

# **DEIM SUBDIVISION**

NOTE: WE UNDERSTAND THAT THE WATER QUALITY REPORT AND RECOMMENDATION BY EPC HEALTH WILL BE REQUIRED PRIOR TO SCHEDULING PC/BOCC HEARINGS. SOME OF THE TEST RESULTS HAVE NOT COME BACK YET SO THIS HAS BEEN RESUBMITTED WITHOUT THE WATER QUALITY INCLUDED. WE UNDERSTAND THE SAME OUTSTANDING COMMENT WILL REMAIN AND THAT THE WATER RESOURCES REPORT ITEM WILL BE INCLUDED AS A NECESSARY RESUBMISSION ITEM.

## **WATER RESOURCES REPORT**

**For  
Deim Subdivision**

**January 31<sup>st</sup>, 2025**

**Prepared By:**



**13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921**

## **Executive Summary:**

### **Water Resources Report – Deim Subdivision at Sundance Ranch**

Chris D. Cummins and W. James Tilton of Monson, Cummins, Shohet & Farr, LLC, on behalf of the Applicant, Connie Deim (“Owner”), provide the following Water Resources/Wastewater Disposal Report in support of the Deim Subdivision. The attorneys at Monson, Cummins, Shohet & Farr, LLC (“MCSF”) have extensive experience in water related matters, with Mr. Cummins having practiced water law almost exclusively for 20 years. MCSF has substantial experience with Denver Basin groundwater resources, augmentation plans, designated basin replacement plans, subdivision proceedings, and rural water usage. Given his experience, Mr. Cummins should be considered a “qualified professional” as concerns water resources, as discussed at Section 8.4.7(B)(1)(c) of the El Paso County Land Development Code. This Report, overseen by Mr. Cummins and prepared in conjunction with other professionals, is intended to demonstrate to the El Paso County Planning Commission and the Board of County Commissions, the sufficiency in terms of quantity and dependability, of the water rights and resources to be utilized in the proposed Deim Subdivision (the “Subdivision”), in the Black Forest in El Paso County, Colorado.

The Property consists of approximately 35.05 acres located at Sundance Ranch Lane, in the NW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., County of El Paso, State of Colorado. The four (4) planned residential lots in the Subdivision are to be provided water and sewer/septic services through on-site individual wells and Individual Septic Disposal Systems (“ISDS”). The proposed subdivision includes four residential lots on what is currently unimproved land, with each lot planned to range in size between approximately 5 to 15.5 acres in size.

It is expected that each of the residential homes on each residential lot in the Subdivision will require an average of 0.26 annual acre-feet of water supply, for a total of 1.04 annual acre-feet for in-house uses with additional amounts for use on each of the lots for a total of 2.328 acre-feet for all lots annually, to be provided through four individual wells to the not-nontributary Dawson aquifer, consistent with the decree in Case No. 23CW3067, as issued by the Water Court, Division 2, on December 6, 2024, confirming the Ruling of Referee issued on November 19, 2024 (“Decree”). The Decree provides for a 300-year water supply for the residential lots within the Subdivision, with each residential lot utilizing ISDS of a non-evaporative nature.

The water resources to be utilized on the residential lots in the Subdivision are typical of rural residential development in El Paso County, Colorado. Case No. 23CW3067 and associated Augmentation Plan decreed by the Water Court, Division 1, demonstrates a sufficient quantity and reliability of water to support compliance with El Paso County’s 300-year water supply rules for subdivisions of this nature.

## I. INTRODUCTION

The purpose of this report is to provide a preliminary outline of the water resources, and associated wastewater requirements, necessary for approval of the Deim Subdivision, as proposed.

1.1 New Development Description: The Subdivision consists of approximately 35.05 acres in the NW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., County of El Paso, State of Colorado. The Property will be subdivided into four lots. **Exhibit A**, attached hereto, is a draft plat for the Subdivision as proposed, prepared by Apex Land Surveying and Mapping, LLC., including an area/vicinity map.

## II. PROJECTION OF WATER NEEDS

2.1 Analysis of Water Demands: It is expected that the four residential lots in the Subdivision will utilize four individual wells drilled to the Dawson aquifer to be used for domestic-type uses, including in-house, landscape/irrigation of lawn, and garden, watering of domestic animals and stock, recreation, fish and wildlife propagation, fire protection, aquifer recharge, and for replacement and augmentation purposes. It is anticipated that each of the lots will utilize a maximum total of 0.582 acre-feet of water, with 0.26 acre-feet to be used in-house, consistent with Section 8.4.7(B)(7)(d)., and the remaining amount of 0.322 acre-feet per lot will be allocated for other approved uses under the augmentation plan.

All wells will be constructed to and will produce from the not-nontributary Dawson aquifer at a flow rate of 10 to 15 gallons per minute, based upon past production rate of nearby wells. Based on past experience with the numerous Dawson aquifer wells serving rural residential properties throughout El Paso County, this rate of production should be more than sufficient to meet demand for in-house use.

## III. PROPOSED WATER RIGHTS AND FACILITIES

3.1 Water Rights: An Augmentation Plan for utilizing the underlying Dawson aquifer for the entire Sundance Ranch Property Owners Association was decreed by the Water Court, Division 1, in Case No. 23CW3067 on December 6, 2024. The Deim property to be subdivided per this application is a part of the Sundance Ranch Property Owner's Association. A copy of the recorded Decree is attached hereto as **Exhibit B**. The Decree vested the following specific quantities of water:

<b>AQUIFER</b>	<b>Saturated Thickness (ft)</b>	<b>Total Water Adjudicated (Acre Feet)</b>	<b>Annual Average Withdrawal – 300 Years (Acre Feet)<sup>1</sup></b>
Dawson (NNT)	491 <sup>2</sup>	8,700	29

All depletions are augmented in time, place, and amount through septic return flows during pumping. Post-pumping depletions will be replaced by nontributary Denver Basin supplies decreed in Case No. 14CW3061 via Sundance Ranch Property Owner Association's contractual agreement with Cherokee Metropolitan District. Cherokee Metropolitan District may replace these post pumping water supplies with other legally available augmentation sources for replacement.

3.2 Source of Supply: Rural residential water supply demand will be met using four not-nontributary Dawson aquifer formation wells. Consistent with El Paso County Land Development Code Section 8.4.7(B)(3)(c)(v), a subdivision utilizing individual wells need not make a further showing as to source of supply.

3.3 Pumping Rates for Service: The Dawson aquifer in the location of the Subdivision is generally known to produce approximately 10-15 gallons per minute, more than sufficient for single family residential and accessory uses. Such flow rates are typical of individual wells on subdivisions within this area of El Paso County.

#### **IV. WASTEWATER AND WASTEWATER TREATMENT**

While soils, geology and geotechnical analysis has been provided by other of Applicant's consultants, Applicant provides a summary of ISDS to be utilized herein, as relates to water usage and resulting return flows which support the approved Augmentation Plan.

4.1 Septic/Wastewater Loads: Septic projections are based on similar Denver Basin residential uses on rural residential lots. Average daily wastewater loads are expected to be approximately 180 gallons per day per single-family residence. Maximum daily wastewater loads are expected to be roughly 210 gallons per day per single-family residence, assuming residential in-house use at the 0.26 acre-feet per year rate described in the approved Augmentation Plan.

4.2 On-Site Wastewater Treatment Systems: The four (4) residential lots within the Subdivision will be served by individual on-site wastewater treatment systems. Each lot will have its own ISDS to ensure return flows to the underlying

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<sup>1</sup> The Dawson aquifer annual withdrawal figure represents 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 land development code as applicable to the subdivision of Applicant's Property.

<sup>2</sup> Average thickness for Dawson aquifer determined in Division 1 Water Court case 99CW0126.

Dawson aquifer. The on-site wastewater treatment system will be evaluated and installed according to El Paso County Guidelines and properly maintained to prevent contamination of surface and subsurface water resources.

Respectfully submitted this 31st day of January, 2025.

MONSON, CUMMINS, SHOHET & FARR, LLC

/s/ W. James Tilton

W. James Tilton

Exhibits:

A – Location Map/Plat of Property

B – Decree

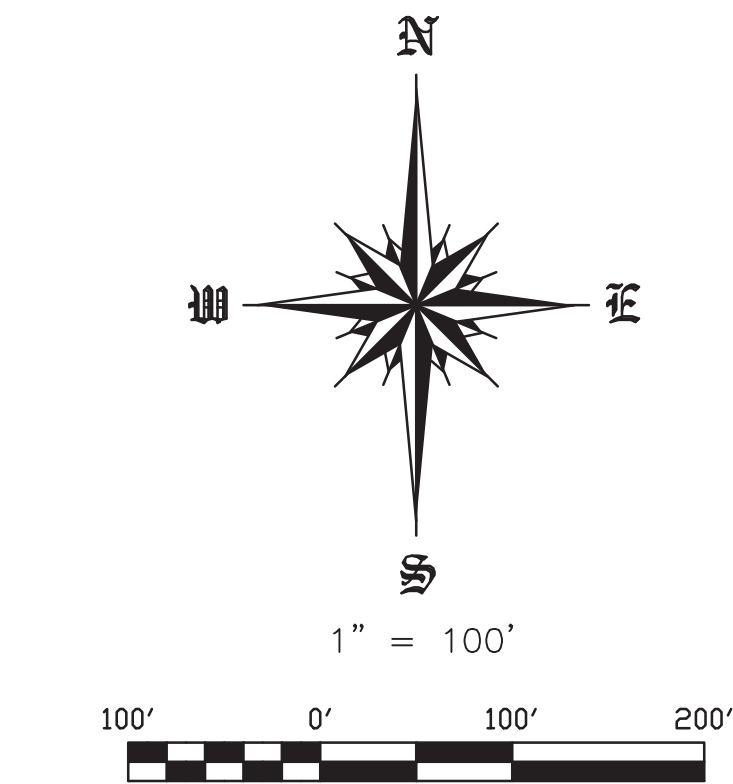


# DEIM SUBDIVISION (Exhibit)

REPLAT OF PARCEL C, LAND SURVEY PLAT BY RECEPTION NO. 220900262,  
BEING A PART OF THE NORTHWEST QUARTER OF SECTION 30,  
TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
COUNTY OF EL PASO, STATE OF COLORADO

AS PLATTED

Exhibit A



DRAFT

## LEGEND

- MONUMENT FOUND AS NOTED
- FOUND NO. 5 REBAR WITH 1-1/4" YELLOW PLASTIC CAP MARKED "ALESSI PLS30130", FLUSH WITH GRADE, UNLESS OTHERWISE NOTED
- RECORD VALUE PER SPECIAL WARRANTY DEED AT RECEPTION NO.221019706
- (R) RECORD VALUE PER LAND SURVEY PLAT AT RECEPTION NO.220900262 BY ALESSI AND ASSOCIATES INC.
- (R1) RECORD VALUE PER LAND SURVEY PLAT AT RECEPTION NO.224900131 BY BARRON LAND
- (R2)
- (M) MEASURED VALUE
- (AOC#...) AREA OF CONCERN
- (TYP.) TYPICAL
- ⊕ FIRE HYDRANT
- ⊕ WATER MANHOLE
- ⊕ UNDERGROUND WATER SIGN
- ⊕ WATER VALVE
- ⊕ UTILITY POLE
- ⊕ STREET SIGN
- ⊕ OVERFLOW INLET
- ⊕ STORM CULVERT INLET
- ⊕ STORM CULVERT FLARED INLET
- ⊕ BREAK SYMBOL
- APROX FEMA FLOODPLAIN LINE - SEE SURVEYOR'S NOTE #2
- OVERHEAD ELECTRIC LINE
- FENCE REMNANTS (T-POSTS)
- x BARBED-WIRE FENCE
- CONCRETE WALL
- GRAVEL DRIVEWAY
- RIP RAP

## SURVEYOR'S NOTES

1. Site Benchmark (CP#100) is a No.4 Rebar set at Elevation = 7475.746' (NAVD88). Elevation was determined through a static OPUS solution.
2. The Federal Emergency Management Agency, Flood Insurance Rate Map No. 08041C0305G, effective date 12/7/2018, indicates a portion of this parcel of land to be located in Zone A (without base flood elevation) and Zone AE (with BFE or Depth 7438.2 feet - LOWR 18-08-0702P Eff. 04-2019). Approximate location is graphically depicted per the aforementioned Federal Emergency Management Agency, Flood Insurance Rate Map.

DATE: --15--		REVISIONS	
No.	Remarks	Date	By
Field: TJM	Drawn: TJM	Checked: DDR	



APEX Land Surveying and Mapping LLC.

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PROJECT No.: 24106

SHEET 1 OF 1



<p><b>DISTRICT COURT, WATER DIVISION 1, CO</b>  Court Address: 901 9th Avenue,  P.O. Box 2038 Greeley, CO 80632  Phone Number: (970) 475-2540</p> <hr/> <p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b></p> <p><b>SUNDANCE RANCH PROPERTY OWNERS ASSOCIATION</b></p> <p><b>IN EL PASO COUNTY</b></p>	<p>DATE FILED  December 6, 2024 6:17 PM  CASE NUMBER: 2023CW3067</p> <hr/> <p><b>▲ COURT USE ONLY ▲</b></p> <p>Case No: 23CW3067</p>
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE</b></p>	

THIS MATTER comes before the Court on the Application filed by Sundance Ranch Property Owners Association, 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 Sundance Ranch Property Owners Association, whose address is 12265 Oracle Blvd., Suite 105, Colorado Springs, Colorado 80921 ("Applicant" or "Sundance POA"). The Applicant seeks the adjudication of groundwater rights, and approval of a plan for augmentation.

2. The lands upon which the groundwater rights adjudicated herein are located are within the boundary of the Sundance POA ("Sundance POA Property"), and the Applicant is the owner of, or controls, all Denver Basin groundwater described herein. All lands are located within the boundaries of the proposed subdivision where the water will be put to beneficial use.

3. The Applicant filed this Application with the Water Court for Water Division 2, and in Water Court for Water Division 1 on June 27, 2023, and filed a First Amended Application on October 31, 2023. The Application was consolidated in Division 1 on October 23, 2023. The Application was referred to the Water Referee Division 1.

4. The time for filing statements of opposition to the Application expired on the last day of December 2023. A Statement of Opposition was timely filed by The City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities, on August 14, 2023, in both Divisions 1 and 2, and a Statement of Opposition was timely filed by the Cherokee Metropolitan District in Division 2 on August 24, 2023.

5. On June 29, 2023, Water Court, Division 2, ordered that no publication need occur in Division 2, but that publication should occur in El Paso County. 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 November 13, 2023, proof of publication in *The Transcript* was filed with the Division 1 Water Court. All notices of the Application have been given in the manner required by law.

6. On September 4, 2024, a stipulation between the Applicant and The City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities was filed with the Division 1 Water Court. By Order dated September 6, 2024, the Division 1 Water Court approved such stipulation.

7. On September 13, 2024, a stipulation between the Applicant and Cherokee Metropolitan District was filed with the Division 1 Water Court. By Order dated September 16, 2024, the Division 1 Water Court approved such stipulation.

8. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts with this Court on August 2<sup>nd</sup>, 2023.

9. The State and Division Engineers timely filed a Consultation Report pursuant to C.R.S. §37-92-302(4) on September 29<sup>th</sup>, 2023, and an updated Consultation Report January 31<sup>st</sup>, 2024. A response to the Consultation Report was requested and Applicant provided its response on February 27<sup>th</sup>, 2024. The State and Division Engineers opined that the 14CW3061 Decree must be amended to remove the 87 acre-feet adjudicated herein from that decree. However, the 14CW3061 Decree explicitly states in paragraph 7.1.1.4.2.2 that “Cherokee shall not withdraw water pursuant to GBP’s (Greenland Basin Pipeline) 87 acre-feet per year interest in the water rights decreed in 99CW126 until Cherokee files a notice in this case demonstrating that its agreement with GBP has been fully executed or that Cherokee is otherwise legally authorized to withdraw said water.” 14CW3061 Decree at paragraph 7.1.1.4.2.2.

A. GBP and Cherokee never entered into such an agreement, and the 87 acre-feet was subsequently deeded to the Applicant herein. As Cherokee never acquired any right to withdraw said 87 acre-feet of water under the 14CW3061 Decree, the Court finds that no amendment of that Decree is required.

10. 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.

11. Sundance Wells Nos. 1 through 81: Each of the Sundance Wells Nos. 1 through 81 (“Sundance POA Wells”) are to be constructed to the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein to provide domestic water supplies to a single-family residence to be located upon the subdivided Subject Property.



Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, if the State Engineer finds that permits can be issued the State Engineer shall issue permits for Sundance Wells Nos. 1 through 81 pursuant to C.R.S. §37-90-137(4), consistent with and references the Plan for Augmentation decreed herein.

## GROUNDWATER RIGHTS

12. The Applicant requests withdrawal of Applicant's full entitlement of water supplies adjudicated in case no. 99CW126 and modified in case no. 03CW227 underlying the Sundance POA Property, as more particularly described on the attached **Exhibit B** map, pursuant to the plan for augmentation decreed herein. The following findings are made with respect to such groundwater rights:

13. The land overlying the groundwater subject to the adjudication in this case is controlled by the Applicant and consists of 362.63 acres of land currently made up of nine (9) parcels, and depicted on the attached **Exhibit B** map (Subject Property"). All groundwater adjudicated herein shall be withdrawn from the Subject Property.

14. Applicant has complied with the notice requirements of C.R.S. §37-92-302, and sent notice to any required lienholder.

15. Existing and Future Wells. All wells will be located on the Subject Property. Applicant is awarded the vested right to use the below described existing exempt wells, along with the below described future wells, 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. A detailed breakdown of the existing wells and planned development are below in paragraphs 16.A-G. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, the State Engineer shall determine whether permits can be issued and issue revised permits for all exempt wells, and new permits for any future well pursuant to C.R.S. §37-90-137(4), consistent with and referencing the Plan for Augmentation decreed herein.

16. Each of the owners of the parcels described herein was deeded a portion of the not-nontributary Dawson aquifer along with the acquisition of their respective parcels, such not-nontributary Dawson aquifer groundwater totaling 87 annual acre feet of supply based upon the statutory 100-year allocation of Denver Basin supplies decreed in Case No. 99CW126 and amended in case no. 03CW227. However, as the water rights sought herein will be utilized to support the subdivision of the Sundance POA parcels in El Paso County, Colorado, and as El Paso County's Land Development Code ("LDC") requires demonstration of a 300-year water supply, the 300-year allocation of 29 annual acre feet shall be utilized herein.

### A. Parcel B Wells:

1. Property Description: Parcel B is located in the NW¼ of the NW¼ and the NE¼ of the NW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, and is approximately 35.09 acres in size. Parcel B will be subdivided into a maximum of seven (7) +/- 5-acre lots, with six (6) augmented wells.

2. Existing Wells: There is one well currently constructed on Parcel B, Division of Water Resources Permit No. 326635, UTM being Easting 524662, Northing 4324372. This well is permitted for ordinary household purposes inside one single family dwelling, the watering of up to four domestic animals, and irrigation of up to 13,000 square feet of home lawn, landscape and gardens. The one (1) annual acre feet of withdrawals associated with the existing well on Parcel B are expressly derived from the total 9 annual acre feet of not-nontributary Dawson aquifer groundwater vacated from the 03CW277 decree, and therefore not included in the 87 annual acre feet of supply otherwise owned by the members of the Sundance POA. Permit No. 326635 is currently permitted as an exempt well and will remain so permitted following decree of the plan for augmentation requested herein, and upon subdivision of the Parcel B property pursuant to 37-92-602(3)(b)(IV).

3. Land Ownership: The land upon which the Parcel B wells will be constructed is owned by Scott and Debra Andrews, members of the Sundance Ranch POA.

B. Parcel C Wells:

1. Property Description: Parcel C is located in the NW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, and is approximately 35.05 acres in size. Parcel C will be subdivided into a maximum of six (6) +/- 5-acre lots, with six (6) augmented wells.

2. Existing Wells: There are no existing wells permitted or constructed on Parcel C.

3. Land Ownership: The land upon which the Parcel C wells will be constructed is owned by Connie Deim, a member of Sundance POA.

C. Parcel D & G Wells:

1. Property Description: Parcel D is located in the SE¼ of the NW¼ and N½ of the SW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, and is approximately 35.05 acres in size. Parcel G is located in the NW¼ of the SW¼ and the NE¼ of the SW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, and is approximately 35.29 acres in size. Parcel D will be developed into a maximum of ten (10) lots, while

Parcel G will be developed into a maximum of three (3) lots, with thirteen (13) total augmented wells between Parcels D and G.

2. Existing Wells: There are no existing wells permitted or constructed on Parcels D and G.

3. Land Ownership: The land upon which the Parcel D and G wells will be constructed is owned by Alan and Judith Greaves, members of Sundance POA.

D. Parcel E Wells:

1. Property Description: Parcel E is located in the SW¼ and the NW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M, and SE¼ of the SE¼ of Section 25, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado, and is approximately 46.47 acres in size.

2. Existing Wells: There is one (1) well currently on the Parcel E property, Permit No. 250932, located at UTM Easting 524436, Northing 4323898, completed to the not-nontributary Dawson aquifer and permitted to pump up to 4 acre feet annually for fire protection, ordinary household purposes inside up to 3 single family dwellings, watering of poultry, domestic animals and livestock, and the irrigation of not more than 1 acre of farms and gardens. The four annual acre feet of withdrawals associated with the existing well on Parcel E are expressly derived from the total 9 annual acre feet of not-nontributary Dawson aquifer groundwater adjudicated in Case No. 99CW126 and as amended by Case No. 03CW227, and therefore not included in the 87 annual acre feet of supply otherwise owned by the members of the Sundance POA. The owner of Parcel E, Michael Turner, also is the owner of 8 acre feet of such vacated not-nontributary Dawson aquifer groundwater. It is Mr. Turner's intention to maintain the existing well as an exempt well as currently permitted following the decree of the plan for augmentation requested herein, utilizing these unadjudicated not-nontributary Dawson aquifer supplies pursuant to 37-92-602(3)(b(IV)). All adjudicated supplies owned by Mr. Turner underlying and associated with Parcel E will be utilized for development of Parcels F, H, I and J, as described in further detail below.

3. Land Ownership: The land upon which the existing wells on Parcel E are constructed is owned by Michael Turner, a member of Sundance POA.

E. Parcel F Wells:

1. Property Description: Parcel F is located in the NW¼ of the SE¼ and the SE¼ of the SE¼ of Section 25, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado. This property will be subdivided, along with Parcels H, I, and J, into a maximum of 56 lots, collectively, resulting in fifty-six (56) augmented

wells.

2. Existing Wells: There are no existing wells permitted or constructed on Parcel F.

3. Land Ownership: The land upon which the wells will be constructed is owned by Michael Turner, a member of Sundance POA.

F. Parcels H, I and J Wells:

1. Property Description: Parcel H is located in the NW¼ of the SW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M. and the E½ of the SE¼ of Section 25, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado. Parcel I is located in the SW¼ of the SW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., in El Paso County, Colorado. Parcel J is located in the SE¼ of the SE¼ of Section 25 Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., and the SW¼ of the SW¼ of Section 30, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado. These properties will be subdivided, along with Parcel F into a maximum of fifty-six (56) lots.

2. Existing Wells: There is one existing well, constructed on Parcel H, Permit No. 257754, completed to the not-nontributary Dawson aquifer and permitted to pump up to 3 acre feet annually for fire protection, ordinary household purposes inside up to 3 single family dwellings, watering of poultry, domestic animals and livestock, and the irrigation of not more than 1 acre of farms and gardens. The three annual acre feet of withdrawals associated with the existing well on Parcel H are expressly derived from the total 9 annual acre feet of not-nontributary Dawson aquifer groundwater vacated from the 03CW277 decree, and therefore not included in the 87 annual acre feet of supply otherwise owned by the members of the Sundance POA. There are no existing wells located on Parcel I. There are two existing well on Parcel J: DWR Permit No. 62265-F-R, UTM coordinates: Easting 524264.9, Northing 4323091.7; and, DWR Permit No. 123522, UTM coordinates: Easting 524328.9, Northing 4323103.1. These existing wells, except for Permit No. 257754 which shall remain exempt, will either be re-permitted as augmented wells pursuant to the augmentation plan requested herein, or abandoned so as to allow for new augmented wells to be constructed.

3. Land Ownership: The land upon which the wells will be constructed for Parcels H, I and J is owned by Sundance Ranch of Black Forest, LLC, a Colorado limited liability company, a member of Sundance POA.

G. Additional Information:

1. All wells which have been or will be constructed described herein are

Sundance Ranch POA

23CW3067

Page 6 of 23

or will be constructed to the not-nontributary Dawson aquifer, and in locations consistent with all terms, conditions and restrictions of Sundance POA's agreement with Cherokee (the "Cherokee Agreement"), a copy of which is attached hereto as **Exhibit A**. See **Exhibit A**, at 3(a)(i) through (iii).

2. It is anticipated that the parcels owned by the members of the Sundance POA and subject to this plan for augmentation, will be created through a subdivision process pursuant to the El Paso County, Colorado Land Development Code, with maximum lots as follows, with each lot supporting having a single-family residence, with an individual well and non-evaporative septic systems. Parcels with wells not included in the plan for augmentation requested herein are not included in the following table:

<b>Parcel</b>	<b>Lots to be Created</b>	<b>Annual Acre Feet per Well (300-Year)</b>	<b>Total Water Available to Parcel Owner</b>
B	One +/- 5-acre lot (on exempt well) & Six +/- 5-acre lots	0.336 AF for each of the Six +/- 5-acre lots (2.016 AF total)	6.048AF (100-yr) = 2.016 AF (300-yr)
C	Six +/- 5 acre lots	0.388 AF per lot (2.328 AF total)	6.984 AF (100-yr) = 2.328 AF (300-yr)
D and G	Three +/- 10 acre lots & Ten +/- 3 acre lots	0.36 AF for each of the lots (4.68 AF total)	14.04 AF (100-yr) = 4.68 AF (300-yr)
F, H, I, & J	Fifty-Six +/- 2.5 acre lots	0.3567 AF for each lot (19.976 AF total)	59.828 AF (100-yr) = 19.936 AF (300-yr)
<b>TOTALS:</b>	<i>81 Lots</i>	<i>29 AF (300-yr)</i>	<i>87AF (100-yr) 29 AF (300-yr)</i>

The maximum number of lots to be created by subdivision of the parcels owned by members of the Sundance POA is therefore eighty-one (81) lots, not including remainder parcels/lots utilizing exempt wells, with a corresponding maximum of eighty-one (81) augmented Sundance POA wells.

17. Pursuant to C.R.S. §37-90-137(9)(c.5)(I)(B), the augmentation requirements for wells in the not-nontributary Dawson aquifer underlying the Sundance POA requires the replacement to the affected stream systems of actual stream depletions on an annual basis. The Applicant shall not be entitled to construct a well or use water from the not-nontributary Dawson aquifer except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9)(c.5).

18. Subject to the augmentation requirements described in this Paragraph 18 and the other requirements and limitations in this decree, Applicant shall be entitled to withdraw all legally available groundwater in the not-nontributary Dawson aquifer underlying the Sundance POA. 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 Applicant's water needs provided withdrawals during such longer period are in compliance with the augmentation requirements of this decree. This decree is based upon a pumping period of 300-years as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1). The average annual amounts of groundwater available for withdrawal from the underlying not-nontributary Dawson aquifer, based upon a 300-year aquifer life, are determined and set forth above in paragraph 16.G.2, based upon the Office of the State Engineer Determination of Facts described in Paragraph 8.

19. Applicant shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the not-nontributary Dawson aquifer underlying the Sundance POA for a 300-year aquifer life, so long as the sum of the total withdrawals from wells in that aquifer does not exceed the product of the number of years since the date of entry of the decree herein, and the average annual volume of water which Applicant is entitled to withdraw from that aquifer underlying the Sundance POA, subject to the requirement that such banking and excess withdrawals do not violate the terms and conditions of the well permit and plan for augmentation decreed herein and any other plan for augmentation decreed by the Court that authorizes withdrawal of the Denver Basin groundwater adjudicated and decreed in Case No. 99CW126 as modified in Case No. 03CW227, and further decreed herein.

20. Subject to the terms and conditions of 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 not-nontributary Dawson Aquifer groundwater underlying the Sundance POA for beneficial uses including, domestic, irrigation of any irrigable acreage within the District boundaries or District service area, stock water, recreation, fish and wildlife propagation, fire protection, aquifer recharge, replacement, and augmentation purposes. The amount of groundwater decreed for such uses is reasonable as such uses are to be made for the long-term use and enjoyment and is to establish and provide for adequate water reserves for the Sundance POA. 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 concerning the not-nontributary Dawson aquifer.

21. Withdrawals of groundwater available from the not-nontributary Dawson aquifer beneath the Sundance POA 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 as long as it is withdrawn pursuant to the augmentation plan decreed herein.

## PLAN FOR AUGMENTATION

22. The structures to be augmented under this plan for augmentation are up to 81 residential wells to be located on up to 81 residential lots, to be created by subdivision proceedings which may be initiated by each of the members of the Sundance POA as concerns their respective parcels, in their discretion (collectively the “Sundance POA Wells”). Each of these residential wells shall be constructed to the not-nontributary Dawson aquifer, with combined pumping not to exceed the 87 acre feet (29 annual acre feet on a 300-year basis) owned by the members of the Sundance POA and available under this plan. Such not-nontributary Dawson groundwater was previously adjudicated by the Division 1 Water Court in Case Nos. 99CW126 and 03CW227, and likewise described in Cherokee’s Water Court Division 2 Case No. 14CW3061.

23. Applicant is hereby decreed a plan for augmentation for out-of-priority depletions associated with the Sundance POA wells, and for the withdrawal of not-nontributary Denver Basin groundwater rights in the not-nontributary Dawson aquifer, respectively, underlying property controlled by the Applicant as previously decreed in Water Court Division 1 Case Nos. 99CW126 and 03CW227, and likewise described in Cherokee’s Case No. 14CW3061 Water Court Division 2, and underlying the Sundance POA as decreed herein, to support development of such lands, more particularly described and depicted on the attached **Exhibit B** map. During the pumping life of wells to the not-nontributary Dawson aquifer described above, it is anticipated that any out-of-priority depletions will be replaced by non-evaporative septic systems., and for replacement of any injurious post-pumping depletions water available to Sundance pursuant to the **Exhibit A** agreement with Cherokee will be used as described in paragraph 26.B below.

24. The not-nontributary Denver Basin groundwater in the not-nontributary Dawson aquifer underlying the property owned by the Sundance POA that is available for withdrawal in accordance with this plan for augmentation was previously adjudicated and quantified by the Division 1 Water Court in Case No. 99CW126 and 03CW227, and likewise described in Cherokee’s Case No. 14CW3061 in Water Court Division 2 as follows:

Aquifer	Annual Average Withdrawal (Acre-Feet) <sup>1</sup>
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<sup>1</sup> This represents the annually estimated available quantity of water for a 300-year pumping life, as required by El Paso County Land Development Code.

Dawson (NNT)	29
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25. All existing exempt permitted wells (except for the existing well on Parcel B, Division of Water Resources Permit No. 326635, the existing well on the Parcel E property, Permit No. 250932, and the existing well on Parcel H, Permit No. 257754 which shall all remain as exempt wells pursuant to their currently issued permits) to the not-nontributary Dawson aquifer, if any, shall be either re-permitted as augmented structures under the plan for augmentation decreed herein, or abandoned, consistent with the rules and regulations of the State and Division Engineers. Applicant is hereby granted pursuant to the terms and conditions of the augmentation plan decreed herein, the right to withdraw all quantities of not-nontributary Denver Basin groundwater in the not-nontributary Dawson aquifer underlying the Sundance POA, through existing, additional or replacement wells located on the subject properties, consistent with Rule 11.A. of the Statewide Nontributary Ground Water Rules, provided Applicant first acquires such interests in the overlying land as may be necessary for construction, maintenance and operation of any such wells, and infrastructure related thereto. Applicant expressly may withdraw the not-nontributary Dawson Aquifer groundwater underlying the Sundance POA from any and all wells, both existing and as may in the future be developed, available to Applicant on said parcel.

26. Water Rights to be Used for Augmentation.

A. Depletions During Pumping. During the pumping life of the not-nontributary wells described herein, any out-of-priority depletions caused by the pumping of the wells will be augmented by in house uses through the use of non-evaporative septic systems in proper time, place and amount. As set forth in the August 2, 2023 State Determination of Facts, maximum pumping of the not-nontributary aquifer described herein, in combination, shall be 8,700 acre feet over the pumping life of the wells, and maximum depletions to all affected stream systems from the pumping of the not-nontributary Dawson aquifer wells are 21.83% of pumping, or 6.33 annual acre feet, after 300 years of pumping, for total approximate annual depletions of 6.33 acre feet that are to be replaced under the plan for augmentation decreed herein. As described in Paragraph 26.A.i, below, return flows from non-evaporative septic systems from 81 lots will result in up to 14.58 annual acre feet of reusable return flow credits.

i. The annual consumptive use for a non-evaporative septic System is 10% per year. Therefore, at conservatively estimated in-house use rates of 0.20 acre-feet per year, replacement amounts of 0.18 acre-feet accrue to the stream system annually from each well. With 81 wells this amounts to 14.58-acre feet annually,

more than double the amount of annual depletions.

ii. If requested by the State and Division Engineers, Applicant may be required to show existence of a water table in hydraulic connection with the stream system from wells, or shall install piezometers located in the vicinity of the property which are satisfactory to the State Engineer, and Applicant may be required to provide an alternate source of augmentation water until such evidence can be provided that the claimed return flows are actually accruing to the stream system.

B. Post Pumping Depletions. For the replacement of injurious post-pumping depletions which may be associated with the use of the Sundance POA Wells, Sundance POA has acquired a contractual entitlement to 87 acre-feet (100-year) annually of water from Cherokee to meet these post-pumping depletions. See Cherokee Agreement, **Exhibit A**. It is anticipated that this replacement supply will be from nontributary Denver Basin supplies decreed in Case No. 14CW3061 for Cherokee's use, though consistent with the terms and conditions of the Cherokee Agreement, Cherokee reserves the right to substitute other legally available augmentation sources for replacement of such post-pumping depletions by Sundance POA. Use of such supplies will follow the requirements of Cherokee's Division 2 Water Court Case No. 14CW3061 Augmentation Plan. Upon entry of this decree, the members of the Sundance POA with Parcels and water subject to this decree are entitled to apply for well permits for each of the Sundance POA Wells.

27. Other Supplies of Augmentation Water of Limited Duration. Pursuant to C.R.S. §37-92-305(8), the Court may authorize Sundance POA to use additional or alternative sources of augmentation water for replacement in this augmentation plan, including water leased by Sundance POA, if such sources are part of a substitute water supply plan approved pursuant to C.R.S. §37-92-308, or an interruptible supply agreement approved under C.R.S. §37-92-309, or other applicable and/or successor statutes, or if such sources are decreed for such use. In order to add these sources to this plan for augmentation, the procedures in Paragraphs 28.A. and 28.B. 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. Because return flows from uses of the water are estimated, rather than measured, such return flows may be used only to replace depletions under this plan for augmentation, and may not be used, sold, traded, or assigned in whole or in part for any other purpose.

28.

A. 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, Sundance POA shall give at least 63 days advance written notice of use of the water right for augmentation to the Court, the Division Engineer, and all the objectors herein which shall describe: 1) the water right by name and decree, if any; 2) the annual and monthly amount of water

available to Sundance POA from the water right; 3) the manner by which the water will be used to replace out-of-priority depletions associated with this plan for augmentation; 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) identification of any applicable exchanges, including the exchange reach, if the water is to be introduced downstream of the out-of-priority depletion; 7) if an exchange is required for the water to be used, proposed terms and conditions relative to the exchange operation; 8) the location or locations at which the water will be delivered to the stream; 9) evidence that the claimed amount of water is available for use in this plan for augmentation and is not and will not be used by any other person; and, 10) the manner in which Sundance POA will account for use of the augmentation credits. Said notice shall specifically include a request that the Court enter an Order either affirming or denying Sundance POA's proposal, and that said Order be attached to this Decree.

i. Objection to Use of New Source. If any person 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 63 days after the date the Notice was given by Sundance POA. If no objection is so filed, the Court shall promptly enter an Order affirming Sundance POA's immediate use of the noticed water rights. If an objection is so filed, then Sundance POA 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.

ii. 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 water rights. If the Notice requested temporary use of the noticed water rights in this plan for augmentation for a period not to exceed one year, then the Court shall grant an expedited hearing.

iii. New Sources Requiring Operation of Exchange. Where the use of a noticed water right in this plan for augmentation requires the operation of any new exchange(s), Sundance POA must obtain approval of the Division Engineer and Water Commissioner prior to operating such exchanges. Sundance POA must submit a separate Water Court application if seeking to adjudicate any such exchange(s).

B. Additional Water rights – Temporary Administrative Approval. If a water right is not decreed or otherwise lawfully available for augmentation use, and Colorado Statutes or other governing authority provides a mechanism for using such water right without the need of a decree, Sundance POA shall provide written notice to the objectors herein of its request for approval of the State Engineer pursuant to C.R.S. §37-92-308, or C.R.S. §37-92-309, or any other applicable statute or rule. Such notice



shall be in addition to any notice required by any applicable statute or rule. Sundance POA may use such water rights in this plan for augmentation upon the State Engineer's approval of the underlying administrative application for the term of any such approval, unless such approval is reversed or modified on appeal or under the retained jurisdiction provisions of this Case No. 23CW3067.

29. Applicant may substitute other legally available augmentation sources for replacement of any such injurious post-pumping depletions under this Court's retained jurisdiction, as described in Paragraph 28, above. Applicant claims that post-pumping depletions will be non-injurious and need not be replaced to prevent injury, though this Court makes no such finding by this decree. Applicant has reserved the right in the future to prove that said post-pumping depletions will be non-injurious under the Court's retained jurisdiction pursuant to paragraph 56.

30. Applicant shall replace post-pumping depletions for the shortest of the following: (a) the period provided by C.R.S. §37-90-137(9)(c); (b) the express period specified by the Colorado Legislature, should it specify one; (c) the period determined by the State Engineer, should he choose to set such a period and have jurisdiction to do so; (d) the period established through rulings of the Colorado Supreme Court on relevant cases, or (e) until Applicant petitions the Water Court, and after notice to parties in the case and the State Engineer's Office, proves that it has complied with any statutory requirement.

31. If operated pursuant to the terms and conditions set forth herein, the plan for augmentation decreed herein will allow Applicant to provide for the augmentation of any injurious out-of-priority stream depletions which may be caused by the pumping of the not-nontributary Dawson aquifer groundwater underlying the Sundance POA. Applicant shall utilize the not-nontributary Denver Basin groundwater in the not-nontributary Dawson aquifer underlying the Sundance POA on the lots associated with the POA, as currently exists or as may exist in the future, expressly including augmentation purposes. Applicant shall replace any out-of-priority depletions resulting from the Applicant's use of the not-nontributary Denver Basin ground water described in paragraph 26 above during the pumping life of the wells through non-evaporative septic system return flows, and any injurious post-pumping or evaporative depletions through contracts with Cherokee. Applicant has contracted for sufficient nontributary Denver Basin groundwater supplies for replacement of any injurious post-pumping depletions.

32. Curtailment. Applicant's plan for augmentation, as decreed herein, is sufficient to permit the pumping of not-nontributary supplies in the not-nontributary Dawson aquifer underlying the Sundance POA as described herein to the extent the Sundance POA complies with all the terms and conditions of this decree including, but not limited to, providing the necessary replacement water as required by this decree. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced to prevent injury to vested water rights. Should replacements under this plan during pumping not be sufficient to replace

depletions, the State Engineer shall curtail pumping at which time post-pumping replacements must be provided.

33. Terms and Conditions. This Court finds that there will be no material injury to the owners or users of water diverted under vested water rights or conditional water rights as a result of operation of the plan for augmentation, so long as there is compliance with and proper administration of the protective terms and conditions herein.

a. The contracted for nontributary Denver Basin groundwater rights referenced in Paragraph 26.B are adequate for replacement of all anticipated post-pumping depletions resulting from the groundwater withdrawals from the not-nontributary Dawson aquifer underlying the Sundance POA as described herein, and augmented under this plan for augmentation. Sundance POA shall cause its contractual interested party to initiate pumping of said nontributary Denver Basin groundwater, or provision of any alternative augmentation supply as may be decreed by the Court, for the replacement of any out-of-priority post-pumping depletions upon cessation of withdrawals from the not-nontributary Dawson aquifer as augmented herein. "Cessation of Withdrawals" occurs when (1) the total volume of water available from the not-nontributary Dawson aquifer allowed to be withdrawn under the plan for augmentation decreed herein has been withdrawn; (2) Sundance POA has acknowledged in writing that all withdrawals from such aquifers have ceased permanently; (3) no withdrawals of groundwater have been made from the subject aquifers for a period of ten (10) consecutive calendar years; or (4) accounting shows that the augmentation sources described in Paragraph 26.B, above, are insufficient to replace depletions caused by withdrawals that have already occurred, and Applicant has not provided supplemental or additional augmentation supplies to remedy such insufficiency. Nothing herein shall preclude Sundance POA or its successors from resuming withdrawals from such not-nontributary aquifers after cessation of withdrawals as defined above has occurred. If pumping is resumed, then Sundance POA's augmentation requirements for such wells shall be determined in accordance with Paragraph 26.B of this Decree, and its post-pumping augmentation obligation shall be determined as if no cessation of withdrawals had occurred.

b. A copy of the Decree shall be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and shall constitute a covenant running with the land, requiring Applicant and its successors in interest to be bound by the terms, conditions, and requirements of this Decree and the plan for augmentation herein, including the requirement take such other measures as necessary to replace any injurious post-pumping depletions upon Cessation of Withdrawals. Failure of Applicant or its successors in interest to comply with such requirements of this Decree may result in enforcement actions from the State Engineer's Office including curtailment or elimination of pumping from the not-nontributary aquifers. The covenant represented by this Decree when so recorded shall be amended as necessary to conform to the provisions of any amendment to this plan for augmentation which may occur

c. The Sundance POA Augmentation Plan decreed herein includes the following additional terms and conditions:

i. All well sites for wells used to supply the development of the Sundance POA Property will be located at least 600 feet from Cherokee's well site easements on Sundance Ranch.

ii. Each lot or parcel for the Sundance POA Property (including any open space or any other non-residential lots) will contain a restrictive covenant requiring any Dawson Aquifer wells on the lot to be completed as close as possible to the bottom of the Dawson Aquifer.

iii. Non-residential uses on the Sundance POA Property will be limited to a maximum of 12 annual acre feet of supply, to be pumped from one or more Dawson aquifer wells.

34. 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.

35. It is determined that the timing, quantity and location of replacement water under the terms and conditions of 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 such replacement water shall be accepted by the senior appropriators in substitution for water derived by the exercise of their decreed rights pursuant to CRS § 37-92-305(5). The depletions from the wells withdrawing non-tributary water underlying the Sundance POA, and any additional or replacement wells associated therewith will not result in injury to the vested water rights of others.

### **CONCLUSIONS OF LAW**

Based upon and fully incorporating herein the Findings of Fact set forth above as though fully set forth herein, this Court concludes as a matter of law that:

36. Applicant's request for adjudication of the Denver Basin groundwater underlying the Sundance POA is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings. §§ 37-92-302(1)(a), 37-92-203, and 37-92-305, C.R.S.

37. Subject to the terms and conditions of this decree, the Applicant is entitled to the sole right to withdraw all the legally available water in the not-nontributary Dawson aquifer underlying the parcels and property described herein, and the right to use that water to the exclusion of all others subject to the terms of this decree.

38. The Applicant has complied with C.R.S. §37-90-137(4), and the not-nontributary Dawson aquifer groundwater underlying the Sundance POA is legally available for withdrawal upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5), and such a plan for augmentation is decreed herein as concerns the not-nontributary Dawson aquifer groundwater. Applicant is entitled to a decree from this Court confirming its rights to withdraw groundwater pursuant to §37-90-137(4), C.R.S.

39. The Denver Basin water rights described herein 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 not-nontributary groundwater meet the requirements of Colorado Law.

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

41. Satisfaction of Burdens of Proof. Applicant has complied with all requirements and satisfied all standards and burdens of proof including, but not limited to, C.R.S. §§37-92-302 through 305, excepting sections 305(3.5) and 305(3.6) which are inapplicable hereto, as amended. Applicant is entitled to a decree confirming and approving the adjudication of the plan for augmentation decreed herein, which will not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights as long as the plan for augmentation is operated and administered in accordance with the terms and conditions herein.

42. The augmentation plan decreed herein is one contemplated by law. If implemented in accordance with the terms and conditions of this decree, the plan will permit the use of water without material injury to the vested or conditionally decreed water rights of others.

43. The Court is required to retain jurisdiction in a decree approving an augmentation plan on the question of injury to vested or conditional water rights. C.R.S. §37-92-304(6). Such jurisdiction is retained and described in detail at Paragraph 53, below.

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

44. 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.

45. 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.

46. The operation of Sundance POA's augmentation plan as decreed herein provides for the replacement of all injurious out-of-priority depletions which may result from withdrawals of not-nontributary groundwater from the Dawson aquifer underlying Sundance POA as described herein, augmented during pumping through dedication septic return flows, or additional sources approved in accordance with the terms of this decree, and augmented post-pumping through dedication of water acquired under the Cherokee Agreement, as more particularly described in Paragraph 26.B, herein. The terms and conditions of this decree are adequate to assure that no injury to any water users will result from operation of this plan for augmentation. The Court approves this plan subject to the terms and conditions contained in this decree.

47. The replacement and augmentation supplies that Sundance POA will use for operation of the plan for augmentation decreed herein are of a quality and quantity so as to meet the requirements for which the water of senior appropriators has normally been used.

48. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the not-nontributary Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur. Applicant consolidated this matter into Water Division 1 upon completion of publication. The Court hereby finds that the total amount of depletions to both the South Platte River and the Arkansas River systems shall be replaced to the South Platte River as set forth herein, and finds that replacements to the South Platte River system as described are sufficient for this plan for augmentation.

49. The State and Division Engineers and the Water Commissioner shall administer this augmentation plan in accordance with the terms and conditions contained in this decree. So long as Sundance POA operates its wells to the not-nontributary Dawson aquifer in accordance with this decree, this augmentation plan can be operated without adversely affecting the owners or users of vested water rights or decreed conditional water rights on the Arkansas River or its tributaries, or the South Platte River or its tributaries. So long as water is used in conformance with the requirements of this decree, there will be no injurious effects to the vested or decreed conditional water rights of others related to the amount or timing of water availability.

50. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the plan for augmentation decreed herein, so long as the septic return flows necessary for augmentation during the pumping life of the not-nontributary Dawson aquifer described herein continue to accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or its successors or assigns is unable to provide the replacement water required, then the wells shall not be entitled to continue 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, septic return flows must at all times during pumping be in an amount sufficient to replace the amount of stream depletions. The State Engineer shall issue well permits in accordance with C.R.S. §37-90-137(4) and/or (10) and consistent with the terms and conditions of this Decree. All such wells constructed by Applicant pursuant to the augmentation plan decreed herein shall be geophysically logged consistent with applicable rules and regulations of the State and Division Engineers.

51. Applicant shall install such metering and measuring devices as may be reasonably required by the State and Division Engineers to ensure proper measurement and accounting of all withdrawals and pumping.

52. Accounting. Sundance POA has demonstrated an appropriate method of accounting for diversions and stream depletions associated with the operation of this plan for augmentation. Sundance POA's accounting under this decree shall include, at a minimum, the following information: (1) the daily volume of water pumped from each non-tributary Dawson aquifer well; (2) the daily amount of water used claimed from septic return flows, (3) the weekly out-of-priority stream depletions from prior weeks' pumping and from the current week's pumping; (4) the source and amount of the replacement sources used for augmentation in this plan, which shall be accounted for daily and reported monthly; and (5) the amount of any additional or alternative augmentation supplies allowed under Paragraph 26, which shall be accounted for daily, balanced weekly, and reported monthly. Unless specifically indicated by this decree, all accounting records required by this decree shall be filed with the State Engineer and Division Engineer on a monthly basis. The Applicant's current accounting forms are adequate to account for the water rights and augmentation plan under this decree; however, said forms are not decreed herein and may be changed from time to time so long as the information required by this decree is included in the forms. Applicant shall serve the Opposers and the Division Engineer with any modified accounting forms. The Opposers will have 63 days thereafter to provide written comments concerning the modified accounting forms to Applicant and the Division Engineer. Applicant must obtain the Division Engineer's approval of the modified accounting forms prior to their use. Upon the Division Engineer's approval of the modified accounting forms, Applicant shall file the approved modified accounting forms with the Court, with service on the opposers herein. Applicant shall make its accounting available to the Water Commissioner and to any party who requests it, providing a summary of withdrawals, return flows, depletions, and augmentation releases associated with the Applicant's operation of the augmentation plan approved herein. The daily accounting and all backup and supporting information and documents shall also be provided to any objector making a written request for said accounting for the accounting year, upon payment of reasonable costs. The accounting shall be delivered to the Division Engineer and Water Commissioner in the manner they prescribe and may be delivered to other objectors in paper or electronic format at the Applicant's option.

53. Retained Jurisdiction. 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, from the date of entry of this decree and extending for a period of five years after Applicant fully utilizes the septic return flows as an augmentation supply, as evidenced by Sundance POA's provision of written notice to Opposers herein, with said five year period to begin on the date of such written notice. 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 the factual basis for the relief requested in the petition, 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 the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (a) that the petitioner is not injured, or (b) that any modification sought by the petitioner is not required to avoid injury to the petitioner, or (c) 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 revisions of the statute, this matter shall become final under its own terms. The Court also retains continuing jurisdiction for the purpose of determining whether the continued reservation of the nontributary Denver Basin water rights in the Denver, Arapahoe, and Laramie-Fox Hills aquifers, more particularly described in Paragraph 26.B., above, for augmentation use hereunder is required and retained jurisdiction for such purpose shall be perpetual. After notice to all objectors, if Applicant can demonstrate to the Court that post-pumping depletions need no longer be replaced and/or are non-injurious, the Court may remove the requirement that the nontributary groundwater must continue to be reserved.

54. 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 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 26.B. The Court's retained jurisdiction may be invoked using the process set forth in Paragraph 53.

55. Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent

injury to vested water rights of others. The Court also has jurisdiction for the purposes of determining compliance with the terms of the augmentation plan. Objector City of Colorado Springs owns senior water rights on Monument Creek that will be negatively impacted by the operation of this decree wherein depletions to the Arkansas River will not be replaced to the Arkansas River, but rather will be replaced to the South Platte River. In addition, Colorado Springs reserves the right to claim that the cumulative negative impacts of this and other similar decrees constitutes injury to its senior Monument Creek rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by doing so, Colorado Springs does not waive its right to claim injury and to seek relief in the future according to this paragraph.

56. 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 well, or any additional or replacement wells associated therewith and are required to include geophysical logging on each well. Applicant shall read and record their well meter readings on April 1st and November 1st of each year and shall submit their meter readings to the Water Commissioner by April 15th and November 15th of each year or more frequently as requested by the Water Commissioner.

57. 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.

58. After the referee ruling was entered in this case on November 13, 2024, the ruling was revised to address comments made by the State and division Engineers. The referee finds that these revisions do not require and extension of the protest period.

Dated. November 19, 2024

BY THE REFEREE:

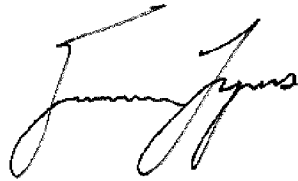


John Stephen Cowan, Water Referee  
Water Division One

**DECREE**

The Court finds that no protest was filed in this matter. The foregoing ruling is confirmed and approved and is made the judgment and decree of this Court.

Dated: December 6, 2024

A handwritten signature in black ink, appearing to read 'Shannon Lyons', written in a cursive style.

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Shannon Lyons  
Alternate Water Judge  
Water Division One

**Sundance Ranch Property**Parcel A:

The NW  $\frac{1}{4}$  , the West  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  and the West 28 acres (924.00 feet) of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 30, in Township 11 South, Range 65 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado EXCEPTING therefrom that portion conveyed to El Paso County by Special Warranty Deed recorded November 23, 2010 at Reception No. 210119150.

Parcel B:

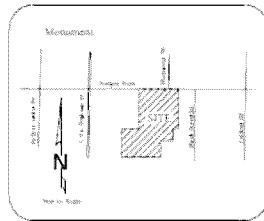
The E  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of Section 25, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M. in El Paso County, Colorado.



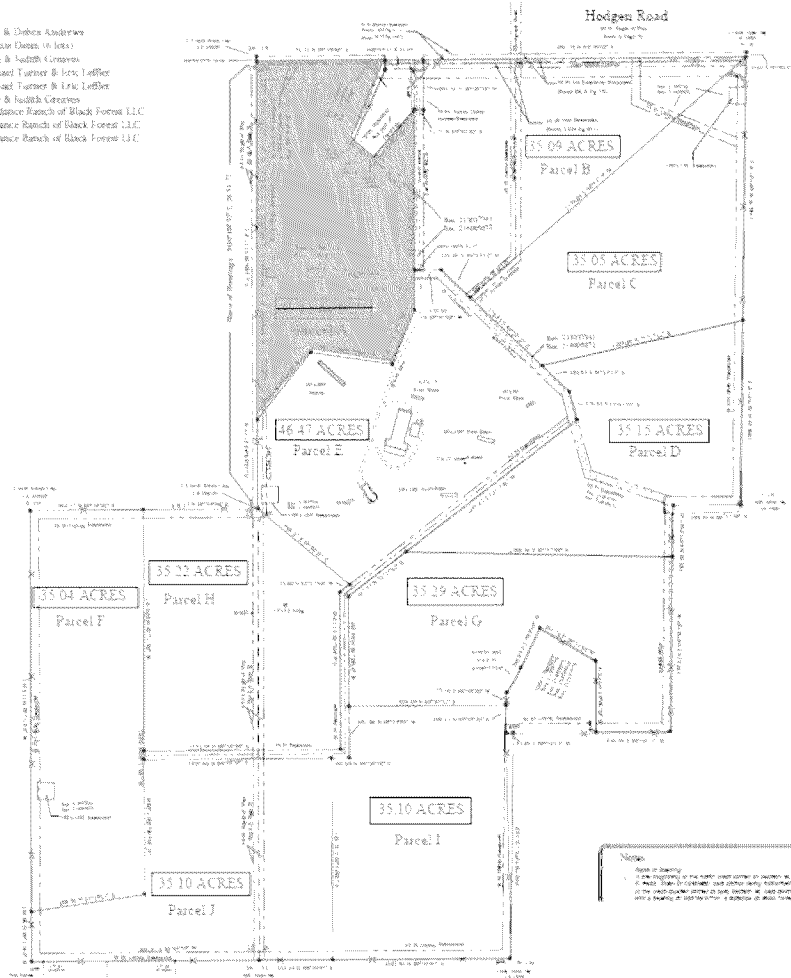
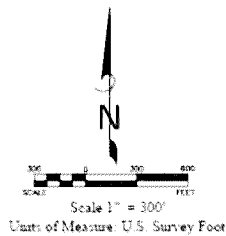
# Land Survey Plat

The East Half of the Southeast quarter of Section 25, Township 11 South, Range 66 West of the 6th P.M., the Northwest quarter and a portion of the Southwest quarter of Section 26, Township 11 South, Range 66 West of the 6th P.M., all in the County of El Paso, State of Colorado.

- B. Scott & Doreen Anderson  
C. Candice Dabbs (n.k.a.)  
D. Alan & Judith Greaves  
E. Michael Turner & Jodi Lettler  
F. Michael Turner & Jodi Lettler  
G. Alan & Judith Greaves  
H. Sundance Ranch of Black Forest LLC  
I. Sundance Ranch of Black Forest LLC  
J. Sundance Ranch of Black Forest LLC



VICINITY MAP



Sundance Ranch POA  
23CW3067

EXHIBIT B