

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	DATE FILED: January 30, 2022 11:48 AM CASE NUMBER: 2021CW3034
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MASON, LLC IN EL PASO COUNTY	▲ COURT USE ONLY ▲ Case No.: 21CW3034 Ctrm.: 406
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE: ADJUDICATING DENVER BASIN GROUNDWATER AND APPROVING PLAN FOR AUGMENTATION	

THIS MATTER comes before the Court on the Application filed by MASON, LLC, and having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Court makes the following findings and orders:

GENERAL FINDINGS OF FACT

1. The applicant in this case is MASON, LLC, whose address is 7702 Barnes Road, #140-58, Colorado Springs, Colorado 80922 (“Applicant”). The Applicant is the owner of the land totaling approximately 5.37 acres on which the structures sought to be augmented herein are located, and under which lies the Denver Basin groundwater described in this decree, and is the owner of the place of use where the water will be put to beneficial use.
2. The Applicant filed the Application with the Water Court for Water Division 2 on July 15, 2021. The Application was referred to the Water Referee on July 16, 2021.
3. The time for filing statements of opposition to the Application expired on the last day of September 2021. No statements of opposition were filed.
4. On July 21, 2021, the Water Court ordered publication occur in *The Gazette* within El Paso County.
5. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On August 25, 2021, proof of publication in *The Gazette* was filed with the Division 2 Water Court. All notices of the Application have been given in the manner required by law.

6. Pursuant to C.R.S. § 37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each Denver Basin aquifer with this Court on October 19, 2021, which has been considered by the Water Court in the entry of this Ruling and Decree.

7. Pursuant to C.R.S. § 37-92-302(4), the office of the Division Engineer for Water Division No. 2 filed its Consultation Report date November 23, 2021. The Water Referee issued a minute order on December 2, 2021 indicating no response to the Consultation Report was needed. The Consultation Report has been considered by the Water Court in the entry of this Ruling and Decree.

8. In accordance with the notice requirements of C.R.S. § 37-92-302(2), a Proof of Notice to Lienholder sent to Integrity Bank and Trust was filed with the Court on July 29, 2021.

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

GROUNDWATER RIGHTS

10. The Applicant requested quantification and adjudication of underground water rights for use by the Mustang Well, as may be constructed to the Denver aquifer, and additional or replacement wells associated therewith, for withdrawal of Applicant's full entitlements of supply under the plan for augmentation decreed herein. Applicant also requested quantification and adjudication of water uses from the Dawson, Arapahoe, and Laramie-Fox Hills aquifers. The following findings are made with respect to such underground water rights:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 5.37 acres located in the N1/2 of Section 4, Township 13 South, Range 65 West of the 6th P.M., and more particularly described as Lot 10, Pawnee Rancheros Filing No. 2, County of El Paso, State of Colorado and referred to as 8330 Mustang Place, Colorado Springs, Colorado 80908 ("Applicant's Property"). Applicant intends to subdivide the property into two lots. All groundwater adjudicated herein shall be withdrawn from the overlying land.

12. There is an existing domestic well with Division of Water Resources Permit No. 131880 ("Mustang Well"). The Mustang Well is drilled to a total depth of 350 feet to the Denver aquifer. Upon approval of this Plan for augmentation, this well will be re-permitted to operate pursuant to the herein Plan for augmentation. Applicant is awarded the vested right to use Mustang Well, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Denver aquifer pursuant to the Plan for augmentation decreed herein.

13. Of the statutorily described Denver Basin aquifers, the Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Dawson Denver, and Arapahoe aquifers underlying the Applicant's Property contain non-tributary water, while the water of the Laramie-Fox Hills aquifer underlying the Applicant's Property is tributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant's Property is as follows:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre-feet)	Annual Avg. Withdrawal 100 Years (Acre-feet)	Annual Avg. Withdrawal 300 Years (Acre-feet)
Dawson (NNT)	70	75	0.75	0.25
Denver (NNT)	310	283	2.83	0.94
Arapahoe (NNT)	235	215	2.15	0.72
Laramie Fox Hills (NT)	190	153	1.53	0.51

14. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirements for wells in the Dawson aquifer require the replacement to the affected stream system of actual stream depletions on an annual basis. As the Applicant's Property is located more than one mile from any point of contact with a surface stream, and pursuant to C.R.S. § 37-90-137(9)(c.5)(I), depletions from wells on the property pumping from the Denver or Arapahoe aquifers shall provide for replacement to affected stream systems of a total amount of water equal to four (4) percent of the amount of water pumped on an annual basis, and such additional amounts as may be required pursuant to C.R.S. § 37-90-137(9)(c.5). Applicant shall not be entitled to construct a well or use water from the non-tributary Dawson, Denver, or Arapahoe aquifers except pursuant to an approved augmentation plan in accordance with C.R.S. § 37-90-137(9)(c.5), including as decreed herein as concerns the Denver aquifer.

15. Subject to the herein decree requirements, Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts can be withdrawn over the 100-year life for the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or based upon Applicant's water needs, provided withdrawals during such longer period are in compliance with the augmentation requirements of this decree. This decree describes a pumping period of 300-years as to the Dawson aquifer, as required by El Paso County, Colorado Land Development Code Section 8.4.7(C)(1). The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, are determined and set forth in Paragraph 13, above, based upon the October 19, 2021 Office of the State Engineer Determination of Facts issued in this case as described in Paragraph 6.

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

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

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

PLAN FOR AUGMENTATION

19. The structures to be augmented are the Mustang Well and one other well constructed to the not-nontributary Denver aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith ("Mustang Wells").

20. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation obligation for Mustang Wells requires the replacement of four (4) percent of the amount withdrawn on an annual basis. The water rights to be used for augmentation during pumping are the

septic system return flows of the not-nontributary Mustang Wells to be pumped as set forth in this Plan for augmentation. The water rights to be used for augmentation after pumping are Applicant's nontributary water rights in the Laramie-Fox Hills aquifer reserved herein. Applicant shall provide for the augmentation of stream depletions caused by pumping the Mustang Wells as approved herein. Water use criteria is as follows:

A. Use: Mustang Wells will pump a maximum of 0.52 acre-feet of water per year from the Denver aquifer with each lot limited to pumping a maximum of 0.26 acre-feet per year. Indoor use will utilize up to 0.25 acre-feet of water per year per residence, with the limited remaining water available for other uses on the Applicant's Property, including, irrigation of lawn and garden and the watering of livestock. The foregoing figures assume the use of one individual well and septic system per lot, with resulting return flows from each.

B. Depletions: Pursuant to C.R.S. § 37-90-137(9)(c.5)(C), replacement obligations for withdrawal from the Denver aquifer in this area requires the replacement of four (4) percent of the amount of water withdrawn on an annual basis. With total pumping of 0.52 acre-feet per year, four percent replacement annually amounts to 0.021 acre-feet.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. § 37-90-137(9)(c.5), Applicant is required to replace four (4) percent of the amount of water withdrawn on an annual basis from the Mustang Wells. Applicant has shown that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is estimated at 10% per year per residence. As such, at the household indoor use rate of 0.25 acre-feet per year, 0.225 acre-feet is replaced to the stream system per year per lot. Therefore, the total annual replacement from both lots amounts to 0.45 acre-feet. Thus, during pumping, total maximum annual replacement requirement of 0.021 acre-feet will be adequately augmented.

D. Augmentation of Post Pumping Depletions: This Plan for augmentation shall have a pumping period of a minimum of 300 years. For the replacement of post-pumping depletions which may be associated with the use of the Mustang Wells, Applicant will reserve 115 acre-feet of water from the nontributary Laramie-Fox Hills aquifer. The amount of nontributary Laramie-Fox Hills groundwater reserved may be reduced as may be determined through this Court's retained jurisdiction as described in this decree. If the Court, by order, reduces the Applicant's obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post

pumping depletions will be noninjurious. Pursuant to C.R.S. § 37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed.

E. Additional or Alternative Sources. Pursuant to C.R.S. § 37-92-305(8), the Court may authorize water from additional and alternative sources to be used for replacement in this Plan for augmentation if such sources are decreed or lawfully available for such use. This paragraph sets forth the procedures under which such additional and/or alternative sources may be used in this Plan for augmentation. In order to add additional and/or alternative sources to this Plan for augmentation, the following procedures must be followed. These procedures are adequate to prevent injury to other water rights that might otherwise result from the addition of these sources to this Plan for augmentation.

i. Additional Water Rights Separately Decreed or Lawfully Available for Augmentation Use. If a water right is decreed or lawfully available for augmentation use and not already approved for such use under this decree, the Applicant shall give written Notice of Use of Water Right for Augmentation (“Notice”) to the Court and the Division Engineer, which shall describe: (1) the water right by name and decree, if any; (2) the annual and monthly amount of water available to the Applicant from the water right; (3) the manner by which the water will be used to replace out-of-priority depletions in time, location and amount; (4) the date of initial use of the water in this plan for augmentation; (5) the duration of use of the water in this Plan for augmentation; (6) evidence that the claimed amount of water is available for use in this Plan for augmentation and will not be used by another person; and (7) the manner in which the Applicant will account for use of the water in this Plan for augmentation. The Notice shall also specifically include a request that the Court enter an Order either affirming or denying the Applicant’s proposal, and that said Order be attached to this decree.

ii. Objection to Use of New Source. If any person, including the Division Engineer, wishes to object to the addition of the noticed water rights to this Plan for augmentation, a written objection shall be filed with the Court within sixty-three (63) days after the date the Notice was given by the Applicant. If no objection is so filed, the Court shall promptly enter an Order affirming the Applicant’s immediate use of the noticed water rights. If an objection is so filed, then the Applicant may not use the noticed water rights until the Court has determined whether and under what terms and conditions the water rights may be used in this plan.

iii. Hearing on Use of New Source. Where an objection has been filed to the use of a noticed water right in this Plan for augmentation, the Court shall promptly schedule a hearing to determine whether and under what terms and conditions the water right may be used in this Plan for augmentation. The Court shall conduct whatever proceedings are needed to appropriately address and resolve the disputed issues. At such hearing, the Court shall impose such terms and conditions as necessary to prevent injury to vested water rights and decreed conditional rights, including a period of retained jurisdiction for the water right. Applicant shall have the burden of proof that the use of

any noticed water right will not cause injury to other water users.

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

22. Applicant or its successors shall be required to begin replacement of post-pumping depletions by either constructing and initiating pumping of a Laramie-Fox Hills well or utilization of a new source of water that may have been added pursuant to Paragraph 20.E. above, when either: (i) the absolute total amount of water available to be withdrawn under the Plan for augmentation decreed herein has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Mustang Wells have permanently ceased, (iii) a period of 10 consecutive years where no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

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

24. The term of this augmentation plan is for a minimum of 300 years, however, the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated to such well or wells is not exceeded.

25. Consideration has been given to the depletions from Applicant's use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicant, and the existence, if any, of injury to any owner of or person entitled to use water under a vested water right.

26. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

33. The Applicant's request for approval of a Plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this Plan for augmentation will permit the uninterrupted diversions from the Mustang Wells without adversely affecting any other vested water rights in the Arkansas River or its

tributaries and when curtailment would otherwise be required to meet a valid senior call for water. C.R.S. §§ 37-92-305(3), (5), and (8).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

34. All of the foregoing Findings of Fact and Conclusions of Law are incorporated herein by reference, and are considered to be a part of this decretal portion as though set forth in full.

35. The Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for augmentation filed by the Applicant is approved, subject to the terms of this decree.

A. Applicant is awarded a vested right to 75 acre-feet of groundwater from the not-nontributary Dawson aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. However, none of the not-nontributary Dawson aquifer water decreed herein shall be withdrawn for any purpose except pursuant to a separate court-approved Plan for augmentation authorizing the pumping of such amount.

B. Applicant is awarded a vested right to 283 acre-feet of groundwater from the not-nontributary Denver aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. Up to 0.52 acre-feet annually may be pumped pursuant to the plan for augmentation decreed herein. The remaining 127 acre-feet of Denver aquifer groundwater decreed herein, which is not included in this plan for augmentation, shall not be withdrawn for any purpose except pursuant to a separate court-approved plan for augmentation authorizing the pumping of that amount.

C. Applicant is awarded a vested right to 215 acre-feet of groundwater from the not-nontributary Arapahoe aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. However, none of the not-nontributary Arapahoe aquifer water adjudicated herein shall be withdrawn for any purpose except pursuant to a separate court-approved plan for augmentation that authorizes the pumping of such amounts.

D. Applicant is awarded a vested right to 153 acre-feet of groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. 115 acre-feet of the water in the Laramie-Fox Hills aquifer has been reserved for use in the plan for augmentation decreed herein. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent of the amount withdrawn, and the other terms and conditions of this decree, Applicant's Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 17, subject to the reservation of all such Laramie-Fox Hill aquifer supplies to be utilized for

replacement of post-pumping depletions under the plan for augmentation decreed herein, as described in Paragraph 20.D., above.

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

37. The Applicant shall comply with C.R.S. §37-90-137(9)(b), requiring the relinquishment of the right to consume two percent (2%) of the amount of the nontributary groundwater withdrawn annually. Ninety-eight percent (98%) of the nontributary groundwater withdrawn annually may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment. Applicant shall be required to demonstrate to the State Engineer prior to the issuance of a well permit that no more than ninety-eight percent of the groundwater withdrawn annually will be consumed.

38. Mustang Wells shall be operated such that combined pumping from all wells does not exceed the annual (0.52 acre-feet) and total (156 acre-feet) pumping limits for the Denver aquifer as decreed herein, and is in accordance with the requirements of the plan for augmentation described herein. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the Mustang Wells so long as the return flows from the annual diversions associated with the Mustang Wells accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or one of its successors or assigns is ever unable to provide the replacement water required, then the Mustang Wells shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulations of the State of Colorado. Pursuant to C.R.S. § 37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein, shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions, and cannot be sold, leased or otherwise used for any purpose inconsistent with the augmentation plan decreed herein. Applicant shall be required to have any wells pumping on the Applicant's Property providing water for in-house uses and generating septic system returns prior to pumping the wells for any of the other uses identified in Paragraphs 17 or 20.A.

39. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristics, and the Applicant need not file a new application to request such adjustments.

A. At such time as adequate data may be available, Applicant or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 39 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to affect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicant, opposer, and the petitioning party.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty-three (63) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 39 concerning adjustments to the Denver Basin ground water rights based upon local aquifer conditions shall no longer be applicable. In the event of a protest being timely filed, or should the State Engineer's Office make no timely determination as provided in Paragraph 39.A., above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

40. Pursuant to C.R.S. §37-92-304(6), the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan. The Court further retains jurisdiction should the Applicant later seek to amend this decree by seeking to prove that post-pumping depletions are non-injurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 20.D. The Court's retained jurisdiction may be invoked using the process set forth in Paragraph 41.

41. Except as otherwise specifically provided in Paragraphs 39-40, above, pursuant to the provisions of C.R.S. § 37-92-304(6), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of others, for a period of three (3) years. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court reconsider injury to petitioner's vested water rights associated with the operation of this decree, together with

proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (i) that the petitioner is not injured, or (ii) that any modification sought by the petitioner is not required to avoid injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not extended by the Court in accordance with the provisions of the statute, this matter shall become final under its own terms.

42. Pursuant to C.R.S. § 37-92-502(5)(a), the Applicant shall install and maintain such water measurement devices and recording devices as are deemed necessary by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meter on each of the Mustang Wells. All diversions from the Mustang Wells shall be metered and the data collected by Applicant shall be provided to the State Engineer or Division Engineers as requested by said entities.

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

DATED THIS 27th day of December, 2022.

BY THE COURT:



Kate Brewer, Water Referee
Water Division 2

DECREE

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

Dated: January 30, 2022



BY THE COURT:

Larry C. Schwartz

**LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2**