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DISTRICT COURT WATER DIV. NO. 2
STATE OF COLORADO

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DISTRICT COURT, WATER DIVISION 1, COLORADO

Court Address:
P.O. Box 2038
Greeley, CO 80632

**CONCERNING WATER RIGHTS OF:
EDWARD A. EDWARDS,**

IN EL PASO COUNTY.

DISTRICT COURT, WATER DIVISION 2, COLORADO

Court Address:
320 West 10th Street, No. 203
Pueblo, CO 81003

**CONCERNING WATER RIGHTS OF:
EDWARD A. EDWARDS,
Applicant,**

IN EL PASO COUNTY.

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▲ COURT USE ONLY ▲

Case Number: 2004-CW-336

▲ COURT USE ONLY ▲

Case Number: 2004-CW-119

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE,
AND DECREE OF THE COURT**

THIS MATTER has come before the Court upon the application of Edward A. Edwards for a determination of all ground /water rights in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying Applicant's property in El Paso County and for approval of an augmentation plan for withdrawal of not-nontributary Dawson aquifer ground water.

THE COURT, having considered the pleadings, the stipulations of the parties, and the evidence presented, and being fully advised in the premises, enters the following Findings of Fact, Conclusions of Law, and Ruling and Decree:

FINDINGS OF FACT

1. **Name and Address of Applicant:**

Mr. Ed Edwards
7360 Shoup Road
Colorado Springs, Colorado 80908 [719-495-7333]

2. **History of the Case:**

A. Applications for a determination of ground water rights underlying Applicant's property and for an augmentation plan for withdrawal of not-nontributary Dawson aquifer ground water under Applicant's property were filed with the Water Courts in both Water Division 1 and Water Division 2 on December 29, 2004. Filing in both Water Divisions was necessary for notice purposes. By Order of the Panel on Multidistrict Litigation, dated April 27, 2005, the application in Water Division 1, Case No. 04-CW-336, was transferred to Water Division 2 and consolidated with Case No. 04-CW-119 in Water Division 2. (Applications hereafter referred to singularly as the "application.")

B. There was one entity other than the Applicant with a recorded interest in the overlying land, and such entity was served with timely notice and a copy of the application in this matter. Accordingly, Applicant certifies compliance with § 37-92-302(2), C.R.S.

C. A statement of opposition was filed by the City of Colorado Springs. Such opposing party has consented to the entry of a ruling and decree in this matter, pursuant to formal Stipulation filed with the Court, dated as indicated below. No other statements of opposition or motions to intervene in this matter have been filed, and the time period for filing same has expired.

3. **Property Location:** The overlying property which is the subject of this application is 44.4 acres, more or less, located in the W ½ of the SE ¼ of Section 8, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, as shown on the General Location Map, **Exhibit A** hereto, and described in **Exhibit B** hereto, Property Legal Description (hereafter "Applicant's Property" or "Property").

4. **Purposes of the Application:**

A. The purposes for filing the application in this matter were (1) to adjudicate the Denver Basin aquifer ground water rights underlying Applicant's Property; and (2) to adjudicate an augmentation plan to allow use of ground water from the not-nontributary Dawson aquifer underlying the Property. Such ground water is to be used to serve the water demands of nine (9) single family homes and a community clubhouse to be located on the Property, including the outdoor irrigation needs of each home. The augmentation plan approved hereinbelow applies only to Dawson aquifer withdrawals for these purposes.

B. The full development on the Property is limited to that described above. Each structure will have its own water supply well and will own the first use rights to the ground water and the obligations under the terms and conditions of the augmentation plan approved herein.

5. **Subject Matter Jurisdiction:** Timely and adequate notice of the pendency of these proceedings has been given 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.

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

A. Applicant seeks a decree for rights to all ground water recoverable from the non-tributary Dawson and Denver aquifers and the nontributary Arapahoe and Laramie-Fox Hills aquifers underlying Applicant's Property in El Paso County, Colorado. The Property which overlies the subject ground water consists of 44.4 acres, more or less, as described above and in the Property Legal Description, Exhibit B hereto.

B. Applicant 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. No part of such lands lies within a designated ground water basin.

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

A. The specific locations for the initial wells to be constructed under this ruling and decree have not been determined at this time. Applicant has 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 as indicated in this ruling and decree, in accordance with § 37-90-137(10), C.R.S.

B. Applicant or his successors shall request a well permit from the Division of Water Resources to construct each such well to be located on Applicant's Property at such time as Applicant foresees the need for such well. Such well permit shall be granted pursuant to the terms and conditions of this ruling and decree.

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

A. Pursuant to the Denver Basin Rules, the ground water in the Arapahoe and Laramie-Fox Hills aquifers underlying Applicant's Property is classified as nontributary ground water, as defined in § 37-90-103(10.5), C.R.S. Accordingly, Applicant may withdraw all such ground water, but is required to relinquish two percent (2%) of withdrawals of such ground water to the stream system. Such relinquishment may be made through system losses, direct discharge, or any other method approved by the State Engineer.

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. Withdrawals of such ground water require judicial approval of a plan for augmentation for the replacement to the stream system of actual modeled stream depletions (Dawson aquifer) or a total of four percent (4%) of the amount withdrawn annually (Denver aquifer).

C. Such an augmentation plan for Dawson aquifer withdrawals is contained in this ruling and decree. No plan for augmentation for Denver aquifer ground water was sought in the application, and none is granted hereby. Applicant or his successors must make separate application to the Water Court for approval of such Denver aquifer augmentation plan.

D. 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>Ave. Ann. Amounts</u>
Dawson	44.4	335 Ft.	20 %	29.7 AF
Denver	44.4	385 Ft.	17 %	29.1 AF
Arapahoe	44.4	255 Ft.	17 %	19.2 AF
Laramie-Fox Hills	44.4	190 Ft.	15 %	12.7 AF

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 Fact, issued on March 24, 2005, in this case.

9. 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>Withdrawal Rate</u>	<u>Well Depth (Avg.)</u>
Dawson	25 gpm	860 feet
Denver	40 gpm	1780 feet
Arapahoe	250 gpm	2340 feet
Laramie-Fox Hills	100 gpm	2910 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. 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.

10. Final Average Annual Amounts of Withdrawal:

A. Final determinations of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicant from each aquifer will be made pursuant to the retained jurisdiction of this Court, as described in Paragraph 32 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.

11. 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. Applicant 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 Applicant and satisfactory to the State Engineer, so long as Applicant 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.

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

A. Ground water in the Dawson and Denver aquifers at this location has been determined by the State Engineer 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 replacement for stream depletions caused by such withdrawals. Such an augmentation plan for Dawson aquifer withdrawals is adjudicated in this ruling and decree, below.

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

A. **Well Locations:** Applicant proposes to construct its 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. Applicant expressly waives the 600-foot well spacing requirement for wells to be constructed on the Property.

B. **Additional Wells:** In addition to the initial well(s) to be permitted and constructed pursuant to this ruling and decree, Applicant 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 Property. As additional wells are planned or needed, applications shall be filed in accordance with § 37-90-137(10), C.R.S. In considering applications for permits for additional wells to withdraw the ground water adjudicated herein, the State Engineer shall be bound by this ruling and decree and shall issue said permits in accordance with provisions of § 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, Applicant or his successors 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, Applicant 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.

14. 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 3. 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 stream depletions resulting from the use of the water, and for augmentation purposes.

15. **Conditions:** For each well constructed pursuant to this decree, Applicant 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. Applicant or its successors 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 upon request.

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. Applicant 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.

**APPROVAL OF PLAN FOR AUGMENTATION FOR
DAWSON AQUIFER WITHDRAWALS:**

16. **Structures to be Augmented:**

A. The Property (44.4 acres, more or less, described at **Exhibit B**) will be developed to include nine (9) single family residences and a community clubhouse. It is anticipated that a single well into the Dawson aquifer will be constructed to serve the domestic, stockwatering, and outdoor irrigation needs for each of the nine residences and the clubhouse (10 wells). The locations of the wells to be completed on each Lot and at the clubhouse has not yet been fixed.

B. Each residence and the clubhouse shall be equipped with a non-evaporative wastewater disposal system (septic system).

C. Well permit applications for the wells to be constructed pursuant to this decree will be applied for at such time as Applicant or his successors are prepared to construct such wells 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 or his successors may apply for a new well permit for such well at the time Applicant or his successors are ready to construct such well, and the State Engineer shall grant such permit as allowed by § 37-90-137, C.R.S., and pursuant to the terms of the decree.

17. **Description of Property to be Served:** The well(s) which will withdraw ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers underlying the land described and shown on the General Location Map, **Exhibit A**, will be located on Applicant's Property in Section 8, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, Colorado.

18. **Water Rights to be Used for Augmentation:**

A. Source of Augmentation Water.

(1) The augmentation sources for this plan are not-nontributary ground water withdrawn from the Dawson aquifer and nontributary ground water in the Arapahoe and Laramie-Fox Hills aquifers owned by Applicant (as well as other sources that may be approved by the State Engineer or the Water Court). Such ground water underlies the Property described herein. **See General Location Map, Exhibit A.**

(2) Such sources may be available by direct discharge to the stream, or by percolation and return to the stream system after in-residence use or land application.

(3) For purposes of this plan for augmentation, the average annual amounts of ground water available for well use and augmentation purposes are as described below. Withdrawals not exceeding these average annual amounts will ensure the development of a 300-year supply. All such ground water has been decreed simultaneously with the approval of this augmentation plan and all such ground water underlies Applicant's Property:

<u>Aquifer</u>	<u>Avg. Ann. Amt.</u>
Dawson	9.9 AF
Arapahoe	6.4 AF
Laramie-Fox Hills	4.2 AF

B. Use and Estimated Demand. Upon full build-out of the Property, total withdrawals from the Dawson aquifer, employing standard residential and lawn irrigation water use limitations, will be approximately 9.9 acre-feet per year, based on the limitations set forth for use below. Such limitations shall be included in this ruling and reflected on the accounting form adopted herein.

Summary of Annual Use for Each Structure

<u>Type of Use</u>	<u>Amount</u>	<u>No. Structures</u>	<u>Total Use</u>
In-House Use	0.30	9	2.70 AF
Irrigation Use	0.52	9	4.70 AF
Stock Watering	0.02	50	1.00 AF
Clubhouse			
(Total-Facility)	1.50	1	<u>1.50 AF</u>
Total			9.90 AF

19. Consumptive Use and Return Flows:

A. **Consumptive Use.** Acceptable assumptions have been made that a maximum of 10% of the water used in-residence or in-facility will be consumed. Of the water used for lawn, garden, and/or recreational area irrigation purposes, an acceptable assumption has been made that 85% of such water will be consumed.

B. **Generated Return Flows.**

(1) Employing the above assumptions, the estimated total combined return flows from use of water by the development as a whole will be over four (4) acre-feet per year, calculated as follows:

<u>Use</u>	<u>Amounts Used (AF/Yr.)</u>	<u>Return Flow %</u>	<u>Generated Returns (AF/Yr.)</u>
In-Residence Use (0.3 AF x 9)	2.70	90 %	2.43
Residential Irrigation (0.52 x 9)	4.70	15 %	0.70
Stockwatering (.02 x 50)	1.00	-0 %	-0-
Clubhouse-In Facility	1.00	90 %	0.90
Clubhouse-Irrigation	<u>0.50</u>	15 %	<u>0.08</u>
Total	9.90		4.11

Note: Residential and Clubhouse lawn irrigation return flows are not needed as an augmentation source because return flows from in-house and in-facility uses are more than adequate to replace modeled stream depletions. Accordingly, lawn irrigation return flows are not included in the accounting form for this plan for augmentation.

(2) The above figures are illustrative, based on an average annual use by the development of 9.9 acre-feet. Actual use may be less than illustrated above; nevertheless, aggregate return flow amounts will be calculated and reported on an approved accounting form, similar in substance to the one attached as **Exhibit C** hereto.

20. Stream System Modeled Depletions:

A. **Pumping From the Dawson Aquifer:** The Applicant's development will use non-tributary ground water from the Dawson aquifer as its supply under this plan for augmentation.

B. **Stream System Affected:** Monument Creek and Cherry Creek and their tributaries. See Table II, Stream Depletion Table (as % q/Q), **Exhibit D**. In this case, Applicant has obtained approval to replace stream depletions associated with both streams with replacement water in Monument Creek.

C. **Actual stream depletions caused by pumping from the Dawson aquifer must be fully augmented in quantity.** Actual stream depletions caused by Dawson aquifer pumping and the post-pumping effects of such pumping are addressed by the plan for augmentation approved in this case.

21. **Replacement of Actual Modeled Stream Depletions During Pumping Period:**

A. Generated Return Flows.

(1) Based on the above approved assumptions, the development on the Property could generate aggregate return flows of about 4.1 acre-feet per year, aggregating return flows from all uses, as shown in the table in Paragraph 18 above. The maximum annual amount of replacement water required to satisfy augmentation requirements of Dawson aquifer pumping, based on approved numeric modeling techniques and assuming pumping of 300 years, is as follows:

<u>Maximum Amount Pumped/Year:</u>	9.9 AF
<u>Maximum Replacement Requirement:</u>	2.3 AF

(2) Generated return flows from in-house and in-clubhouse uses only will exceed the aggregate replacement amount required by over one acre-foot per year, as follows:

In-House (9 Homes) Generated Returns	.....	2.43 AF
Clubhouse Use Generated Returns	.....	<u>0.90</u> AF
Total Generated Returns	.....	3.33 AF
Maximum Modeled Stream Depletion	.....	<u>2.33</u> AF
Minimum Excess Return Flows	.....	1.00 AF

B. Availability of Generated Return Flows as an Augmentation Source.

(1) Return flows generated are available as an augmentation source only if it can be shown that such flows actually accrue to the stream system. It is a technically and hydrologically acceptable assumption that if a continuous shallow water table exists at the location of return flow generation, then such flows will travel with the shallow water to the stream system, thereby accruing to such stream system.

(2) In the present case, given the known geology at this location and based upon other similarly situated developments in close proximity to this property, it is likely that a continuous shallow water table will exist as a result of the development at this location. The Court finds such assumption acceptable in this instance.

(3) Therefore, the Court finds it probable that the return flows at the location of the Applicant's Property will accrue to the Monument Creek stream system and will serve as an adequate augmentation source for the augmentation plan approved herein.

22. **Replacement of Depletions During the Post-Pumping Period:**

A. Post-Pumping Depletive Impact. No finding is made herein whether or not the impact of post-pumping stream depletions are de minimis and non-injurious, and need not be replaced under § 37-90-137(9), C.R.S. Applicant has made provisions for replacing such modeled stream depletions, nevertheless, in this ruling and decree.

B. **Reservation of Arapahoe and Laramie-Fox Hills Aquifer Nontributary Ground Water.** Applicant has reserved for post-pumping replacement purposes sufficient nontributary ground water in the Arapahoe and Laramie-Fox Hills aquifers underlying the Property, as such ground water is decreed in this case. Specifically, such reserved amounts are as follows:

Arapahoe Aquifer	1725 acre-feet
Laramie-Fox Hills Aquifer	<u>1245</u> acre-feet (Total amount minus 2% relinquishment.)
Total	2970 acre-feet

Such reserved amount is equal to the entire amount pumped over the projected 300 year period (9.9 AF/Yr. x 300 Yrs. = 2970 AF).

C. Applicant or its successors may be required to construct Arapahoe and/or a Laramie-Fox Hills aquifer wells to access such sources to satisfy a portion of its post-pumping obligations herein. Such reserved quantity is sufficient to replace all post-pumping stream depletions under this plan for augmentation.

D. **Additional and/or Alternative Post-Pumping Augmentation Sources.**

(1) To satisfy post-pumping replacement obligations, if any, upon application to this Court, Applicant or its successors may use other legally available augmentation supplies which are sufficient in quantity, time, and place to replace injurious stream depletions.

(2) Notice of acquisition of sources other than and in addition to the nontributary Arapahoe and Laramie-Fox Hills aquifer ground water reserved for such purpose hereby will be given to the parties hereto, who may object to such source or sources under the Court's retained jurisdiction in this case. The Court retains jurisdiction in this matter to determine if such acquired supply source(s) are adequate.

E. **Continuation of Post-Pumping Replacement Accounting.**

(1) Accounting for post-pumping stream depletions shall continue for the shortest of the following periods: (a) The period provided by statute; (b) The period specified by any subsequent change in statute; (c) The period required by this Court under its retained jurisdiction; (d) The period determined by the State Engineer; or (e) The period as established by Colorado Appellate or Supreme Court pronouncements. Should Applicant's obligation hereunder to account for and replace such post-pumping stream depletions be abrogated for any reason pursuant to the retained jurisdiction of the Court, then the reserved Arapahoe and Laramie-Fox Hills aquifer ground water shall be free from all reservations and may be used or conveyed by its owner without restriction.

(2) Post-pumping replacement shall be made in amounts consistent with the modeled stream depletions, as indicated on the Table 1, **Exhibit D** hereto.

(3) In the interim, this ruling and decree creates a covenant running with the Applicant's land which binds Applicant or its successors to perform the post-pumping obligations set forth herein.

23. Administration of Plan for Augmentation:

A. **Accounting and Reporting.** The Applicant shall maintain records showing on an annual basis the metered withdrawals from the subject Dawson aquifer well(s), including any replacement or additional wells thereto, on the accounting form shown at **Exhibit C** hereto. The completed accounting form shall be submitted to the Water Division 2 Engineer annually.

B. **Meters.** Each well subject to this decree shall be equipped with a properly installed and maintained totalizing flow meter.

C. **Limitations.** Restrictions are imposed on the acreage under irrigation. The amount of irrigated land on the Property shall not exceed approximately 0.2 acres per residential homesite, or a total of 1.8 acres per year.

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

CONCLUSIONS OF LAW

24. 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 Applicant's 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.

25. 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 aquifer ground water decreed hereby may be withdrawn only pursuant to the augmentation plan, adjudicated and approved herein. No such plan is adjudicated for withdrawal of not-nontributary Denver aquifer ground water.

26. Return flows from in-residence and irrigation uses, as contemplated herein, are an acceptable source for replacement of modeled stream depletions, so long as the quantity of such projected return flows meets or exceeds the modeled stream depletions, as shown above and in **Exhibit D** hereto.

27. 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.

28. **Adequacy of Augmentation Plan:**

A. The augmentation plan for the replacement of modeled stream depletions caused by withdrawals of not-nontributary Dawson aquifer ground water is adequate to prevent injury during the period of pumping operations. The plan satisfies the requirements of § 37-90-137(9)(c), C.R.S.

B. Whether post-pumping depletions are injurious is a question of fact for determination by the trial court. Danielson v. Castle Meadows I, 791 P.2d 1106 (Colo. 1990); State Engineer v. Castle Meadows, 856 P.2d 496 (Colo. 1993).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

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

30. 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.

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

A. The Applicant may withdraw the not-nontributary and 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 well 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 used for all beneficial purposes listed hereinabove.

32. **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 Applicant's 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), Applicant or any successor in interest to these ground water rights shall serve copies of such log(s) upon the State Engineer.

B. 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 Applicant.

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 pursuant to § 37-92-305(11), C.R.S.

33. Applicant or its successors may seek approval to recapture and reuse excess return flows of nontributary or fully augmented not-nontributary ground water subject to this ruling and decree. A separate application must be made therefor.

34. Applicant has complied with all requirements and met all standards and burdens of proof, including but not limited to the requirements contained in §§ 37-90-137(9)(c), 37-90-103(9), 37-92-302, 37-92-304(6), 37-92-305(1),(2),(3),(4),(5),(6), and (8), C.R.S., to adjudicate this plan for augmentation. The plan for augmentation described in the Findings of Fact, above, is hereby approved, confirmed, and adjudicated, including and subject to the terms and conditions specified in the foregoing Findings of Fact.

35. No owners of or persons entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by the operation of the plan for augmentation as decreed herein.

36. Upon entry of this decree of the Water Court, Applicant may have the decree recorded in the real property records of El Paso County.

37. **Retained Jurisdiction as to Augmentation Plan Adjudication:**

A. The Court retains jurisdiction over this matter for the purpose of determining compliance with the terms and conditions of the augmentation plan decreed hereby. The Court shall retain jurisdiction so long as depletions occur to the South Platte River system in order to reconsider whether replacement of depletions only to the Arkansas River system is causing material injury to vested water rights tributary to the South Platte River.

B. The Court retains jurisdiction for a period necessary to protect against injury to other water rights. Once it has been shown that return flows are occurring and are adequate in amount, then the Applicant or his successors may ask the Court, after adequate notice, to terminate its retained jurisdiction over this decree.

C. Any party or entity invoking such retained jurisdiction must make a prima facie case that injury to its water rights has been actually caused by Applicant's withdrawals or operation of this plan for augmentation.

D. The Court retains jurisdiction to entertain a motion to relieve Applicant or its successors from the obligation to perform post-pumping replacement of stream depletions caused by the withdrawals of Dawson aquifer ground water hereunder as specified in this ruling and decree.

E. The Court retains jurisdiction to allow Applicant or its successors to file a separate application for the recapture and reuse of return flows which can be shown to be in excess of the amounts needed for replacement purposes under this plan for augmentation, if any.

38. Pursuant to statute, the State Engineer is required to curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

RULING ENTERED this 7th day of October, 2005.

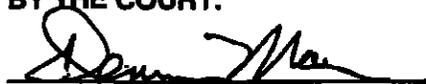

Mardell R. DiDomenico
Water Referee
Water Division 2, Colorado

THE COURT DOTH 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.

BY THE COURT:

Date: 11-2-05


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

APPROVED AS TO FORM AND CONTENT:

ROBERT E. SCHWEEN, P.C.

By: *Robert E. Schween*
Robert E. Schween, No. 12923

ATTORNEY FOR APPLICANT EDWARD A. EDWARDS

ANDERSON, DUDE & LEBEL, P.C.

By: See Stipulation dated September 1, 2005
William Kelly Dude, No. 13208
111 South Tejon, Suite 400
Colorado Springs, Colorado 80903
Telephone: 719-632-3545
Facsimile: 719-632-5452

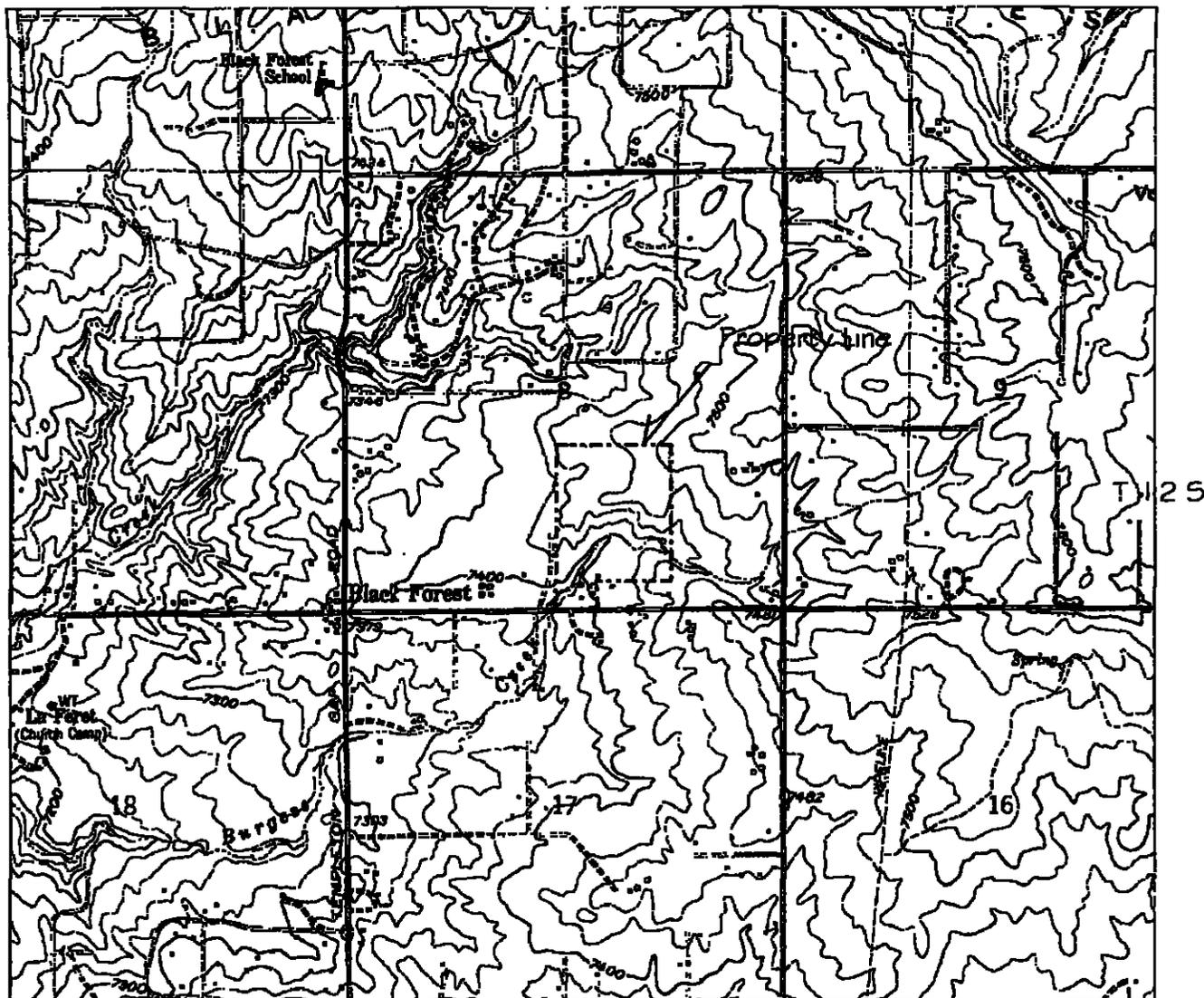
ATTORNEYS FOR OBJECTOR COLORADO SPRINGS UTILITIES

**Consolidated
Case No. 04-CW-336, Water Division 1
Case No. 04-CW-119, Water Division 2**

TABLE OF EXHIBITS

Exhibit A	General Location Map.
Exhibit B	Property Legal Description.
Exhibit C	Sample Accounting Form Showing Annual Usage and Calculated Return Flows.
Exhibit D	Table II - Stream Depletions Shown as a Percentage of Quantity Pumped.

R 65 W



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Scale 1" = 2000'

Location Map
Eagle Heights Project

Wm Curtis Wells & Co.
consulting ground water geologists

Figure 1

EXHIBIT A

Legal Description

TRACT IN W2SE4 SEC 8-12-85 AS FOLS. BEG AT PT ON
N-S C/L OF SEC 8 WHICH IS 30 FT N OF S4 COR THEREOF,
TH NLY ALG SD C/L 1853.29 FT, ANG R 89<09'23" ELY
1299.85 FT, ANG R 90<43'17" SLY 1247.98 FT, TH
S 89<22'33" W 622.03 FT, N 39<59'42" W 80.0 FT,
S 50<00'18" W 132.81 FT, TH ALG ARC OF CUR TO L
HAVING A RAD OF 330.0 FT A C/A OF 50>00'00" AN ARC
LENGTH OF 287.98 FT, S 00<00'18" W 422.97 FT.
TO PT 30.0 FT N OF S LN OF SEC 8, TH ANG R
89<22'15" WLY PARA TO S LN OF SD SEC 422.17 FT
TO POB

EXHIBIT B

Table I
Dawson Aquifer Stream Depletion Factors
Ed Edwards Property
(as % of pumping)

Yrs.	Arkansas River	South Platte River	Total	Yrs.	Arkansas River	South Platte River	Total
10	0.27	0.05	0.32	310	15.22	8.19	23.41
20	0.68	0.15	0.83	320	15.14	8.42	23.56
30	1.18	0.29	1.47	330	14.97	8.60	23.57
40	1.75	0.45	2.20	340	14.72	8.76	23.48
50	2.33	0.65	2.98	350	14.43	8.89	23.32
60	2.97	0.84	3.81	360	14.10	9.01	23.11
70	3.61	1.06	4.67	370	13.76	9.11	22.87
80	4.24	1.30	5.54	380	13.41	9.19	22.60
90	4.88	1.54	6.42	390	13.04	9.27	22.31
100	5.51	1.80	7.31	400	12.68	9.33	22.01
110	6.13	2.06	8.19	410	12.31	9.39	21.70
120	6.75	2.33	9.08	420	11.96	9.43	21.39
130	7.35	2.60	9.95	430	11.61	9.47	21.08
140	7.92	2.89	10.81	440	11.27	9.50	20.77
150	8.48	3.19	11.67	450	10.96	9.51	20.47
160	9.03	3.48	12.51	460	10.62	9.54	20.16
170	9.57	3.77	13.34	470	10.31	9.55	19.86
180	10.08	4.09	14.17	480	10.02	9.55	19.57
190	10.59	4.38	14.97	490	9.74	9.55	19.29
200	11.07	4.70	15.77	500	9.45	9.56	19.01
210	11.53	5.01	16.54	510	9.19	9.55	18.74
220	11.99	5.32	17.31	520	8.95	9.53	18.48
230	12.42	5.66	18.08	530	8.69	9.53	18.22
240	12.85	5.97	18.82	540	8.46	9.51	17.97
250	13.27	6.29	19.56	550	8.24	9.48	17.72
260	13.67	6.61	20.28	560	8.04	9.45	17.49
270	14.05	6.94	20.99	570	7.80	9.44	17.24
280	14.43	7.26	21.69	580	7.62	9.40	17.02
290	14.80	7.58	22.38	590	7.42	9.37	16.79
300	15.15	7.91	23.06	600	7.23	9.34	16.57

EXHIBIT D