

DISTRICT COURT, WATER DIVISION NO. 2 PUEBLO COUNTY, COLORADO Pueblo County Courthouse 501 North Elizabeth Street, Suite 116 Pueblo, Colorado 81003	DATE FILED: November 1, 2017 2:53 PM CASE NUMBER: 2016CW3088
Concerning the Application for Water Rights of: GLENN W. HUNSINGER FAMILY TRUST and MARY V. HUNSINGER FAMILY TRUST In the Arkansas River and its tributaries In El Paso County	▲ COURT USE ONLY ▲
	Case No. 16CW3088
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

The Court, having reviewed the pleadings in this case, the State Engineer's Determinations of Facts and the Division Engineer's Consultation Report and Amended Consultation Report, hereby makes the following Findings of Fact, Conclusions of Law, Judgment and Decree.

FINDINGS OF FACT

I. Jurisdictional Facts.

1. The applicants in this case are the Glenn W. Hunsinger Family Trust and the Mary V. Hunsinger Family Trust, c/o Steven G. Hunsinger, co-trustee, 4406 College Park Court, Colorado Springs, CO 80918; phone 719.332.2274; e-mail steveh@olivereg.com. As used herein, "Applicants" means not only the two referenced Hunsinger Trusts, but also their beneficiaries, successors and assigns.

2. The application was filed in Water Division 2 on December 12, 2016. The application was published in the resume for Water Division 2 and in a newspaper of general circulation in El Paso County, as required by law. Proof of publication has been filed.

3. Prior to the deadline for filing statements of opposition, the Applicants entered into a stipulation with the Board of County Commissioners of El Paso County, Colorado, which stipulation has been approved by the Court. Kettle Creek, LLC filed a timely statement of opposition.

4. Subsequent to the deadline for filing statements of opposition, the Applicants filed an unopposed motion to amend the application, which motion was granted on April 21, 2017. The amendment to the application was published in the resume for Water Division 2 and in a newspaper of general circulation in El Paso County, as required by law. Proof of publication of the amendment to the application has been filed. The application, as amended, sets forth the claims made by the Applicants and decreed herein.

5. No statements of opposition to the amendment to the application were filed, and the deadline for such statements of opposition has passed. No motions to intervene have been filed.

6. The Applicants have entered into a stipulation with Kettle Creek, LLC, permitting the Court's approval of this decree, which stipulation was approved by the Court on October 5, 2017.

7. There are no liens or encumbrances of record against the Applicants' property as described in ¶ 9 below. Accordingly, the notice requirements of C.R.S. 37-92-302(2)(b) are inapplicable.

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

II. Denver Basin Water Rights.

9. Applicants own Lot 10, Block B, Amended Filing of Spring Crest and Lots K and L, Filing No. 2 of Spring Crest. According to a recent survey of the property, copy attached as Figure 1, these contiguous parcels contain a total of 14.959 acres. In addition, Applicants claim the right to appropriate the water in the Denver Basin aquifers underlying Old Ranch Road and Otero Drive where these roads are adjacent to the Applicants' property, consisting of approximately 1.66 acres, for a total of 16.62 acres of overlying land (collectively, the "Property").

10. Pursuant to the State Engineer's Determinations of Facts dated February 7, 2017, the amounts of water underlying the Property available for appropriation from the Denver and Laramie-Fox Hills aquifers are as shown on Table I. The Determination of Facts for the Arapahoe aquifer incorrectly states that the specific yield for the Arapahoe aquifer is 0.2 instead of 0.17, resulting in an erroneous calculation that 798 acre feet are available for appropriation. Utilizing the correct specific yield of 0.17, the correct amount is 678 acre feet. The corrected numbers are shown on Table I.

TABLE I

Aquifer	Acreage	Specific Yield	Saturated Thickness (ft)	Total Amount (AF)	Annual Amount (AF) ¹
Denver	16.62	.17	65	184	1.8
Arapahoe	16.62	.17	240	678	6.8
L-Fox Hills	16.62	.15	180	449	4.5

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

Table II

Aquifer	Depth below surface (ft)	tributary status
Denver	near surface to 445	not nontributary
Arapahoe	480 - 955	not nontributary
Laramie-Fox Hills	1,480 - 1,780	nontributary

12. The Property is closer than one mile to any point of contact between any natural surface stream, including its alluvium, and both the Denver and the Arapahoe aquifers. Plans for augmentation are required for the withdrawal of water from such aquifers and must provide for the replacement of the actual stream depletions to Monument Creek.

13. There are four constructed Denver aquifer wells on the Property, including permit nos. 172650, 172651, 250314, and 250314-A. Pursuant to the plan for augmentation decreed herein, Applicants will withdraw water from two Denver aquifer wells, permit nos. 250314-A and 172650. After entry of a decree in this case, the existing exempt permits for these two wells

¹ Based on a 100 year aquifer life and annual withdrawals of 1% of the total amount adjudicated.

will be cancelled, and the wells will be re-permitted as non-exempt wells in accordance with ¶ 35, and will be operated pursuant to the terms and conditions of the plans for augmentation, The other two Denver aquifer exempt wells (permit nos. 250314 and 172651 shall be properly plugged and abandoned. Applicants will also withdraw water from three wells to be constructed in the Arapahoe aquifer. Subject to the limitations in this decree, Applicants will also withdraw water from one well to be constructed in the Laramie-Fox Hills aquifer for replacement of post-pumping depletions pursuant to the plan for augmentation decreed herein. All such wells shall satisfy the requirements of C.R.S. § 37-90-137(2).

14. Subject to the terms, conditions, and limitations of this decree, and the issuance by the State Engineer of a well permit that authorizes the specific use or uses, the water rights for the Denver and Arapahoe aquifers are decreed for the following uses: indoor residential use, a hot tub or spa on each lot, commercial uses such as those allowed by Policy 2011-3 for “exempt” wells, dust suppression, and augmentation through septic system return flows. Water from the Denver aquifer wells may also be used for irrigation of flower pots and planters, and for stock water for no more than two large animals such as horses. Water from the Arapahoe aquifer wells may also be used for irrigation of flower pots, for drip irrigation of shrubs, flowers and trees, and for stock water for no more than two large animals such as horses. Due to the limited amount of water available for each lot, sprinkler irrigation and irrigation of turf grass are prohibited. Use of the Laramie-Fox Hills aquifer water reserved herein is limited to augmentation.

III. Plan for Augmentation.

15. Amount sought to be pumped. Applicants will divert a maximum of 0.306 acre foot (99,710 gallons) annually per well for 300 years from each of two Denver aquifer wells on the Property (combined total pumping of 184 acre feet); combined annual pumping shall not exceed 0.612 acre foot). Applicants will also divert a maximum of 0.348 acre foot (113,396 gallons) annually per well for 300 years from each of three Arapahoe aquifer wells to be constructed on the Property (combined total pumping of 313.2 acre feet); combined annual pumping shall not exceed 1.044 acre feet. Each Denver and Arapahoe aquifer well shall be limited to a flow rate of 15 gpm.

16. Return flows from indoor residential use. The State Engineer has issued an informal guideline estimating that conservatively, water use in one single family dwelling will equal at least 0.2 acre foot of water annually for indoor uses, and that return flows from such use through nonevaporative septic systems will equal at least 0.18 acre foot annually. Thus, it is assumed for purposes of determining the sufficiency of the plan for augmentation that each well constructed pursuant to this plan for augmentation will be used in at least one single family dwelling, and will generate septic system return flows of at least 0.18 acre foot annually, resulting in return flows during the pumping period of at least 0.9 acre foot annually if the five allowed wells each provide water for indoor uses for one single-family dwelling.

17. Replacement of depletions during pumping. During the 300 year pumping period, Applicants shall replace all depletions impacting the stream from pumping the Denver aquifer and Arapahoe aquifer wells as follows:

A. Denver aquifer. Applicants shall replace all depletions from pumping of 0.306 acre foot annually from each of two wells in the Denver aquifer (0.612 acre foot annually in combination, and 184 acre feet total over 300 years). The State Engineer's computer model indicates that combined depletions to the Arkansas River Basin will gradually increase to a maximum of 24.64 percent of diversions in the 300th year of pumping. At an annual pumping rate of 0.612 acre foot annually, stream depletions will increase to a maximum of 0.151 acre foot in the 300th year.

B. Arapahoe aquifer. Applicants shall replace all depletions from pumping of 0.348 acre foot annually from each of three wells in the Arapahoe aquifer (1.044 acre foot annually in combination, and 313.2 acre feet total over 300 years). The State Engineer's computer model indicates that combined depletions to the Arkansas River Basin will gradually increase to a maximum of 22.48 percent of diversions in the 300th year of pumping. At a pumping rate of 1.044 acre foot annually, stream depletions will increase to a maximum of 0.235 acre foot in the 300th year.

C. Sufficiency of septic system return flows to replace depletions during pumping. Based on an assumed minimum amount of 0.2 acre foot for indoor uses per single family dwelling per year, and 90 percent return flows through utilization of non-evaporative septic systems, annual return flows for five such dwellings will equal 0.9 acre foot, while combined depletions due to pumping all five wells at the annual amounts allowed by this decree will equal $0.151 + 0.235 = 0.386$ acre foot annually in the 300th year of pumping. The Court determines that use of each well for indoor uses in a separate single family

dwelling in the annual amount described in this decree will result in septic system return flows sufficient to replace depletions during each and every year of the 300 year pumping period.

D. Provision of sufficient septic system return flows. Nonevaporative septic systems shall be used for treatment of water used for indoor drinking and sanitary uses. All septic system return flows are dedicated to this plan for augmentation, and shall not be sold, leased or otherwise used for any other purpose. Septic system return flows are necessary to provide an adequate source of water to replace stream depletions during the pumping period under the plan for augmentation as decreed. Accordingly, in order to generate required return flows to replace depletions during pumping, each Denver and Arapahoe aquifer well must be used to provide at least 0.2 acre foot of water to a single family dwelling on the Property before other uses of the well can be made, and annual withdrawals shall be limited as indicated in ¶ 15 above.

18. Replacement of post-pumping depletions.

A. Unless modified by the Court under its retained jurisdiction, after pumping from the Denver and Arapahoe aquifers ceases, Applicants shall replace the actual depletions caused by pumping water from those aquifers. The Court finds that this requirement is adequate to comply with existing law and to prevent injury to others.

B. The requirement to replace post-pumping depletions shall commence once the earliest of the six following events has occurred: (1) 184 acre feet have been pumped from the Denver aquifer; or (2) 313.2 acre feet have been pumped from the Arapahoe

aquifer; or (3) ten consecutive years have passed with no pumping from the Denver or the Arapahoe aquifers; or (4) when Applicants acknowledge in writing that all withdrawals for beneficial use from the Denver or the Arapahoe aquifers have permanently ceased; or (5) when accounting shows that septic system return flows from the use of the water being withdrawn from the Denver or Arapahoe aquifers are insufficient to replace depletions that already occurred; or (6) when 300 years have passed since the start of pumping from either aquifer.

C. To determine the post-pumping replacement obligation, upon the occurrence of one of the six events described above, Applicants shall cause a depletion analysis to be conducted, using the computer model generally accepted as being most accurate at that time, to calculate the amount and timing of post-pumping depletions which must be replaced, based on actual withdrawals during the pumping period. That amount of water shall then be pumped at the appropriate times from the Laramie-Fox Hills aquifer as decreed herein, or provided from such other source of water as receives judicial approval after notice, and delivered to the Monument Creek system in a manner that will adequately replace all depletions from pumping of the Denver and Arapahoe aquifer wells approved pursuant to this decree in amount and timing. Applicants shall be required by the terms of this decree to construct a Laramie-Fox Hills aquifer well pursuant to this plan for augmentation at the time replacement of post-pumping depletions must commence pursuant to this decree, unless a different source of water is approved by the court for replacement of post-pumping depletions, or unless the

obligation is modified or terminated pursuant to ¶ 18.A above.

D. Applicants shall reserve and dedicate to this plan for augmentation all 449 acre feet of Laramie-Fox Hills water decreed herein for the purpose of replacing all post-pumping depletions to the Monument Creek system. This amount of augmentation water has been calculated as follows:

I. Applicants allocated all 184 acre feet of Denver aquifer water decreed herein for pumping over 300 years. The post-pumping depletions associated with the pumping of that volume of water will equal 161.03 acre feet.

II. Applicants allocated 313.2 acre feet of the Arapahoe aquifer water decreed herein for pumping over 300 years. The post-pumping depletions associated with the pumping of that volume of water will equal 278.37 acre feet.

III. Total post-pumping depletions will equal $161.03 + 278.37 = 439.4$ acre feet.

IV. Rule 8 of the Denver Basin Rules, 2 CCR 406-2, requires that only 98 percent of nontributary Denver Basin water may be consumed. Thus, only $0.98 \times 449 = 440$ acre feet of Laramie-Fox Hills aquifer water is considered to be available to replace post-pumping depletions. As indicated above, post-pumping depletions will equal 439.4 acre feet, so the water in the Laramie-Fox Hills aquifer is sufficient to replace all post-pumping depletions.

E. Applicants may petition the Court under retained jurisdiction to modify or terminate the requirement to replace post-pumping depletions or to utilize a source of

replacement water other than the Laramie-Fox Hills aquifer water reserved herein. In such a proceeding, the Court may modify or terminate the reservation of the Laramie-Fox Hills aquifer water, if appropriate.

19. Recording of decree and covenants. A certified copy of this decree shall be recorded in the real estate records of El Paso County and shall constitute a covenant running with the land, requiring Applicants to comply with the requirements of this decree and plan for augmentation, including the requirement to construct a Laramie-Fox Hills aquifer well or take other measures as necessary to replace post-pumping depletions. Said covenants shall indicate clearly that failure of the property owner to comply with the terms of this decree may result in an order from the State Engineer's office to curtail pumping from one or more of the Denver and Arapahoe aquifer wells. Said covenants shall be amended as necessary to conform to the provisions of any amendment to this augmentation plan. The covenants shall be for the benefit of, and enforceable by, the State and Division Engineers and third parties owning vested water rights that would be injured by the failure to provide for the replacement of depletions from pumping of the Denver and Arapahoe aquifer wells as decreed herein. Specific performance shall be a remedy available to such third parties against the owner(s) of the Property and the Denver and Arapahoe aquifer wells. Any proposed change in the method of wastewater treatment and disposal shall require water court approval after the filing of a separate water court application, and notice in the water resume and publication in a newspaper of general circulation in El Paso County.

20. Appurtenances to Property. This plan for augmentation, all of the Denver and Laramie-Fox Hills aquifer water rights decreed herein, and 313.2 acre feet of the Arapahoe aquifer water rights decreed herein, shall be considered, and are, appurtenances to the Property. They shall be conveyed pursuant to the appurtenance clause in any deed conveying the Property or any portion thereof, whether or not the plan for augmentation and the water rights are specifically referenced in the deed. However, if a different source of augmentation water for replacement of post-pumping depletions is approved pursuant to ¶¶ 18.A and C above, then subsequently, whether a deed which does not specifically reference the previously reserved Laramie-Fox Hills aquifer water conveys such water rights shall be interpreted pursuant to conventional rules regarding interpretation of deeds.

21. Meters and reporting requirements. Each well permitted pursuant to this decree shall be equipped with a properly installed and calibrated totalizing flow meter. Applicants shall record the metered use, at minimum, on November 1 and April 1 of each year, and report such use to the water commissioner within two weeks after the measurements have been made. The water commissioner may require more frequent metering and reporting.

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

CONCLUSIONS OF LAW

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

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

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

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

JUDGMENT AND DECREE

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

28. Adjudication of Denver aquifer water rights.

A. Applicants are granted a vested right to 184 acre feet of ground water in the not nontributary Denver aquifer, subject to modification by the Court under its retained jurisdiction. Such right is conditioned on compliance with the other

requirements of this decree concerning re-permitting and abandonment of the exempt wells identified in ¶ 13.

B. The entire amount of the Denver aquifer water rights decreed herein is reserved for and may be withdrawn only pursuant to the terms and conditions of the augmentation plan which is also decreed herein.

29. Adjudication of Arapahoe aquifer water rights.

A. Applicant is granted a vested right to 678 acre feet of ground water in the not nontributary Arapahoe aquifer, subject to modification by the Court under its retained jurisdiction.

B. Three hundred thirteen and 2/10ths (313.2) acre feet of the Arapahoe aquifer water rights decreed herein are reserved for and may be withdrawn only pursuant to the terms and conditions of the augmentation plan which is also decreed herein. The remaining 364.8 acre feet of Arapahoe aquifer water that is not included in the plan for augmentation approved in this decree shall not be pumped for any purpose unless pursuant to a separate Court-approved plan for augmentation authorizing that water's withdrawal. Any such plan for augmentation shall limit annual withdrawals to a maximum of 3.65 acre feet annually, unless water banking pursuant to Rule 8.A of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, is authorized by the decree approving that plan.

30. Adjudication of Laramie-Fox Hills aquifer water rights.

A. Applicants are granted a vested right to 449 acre feet of ground water in the nontributary Laramie-Fox Hills aquifer, subject to modification by the Court under its retained jurisdiction.

B. All of the Laramie-Fox Hills aquifer water rights are reserved for replacement of post-pumping depletions pursuant to the plan for augmentation decreed herein unless and until the Water Court has approved an alternate source of water to replace post-pumping depletions and modified the reservation herein under its retained jurisdiction. This water shall be pumped at a rate to be determined pursuant to the procedure described in ¶ 18.C.

31. Decreed uses. The Denver, Arapahoe, and Laramie-Fox Hills aquifer water rights are decreed for those uses specified in ¶ 14 above, subject to the permitting requirements of ¶ 35, below, and the terms and conditions governing the reservation of the Laramie-Fox Hills water as decreed herein.

32. “Water Banking.” The “water banking” procedures of Rule 8.A. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7, cannot be applied to the Denver aquifer, Arapahoe aquifer, and Laramie-Fox Hills aquifer water rights which are reserved for use in the plan for augmentation decreed herein. Whether the water banking rules will be applicable to the 364.8 acre feet of the not-nontributary Arapahoe aquifer water adjudicated herein which is not included in the plan for augmentation shall be determined in a separate plan for augmentation decreed for the purpose of allowing the pumping of such not nontributary water.

33. Vested Water Rights. The water rights decreed herein are vested water rights, and no applications for findings of diligence are required. Pursuant to C.R.S. §37-92-305(11), the Court will retain jurisdiction to finally determine the amount of water available from each aquifer underlying the Property, based on site-specific data when it becomes available, and to adjust upward or downward as appropriate the amount available for withdrawal from each aquifer. The Applicants need not refile, republish, or otherwise amend this decree to request or obtain such adjustment.

34. Approval of Plan for Augmentation.

A. The plan for augmentation described herein is approved. Depletions caused by pumping water from the Denver and Arapahoe aquifers shall be replaced as provided and decreed herein.

B. Annual withdrawals from the Denver aquifer shall not exceed 0.306 acre foot (99,710 gallons) annually per well, nor more than a total of 0.612 acre feet annually from two Denver aquifer wells, nor more than 184 acre feet during the duration of this plan for augmentation. Annual withdrawals from the Arapahoe aquifer shall not exceed 0.348 acre foot (113,396 gallons) annually per well, nor more than a total of 1.044 acre feet annually from three Arapahoe aquifer wells, nor more than 313.2 acre feet during the duration of this plan for augmentation. Pumping from any Denver or Arapahoe aquifer well shall not exceed 15 gpm. The State or Division Engineer shall curtail the pumping of more than those amounts from the Denver and Arapahoe aquifers.

C. Absent modification, the plan for augmentation shall terminate 300 years after the beginning of pumping, even if less than 184 acre feet have been pumped from the Denver aquifer or less than 313.2 acre feet have been pumped from the Arapahoe aquifer.

D. Pursuant to C.R.S. § 37-92-305(8), the State Engineer shall also curtail all diversions, the depletions from which are not replaced in a manner to prevent injury to vested water rights or decreed conditional water rights. In order to ensure replacement of depletions during the pumping period, pumping and use of a Denver or Arapahoe aquifer well for any beneficial uses other than indoor residential use shall not be allowed unless ground water is also being pumped through that well as described in this decree and used for indoor residential use.

35. Issuance of well permits. Within 60 days after entry of a final decree in this case, Applicant shall apply for new well permits for the existing Denver aquifer exempt wells with permit nos. 250314-A and 172650, and for three new Arapahoe aquifer wells. The applications shall be consistent with the provisions of this decree. Upon submission of a properly completed application and the requisite fee, the State Engineer shall issue a permit for each new well authorized by this decree, consistent with the terms of this decree and all applicable statutes and rules. The State Engineer shall identify the specific uses which can be made of the ground water to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the application or which would be inconsistent with the requirements of this decree and the plan for augmentation approved herein, or any modified decree and plan.

36. Additional provisions.

A. Subject to the requirements of this decree concerning the allowable volumes of water that may be pumped, Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands, or to recover the entire amount of legally available ground water in the subject aquifers underlying the Property. As additional wells are planned, applications shall be filed in accordance with C.R.S. §37-90-137(10). All new wells on the Property must be constructed pursuant to applicable Colorado laws and regulations of the Division of Water Resources.

B. Two or more wells constructed into the Laramie-Fox Hills aquifer shall be considered a well field. In effecting production of water from such well field, Applicants may produce the entire amount which may be produced from that aquifer through any combination of wells within the well field. The multiple wells in either the Denver or Arapahoe aquifers shall not be considered a well field and shall be operated in accordance with the pumping limits and plan for augmentation decreed herein.

C. In considering applications for permits for wells or additional wells to withdraw the groundwater which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with the provisions of C.R.S. § 37-90-137(10). Each well shall be equipped with a properly functioning totalizing flow meter.

D. Groundwater production shall be limited to the subject aquifers. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was permitted.

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

F. In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain permits to reflect such adjusted average annual amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

G. The Applicants 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 Laramie-Fox Hills aquifer water withdrawn annually. No more than ninety-eight percent of the nontributary ground water withdrawn annually may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment. Applicant shall be required to demonstrate to the State Engineer prior to the issuance of a well permit that no more than ninety-eight percent of the ground water withdrawn annually will be consumed.

37. Retained jurisdiction provisions regarding quantity of water appropriated.

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of ground water available in each aquifer under the Property to conform to actual

local aquifer characteristics as determined from adequate information obtained from wells, pursuant to C.R.S. §37-92-305(11). Within 60 days after completion of any well decreed herein or any test hole(s) which fully penetrate any of the Denver Basin aquifers, Applicants shall geophysically log such well and shall serve copies of such log(s) upon the State Engineer, unless the requirement is waived pursuant to Rule 9.A. of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.

B. At such time as adequate data is available, any person, including the State Engineer, may invoke the Court's retained jurisdiction to make a Final Determination of Water Right. Within four months of notice that the retained jurisdiction for such purpose has been invoked, the State Engineer shall use the information available to him to make a final determination of water rights findings. The State Engineer shall file and serve such finding with the Water Court in this case.

C. If no protest to such finding is made within 60 days, the Final Determination of Water Rights shall be incorporated into the decree by the Water Court. In the event of a protest, or in the event the State Engineer makes no determination within four months, such final determination shall be made by the Water Court after notice to all parties and a hearing.

38. Retained jurisdiction regarding consideration of injury. 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. Any person may invoke the

Court's retained jurisdiction at any time such person alleges that the Applicants are causing injury to the senior water rights of such person. Any person seeking to invoke the retained jurisdiction of the Court shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the decree shall set forth with particularity the factual basis of material injury to the petitioner's vested water rights upon which the requested reconsideration is premised, together with proposed decretal language to effect the petition. The person invoking the Court's retained jurisdiction shall have the burden of establishing a *prima facie* case that Applicants are causing injury to water rights owned by the person invoking the Court's retained jurisdiction, except that the State and Division Engineers may invoke the Court's retained jurisdiction by establishing a *prima facie* case that injury is occurring to any vested or conditionally decreed water rights. Applicants shall have the ultimate burden of proving that no injury is occurring, or shall propose terms and conditions to prevent such injury.

39. Retained jurisdiction regarding compliance with plan for augmentation. The Court also retains jurisdiction for the purposes of determining compliance with the terms of the augmentation plan, and to reconsider the post-pumping depletion replacement obligation for the Denver and Arapahoe aquifer withdrawals and the reservation of 449 acre feet of the Laramie-Fox Hills aquifer water for that purpose. Any person seeking to invoke the retained jurisdiction of the Court pursuant to this paragraph shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the decree shall set forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to effect the petition. The person lodging the petition shall have the burden of going

forward to establish *prima facie* facts alleged in the petition. If the Court finds those facts to be established, Applicants shall thereupon have the burden of proof to show: (1) that any modification sought by Applicants will prevent injury to other appropriators, or (2) that any modification sought by the person filing the petition is not required to prevent injury to other appropriators, or (3) that any term or condition proposed by Applicants in response to the petition prevents injury to other appropriators.

Dated: October 10, 2017.

BY THE REFEREE:

Mardell R. DiDomenico



Mardell R. DiDomenico
Water Referee
Water Division 2

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: November 1, 2017.

BY THE COURT:

Larry C. Schwartz
LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2



