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El Paso County, CO



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DISTRICT COURT, WATER DIVISION 2, COLORADO Pueblo County Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo Colorado 81003	
Concerning the Application for Water Rights of:  <b>PRI #2 LLC</b> , a Colorado limited liability company,  in El Paso County.	▲ COURT USE ONLY ▲  Case No.  <b>18CW3043</b>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND DECREE OF THE WATER COURT</b>	

THIS MATTER comes on for consideration by the Court upon the Application for Approval of Plan for Augmentation for Use of Not Nontributary Groundwater in El Paso County, Colorado, filed on behalf of PRI #2 LLC, a Colorado limited liability company. All matters contained in the Application were reviewed. The Court, being fully advised in the premises, does hereby find:

**I. FINDINGS OF FACT**

A. The Application in this case was filed with the Water Clerk, Water Division 2, on July 31, 2018. The name and address of the Applicant is:

PRI #2 LLC  
6385 Corporate Drive, Suite 200  
Colorado Springs, Colorado 80919

B. The Application was published in the resume of Water Division 2 and in a newspaper of general circulation in El Paso County as ordered by the Court. Proof of publication was filed.

1) A timely Statement of Opposition to the Application was filed by the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities. The time for filing additional Statements of Opposition has expired and no other person has entered an appearance herein.

C. Timely and adequate notice of the pendency of these proceedings in rem has been given in the manner required by law. This Court has exclusive 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 water judge referred the Application to the water referee.

D. Applicant and Opposer Colorado Springs Utilities have entered into a Stipulation and Agreement dated August 22, 2019 in which the Colorado Springs Utilities has agreed to the entry of these Findings and Ruling of the Referee and Decree of the Water Court.

E. The Court has received and considered the Consultation Report of the Division Engineer for Water Division No. 2, which consultation was held October 9, 2018 and filed November 13, 2018.

F. The land and water rights involved herein are not included within the boundaries of any designated groundwater basin.

G. The purpose of this application is to obtain approval of a plan for augmentation for Denver aquifer not nontributary well pumping.

## II. PLAN FOR AUGMENTATION

A. Applicant is constructing a golf course (“Flying Horse North”) within approximately 1,341 acres described herein. The irrigation of the golf course for the first 110 years will use nontributary Arapahoe aquifer groundwater decreed in Case No. 04CW098, Water Division 2, see 04CW098 Decree attached as **Exhibit E**. In this application, Applicant seeks approval of a plan for augmentation to allow not nontributary Denver groundwater to be used for irrigation of the golf course in years 111-300.

B. Applicant owns certain groundwater rights underlying approximately 701 acres, more or less, located generally in Sections 30 and 31, Township 11 South, Range 65 West of the 6th P.M., in El Paso County (“701 acre parcel”), which were decreed in Case No. 94CW023(B), Water Division No. 1 (entered June 12, 1996), which amended an original decree in Case No. 85CW446, Water Division No. 1. A map depicting the 701 acres is attached as **Exhibit A**, and the legal description is attached as **Exhibit B**. The Applicant also owns approximately 640 acres, more or less, located generally in Section 36, Township 11 South, Range 66 West of the 6th P.M., in El Paso County (“640-acre parcel”). References herein to “Subject Property” are to the approximately 1,341 acres that includes the 701-acre parcel and the 640-acre parcel. Applicant’s predecessor-in-interest entered into a Groundwater Production Lease, No. OT-109328, with the State Board of Land Commissioners, pursuant to which Applicant leased the not nontributary and nontributary groundwater underlying the 640 acres, decreed in Case No. 04CW098, Water Division No. 2 (entered June 17, 2005) through February 27, 2048. On that date, all of the groundwater rights revert to the Applicant. A map depicting the 640 acres is attached as **Exhibit A**, and the legal description is attached as **Exhibit C**. The Subject Property is being developed as a residential subdivision consisting of 283 single family residences, including irrigation and common area facilities, which will be supplied pursuant to the decree entered in Case No. 16CW3190, Water Div. 1. Applicant intends to use not nontributary Denver aquifer groundwater, decreed in Case No. 04CW098, to irrigate the golf course in years 111-300 should the golf course exist at that time and no other source of golf course irrigation supply is made available.

C. Paragraph 11 of the Decree entered in Case No. 04CW098 requires judicial approval of a plan for augmentation to replace the four percent depletions caused by the pumping of the groundwater, as required by then § 37-90-137(9)(c), C.R.S. (now § 37-90-137(9)(c.5)(1)(A), C.R.S.), as a condition precedent to the withdrawal of the Denver aquifer groundwater decreed therein.

D. Applicant seeks approval of a plan for augmentation to augment the depletions associated with operation of not nontributary Denver aquifer wells located on the 640-acre Parcel in years 111-300, through return flows from the irrigation of the golf course described herein and the reservation of nontributary groundwater to augment post-pumping depletions.

E. The Applicant's golf course is on land owned by Applicant, including the 640-acre Parcel described in **Exhibit B** ("Applicant's Property"). Applicant intends to initially irrigate the golf course with 239 acre-feet annually of Arapahoe aquifer nontributary groundwater decreed in Case No. 04CW098, Water Division No. 2. Applicant anticipates that this Arapahoe aquifer nontributary groundwater will provide irrigation for the golf course for approximately 110 years, using an average of 201 acre-feet per year which will include water for replacement of pond evaporation. Applicant intends to use an annual average of 201 acre-feet per year of Denver aquifer not nontributary groundwater decreed in Case No. 04CW098 to irrigate the golf course in years 111-300. Accordingly, 38,190 acre-feet of Denver aquifer groundwater decreed in Case No. 04CW098 (out of a total of 57,700 acre-feet of Denver groundwater decreed in that case) shall be reserved and dedicated for irrigation of the golf course, and depletions associated with pumping that amount will be augmented by the augmentation plan approved herein. A number of wells will be drilled into the Denver aquifer to serve the irrigation demand for the golf course, as described and limited herein.

F. Previous Decrees for Water Rights to be Used as Augmentation Sources:

1. Flying Horse North. The decree in Case No. 04CW098, Water Division 2, adjudicated rights in not nontributary groundwater in the Denver aquifer underlying the 640-acre Parcel which is to be used as a source of replacement water in this augmentation plan. Such groundwater rights are summarized as follows:

- a) Decree Entered: May 24, 2005.
- b) Court: District Court, Water Division 2.
- c) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to § 37-90-137(4) and (9), C.R.S.

d) Legal Description: The decreed groundwater rights underlie Section 36, Township 11 South, Range 66 West of the 6th P.M., El Paso County, consisting of 640 acres, more or less.

e) Sources and Amounts of Groundwater Decreed that Will Be Used as an Augmentation Source:

AQUIFER	TYPE	ANNUAL AVG. AMOUNT
Denver	Not Nontributary	577 acre-feet

f) Decreed Uses: Reuse and successive uses for all beneficial purposes including municipal, domestic, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife, fire protection, and sanitary purposes, including the right to use, reuse, and successively use such water to extinction. Further, such water may be stored for subsequent use and may be used for augmentation, exchange, and replacement purposes. The return flows resulting from irrigation of the golf course hereunder using the Denver aquifer not nontributary groundwater will be reserved for use as an augmentation source for augmentation of depletions occurring in years 111-300.

2. Lazy H Ranch. The decree in Case No. 99CW218, Water Division 1, adjudicated rights in nontributary groundwater in the Arapahoe and Laramie-Fox Hills aquifers which are to be used as sources of replacement water in this augmentation plan. Such groundwater rights are summarized as follows:

a) Decree Entered: December 14, 2000.

b) Court: District Court, Water Division 1.

c) Type of Water Right: Vested property right to withdraw all groundwater underlying the property in specified aquifers, pursuant to §§ 37-90-137(4) and -137(9), C.R.S.

d) Legal Description: The decreed groundwater rights underlie parts of Sections 29, 30, 31 and 32, Township 10 South, Range 65 West of the 6th P.M., Douglas County, and Sections 5 and 6, Township 11 South, Range 65 West of the 6th P.M., El Paso County, consisting of approximately 1,240 acres, more or less.

e) Sources and Amounts of Groundwater Decreed that Will Be Used as an Augmentation Source:

AQUIFER	TYPE	ANNUAL AVG. AMOUNT
Arapahoe	Nontributary	592.3 acre-feet
Laramie-Fox Hills	Nontributary	375.7 acre-feet

f) Decreed Uses: Use, reuse, succession of uses, and after use, the waters may be leased, sold, or disposed of for the following beneficial purposes: municipal, domestic, industrial, commercial, irrigation, agricultural, livestock watering, recreational, fish and wildlife, fire protection, and any other beneficial uses. Said water will be produced for immediate application to said uses, both on and off the property for storage and subsequent application to beneficial uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources and for augmentation purposes. Applicant has previously reserved 158.5 acre-feet per year from the Laramie-Fox Hills aquifer for post-pumping augmentation obligations associated with Dawson aquifer pumping, approved in Case No. 16CW3190, Water Division No. 1. Applicant will reserve 21,720 acre-feet from the Laramie-Fox Hills aquifer and 16,470 acre-feet from the Arapahoe aquifer for use under this augmentation plan as a replacement source for post pumping depletions.

G. Statement and Description of Plan for Augmentation:

1. A. Source of Augmentation Water.

a) Applicant will use nontributary Arapahoe aquifer groundwater decreed in 04CW098 for irrigation of the golf course in years 1-110. No augmentation is required for this Arapahoe pumping. The augmentation source for replacement of depletions during years 111-300 will be return flows from the irrigation of the golf course by the Denver aquifer not nontributary groundwater decreed in Case No. 04CW098. The augmentation sources for replacement of post pumping depletions will be up to 38,200 acre-feet of the nontributary groundwater in the Laramie-Fox Hills and Arapahoe aquifers decreed in Case No. 99CW218 as described in Section II, paragraph E.2. herein. Such augmentation sources may be available by direct discharge to the stream system and return flows to the stream system after golf course irrigation.

b) Applicant may substitute any other legally authorized augmentation water upon approval by the Water Court.

2. Use and Estimated Demand.

a) The Applicant's golf course will require approximately 180 acre-feet per year for irrigation and associated golf course purposes. An additional 21 acre-feet may evaporate from the on-site irrigation pond that will be filled

with Arapahoe nontributary groundwater (years 1-110) and Denver not nontributary groundwater (years 111-300).

b) The supply for the golf course's irrigation demand during years 111-300 will be the decreed not nontributary water rights in the Denver aquifer underlying the 640-acre parcel, as depicted in **Exhibit A**. Total average Denver aquifer amounts available for irrigation of the golf course and irrigation pond filling are 201 acre-feet per year, based on a projected 190-year use of the Denver aquifer.

3. Augmentation and Replacement of Depletions.

a) Stream Systems Affected: Monument Creek, tributary to the Arkansas River.

b) Replacement of Depletions During Pumping Period.

(1) If Applicant pumps 201 acre-feet per year of not nontributary water from the Denver aquifer during years 111-300, the "during pumping" replacement obligation will be four percent of pumping or 8 acre-feet per year. Return flows are anticipated to be approximately ten percent of the amount applied to irrigation or 18 acre-feet per year. Approximately 12 acre-feet of return flows per year will accrue to the Arkansas River basin. Applicant, through design and operation of the golf course, shall continue to provide at least 8 acre-feet per year of augmentation water through return flows to the Arkansas River basin during pumping. As such, the return flows will exceed the augmentation amounts required for the Denver aquifer depletions described herein.

(2) Excess Return Flows: To the extent that golf course irrigation return flows exceed the quantities needed to fully augment all projected stream depletions during pumping, Applicant reserves the right to recapture and reuse such excess returns. Applicant reserves the right to apply to the Court for alluvial wells in Monument Creek tributaries to recapture and reuse such excess returns. However, unless the requirement is modified by a subsequent decree of the Court, all golf course irrigation return flows are dedicated to this plan for augmentation, and shall not be sold, leased, or otherwise used for any other purpose.

c) Replacement of Depletions During the Post-Pumping Period.

(1) Applicant reserves the right to claim and demonstrate that the impact of post-pumping depletions are wholly de minimis and

non-injurious and need not be replaced under the law. § 37-90-137(9), C.R.S.

(2) Assuming that such post-pumping depletions may be determined to be injurious and replacement is required, Applicant will reserve for such purpose the nontributary groundwater in the Arapahoe and Laramie-Fox Hills nontributary aquifer underlying the property decreed in Case No. 99CW218, Water Division No.1, in the amounts described herein in Section II, paragraph E.2. Such quantity is sufficient to fully replace all post-pumping depletions under this plan for augmentation.

(3) Applicant reserves the right to replace such post-pumping depletions with any judicially acceptable source of augmentation water, provided such source and location of the replacement has been approved by the Court pursuant to an application to amend this Decree.

(4) Upon cessation of withdrawals from the wells, Applicant will replace all post-pumping depletions in the Arkansas drainage. With respect to post-pumping depletions, the following shall apply; "Cessation of withdrawals" occurs when either (1) the Applicant or its successors in interest have acknowledged in writing that all Denver groundwater withdrawals for beneficial use through the wells described in the decree entered in 04CW098 have ceased permanently, or (2) no withdrawals of ground water have occurred from those wells for a period of 10 consecutive years. Nothing herein shall preclude the Applicant or its successors from resuming pumping of such wells after cessation of withdrawals, as defined above, has occurred. If pumping is resumed, Applicant's augmentation requirements for such wells shall be determined in accordance with paragraph 2.6 above and its post-pumping augmentation obligation for such wells shall be determined as if no cessation of withdrawals had occurred.

(5) The "post-pumping period" is that period required by applicable Colorado law. Applicant reserves the right to seek court approval to modify the post-pumping period under the court's retained jurisdiction. Applicant shall be obligated to drill Laramie-Fox Hills and/or Arapahoe well to provide replacement water reasonably in advance of cessation of pumping the Denver aquifer wells, unless other augmentation sources are approved by this court.

4. Unless the requirement is modified by the Court under its retained jurisdiction, Applicant shall replace post-pumping depletions resulting from the pumping of the Denver aquifer authorized under the plan for augmentation decreed herein pursuant to § 37-90-137(9)(c)(5), C.R.S. The Court finds that this requirement is adequate to comply with existing law and to prevent injury to other water rights.

5. Applicant shall replace post-pumping depletions to the Arkansas River system with reserved water pumped from the Laramie-Fox Hills or Arapahoe aquifers from the augmentation sources described herein. Applicant may petition the Court under its retained jurisdiction to modify the post-pumping replacement obligation decreed herein, to terminate or modify the reservation of the Arapahoe and Laramie-Fox Hills aquifer groundwater, or to use any other legally available augmentation supply that is sufficient in quality, quantity, timing and place to meet the requirements of this Decree. The Court retains continuing jurisdiction over this matter to make these determinations. Applicant shall be required by the terms of this Decree to construct Arapahoe and Laramie-Fox Hills aquifer well(s) pursuant to this plan for augmentation at the time replacement of post-pumping depletions must commence pursuant to this Decree, unless a different source of water is approved by the Court for replacement of post-pumping depletions, or unless the replacement obligation is otherwise modified or terminated.

6. Based on pumping of up to 38,200 acre-feet total and reservation of 21,700 acre-feet of Laramie-Fox Hills aquifer groundwater, and 16,500 acre-feet of Arapahoe aquifer groundwater the plan for augmentation will be able to replace all post-pumping depletions from the Denver aquifer pumping authorized by this Decree. Applicant's annual post-pumping replacement obligation will be determined by multiplying average annual pumping from the Denver aquifer through the cessation of pumping, whenever that occurs, by four percent. This amount of water will be replaced into the Arkansas River basin each year. The replacement obligation will continue until the sum of all replacements made during both the pumping period and the post-pumping period equals the total amount of Denver aquifer water pumped.

7. Applicant and its successors in interest shall pay the costs imposed by operation of this augmentation plan so long as an obligation to augment depletions exists. This Decree shall be recorded in the real property records of El Paso County, Colorado, and shall be a covenant running with the Property, requiring Applicant and its successors to comply with the requirements of this Decree and plan for augmentation, including the requirement to construct Laramie-Fox Hills and Arapahoe aquifer wells or take other measures as necessary to replace post-pumping depletions. Applicant shall provide future purchasers of the Applicant's Property documentation as to their responsibility under the terms of this Decree.

8. Applicant shall reserve and dedicate to this plan for augmentation the water owned by Applicant in the Laramie-Fox Hills and Arapahoe aquifers, described herein, for the purpose of replacing to the system all post-pumping depletions. If the Court issues an order such that replacement of post-pumping depletions is no longer required pursuant to this Decree, said reservation will become null and void at such time as the obligation to replace post-pumping depletions terminates.

Applicant or its successors will document the volume of water pumped monthly from each not nontributary Denver well located on the Applicant's Property and report no less than annually to the State Engineer. To the extent needed, the volume of water pumped from the nontributary Arapahoe and Laramie-Fox Hills aquifer wells will be documented to ensure that sufficient augmentation water is provided during and after pumping to meet the augmentation requirements set forth herein monthly and reported to the State Engineer no less than annually. Annual reporting and monthly accounting is appropriate based on the annual entitlement to the Denver groundwater, and the annual replacement obligation. The augmentation sources for this plan during the pumping period will be return flows of the fully-augmented not nontributary groundwater in the Denver aquifer and, for post-pumping depletions, the nontributary groundwater in the Arapahoe and Laramie-Fox Hills aquifer described herein. Such sources may be available by direct discharge to the stream system and return flows to the stream system after golf course irrigation use.

H. The average annual amounts of Denver aquifer groundwater underlying the Property available for golf course irrigation purposes are those amounts decreed in Case No. 04CW098. The average annual amounts of Laramie-Fox Hills aquifer groundwater available for augmentation are those amounts decreed in 99CW218 and described in paragraph E.2.

I. Paragraph 12 of the Decree entered in Case No. 04CW098 allows for the withdrawal of groundwater from the aquifers in amounts that are in excess of the allowed average annual amounts, provided that the total volume of water withdrawn from a well or wells does not exceed the product of the total number of years since the date of determination of the right to groundwater and the allowed average annual amount of withdrawal in accordance with Rule 8(A), 2 C.C.R. 402-7 ("water banking"). Such "water banking" shall be subject to the requirement that excess withdrawals do not violate the terms and conditions of the plan for augmentation decreed herein or any other plan for augmentation decreed by the Court that authorizes the withdrawal of the Denver Basin groundwater decreed in Case No. 04CW098.

J. Applicant has not determined the specific locations for all the wells required to withdraw groundwater from the Denver aquifer hereunder, but states that each well will be constructed within the overlying property as described in Case No. 04CW098. Applicant is granted the right to locate the wells required to withdraw its entitlement from the Denver

aquifer at any point within the overlying property without the necessity of republishing or petitioning the Court for the reopening of any decree. 2 C.C.R. 402-7, Rule 11.

K. Applicant has not determined the specific locations for all the wells required to withdraw groundwater from the Laramie Fox-Hills aquifer hereunder, but states that each well will be constructed within the overlying property as described in Case No. 99CW218. Applicant is granted the right to locate the wells required to withdraw its entitlement from the Laramie Fox-Hills aquifer at any point within the overlying property without the necessity of republishing or petitioning the Court for the reopening of any decree. 2 C.C.R. 402-7, Rule 11.

L. Well permit applications for the wells to be constructed pursuant to this decree will be applied for at such time as Applicant is prepared to construct such well(s) pursuant to the terms of the decree to be entered in this case. If the well permit for any well authorized by this decree expires, Applicant may apply for a new well permit for such well at the time Applicant is ready to construct such well, and the State Engineer shall grant such permit as allowed by C.R.S. § 37-90-137(9),(4) and pursuant to the terms of the decree.

M. Well permit applications for the wells to be constructed pursuant to this decree will be applied for at such time as Applicant is prepared to construct such well(s) pursuant to the terms of the decree to be entered in this case. If the well permit for any well authorized by this decree expires, Applicant may apply for a new well permit for such well at the time Applicant is ready to construct such well, and the State Engineer shall grant such permit as allowed by C.R.S. § 37-90-137(9), and pursuant to the terms of the decree.

N. As reasonably required by the Division Engineer, but no less than annually, Applicant shall complete and submit an accounting form which shows groundwater withdrawals (both annual and running total), stream depletions, return flows and net stream depletions. All wells permitted pursuant to this decree shall be equipped with a properly installed and calibrated totalizing flow meter. Applicant shall record the metered use on November 1 of each year and report such use to the water commissioner within two weeks after the measurements have been made. The water commissioner may require more frequent metering and reporting. The accounting form must be acceptable to the Division Engineer and may be changed from time to time if necessary. A draft accounting form is attached hereto as **Exhibit D**. Applicant will modify the accounting form at the direction of the Division Engineer.

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

P. The Court finds that if the plan for augmentation is operated and administered as described herein with releases during pumping to the Arkansas River system to replace depletions and with releases after cessation of withdrawals to the Arkansas River system,

there will be no material injury to the owners of or persons entitled to use water pursuant to vested water rights or decreed conditional water rights.

Q. There are no liens or encumbrances against the Property. As such, the notice provisions of § 37-92-302(2)(b), C.R.S. do not apply.

### **III. CONCLUSIONS OF LAW**

A. The Court has jurisdiction over the subject matter of this case and over all persons affected hereby whether they have appeared or not pursuant to §§ 37-90-137(6), 37-90-137(9)(c.5), 37-90-203(1), 37-92-302, and 37-92-304, C.R.S.

B. This Application was filed with the Water Court pursuant to § 37-92-302(1)(a), C.R.S. Timely statements of opposition were filed as indicated above. The time for filing additional statements of opposition has expired according to law. § 37-92-302(1)(c), C.R.S.

C. Full and adequate notice of the claims adjudicated herein has been given in the manner required by law.

D. The Court shall retain jurisdiction over this matter for the purpose of reconsidering the question of injury to the vested water rights of others pursuant to Section IV, paragraph G. herein.

### **IV. RULING OF THE REFEREE**

A. The provisions of the foregoing Findings of Fact and Conclusions of Law are incorporated herein and made a part of the Court's judgment and decree as if set out in full.

B. The application in this matter is hereby approved subject to the terms and conditions set forth in this Decree.

C. The plan for augmentation approved herein allows for the average annual pumping of 201 acre-feet per year from the Denver aquifer during years 111-300.

D. Consistent with Paragraph 14.A. of the Decree entered in Case No. 04CW098, Applicant shall be required to install totalizing flow meters on each well, including the irrigation water line, and account for the volumes of water withdrawn annually from the Denver aquifer under the plan for augmentation decreed herein.

E. Unless specifically modified by this Decree, the terms and conditions of the Decree entered in Case No. 16CW3190 remain in full force and effect and continue to govern the use of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifer groundwater adjudicated in that case and any wells required to pump that groundwater. Unless specifically modified by this Decree, the terms and conditions of the Decree entered in

Case No. 04CW098 remain in full force and effect and continue to govern the use of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifer groundwater adjudicated in that case and any wells required to pump that groundwater. Unless specifically modified by this Decree, the terms and conditions of the Decree entered in Case No. 99CW218 remain in full force and effect and continue to govern the use of the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifer groundwater adjudicated in that case and any wells required to pump that groundwater.

F. Pursuant to § 37-92-304(6), C.R.S., the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for five years for reconsideration of the question whether the provisions of this Decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court shall retain continuing jurisdiction in perpetuity over the plan for augmentation for the purposes of determining compliance with the terms of the augmentation plan decreed herein, including whether the return flows are insufficient to replace depletions caused by the Denver aquifer withdrawals, and to reconsider the post-pumping depletion replacement obligation for the Denver aquifer withdrawals and the reservation of 38,200 acre-feet of the Laramie-Fox Hills and Arapahoe aquifer water for that purpose. Any person seeking to invoke the retained jurisdiction of the Court pursuant to this paragraph shall file a verified petition with the Court. The petition to invoke retained jurisdiction shall set forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to affect the petition. The person lodging the petition shall have the burden of going forward to establish *prima facie* facts alleged in the petition. If the Court finds those facts to be established, Applicant shall have the burden of proof to show: (1) that any modification sought by Applicant will prevent injury to other appropriators, or (2) that any modification sought by the person filing the petition is not required to prevent injury to other appropriators, or (3) that any term or condition proposed by Applicant in response to the petition prevents injury to other appropriators.

G. Appurtenances to Property. This plan for augmentation, the right to 38,190 acre-feet of Denver aquifer water which may be pumped pursuant to the plan for augmentation, and the right to 38,190 acre-feet of Arapahoe and Laramie-Fox Hills aquifer water reserved for replacement of post-pumping depletions, shall be considered as appurtenances to the Subject Property. The Flying Horse Country Club, LLC ("Club") will hold title to the Denver, Arapahoe and Laramie-Fox Hills water rights and shall hold the Denver, Arapahoe and Laramie-Fox Hills well permits in the name of the Club.

H. Applicant and its successors in interest shall pay the costs imposed by operation of this augmentation plan so long as an obligation to augment depletions exists. A certified copy of this Decree shall be recorded in the real estate records of El Paso County and the Decree shall constitute a covenant running with the land, requiring Applicant and its successors to comply with the requirements of this Decree and plan for augmentation, including the requirement to construct a Laramie-Fox Hills and/or Arapahoe aquifer well(s) or take other measures as necessary to replace post-pumping depletions. Additional

covenants shall be recorded in the real estate records of El Paso County and shall clearly indicate that failure of the property owner to comply with the requirements of this Decree may result in an order from the State Engineer to curtail or eliminate pumping from one or more of the Denver aquifer wells. Said covenants shall be amended as necessary to conform to the provisions of any amendment to this augmentation plan. The covenants shall be for the benefit of, and enforceable by, the State and Division Engineers and third parties owning vested water rights that would be injured by the failure to provide for the replacement of depletions from pumping of the Denver aquifer well as decreed herein. Specific performance shall be a remedy available to such third parties against the owner(s) of the Property and the Denver aquifer well.

Dated: September 10, 2019



Kate Brewer, Water Referee  
Colorado Water Division 2

**V. DECREE OF THE WATER COURT**

THE COURT FINDS: THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: October 7, 2019



BY THE COURT:

  
LARRY E. SCHWARTZ, WATER JUDGE  
WATER DIVISION 2

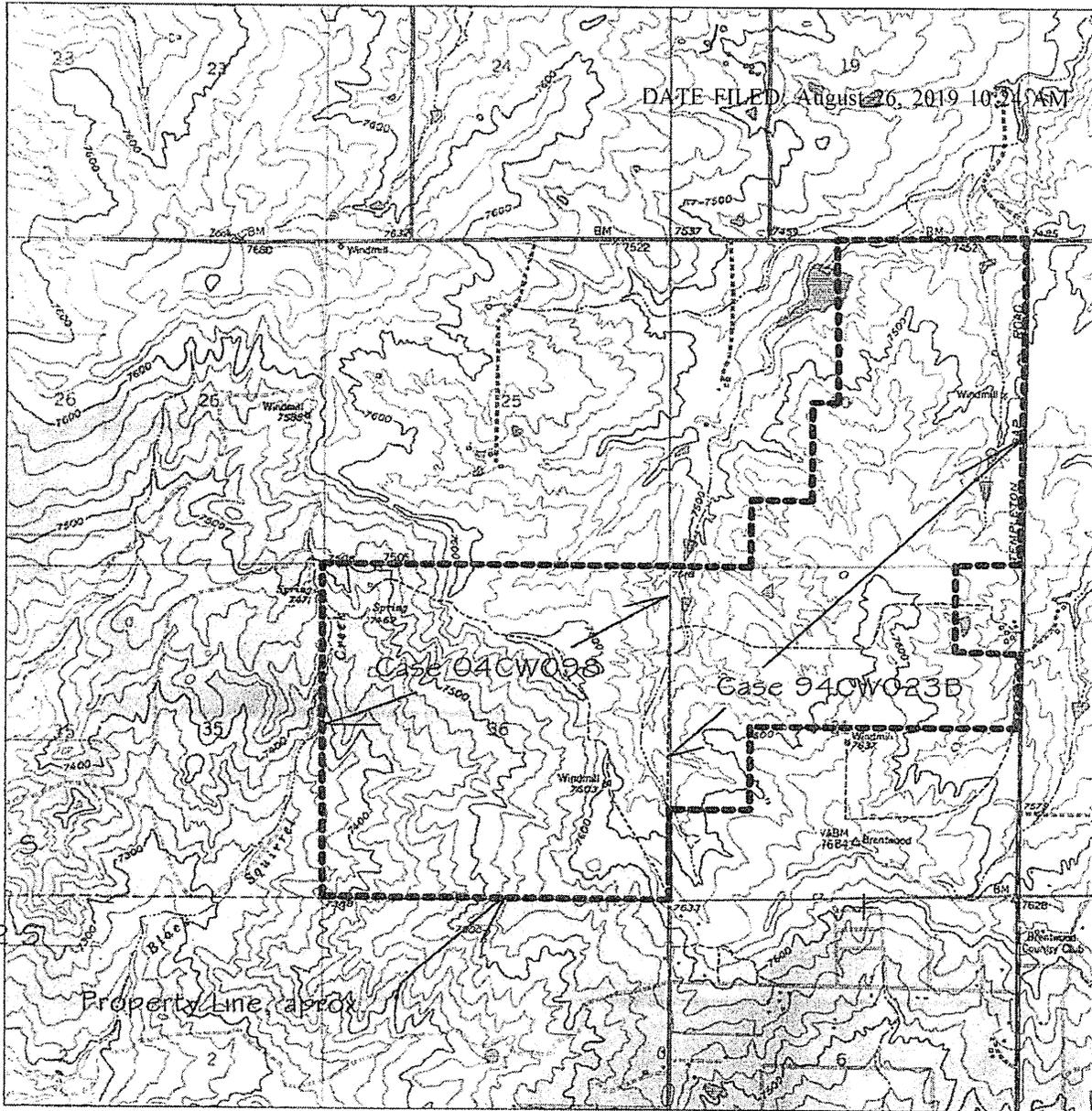
CERTIFIED TO BE A FULL, TRUE AND CORRECT  
COPY OF THE ORIGINAL IN CUSTODY OF  
DISTRICT COURT, WATER DIVISION 2  
STATE OF COLORADO

BY Michelle Jentink 10-8-19  
DEPUTY CLERK DATE

R 66 W

R 65 W

DATE FILED August 26, 2019 10:21 AM



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Scale 1" = 0.5 miles

**Exhibit**  
**A**  
18CW3043 | Div. 2

Location Map  
Shamrock East  
Curt Wells  
consulting ground water geologist

Figure 1



DATE FILED: August 26, 2019 10:24 AM

LEGAL DESCRIPTION - Shamrock Ranch (East Parcel)

The following property in Township 11 South, Range 65 West of the 6th Principal Meridian, El Paso County, Colorado: The following portion of Section 30: The East half and the Southeast quarter of the Southwest quarter and the East 12 acres of the Northeast quarter of the Southwest quarter; the following portion of Section 31; the Northwest quarter and the Northwest quarter of the Northeast quarter and the South half of the Northeast quarter and the Northwest quarter of the Southwest quarter, excepting from all of the above described property any portions thereof contained within rights-of-way for public roads, County of El Paso, State of Colorado, containing 700.6 acres, more or less.

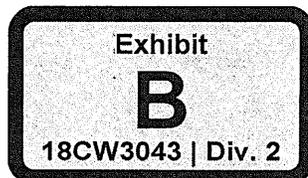
SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, do hereby certify that this legal description was prepared by me or under my direct supervision.

September 7, 1995  
Date

*Michael C. Cregger*

MICHAEL C. CREGGER  
Professional Land Surveyor  
Colorado Registration No. 22564



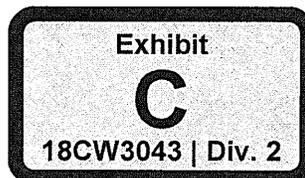
DATE FILED: August 26, 2019 10:24 AM

**LEGAL DESCRIPTION OF THE PROPERTY**

**IN TOWNSHIP ELEVEN SOUTH (T11S), RANGE SIXTY-SIX WEST (R66W),  
OF THE SIXTH PRINCIPAL MERIDIAN (6TH PM)**

**Section Thirty-six (36):                      All**

**Containing Six Hundred Forty and No/One Hundredths (640.00)  
acres, more or less, according to U.S. government survey.**

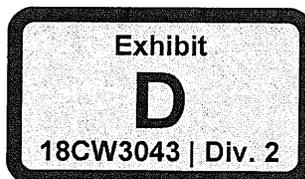


Flying Horse North Denver Aquifer  
Draft Accounting Form

DATE FILED: August 26, 2019 10:24 AM

Year
2129

	Total Denver Well Pumping From Last Year(2)		+	af
1	Denver Well Pumping This Year		+	af
2	Accumulative Total Through This Year		=	af
	Year Pumping Began	2129		
	Average Annual Withdrawal			af/yr.
	Denver Well Pumping This Year (1)		+	af
	Replacement Obligation Factor	0.04	*	
3	Replacement Obligation		=	af
	Irrigation Water Delivered This Year		+	af
	Return Flow Factor	0.1	*	
	Return Flow		=	af
	Replacement Obligation (3)		-	af
	Net Depletion (enter 0 >0.0)		=	af



## CENTRAL FILES

RECEIVED

JUN 30 2005

DISTRICT COURT, WATER DIVISION 2, COLORADO	
320 West 10 <sup>th</sup> Street, No. 203 Pueblo, CO 81003	
CONCERNING THE APPLICATION FOR GROUND WATER RIGHTS OF:	
THE DAVID A. WISMER AND MARY ANNE WISMER TRUST AND STATE BOARD OF LAND COMMISSIONERS, Co-Applicants,	
IN EL PASO COUNTY.	
Attorneys: Lusanna J. Ro, No. 28806 Office of the Colorado Attorney General 1525 Sherman Street, 5 <sup>th</sup> Floor Denver, Colorado 80203 Tele: 303-866-8002 ATTORNEYS FOR CO-APPLICANT STATE BOARD OF LAND COMMISSIONERS and Robert E. Schween, No. 12923 Robert E. Schween, P.C. 8231 South Winnipeg Circle Aurora, Colorado 80016 Tele: 303-690-8451 ATTORNEYS FOR CO-APPLICANT DAVID A. WISMER AND MARY ANNE WISMER TRUST	<p style="text-align: right;">WATER RESOURCES STATE ENGINEER COLO</p> <p style="text-align: center;">FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2 STATE OF COLORADO</p> <p style="text-align: center;">JUN 17 2005</p> <p style="text-align: center;">CLERK</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p style="text-align: center;">Case Number: 2004-CW-098</p>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE OF THE WATER COURT</b>	

THIS MATTER has come before the Court upon the application of the David A. Wismer and Mary Anne Wismer Trust ("Trust") and Intervenor and joined Co-Applicant State Board of Land Commissioners ("SBLC") for a determination of all ground water rights in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying certain property in El Paso County. Such property, a section of land containing 640 acres, more or less, described hereinbelow and in the application, is owned by Co-Applicant Trust, but ownership and use of the underlying ground water was retained by Co-Applicant SBLC in its patent of the land to Co-Applicant Trust for a period of 50 years (until February 27, 2048), after which such rights in the underlying ground water are to be conveyed to the Trust.

By agreement of the Co-Applicants, the underlying ground water is to be adjudicated herein by both Co-Applicants. Accordingly, having considered the evidence in this matter, the Court now enters this ruling and decree, as follows:

---

**FINDINGS OF FACT**

1. **Name and Address and Telephone Nos. of Applicants:**

State Board of Land Commissioners  
1313 Sherman Street, Suite 621  
Denver, Colorado 80203  
Telephone: 303-866-3454

The David A. Wismer  
and Mary Anne Wismer Trust  
15555 Highway 83  
Colorado Springs, Colorado 80921  
Telephone: 719-495-8665

2. **History of the Case:**

A. An Application for a determination of ground water rights underlying Property subject to this ruling and decree was filed in the Water Court for Water Division 2 on November 19, 2004, by the Co-Applicant Trust. A timely statement of opposition and motion to intervene was filed by the SBLC. Co-Applicant Trust consented to the joinder of the SBLC as a Co-Applicant in this case. By Order of the Court dated February 17, 2005, intervention was granted and the SBLC was joined as a Co-Applicant. No other statements of opposition or motions to intervene in this matter have been filed, and the time period for filing same has expired.

B. The Office of the State Engineer issued its Determination of Facts in this matter on January 25, 2005. All findings of fact made in this ruling and decree are consistent with the findings of fact in such Determination of Facts.

C. The overlying property which is the subject of this application is 640 acres, more or less, consisting of all of Section 36, Township 11 South, Range 66 West of the 6th P.M., in El Paso County, as shown on the General Location Map, Exhibit A hereto ("Property"), and as described in the Property Legal Description, Exhibit B hereto.

3. **Purpose of the Application:** The purpose for filing the original application in this matter was to adjudicate the Denver Basin aquifer ground water rights underlying the subject parcel ("Property"). No augmentation plan for the use of not-nontributary ground water was requested.

4. **Subject Matter Jurisdiction:** Timely and adequate notice of the pendency of these proceedings has been given in Water Division 2 in the manner required by law. 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.

5. **Aquifers and Location of Ground Water:**

A. Co-Applicants seek a decree for rights to all ground water recoverable from the not-nontributary Dawson and Denver aquifers and the nontributary Arapahoe and Laramie-Fox Hills aquifers underlying the Property in El Paso County, Colorado. The Property which overlies the subject ground water consists of 640 acres, more or less, as described in Exhibit B hereto.

B. Co-Applicant SBLC is the owner of all ground water rights underlying the Property and has the right to withdraw such ground water under Colorado law. Section 37-90-137(4), C.R.S. Co-Applicant Trust is the owner of the overlying land and successor in interest by patent of such rights to such ground water at the expiration of the SBLC's 50-year ownership interest. See Patent No. 8167, attached as Exhibit C hereto. No part of such lands lies within a designated ground water basin.

6. **Specific Wells Claimed and Well Permits:**

A. The Property is subject to a Conservation Easement. The Conservation Easement acknowledges that the ground water interests (other than production from exempt wells) on the Property have been reserved by the SBLC for a period of fifty (50) years beginning on February 27, 1998, and neither the Trust nor the Grantee of the Conservation Easement have the right or ability to prohibit the development of such ground water interests. Further, the Conservation Easement and the SBLC acknowledge that after February 27, 2048, SBLC's reservation expires and all interests in such ground water are to be conveyed to the Trust.

B. The specific location for the initial well or wells to be constructed under this ruling and decree has not been determined at this time. Co-Applicants have the legal right, nevertheless, to construct and complete such well(s) into each aquifer anywhere on the overlying property as necessary to obtain the full average annual amount from each aquifer pursuant to the terms and conditions of this ruling and decree, and in accordance with § 37-90-137(10), C.R.S.

C. Co-Applicants or their successor(s) shall request a well permit from the Division of Water Resources to construct each such well to be located on the Property described herein at such time as Co-Applicants foresee the need for such well. Such well permit shall be granted pursuant to the terms and conditions of this ruling and decree.

7. **Average Annual Amounts of Withdrawal Available:**

A. Pursuant to the Denver Basin Rules, the ground water in the Arapahoe and Laramie-Fox Hills aquifer underlying the Property, as described herein, is classified as nontributary ground water, as defined in § 37-90-103(10.5), C.R.S. Accordingly, the developer and user of such ground water is required to relinquish two percent (2%) of withdrawals of such ground water to the stream system.

B. The ground water contained in the Dawson and Denver aquifers at this location is classified not-nontributary as defined in § 37-90-103(10.7), C.R.S. Thus, withdrawals of such ground water will require replacement to the stream system of the actual amounts of modeled stream depletions, or four percent of the amount of such withdrawals (as will be the case for Denver aquifer withdrawals from locations more than one mile from the point of contact between the aquifer and the stream system) caused by such pumping, pursuant to a judicially approved plan for augmentation. No such augmentation plan is adjudicated by this ruling and decree.

C. The average annual amounts available in acre-feet for withdrawal from each of the underlying aquifers are as follows:

<u>Aquifer</u>	<u>Acres</u>	<u>Sat. Sand Thickness</u>	<u>Specific Yield</u>	<u>Avg. Ann. Amounts</u>
Dawson	640	410	20 %	515 AF *
Denver	640	530	17 %	577 AF
Arapahoe	640	220	17 %	239 AF
Laramie-Fox Hills	640	190	15 %	182 AF

\* Ten (10) acre-feet per year from the Dawson aquifer were left unadjudicated so that such amount would be available for allocation to exempt wells on the Property. The Agreement to Exchange Real Property between the SBLC and the Trust, dated December 18, 1996, acknowledges that under the terms of the Conservation Easement, the Trust retains the right to apply for and obtain exempt water wells.

D. The above values and amounts listed for the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers are consistent with the Office of the State Engineer Determinations of Facts, issued on January 25, 2005, in this case.

8. **Estimated Average Pumping Rates and Well Depths:**

A. The following are the estimated average pumping rates and well depths by aquifer:

<u>Aquifer</u>	<u>Rate of Flow</u>	<u>Depth</u>
Dawson	15 gpm	920 feet
Denver	50 gpm	1820 feet
Arapahoe	250 gpm	2380 feet
Laramie-Fox Hills	100 gpm	3030 feet

B. The above estimated average rates of withdrawal are not to be construed as maximum production rates, which are to be specified on the well permit.

C. Well depths indicated above are those shown in the State Engineer's Determinations of Fact, but such depths may vary somewhat from those depths shown above based on surface topography at the specific well location.

9. **Final Average Annual Amounts of Withdrawal:**

A. Final determinations of the applicable average saturated sand thicknesses and resulting average annual amounts available to Co-Applicants from each aquifer will be made pursuant to the retained jurisdiction of this Court, as described in Paragraph 23 of this ruling and decree. In the event this ruling and decree is not reopened for a further quantitative determination, the findings herein are final and controlling.

B. The allowed annual amount of ground water which may be withdrawn from such aquifers through the wells initially constructed and any additional wells, pursuant to § 37-90-137(10), C.R.S., may exceed the average annual amount of withdrawal, as long as the total volume of water actually withdrawn through such wells and any additional wells therefor subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of the well permits or the date of this decree, whichever is earliest in time, multiplied by the average annual amount of withdrawal, as specified above or as subsequently determined pursuant to the retained jurisdiction of the Court.

10. **Limitations on Consumption of Nontributary Ground Water:**

A. The ground water to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers under this ruling and decree is "nontributary ground water" as defined in § 37-90-103(10.5), C.R.S., and in the Denver Basin Rules, 2 CCR 402-6, the withdrawal of which will not, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in §§ 37-82-101(2) and 37-92-102(1)(b), C.R.S., at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal.

B. Co-Applicants may not consume more than 98% of the annual quantity of water withdrawn from such nontributary aquifer. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules, may be satisfied by any method selected by the Co-Applicants and satisfactory to the State Engineer, so long as Co-Applicants can demonstrate that an amount equal to 2% of such withdrawals (by volume) has been relinquished to the stream system.

C. The vested water rights of others will not be materially injured by such withdrawals as described hereby, so long as such withdrawals are made pursuant to the terms of this ruling and decree. Withdrawals hereunder are allowed on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years.

D. No material injury to vested water rights of others will result from the issuance of permits for wells or the exercise of the rights and limitations specified in this decree.

11. **Condition Precedent to Use of Not-Nontributary Ground Water:**

A. Ground water in the Dawson and Denver aquifers at this location has been determined to be not-nontributary, as that term is defined at § 37-90-103(10.7), C.R.S.

B. Pursuant to § 37-90-137(9)(c), C.R.S., such not-nontributary ground water may not be withdrawn and used until a judicially approved plan of augmentation has been obtained providing adequate replacement for stream depletions, as applicable, caused by such withdrawals. No such plan is adjudicated in this ruling and decree.

12. **Well Locations, Additional Wells, Well Fields and Adjustment of Well Permits:**

A. **Well Locations:** Co-Applicants propose to construct their wells as required by demands over time. Wells may be drilled and constructed pursuant to this ruling and decree at any location on the overlying land area described herein, pursuant to well permits to be issued in accordance with § 37-90-137(10), C.R.S.

B. **Additional Wells:** In addition to the initial well(s) to be permitted and constructed pursuant to this ruling and decree, Co-Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water systems demands, or to recover the entire amount of ground water in the subject aquifers underlying the subject property, as described herein. As additional wells are planned or needed, applications shall be filed in accordance with § 37-90-137(10), C.R.S.

C. **Well Fields:** Two or more wells constructed into the same aquifer shall be considered a well field. In producing water from such well field, Co-Applicants or their successor(s) may withdraw the entire amount which may be produced hereunder from the particular aquifer through any combination of wells within the well field for that particular aquifer.

D. **Adjustment of Well Permits:** In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, the well permittee shall obtain new well permits prior to withdrawing such adjusted average annual amounts. New permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

13. **Proposed Uses of Water:** The water withdrawn pursuant to this ruling and decree may be used, reused, and successively used and after use, leased, sold, or otherwise disposed of for domestic, commercial, irrigation, stock watering, recreational, fish and wildlife, fire protection, and any other beneficial purpose, to be used on or off the land described in Paragraph 4. This water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for augmentation purposes.

14. **Conditions:** For each well constructed pursuant to this decree, the well permittee shall comply with the following conditions:

A. A totalizing flow meter shall be installed on each well discharge prior to withdrawing any water from the well. Co-Applicants or their successor(s) shall keep accurate records of all withdrawals by the proposed wells, make any calculations necessary, and submit such records to the Water Division 2 Engineer on an annual basis or as otherwise requested by the Division Engineer.

B. The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Co-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.

C. The ground water production shall be limited to the specific aquifer for which the well was permitted. 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.

D. 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 pumphouse.

#### **CONCLUSIONS OF LAW**

15. The Water Court has jurisdiction over this proceeding pursuant to § 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. Sections 37-90-137(4) and (9), C.R.S. The application for a decree confirming Co-Applicants' right to withdraw and use all ground water from the named nontributary aquifers beneath the property as described herein pursuant to § 37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree.

16. The nature and extent of the rights to nontributary and not-nontributary ground water determined herein are defined by §§ 37-90-137(4) and (9), C.R.S. The withdrawal of the ground water decreed herein in accordance with the terms of this decree will not result in material injury to vested water rights of others. The not-nontributary Dawson and Denver aquifer ground water decreed hereby may be withdrawn only pursuant to a subsequent judicially approved augmentation plan.

17. Return flows from domestic and irrigation uses, as contemplated herein, are an acceptable source for replacement of stream depletions, so long as the quantity of such projected return flows meets or exceeds the modeled actual stream depletions.

18. The rights to nontributary and not-nontributary ground water determined herein shall not be administered in accordance with priority of appropriation. Such rights are not "conditional water rights" as defined by § 37-92-103(6), C.R.S. The provisions of § 37-92-301(4), C.R.S., requiring findings of reasonable diligence are not applicable to the ground water rights determined herein. The determination of ground water rights herein need not include a date of initiation of the withdrawal project. See § 37-92-305(11), C.R.S.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

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

20. The ground water subject to this ruling and decree is adjudicated in the name of the State Board of Land Commissioners until February 27, 2048, and thereafter in the name of Co-Applicant Trust.

21. Full and adequate notice in the application in this matter was given, and the Court has jurisdiction over the subject matter and over the parties, whether they have appeared or not. For the purposes of jurisdiction over this matter, § 37-92-302(2), C.R.S., does not require that the application be supplemented with a well permit or evidence of a well permit denial.

**22. Right to Withdraw Nontributary Ground Water:**

A. The Co-Applicants may withdraw the nontributary ground water subject to this decree through wells to be permitted by the State Engineer's Office at any location on the overlying land, or through any duly authorized additional or replacement wells thereto, and in the amounts and at the estimated average rates of flow specified therefor, subject to the limitations herein and the retained jurisdiction of this Court. Rights to use ground water from the wells described in § 37-90-134(4), C.R.S., pursuant to all such determinations shall be deemed to be vested property rights. See § 37-92-305(11), C.R.S.

B. Ground water withdrawals pursuant to this ruling and decree may be made in the quantities decreed herein and may be used for all beneficial purposes listed hereinabove.

**23. Retained Jurisdiction as to Ground Water Adjudication:**

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of nontributary and not nontributary ground water available under the Property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to § 37-92-305(11), C.R.S. Within 60 days after completion of any well decreed herein, or any test hole(s), Co-Applicants or any successor(s) in interest to these water rights shall serve copies of such log(s) upon the State Engineer.

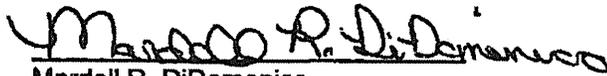
B. Within five years from the date this decree is entered and at such time as adequate data are available, any person including the State Engineer may invoke the Court's retained jurisdiction to make a Final Determination of Water Right. Within four months of notice that the retained jurisdiction for such purpose has been invoked, the State Engineer shall use the information available to him to make a final determination of water rights finding. The State Engineer shall submit such finding to the Water Court and to the Co-Applicants.

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

D. In the interim, the Court retains jurisdiction over this matter pursuant to the directive found at § 37-92-305(11), C.R.S.

24. Upon entry of this decree of the Water Court, Co-Applicants shall have the decree recorded in the real property records of El Paso County.

RULING ENTERED this 24<sup>th</sup> day of May, 2005.

  
Mardell R. DiDomenico  
Water Referee  
Water Division 2, Colorado

\*\*\*

THE COURT DOETH FIND THAT NO PROTEST TO THE RULING OF THE REFEREE HAS BEEN FILED.

THE FOREGOING RULING IS THEREFORE CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS WATER COURT.

Date:

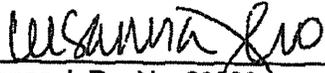
6/17/05

BY THE COURT:

  
Honorable C. Dennis Maes  
Water Judge  
Water Division 2, Colorado

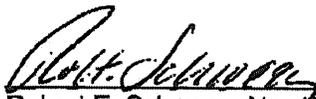
APPROVED AS TO FORM AND CONTENT:

OFFICE OF THE ATTORNEY GENERAL

By:   
Lusanna J. Ro, No. 28806

ATTORNEYS FOR CO-APPLICANT STATE BOARD  
OF LAND COMMISSIONERS

ROBERT E. SCHWEEN, P.C.

By:   
Robert E. Schween, No. 12923

ATTORNEY FOR CO-APPLICANT DAVID A. WISMER  
AND MARY ANNE WISMER TRUST

\*\*\*\*\*

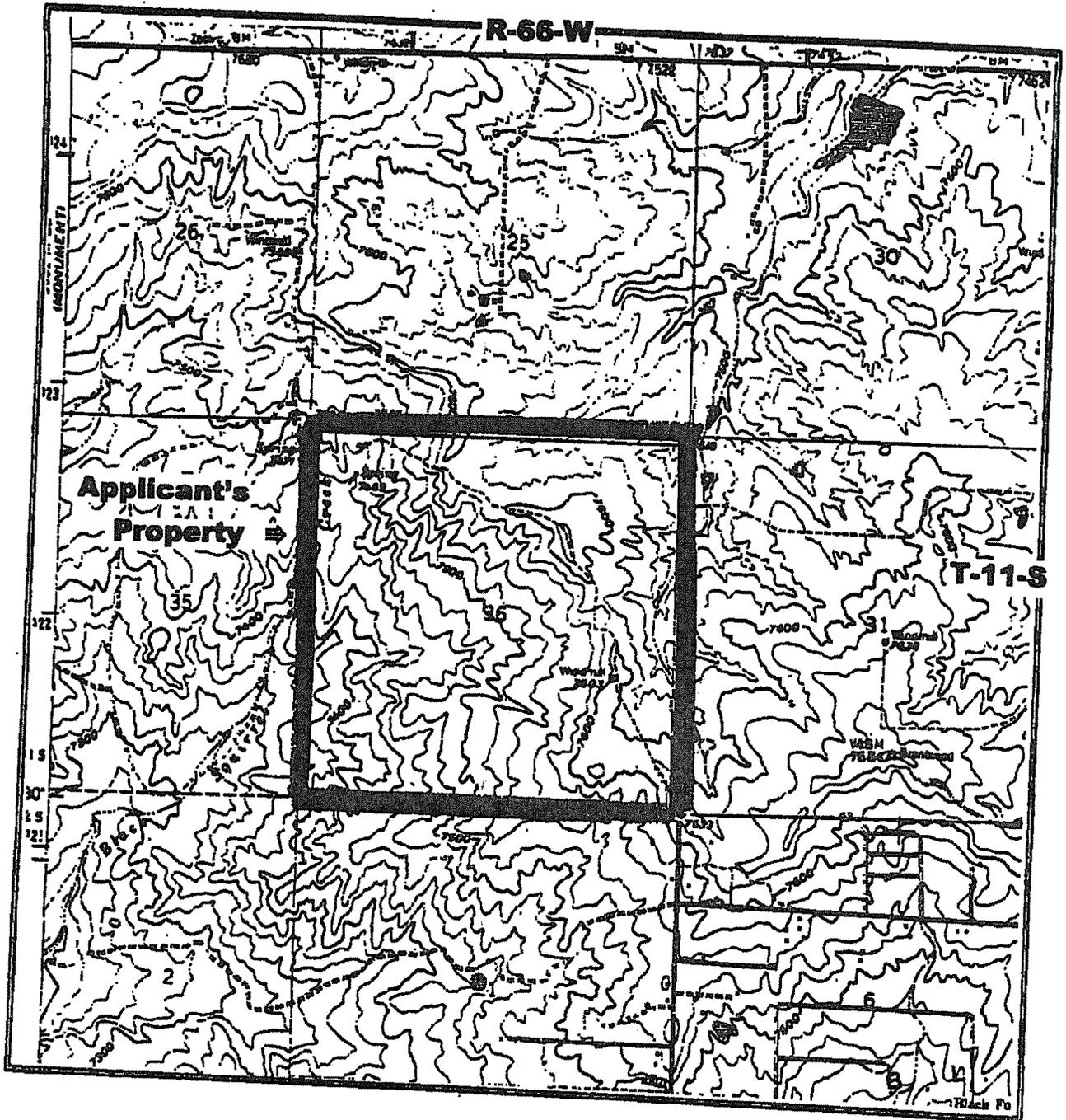
Case No. 04-CW-098, Water Division 2

TABLE OF EXHIBITS

Exhibit A	.....	General Location Map.
Exhibit B	.....	Property Legal Description.
Exhibit C	.....	Patent No. 8167.

c: Wismer-04CW098.RUL

*C: State/Dunsmuir Engineers  
R. Schween  
d. Ro  
620-05  
ND*



● TOPOGRAPHIC MAP ●  
(Contour Intervals - 20 Feet)

FROM USGS BLACK FOREST QUADRANGLE MAP  
REVISED 1969 AND 1975

**EXHIBIT A**  
**General Location Map**

**Application of David A. Wismer and Mary Anne Wismer Trust**

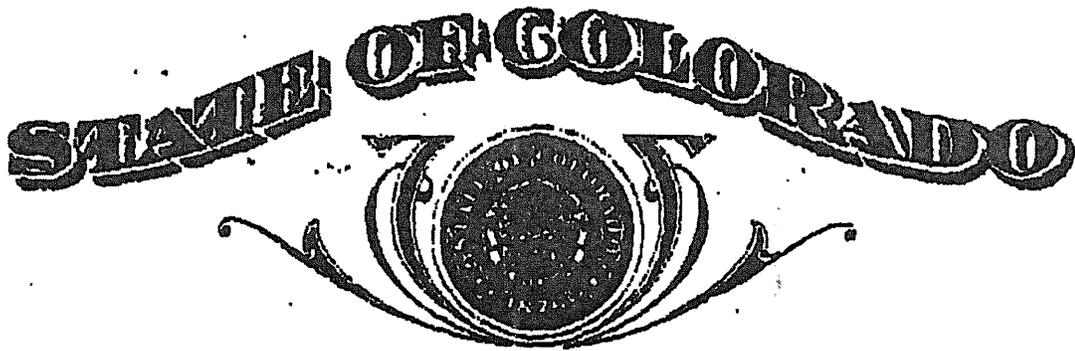
**LEGAL DESCRIPTION OF THE PROPERTY**

**IN TOWNSHIP ELEVEN SOUTH (T11S), RANGE SIXTY-SIX WEST (R66W),  
OF THE SIXTH PRINCIPAL MERIDIAN (6TH PM)**

**Section Thirty-six (36):                    All**

**Containing Six Hundred Forty and No/One Hundredths (640.00)  
acres, more or less, according to U.S. government survey.**

**EXHIBIT B**



## PATENT NO. 8167

This patent is made this 27 day of February, 1978, by the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS ("BOARD") to DAVID A. WISMER and MARY ANNE WISMER as co-trustees for benefit of the DAVID A. WISMER and MARY ANNE WISMER TRUST dated APRIL 9, 1980 and restated MARCH 31, 1986, ("WISMER") whose address is 15555 Highway 83, Colorado Springs, Colorado, 80921;

**WHEREAS**, pursuant to an Exchange Agreement (Agreement) and to Board Order No. 96-290 dated July 30 & 31, 1996, the Board and Wismer agreed to exchange Real Property; and

**WHEREAS**, the Replacement Property to be conveyed to the Board pursuant to the Agreement will be of equal or greater value to the lands to be conveyed by the BOARD, pursuant to the terms of the Agreement; and

**WHEREAS**, the Board has determined that this action is in the best interests of the trusts it administers;

**NOW THEREFORE**, in consideration of the lands being conveyed to the Board and other consideration described in the Agreement, the BOARD OF LAND COMMISSIONERS hereby grants, conveys, deeds and relinquishes to Wismer, as co-trustees for benefit of the DAVID A. WISMER and MARY ANNE WISMER TRUST dated APRIL 9, 1980 and restated MARCH 31, 1986, its successors and assigns forever, the following described School lands in EL PASO County, State of Colorado, ("State Property") to wit:

SCHOOL TRUST LANDS

TOWNSHIP ELEVEN SOUTH (T11S), RANGE SIXTY-SIX WEST (R66W),  
OF THE SIXTH PRINCIPAL MERIDIAN (6TH PM)

Section Thirty-six (36): All

Containing Six Hundred Forty and No/one-hundredths (640.00) acres, more or less, according to U.S. government survey.

**RESERVING**, however, to the State of Colorado, all rights to any and all minerals, ore and metals of any kind and character, and all coal, asphaltum, oil, gas or other like substance in or under said land and geothermal resources, the right of ingress and egress for the purpose of mining, together with enough of the surface of the same as may be necessary for the proper and convenient working of such minerals and substances.

Also, reserving to the Board, for a period of fifty (50) years, all water underlying the State Property from the Dawson-Arkose, Denver, Arapahoe, Laramie-Fox Hills and Dakota aquifers and rights of ingress and egress for the purpose of exploring the same together with enough of the surface as may be necessary for the proper and convenient working of such water, and the Board shall convey to Wismer such water rights in perpetuity thereafter.

Subject to any and all covenants, restrictions, easements or rights-of-way whether or not of record and shall further be subject the Conservation Easement pursuant to the Agreement.

**TO HAVE AND TO HOLD**, the hereinabove described lands together with any and all rights, appurtenances and privileges thereto to DAVID A. WISMER and MARY ANNE WISMER as co-trustees for benefit of the DAVID A. WISMER and MARY ANNE WISMER TRUST dated APRIL 9, 1980 and restated MARCH 31, 1986, its successors and assigns forever.

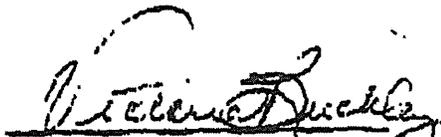
IN WITNESS WHEREOF, I, ROY ROMER, Governor of the  
STATE of COLORADO has caused this patent to be executed  
by its duly authorized officers and its seal hereunto affixed this  
31<sup>st</sup> day of December, 1996.



Roy Romer

(STATE SEAL)

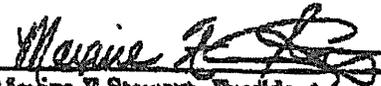
ATTEST:

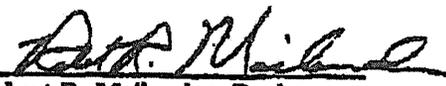


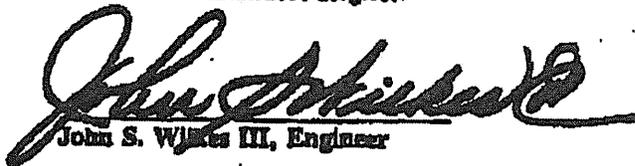
Secretary of State

(LAND BOARD SEAL)

STATE OF COLORADO  
ACTING BY AND THROUGH THE  
STATE BOARD OF LAND COMMISSIONERS

  
Maxine F Stewart, President

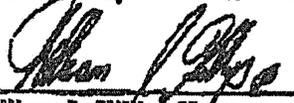
  
Robert E. Mailander, Register

  
John S. Wilkes III, Engineer

State of Colorado )  
City and ) ss.  
County of Denver )

Patent 8167 was acknowledged before me this 17<sup>th</sup> day of December 1996, by  
Maxine F Stewart as President, Robert E. Mailander as Register, and John S. Wilkes III  
as Engineer of the COLORADO STATE BOARD OF LAND COMMISSIONERS.

WITNESS my hand and official seal

  
William J. Klipp, II  
NOTARY PUBLIC

My Commission Expires: AUGUST 6, 1999