

<b>DISTRICT COURT, WATER DIVISION 2, COLORADO</b> Court Address: 501 N. Elizabeth Street, Ste. 116 Pueblo, CO 81003 Phone Number: (719) 404-8700	DATE FILED: October 1, 2020 2:48 PM CASE NUMBER: 2019CW3015
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>GRANDWOOD ENTERPRISES, LLC</b>  <b>IN EL PASO COUNTY, COLORADO</b>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No.: 19CW3015  Ctrm.: 406
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING AND DECREE OF WATER COURT ADJUDICATING DENVER BASIN GROUNDWATER AND APPROVING PLAN FOR AUGMENTATION</b>	

THIS MATTER, having come before the Court on the Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation filed by Grandwood Enterprises, LLC, and the Court being fully advised on this matter, hereby makes the following findings of fact, conclusions of law, judgment and decree:

### GENERAL FINDINGS OF FACT

1. The Applicant in this case is Grandwood Enterprises, LLC, a Colorado limited liability company, whose address is 270 Lodge Pole Way, Monument, Colorado 80132. Applicant is the owner of approximately 146.84 acres on which the structures sought to be adjudicated herein will be located, and are the owners of the place of use where the water will be put to beneficial use.
2. The Applicant filed the Application with the Water Courts for both Water Divisions 1 and 2 on February 28, 2019. The Application was subsequently referred to the Water Referees in both Divisions 1 and 2.
3. The time for filing statements of opposition to the Application expired on the last day of April 2019. Woodmoor Water and Sanitation District No. 1 ("Woodmoor") filed a timely statement of opposition. No other parties have filed a statement of opposition.
4. Applicant and Woodmoor entered into a stipulation dated August 26, 2020 that was approved by an order of the Court dated August 27, 2020.
5. A Motion for Consolidation of the cases into Water Division 2 was filed with

the Colorado Supreme Court on May 1, 2019. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on May 2, 2019. Chief Justice, Nathan B. Coats, granted the Motion for Consolidation by Order dated June 6, 2019.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On March 20, 2019, proof of publication in *The Transcript* was filed with Water Court Division 2. All notices of the Application have been given in the manner required by law.

7. Pursuant to § 37-92-302(2), C.R.S., the Office of the State Engineer has filed Determination of Facts for each aquifer with this Court on March 21, 2019.

8. Pursuant to § 37-92-302(4), C.R.S., the office of the Division Engineer for Water Division No. 2 filed its Consultation Report dated June 7, 2019, and a Response to the Consultation Report was filed by the Applicant on July 12, 2019. Additionally, the Division Engineer for Water Division No. 2 filed a Supplemental Consultation Report dated January 31, 2020. The Consultation Report, Response, and Supplemental Consultation Report have been considered by the Court in the entry of this decree.

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

## GROUNDWATER RIGHTS

10. The Applicant seeks to subdivide the Applicant's Property, as described below, into forty-eight (48) single-family lots. Therefore, the Applicant requested the quantification and adjudication of underground water from the Denver Basin aquifers underlying the Applicant's property for forty-eight (48) individual wells (collectively, the "Grandwood Wells") as may be constructed to the Dawson Aquifer and any additional or replacement wells associated therewith for withdrawal of Applicant's full entitlements of supply under the plan for augmentation decreed herein.

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 146.84 acres located in the S1/2 of the N1/2 of Section 19, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado as shown on the attached **Exhibit A** map ("Applicant's Property"). All groundwater adjudicated herein shall be withdrawn from the overlying land.

12. In accordance with the notice requirements of § 37-92-302, C.R.S., Integrity

Bank & Trust, lienholder on Applicant's Property, was sent a Letter of Notice. A Certificate of Notice to Lienholder was filed with the District Court, Water Division 2, on July 8, 2019.

13. There are currently two Colorado Division of Water Resources well permits issued for the Applicant's Property: Permit No. 267286 and Permit No. 2757. Such wells shall be properly capped and abandoned and the Applicant shall provide written notice to the State and Division Engineers and to Woodmoor that such wells have been capped and abandoned within sixty (60) days of abandonment.

14. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Dawson, Denver, and Arapahoe aquifers underlying the Applicant's Property contain non-tributary water as defined in § 37-90-103(10.7), C.R.S. The water of the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary as defined in § 37-90-103(10.5), C.R.S. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant's Property is as follows:

<b>AQUIFER</b>	<b>NET SAND (ft)</b>	<b>Specific Yield</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Average Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Average Withdrawal 300 years</b>
Dawson (NNT)	333.5	0.20	9,805	98.05	32.68
Denver (NNT)	500	0.17	12,495	124.95	-
Arapahoe (NNT)	270.6	0.20	6,763	67.63	-
Laramie-Fox Hills (NT)	191.4	0.15	4,220	42.20	-

15. Applicant shall not be entitled to construct a well or use water from the non-tributary Dawson, Denver, and 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.

16. Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts can be withdrawn over the 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 Applicant's water needs. The average annual amounts of groundwater available for withdrawal from the underlying Denver Basin aquifers, based upon the 100-year aquifer life (and 300-year aquifer life as set forth in El Paso County, Colorado Land Development Code § 8.4.7(C)(1)) are determined and set forth above, based upon the March 21, 2019 Office of the State Engineer Determination of Facts.

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

18. Subject to the terms and conditions of this Decree 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., the Applicant shall have the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic, indoor and outdoor irrigation, stock watering, recreation, fire protection, equipment and structure washing, and also for storage and augmentation purposes associated with such uses. The amount of groundwater decreed for such uses upon the Applicant's Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicant's Property and to establish and provide for adequate water reserves. The nontributary groundwater, if any remains after the reservation for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume 2% of such nontributary water annually withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein.

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

### **PLAN FOR AUGMENTATION**

20. The structures to be augmented are the Grandwood Wells, forty-eight (48) individuals wells serving individuals lots, along with any additional or replacement wells associated therewith, all to be constructed to the Dawson aquifer, as described above.

21. Pursuant to § 37-90-137(9)(c.5)(I)(B), C.R.S., the augmentation obligation for wells constructed to the Dawson aquifer requires the replacement of actual out-of-priority depletions to the stream caused by withdrawals from the wells. The water rights to be used for augmentation during pumping are the septic return flows from indoor uses

after the diversion by the Grandwood Wells. The water rights to be used for augmentation after pumping are a reserved amount of Applicant's nontributary water rights in the Laramie-Fox Hills aquifer. Applicant shall provide for the augmentation of stream depletions caused by pumping the Grandwood Wells as approved herein.

A. Diversions: The Grandwood Wells may pump up to 16.08 annual acre-feet of water (0.335 annual acre-feet per well) from the Dawson aquifer. Household use will utilize an estimated 0.25 acre-feet of water per year per residence, with remaining pumping entitlements available for other uses herein decreed. Wastewater will be treated via non-evaporative septic systems.

B. Depletions: Consistent with the figures provided in the Division Engineer's Consultation Report, maximum stream depletions over the 300-year pumping period will amount to approximately 27.5% of pumping of the Grandwood Wells. Maximum annual depletions for total residential pumping from the Grandwood Wells therefore amounts to 4.42 acre-feet in the year 300.

C. Uses: Outdoor irrigation use of the water pumped with the Grandwood Wells under this plan for augmentation shall be limited on each lot to 1,600 square feet. In addition, outdoor irrigation and stock watering uses shall be allowed only on lots with occupied single-family residences and septic systems.

D. Augmentation of Depletions During Pumping Life of Wells: Pursuant to § 37-90-137(9)(c.5), C.R.S., Applicant is required to replace actual stream depletions attributable to pumping of the Grandwood Wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems serving single-family residences to be constructed on Applicant's Property, which accrues to Monument Creek and some of its tributaries. The annual consumptive use for non-evaporative septic systems is estimated at 10% per year per residence. At the household use rate of 0.25 acre-feet per residence per year, an estimated 10.8 acre-feet is replaced to the stream system per year utilizing non-evaporative septic systems. Applicant will not cause stream depletions to exceed this amount during pumping. Because these return flows from indoor uses are estimated rather than measured, Applicant agrees that such return flows shall be used only to replace depletions under this plan for augmentation, and will not be sold, traded or assigned in whole or in part for any other purpose. Applicant shall account for its replacements in accordance with the terms and conditions of this decree.

E. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. Applicant or its successors shall fully replace actual out-of-priority post pumping depletions from the Grandwood Wells. For the replacement of out-of-priority post pumping depletions associated with the use of the Grandwood Wells, Applicant will reserve all of the water

from the nontributary Laramie-Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period currently calculated at 744 acre-feet, to replace post pumping depletions in accordance with the terms and conditions of this decree. The reserved nontributary groundwater will be used to replace out-of-priority post pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive well permits for the Grandwood Wells for the uses in accordance with this decree, and otherwise in compliance with § 37-90-137, C.R.S. Subject to the requirements of this decree, in order to determine the amount and timing of post pumping replacements under this augmentation plan, Applicant or its successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time post-pumping replacement obligations begin as set forth in Paragraph 24 below. Such information shall be used to calculate the timing, amount, and location of post pumping replacements required by this decree. Applicant or its successors shall account for the replacement of out-of-priority, post pumping depletions from the Grandwood Wells in accordance with the terms and conditions of this decree.

F. Additional or Alternative Sources. Pursuant to § 37-92-305(8), C.R.S., the Court may authorize water from additional and alternative sources to be used for replacement in this plan for augmentation if such sources are decreed or lawfully available for such use or are part of a substitute water supply plan approved by the State Engineer pursuant to § 37-92-308, C.R.S., or an interruptible supply agreement approved under § 37-92-309, C.R.S., or other applicable and/or successor statutes. This paragraph sets forth the procedures under which such additional and/or alternative sources may be used in this plan for augmentation. In order to add additional and/or alternative sources to this plan for augmentation, the following procedures must be followed. These procedures are adequate to prevent injury to other water rights that might otherwise result from the addition of these sources to this plan for augmentation.

i. Additional Water Rights Separately Decreed or Lawfully Available for Augmentation Use. If a water right is decreed or lawfully available for augmentation use and not already approved for such use under this decree, the Applicant shall give at least thirty days advance written Notice of Use of Water Right for Augmentation (“Notice”) to the Court, the Division Engineer and all objectors herein, which shall describe: (1) the water right by name and decree, if any; (2) the annual and monthly amount of water available to the Applicant from the water right; (3) the manner by which the water will be used to replace out-of-priority depletions in time, location and amount; (4) the date of initial use of the water in this plan for augmentation; (5) the duration of use of the water in this plan for augmentation; (6) identification of the exchange reach, including the exchange “to” and exchange “from” point(s), if the water is to be introduced downstream of the out-of-priority depletion; (7) if an exchange is required for the water to be used, proposed terms and conditions relative to the exchange operation; (8) evidence that the claimed amount of water is available for use in this plan for augmentation and will not be

used by another person; and (9) the manner in which the Applicant will account for use of the water in this plan for augmentation. The Notice shall also specifically include a request that the Court enter an Order either affirming or denying the Applicant's proposal, and that said Order be attached to this decree.

ii. Objection to Use of New Source. If any person wishes to object to the addition of the noticed water rights to this plan for augmentation, a written objection shall be filed with the Court within thirty-five (35) days after the date the Notice was given by the Applicant. If no objection is so filed, the Court shall promptly enter an Order affirming the Applicant's immediate use of the noticed water rights. If an objection is so filed, then the Applicant may not use the noticed water rights until the Court has determined whether and under what terms and conditions the water rights may be used in this plan.

iii. Hearing on Use of New Source. Where an objection has been filed to the use of a noticed water right in this plan for augmentation, the Court shall promptly schedule a hearing to determine whether and under what terms and conditions the water right may be used in this plan for augmentation. The Court shall conduct whatever proceedings are needed to appropriately address and resolve the disputed issues. At such hearing, the Court shall impose such terms and conditions as necessary to prevent injury to vested water rights and decreed conditional rights. Applicant shall have the burden of proof that the use of any noticed water right will not cause injury to other water users.

iv. New Sources Requiring Operation of an Exchange. Where the use of a noticed water right in this plan for augmentation requires the operation of any new exchange(s), Applicant must obtain approval of the Division Engineer and Water Commissioner prior to operating such exchanges. Applicant must submit a separate water court application if seeking to adjudicate such exchange(s).

G. Additional Water Rights - Temporary Administrative Approval. If a water right is not decreed or otherwise lawfully available for augmentation use, and Colorado statutes or other governing authority provide a mechanism for using such water right without the need of a decree or well permit, the Applicant shall provide written notice to the objectors herein of its request for approval of the State Engineer pursuant to § 37-92-308, C.R.S., or § 37-92-309, C.R.S., or other applicable statute. Such notice shall be in addition to any notice required by the applicable statute. The Applicant may use such water rights in this plan for augmentation upon the State Engineer's approval of the underlying administrative application for the term of such approval, unless such approval is reversed or modified on appeal or under retained jurisdiction.

22. Because depletions occur to both the South Platte and Arkansas River systems under the State's groundwater flow model, the Application in this case was filed

in both Water Divisions 1 and 2. The return flows set forth above as augmentation will accrue to only the Arkansas River system where the Applicant's Property is located. Under this augmentation plan, the total amount of depletions will be replaced to the Arkansas River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan subject to Paragraphs 42- 45 herein.

23. This decree shall be recorded in the Clerk and Recorder's Office in El Paso County. Upon recording, this decree shall constitute a covenant running with Applicant's Property, benefitting and burdening said land, and requiring construction of well(s) to the nontributary aquifers and pumping of water to replace out-of-priority post pumping depletions under this decree. Pursuant to this covenant, the water from the nontributary groundwater 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 this decree, and shall be specifically enforceable by such third parties against all owners of the Applicant's Property.

24. Applicant or its successors shall be required to construct a Laramie-Fox Hills aquifer well and initiate pumping from the Laramie-Fox Hills aquifer for the replacement of post pumping depletions when either: (i) the absolute total amount of water available to each well allowed to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Grandwood 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.

25. Applicant shall track and account for its post pumping depletion obligation consistent with the requirements of this decree. Should Applicant's obligation hereunder to account for and replace such post pumping stream depletions be abrogated or reduced for any reason, then the groundwater reserved for such a purpose shall be free from the reservation herein and such groundwater may be used or conveyed by its owner without restriction for any post pumping depletions.

26. Applicant will maintain a financial reserve to construct, equip, operate, and maintain the well(s) required to withdraw and deliver the nontributary water from the Laramie-Fox Hills aquifer required to satisfy its post-pumping augmentation obligations ("POPA Fund"). Funds accumulated in the POPA Fund shall not be assigned, pledged, set aside, hypothecated or committed in any manner to satisfy other obligations of Applicant or its successors. Any such funds are designated by this Decree solely for the purposes set forth herein and shall not be subject to the claims or demands of any other person or entity. Funds accumulated in the POPA Fund shall not be used by Applicant



or its successors for any purpose other than construction, equipment, operation and maintenance of the well(s) and other facilities required to satisfy its post-pumping augmentation obligations, except that Applicant may use such funds to acquire substitute water rights for post-pumping augmentation purposes in lieu of the nontributary Laramie-Fox Hills aquifer ground water held in reserve. Use by Applicant of the funds in the POPA Fund for acquisition of substitute water rights for post-pumping augmentation purposes shall require prior approval by this Court, after notice to the opposers and an evidentiary hearing, if required. The Court shall retain continuing jurisdiction for the purposes set forth in this paragraph. Applicant shall annually provide to the Division Engineer and to Woodmoor a financial statement for the POPA Fund. The financial statement must show the total amount in the fund, all funds received by the fund during the previous twelve months, the sources of the funds received in the previous twelve months, and the amount and purpose of any disbursements from the fund in the previous twelve months.

27. 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.

28. 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.

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

## **CONCLUSIONS OF LAW**

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

31. The Applicant's request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have

exclusive jurisdiction over these proceedings. §§ 37-92-302(1)(a), 37-92-203, and 37-92-305, C.R.S.

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

33. The Applicant has 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. Applicant is entitled to a decree from this Court confirming its rights to withdraw groundwater pursuant to § 37-90-137(4), C.R.S.

34. 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.

35. 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.

36. The Applicant's request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the Grandwood Wells 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. §§ 37-92-305(3),(5), and (8), C.R.S.

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

37. 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.

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

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

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

41. Subject to the terms and conditions of this decree, Applicant is awarded the vested right to use the Grandwood Wells, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson, Denver and Arapahoe aquifers pursuant to the Plan for Augmentation decreed herein. Upon entry of this decree and submittal by the Applicant or Applicant's successors of a complete well permit application and filing fee, the State Engineer shall issue permits for the Grandwood Wells pursuant to § 37-90-137(4), C.R.S., consistent with and that reference the Plan for Augmentation decreed herein. In considering applications for permits for wells or additional wells to withdraw the groundwater which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with provisions of Section 37-90-137(10), C.R.S. Applicant may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of groundwater in the subject aquifers underlying the Subject Property. As additional wells are planned, applications shall be filed in accordance with Section 37-90-137(10), C.R.S.

42. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the Grandwood Wells so long as the return flows from the annual diversions associated with the Grandwood Wells accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or its successors or assigns is ever unable to provide the replacement water required, then the Grandwood 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 regulation 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. Such return flows may be used only to replace depletions under the plan for

augmentation decreed herein, and may not be used, sold, traded, or assigned in whole or in part for any other purposes.

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 characteristic, and the Applicant need not refile, republish, or otherwise amend this application to request such adjustments, subject to the requirements of this paragraph.

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

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty-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 42 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 42.A., above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

44. 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 purposes of (1) determining compliance with the terms of the augmentation plan, (2) determining whether the replacement supplies in the augmentation plan are adequate in time, location and amount to cover stream depletions, and (3) ensuring that the Laramie-Fox Hills aquifer well described in paragraph 24 is constructed and operated in accordance with the terms and conditions herein.

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

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

47. Except as otherwise specifically provided in Paragraphs 42 - 45, 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 ten years, except as otherwise provided herein. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court reconsider material injury to petitioner's vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (i) that the petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid

material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not extended by the Court, this matter shall become final under its own terms.

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

49. Pursuant to § 37-92-502(5)(a), C.R.S. the Applicant shall install and maintain such water measurement devices and recording devices as are required by this decree and/or as deemed essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant shall install and maintain totalizing flow meters on all Grandwood Wells or any additional or replacement wells associated therewith. All diversions from the Grandwood Wells or any additional or replacement wells shall be metered and the data collected by Applicant shall be provided to the State Engineer or Division Engineers as requested by said entities, but at least on an annual basis in accordance with paragraph 50, below.

50. Applicant shall provide an accounting of diversions, depletions, return flows and augmentation replacement associated with Applicant's operation of the augmentation plan approved herein. Applicant shall also maintain such records and provide reports to the State Engineer, Division Engineers and/or the Water Commissioner as instructed or requested by said entities. All such records and reports shall be submitted on an accounting form acceptable to said entities. Unless specifically indicated by this decree, all accounting records required by this decree shall be filed with the State Engineer and Division Engineer on an annual basis. Applicant shall also make its accounting available to Woodmoor upon request. Following the acceptance of Applicant's initial accounting form by the State Engineer and/or Division Engineer, the accounting form may be changed so long as the information required by this decree is included in the forms, thirty-five (35) days advance written notice is provided to Woodmoor, and such changes are approved by the Division Engineers or Water Commissioner.

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

52. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State

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

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

Dated: September 3, 2020

BY THE COURT:



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Kate Brewer, Water Referee  
Water Division 2


**DECREE**

THE COURT FINDS THAT NO PROTEST WAS MADE IN THIS MATTER, THEREFOR THE FORGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: October 1, 2020



BY THE COURT:

  
LARRY C. SCHWARTZ, WATER JUDGE  
WATER DIVISION 2



