall have a pumping period of three hundred years. It is necessary for the Applicant to address the replacement of injurious post-pumping depletions which may be caused to the stream system by the Dawson Aquifer Wells beyond the operation of the wells. For the replacement of such post-pumping depletions, the Applicant shall reserve up to 12,858 acre feet of water from the nontributary Laramie-Fox Hills and Arapahoe aquifers underlying the Applicant's Property, less the amount of actual replacements made during the three hundred year plan pumping period. This reservation shall consist of 6,930 acre feet of the Laramie-Fox Hills aquifer and 5,928 acre feet of the Arapahoe aquifer. This leaves 4,869 acre feet of the Arapahoe aquifer not committed to the plan for augmentation. Ninety-eight percent of this reserved amount equals the maximum pumping under the life of this plan. Provided, however, this reservation for post pumping depletions shall not exceed the total amount of Dawson aquifer plan pumping, less the amount of actual replacements made during the period of plan pumping. The Applicant's entitlement to the Laramie-Fox Hills and Arapahoe aquifers shall be reduced by this amount in order to reflect this reservation. The reserved nontributary water will be used to replace injurious post-pumping depletions. This decree, upon recording, shall constitute a covenant running with the Applicant's Property, benefitting and burdening said land, and requiring construction of the well to the nontributary Laramie-Fox Hills and Arapahoe aquifers and pumping of water to replace injurious post-pumping stream depletions under this decree. 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. 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 fees and costs incurred in such enforcement action in addition to all other remedies available. Applicant claims that post-pumping depletions will be noninjurious and need not be replaced. To preserve the ability to prove such claim at a later point, the Applicant is allowed the right to invoke the Court's retained jurisdiction to prove that post-pumping depletions are noninjurious, or that a lesser amount of replacement water is required than reserved herein. Applicant shall have the burden of proof on these matters.

22. In addition, to satisfy post-pumping depletion obligations, upon application and approval of this Court under its retained jurisdiction pursuant to paragraph 35 herein, Applicant may use other legally available augmentation supplies which are sufficient in quantity, time, and location to meet injurious depletions as determined by the Court. Accounting and responsibility for post pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (1) the period provided by statute; (2) the period specified by any subsequent

change in statute; (3) the period required by this Court under its retained jurisdiction; (4) the period determined by the State Engineer; or (5) 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 and Arapahoe aquifer ground water reserved for such purposes shall be free from the reservation herein and such ground water may be used or conveyed by its owner without restriction for any post-pumping obligations.

23. The following chart shows the water rights in the Denver Basin aquifers adjudicated to Applicant's Property in consolidated Case No. 05MDL04 and Case No. 85CW230 that are dedicated to this augmentation plan and the water rights that are available for other uses by the Applicant:

	<u>Total Decreed Water</u>	<u>Water Dedicated to Aug Plan for 42 lots</u>	<u>Water Available for Other Uses</u>
Dawson	19,826 AF	12,600 AF	7,226 AF
Denver	21,569 AF	0 AF	21,569 AF
Arapahoe	10,797 AF	5,928 AF	4,869 AF
Laramie-Fox Hills	6,930 AF	6,930 AF	0 AF

24. 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. The Court further finds that the post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping.

25. 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, of injury to any owner of or person entitled to use water under a vested water right.

26. 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 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 Dawson Aquifer Wells. As a result of the operation of this plan for augmentation, the depletions from the Dawson Aquifer Wells will not result in material injury to the vested water rights of others.

27. The City of Colorado Springs ("Colorado Springs") owns senior water rights on Monument Creek that it asserts could be negatively impacted by the operation of this decree wherein depletions to the Arkansas River will not be replaced to the Arkansas River, but rather will be replaced to the Platte River. Colorado Springs reserves the right to claim that the cumulative negative impacts of this and other similar decrees constitutes injury to its senior Monument Creek water rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by doing so, Colorado Springs does not waive its right to claim injury and to seek relief in the future according to the provisions of paragraph 35. Applicant does not admit by this paragraph that any material injury will occur to Colorado Springs or that a cumulative impact analysis is appropriate, but only that the right to assert those positions under paragraph 35 is reserved by Colorado Springs.

Conclusions of Law

28. The application for modification of plan for augmentation was filed by the Applicant with the Water Clerks in Division No. 1 and Division No. 2, pursuant to C.R.S. §37-92-302(1)(a) and C.R.S. §37-90-137(9)(c). These cases were properly consolidated before Water Division 1.

29. The Applicant's request for approval of the modification of the plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this modified plan for augmentation will permit the uninterrupted diversions for the 42 Dawson Aquifer Wells as described herein, 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. C.R.S. §38-92-305(3), (5), and (8).

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

30. 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.

31. The Application for Modification of Plan of Augmentation proposed by the Applicant is approved, subject to the terms of this decree.

32. 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.

33. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not, at the request of appropriators, or on their own initiative, curtail the diversion and use of water covered by the Dawson Aquifer Wells and modified plan for augmentation, so long as the return flows from the annual diversions associated with the Dawson Aquifer Wells 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 Dawson 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. In order for this modified plan for augmentation to operate, return flows from the septic systems shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

34. The Court retains jurisdiction over this matter for 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, and other post pumping matters addressed in paragraphs 21 and 22 above.

35. The Court shall retain jurisdiction for so long as depletions occur to the Arkansas River system in order to reconsider whether the replacement of depletions to only the South Platte River system, instead of the Arkansas River system, is causing material injury to the vested water rights tributary to the Arkansas River. 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 for requesting 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 of 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 (a) that petitioner is not materially injured, or (b) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (c) 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.

36. Pursuant to the provisions of C.R.S. §37-92-304(6), the modified 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 from the build out of 34 homes. 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: (a) that the petitioner is not materially injured, or (b) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (c) 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.

37. The Court determines and orders that the State Engineer shall issue well permits in accordance with the decree entered herein. 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.

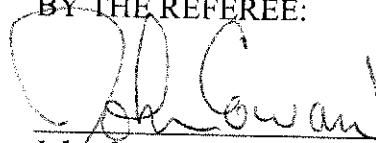
38. The wells shall be installed and metered as reasonably required by the Division Engineer and the State Engineer. Each well shall be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer or his representative on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation, a representative copy of which accounting is attached hereto as Exhibit C.

39. 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 decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 3rd day of February, 2009.

BY THE REFEREE:



John Cowan, Water Referee
Water Division 1
State of Colorado

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.
THE FOREGOING RULING OF REFEREE IS CONFIRMED AND APPROVED, AND IS
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____, 2009

Roger A. Klein
Water Judge
District Court, Water Division 1
State of Colorado

LEGAL DESCRIPTION:

The South Half of the Northeast quarter and the Southeast Quarter of Section 9, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado EXCEPT that portion of said Southeast Quarter described as follows:

Commencing at the Southeast corner of said Southeast Quarter of Section 9; thence N 00 degrees 14' 44" West (on an assumed bearing to which all others in this description are relative) on the East line of said Southeast Quarter, 860.27 feet to the POINT OF BEGINNING of the tract to be described hereby; thence along an existing fence for the next four (4) courses; (1) North 57 degrees 33' 53" West, 496.57 feet; (2) thence North 13 degrees 00' 29" East, 60.34 feet; (3) thence North 10 degrees 55' 18" West, 383.28 feet; (4) thence North 34 degrees 58' 51" East, 823.72 feet to intersect said Easterly line of said Southeast Quarter; thence South 00 degrees 14' 44" East, on said East line, 1376.39 feet to the Point of Beginning.

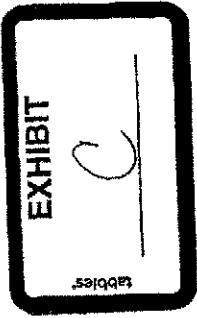
Table II
 Dawson Aquifer Stream Depletion Factors
 Seatie Property
 (as % of pumping)

YRS	South Platte River	Arkansas River	Total	YRS	South Platte River	Arkansas River	Total
10	1.15	0.08	1.23	310	15.48	8.35	23.83
20	2.01	0.22	2.23	320	15.03	8.46	23.49
30	2.75	0.40	3.15	330	14.71	8.51	23.22
40	3.42	0.63	4.05	340	14.46	8.51	22.97
50	4.04	0.89	4.93	350	14.26	8.47	22.73
60	4.62	1.18	5.80	360	14.09	8.40	22.49
70	5.18	1.49	6.67	370	13.93	8.32	22.25
80	5.74	1.78	7.52	380	13.77	8.24	22.01
90	6.29	2.08	8.37	390	13.64	8.13	21.77
100	6.80	2.41	9.21	400	13.51	8.02	21.53
110	7.31	2.73	10.04	410	13.38	7.91	21.29
120	7.83	3.04	10.87	420	13.26	7.79	21.05
130	8.32	3.36	11.68	430	13.14	7.67	20.81
140	8.82	3.67	12.49	440	13.02	7.55	20.57
150	9.32	3.98	13.30	450	12.90	7.42	20.32
160	9.82	4.27	14.09	460	12.80	7.28	20.08
170	10.28	4.60	14.88	470	12.68	7.16	19.84
180	10.77	4.89	15.66	480	12.57	7.03	19.60
190	11.23	5.21	16.44	490	12.44	6.93	19.37
200	11.70	5.50	17.20	500	12.33	6.80	19.13
210	12.18	5.78	17.96	510	12.23	6.66	18.89
220	12.63	6.07	18.70	520	12.11	6.55	18.66
230	13.09	6.35	19.44	530	12.01	6.41	18.42
240	13.55	6.62	20.17	540	11.88	6.31	18.19
250	14.00	6.90	20.90	550	11.76	6.20	17.96
260	14.46	7.15	21.61	560	11.65	6.09	17.74
270	14.89	7.43	22.32	570	11.54	5.97	17.51
280	15.33	7.69	23.02	580	11.43	5.86	17.29
290	15.77	7.93	23.70	590	11.31	5.76	17.07
300	16.20	8.18	24.38	600	11.21	5.64	16.85



Accounting Form
Searle Property

Water Court Case Nos. 04CW 299
and 08CW 188



Accounting Period		From	To
Dawson Well Master Baseline			
Lot No.	Well Permit No.	This Oct. 31	Last Year Oct. 31
		col. a	col. b
			Gal.
			col. a - col. b
			af
			Total
1			
2			
3			
1	Total number of Homes		
2	Total		

Table 1
(as %)

Yrs.	Depletion	Yrs.	Depletion
10	1.23	160	14.09
20	2.25	170	14.88
30	3.15	180	15.66
40	4.05	190	16.44
50	4.93	200	17.20
60	5.80	210	17.96
70	6.67	220	18.70
80	7.52	230	19.44
90	8.37	240	20.17
100	9.21	250	20.90
110	10.04	260	21.61
120	10.87	270	22.32
130	11.68	280	23.02
140	12.49	290	23.70
150	13.30	300	24.38

Dawson Stream Depletion	
Total Pumping [2]	+
Stream Depletion Factor From Table 1	*
rounded up to next 10 years since pumping began	1100
Stream Depletion	=
	af
3	

Net Stream Depletion	
Return Flows [1]	+
	*
Stream Depletion [3]	-
Net Accretion (Depletion)	=
	0.27
	af
	af
	af

Master Supply Summary	
Withdrawal From Last Year [4]	+
Withdrawal This Year [2]	+
Total Withdrawal Since Pumping Began	=
Years Since Pumping Began	/
Average Annual Withdrawal	=
Year Pumping Began	
	af
	af
	af
	af
	af

existence of this decree. Copies of this decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 24 day of February, 2009.

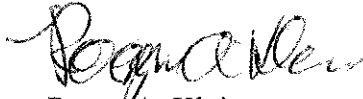
BY THE REFEREE:



John Cowan, Water Referee
Water Division 1
State of Colorado

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.
THE FOREGOING RULING OF REFEREE IS CONFIRMED AND APPROVED, AND IS
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: February 24, 2009



Roger A. Klein
Water Judge
District Court, Water Division 1
State of Colorado