

<b>DISTRICT COURT, WATER DIVISION NO. 1 WELD COUNTY, COLORADO</b> <b>Weld County Courthouse</b> 901 9 <sup>th</sup> Avenue, P.O. Box 2038 Greeley, CO 80632	DATE FILED: December 20, 2016 11:30 AM CASE NUMBER: 2015CW3153  Δ <b>COURT USE ONLY</b> Δ
<b>Concerning the Application for Water Rights of:</b>  <b>BF RANCH TRUST 2015</b>  In El Paso County	<b>Consolidated Case Nos. 15CW3153 and 15CW3062</b>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE</b>	

The Court, having reviewed the application, the Summary of Consultation held by the Division Engineer for Water Division 1 on February 29, 2016, the pleadings in this case, hereby enters the following Findings of Fact, Conclusions of Law, Judgment and Decree:

**FINDINGS OF FACT**

**I. Jurisdictional Facts.**

1. The applicant for approval of a plan for augmentation in this case is the BF Ranch Trust 2015. Its address is c/o Eric Leffler, Trustee, 4510 Ford Drive, Colorado Springs, CO 80908, e-mail address is: eleffler1981@gmail.com, phone 719.640.7511.
2. The application in this case was filed on November 30, 2015 in Water Divisions 1, Case No. 15CW3153 and Water Division 2, Case No. 15CW3062.
3. The application in this case was filed in Water Divisions 1 and 2 on November 30, 2015 in Water Divisions 1, Case No. 15CW3153, and Water Division 2, Case No. 15CW3062. The application was published in the resumes for Water Divisions 1 and 2 and in a newspaper of general circulation in El Paso County, as ordered by the Court. Proof of publication has been filed.
4. The application in Water Division 2, Case No. 15CW3062, was consolidated with Case No. 15CW3153 before Judge Hartmann in Water Division 1 by order of the Colorado Supreme Court, dated February 25, 2016. Upon Applicant’s unopposed motion, the application was again referred to the water referee on March 2, 2016.
5. Timely statements of opposition were filed in Water Division 2 by the City of Colorado

Springs acting by and through its enterprise, Colorado Springs Utilities, and by Cherokee Metropolitan District. Those statements of opposition apply to the consolidated cases. Both of those parties have stipulated to entry of a decree in this case, and this decree is consistent with their stipulations. The deadline for filing statements of opposition has expired, and no motions to intervene have been filed.

6. The Court has reviewed and considered the Consultation Report of the Division Engineer for Water Division 1, which was on held on February 24, 2016, and filed on February 29, 2016.

7. The land and water involved herein are not within the boundaries of a designated ground water basin.

## **II. Description of Denver Basin Water Rights to be Adjudicated.**

8. The property beneath which certain water is sought to be adjudicated consists of 39.83 acres owned by Applicant. Its legal description is as follows: the SE1/4 NE1/4 NE1/4 and the NE1/4 SE1/4 NE1/4 Section 23, T. 11, R. 66 W., and the S1/2 NW1/4 NW1/4 Section 24, T. 11 S., R. 66 W., 6<sup>th</sup> P.M. (the "Property"). A map showing the Property's location is attached as Figure 1.

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

10. Pursuant to the Determinations of Fact issued by the State Engineer on December 22, 2015, the amounts of water available for appropriation are as shown on Table 1 on the following page:

**Table I**

<b>Aquifer</b>	<b>Acreage</b>	<b>Specific Yield</b>	<b>Sat. Thick-ness (ft)</b>	<b>Total Amount (AF)</b>	<b>Annual Amount (AF)<sup>1</sup></b>
Dawson	39.83	.20	475	3,784	37.8
Denver	39.83	.17	535	3,623	36.2
Arapahoe	39.83	.17	245	1,659	16.6
L-Fox Hills	39.83	.15	205	1,225	12.3

11. The estimated depths and tributary status of the four aquifers located beneath the Property are shown on Table II:

**Table II**

<b>Aquifer</b>	<b>Depth below surface (ft)</b>	<b>tributary status</b>
Dawson	near surface to 1,100	not nontributary
Denver	1,120 - 1,960	nontributary
Arapahoe	2,010 - 2,500	nontributary
Laramie-Fox Hills	2,880 - 3,180	nontributary

12. Applicant will withdraw water from the Dawson aquifer from as many as 15 wells. Subject to the limitations in this decree, Applicant may also withdraw water from one well in each of the Denver, Arapahoe, and Laramie-Fox Hills aquifers, plus any additional wells required in order for Applicant to withdraw the full decreed amounts. Such wells may be constructed at any location on the Property, provided, that no wells may be located within 100 feet of the Property boundary.

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<sup>1</sup> This amount is based on annual withdrawals of one percent of the total amount appropriated, as provided in C.R.S. §37-90-137(4)(b). The plan for augmentation decreed herein provides that some of the water in the Dawson and Denver aquifers must be withdrawn at a lower rate than would otherwise be required by state law.

13. Subject to the terms, conditions and limitations of this decree, and the issuance by the State Engineer of a well permit that authorizes the specific use or uses, the water rights adjudicated herein decreed for all beneficial uses except municipal uses.

### **III. Description of Plan for Augmentation.**

14. Overview of plan for augmentation. Applicant intends to subdivide the property into as many as 15 residential lots. Each lot will be entitled to drill one well into the Dawson aquifer. The plan for augmentation is designed to last for 300 years. Septic system return flows will be used to replace depletions which occur during the pumping period, and nontributary Denver aquifer water is hereby reserved in an amount sufficient to replace all post-pumping depletions. Uses of water on such lots are expected to be, but shall not be limited to, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows. Total annual pumping from the Dawson aquifer will be limited to 0.8 acre foot annually per lot, regardless of the number of lots ultimately platted, but which shall not exceed 15 lots and 12.0 acre feet annually. Applicants for well permits will indicate the uses to which they intend to put the water on their well permit applications.

15. Return flows from indoor residential use. The State Engineer has issued an informal guideline estimating that conservatively, water use in single family dwellings will equal at least 0.2 acre foot of water annually for indoor uses, and that return flows from nonevaporative septic systems will equal at least 0.18 acre foot annually. Thus, it is assumed that each well constructed pursuant to this plan for augmentation will be used in at least one single family dwelling, and will cause septic system return flows of at least 0.18 acre foot annually, or at least 2.7 acre foot annually if 15 wells are constructed. Though there may be return flows from landscape and/or garden irrigation, Applicant does not and will not rely on such return flows to replace depletions during the pumping period, or in any other plan for augmentation.

16. Replacement of depletions during pumping. Applicant shall replace all depletions caused during pumping of the Dawson aquifer water. The State Engineer's computer model "DA02" indicates that during pumping, combined depletions to the Arkansas and South Platte River systems will gradually increase to a maximum of approximately 22.24 percent of annual pumping in the 300<sup>th</sup> year, or 2.67 acre feet based on annual pumping of 12.0 acre feet. Applicant proposes to replace those depletions with septic system return flows, which will equal 2.7 acre feet annually for 15 lots, based on assumed average annual indoor use of at least 0.2 acre foot per dwelling. If the Property is subdivided into fewer than 15 lots, with one well per lot, return flows from septic systems will still always exceed stream depletions during the 300 year pumping period. Thus, Applicant may subdivide the Property into fewer than 15 lots, with one

well per lot, provided that Applicant complies with all other provisions of this decree.

17. Provision of sufficient return flows during the pumping period. Nonevaporative septic systems shall be used for treatment of water used for indoor drinking and sanitary uses on all lots. All septic system return flows are dedicated to this plan for augmentation, and shall not be sold, leased or otherwise used for any other purpose. Septic system return flows are necessary to provide an adequate source of water to replace stream depletions during the pumping period under the plan for augmentation decreed herein. Accordingly, in order to generate required return flows to replace depletions during pumping, each Dawson aquifer well must be used to provide water to one or more single family dwellings on the Property, and annual withdrawals shall be limited to withdrawal of 0.8 acre foot per well. Because this augmentation plan is dependent on return flows from indoor residential uses, no Dawson aquifer well approved pursuant to this plan for augmentation shall be allowed to pump water for any purpose unless it is also used in a residence on the lot on which such well is located. Total post-pumping depletions from Applicant's withdrawals shall in no instance exceed the 3,265 acre feet of water reserved and available for replacement from the Denver aquifer.

18. Replacement of post-pumping depletions.

A. Applicant shall replace post-pumping depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicant obtains Water Court approval for such modification; the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court in relevant cases; or until Applicant or its successors petition the Water Court and after notice to all parties in this case prove that it has complied with all statutory requirements.

B. Replacement of post-pumping depletions shall commence after the earliest of the four following events has occurred: (1) 3,600 acre feet have been pumped from the Dawson aquifer; or (2) ten consecutive years have passed with no pumping from the Dawson aquifer; or (3) when Applicant or its successors acknowledge in writing that all withdrawals for beneficial use from the Dawson aquifer have permanently ceased; or (4) when accounting shows that return flows from the use of the water being withdrawn from the Dawson aquifer well is insufficient to replace depletions that already occurred. Applicant or its successors shall at that time cause a depletion analysis to be conducted, using the computer model generally accepted as being most accurate at that time, to calculate the amount and timing of post-pumping depletions which must be replaced, based on actual withdrawals during the applicable pumping period. After the depletion analysis has occurred, Denver aquifer water as decreed herein, or from such other source of water as receives judicial approval after notice, shall then be pumped at the appropriate times and delivered to the South Platte River system in a manner that will adequately replace all depletions from pumping of the Dawson aquifer wells approved pursuant to this decree.

Applicant's successors in interest shall be required by the terms of this decree to construct a Denver aquifer well 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 obligation is modified or terminated pursuant to ¶ 18.A. above.

C. Applicant hereby reserves and dedicates to this plan for augmentation 3,265 acre feet of Denver aquifer water decreed herein for the purpose of replacing all post-pumping depletions to the South Platte River system. This amount has been calculated as follows:

I. Based on a maximum allowable annual pumping of 12.0 acre feet for 300 years, a total of 3,600 acre feet may be pumped under this plan for augmentation. Approximately 400 acre feet of stream depletions will occur during the pumping period, and there will be approximately 3,200 acre feet of post-pumping depletions.

II. Rule 8 of the Denver Basin Rules, 2 CCR 406-2, requires that only 98 percent of nontributary Denver Basin water may be consumed. The amount of water which must be reserved to replace post-pumping depletions is 3,265 acre feet, which was calculated by dividing post-pumping depletions of 3,199.68 acre feet by 0.98 and rounding to the nearer whole acre foot.

D. If at some time replacement of post-pumping depletions is no longer required pursuant to ¶17.A. above, or if Applicant receives judicial approval to use a different water source for augmentation purposes, Applicant may petition the court pursuant to its retained jurisdiction to modify or terminate the reservation.

19. Recording of decree and covenants. A certified copy of this decree shall be recorded in the real estate records of El Paso County and shall constitute a covenant running with the land, requiring Applicant and its successors of the requirements of this decree and plan for augmentation, including the requirement to construct a Denver aquifer well 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 terms of this decree may result in an order from the State Engineer to curtail or eliminate pumping to curtail or eliminate pumping from the Dawson aquifer. Said covenants shall be amended as necessary to conform to the provisions of any amendment to this augmentation plan. Any proposed change in the method of wastewater treatment and disposal shall require water court approval after notice in the water resume and publication in a newspaper of general circulation in El Paso County.

20. 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 water will accrue to only the South

Platte River system. Under this augmentation plan, the total amount of depletions will be replaced to the South Platte River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan, subject to the retained jurisdiction provisions of this decree.

21. Appurtenances to Property. This plan for augmentation, the right to 3,600 acre feet of Dawson aquifer water which may be pumped pursuant to the plan for augmentation, and the right to 3,265 acre feet of Denver aquifer water reserved for replacement of post-pumping depletions, shall be considered as appurtenances to the Property, and shall be conveyed pursuant to the appurtenance clause in any deed conveying the Property or any portion thereof, whether or not the plan for augmentation and the water rights are specifically referenced in the deed.

22. Meters and reporting requirements. 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 and April 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.

23. Finding of no injury. The Court finds that under the terms and conditions herein the requirements of C.R.S. §37-90-137(9)(c) have been met, and that no injury will be caused to the owner of or anyone entitled to use water under a vested water right or decreed conditional water right.

### **CONCLUSIONS OF LAW**

24. The Court has jurisdiction over the subject matter of this action and over all persons who could have appeared herein, whether or not they did so appear.

25. All conditions precedent to the granting of this decree have been performed.

26. The plan for augmenting depletions caused by pumping the not nontributary Dawson aquifer is required by C.R.S. §37-90-137(9), and is subject to the requirement of C.R.S. §37-92-305(3) and 305(8) that no injury will occur to the owners of or persons entitled to use water under an absolute water right or decreed conditional water right as a result of implementing such plan for augmentation. Applicant has complied with all the conditions of C.R.S. §37-92-305(3), (8) and all other relevant statutes.

27. Applicant can maintain dominion and control over the septic system return flows by determining the quantity of such return flows, as set forth above, and thus has the legal ability to use said return flows in this plan for augmentation. See, Public Service Co. v. Willows Water District, 856 P.2d 829 (Colo. 1993).

## **JUDGMENT AND DECREE**

28. The forgoing findings of fact and conclusions of law are hereby incorporated into this judgment and decree.

29. Adjudication of Dawson aquifer water rights.

A. Applicant is granted a vested right to 3,784 acre feet of ground water in the nontributary Dawson aquifer located beneath the Property, subject to modification by the Court under its retained jurisdiction.

B. Up to 3,600 acre feet of Applicant's Dawson aquifer water rights may be pumped pursuant to this plan for augmentation. All well permits for Dawson aquifer wells constructed pursuant to the plan for augmentation shall limit withdrawals to 0.8 acre foot annually. The remaining 184 acre feet of Dawson aquifer water which is not included in the augmentation plan approved in this decree shall not be withdrawn for any purpose except pursuant to a separate court-approved plan for augmentation authorizing that water's withdrawal in accord with C.R.S. 37-90-137(a)(c.5).

30. Adjudication of Denver aquifer water rights.

A. Applicant is granted a vested right to 3,623 acre feet of ground water in the nontributary Denver aquifer located beneath the Property, subject to modification by the Court under its retained jurisdiction.

B. The 3,265 acre feet of Applicant's Denver aquifer water which is reserved for replacement of post-pumping depletions may be pumped only pursuant to the provisions herein regarding such replacement. The remaining 358 acre feet of Applicant's Denver aquifer water rights may be pumped at a rate not to exceed 3.6 acre feet annually except pursuant to the "water banking" procedures of Rule 8.A. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, as set forth in ¶ 33 below.

C. Applicant reserves the right to substitute a source of water other than the reserved 3,265 acre feet of Denver aquifer water for replacement of post-pumping depletions, under the Court's retained jurisdiction, after all required notices have been made. If that occurs, the 3,265 acre feet of reserved Denver aquifer water, or such portion thereof which has not already been used for replacement purposes, may be released from that reservation, and may thereafter be used for any decreed, non-speculative use.

31. Adjudication of Arapahoe aquifer water rights.

A. Applicant is granted a vested right to 1,659 acre feet of ground water in the nontributary Arapahoe aquifer located underneath the Property, subject to modification by the Court under its retained jurisdiction. The Arapahoe aquifer water rights are decreed for all beneficial uses, except municipal uses.

B. The Arapahoe aquifer water may be pumped at an annual rate not to exceed 16.6 acre feet annually, except pursuant to Rule 8.A. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, as set forth in ¶ 33 below.

32. Adjudication of Laramie-Fox Hills water rights.

A. Applicant is granted a vested right to 1,225 acre feet of ground water in the nontributary Laramie-Fox Hill aquifer located beneath the Property, subject to modification by the Court under its retained jurisdiction.

B. The Laramie-Fox Hills water may be pumped at a rate not to exceed 12.3 acre feet per year, except pursuant to Rule 8.A. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, as set forth in ¶ 33 below.

33. “Water Banking.” The “water banking” procedures of Rule 8.A. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, cannot be applied to the Dawson aquifer water, which may be pumped only pursuant to a court-approved plan for augmentation, or to that portion of the Denver aquifer water which is reserved for replacement of use and for replacement of post-pumping depletions as described above, which precludes water banking. However, water banking procedures do apply to the “unreserved” 358 acre feet of the Denver aquifer and to all of the water in the Arapahoe and Laramie-Fox Hills aquifers. The allowed annual amount of withdrawal from those aquifers may exceed the allowed average annual amount of withdrawal for that aquifer as long as the total volume of water withdrawn from the well or wells does not exceed the product of the number of years since the date of entry of this decree, multiplied by the allowed average annual amount of withdrawal.

34. Decreed Uses. The ground water rights decreed herein are approved for all beneficial uses other than municipal uses, except that the 3,265 acre feet of Denver aquifer water reserved for replacement of post-pumping depletions are approved only for augmentation use pursuant to this decree until such time as they are released from dedication pursuant to ¶ 30.c of this decree.

35. Vested Water Rights. The water rights decreed herein are vested water rights, and no applications for findings of diligence are required. Pursuant to C.R.S. §37-92-305(11), the Court will retain jurisdiction to finally determine the amount of water available for appropriation, based on site-specific data when it becomes available, and to adjust upward or downward as appropriate the amount available for withdrawal from each aquifer. The Applicant need not

refile, republish, or otherwise amend this decree to request or obtain such adjustment.

36. Approval of Plan for Augmentation. The plan for augmentation described herein is approved. Depletions caused by pumping water from the Dawson aquifer shall be replaced as provided and decreed herein. Annual withdrawals from the Dawson aquifer shall not exceed 0.8 acre feet (260,681 gallons) per well, nor more than 12.0 acre feet total. The State or Division Engineer shall curtail the pumping of more than those amounts from the Dawson aquifer absent prior modification of this plan for augmentation by amendment of this decree or court approval of an additional plan for augmentation which replaces depletions attributable to such additional pumping. The State Engineer shall also curtail all diversions, the depletions from which are not replaced in a manner to prevent injury to vested water rights or decreed conditional water rights.

37. In order to ensure replacement of depletions during the pumping period, pumping and use of the Dawson aquifer wells for any beneficial uses other than indoor residential use shall not be allowed unless ground water is also being pumped and used for indoor residential use. In order for this plan for augmentation to operate, return flows from septic systems shall at all time during pumping be in an amount sufficient to replace the amount of stream depletions.

38. Well spacing. Each of the Dawson aquifer wells to be constructed pursuant to this plan for augmentation must be used for a residence, and shall be limited to a maximum pumping rate of 15 gallons per minute.

39. Issuance of well permits. Upon submission of the required filing fee and a properly completed well permit application, the State Engineer shall issue a permit for each well approved herein, consistent with the terms of this decree and all applicable statutes and rules. The State Engineer shall identify the specific uses which can be made of the ground water 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 application or which would be inconsistent with the requirements of this decree and the plan for augmentation approved herein, or any modified decree and plan.

40. Additional provisions.

A. 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 Property. As additional wells are planned, applications for new well permits shall be filed in accordance with C.R.S. §37-90-137(10).

B. 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 which may be produced from any given aquifer through any combination of wells within the well field.

C. 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 C.R.S. § 37-90-137(10). Each well shall be equipped with a properly functioning totalizing flow meter.

D. Groundwater production shall be limited to the subject aquifers. 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.

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

F. 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.

41. Retained jurisdiction provisions regarding quantity of water appropriated.

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of ground water available in each aquifer under the Property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to CRS §37-92-305(11). Within 60 days after completion of any well decreed herein or any test hole(s) which fully penetrate any of the Denver Basin aquifers, Applicant or any successor in interest shall geophysically log such well and shall serve copies of such log(s) upon the State Engineer.

B. At such time as adequate data is available, any person, including the State Engineer, may invoke the Court's retained jurisdiction to make a Final Determination of Water Right as to the quantities of water available for appropriation 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 the Final Determination of Water Right, together with proposed decretal language. 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 findings. The State Engineer shall submit such finding to the Water Court and the Applicant.

C. If no protest to such finding is made within 60 days, this Court shall incorporate by entry of an Amended Decree such 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. If the Final Determination for the Dawson aquifer reveals that there is less than 3,600 acre feet in that aquifer, or that there is less than 3,265 acre feet of water in the Denver aquifer, then at the time of the Final Determination, the plan for augmentation shall be modified to provide that during the scheduled 300 years of the plan for augmentation, total withdrawals from the Dawson will not exceed the total amount which is “finally determined,” and that the amount of water necessary to replace post-pumping depletions, including the two percent relinquishment requirement, does not exceed the amount of “finally determined” Denver aquifer water.

42. Retained jurisdiction regarding consideration of injury.

A. Pursuant to C.R.S. §37-92-304(6), C.R.S., the court shall retain perpetual 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. The court shall retain continuing jurisdiction for so long as the Applicant is required to replace depletions to the South Platte River stream system to determine whether the replacement of depletions only to the South Platte River stream system, with no replacements being made to the Arkansas River stream system, is causing material injury to water rights tributary to the Arkansas River stream system. Any person may invoke the Court's retained jurisdiction at any time Applicant is causing depletions (including ongoing post-pumping depletions) to the Arkansas River system and is aggregating such depletions and replacing them to the South Platte River system. The person invoking the Court's retained jurisdiction shall have the burden of establishing a *prima facie* case that Applicant's failure to replace depletions to the Arkansas River system is causing injury to water rights owned by the person invoking the Court's retained jurisdiction, except that the State and Division Engineers may invoke the Court's retained jurisdiction by establishing a *prima facie* case that injury is occurring to any vested or conditionally decreed water rights. Applicant shall retain the ultimate burden of proving that no injury is occurring, or shall propose terms and conditions to prevent such injury. Among any other remedies it may impose, the Court may require that Applicant replace depletions to the Arkansas River system.

B. The City of Colorado Springs owns senior water rights in the Arkansas River system that may be injured by the operation of this decree wherein depletions to the Arkansas River system will not be made to the Arkansas River system, but rather will be replaced to the South Platte River System. Colorado Springs reserves the right to claim that the cumulative impacts of this and other similar decrees constitute injury to its senior Arkansas River system water rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by so doing, Colorado Springs does not waive its right to claim injury and to seek relief in the future pursuant to this paragraph, and Applicant does not waive any rights it has to claim that no injury is occurring, or that any such injury is *de minimus*.

43. Retained jurisdiction regarding substitution of replacement source for post-pumping depletions. The Court shall retain jurisdiction in perpetuity over the issue whether Applicant may substitute a different source of water in place of the 3,265 acre feet of Denver aquifer water for replacement of post-pumping depletions.

44. Retained jurisdiction regarding compliance with plan for augmentation. The Court also retains perpetual jurisdiction for the purposes of determining compliance with the terms of the augmentation plan decreed herein, and to reconsider the post-pumping depletion replacement obligation for the Dawson aquifer withdrawals and the reservation of 3,265 acre feet of the Denver 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 or to modify the decree shall set forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to effect 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 thereupon 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.

Dated: November 28, 2016

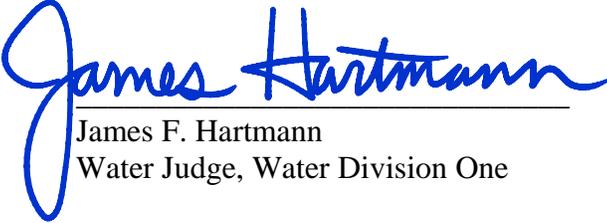


John Cowan  
Water Referee  
Water Division 1

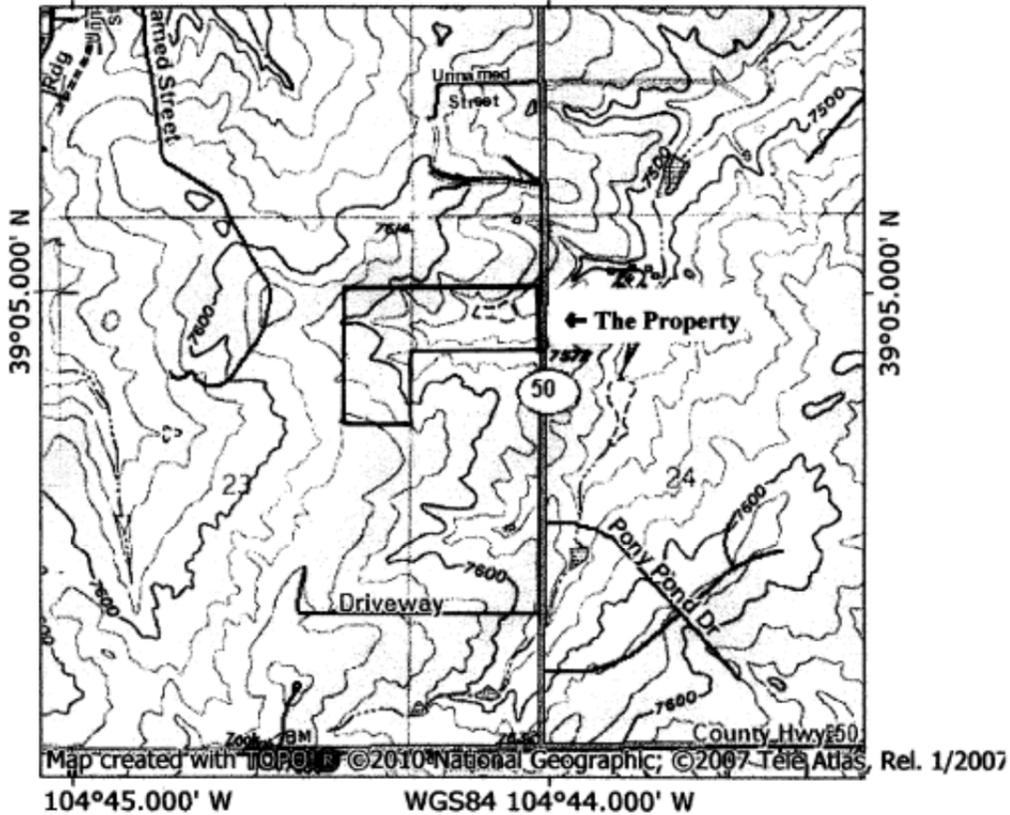
**NO PROTEST WAS FILED IN THIS MATTER. THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS MADE THE JUDGMENT AND DECREE OF THIS COURT.**

Dated: December 20, 2016.

BY THE COURT:

  
James F. Hartmann  
Water Judge, Water Division One

TOPO! map printed on 11/27/15 from "Untitled.tpo"  
104°45.000' W WGS84 104°44.000' W



**FIGURE 1**  
Part of Sections 23 and 24,  
T. 11 S., R. 66 W., 6<sup>th</sup> P.M.