

DISTRICT COURT, WATER DIVISION 2, CO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	DATE FILED: August 9, 2018 3:41 PM CASE NUMBER: 2018CW3001
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: GREGORY S. WOLFF AND TANYA R. WOLFF IN EL PASO COUNTY	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No.: 18CW3001 (c/r 18CW3001 Div. 1)
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE</p>	

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

GENERAL FINDINGS OF FACT

1. The applicants in this case are Gregory and Tanya Wolff, whose address is 14160 Roller Coaster Road, Colorado Springs, CO 80921 ("Applicant"). Applicant is the owner of the land totaling approximately 9.86 acres on which the structures sought to be adjudicated herein are located and under which lies the Denver Basin groundwater described in this decree, and are the owners of the place of use where the water will be put to beneficial use except as described in Paragraph 19.

2. The Applicant filed this Application with the Water Courts for both Water Divisions 1 and 2 on January 9, 2018. The Application was referred to the Water Referees in both Divisions 1 and 2 on or about January 18, 2018.

3. The time for filing statements of opposition to the Application expired on the last day of March 2018. A Statement of Opposition was timely filed by Kettle Creek, LLC on March 29, 2018.

4. A Motion for Consolidation of the Division 1 and Division 2 cases into Water Division 2 was filed with the Colorado Supreme Court on April 2, 2018. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on April 4, 2018. Chief Justice, Nancy E. Rice, granted the Motion for Consolidation by Order dated May 8, 2018.

5. On January 11, 2018, the Division 1 Water Court, on Motion from Applicant, ordered that consolidated publication be made by only Division 2. On January 18, 2018, the Division 2 Water Court ordered that publication occur in the *Daily Transcript* within El Paso County.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On February 15, 2018, proof of publication in the *Daily Transcript* was filed with both Water Court Divisions 1 and 2. All notices of the Application have been given in the manner required by law.

7. On June 27, 2018, a stipulation between the Applicant and Kettle Creek, LLC was filed with the Division 2 Water Court. By Order dated June 28, 2018, the Division 2 Water Court approved such stipulation.

8. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each Denver Basin aquifer with this Court on March 26, 2018, which have been considered by the Court in the entry of this Ruling and Decree.

9. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division 2 has filed its Consultation Report dated April 27, 2018, with the Court ("Consultation Report"), and a Response to the Consultation Report was filed by the Applicant on May 29, 2018. Both the Consultation Report and Response have been considered by the Court in the entry of this Ruling and Decree.

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

GROUNDWATER RIGHTS

11. The Applicant requested the adjudication of available groundwater and water uses from the Dawson aquifer, and underground water rights for Wolff Well Nos. 1 through 4, as may be constructed to the Dawson aquifer, and additional or replacement wells associated therewith for withdrawal of Applicant's full entitlements of supply under the plan for augmentation decreed herein. Applicant also requested quantification of available groundwater and adjudication of water uses from the Denver, Arapahoe, and Laramie-Fox Hills aquifers. The following findings are made with respect to such underground water rights:

12. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 9.86 acres located in the SW¼ NW¼ of Section 4, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, as more particularly described on the attached **Exhibit A**, and depicted on the attached **Exhibit B** map (“Applicant’s Property”). Applicant intends to subdivide the property into up to four lots. All groundwater adjudicated herein shall be withdrawn from the Applicant’s Property.

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

14. Wolff Wells Nos. 1 through 4: Wolff Well Nos. 1 through 4 are to be located on the Applicant’s Property. Applicant is awarded the vested right to use Wolff Well Nos. 1 through 4, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein. Wolff Well No. 1 currently exists on the Applicant’s Property. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, the State Engineer shall issue a revised permit for Wolff Well No. 1 and well permits for Wolff Well Nos. 2 through 4 pursuant to C.R.S. §37-90-137(4), consistent with and referencing the Plan for Augmentation decreed herein.

15. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant’s Property. The Dawson, Denver, and Arapahoe aquifers underlying the Applicant’s Property contain not-nontributary groundwater, while the groundwater of the Laramie-Fox Hills aquifer underlying the Applicant’s Property is nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant’s Property is as follows:

Aquifer	Net Sand Thickness (Feet)	Total Ground Water Storage (Acre Feet)	Annual Average Withdrawal (Acre Feet)
Dawson (NNT)	150	296	0.99 ¹
Denver (NNT)	475	796	7.96
Arapahoe (NNT)	230	386	3.86
Laramie Fox Hills (NT)	190	281	2.81

¹ The Dawson Annual Average Withdrawals in this table represent not the 100-year aquifer life discussed in C.R.S. 37-90-137(4), but rather a 300-year aquifer life (296 acre feet divided by 300 years) for provision of a 300-year water supply in compliance with El Paso County Land Development Code for the subdivision of the Applicant’s Property, consistent with the plan for augmentation decreed herein.

16. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirements for wells in the Dawson aquifer require the replacement to the affected stream systems of actual out-of-priority stream depletions on an annual basis. The Denver and Arapahoe aquifers underlying Applicant's Property are more than one mile from any point of contact between any natural surface stream, including its alluvium, and the aquifers, and therefore pursuant to C.R.S. §37-90-137(9)(c), Applicant must replace 4% of annual pumping for withdrawals from the Denver and Arapahoe aquifers. Applicant shall not be entitled to construct a well or use water from the not-nontributary Dawson, Denver or Arapahoe aquifers except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9)(c.5), including as decreed herein as concerns the Dawson aquifer.

17. Subject to the augmentation requirements described in Paragraph 16 and Paragraph 22 and the other requirements and limitations in this decree, Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts can be withdrawn over the 300-year life of the aquifers as set forth in El Paso County, Colorado Land Development Code §8.4.7(C)(1) which requirements also satisfy the 100-year life for the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or Applicant's water needs, provided withdrawals during such longer period are in compliance with the augmentation requirements of this decree. The average annual amounts of groundwater available for withdrawal from the underlying Denver Basin aquifers, based upon the 300-year aquifer life, are determined and set forth above, based upon the March 26, 2018 Office of the State Engineer Determination of Facts.

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

19. Subject to the terms and conditions in the plan for augmentation decreed herein and final approval by the State Engineer's Office pursuant to the issuance of well permits in accordance with C.R.S. §§37-90-137(4) or 37-90-137(10), the Applicant shall

have the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial, and for storage and augmentation associated with such uses. The amount of groundwater decreed for such uses upon the Applicant's Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicant's Property and are to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the limitations imposed on the use of the Laramie-Fox Hills aquifer groundwater by this decree and the requirement under C.R.S. §37-90-137(9)(b) that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided however, as set forth above, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein for the Dawson aquifer wells. This decree does not approve a plan for augmentation for pumping from the Denver and Arapahoe aquifers underlying the Applicant's Property. Applicant must obtain judicial approval of a plan for augmentation in order to pump water from the Denver and Arapahoe aquifers.

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

PLAN FOR AUGMENTATION

21. The structures to be augmented are Wolff Well Nos. 1 through 4 to be constructed in the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith.

22. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation obligation for Wolff Well Nos. 1 through 4, and any additional or replacement wells constructed to the Dawson aquifer requires the replacement of actual stream depletions. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary Wolff Well Nos. 1 through 4, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping ceases are a reserved portion of Applicant's nontributary water rights in the Laramie-Fox Hills aquifer as decreed herein. Applicant shall provide for the augmentation of stream depletions caused by pumping the Wolff Well Nos. 1 through 4 and any additional or replacement wells as approved herein. Water use criteria is as follows:

A. Use: The Wolff Well Nos. 1 through 4 may each pump up to 0.247 acre feet of water per year, for a maximum total of 0.99 acre feet being withdrawn from the Dawson aquifer annually, though should fewer than 4 lots be developed on Applicant's Property, each well thereon shall be entitled to withdraw its proportional share of the total 0.99 acre feet available (*i.e.* should only Wolff Well Nos. 1-3 be developed, each would be entitled to a maximum of 0.33 acre feet of withdrawals, annually). Indoor use will utilize an estimated 0.2 acre feet of water per year per residence, with remaining pumping entitlements available for other uses on the property, including, for example, irrigation of approximately 1,023 square feet of lawn and garden or the watering of up to four horses or equivalent livestock, per residence, or some mixture of such uses utilizing not more than 0.047 acre feet of water annually (assuming 4 lots/wells are utilized). The foregoing figures assume the use of four septic systems, with resulting return flows from each as described below in Paragraph 22.C. Should Applicant subdivide Applicant's Property into fewer than 4 lots, generated septic system return flows for the replacement of depletions will be correspondingly reduced, though pumping for uses other than household use may be increased provided at all times septic return flows shall be sufficient to replace the maximum depletions resulting from pumping (24.5%) as described in Paragraph 22.B.

B. Depletions: Consistent with the figures provided in the Division Engineer's Consultation Report, maximum annual stream depletions over the 300-year pumping period will amount to approximately twenty-four percent (24.3%) of pumping. Maximum annual depletions for total residential pumping from all wells during the pumping period will therefore be 0.243 acre feet in year 300. Should Applicant's pumping be less than the total 0.99 annual acre feet described herein, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the four Dawson aquifer wells or any additional or replacement wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The estimated consumptive use for non-evaporative septic systems is 10% per year per residence. At a household indoor delivery rate of 0.2 acre feet per residence per year (a total of 0.8 acre feet assuming 4 residences), 0.72 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Should only 3 residences/wells be utilized with resulting pumping for in-house use of 0.6 annual acre feet, septic return flows would be 0.54 annual acre feet. Should only 2 residences/wells be utilized with resulting pumping for in-house use of 0.4 annual acre feet, septic return flows would be 0.36 annual acre feet. With maximum annual depletions from the pumping of 0.99 acre feet annually for 300 years at 0.243 acre feet, stream depletions during the pumping period will be more than adequately augmented using septic system

return flows, provided at least 2 residences are constructed on the Applicant's Property and are receiving annual deliveries for in-house use and septic system return flows are made in the amounts described in this paragraph.²

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. For the replacement of post-pumping depletions which may be associated with the use of the Wolff Well Nos. 1 through 4, Applicant will reserve up to 267 acre feet of water from the nontributary Laramie-Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, estimated by the Division Engineer in the Consultation Report as approximately 34 acre feet, as necessary to replace post pumping depletions. The amount reserved may be reduced as may be determined through this Court's retained jurisdiction as described in this decree. If the Court, by order, reduces the Applicant's obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace post-pumping depletions. Pursuant to C.R.S. §37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed. The reservation of 267 acre feet from the Laramie-Fox Hills aquifer results in 262 acre feet of available post-pumping augmentation water, which will be sufficient to cover maximum post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive well permits for the Wolff Well Nos. 1 through 4 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

23. Because depletions occur to both the South Platte and Arkansas River systems under the State's groundwater flow model, the Application in this case was filed in both Water Divisions 1 and 2. The return flows set forth above as the augmentation source during the pumping period will accrue to only the Arkansas River system where most of the depletions will occur and where the Applicant's Property is located. Under this augmentation plan, the total amount of depletions will be replaced to the Arkansas River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan subject to Paragraphs 42-46 herein.

² If only one residence is constructed on the Applicant's Property, the full amount of 0.99 acre feet per year cannot be withdrawn, as septic system return flows of 0.18 acre feet per year from indoor use in the single residence (0.2 acre feet x .90) would not be sufficient to replace maximum annual depletions of 0.243 acre feet during the pumping period.

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

25. Applicant or its successors shall be required to initiate pumping from the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions when either: (i) the absolute total amount of water available from the Dawson aquifer allowed to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Wolff Well Nos. 1 through 4 have permanently ceased, (iii) a period of 10 consecutive years where no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

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

27. The term of this augmentation plan is for a minimum of 300 years, however, the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated to such well or wells is not exceeded. Should the actual operation of this augmentation plan depart from the planned diversions described in Paragraph 22 such that annual diversions are increased or the duration of the plan is extended, the Applicant must prepare and submit a revised model of stream depletions caused by the actual pumping or intended schedule. This analysis must utilize depletion modeling acceptable to the State Engineer, and to this Court, and must represent the water use under the plan for the entire term of the plan to date. The analysis must show that return flows have equaled

or exceeded actual stream depletions throughout the pumping period and that reserved nontributary water remains sufficient to replace post-pumping depletions.

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

29. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided the water is of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Wolff Well Nos. 1 through 4. As a result of the operation of this plan for augmentation, the depletions from the Wolff Well Nos. 1 through 4 and any additional or replacement wells associated therewith will not result in material injury to the vested water rights of others.

CONCLUSIONS OF LAW

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

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

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

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

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

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

36. The Applicant's request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the Wolff Well Nos. 1 through 4 and any additional or replacement wells in the Dawson aquifer without adversely affecting any other vested water rights in the Arkansas River and South Platte River or their tributaries and when curtailment would otherwise be required to meet a valid senior call for water. C.R.S. §§37-92-305(3), (5), and (8).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

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

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

A. Applicant is awarded a vested right to use the groundwater from the not-nontributary Dawson aquifer underlying Applicant's Property, as quantified in Paragraph 15 or as modified by the Court under its retained jurisdiction. Subject to the limitations on total pumping under the plan for augmentation decreed herein, this decree and plan for augmentation authorize the pumping of all 296 acre feet of the Dawson aquifer groundwater decreed herein.

B. Applicant is awarded a vested right to use the groundwater from the not-nontributary Denver aquifer underlying Applicant's Property, as quantified in Paragraph 15 or as modified by the Court under its retained jurisdiction. Withdrawal and use of the Denver aquifer groundwater shall not be made until Applicant or any successor in interest has obtained a separate decreed plan for augmentation that allows such withdrawal and use.

C. Applicant is awarded a vested right to use the groundwater from the not-nontributary Arapahoe aquifer underlying Applicant's Property, as quantified in Paragraph 15 or as modified by the Court under its retained jurisdiction. Withdrawal and use of the Arapahoe aquifer groundwater shall not be made until Applicant or any successor in interest has obtained a separate decreed plan for augmentation that allows such withdrawal and use.

D. Applicant is awarded a vested right to use the groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, as quantified in Paragraph 15 or as modified by the Court under its retained jurisdiction. 267 acre feet of the 281 total acre feet awarded has been reserved for use in the plan for augmentation decreed herein. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent of the amount withdrawn, and the other terms and conditions of this decree, Applicant's Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 19.

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

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

41. Wolff Well Nos. 1 through 4 and any replacement or additional wells shall be operated such that combined pumping from all wells does not exceed the annual and total pumping limits for the Dawson aquifer as decreed herein, and is in accordance with the requirements of the plan for augmentation described herein. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the Wolff Well Nos. 1 through 4 or any additional and replacement wells so long as the return flows from the annual diversions associated with the Wolff Well Nos. 1 through 4 and such other wells accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or one of its successors or

assigns is ever unable to provide the replacement water required, then the Wolff Well Nos. 1 through 4 and any additional or replacement wells shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulations of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions. Applicant shall be required to have any wells pumping on the Applicant's Property providing water for in-house uses and generating septic system returns prior to pumping the wells for any of the other uses identified in Paragraphs 19 or 22.A.

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

A. At such time as adequate data may be available, Applicant or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 42 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to effect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicant, opposer, and the petitioning party.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty (60) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 42 concerning adjustments to the Denver Basin ground water rights based upon local aquifer conditions shall no longer be applicable. In the event of a protest being timely filed, or should the State Engineer's Office make no timely determination as provided in Paragraph 42.A., above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

43. Pursuant to C.R.S. §37-92-304(6), the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan. The Court further retains jurisdiction should the Applicant later seek to amend this decree by seeking to prove that post-pumping depletions are non-injurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 22.D. The Court's retained jurisdiction may be invoked using the process set forth in Paragraph 46.

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

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

46. Except as otherwise specifically provided in Paragraphs 42-45, above, pursuant to the provisions of C.R.S. §37-92-304(6), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of others, for a period of three years, except as otherwise provided herein. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court reconsider material injury to petitioner's vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (i) that the petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not extended by the Court in accordance with the revisions of the statute, this matter shall become final under its own terms.

47. Pursuant to C.R.S. §37-92-502(5)(a), the Applicant shall install and maintain such water measurement devices and recording devices as are deemed necessary by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain totalizing flow meters on Wolff Well Nos. 1 through 4 or any additional or replacement wells associated therewith. Applicant is also to maintain records and provide reports to the State Engineer or Division Engineer as instructed by said entities, on at least an annual basis.

48. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. Wolff Well No. 1 shall be permitted as a non-exempt structure under the plan for augmentation decreed herein. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses which can be made of the groundwater to be withdrawn, and, to the extent the well permit application requests a use that has not been specifically identified in this decree, shall not issue a permit for any such proposed use, which use the State Engineer determines to be speculative at the time of the well permit application or which would be inconsistent with the requirements of this

decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

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

DATED THIS 18th day of July, 2018.

BY THE REFEREE:

Mardell R. DiDomenico



Mardell DiDomenico, Water Referee
Water Division 2

DECREE

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

Dated: August 9th, 2018.



BY THE COURT:

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

Attached Legal Description

A tract of land in the Southwest quarter of the Northwest quarter of Section 4 in Township 12 South, Range 66 West of the 6th P.M.; whose location and boundaries are more particularly described as follows:

Commencing at the West quarter corner of said Section; thence North $1^{\circ} 22\text{-}1/2'$ West on the West line of the Northwest quarter of said Section a distance of 1365.48 feet more or less to the Northwest corner of the Southwest quarter of the Northwest quarter of said Section; thence North $89^{\circ} 39'$ East on the North line of the Southwest quarter of the Northwest quarter of said Section, a distance of 990.0 feet to a point, said point being the point of beginning of said tract; thence continuing North $85^{\circ} 39'$ East on the North line of said Southwest quarter of the Northwest quarter a distance of 330.07 feet, more or less, to the Northeast corner of the Southwest quarter of the Northwest quarter of said Section; thence South $1^{\circ} 13'$ East on the East line of the Southwest quarter of the Northwest quarter of said Section a distance of 1260.94 feet, more or less, to the North line of the County Road; thence South $89^{\circ} 46'$ West on the North line of said County Road 15.43 feet to a point of curve; thence on a curve to the left whose radius is 526.81 feet an arc distance of 239.67 feet, said arc being the Northerly line of said County Road; thence continuing on said North line of said County Road, South $63^{\circ} 41'$ West a distance of 83.83 feet to a point of intersection with a line drawn South $1^{\circ} 22\text{-}1/2'$ East from the point of beginning parallel with the West line of said Southwest quarter of the Northwest quarter, said section; thence North $1^{\circ} 22\text{-}1/2'$ West on said line a distance of 1351.25 feet to the point of beginning, Except any portion thereof lying within Old Northgate Road,
County of El Paso, State of Colorado.

El Paso County Assessor's Office

2030 OLD NORTH GATE RD

SCHEDULE: 6204000016

OWNER: MYERS DWAYNE A

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