

<p><b>DISTRICT COURT, WATER DIVISION 2, CO</b>  Court Address: 501 N. Elizabeth Street, Suite 116  Pueblo, CO 81003  Phone Number: (719) 404-8832</p> <hr/> <p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b></p> <p><b>MICHAEL S. LUDWIG</b></p> <p><b>IN EL PASO COUNTY</b></p>	<p>DATE FILED: June 26, 2018 1:21 PM  CASE NUMBER: 2018CW3003</p> <hr/> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 18CW3003 (Div 2)  18CW302 (Div 1)  (c/r 07CW49)</p>
<p align="center"><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE</b></p>	

THIS MATTER comes before the Water Referee on the Application filed by Michael S. Ludwig, and having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Water Referee makes the following findings and orders:

**GENERAL FINDINGS OF FACT**

1. The applicant in this case is Michael S. Ludwig, whose address is 4255 Arrowhead Drive, Colorado Springs, CO 80908 (“Applicant”). Applicant is the owner of the land totaling approximately 67.94 acres on which the structures sought to be adjudicated herein are located, and are the owners of the place of use where the water will be put to beneficial use.

2. The Applicant filed this Application with the Water Courts for both Water Divisions 1 and 2 on January 16, 2018. The Application was referred to the Water Referees in both Divisions 1 and 2 on or about January 18, 2018.

3. The time for filing statements of opposition to the Application expired on the last day of March 2018. No statements of opposition were timely filed.

4. A Motion for Consolidation of the cases into Water Division 2 was filed with the Colorado Supreme Court on April 2, 2018. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on April 4, 2018. Chief Justice, Nancy E. Rice, granted the Motion for Consolidation by Order dated May 8, 2018.

5. On January 18, 2018, the Water Court, Division 1 on Motion from

Applicant, ordered that consolidated publication be made by only Division 2.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On February 15, 2018, proof of publication in the *Daily Transcript* in El Paso County was filed with Water Court Division 2. All notices of the Application have been given in the manner required by law.

7. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each aquifer with this Court on June 19, 2018.

8. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division 2 has filed its Consultation Report dated April 27, 2018 with the Court, and a Response to the Consultation Report was filed by the Applicant on May 4, 2018. Both the Consultation Report and Response have been considered by the Water Referee in the entry of this Ruling.

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. In addition to the amended plan for augmentation decreed herein, the Applicant requests quantification of previously-unquantified Denver Basin groundwater supplies under the approximately 28.03 acre "East Parcel" of Applicant's Property as more particularly described on attached **Exhibit A**, and as depicted on the **Exhibit B** map. Applicant seeks to utilize such newly quantified groundwater supplies in conjunction with those supplies underlying the "West Parcel" of Applicant's Property as previously quantified in Case No. 07CW49. Applicant further seeks the adjudication of underground water rights for Redtail Ranch Well Nos. 1 through 12, each to be constructed to either of the not-nontributary Dawson or Denver aquifers, and additional or replacement wells associated therewith for withdrawal of Applicant's full entitlements of supply under the plan for augmentation sought herein. 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 as underlying the East Parcel of Applicant's Property, as well as the associated West Parcel as described herein is owned by the Applicant and consists of approximately 67.94 acres (28.03 acres being the East Parcel, and 39.91 acres being the West Parcel). The East Parcel of Applicant's Property located in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, as more particularly described on the attached **Exhibit A**, and depicted on the attached **Exhibit B** map. Applicant intends to subdivide the entirety of Applicant's Property, including the

previously quantified West Parcel, into up to twelve lots of approximately 5 acres each. All groundwater discussed and adjudicated herein shall be withdrawn from the overlying land of Applicant's Property.

12. There are no lienholders on the Applicant's Property and the notice requirements of C.R.S. § 37-92-302 are therefore inapplicable.

13. Redtail Ranch Well Nos. 1 through 12: Redtail Ranch Well Nos. 1 through 12 will be located on the Applicant's Property in the N½ SE¼ of Section 9, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M. Applicant is awarded the vested right to use Redtail Ranch Well Nos. 1 through 12, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein. Such wells may be constructed to the nontributary Denver aquifer in the alternative, but no well shall at any time be constructed to more than one aquifer. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, the State Engineer shall issue permits for Redtail Ranch Wells Nos. 1 through 12 pursuant to C.R.S. §37-90-137(4), consistent with the Plan for Augmentation decreed herein. Of the twelve Retail Ranch Wells decreed herein, upon information and belief, six have been previously constructed and permitted, and will upon entry of this decree be re-permitted (and redrilled if necessary) to comply with the terms and conditions of this plan for augmentation. Such existing structures are (a) Retail Ranch Well No. 1 (DWR Permit No. 68030-F), Redtail Ranch Well No. 3 (DWR Permit No. 74767-F), Redtail Ranch Well No. 5 (DWR Permit No. 74768-F), Redtail Ranch Well No. 7 (DWR Permit No. 1122), Redtail Ranch Well No. 8 (DWR Permit No. 146809), and Redtail Ranch Well No. 9 (DWR Permit No. 103645/135594).

14. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Dawson and Denver aquifers underlying the Applicant's Property contain not-nontributary water, while the water of the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. For purposes of clarity as concerns the plan for augmentation, the Court sets forth below the quantities of water underlying the East Parcel, as quantified herein, and the West Parcel, as previously quantified in Case No. 07CW49, as well as the total amount of water now quantified under both parcels in combination, as utilized in the amended plan for augmentation decreed herein. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant's Property is as follows:

**EAST PARCEL:**

<b>AQUIFER</b>	<b>Saturated Thickness (ft)</b>	<b>Specific Yield (%)</b>	<b>Total Water Adjudicated (Acre Feet)</b>	<b>Annual Average Withdrawal – 100 Years (Acre Feet)</b>
Dawson (NNT)	410	.20	2,259 <sup>1</sup>	7.6 <sup>2</sup>
Denver 4% (NNT)	360	.17	1,720	5.7 <sup>2</sup>
Arapahoe (NT)	255	.17	1,220	12.2
LFH (NT)	190	.15	800	8.0

**WEST PARCEL (07CW49):**

<b>AQUIFER</b>	<b>Saturated Thickness (ft)</b>	<b>Specific Yield (%)</b>	<b>Total Water Adjudicated (Acre Feet)</b>	<b>Annual Average Withdrawal – 100 Years (Acre Feet)</b>
Dawson (NNT)	410.7	.20	3,277 <sup>3</sup>	10.9 <sup>2</sup>
Denver 4% (NNT)	359.6	.17	2,492	8.3 <sup>2</sup>
Arapahoe (NT)	254.7	.17	1,733	17.3
LFH (NT)	191.4	.15	1,147	11.5

**TOTAL COMBINED GROUNDWATER:**

<b>AQUIFER</b>	<b>Saturated Thickness (ft)</b>	<b>Specific Yield (%)</b>	<b>Total Water Adjudicated (Acre Feet)</b>	<b>Annual Average Withdrawal – 100 Years (Acre Feet)</b>
Dawson (NNT)	410.7	.20	5,536	18.5 <sup>2</sup>
Denver 4% (NNT)	359.6	.17	4,212	14.0 <sup>2</sup>
Arapahoe (NT)	254.7	.17	2,953	29.5
LFH (NT)	191.4	.15	1,947	19.5

<sup>1</sup> The total available withdrawals from the Dawson aquifer underlying the East Parcel have been reduced by 41 acre feet to account for prior estimated pumping from Well Permit No. 1122, which will be re-permitted pursuant to this Decree as augmented Redtail Ranch Well No. 7, from Well Permit No. 146809, which will be re-permitted pursuant to this Decree as augmented Redtail Ranch Well No. 8, and from Well Permit No. 32323, which will be re-permitted pursuant to this Decree as augmented Redtail Ranch Well No. 9.

<sup>2</sup> The Dawson and Denver aquifer annual withdrawal figures represent not the 100-year aquifer life discussed at C.R.S. §37-90-137(4), but rather a 300-year aquifer life consistent with provision of a 300-year water supply in compliance with El Paso County, Colorado LDC as applicable to the subdivision of Applicant's Property.

<sup>3</sup> The total available withdrawals from the Dawson aquifer underlying the West Parcel have been reduced by 7.7 acre feet to account for prior estimated pumping from Well Permit Nos. 68030-F, 74767-F, and 74768-F, which are to be re-permitted pursuant to this Decree as augmented Redtail Well Nos. 1, 3 and 5.

15. 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 systems of actual stream depletions on an annual basis, to the extent necessary to prevent injurious effect, based upon actual aquifer conditions. For wells constructed instead to the Denver aquifer, Applicant is required to replace only 4% of pumping. Applicant shall not be entitled to construct a well or use water from the not-nontributary Dawson or Denver aquifers except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9)(c.5), including as decreed herein.

16. Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts can be withdrawn over the 300-year life of the aquifers as set forth in El Paso County, Colorado Land Development Code §8.4.7(C)(1) which requirements also satisfy 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 Applicant's water needs. The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, based upon the 300-year aquifer life is determined and set forth above, based upon the June 9, 2018 Office of the State Engineer Determination of Facts, as concerns the East Parcel, and based on the decree in Case No. 07CW49 as concerns the West Parcel.

17. Applicant shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of the decree herein, whichever comes first, and the annual volume of water which Applicant is entitled to withdraw from the aquifer underlying Applicant's Property.

18. The Applicant shall have the right to use the ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial, and for storage and augmentation 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 are to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume two percent of such nontributary water withdrawn. 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 aquifer pursuant to a decreed augmentation plan entered by the Court, including that plan for

augmentation decreed herein.

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

### **PLAN FOR AUGMENTATION**

20. The structures to be augmented are Redtail Ranch Well Nos. 1 through 12 as are or may be constructed to either the not-nontributary Dawson aquifer or not-nontributary Denver aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith. This decreed plan for augmentation effectively amends and replaces those plans for augmentation previously decreed in Case Nos. 07CW49 and 11CW37, with all aspects of both prior cases being amended and replaced by the terms and conditions herein. Any previously decreed augmented structures not specifically referenced herein, including Ludwig Pond, are hereby abandoned.

21. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation obligation for Redtail Ranch Well Nos. 1 through 12, and any additional or replacement wells constructed to the Dawson aquifer, requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. For wells constructed instead to the Denver aquifer, Applicant is required to replace only 4% of pumping. This plan for augmentation is intended to address the maximum of actual depletions resulting from Dawson aquifer wells, so to the extent any of the Redtail Ranch Well Nos. 1 through 12 are instead constructed to the 4% depletive Denver aquifer, injury will likewise be prevented. The water rights to be used for augmentation during pumping are the septic return flows resulting from the in-house use of water from the not-nontributary Redtail Ranch Well Nos. 1 through 12, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are a reserved portion of Applicant's nontributary water rights in the Arapahoe and Laramie-Fox Hills aquifers. Applicant shall provide for the augmentation of stream depletions caused by pumping the Redtail Ranch Well Nos. 1 through 12 as approved herein. Water use criteria as follows:

A. Use: The Redtail Ranch Well Nos. 1 through 12 may each pump up to 1.06 acre feet of water per year, for a maximum total of 12.72 acre feet being withdrawn from the Dawson (and/or Denver) aquifer annually. Households will utilize up to 0.26 acre feet of water per year per residence, with the additional 0.8 acre feet per year per residence available for irrigation of lawn and garden and the watering of horses or equivalent livestock, use in water features or hot tubs or other beneficial uses. The foregoing figures assume the use of twelve septic systems, with resulting return flows from each of 90% of in house uses, or 2.81 annual acre feet.

B. Depletions: Applicant has determined, as previously decreed in

Case No. 07CW49, that maximum stream depletions over the 300-year pumping period will amount to approximately twenty two percent (21.97%) of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 2.79 acre feet in year 300. Should Applicant's pumping be less than the 1.06 acre feet per lot described herein, or should any of the augmented well be constructed to the 4% depletive Denver aquifer, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. §37-90-137(9)(c.5), an assuming all of the Redtail Ranch Well Nos. 1 through 12 are constructed to the Dawson aquifer, Applicant is required to replace actual stream depletions attributable to pumping of the anticipated twelve residential wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems as described herein. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.26 acre feet per residence per year, totaling 3.12 acre feet for all twelve residences, 2.81 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems, while maximum depletions as described above are 2.79 annual acre feet. Thus, during pumping, stream depletions 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 any injurious post-pumping depletions which may be associated with the use of the Redtail Ranch Well Nos. 1 through 12, Applicant will reserve up to 1,908 acre feet of water from the nontributary Arapahoe aquifer and 1,908 acre feet of water from the nontributary Laramie Fox Hills aquifer, or such greater amounts as necessary to replace any injurious post pumping depletions. 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. The reserved nontributary Arapahoe and Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive new well permits for the Redtail Ranch Wells Nos. 1 through 12, including replacement permits for existing structures, for the uses in accordance with this Decree and otherwise in compliance with C.R.S. §37-90-137.

22. Because depletions occur to both the South Platte and Arkansas River systems under the State's groundwater flow model, the Application in this case was filed in both Water Divisions 1 and 2. The return flows set forth above as augmentation will accrue to only Arkansas River system where most of the depletions will occur and where the Applicant's Property is located. Under this augmentation plan, the total amount of depletions will be replaced to the Arkansas River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan

subject to Paragraphs 41-45 herein.

23. This decree, upon recording, shall constitute a covenant running with Applicant's Property, benefiting and burdening said land, and requiring construction of wells to the nontributary Arapahoe and Laramie-Fox Hills aquifer and pumping of water to replace any injurious post-pumping depletions under this decree, unless other post-pumping replacement supplies are substituted by order of this Court, as provided herein. Subject to the requirements of this decree, in order to determine the amount and timing of post-pumping replacement obligations, if any, 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 Arapahoe and Laramie-Fox Hills aquifer reserved herein may not be severed in ownership from the overlying subject property. This covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights who would be materially injured by the failure to provide for the replacement of post-pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner of the Applicant's Property.

24. Applicant or its successors shall be required to initiate pumping from the Arapahoe and/or Laramie-Fox Hills aquifer for the replacement of post-pumping depletions when either: (i) 3,816 acre-feet of water available from the Dawson and/or Denver aquifers allowed to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Redtail Ranch Well Nos. 1 through 12 have permanently ceased, (iii) a period of 10 consecutive years where either no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

25. Accounting and responsibility for post-pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (i) the period provided by statute; (ii) the period specified by any subsequent change in statute; (iii) the period required by the Court under its retained jurisdiction; (iv) the period determined by the State Engineer; or (v) the period as established by Colorado Supreme Court final decisions. Should Applicant's obligation hereunder to account for and replace such post-pumping stream depletions be abrogated for any reason, then the Arapahoe and Laramie-Fox Hills aquifer groundwater reserved for such a purpose shall be free from the reservation herein and such groundwater may be used or conveyed by its owner without restriction.

26. 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. Should the actual operation of this augmentation plan depart from the planned diversions described in Paragraph 21 such that annual diversions are increased or the duration of the plan is extended, the Applicant must prepare and

submit a revised model of stream depletions caused by the actual pumping schedule. This analysis must utilize depletion modeling acceptable to the State Engineer, and to this Court, and must represent the water use under the plan for the entire term of the plan to date. The analysis must show that return flows have equaled or exceeded actual stream depletions throughout the pumping period and that reserved nontributary water remains sufficient to replace post-pumping depletions.

27. 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, injury to any owner of or person entitled to use water under a vested water right.

28. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Redtail Ranch Well Nos. 1 through 12. As a result of the operation of this plan for augmentation, the depletions from the Redtail Ranch Well Nos. 1 through 12 and any additional or replacement wells associated therewith will not result in material injury to the vested water rights of others.

### **CONCLUSIONS OF LAW**

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

30. 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.

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

32. 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 wells upon the entry of this decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). Applicant is entitled to a decree from this Court confirming its rights to

withdraw groundwater pursuant to C.R.S. §37-90-137(4).

33. 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.

34. 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.

35. 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 Redtail Ranch Well Nos. 1 through 12 without adversely affecting any other vested water rights in the Arkansas River and South Platte River or their tributaries and when curtailment would otherwise be required to meet a valid senior call for water. C.R.S. §§37-92-305(3),(5), and (8).

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

36. 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.

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

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

39. 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. Ninety-eight percent (98%) of the nontributary groundwater withdrawn may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment.

40. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the Redtail

Ranch Well Nos. 1 through 12 so long as the return flows from the annual diversions associated with the Redtail Ranch Well Nos. 1 through 12 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 Redtail Ranch Well Nos. 1 through 12 shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulation of the State of Colorado. Pursuant to 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.

41. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristic, and that the Applicant need not refile, republish, or otherwise amend this application to request such adjustments. The Court further retains jurisdiction should the Applicant later seek to amend this decree by seeking to prove that post-pumping depletions are noninjurious, 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 21.D.

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 41 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, and the petitioning party.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty (60) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 41 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 41.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.

42. 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.

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

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

45. Except as otherwise specifically provided in Paragraphs 41-44, 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 years, except as otherwise provided herein. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for

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

46. 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 essential 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 all Redtail Ranch Wells, or any additional or replacement wells associated therewith. Applicant is also to maintain records and provide reports to the State Engineer or Division Engineers as instructed by said entities, on at least an annual basis.

47. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users.

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

DATED THIS 26th day of June, 2018.

BY THE REFEREE:

*Mardell R. DiDomenico*



Mardell DiDomenico, Water Referee  
Water Division 2

**DECREE**

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

Dated: July \_\_\_\_\_, 2018.

BY THE COURT:

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Honorable Larry C. Schwartz  
Water Judge, Water Division 2  
State of Colorado

**EXHIBIT A – Applicant’s Property**

PARCEL A:

LOTS 1 AND 2, WALKER PLACE, COUNTY OF EL PASO, STATE OF COLORADO, AS AMENDED BY SURVEYOR’S AFFIDAVIT OF AMENDMENT RECORDED APRIL 6, 2010 UNDER RECEPTION NO. 210031708, ALSO KNOWN AS THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

PARCEL B:

A NON-EXCLUSIVE RIGHT OF WAY FOR PUBLIC DRIVEWAY PURPOSES OVER THE SOUTH 330 FEET OF THE WEST 20 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND OVER THE WEST 20 FEET OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, AS CREATED BY DEED RECORDED SEPTEMBER 6, 2006 UNDER RECEPTION NO. 206131909.

PARCEL C:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, DRAINAGE AND DRIVEWAY GRADING OVER A PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, AS CREATED BY EASEMENT RECORDED JUNE 8, 2009 UNDER RECEPTION NO. 209064392.

PARCEL D:

THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

PARCEL E:

THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, EXCEPT FOR THE EAST 30 FEET THEREOF FOR A PUBLIC ROAD, AND EXCEPT FOR THAT PORTION THEREOF CONVEYED BY SPECIAL WARRANTY DEED RECORDED OCTOBER 3, 2006 UNDER RECEPTION NO. 206145897.

PARCEL F:

THE NORTH 330.0 FEET OF THE EAST 660.0 FEET OF THE SOUTH 990.0 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, EXCEPT FOR THE EAST 30 FEET THEREOF FOR A PUBLIC ROAD, AND EXCEPT FOR THAT PORTION THEREOF CONVEYED BY SPECIAL WARRANTY DEED RECORDED OCTOBER 3, 2006 UNDER RECEPTION NO. 206145897.

Note: Parcels E & F constitute the “East Parcel”, as referenced in the Application.

a/k/a: El Paso County Assessor Schedule Nos. 5209000128, 5209000129, 5209002006, and 5209002008

# Ludwig Application

Exhibit B Location/Property Map

## Legend

-  East Parcel
-  Ludwig/Applicant's Property

Cir

Linwood Ln

Vollmer Rd

Shoup Rd

Google Earth

© 2018 Google

1000 ft



DISTRICT COURT, WATER DIVISION 2, COLORADO  Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 (719) 404-8832	<div style="text-align: center;"> <p>▲</p> <p><b>COURT USE ONLY</b></p> <p>▲</p> </div>
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>MICHAEL S. LUDWIG</b>  <b>IN EL PASO COUNTY.</b>	
	Case Number: 2018CW3003
<b>NOTICE OF TRANSMITTAL AND CERTIFICATE OF SERVICE</b>	

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I served through the approved judicial branch e-filing service provider a true and correct copy of the foregoing and Ruling to:

Name	Party	Attorney
Ludwig, Michael S.	Applicant	Cummins, Christopher Dale #35154
Division 2 Engineer	Division Engineer	Division 2 Water Engineer #905101
State Engineer	State Engineer	Colorado Division Of Water Resources #900040

Witness my hand and the seal of this Court. Date: June 26, 2018.

Mardell R. DiDomenico, Clerk  
District Court Water Div. 2  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003  
Telephone: (719) 404-8832

*Mardell R. DiDomenico*



By: \_\_\_\_\_  
Clerk

Attachment to Order - 2018CW2003