

<p>DISTRICT COURT, WATER DIVISION 2, STATE OF COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832</p> <p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>RANDALL O'LEARY AND ANDREA O'LEARY</p> <p>IN EL PASO COUNTY</p>	<p>DATE FILED: June 29, 2023 1:33 PM CASE NUMBER: 2022CW3092</p> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 22CW3092</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, AND DECREE OF WATER COURT: ADJUDICATING DENVER BASIN GROUNDWATER AND APPROVING PLAN FOR AUGMENTATION</p>	

THIS MATTER comes before the Water Referee on the Application filed by Randall O'Leary and Andrea O'Leary on December 30, 2022. Having reviewed said application and other pleadings on file, and being fully advised on this matter, the Court makes the following findings and orders:

FINDINGS OF FACT

1. The Applicants in this case are Randall O'Leary and Andrea O'Leary, whose address is 555 Middle Creek Parkway, Colorado Springs, Colorado 80921 ("Applicants"). Applicants are the owners of the land totaling approximately 213 acres on which the structures sought to be adjudicated herein are and will be located, and are the owners of the place of use where the water will be put to beneficial use.
2. The Applicants filed the Application with the Water Court on December 30, 2022. The Application was referred to the Water Referee that same day.
3. The time for filing statements of opposition to the Application expired on the last day of February, 2023. No Statements of Opposition were filed.
4. In accordance with the notice requirements of § 37-92-302, C.R.S., VIVA Capital Funding was sent a Notice to Lienholder letter dated January 4, 2023. A Proof of Notice to Lienholder was filed with this Court on January 12, 2023.
5. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On January 18, 2023 proof of publication in *The Gazette* was filed with this Court, and on January 19, 2023 proof of publication in the *Douglas County News* was filed with this Court. All notices of the Application have been given in the manner required by law.

6. Pursuant to § 37-92-302(2), C.R.S., the Office of the State Engineer has filed his Determination of Facts for each Denver Basin aquifer with this Court on March 8, 2023, which have been considered by the Court in the entry of this Ruling and Decree.

7. Pursuant to § 37-92-302(4), C.R.S., the office of the Division Engineer for Water Division No. 2 filed its Summary of Consultation Report dated April 25, 2023. A Response to Consultation Report was filed on May 26, 2023. The Summary of Consultation Report and Response to Consultation Report have been considered by the Court in the entry of this Ruling and Decree.

8. The Water Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties whether they have appeared or not. The land and water rights involved in this case are not within a designated groundwater basin.

GROUNDWATER RIGHTS

9. The Applicants requested the quantification and adjudication of underground water rights for the use of twenty wells constructed to the Denver aquifer, and additional or replacement wells associated therewith, for withdrawal of Applicants' full entitlements of supply under the plan for augmentation decreed herein. Applicants also requested quantification and adjudication of water uses from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers. The following findings are made with respect to such underground water rights.

10. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicants and consists of approximately 213 acres located in the SE1/4 of Section 33 and the SW1/4 of Section 34, Township 11 South, Range 67 West of the 6th P.M., El Paso County, as shown in the attached **Exhibit A** and as specifically described in the attached **Exhibit B** ("Applicants' Property"). All groundwater adjudicated herein shall be withdrawn from the overlying land unless there is a further order of this Court allowing otherwise following the filing of a new water court application.

11. There is an existing domestic well with Division of Water Resources Permit No. 119564 constructed located on the Applicants' Property ("O'Leary Well No. 1"). The O'Leary Well is drilled to a total depth of 545 feet to the Denver aquifer. Upon approval of this plan for augmentation, this well will be re-permitted to operate pursuant to the herein plan for augmentation. Applicants are awarded the vested right to use the O'Leary Well, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Denver aquifer pursuant to the plan for augmentation decreed herein. Upon entry of this decree and submittal by the Applicants of a complete well permit application and filing fee, the State Engineer shall conduct an analysis and issue a permit for the O'Leary Well No. 1 pursuant to § 37-90-137(4), C.R.S., if determined appropriate, consistent with and

referencing the plan for augmentation decreed herein.

12. Additional wells, O'Leary Wells Nos. 2 through 20 will be located on the Applicants' Property. Applicants are awarded the vested right to use the O'Leary Wells Nos. 2 through 20, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Denver aquifer pursuant to the plan for augmentation decreed herein. The State Engineer shall be bound by C.R.S. § 37-90-137(4) and the Plan for Augmentation decreed herein in issuing well permits.

13. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicants' Property. The Dawson aquifer and Denver aquifer underlying the Applicants' Property contains not-nontributary groundwater. Additionally, a portion of the Arapahoe aquifer underlying 127.4 acres of the Applicants' Property contains not-nontributary water ("NNT Arapahoe"). The water underlying the remaining 85.6 acres of the Applicants' Property in the Arapahoe aquifer is nontributary ("NT Arapahoe"). The water in the Laramie-Fox Hills aquifers underlying the Applicants' Property is nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicants' Property is as follows:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	50	1,440	14.4	n/a
Denver (NNT)	225	8,147	81.47	27.16
Arapahoe (NNT)	325	7,038	70.38	n/a
Arapahoe (NT)	325	4,729	47.29	n/a
Laramie-Fox Hills (NT)	125	3,993	39.93	n/a

14. Pursuant to § 37-90-137(9)(c.5)(I), C.R.S., the augmentation requirements for wells in the Dawson and Denver aquifers require the replacement to the effected stream systems of actual stream depletions on an annual basis. The augmentation requirements for wells in the NNT Arapahoe aquifer require the replacement to affected stream systems of a total of four percent (4%) of the amount of water withdrawn on an annual basis. *Id.* Applicants shall not be entitled to construct a well or use water from the not-nontributary Dawson, Denver, or NNT Arapahoe aquifers except pursuant to an approved augmentation plan in accordance with § 37-90-137(9)(c.5), C.R.S., including as decreed herein.

15. Subject to the herein decree requirements, Applicants shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicants' Property. Said amounts can be withdrawn over the 100-year life for the aquifers as set forth in § 37-90-137(4), C.R.S, or withdrawn over a longer period of time based upon local governmental regulations or Applicants' water needs provided withdrawals during such longer period are in compliance with the augmentation requirements of this decree. This decree describes a pumping period of for the Denver aquifer of 300 years, consistent with El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to § 37-9-137(4), C.R.S. The average annual amounts of groundwater available for withdrawal from the underlying Denver Basin aquifers, are determined and set forth in Paragraph 13, above, based upon the March 8, 2023 Office of the State Engineer Determination of Facts issued in this case as described in Paragraph 6.

16. Subject to the terms and conditions in the plan for augmentation decreed herein and final approval by the State Engineer's Office pursuant to the issuance of well permits in accordance with §§ 37-90-137(4) or 37-90-137(10), C.R.S., and this decree, the Applicants shall have the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic within a single-family dwelling and guest house, structure and equipment washing, hot tub, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The amount of groundwater decreed for such uses upon the Applicants' Property is reasonable as such uses are to be made for the long-term use and enjoyment of the Applicants' Property and to establish and provide for adequate water reserves. The nontributary groundwater may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the limitations imposed on the use of the Denver aquifer groundwater by this decree, and the requirement under § 37-90-137(9)(b), C.R.S., that no more than 98% of the amount withdrawn annually from the nontributary aquifers shall be consumed. Applicants 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, Applicants shall only be entitled to construct a well or use water from the not-nontributary Dawson, Denver, or NNT Arapahoe aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

17. Withdrawals of groundwater available from the nontributary Arapahoe and Laramie-Fox Hills aquifers beneath the Applicants' Property in the amount determined in accordance with the provisions of this decree will not result in injury to any other vested water rights or to any other owners or users of water.

PLAN FOR AUGMENTATION

18. The structures to be augmented are the O'Leary Well Nos. 1 through 20 as

may be constructed, and to be constructed in the not-nontributary Denver aquifer underlying the Applicants' Property, along with any additional or replacement wells associated therewith ("O'Leary Wells").

19. Pursuant to § 37-90-137(9)(c.5), C.R.S. the augmentation obligation for the O'Leary Wells requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary O'Leary Well to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are a reserved portion of Applicants' nontributary water rights in the Laramie-Fox Hills aquifer. Applicant shall provide for the augmentation of stream depletions caused by pumping of the O'Leary Wells as approved herein. Water use criteria is as follows:

A. Use: The O'Leary Wells will each pump up to 0.81 acre-feet of water per year, for a maximum total of 16.2 acre-feet being withdrawn from the Denver aquifer annually. Household use will utilize an estimated 0.30 acre-feet of water per year per lot, with the remaining pumping entitlements available for other uses on the property, including, structure and equipment washing, hot tub, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. The foregoing figures assume the use of twenty individual non-evaporative septic systems with resulting return flows from each.

B. Depletions: Maximum stream depletions over the 300-year pumping period will amount to approximately 33.21% of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 5.381 acre-feet in year 300 (being 33.21% of 16.2).

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to § 37-90-137(9)(c.5), C.R.S., Applicants are required to replace actual stream depletions attributable to pumping of the O'Leary Wells. Applicants have determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.30 acre-feet per residence per year for a total of 6.0 acre-feet, 5.4 acre-feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be adequately augmented. Because return flows from the uses of the water are estimated rather than measured, return flows may be used only to replace depletions under this plan for augmentation, and may not be used, sold, traded, or assigned in whole or in part for any other purpose. Applicants shall be required to use non-evaporative septic systems to treat and dispose of water used for in-house use. All water pumped for in-house use shall be separately measured on an annual basis, and actual annual return flows shall be calculated by multiplying the measured amount times the return flow percentage of 90%.

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of 300 years. For the replacement of any injurious post-pumping depletions which may be associated with the use of the O'Leary Wells, Applicants reserve the entirety of the nontributary Laramie-Fox Hills aquifer (3,993 acre-feet) decreed herein. The amount of Laramie-Fox Hills aquifer groundwater reserved may be reduced as may be determined through this Court's retained jurisdiction as described in this decree. If the Court, by order, reduces the Applicants' obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. Pursuant to § 37-90-137(9)(b), C.R.S., no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed. The reservation of 3,993 acre-feet of Laramie-Fox Hills aquifer groundwater results in approximately 3,913.14 acre-feet of available post-pumping augmentation water, which will be sufficient to replace post-pumping depletions.

E. Permit: Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a well permits for the O'Leary Wells for the use in accordance with this decree and otherwise in compliance with § 37-90-137, C.R.S.

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

21. Applicants or their successors shall be required to begin replacement of post-pumping depletions by either constructing and initiating pumping of a Laramie-Fox Hills well or utilization of a new source of water that has been adjudicated as an allowed augmentation source when either: (i) the absolute total amount of water available to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the

Applicants or their successors in interest have acknowledged in writing that all withdrawals for beneficial use through the O'Leary Wells have permanently ceased, (iii) a period of 10 consecutive years where no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred and direct replacement to the stream system from the O'Leary Wells is insufficient to cover such depletions.

22. Unless modified by the Court under its retained jurisdiction, Applicants and their successors shall be responsible for accounting and replacement of post-pumping depletions as set forth herein. Should Applicants' obligation hereunder to account for and replace such post-pumping stream depletions be reduced or abrogated for any reason, Applicants may petition the Court to also modify or terminate the reservation of the Laramie-Fox Hills aquifer groundwater.

23. The term of this augmentation plan is for a minimum of 300 years, however, the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated to such well or wells is not exceeded. Should the actual operation of this augmentation plan depart from the planned diversions described in Paragraph 19 such that annual diversions are increased or the duration of the plan is extended, the Applicants or their successors must prepare and submit a revised model of stream depletions caused by the actual pumping or intended schedule. This analysis must utilize depletion modeling acceptable to the State Engineer, and to this Court, and must represent the water use under the plan for the entire term of the plan to date. The analysis must show that return flows have equaled or exceeded actual stream depletions throughout the pumping period and that reserved nontributary water remains sufficient to replace post-pumping depletions.

24. Consideration has been given to the depletions from Applicants' 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 Applicants, and the existence, if any, of injury to any owner of or person entitled to use water under a vested water right.

25. 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 injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the O'Leary Wells. As a result of the operation of this plan for augmentation, the depletions from the O'Leary Wells will not result in injury to the vested water rights of others.

CONCLUSIONS OF LAW

26. The application for adjudication of Denver Basin groundwater and approval of plan for augmentation was filed with the Water Clerk for Water Division 2, pursuant to §§ 37-92-302(1)(a) and 37-90-137(9)(c.5), C.R.S.

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

28. Subject to the terms of this decree, the Applicants are entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicants' Property, and the right to use that water to the exclusion of all others.

29. The Applicants have complied with § 37-90-137(4), C.R.S., and the groundwater is legally available for withdrawal by the requested nontributary well(s), and legally available for withdrawal by the requested not-nontributary well(s) upon the entry of this decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S., and the issuance of a well permit by the State Engineer's Office. Applicants are entitled to a decree from this Court confirming their rights to withdraw groundwater pursuant to § 37-90-137(4), C.R.S.

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

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

32. The Applicants' request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the O'Leary Wells without adversely affecting any other vested water rights in the Arkansas River or its tributaries and when curtailment would otherwise be required to meet a valid senior call for water. §§ 37-92-305(3), (5), and (8), C.R.S.

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

33. All of the foregoing Findings of Fact and Conclusions of Law are

incorporated herein by reference, and are considered to be a part of this decretal portion as though set forth in full.

34. The Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation filed by the Applicants is approved, subject to the terms of this decree.

A. Applicants are awarded a vested right to 1,440 acre-feet of groundwater from the not-nontributary Dawson aquifer underlying Applicants' Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction.

B. Applicants are awarded a vested right to 8,147 acre-feet of groundwater from the not-nontributary Denver aquifer underlying Applicants' Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. Of this total amount, 4,860 acre-feet may be pumped pursuant to the plan for augmentation decreed herein.

C. Applicants are awarded a vested right to 7,038 acre-feet of groundwater from the not-nontributary Arapahoe aquifer underlying Applicants' Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction.

D. Applicants are awarded a vested right to 4,729 acre-feet of groundwater from the nontributary Arapahoe aquifer underlying Applicants' Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction.

E. Applicants are awarded a vested right to 3,993 acre-feet of groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicants' Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent of the amount withdrawn, and the other terms and conditions of this decree, Applicants' Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 16, subject to the reservation of up to the entirety of the water from the nontributary Laramie-Fox Hills aquifer awarded to be utilized only for replacement of post-pumping depletions under the plan for augmentation decreed herein, as described in Paragraph 19.D., above.

35. The Applicants have furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation, as filed by the Applicants, is granted and approved in accordance with the terms and conditions of this decree. Approval of this Application will not result in any injury to senior vested water rights.

36. The Applicants shall comply with § 37-90-137(9)(b), C.R.S., requiring the relinquishment of the right to consume two percent (2%) of the amount of the nontributary groundwater withdrawn annually. Ninety-eight percent (98%) of the nontributary

groundwater withdrawn annually may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment. Applicants shall be required to demonstrate to the State Engineer prior to the issuance of a well permit that no more than ninety-eight percent of the groundwater withdrawn annually will be consumed.

37. The O'Leary Wells shall be operated such that combined pumping from all wells does not exceed the annual (16.2 acre-feet) and total (4,860 acre-feet) pumping limits for the Denver aquifer as decreed herein, and is in accordance with the requirements of the plan for augmentation described herein. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the O'Leary Wells so long as the return flows from the annual diversions associated with the O'Leary Wells and such other wells accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicants or their successors or assigns is ever unable to provide the replacement water required, then the O'Leary 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 § 37-92-305(8), C.R.S., the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions, and cannot be sold, leased, or otherwise used for any purpose inconsistent with the augmentation plan decreed herein. Applicants shall be required to have any wells pumping on the Applicants' Property providing water for in-house use and generating septic system returns prior to pumping the wells for any of the other uses identified in Paragraph 16 and 19.A.

38. 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 the Applicants need not file a new application to request such adjustments.

A. At such time as adequate data may be available, Applicants or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 38 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to affect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicants, opposer, and the petitioning party.

B. In the event that the allowed average annual amounts decreed

herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain permits to reflect such adjusted average annual amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

C. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty-three (63) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 38 concerning adjustments to the Denver Basin groundwater rights based upon local aquifer conditions shall no longer be applicable. In the event of a protest being timely filed, or should the State Engineer's Office make no timely determination as provided in Paragraph 38.A., above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

39. Pursuant to § 37-92-304(6), C.R.S., the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan. The Court further retains jurisdiction should the Applicants later seek to amend this decree by seeking to prove that post-pumping depletions are non-injurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 19.D. The Court's retained jurisdiction may be invoked using the process set forth in Paragraph 41.

40. As pertains to the Denver Basin groundwater supplies, the Court shall retain continuing jurisdiction for so long as Applicants are required to replace depletions to the South Platte River system, to determine whether the replacement of depletions to the South Platte River system instead of the Arkansas River system is causing injury to water rights tributary to the Arkansas River system.

41. 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 injury and to request that the Court reconsider injury to petitioners' vested water rights associated with the above replacement of depletions under this decree, together with the proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof going forward to establish a prima facie case based on the facts

alleged in the petition and that Applicants' failure to replace depletions to the Arkansas River system is causing 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 injury is occurring to any vested or conditionally decreed water rights in the Arkansas River system due to the location of Applicants' replacement water. If the Court finds that those facts are established, the Applicants shall thereupon have the burden of proof to show (i) that petitioner is not injured, or (ii) that any modification sought by the petitioner is not required to avoid injury to the petitioner, or (iii) that any term or condition proposed by Applicants in response to the petition does avoid injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert injury to the vested water rights of others.

42. Except as otherwise specifically provided in Paragraphs 38-41, above, pursuant to the provisions of § 37-92-304(6), C.R.S., 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 five (5) years. 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 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, Applicants shall thereupon have the burden of proof to show: (i) that the petitioner is not injured, or (ii) that any modification sought by the petitioner is not required to avoid injury to the petitioner, or (iii) that any term or condition proposed by Applicants in response to the petition does avoid injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert 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 provisions of the statute, this matter shall become final under its own terms.

43. Pursuant to § 37-92-502(5)(a), C.R.S., the Applicants shall install and maintain such water measurement devices and recording devices as are deemed necessary by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meters on the O'Leary Wells. All diversions from the O'Leary Wells shall be metered and the data collected at least annually by Applicants and together with any calculations necessary, shall be provided to the State Engineer or Division Engineers as requested by said entities.

44. Two or more wells constructed into a given aquifer shall be considered a well field. In effecting production of water from such well field, Applicants may produce

the entire amount that may be produced from any given aquifer through any combination of wells within the well field. As such, Applicants waive any 600-foot spacing requirements.

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

46. A site specific evaluation must be conducted with each well permit to identify the correct aquifer interval due to the varied elevations of the aquifers and surface topography. A well constructed to withdraw the decreed groundwater may only withdraw groundwater from a single aquifer. Groundwater production shall be limited to the specific identified aquifer. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

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

48. This Ruling of Referee, when entered as a decree of the Water Court, shall be recorded in the real property records of El Paso County, Colorado.

DATED: June 7, 2023.

BY THE REFEREE:



Kate Brewer, Water Referee
Water Division 2

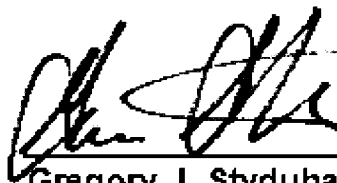
JUDGEMENT AND DECREE

No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the foregoing Findings of Fact, Conclusions of Law and Ruling of Referee, is hereby adopted as the Findings of Fact, Conclusions of Law, Judgement and Decree of this Court.

DATED: June 29, 2023

BY THE COURT:



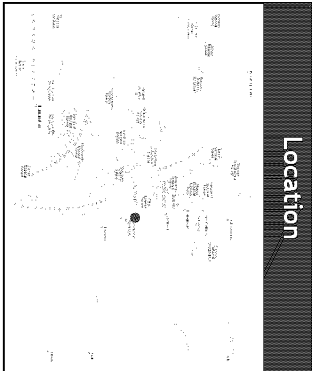
Gregory J. Styduhar, Water Judge
Water Division 2, State of Colorado



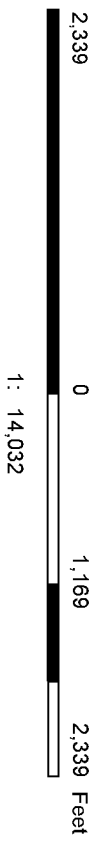
EXHIBIT A - Topo of O'Leary Property

										DATE FILED: May 26, 2019 9:03 AM
33	T11.05 R67.0W	33	T11.05 R67.0W	34	34	34	T11.05 R67.0W			
33	T11.05 R67.0W	33	T11.05 R67.0W	34	34	34	T11.05 R67.0W			
4	T-12-0S R67.0W	4	T-12-0S R67.0W	3	3	3	T-12-0S R67.0W			

- Legend**
- Township
 - Q40
 - County



Notes



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Date Prepared: 12/27/2022 3:10:08 PM

EXHIBIT B - HAY CREEK ROAD PLAT BOUNDARY DESCRIPTION

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 33 AND THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 33, FROM WHICH THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 33 BEARS NORTH 89°38'17" EAST, A DISTANCE OF 2,684.46 FEET, WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE NORTH 00°25'17" WEST, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 33, A DISTANCE OF 1,169.26 FEET;

THENCE THE FOLLOWING TWENTY-TWO (22) COURSES;

1. SOUTH 71°29'43" EAST, A DISTANCE OF 140.51 FEET;
2. NORTH 82°07'46" EAST, A DISTANCE OF 458.69 FEET;
3. NORTH 71°31'45" EAST, A DISTANCE OF 369.66 FEET;
4. NORTH 89°30'59" EAST, A DISTANCE OF 195.64 FEET;
5. NORTH 82°27'48" EAST, A DISTANCE OF 300.93 FEET;
6. SOUTH 81°25'26" EAST, A DISTANCE OF 208.57 FEET;
7. NORTH 66°51'51" EAST, A DISTANCE OF 197.45 FEET;
8. NORTH 70°47'03" EAST, A DISTANCE OF 178.13 FEET;
9. NORTH 66°11'16" EAST, A DISTANCE OF 170.15 FEET;
10. NORTH 71°47'12" EAST, A DISTANCE OF 403.02 FEET;
11. NORTH 84°26'00" EAST, A DISTANCE OF 169.75 FEET;
12. SOUTH 87°26'44" EAST, A DISTANCE OF 197.38 FEET;
13. NORTH 74°51'53" EAST, A DISTANCE OF 86.71 FEET;
14. NORTH 86°13'24" EAST, A DISTANCE OF 233.11 FEET;
15. NORTH 80°10'48" EAST, A DISTANCE OF 260.90 FEET;
16. NORTH 78°52'32" EAST, A DISTANCE OF 149.05 FEET;
17. NORTH 71°58'16" EAST, A DISTANCE OF 210.75 FEET;
18. NORTH 49°30'50" EAST, A DISTANCE OF 403.50 FEET;
19. NORTH 57°57'37" EAST, A DISTANCE OF 170.21 FEET;
20. NORTH 37°03'08" EAST, A DISTANCE OF 266.68 FEET;

21. NORTH 43°48'53" WEST, A DISTANCE OF 107.37 FEET;

22. NORTH 20°29'00" WEST, A DISTANCE OF 220.10 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 34;

THENCE NORTH 89°30'43" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 1,125.83 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 34;

THENCE SOUTH 00°28'46" WEST, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 34, A DISTANCE OF 2,654.48 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER;

THENCE SOUTH 89°38'45" WEST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 2,683.98 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 33;

THENCE SOUTH 89°38'17" WEST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 33, A DISTANCE OF 2,684.46 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 214.622 ACRES, (9,348,924 SQUARE FEET), MORE OR LESS.