



May 16, 2024

El Paso County Commissioners c/o
Ryan Howser, AICP, Planner III
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Subject: Eagle Rising Development, SP205 Eagle Rising Preliminary Plan
Park Forest Water District Water Commitment Letter

We submit the attached March 20, 2024 Park Forest Water District Water Commitment Letter upon representations from both El Paso County attorney Lori Seago and Park Forest Water District attorney Julianne Woldridge that this letter meets all El Paso County Development Code and Water Commitment Letter requirements and all State of Colorado Water Engineer requirements for the purpose of supporting the finding of water supply sufficiency by the El Paso County Board of Commissioners.

Respectfully submitted,

NEXT LEVEL DEVELOPMENT, INC.

A handwritten signature in blue ink that reads "Wayne M. Timura".

Wayne M. Timura, P.E.
Principal

Commercial Real Estate, Development and Construction Management

735 Lancers Court West, Suite 100, Monument, CO 80132

Telephone: 719-886-6535 Cell: 719-351-8629

www.NLdevelopment.com wtimura@NLdevelopment.com

PARK FOREST WATER DISTRICT

7340 McFerran Road • Colorado Springs, CO 80908 • (719) 494-1320

Web: <https://parkforestwd.colorado.gov/> • Email: pfwd@pfwd.org

March 20th, 2024

Ryan Howser, AICP, Planner III
El Paso County Planning and Community Development Department
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: Eagle Rising development, Eagle Rising Preliminary Plan
SW1/4NE1/4 Sec. 29, T.12S., R.65W, 6th P.M., El Paso County

This letter updates prior letters to you regarding the Park Forest Water District (District") commitment to serve and supersedes all prior commitment letters.

The District has committed to serve a proposed development as described in and subject to the provisions of that Inclusion Agreement attached hereto as Exhibit A. This appears to be the same property described as the Eagle Rising development on the Water Supply Information Summary attached hereto as Exhibit B, which has been provided to the District by the property owners.

The District has committed to provide a water supply for up to 18 residential taps with on-lot septic systems within the subdivision and to augment depletions from that supply, all subject to the terms and limitations of the Inclusion Agreement and the decrees entered in Case Nos. 14CW3010 (augmentation plan) and 00CW18 (water rights adjudication), Water Division No. 2, copies attached as Exhibit C. As described in those decrees, the projected water supply for 18 residential taps is 0.35 acre-feet per year per tap or 6.3 acre-feet per year for 18 taps with a total augmentation requirement of 0.63 acre-feet per year for 18 taps. The proposed water requirements for the residential taps described in the attached Water Supply Information Summary is within the amount projected by the District as described in the decree in Case No. 14CW3010 and within the amount the District has committed to supply and augment pursuant to the Inclusion Agreement. The amount of the water supply and the amount of augmentation water required for the residential taps expressed in the attached Water Supply Information Summary is within the water supply and augmentation requirements to which the District has committed pursuant to the Inclusion Agreement and for which the District has a current supply available pursuant to the attached Water Court decrees.

The District notes that the Water Supply Information Summary's description of 5.0 acre-feet per year of water proposed to be diverted from these two existing wells is consistent with the amount of water for which augmentation may be provided by the District subject to the terms and limitation of the attached Water Court decrees and the Inclusion Agreement; and the Water Supply Information Summary's description of 13.33 acre-feet per year of "ponds evaporation" is consistent with the amount of augmentation water that may be provided by the District for surface area evaporation from three ponds subject to the terms and limitations of those same decrees and the Inclusion Agreement. The District expresses no opinion regarding the physical supply of water available from the wells or the actual amount of pond surface area evaporation occurring. The Water Supply Information Summary does not identify the specific uses proposed for the water to be diverted from the existing wells or the ponds. The wells with permit numbers 203335 and 228940 are NOT the wells by which the District will supply the central water system for this subdivision. The use of those wells is subject to the terms of the attached Inclusion Agreement and the District's commitment to augment depletions from these wells and pond evaporation is specifically limited as provided in the attached Inclusion Agreement and the attached Water Court decrees.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Kerekes", written in a cursive style.

Jason Kerekes
President - PFWD Board of Directors

Exhibit A

Being Re-recorded to include Schedules A & B - legal descriptions

INCLUSION AGREEMENT

This Inclusion Agreement ("Agreement") is entered into this 19th day of September, 2013, by and between the Park Forest Water District ("Water District"), whose address is 7340 McFerran Rd., Colorado Springs, Colorado 80908, and Casas Limited Partnership No. 4, a Colorado limited partnership, whose address is 5390 North Academy, Suite 300, Colorado Springs, Colorado 80918, and IQ Investors, LLC, a Colorado limited liability company, whose address is 5390 North Academy, Suite 300, Colorado Springs, Colorado 80918 (collectively "Petitioner").

RECITALS

A. The Water District is a special water district formed and operating under the Colorado Special District Act, and provides water service within its boundaries in northern El Paso County, Colorado.

B. Petitioner is the fee owner of 100 percent of the real property described in Exhibit A attached hereto encompassing approximately 70 acres, more or less, known as the Eagle Rising Subdivision, and consisting of 18 lots as pending subdivision approval before El Paso County, Colorado ("Property").

C. The Petitioner has requested that the Property be included within the service area and boundaries of the Water District and has submitted a Petition for Inclusion into the Water District ("Petition for Inclusion").

D. The Property is eligible for inclusion into the Water District pursuant to C.R.S. 32-1-401, *et. seq.* and also pursuant to the Water District's inclusion resolutions and guidelines. The Water District has initially approved the Petition for Inclusion, contingent upon the execution of this Inclusion Agreement.

E. The Water District and Petitioner wish to set forth the terms and provisions under which the Property is to be included within the Water District.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Court Approval. The Parties agree and acknowledge that this Agreement is premised upon (a) completion of the pending subdivision process by Petitioner, as discussed in Paragraph 12, below; and (b) approval by the District Court of the Petition for Inclusion. The Water District shall, at its own expense, file all documents appropriate with the District Court to facilitate approval of the inclusion of the Property and to obtain an Order of Inclusion therefore. The Petitioner shall provide all support and assistance necessary and as may be requested by the Water District to facilitate



completion of the inclusion process, and Petitioner shall reimburse the Water District for all costs, including legal fees, which the Water District incurs associated with not only completion of the Petition process, but also all necessary water court filings and proceedings, an amount estimated to be less than \$10,000.00 for completion of any such necessary legal proceedings and submissions. Petitioner's \$1,000 deposit with the Petition shall be applied to these costs prior to the Water District's request from Petitioner for additional funds for this purpose. The Water District may terminate this Agreement immediately in the event Petitioner fails or refuses to provide such additional funds upon the Water District's request.

2. Water Improvements. Petitioner shall describe and grant legal easements for the benefit of the Water District, construct and pay for the on-site water delivery and distribution system as necessary to properly supply and distribute water from the Water District's existing facilities to the Property ("Water Utility Improvements"), the sufficiency of which shall be determined by the Water District in its reasonable discretion. Petitioner shall provide the Water District with design plans and schematics for the Water Utility Improvements, and shall obtain final design approval of the Water Utility Improvements from the Water District, in writing, that such improvements are in accordance with the Water District's design criteria and construction standards.

3. Plan Approval. Prior to construction of any Water Utility Improvements, Petitioner shall submit detailed construction plans to the Water District for final design approval, which shall be reviewed within one week's time and approved with alacrity. Construction shall not begin until Petitioner has obtained the prior written approval by the Water District of such final design construction plans, which approval shall be in the Water District's reasonable discretion as to whether such plans comply with this Agreement, the Water District's design criteria and construction standards, and all other rules, regulations and policies of the Water District. The Petitioner shall provide the Water District with a copy of the final approved plans and also with a complete set of as-built drawings upon completion of the Water Utility Improvements.

4. Main Lines. Petitioner shall be responsible for the construction, at its expense, of the connection to and extension of the Water District's existing water main lines to and from the Property, as necessary for delivery of utility service to the Property. In this manner, and as discussed in Paragraph 1 above, Petitioner is responsible for the construction and expense of all onsite infrastructure improvements for utility service to the Property.

5. Service Lines. The cost of the Petitioner's connection to the water main lines and the cost of the service lines from the main lines to the improvements on the Property shall be at the sole expense and obligation of the Petitioner.

6. Conveyance and Warranty. The construction obligations of Petitioner referenced in Paragraphs 2 through 5, above, shall not be complete until the Water

District's inspection and written acceptance of the infrastructure as being in compliance with the Water District's specifications and plans accepted by the Water District for use in construction under this Agreement, which acceptance shall occur within three months after completion. Such acceptance shall be in accordance with standard policies and procedures of the Water District. Petitioner guarantees all infrastructure improvements for one year after determination of final completion and acceptance by the Water District. Petitioner shall maintain the improvements during said guarantee period and shall cure any nonconforming work or any failures in materials or workmanship. All infrastructure improvements performed by the Petitioner, once accepted by the Water District and following the one-year guarantee period, shall become the property of the Water District, and shall be maintained and operated by the Water District, except as expressly provided herein concerning the operation and maintenance of the Existing Wells. Upon acceptance by the Water District, the Petitioner shall convey good title for the easements and the utility improvements to the Water District, free and clear of all liens and encumbrances.

7. Existing Well Uses. The Water District and Petitioner acknowledge that two existing wells constructed to the Dawson aquifer are currently permitted for use upon the Property, Colorado Division of Water Resources Permit Nos. 228940 and 203335 ("Existing Wells"). The term "Existing Wells" for purposes of this Agreement shall include not only the existing permitted structures, but also any replacement wells as may be necessary to deliver the water permitted for withdrawal thereby and pursuant to this Agreement, whether constructed to the Dawson aquifer, or the Denver aquifer. The Existing Wells will be added to the Water District's plan for augmentation as augmented structures, and may be utilized by any owner's association(s) ("Association") to be formed by Petitioner, only for non-potable purposes of stock-watering, common area landscape irrigation, hobby use and irrigation of community gardens only. The Existing Wells shall remain generally available to the Eagle Rising community, and shall not be for the service of only particular lots or particular individual residents. The Existing Wells shall be re-permitted consistent with the District's plan for augmentation upon entry of a decree, and shall be metered as necessary to provide accounting thereunder for uses therefrom. The Water District shall not assess any fees or charges upon the Association in regards to the use of the Existing Wells (as re-permitted under the Water District's plan for augmentation), but the Association shall be responsible for all costs associated with the use, operation, maintenance and replacement of the Existing Wells, including utilities necessary for their use and operation. Upon dissolution of any such owner's association as pertains to the use, operation and maintenance of the Existing Wells, unless a similar successor association is formed for similar purposes, ownership and control of the Existing Wells shall revert to the Water District, in which event the Water District shall have sole discretion over their use and disposition. The volumetric limitation on diversions from the Existing Wells by the Association shall be 5 acre feet annually, and maximum depletions shall be 4 acre feet, or 85% of pumping, whichever is less.

8. Augmentation of Evaporative Depletions. The Water District and Petitioner acknowledge that the Property includes three existing ponds with a maximum combined surface area of approximately 5 acres ("Existing Ponds"). The Water District shall add the Existing Ponds to its plan for augmentation as augmented structures, and shall provide replacement/augmentation water sufficient to maintain the Existing Ponds at a full stage, and to augment depletions resulting from surface evaporation, without additional charges or fees assessable upon Petitioner or the Association. It is anticipated that the Water District will utilize excess available septic return flows from within the District for such augmentation purposes, but the Water District may use any such augmentation means available to it, in the Water District's sole and complete discretion. The Existing Ponds will be operated consistent with the terms and conditions of the augmentation plan amendment, which shall be consistent with this Paragraph 8, and no additional ponds may be constructed on the Property without the Water District's prior written consent. Excepting provision of augmentation water as provided in this Paragraph 8 and the obtaining of a decree from the Division 2 Water Court allowing the District to do the same, nothing in this Agreement shall require or otherwise obligate the Water District, at any time or for any other purpose, to provide fill or re-fill water to the Existing Ponds or any future ponds located on the Property, nor shall the Existing Wells be used to fill or supply water to any such ponds, excepting return flows from the authorized uses of the Existing Wells, as described in Paragraph 7 of this Agreement, which may naturally accrue to the Existing Ponds.

9. Water Requirements. The Water District requires, as part of the inclusion of the Property into the Water District, that Petitioner conveys all water and water rights, whether surface or ground water and whether or not adjudicated by decree or by administrative order, including but not limited to all its underlying Denver Basin water rights, to the Water District for the development uses of the Property. The Denver Basin groundwater underlying the Property was subject of the adjudication in Case No. 00CW84, Water Division No. 2, and the plan for augmentation adjudicated in Case No. 10CW24, Water Division No. 2. Petitioner shall deed all such Denver Basin groundwater to the Water District for the Water District's use in provision of water supply to the Property by special warranty deed, and the Water District may then take such action as appropriate to utilize, modify or vacate any such judicial rulings. Notwithstanding the foregoing in this Paragraph 9, Petitioner and the Association(s) to be formed thereby shall maintain dominion and control over the Existing Wells and the uses of water therefrom as provided in Paragraph 7 above, and the Water District shall have dominion and control over all return flow water resulting from such uses. The Water District shall have no obligation to provide any water service to the Property until execution of said special warranty deeds.

10. Tap Fees. The Water Tap Fee for each requested water line to the 18 residential units to be developed on the Property pursuant to the pending subdivision proceedings before El Paso County is currently \$4,000.00 per tap, for total Water Tap Fees of \$72,000.00, were all such tap fees to be paid concurrent with this Agreement,

per the current applicable Water District tap fees (assuming the maximum 18 lots are platted and developed). All Water Tap Fees shall be payable directly to the Water District, and due and payable at the time that water service is requested to be made available to specific lots upon the Property and at the rate structure in place at that time.

a. However, in consideration of other fees and revenues to the Water District resulting from the inclusion of the Property, for a period of 10 years from the recording date of the final plat for Filing No. 2 of the Eagle Rising Subdivision, the Water District shall refund the then-applicable tap fee, less a \$250 meter and connection charge per tap, to MyPad, Inc.¹ or its assigns within 30 days of receipt of said tap fee. Tap fees collected following said 10-year period shall not be rebated to Petitioner, MyPad, Inc. or assigns, and shall be fully retained by the Water District.

11. Application Fee. Petitioner paid an application fee for inclusion within the Water District of \$1,000 coincident with the submission of the above-referenced Petition for Inclusion. Said fee shall be utilized by the Water District to defer legal and engineering costs associated with the inclusion of the Property, including development of this Agreement. Petitioner shall be responsible for all fees incurred by the Water District in processing Petitioner's inclusion petition and shall provide additional funds and in such amounts as the Water District may request. The Water District may terminate this Agreement immediately upon Petitioner's failure or refusal to provide such additional funds requested by the Water District.

12. Subdivision. The Water District acknowledges that Petitioner is currently processing a request for subdivision of the property through El Paso County planning authorities, and that the terms and conditions of this Inclusion Agreement are premised upon successful completion of that subdivision process. Petitioner shall keep representatives of the Water District apprised of progress in said subdivision process, and shall provide the Water District with copies of all relevant development plan filings or submissions to said El Paso County planning authorities promptly following such submissions. Any further subdivision or re-zoning of any parcel within the Property which would act to expand the density beyond the maximum 18 lots considered herein¹, must be completed in cooperation with the Water District and in compliance with any reasonable requirements or restrictions of the Water District as may be provided. Any future subdivision or re-zoning completed without the compliance with Water District requirements or restrictions may result in the Water District's denial of water service to the subject parcel. Further, any such non-compliant subdivision shall not form the basis

¹ MyPad, Inc. is a Colorado Corporation, and a principal in Casas Limited Partnership No. 4.

¹ Petitioner's currently pending subdivision plan contemplates a 17 lot subdivision for the subject property, however, further subdivision creating one additional lot may be feasible, thereby creating an additional 18th lot. The District through this Agreement consents to such subdivision creating said 18th Lot as being "compliant", as considered in Paragraph 12 herein.

for Petitioner or its successors and assigns to seek exclusion from the Water District, and the Water District may use such means as available to compel the Petitioner or its successors and assigns to bring any such non-compliant subdivision into compliance with all applicable Water District rules and regulations.

13. Re-Sale of Lots on the Property. Each subsequent purchaser of lots within the Property, following subdivision, and each successor or assign of Petitioner (subject to Paragraph 23, below), shall at the Water District's request, sign a Water District Service Agreement, and shall likewise be required to pay all applicable fees, rates and mil levies uniformly applicable to all Water District residents, consistent with this Agreement. Any and all future sales, leases or other transfers of ownership or control of lots within the Property shall include notification to prospective purchasers/lessees of all applicable Water District Rules and Regulations, including this Agreement, so as to notify such purchasers/lessees of their responsibilities and obligations hereunder.

14. Easements. The Petitioner shall grant and provide to the Water District, at no cost to the Water District, any and all necessary licenses, permits, easements and rights-of-way across the Property, in size and location acceptable to the Water District. Such grants and provisions shall be in accordance with the Water District's reasonable design criteria and specifications to provide for the construction, operation, maintenance, repair and replacement of the mains, pipelines and appurtenances for the utility lines serving the Property, together with the right of ingress and egress thereto. All easements are appurtenant to the water infrastructure serviced thereby.

15. Compliance. Upon inclusion of the Property by the Water District by final order of the El Paso County District Court, the Petitioner shall abide by all terms of this Inclusion Agreement and comply with all applicable Federal, State, County and local statutes, laws, rules, regulations, policies and resolutions. Further, the Property and all lots thereon will be subject to payment of the mil levy approved by the voters of the Water District and uniformly applicable to all properties included therein, assessments and other charges of the Water District from the date of the inclusion, and Petitioner and its successors and assigns, specifically including all future lot owners within the subdivision upon the included property, shall comply with all rules, regulations, and rate structures of the Water District, both existing and as may be enacted in the future.

16. Nature of Work. All work to be performed by the Petitioner under the terms of this Inclusion Agreement shall be performed using quality materials and shall be performed in a workmanlike manner in compliance with the rules, regulations, specifications, policies and requirements of the Water District. Compliance with such specifications and requirements shall be determined in accordance with standard procedures of the Water District.

17. Water Quality. The Petitioner shall have the obligation to assure that the

Water Utility Improvements constructed by Petitioner are able to deliver water to the development meeting all applicable drinking water quality requirements. The Water District shall have the obligation to meet all applicable drinking water quality requirements to the point of delivery to the Water Utility Improvements.

18. Contingencies. This Inclusion Agreement is conditional upon obtaining the formal inclusion of the Property into the District by order of the El Paso County District Court, and upon completion of the pending subdivision of the property by El Paso County planning authorities. This Inclusion Agreement, as signed by the Water District, is also conditioned upon obtaining the approval of this Inclusion Agreement by resolutions of the Board of Directors of the Water District.

19. Provision of Service. All water service for the Property shall be subject to the rules, regulations, policies and resolutions promulgated by the Water District from time to time. The Water District shall not provide any water service if Petitioner or their successors are not in compliance with this Agreement.

20. Cooperation. The Petitioner and the Water District agree to cooperate with one another in the processing of the Petition for Inclusion, the performance of the post-inclusion obligations set forth in this Agreement, completion of the pending subdivision proceedings before El Paso County planning authority, amendment of the Water District's plans for augmentation, and the execution of any other documents necessary to fulfill the intent and purposes of this Agreement.

21. Default/Remedies. A party shall be in default hereunder in the event it fails to perform its obligations as required hereunder, and if such noncompliance is not cured within 15 days after written notice by the other party of the nature of the alleged noncompliance. In the event of default, the non-defaulting party shall have all remedies available under Colorado law, including that the Water District shall have the right to injunctive relief and specific performance in order to require Petitioner to perform its obligations under this Agreement. The Water District may further have the right to discontinue water service to owners of properties in default, consistent with the Rules and Regulations of the Water District.

22. Assignment. This Inclusion Agreement may not be assigned by Petitioner without the Water District's prior written consent, which consent will not be unreasonably withheld. If any portion of the Property is sold or transferred by Petitioner prior to the time for recording of the Court order for inclusion of the Property into the Water District, the Petitioner shall obtain the Water District's consent for the assignment of this Agreement with the Property. The Petitioner shall obtain and provide to the Water District the consent of the transferee, in recordable form, for the inclusion of that Property into the Water District and the assumption of this Inclusion Agreement. The transferee shall also agree and consent that the Property will be subject to assessments and charges of the Water District from the date of inclusion, including tap fees, and that

they shall comply with the rules, regulations and rate structures of the Water District, both existing and as may be enacted in the future. Any transferee not providing such consents shall not be entitled to connect into and receive service from the Water District's facilities.

23. Entire Agreement. This Inclusion Agreement represents the entire agreement of the parties with respect to the subject matter covered herein. All negotiations, considerations, representations and understandings between the parties are incorporated and merged herein. This Inclusion Agreement may be modified or altered only by the parties' written agreement.

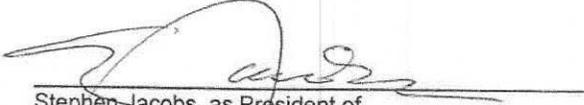
24. Authority/Ownership. All parties to this Inclusion Agreement represent and warrant that they have the full power and authority to enter into and perform this Agreement, and to bind their respective principals. Petitioner represents that it is the owner and is in title to the Property and agrees to deliver good marketable title to the Water District for all easements, water and water rights, and other facilities to be conveyed hereunder, free and clear of liens and encumbrances or with all lienholders' consent. Petitioner shall provide appropriate entity resolutions authorizing the execution and performance of this Agreement. Petitioner warrants and represents that there are no liens upon the Property. The Water District shall not be obligated to provide service to the Property under this Agreement until any lienholder consents to the inclusion of the Property within the Water District and to the terms of this Agreement and subordinates any such lien to the same, or, in the alternative, until this existing lienholder is paid in full and its lien released. These lienholder requirements may be waived by the Water District in its sole discretion. Such waiver must be in writing and signed by the Water District.

25. Severability. Unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement, so long as the primary purpose(s) of this Agreement remain effectuated by the remaining terms.

26. Attorney's Fees. In the event of any dispute between the parties concerning this Agreement or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney's fees, incurred in such litigation as well as all additional such costs and expenses incurred in enforcing and collecting any judgment rendered in such action.

27. Time is of the Essence. Time is of the essence in the performance of the parties obligations hereunder. Where not otherwise expressly provided in this agreement, any response required by a party shall be within 45 days or less of the date of receipt of any communication to which such response is required.

PETITIONER



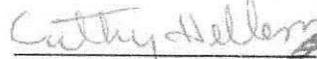
Stephen Jacobs, as President of
Sesmar Corporation, as managing
member of IQ Investors, LLC

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

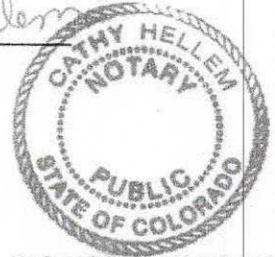
Subscribed and sworn to before me this 9 day of Sept, 2013, by Stephen
Jacobs as President of Sesmar Corporation, a Colorado corporation, as managing
member of Petitioner, IQ Investors, LLC.

My commission expires: Feb 9, 2015

Witness my hand and seal.
(SEAL)



Notary Public



Commission Expires 02-09-15

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LEGAL DESCRIPTION

THAT PORTION OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 29, SAID POINT BEING ON THE SOUTHERLY BOUNDARY OF PARK FOREST ESTATES FILING NO. 2 (PLAT BOOK B-2 AT PAGE 52) SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE N 89 DEGREES 14 MINUTES 16 SECONDS E, ALONG THE SOUTHERLY BOUNDARY OF SAID PARK FOREST ESTATES, A DISTANCE OF 375.32 FEET TO THE SOUTHEAST CORNER OF LOT 14, BLOCK 18 OF SAID PARK FOREST ESTATES; THENCE N 89 DEGREES 13 MINUTES 46 SECONDS E ALONG SAID SOUTHERLY BOUNDARY, A DISTANCE OF 50.00 FEET TO THE EAST LINE OF KURIE ROAD; THENCE N 89 DEGREES 33 MINUTES 17 SECONDS E ALONG SAID SOUTHERLY BOUNDARY, A DISTANCE OF 237.50 FEET; THENCE N 89 DEGREES 20 MINUTES 43 SECONDS E ALONG SAID SOUTHERLY BOUNDARY, A DISTANCE OF 149.96 FEET; THENCE S 00 DEGREES 39 MINUTES 26 SECONDS E, DEPARTING SAID SOUTHERLY BOUNDARY OF PARK FOREST ESTATES, A DISTANCE OF 231.57 FEET; THENCE S 43 DEGREES 12 MINUTES 03 SECONDS E, A DISTANCE OF 433.08 FEET; THENCE S 43 DEGREES 12 MINUTES 03 SECONDS E, A DISTANCE OF 56.61 FEET; THENCE N 88 DEGREES 33 MINUTES 24 SECONDS E, A DISTANCE OF 0.10 FEET TO THE NORTHWEST CORNER OF LOT 1 POCO SUBDIVISION ACCORDING TO THE OFFICIAL MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF EL PASO COUNTY, COLORADO, AS RECEPTION NO. 2406425; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 1 THE FOLLOWING SIX (6) COURSES:
S 16 DEGREES 04 MINUTES 20 SECONDS E, 158.01 FEET;
S 02 DEGREES 43 MINUTES 41 SECONDS W, 265.73 FEET;
N 84 DEGREES 46 MINUTES 48 SECONDS W, 71.67 FEET;
S 00 DEGREES 11 MINUTES 34 SECONDS W, 147.46 FEET;
N 88 DEGREES 32 MINUTES 26 SECONDS E, 150.00 FEET;
S 01 DEGREES 27 MINUTES 34 SECONDS E, 275.63 FEET;
THENCE S 89 DEGREES 46 MINUTES 20 SECONDS W DEPARTING SAID WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 1271.04 FEET TO A POINT ON SAID WEST LINE OF THE EAST HALF OF SAID SECTION 29; THENCE N 00 DEGREES 13 MINUTES 40 SECONDS W, ALONG THE SAID WEST LINE, A DISTANCE OF 1413.98 FEET TO THE TRUE POINT OF BEGINNING.

LEGAL DESCRIPTION

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S 02 DEGREES 43 MINUTES 41 SECONDS W, 265.73 FEET;
N 84 DEGREES 46 MINUTES 48 SECONDS W, 71.67 FEET;
S 00 DEGREES 11 MINUTES 34 SECONDS W, 147.46 FEET;
N 88 DEGREES 32 MINUTES 26 SECONDS E, 150.00 FEET;
S 01 DEGREES 27 MINUTES 34 SECONDS E, A DISTANCE OF 275.63 FEET TO THE TRUE POINT OF BEGINNING; THENCE S 01 DEGREES 27 MINUTES 34 SECONDS E, A DISTANCE OF 178.87 FEET; THENCE S 34 DEGREES 54 MINUTES 56 SECONDS W, A DISTANCE OF 563.22 FEET; THENCE S 00 DEGREES 00 MINUTES 00 SECONDS E, A DISTANCE OF 344.55 FEET; THENCE N 90 DEGREES 00 MINUTES 00 SECONDS E, A DISTANCE OF 87.56 FEET; THENCE S 00 DEGREES 00 MINUTES 00 SECONDS E, A DISTANCE OF 459.65 FEET; THENCE S 89 DEGREES 59 MINUTES 26 SECONDS W, A DISTANCE OF 1035.05 FEET TO A POINT ON THE WEST LINE OF THE EAST HALF OF SAID SECTION 29; THENCE N 00 DEGREES 13 MINUTES 40 SECONDS W, ALONG SAID WEST LINE, A DISTANCE OF 1439.98 FEET; THENCE N 89 DEGREES 46 MINUTES 20 SECONDS E, A DISTANCE OF 1271.04 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit B

FORM NO. GWS-76 05/2011	WATER SUPPLY INFORMATION SUMMARY STATE OF COLORADO, OFFICE OF THE STATE ENGINEER 1313 Sherman St., Room 821, Denver, CO 80203 Main (303) 866-3581 dwr.colorado.gov
Section 30-28-133,(d), C.R.S. requires that the applicant submit to the County, "Adequate evidence that a water supply that is sufficient in terms of quantity, quality, and dependability will be available to ensure an adequate supply of water."	

1. NAME OF DEVELOPMENT AS PROPOSED: **Eagle Rising**

2. LAND USE ACTION: **Eagle Rising Preliminary Plan**

3. NAME OF EXISTING PARCEL AS RECORDED: **Parcels # 5229000034 and 5229000035 in El Paso County, Colorado**
 SUBDIVISION: _____, FILING (UNIT) _____, BLOCK _____, LOT _____

4. TOTAL ACREAGE: **70.79** 5. NUMBER OF LOTS PROPOSED **17** PLAT MAP ENCLOSED? YES or NO

6. PARCEL HISTORY – Please attach copies of deeds, plats, or other evidence or documentation. See Water Resources Report Appendix A Eagle Rising Preliminary Plan V1.5 Sheet 1 of 2

A. Was parcel recorded with county prior to June 1, 1972? YES or NO

B. Has the parcel ever been part of a division of land action since June 1, 1972? YES or NO

If yes, describe the previous action: **Separation of a portion of a larger parcel into two 35+ acre parcels plus a lot line adjustment.**

7. LOCATION OF PARCEL – Include a map delineating the project area and tie to a section corner. See Water Resources Report Appendix A Eagle Rising Preliminary Plan V1.5 Sheet 1 of 2

SW 1/4 of the NE 1/4, Section 29, Township 12 N or S, Range 65 E or W

Principal Meridian (choose only one): Sixth New Mexico Ute Costilla

Optional GPS Location: GPS Unit must use the following settings: Format must be **UTM**, Units must be **meters**, Datum must be **NAD83**, Unit must be set to **true N**, Zone 12 or Zone 13

Easting: _____
Northing: _____

8. PLAT – Location of all wells on property must be plotted and permit numbers provided. See Water Resources Report Appendix A Eagle Rising Preliminary Plan V1.5 Sheet 1 of 2

Surveyor's Plat: YES or NO If not, scaled hand drawn sketch: YES or NO

USE	WATER REQUIREMENTS	10. WATER SUPPLY SOURCE	PROPOSED AQUIFERS – (CHECK ONE)
HOUSEHOLD USE # <u>17</u> of units	Gallons per Day Acre-Feet per Year See Notes 1, 2 & 3 <u>5.4</u>	<input checked="" type="checkbox"/> EXISTING WELL <input type="checkbox"/> DEVELOPED SPRING WELL PERMIT NUMBERS 203335 and 228940	<input type="checkbox"/> ALLUVIAL <input type="checkbox"/> UPPER ARAPAHOE
COMMERCIAL USE # _____ of S. F.	_____ <u>N/A</u>	_____	<input type="checkbox"/> UPPER DAWSON <input type="checkbox"/> LOWER ARAPAHOE
IRRIGATION # <u>10±</u> of acres	} See Note 4 <u>5.0</u>	_____	<input type="checkbox"/> LOWER DAWSON <input type="checkbox"/> LARAMIE FOX HILLS
		_____	<input type="checkbox"/> DENVER <input type="checkbox"/> DAKOTA
STOCK WATERING # <u>68</u> of head	} See Note 4 <u>13.33</u>	<input type="checkbox"/> MUNICIPAL	WATER COURT DECREE CASE NUMBERS: Water Court, Water Division No. 2 Case No. 2014CW310
OTHER: Ponds Evaporation Return flow credit		<input type="checkbox"/> ASSOCIATION <input type="checkbox"/> COMPANY <input checked="" type="checkbox"/> DISTRICT	
TOTAL	_____ <u>23.8</u>	NAME Park Forest Water District LETTER OF COMMITMENT FOR SERVICE <input checked="" type="checkbox"/> YES or <input type="checkbox"/> NO	Appendix C.

11. WAS AN ENGINEER'S WATER SUPPLY REPORT DEVELOPED? YES or NO IF YES, PLEASE FORWARD WITH THIS FORM.
 (This may be required before our review is completed.)

12. TYPE OF SEWAGE DISPOSAL SYSTEM

SEPTIC TANK/LEACH FIELD CENTRAL SYSTEM

LAGOON DISTRICT NAME: _____

ENGINEERED SYSTEM (Attach a copy of engineering design.) VAULT

LOCATION SEWAGE HAULED TO: _____

OTHER: _____

See Water Resources Report: Table 1 Water Demand, Appendix C Court Decree, Appendix D Will Serve Letters and Appendix F Inclusion Agreement

Note 1: Meets the minimum of Section 8.4.7(B)(7)(d) of the El Paso County Land Development Code.

Note 2: Per Section 8.4.7(B)(7)(d) of the El Paso County Land Development Code, assuming 1000 ft² of irrigation per SFE-lot.

Note 3: For the total 17 Lot subdivision Park Forest Water District will provide an estimated 0.35+ Acre Feet per lot. i.e. 5.95AF is greater than 5.4AF expected demand of the 6.3AF the District has reserved for the potential 18 lot subdivision.

Note 4: Permits 203335 + 228940 are authorized for up to 5 AF/year which includes stock watering, common area landscape and garden irrigation, and hobby use, plus 13.33AF of return flow credit for Park Forest Water District to augment evaporation loss for 5 acres of pond surface area all according to Water Court, Water Division No. 2 Case No.2014CW310 Appendix C.

Exhibit C

CENTRAL FILES

DISTRICT COURT, WATER DIVISION NO 2 PUEBLO COUNTY, COLORADO Pueblo County Judicial Bldg , 320 W. 10 th Street, Pueblo, Colorado 81003	RECEIVED JUN 21 2002 WATER RESOURCES STATE ENGINEER COLO
Concerning the Application for Water Rights of: PARK FOREST WATER DISTRICT In the Arkansas River or its tributaries in El Paso County	▲ COURT USE ONLY ▲
	Case No. 00CW22 (Water Div. 1) Case No. 00CW18 (Water Div 2)
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This application comes before the Court upon the Application of Park Forest Water District ("Applicant" or "District") for adjudication of water rights in the Denver Basin aquifers and for approval of a plan for augmentation which allows pumping from the nontributary Dawson and Arapahoe aquifers and augments evaporation from five ponds located within the District. The decree also provides a method for determining the amount of fully consumable return flows above those needed for augmentation purposes, which may be used by the District or leased to others. Having considered the pleadings and the stipulation of the Applicant with the sole objector, the City of Colorado Springs, the Court enters the following Findings of Fact, Conclusions of Law, Judgment and Decree

I. FINDINGS OF FACT.

A. General.

1 The applicant for water rights herein is Park Forest Water District, the address for which is 7340 McFarren Road, Colorado Springs, CO 80908 Its telephone number is 719-495-4163

2 The application in this case was filed on February 29, 2000 in both Water Divisions 1 and 2. The application was published in a newspaper of general circulation in El Paso County and in the resumes for Water Divisions 1 and 2.

3 A timely statement of opposition was filed by the City of Colorado Springs. No other statements of opposition were filed, and the time for filing statements of opposition has expired. No motions to intervene have been filed.

4 Upon the motion of the applicant, the cases were consolidated in Water Division 2 on July 6, 2000 by order of the Colorado Supreme Court.

5. On February 28, 2001, the Referee ordered that Applicant's Motion to Amend should be granted, to include additional land beneath which adjudication of any unappropriated ground water was sought, and to correct the locations of the ponds included in the original application.

6 On August 23, 2001, the Referee granted another Motion to Amend filed by the Applicant. This amendment requested an increase the amount of water to be pumped from the not nontributary Dawson and Arapahoe aquifers pursuant to the plan for augmentation.

7. The amendments were both published in the water resume for Water Division 2 and in a newspaper of general circulation as required by law. No statements of opposition were filed to the amended applications, and the time for filing statements of opposition to the amended applications has expired. No motions to intervene have been filed in respect to the amended applications.

8. Neither the land nor the water rights which are the subject of this application is within the boundaries of a designated ground water basin.

B. Application for Denver Basin Water Rights.

9 The Applicant herein is a special water district, a quasi-municipal entity of the State of Colorado. At the time of the filing of the initial application in this case, there were 800 acres of land within its boundaries, it has since included two additional parcels consisting of a total of 14.6 acres. The land within the District's boundaries (the "Property") is depicted on the attached Figure 1, the legal description of the Property appears on Exhibit A attached hereto.

10. Prior to the filing of the Application, the Applicant had obtained two water rights decrees in Case Nos W-1074 and W-4615. In the former case, Applicant obtained a decree for Park Forest District Well No. 1 (permit no. 2064-F) for 50 gpm, for Park Forest District Well No. 2 (permit no. 021191-F) for 40 gpm, and for Park Forest District Well No. 3 (permit no. 015606-F) for 150 gpm. This decree does not alter or amend the decree entered in Case No. W-1074.

11 In Case No. W-4615, Applicant was granted a decree for Park Forest Well No. 4 (permit no. 21941-F) for 150 gpm, and 240 acre feet of nontributary water annually from the nontributary Arapahoe aquifer underlying the Property.

12 Prior to filing the initial application herein, Applicant had obtained the consents of landowners to withdraw the water beneath 744 of the 800 acres which comprise the District. On November 3, 1999, Applicant adopted an "implied consent" ordinance by which it obtained the right to withdraw all of the water in the Denver Basin (Dawson, Denver, Arapahoe and Laramie-Fox Hills) aquifers underlying the District. Subsequently Applicant obtained the consents of the owners of two subsequently annexed parcels of land to appropriate the unappropriated Denver Basin water underlying those two parcels.

13 All of the Property is contiguous, except for a small parcel in Section 18. The water

in the Dawson and Denver aquifers underlying the land in Section 18 has previously been appropriated. The cylinders of appropriation for wells in the nontributary Arapahoe and Laramie-Fox Hills aquifers would overlap, at least in part, the land in Section 18. Thus, wells in each of the aquifers for which water is decreed herein may be operated pursuant to the rules for well fields as set forth in the Statewide Nontributary Ground Water Rules, 2 CCR 402-7

14. The amount of water underlying the Property which is available for appropriation and is decreed herein is as follows:

A Dawson aquifer water 274 acre feet annually. The Dawson aquifer water underlying the Property is not nontributary. Pursuant to C.R.S. § 37-90-137(9)(c)(I), judicial approval of a decree which provides for the replacement of actual stream depletions to the extent necessary to prevent any injurious effect must be obtained prior to pumping such water. Applicant is entitled to construct as many wells as are necessary to withdraw the water decreed herein, at any location on the Property; provided that Applicant will not construct wells within 600 feet of any other well in the same aquifer, unless permission to do so is granted pursuant to C.R.S. § 37-90-137(2)(b). All wells constructed to withdraw the water decreed herein may be operated pursuant to the well field provisions of the Statewide Nontributary Rules, 2 CCR 402-7. The wells decreed in Case No. W-1074 cannot be used to withdraw any portion of the water rights decreed herein.

B Denver aquifer water 335.6 acre feet annually. The Denver aquifer water underlying the Property is not nontributary, and the overlying land is more than one mile from any point of contact between any natural surface stream, including its alluvium, and the aquifer. Pursuant to C.R.S. § 37-90-137(9)(c)(I), judicial approval of a decree which

provides for the replacement of four percent of the water withdrawn on an annual basis must be obtained prior to pumping such water. The augmentation plan decreed herein does not provide for replacement of pumping of the not nontributary Denver aquifer water. After a plan for augmentation has been adjudicated for the Denver aquifer, Applicant will be entitled to construct as many wells as are necessary to withdraw the water decreed herein, at any location on the Property, provided that Applicant will not construct wells within 600 feet of any other well in the same aquifer, unless permission to do so is granted pursuant to C.R.S. § 37-90-137(2)(b). All wells constructed to withdraw the water decreed herein may be operated pursuant to the well field provisions of the Statewide Nontributary Rules, 2 CCR 402-7. The wells decreed in Case No. W-1074 cannot be used to withdraw any portion of the water rights decreed herein.

C Not nontributary Arapahoe aquifer water 70.7 acre feet annually, underlying that portion of the Property which is located in Section 29, is not nontributary. The overlying land is more than one mile from any point of contact between any natural surface stream, including its alluvium, and the aquifer. Pursuant to C.R.S. § 37-90-137(9)(c)(I), judicial approval of a decree which provides for the replacement of four percent of the water withdrawn on an annual basis must be obtained prior to pumping such water. Applicant is entitled to construct as many wells as are necessary to withdraw the water decreed herein, at any location on the Property; provided that Applicant will not construct wells within 600 feet of any other well in the same aquifer, unless permission to do so is granted pursuant to C.R.S. § 37-90-137(2)(b). All wells constructed to withdraw the water decreed herein may be operated pursuant to the well field provisions of the Statewide

Nontributary Rules, 2 CCR 402-7 Park Forest Water District Well Nos 4 and 5 may not be used to withdraw this not nontributary water

D Nontributary Arapahoe aquifer water 43 acre feet annually Applicant is required to relinquish two percent of the water withdrawn on an annual basis.

Park Forest Water District Well No 4, well permit 21941-F, was decreed in Case No. W-4615 to withdraw 240 acre feet of nontributary water from the Arapahoe aquifer each year Park Forest Water District Well No. 5, permit 48901-F, was permitted, but not decreed, to withdraw 390 acre feet of nontributary water from the Arapahoe aquifer each year, in conjunction with well permit 21941-F The 390 acre foot annual appropriation is more nontributary Arapahoe aquifer water than underlies the Property Applicant may instead withdraw 289.5 acre feet of nontributary Arapahoe aquifer water decreed in Case No. W-4615 and herein each year, from Park Forest Water District Well Nos 4 and 5, and any other wells it constructs into the Arapahoe aquifer in Section 20, pursuant to the well field provisions of the Statewide Nontributary Rules, 2 CCR 402-7. Subsequent to entry of this decree, Applicant shall submit new well permit applications for well permit nos. 21941-F and 48901-F to make them consistent with this ruling

Pursuant to State Engineer Policy Memo 90-2, dated January 22, 1990, all wells located on the Property overlying the nontributary portion of the Arapahoe aquifer may also be used to withdraw the not nontributary Arapahoe aquifer water underlying Section 29, provided, however, that such water must be augmented pursuant to this plan for augmentation. For purposes of determining how much water is nontributary, and how much is not nontributary, all water withdrawn in a year in excess of 289.5 acre feet shall

be deemed to be not nontributary To avoid complications arising from the "banking" provisions of Rule 8 A. of the Statewide Nontributary Ground Water Rules, the right to withdraw more than 289.5 acre feet of water annually pursuant to said rule is hereby waived by the Applicant.

E Laramie-Fox Hills aquifer: 232 acre feet annually This water is nontributary. Applicant must relinquish two percent of the water withdrawn on an annual basis to the stream system, Cottonwood Creek, in this case Applicant is entitled to construct as many wells as are necessary to withdraw the water decreed herein, at any location on the Property; provided that Applicant will not construct wells within 600 feet of any other well in the same aquifer, unless permission to do so is granted pursuant to C R S § 37-90-137(2)(b) All wells constructed to withdraw the water decreed herein may be operated pursuant to the well field provisions of the Statewide Nontributary Rules, 2 CCR 402-7.

15 The amount of water underlying the Property and which is available for appropriation as set forth above is based on the State Engineer's Amended Determination of Facts dated April 30, 2001 The amounts available from the Dawson, Denver and Arapahoe aquifers is based ^{not on} ~~on~~ only on the State's database promulgated pursuant to Senate Bill 5, but also on analysis of the well log from well permit 48901-F. As such, the determination of the amount of water available from those aquifers is final Regarding the Laramie-Fox Hills aquifer, pursuant to § 37-92-305(11), the Court will retain jurisdiction to finally determine the amount of water available for appropriation, 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 Applicant need not refile, republish, or otherwise amend this decree to request or obtain such

adjustment to the amount of water available for appropriation from the Laramie-Fox Hills aquifer.

16. The water rights decreed herein are decreed for all municipal purposes, including augmentation and exchange, and including by storage and subsequent releases to the stream

II. APPROVAL OF PLAN FOR AUGMENTATION

A. Replacement of Stream Depletions Caused By Pumping Not Nontributary Water.

17. Applicant proposes to augment the pumping up to 17,500 acre feet from not nontributary Dawson and 7070 acre feet from the not nontributary Arapahoe aquifer. During pumping, Applicant will replace stream depletions during pumping with return flows from nonevaporative septic tanks and leach fields ("septic systems") or a central discharging type of central wastewater treatment plant, and with landscape irrigation return flows. During pumping, return flows will greatly exceed stream depletions. Applicant proposes to use excess return flows to augment pond evaporation from specified ponds within the District's boundaries, and to use any additional return flows for augmentation in future augmentation plans. Replacement of post-pumping depletions will be made by reservation and pumping of water in the nontributary Laramie-Fox Hills aquifer.

18. The land within the District's boundaries totals 814.6 acres. The land is primarily "built-out", i.e., there are relatively few empty lots left upon which to construct buildings, and many of the remaining lots are owned by persons who own homes on adjacent lots and are disinclined to sell their empty lots. However, some additional construction of homes and businesses will occur in the future, including on two relatively small parcels of land included in the District in 2000.

19. During the nine year period from 1990 through 1998, annual pumping in the District averaged 70.7 acre feet. Average annual use for indoor purposes, primarily sanitation and

drinking, was 51.6 acre feet during that period, based on extrapolation of monthly pumping during the months of December through January, when very little outdoor uses occur.

20. At present all waste water from indoor uses is treated by use of septic systems. It is generally acknowledged that no more than 10 per cent of water used indoors and so treated is consumed. All water used outdoors, 19 acre feet annually, on average, is used for a variety of purposes, including livestock watering, line flushing, fire protection, etc., but primarily for landscape irrigation. Applicant does not claim a credit against consumption for water used outdoors which percolates past the root zones of plants and is not consumed, but reserves the right to seek credit for such return flows through a separate court proceeding.

21. Pumping from the Dawson aquifer will result in gradually increasing stream depletions during the pumping period, and will reach their maximum amount of 15.4 percent of pumping in the 100th year. Shortly after the theoretical cessation of pumping in the 100th year, stream depletions will begin to decline.

22. The Arapahoe aquifer in this locale is not nontributary. It is located more than one mile from any point of contact with a natural stream including its alluvium. Pursuant to C.R.S. § 37-90-137(c)(1), during pumping Applicant must replace four percent of the water so pumped to the affected stream system.

23. In the case of the Dawson aquifer, stream depletions will occur in small amounts to several streams outside the Arkansas River drainage. In the case of the Arapahoe aquifer, no depletions will occur in the South Platte drainage, but some stream depletions will occur to streams other than Cottonwood Creek. Applicant will make all required replacements of depletions, wherever they actually occur, to Cottonwood Creek, a tributary of Monument Creek.

24 Each ten year period after entry of this decree, Applicant shall determine the stream depletions caused in that year by Dawson aquifer pumping, but not including pumping of Dawson aquifer water decreed in Case N W-1074, by multiplying the amount so pumped by the stream depletion factor for Dawson aquifer pumping for the relevant ten year period set forth on the accounting form in Exhibit B attached hereto At the same time, Applicant shall determine its replacement obligation due to pumping from the not nontributary Arapahoe aquifer decreed herein, by multiplying the amount pumped during the year by 0.04 Applicant shall replace these depletions using its return flows

26 To the extent that the acre feet of return flows exceeds the replacement obligation for pumping not nontributary water, as demonstrated on the accounting form, Applicant may use the excess water for replacement of pond evaporation and for other purposes, as described below

C. Replacement of Pond Evaporation.

25 Applicant desires to augment evaporation from five small ponds within the District's boundaries, as depicted on the map attached as Figure 1 hereto. Their legal descriptions and acres of surface area are as follows

A. Pond 1. the right abutment is located at a point from whence the NW corner Section 20, T 12 S , R. 65 W , 6th P M , bears N. 61° W. 3310 feet. Surface area is 0.1 acres

B. Pond 2. the right abutment is located at a point from whence the NW corner Section 20, T 12 S , R 65 W , 6th P.M., bears N. 56° W 3840 feet. Surface area is 0.5 acres

C Pond 3. the right abutment is located at a point from whence the NW corner Section 20, T. 12 S , R 65 W , 6th P M , bears N. 35° W. 5110 feet Surface area is 0.3 acres

D Pond 4 the right abutment is located at a point from whence the NW corner Section 20, T 12 S , R 65 W , 6th P M , bears N. 32° W. 6080 feet Surface area is 0 5 acres

E Pond 5: the right abutment is located at a point from whence the NW corner Section 20, T 12 S., R. 65 W , 6th P.M , bears N 32° W 6790 feet Surface area is 0 3 acres.

26 The average annual net evaporation from the ponds is 32 inches annually, or 4 6 acre feet for the 1.7 acres of total surface area As stated previously, the evaporation from these ponds will be replace on an annual basis with "excess" return flows, i e , consumable return flows from the not nontributary Dawson and Arapahoe aquifers, and the nontributary Arapahoe aquifer, which are not necessary to replace stream depletions caused by pumping from the not nontributary Dawson and Arapahoe aquifers

27. If the surface area of ponds to be augmented pursuant to this decree changes in the future, the replacement obligation will change as well A calculation of any changed net evaporation amount shall use the 32 inch figure noted above

28. During the theoretical 100 year pumping period, there will be return flows in excess of the amount of water necessary to replace stream depletions caused by pumping the not nontributary Dawson and Arapahoe aquifers, and to replace out-of-priority depletions caused by pond evaporation These excess return flows are fully consumable Applicant may lease the

return flows for no longer time increments than 10 years, which leases may be renewed based on availability of excess water. The lessor of any such water shall be required to obtain approval of a substitute supply plan or a plan for augmentation before using such water at any site outside the boundaries of the District.

29 The Division Engineer indicated in his Summary of Consultation that Applicant should be required to prove that return flows will accrue to Cottonwood Creek. The Division Engineer does not dispute the nature or existence of the overburden materials, but desires more evidence that septic system return flows enter the overburden materials. Therefore, Applicant and the Division Engineer agree as follows.

A Within two months of entry of this decree the Applicant, in consultation with the State or Division Engineer's staff, will install one or more monitoring holes drilled through the overburden soils at some point reasonably near an existing septic system for the purpose of measuring water levels.

B Each quarter the monitoring hole(s) will be monitored for the presence of overburden deposit ground water. If within five years from full build-out these observations demonstrate that the soil is continuously saturated over four consecutive quarters, it shall be taken as conclusively proved that septic system return flows accrue to Cottonwood Creek. If the soil is not continuously saturated during four consecutive quarterly observations, then Applicant shall invoke the court's retained jurisdiction for the purpose of demonstrating that no injury is occurring to the owners and users of vested and conditionally decreed water rights, or to propose terms and conditions to prevent such injury from occurring.

30. Replacement of post-pumping depletions.

A Applicant agrees to replace depletions for the shortest of the following periods. the period provided by the Colorado Legislature, should it eventually specify one and if the Applicant obtains water court approval for such modification, the period determined by the State Engineer, should the State Engineer lawfully establish such a period, the period established through rulings of the Colorado Supreme Court on relevant cases, or until Applicant petitions the water court and after notice to parties in the case proves that it has complied with all statutory requirements. The court finds that the provisions of this paragraph are adequate to comply with existing law and to prevent injury to others

B. Based on a 100 year pumping period, Dawson aquifer post-pumping depletions will reach a maximum of 15.77% of pumping immediately after pumping is projected to cease in the 100th year, and will decline thereafter Applicant's actual post-pumping replacement obligation will be determined by multiplying average annual Dawson aquifer pumping and not nontributary Arapahoe aquifer pumping through the end of pumping, whenever that occurs, by the stream depletion factors show on the accounting form attached as Exhibit B attached hereto That amount of water shall then be pumped from the Laramie-Fox Hills aquifer decreed herein, or from such other source of water as receives judicial approval after notice, into Cottonwood Creek or one of its tributaries. Applicant's successors in interest shall be required to construct a Laramie-Fox Hills well pursuant to this plan for augmentation unless a different source of water is approved by the court for replacement of post-pumping depletions, or unless the obligation is

terminated pursuant to ¶ 30 .A above

C Reservation of Laramie-Fox Hills aquifer water Plans for augmentation such as this have generally reserved for the replacement of post-pumping depletions an amount of nontributary water equal in volume to the total amount of not nontributary water proposed to be pumped. To the extent that depletions occur and are replaced during the pumping period, it is not necessary to reserve nontributary water for the replacement of those depletions. Very little of the stream depletions associated with pumping the Arapahoe aquifer will occur during the pumping period, and Applicant will reserve a portion of its Laramie-Fox Hills aquifer water for replacement of post-pumping depletions on a one-to-one basis, i.e., it will reserve 7070 acre feet of Laramie-Fox Hills water to replace the post-pumping depletions associated with pumping 7070 acre feet of not nontributary Arapahoe aquifer water. However, based on an assumed 100 year pumping period, approximately eight percent of the water pumped from the Dawson aquifer will be replaced during the pumping period. Thus, reservation of the remaining 16,130 acre feet of Laramie-Fox Hills aquifer water is adequate to replace post-pumping depletions attributable to pumping of 17,530 acre feet annually from the nontributary Dawson aquifer. Applicant shall reserve and dedicate to this plan for augmentation all of its Laramie-Fox Hills aquifer water decreed herein for the purpose of replacing to Cottonwood Creek all post-pumping depletions, regardless where such depletions occur. If at some time replacement of post-pumping depletions is no longer required pursuant to ¶ 30.A above, or if Applicant receives judicial approval to use a different water source for augmentation purposes, said reservation will become null and void at such time as the obligation to use

the Laramie-Fox Hills aquifer water to replace post-pumping depletions terminates.

31. Applicant shall adopt a resolution requiring the use of nonevaporative septic systems for wastewater disposal, or the use of a central type of wastewater treatment plant which discharges into Cottonwood Creek or some other tributary of Monument or Fountain Creek

32. As reasonably required by the Division Engineer, but no less than annually, Applicant shall complete and submit an accounting form which shows groundwater withdrawals, stream depletions, return flows, net stream depletions, the amount of water required for augmentation of the ponds augmented herein, and any excess fully consumable return flows. The accounting form must be acceptable to the Division Engineer, and may be changed from time to time if necessary. An accounting form which is acceptable to the Division Engineer at the present time is attached to this Ruling as Exhibit B.

33. The Court finds that under the terms and conditions herein the requirements of C.R.S. §37-90-137 (9)(c) have been met.

34. The Court has considered the depletions from Applicant's proposed use of water, in quantity and in time, the amount and timing of augmentation water to be provided, and whether injury would be caused to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right. The Court concludes that under this plan for augmentation, no such injury will occur.

CONCLUSIONS OF LAW

35. 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.

36. All conditions precedent to the granting of this decree have been complied with,

including but not limited to the notice requirement of C R S §37-90-137(4)(b 5)(I).

37 The plan for augmenting depletions caused by pumping the not nontributary Dawson aquifer 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 Applicant has proved that no such injury will occur

38 Applicant has complied with all the conditions of C R S § 37-92-305(8) and all other relevant statutes.

JUDGMENT AND DECREE

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

40 The application for adjudication of water rights from the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the Property is approved as set forth above The Court retains jurisdiction over this decree to finally adjudicate the amount of water available for withdrawal from the Laramie-Fox Hills aquifer only, based on site specific information from well logs when they become available The amounts decreed to be available from the Dawson, Denver and Arapahoe aquifers is final and is not subject to the Court's retained jurisdiction

41 In any year, Applicant may withdraw the subject water in any given aquifer from any combination of the wells applied for in the same aquifer as long as the total amount of water withdrawn in that year does not exceed the product of the total number of years after the date of determination of the right to ground water by the Court, multiplied by the allowed average annual amount of withdrawals for that aquifer

42 The wells must be constructed pursuant to applicable regulations of the Division of Water Resources. Each well must be equipped with a properly equipped and maintained totalizing flow meter. Applicant must submit diversion records to the Division Engineer or his representative on an annual basis or as otherwise requested by the Division Engineer. All wells shall be cased so as to prevent withdrawal of water from more than one aquifer. All wells decreed herein shall be geophysically logged, and a copy of such log shall be submitted to the State Engineer pursuant to 2 CCR 402-7, Rule 9.

43. Pursuant to the plan for augmentation decreed herein, Applicant may withdraw up to 175.3 acre feet per year, and 17,530 acre feet cumulatively, from the Dawson aquifer, and 70.7 acre feet annually from the not nontributary Arapahoe aquifer. No water may be withdrawn from the Denver aquifer absent approval of a plan for augmentation allowing such pumping. Applicant must relinquish two percent of the water withdrawn from the nontributary Arapahoe and Laramie-Fox Hills aquifers to the stream.

44. The water rights so decreed are absolute water rights, and no applications for findings of diligence are required.

45 The application for approval of a plan for augmentation to replace depletions caused by pumping the not nontributary Dawson and Arapahoe aquifers is approved as set forth above in the findings of fact in this decree. The State or Division Engineer shall curtail the pumping of more than 175.3 acre feet annually from the Dawson aquifer, and 70.7 acre feet annually from the Arapahoe aquifer without prior modification of this plan for augmentation or approval of an additional plan for augmentation which replaces depletions attributable to such pumping. The State Engineer shall also curtail all out-of-priority diversions, the depletions from

which are not replaced as to prevent injury to vested water rights or decreed conditional water rights

46 The application for approval of a plan for augmentation to replace out-of-priority depletions from pond evaporation is also approved. Applicant may utilize its fully consumable return flows for the replacement of any amount of pond evaporation within the District, based on average net evaporation of 32 inches per year. However, this right is subordinate to Applicant's obligation to replace stream depletions caused by pumping the not nontributary Dawson and Arapahoe aquifers. Applicant may also add or delete ponds to be augmented pursuant to this decree without amending this plan for augmentation, so long as the ponds are located within the current boundaries of the District.

47 Applicant may also lease any fully consumable return flows which are in excess of its needs for augmenting stream depletions caused by pumping the not nontributary Dawson and Arapahoe aquifers, and augmenting pond evaporation, for uses within or without the District. To help ensure that such water will be available for its intended use, such leases shall not exceed ten years in length, though such leases may be renewed for so long as there is adequate water to supply them.

48 Within two months after entry of this decree, Applicant shall file with the State Engineer a new well permit application for the existing Park Forest District Well No. 4 (permit no. 021941-F) and Well No. 5 (permit no. 048901-F). The State Engineer shall cancel the current well permits for those wells and shall issue new well permits for those wells, and for any other wells sought to be permitted pursuant to the decree in this case, in accordance with C.R.S. § 37-99-137(4) and/or (10) and in accordance with the decree entered herein. Should Applicant fail to

construct and/or file a statement of beneficial use for any well prior to the expiration of the well permit Applicant may reapply to the State Engineer for a new well permit and the State Engineer shall issue a new well permit with the terms and conditions no more burdensome than those contained herein

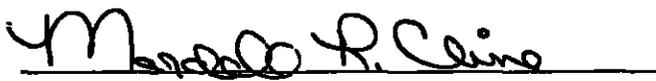
49. At least once a year, or as reasonably requested by the State Engineer, Applicant shall complete and send to the State Engineer the accounting forms attached as Exhibit B. If either the State Engineer or the Applicant determines that the present accounting form is unsuitable for any reason, they shall work together to create a new accounting form which addressed the deficiencies of the present one. If they cannot agree, the party seeking the change may invoke the Court's retained jurisdiction, and may ask the Court to review and resolve the matter

50. The Court shall retain jurisdiction for so long as Applicant is required to replace depletions to the South Platte system, to determine whether the replacement of depletions to the Arkansas River system instead of the South Platte system is causing material injury to water rights tributary to the South Platte. Any person may invoke the Court's retained jurisdiction at any time Applicant is causing depletions (including ongoing post-pumping depletions) to Cherry Creek, and is instead replacing such depletions to the Monument Creek. The person invoking the Court's retained jurisdiction shall have the burden of establishing a *prima facie* case that Applicant's failure to replace depletions to Cherry Creek is 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. Applicant shall retain the ultimate burden of proving

that no injury is occurring, or shall propose terms and conditions which prevent such injury
Among any other remedies it may impose, the Court may require that Applicant replace depletions
to Cherry Creek

51 Pursuant to C.R.S. § 37-92-304(6), the Court also retains 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 the vested water rights of others. The
Court also retains jurisdiction for the purposes of determining compliance with the terms of the
augmentation plan. 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
face facts alleged in the petition. If the Court finds those facts to be established, Applicant shall
thereupon have the burden of proof to show (1) that any modification sought by Applicant will
avoid injury to other appropriators, or (2) that any modification sought by the person filing the
petition is not required to avoid injury to other appropriators, or (3) that any term or condition
proposed by Applicant in response to the petition does avoid injury to other appropriators.

Dated this 20th day of June, 2002


Mardell Cline
Water Referee
Water Division 2

NO PROTEST WAS FILED IN THE ABOVE MATTER. THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated this _____ day of _____, 2002

Dennis Maes
Water Judge
Water Division 2

APPROVED AS TO FORM:

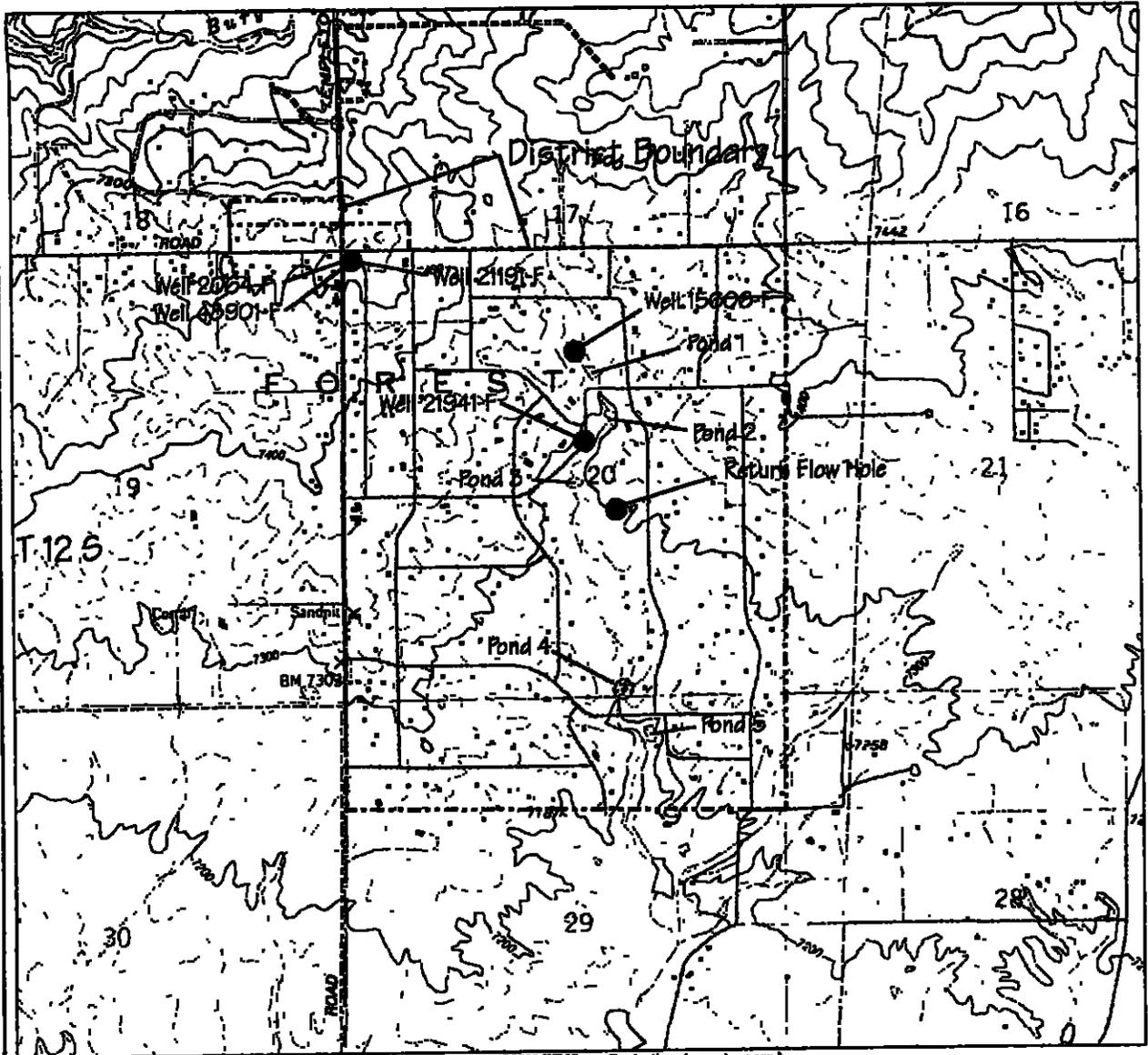
MacDOUGALL, WOLDRIDGE & WORLEY, PC.

By Henry D. Worley 6/7/02
Henry D. Worley #14368 (Date)
530 Communication Circle, #204
Colorado Springs, CO 80905-1743
Phone 719-520-9288, fax 719-520-9447
E-mail hworley@waterlaw tv

ANDERSON, DUDE & LEBEL, P C

By William Kelly Dude 6-8-02
William Kelly Dude #13208 (Date)
P.O Box 240
Colorado Springs, CO 80901-0240
Phone. 719-632-3545; fax 719-632-5452
E-mail wkdude@adplebel com

R 65 W



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LOCATION MAP

Wm. Curtis Wells & Co.
consulting ground water geologists

Figure 1



Scale 1" = 2000'

EXHIBIT A
Consolidated Case Nos. 00CW18 and 00CW22

Legal Description
of
Park Forest Water District

Section 20, T. 12 S , R. 65 W , 6th P M , El Paso County, Colorado;

and also

N1/2 N1/2 Section 29, T 12 S., R. 65 W , 6th P M , El Paso County, Colorado,

and also:

N1/2 S1/2 SE1/4 SE1/4 Section 18, T 12 S , R. 65 W., El Paso County, Colorado;

and also

That portion of Lot 3, Block 1, Whale Waiver Subdivision described as the Southerly 344 45 feet of the Westerly 665.52 feet, except the Southerly 30.0 feet and the Westerly 30 0 feet, Section 17, Township 12 South, Range 65 West of the 6th P M , El Paso County, Colorado

Accounting Form
Park Forest Water District
Case No 00-CW-18

DRAFT

							From	To		
							Gallons	Acre Feet	Gallons	Acre Feet
							Base Use		Year	
Well No	Permit No	This October 31	Last Feb 28/29	Last Dec 1	Last October 31	Total	Total	Total	Total	
		col a	col b	col c	col d	col b - c		col a - d		
1	2064-F									
2	15606-F									
3	21191-F									
4	21941-F									
5	48901-F									
	DA-1									
	DA-2									
	DA-3									
1	Total									

Return Flows				
	Well DA-1	+		af
	Well DA-2	+		af
	Well DA-3	+		af
2	Total	=		

Not Non-tributary Arapahoe				
	Well 4	+		af
	Well 5	+		af
3	Total	=		af
4	Total	=	> 289.5	af
	Not Non-tributary Arapahoe	=		af

Dawson Withdrawal (2)				
	Dawson Stream Depletion Factor			
	From Table I rounded up			
	to nearest 10 year since pumping began		* / 100	
5	Total Dawson Depletion	=		af
	Not Non-tributary Arapahoe Withdrawal (3)	+		af
	Total Arapahoe Depletion	=	0.04	af
6	Total Arapahoe (4)	+		af
	Not Non-tributary Arapahoe	-		af
	Total Arapahoe	=	0.02	af
7	Relinquishment	=		af
	Pond Evaporation	+	4.6	af
	Denver Basin Aquifer Depletion (5+6+7)	+		af
8	Total Depletion	=		af

Base Use (1)				
		+		af
		+	4	
		+	0.9	
9	Total Return Flows	=		af

1389Chpark forestRegal

Accretion (Depletion)				
			(9)-(8)	af

Table I

YRS	Total	YRS	Total
10	1.01	160	13.45
20	2.46	170	12.84
30	4.11	180	12.25
40	5.83	190	11.69
50	7.56	200	11.17
60	9.25	210	10.68
70	10.89	220	10.23
80	12.47	230	9.82
90	13.97	240	9.43
100	15.40	250	9.08
110	15.77	260	8.75
120	15.62	270	8.44
130	15.21	280	8.16
140	14.67	290	7.90
150	14.07	300	7.65

EXHIBIT B
Consolidated Case Nos. 00CW18 and 00CW22

<p>DISTRICT COURT, WATER DIVISION NO. 2, COLORADO Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo, Colorado 81003</p> <hr/> <p>CONCERNING THE APPLICATION OF: PARK FOREST WATER DISTRICT, IN EL PASO COUNTY, COLORADO</p> <hr/>	<p>COURT USE ONLY</p> <hr/> <p>Case Number: 2014CW3010 (00CW18)</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE</p>	

FINDINGS OF FACT

1. The Park Forest Water District ("District" or "Park Forest") filed an Application in this matter on February 28, 2014. Timely and adequate notice of this Application was duly published as required by statute on March 12, 2014, and publication costs have been paid. The Court has jurisdiction over the matters raised in the Application and all parties affected thereby, whether they have appeared or not. The lands and water rights involved in this Application are located within the boundaries of the Denver Basin, but are not located within the boundaries of a designated ground water basin.

2. The time for filing a Statement of Opposition expired on April 30, 2014. The City of Colorado Springs, acting through its enterprise entity Colorado Springs Utilities ("City"), filed a Statement of Opposition in the case on April 3, 2014. On March 2, 2015 a stipulation was filed with this Court in which the City agreed to entry to a final Decree containing terms no less stringent than those set forth herein. A Consultation Report was filed by the Division Engineer for Water Division 2 with the Court on May 8, 2014 and the Court has taken the same into consideration herein.

3. In November 2013, Park Forest incorporated additional lands into the District. Associated with the included lands were previously adjudicated groundwater water rights (Case No. 00CW84) and an augmentation plan (Case No. 10CW24), which Park Forest intends to incorporate into its existing water rights portfolio. Accordingly, in the Application for this case, Park Forest seeks to: 1) amend the plan for augmentation decreed in Case No. 00CW18, Water Division 2 to augment water use on the newly included property; 2) allow for Park Forest's use of the water rights previously adjudicated in Case No. 00CW84, Water Division 2, conveyed to Park Forest District that are associated with the property approved for inclusion into its service area in November 2013; and 3) abandon the previous augmentation plan associated with the newly included property decreed in Case No. 10CW24, Water Division 2. This amendment increases the land area to be served under the current augmentation plan and adds two (2) wells and three (3) ponds that are located on the newly included property. These structures are identified as follows:

A. Well permit # 203335

i. Legal description: SW1/4 NE1/4 Section 29, Township 12 South, Range 65 West of the 6th P.M., a distance of approximately 1980 feet from the north section line and 1840 feet from the east section line.

ii. Source: Dawson aquifer

iii. Proposed amount: 15 gpm, up to a maximum of five (5) acre-feet annually in combination with current well permit # 228940

iv. Proposed Use: Irrigation, fire protection, recreation, stock watering

B. Well permit # 228940

i. Legal description: NW1/4 SE1/4 Section 29, Township 12 South, Range 65 West of the 6th P.M., a distance of approximately 1420 feet from the south section line and 2100 feet from the east section line.

ii. Source: Dawson aquifer

iii. Amount: 15 gpm, up to a maximum of five (5) acre-feet annually in combination with current well permit # 203335

iv. Proposed Use: Irrigation, fire protection, recreation, stock watering

C. Eagle Rising Pond No. 1 aka North Pond

i. Legal description: NE1/4 NW1/4 Section 29, Township 12 South, Range 65 West of the 6th P.M. UTM coordinates: 38°58'39.78" Northing, - 104°41'41.88" Easting (NAD 83).

ii. Source: Cottonwood Creek

iii. Pond surface: 2.07 acres

iv. Use: Storage, piscatorial, recreation, fire protection, augmentation releases and exchange

D. Eagle Rising Pond No. 2 aka South Pond

i. Legal description: NE1/4 NW1/4 Section 29, Township 12 South, Range 65 West of the 6th P.M. UTM coordinates: 38°58'22.02" Northing, - 104°41'18.48" Easting (NAD 83).

ii. Source: Cottonwood Creek

iii. Pond surface: 2.69 acres

iv. Use: Storage, piscatorial, recreation, fire protection, augmentation releases and exchange

E. Eagle Rising Pond No. 3 aka Stock Pond

i. Legal description: NE1/4 NW1/4 Section 29, Township 12 South, Range 65 West of the 6th P.M. UTM coordinates: 38°58'35.76" Northing, - 104°41'24.00" Easting (NAD 83).

ii. Source: Cottonwood Creek

iii. Pond surface: 0.24 acre

iv. Use: Storage, piscatorial, recreation, fire protection, augmentation releases and exchange

4. The District's Application seeks to add the above wells and ponds to the District's current augmentation plan and add up to 18 additional residential taps to the District's current plan. As described in the Application, the District approved the inclusion of 70.8 acres of land contiguous to the District upon which the above wells and

ponds are located. The orders approving the inclusion as adopted by the District and the El Paso County District Court, respectively, were filed with the Application. The inclusion as approved increased the District's service area to a total of 885.4 acres.

5. The current property owners intend to develop the newly included property as a residential subdivision for up to 18 lots, with potable water service to be provided by the District. The Park Forest water system operates under the current augmentation plan approved in Case No. 00CW18; paragraph 43 of that decree allows the District to pump up to 175.3 acre-feet per year of not-nontributary Dawson aquifer water, or 17,530 acre-feet cumulatively, and 70.7 acre-feet of not-nontributary Arapahoe aquifer water, or 7,070 acre-feet cumulatively. Pursuant to paragraph 17 of the District's current decree, the District intends to continue using septic return flows to augment the above wells, the ponds, and the additional residential taps as identified in paragraph 3 above. Such return flows may include those produced from use of the water and water rights conveyed to the District by the current property owner.

6. As a condition of inclusion, the current property owners conveyed all water and water rights underlying or appurtenant to the inclusion property. The Denver Basin ground water rights associated with the property previously were adjudicated for all beneficial uses in Case No. 00CW84, Water Division 2. Per paragraph 17 of that decree, the adjudicated uses for these rights include augmentation and exchange, and the return flows to be used under this amended plan may include using return flows created from use of the water and water rights adjudicated in Case No. 00CW84. The District will use such water and water rights consistent with the terms and conditions contained in the District's current augmentation plan approved in Case No. 00CW18. The District specifically reserves the right to use the water rights previously adjudicated in Case No. 00CW84 for all beneficial uses as decreed pursuant to paragraph 17 of that decree so long as any use of the not-nontributary water adjudicated thereunder is augmented. The volume of Dawson aquifer available for use under this decree, after deductions for prior use of water use by wells identified in paragraph 7 below, is 1,906 acre-feet, or 19.06 acre-feet annually.¹

7. As regarding the current wells located on the inclusion property identified in paragraph 3 above (current permit #s 203335 and 228940), the Court finds that under paragraph 7 of the inclusion agreement between the District and the current property

¹ Presuming each well diverted the maximum allowable under each permit and per footnote 1 of the decree in Case No. 00CW84, a maximum of 41 acre-feet would have been diverted under permit # 203335 and 33 acre-feet under permit # 228940 for a total of 74 acre-feet. Per the decree in Case No. 00CW84, the total amount of not-nontributary Dawson aquifer water available under the inclusion property based on a 100-year supply is 1,980 acre-feet. Subtracting 74 acre-feet of prior diversions from the not-nontributary Dawson ground water quantification and discounting the previously agreed upon reduction of the aquifer quantification pursuant to footnote 1 of the Case No. 00CW84 decree, the total current amount available is 1,906 acre-feet ($1,980 - 74 = 1,906$); adjusting this figure to allow for well withdrawals over a 100-year period, the revised total annual amount available to the District is 19.06 acre-feet based on a 100-year supply from the date of this Ruling and Decree.

owners, the District is obligated to augment up to four (4) acre-feet of water annually based on a maximum of five (5) acre-feet of withdrawals from these wells or eighty-five percent (85%) of actual, annual well pumping, whichever is less. Pursuant to paragraph 15 of the decree entered in Case No. 00CW84, a court-approved augmentation plan is required to withdraw water from the not-nontributary aquifers underlying the property, and according to the well construction reports filed under these well permit numbers both wells were constructed into the Dawson aquifer. To comply with this requirement, the District agrees to augment these wells pursuant to paragraph 17 of the District's current augmentation plan decree approved in Case No. 00CW18.

8. The District's current augmentation plan approved in Case No. 00CW18 allows the District to augment pond evaporation for certain ponds specifically identified in that decree. Paragraph 26 of that decree indicates that average annual net evaporative loss is 32 inches, or 13.33 acre-feet for 5 acres of pond surface area for the three (3) ponds identified above. Paragraph 46 of that decree also allows the District to add or delete ponds to be augmented so long as the ponds are located within the District's current service area boundaries. As the Eagle Rising ponds are now within the Park Forest boundaries, evaporative losses from these ponds will be augmented by the District's return flows consistent with paragraph 17 of the current plan decreed in Case No. 00CW18. The District does not seek new water storage rights for the pond structures in this case, and the District is simply replacing the evaporative loss from each pond.

9. Per paragraph 14 of the decree in Case No. 00CW18, up to 955.3 acre-feet is potentially available annually to the District's water system. The District has five (5) wells connected to its water system (identified as Well #s 1 - 5) of which four (4) wells currently supply the District's system. Currently there are 286 residential taps connected to the District's system. Between October 2008 and October 2013 the District's water system produced an average of 92.5 acre-feet annually, and when accounting for commercial water use the District supplies an average of about 0.35 acre-feet per residential tap connection.²

10. Presuming 18 lots are developed within the new subdivision and an annual supply of 0.35 acre-feet per lot, the District's system would supply a total of 6.3 acre-feet to the new lots. The District's current augmentation plan presumes ten percent (10%) of all well pumping is consumed through the use of non-evaporative

² The District's system also supplies 19 commercial taps, 12 of which use less than 10,000 gallons per quarter of each year with the other 7 taps using more than 10,000 gallons per quarter. Total commercial demand is not separated from total annual pumping in the District's water use accounting, however, if each commercial tap is treated as using the 10,000-gallon minimum per quarter the total annual use by commercial taps would equal 2.33 acre-feet, or about 2.5% of the District's average annual water use. If this presumed commercial use were subtracted from the average annual total use, the residential tap use would be slightly below 0.32 acre-feet per tap. To account for the comparatively small commercial use, the District is using 0.35 acre-feet per tap, which is a greater demand per residential tap, to determine the new subdivision's projected water supply and augmentation requirements.

Findings of Fact, Conclusions of Law, Ruling of the Referee, Judgment and Decree

In Re Application of Park Forest Water District

Water Court, Water Division No. 2, Case No. 2014CW3010

Page 5

septic systems located within the District. Presuming 18 lots are developed, an average of 0.35 acre-feet of water for each lot per year is supplied and septic systems that are similar to those within the District are installed, a total of 0.63 acre-feet per year of additional water would be consumed by the new residences. When added to well depletions and pond evaporation loss, total depletions associated with the new subdivision will equal a maximum of 17.96 acre-feet at full build out (4 acre-feet for well augmentation + 13.33 acre-feet for pond evaporation + 0.63 acre-feet consumed by septic systems = 17.96 acre-feet). After accounting for water consumed by septic systems, a total of up to 5.67 acre-feet of additional return flows would be available to augment the new subdivision at full build-out, requiring the District to provide up to an additional 12.29 acre-feet per year of augmentation water to replace these depletions using current and future excess return flow credits pursuant to the decree in Case No. 00CW18.

11. Return flows from existing septic systems within the District currently are used as augmentation credit to replace stream depletions caused by the District's well pumping and water consumed by the existing septic systems. According to well pumping records submitted by the District with the Application herein, annual net stream accretions totaled 34.5 acre-feet for 2010 - 2011, 29.66 acre-feet for 2011 - 2012 and 41.83 acre-feet for 2012 - 2013 after accounting for water consumption and well pumping impacts. Under its current operations, the District's water system produces sufficient excess augmentation credits to fully augment the ponds and wells described in paragraph 3 above. Since the District currently produces excess return flow credits that are greater than required to fully augment water use under full build-out conditions on the inclusion property, the Court finds and concludes that no injury will occur to any vested water rights on Cottonwood Creek located downstream of the inclusion property.³ As residents move into the new subdivision, increased pumping of the District's water system wells will occur and in turn generate up to an additional 5.67 acre-feet of excess return flow credits as described in paragraph 10 above. These excess credits also may be used as necessary to augment the above wells, the Eagle Rising ponds and the additional residential taps.

12. The District agrees to operate the amended augmentation plan consistent with the terms and conditions approved in Case No. 00CW18. Specifically, not less than annually the District shall complete and submit accounting forms to the State Engineer that are the same as or similar to the forms the District currently uses and

³ The District is aware of a pond structure located on the channel of Cottonwood Creek known as the Highland Park pond. This pond was decreed a storage right in Case No. 97CW148, Water Division 2. Per paragraph 28 of the final decree entered in that case, the pond relies on "runoff, surface and underground return flows, natural precipitation" and ground water pumping. Prior excess return flow credits from the District's water system have supplied the Highland Park pond with water and will continue to do so in the future. Except in the unlikely event the District's return flow credits are insufficient, evaporative loss from the Eagle Rising ponds will be fully replaced and thus prevent injury to the Highland Park pond.

submits. Such forms shall show ground water withdrawals, stream depletions, return flows, net stream depletions, the amount required for augmenting all pond evaporation loss within the Park Forest service area including the Eagle Rising ponds, and any excess consumable return flows. The District agrees to update its current accounting forms to include the existing wells and ponds located on the inclusion property, and to otherwise update the forms as necessary in the future.

CONCLUSIONS OF LAW

13. The Court has jurisdiction in this matter pursuant to C.R.S. § 37-92-203(1).

14. The Application in this matter is one contemplated by law. C.R.S. § 37-92-302(1).

15. The Court finds that the Ruling and Decree proposed by the District in this matter complies with the requirements set forth in C.R.S. §37-90-137(9)(c). The Court has also considered the District's proposed use of the water by the wells and the Eagle Rising ponds described in paragraph 3 above, in quantity and time, the amount and timing of augmentation water to be provided, and whether injury would be caused to any owner of or other person entitled to use water under a vested water right or a conditionally decreed water right. The Court finds that under the plan for augmentation approved in Case No. 00CW18 and as amended herein, no such injury will occur and that the Decree proposed by the District complies with C.R.S. § 37-92-305(6)(a) and § 37-92-305(8).

RULING

16. The provisions of paragraphs 1-15 above are incorporated herein and made a part of the Court's Ruling.

17. The District's request to amend the plan for augmentation as described in paragraphs 5-12 above is hereby granted subject to the terms and conditions set forth herein.

18. The wells and the Eagle Rising ponds described in paragraph 3 above shall be augmented consistent with the requirements set forth in paragraph 17 of the final decree in Case No. 00CW18, Water Division 2. The District shall use existing excess return flow credits to augment the above wells and ponds, and the District may also use the additional return flows generated from septic systems located on the inclusion property as necessary for augmentation purposes. All septic systems installed on the inclusion property shall be non-evaporative and consume no more than 10% of all water that enters such systems.

19. The District further retains all rights granted and shall be subject to all terms and conditions set forth under the final decree entered in Case No. 00CW84, Water Division 2, as to the water rights awarded therein in connection with the water and water rights conveyed to the District by the current owner of the inclusion property. To the extent the District develops and makes of such water outside of the amended augmentation plan approved herein, such use shall be subject to the terms and conditions of the final decree entered in Case No. 00CW84. The decree entered in Case No. 10CW24, Water Division 2, is hereby vacated.

20. The District shall apply for new well permits for the existing wells located on the inclusion property. The State Engineer shall evaluate those applications pursuant to C.R.S. § 37-90-137(2)(a)(II) consistent with the terms and conditions of the final decree entered herein. Pursuant to C.R.S. § 37-92-305(6)(a), permits shall be issued. The District shall meter, record and report all water use associated with these wells pursuant to paragraph 21 below. These wells shall be used consistent with the terms of the well permits issued and the amended plan for augmentation approved herein.

21. Not less than annually, the District shall complete and submit accounting forms to the State Engineer which show ground water withdrawals, stream depletions, return flows, net stream depletions, the amount required for augmenting all pond evaporation loss within the Park Forest service area and any excess consumable return flows. Such forms shall be the same as or substantially similar to the forms the District currently uses and submits, The District shall update its current accounting forms to include the existing wells located on the inclusion property and the Eagle Risings ponds, and to otherwise continue to update such forms as necessary to ensure proper accounting of the District's water use.

22. The Court shall retain jurisdiction for as long as the District is required to replace depletions to the South Platte system, to determine whether the replacement of depletions to the Arkansas River system instead of the South Platte system is causing material injury to water rights tributary to the South Platte. Any person may invoke the Court's retained jurisdiction at any time the District is causing depletions (including ongoing post-pumping depletions) to Cherry Creek, and is instead replacing such depletions to Monument Creek. The person invoking the Court's retained jurisdiction shall have the burden of establishing a *prima facie* case that the District's failure to replace depletions to Cherry Creek is 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. The District shall retain the ultimate burden that no injury is occurring, or shall propose terms and conditions

which prevent such injury. Among any other remedies it may impose, the Court may require that the District replace depletions to Cherry Creek.

23. Pursuant to C.R.S. § 37-92-304(6), the Court also retains jurisdiction over the plan for augmentation as amended herein for reconsideration of the question of whether the provisions of this Decree are necessary and/or sufficient to prevent injury to the vested water rights of others. The Court also retains jurisdiction for the purpose of determining compliance with the terms of the augmentation plan as amended. Any person seeking to invoke the Court's retained jurisdiction under this paragraph to modify the Decree shall file a verified petition with the Court. Such petition 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 the *prima facie* facts alleged in the petition. If the Court finds those facts to be established, the District shall thereupon have the burden of proof to show one of the following: (a) that any modification sought by the District will avoid injury to other appropriators; (2) that any modification sought by the person filing the petition is not required to avoid injury to other appropriators; or (c) that any term or condition proposed by the District in response to the petition does avoid injury to other appropriators.

24. This Ruling shall be mailed as required by statute.

DONE this 13th day of March, 2015.

BY THE REFEREE:



Mardell R. DiDomenico

Mardell R. DiDomenico, Water Referee
Water Division 2

JUDGMENT AND DECREE

The foregoing Ruling comes before the Court after the time period for raising objections to the same pursuant to C.R.S. § 37-92-304(2) has expired. The Court, having reviewed the Ruling and being familiar with the terms of the same, hereby approves and enters said Ruling as a Judgment and Decree of this Court pursuant to C.R.S. § 37-92-304(5).

DONE this 9th day of April, 2015.

BY THE COURT:


LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2