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El Paso County, CO



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| <b>DISTRICT COURT, WATER DIVISION 2</b><br><b>Pueblo County Courthouse</b><br><b>501 North Elizabeth Street, Suite 116</b><br><b>Pueblo, CO 81003</b> | DATE FILED: January 19, 2018 4:08 PM |
| <b>Concerning the Application for Water Rights of:</b><br><br><b>ARROYA INVESTMENTS, LLC and ROBERT SCOTT GENERAL CONTRACTORS, INC.</b>               | <b>▲ COURT USE ONLY ▲</b>            |
| In El Paso County   |                                      |
|   | <b>Case No. 16CW3095</b>             |
| <b>SECOND AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW,<br/>JUDGMENT AND DECREE</b>   |                                      |

The Court, having reviewed the application, the Summary of Consultation held by the Division Engineer for Water Division 2 on March 10, 2017, and the pleadings in this case, including a Motion to Amend Decree to include an omitted exhibit which contains the legal description of the Property, and an Unopposed Motion for Second Amendment to Decree which substitutes the correct map of the Property for the incorrect map which was filed with the Motion to Amend Decree, hereby enters the following Second Amended Findings of Fact, Conclusions of Law, Judgment and Decree:

**FINDINGS OF FACT**

**I. Jurisdictional Facts.**

1. The applicants for adjudication of Denver Basin ground water and approval of a plan for augmentation in this case are Arroya Investments, LLC, 1283 Kelly Johnson Blvd., Colorado Springs, CO 80920 ("Arroya"), and Robert Scott General Contractors,

Inc. (Scott”), Attn: Bob Ormston. 2760 Brogans Bluff Drive, Colorado Springs, CO 80918, phone 719.499.6754; email rshomes@comcast.net.

2. The application in this case was filed on December 29, 2016 in Water Division 2. The application was published in the resume for Water Division 2 and in a newspaper of general circulation in El Paso County, as ordered by the Court. Proof of publication has been filed.

3. A timely statement of opposition was filed in Water Division 2 by the City of Colorado Springs acting by and through its enterprise, Colorado Springs Utilities. The City of Colorado Springs has stipulated to entry of a decree in this case, and this decree is consistent with the stipulation. The deadline for filing statements of opposition has expired, and no motions to intervene have been filed.

4. The Court has reviewed and considered the Consultation Report of the Division Engineer for Water Division 2, which was on held and filed on March 10, 2017.

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

## **II. Description of Denver Basin Water Rights to be Adjudicated.**

6. The property beneath which certain water is sought to be adjudicated consists of 35.28 acres situate in the SW1/4 Section 22, T. 12 S., R. 65 W., 6<sup>th</sup> P.M.; its legal description is found on Exhibit A (the “Property”). A map showing the Property’s location is attached as Figure 1.

7. The Property is owned by the Applicant and there are no liens or encumbrances against the Property, so the provisions of C.R.S. §37-92-302(2)(b) do not apply.

8. Pursuant to the Determinations of Fact issued by the State Engineer on February 8, 2017, the amounts of water available for appropriation from each aquifer are as shown on Table 1:

**Table I**

| <b>Aquifer</b>    | <b>Acreage</b> | <b>Specific Yield</b> | <b>Sat. Thickness (ft)</b> | <b>Total Amount (AF)</b> | <b>Annual Amount (AF)*</b> |
|-------------------|----------------|-----------------------|----------------------------|--------------------------|----------------------------|
| Dawson            | 35.28          | .20                   | 275                        | 1,940                    | 19.4                       |
| Denver            | 35.28          | .17                   | 280                        | 1,679                    | 16.8                       |
| Arapahoe          | 35.28          | .17                   | 250                        | 1,499                    | 15.0                       |
| Laramie-Fox Hills | 35.28          | .15                   | 190                        | 1,005                    | 10.1                       |

\* This amount is based on annual withdrawals of one percent of the total amount appropriated, as provided in C.R.S. §37-90-137(4)(b). The plan for augmentation decreed herein requires that the water in the Dawson aquifer be withdrawn at a lower rate than would otherwise be allowed by state law.

9. The estimated depths and tributary status of the four aquifers located beneath the Property are shown on Table II:

**Table II**

| <b>Aquifer</b>    | <b>Depth below surface (ft)</b> | <b>tributary status</b> |
|-------------------|---------------------------------|-------------------------|
| Dawson            | 100 - 620                       | not nontributary        |
| Denver            | 640 - 1,540                     | not nontributary        |
| Arapahoe          | 1,590 - 2,075                   | nontributary            |
| Laramie-Fox Hills | 2,350 - 2,635                   | nontributary            |

10. Applicants will withdraw water from the Dawson aquifer from as many as 10 wells. Subject to the limitations in this decree, Applicants may also withdraw water from one well in each of the Denver, Arapahoe, and Laramie-Fox Hills aquifers, plus any additional wells in those aquifers required in order for Applicants to withdraw the full decreed amounts. Such wells may be constructed at any location on the Property, provided, that no wells may be located within 100 feet of the Property boundary.

11. Subject to the terms, conditions and limitations of this decree, and the issuance by the State Engineer of a well permit that authorizes the specific use or uses, the Denver Basin ground water rights adjudicated herein are decreed for all beneficial uses except municipal uses.

### **III. Description of Plan for Augmentation.**

12. Overview of plan for augmentation. Applicants intend to subdivide the property into as many as 10 residential lots. Applicants are entitled to drill one well into the Dawson aquifer for each lot. The plan for augmentation is designed to last for 300 years. Septic system return flows will be used to replace depletions which occur during the pumping period, and nontributary Arapahoe and Laramie-Fox Hills aquifer water is hereby reserved in an amount sufficient to replace all post-pumping depletions. Uses of water on such lots are expected to be, but shall not be limited to, some or all of the

following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows. Annual pumping from the Dawson aquifer will be limited to 0.5225 acre foot (170,257 gallons) annually per well, with one well per lot, and 5.225 acre feet annually. Applicants for well permits will indicate the uses to which they intend to put the water on their well permit applications.

13. Return flows from indoor residential use. The State Engineer has issued an informal guideline estimating that conservatively, water use in single family dwellings will equal at least 0.2 acre foot of water annually for indoor uses, and that return flows from nonevaporative septic systems will equal at least 0.18 acre foot annually. Thus, it is assumed that each well constructed pursuant to this plan for augmentation will be used in at least one single family dwelling, and will cause septic system return flows of at least 0.18 acre foot annually, or at least 1.8 acre foot annually if 10 wells are constructed. Though there may be return flows from landscape and/or garden irrigation, Applicants do not and will not rely on such return flows to replace depletions during the pumping period under this plan for augmentation, or in any other plan for augmentation.

14. Replacement of depletions during pumping. Applicants shall replace all depletions caused by pumping of the Dawson aquifer water. The State Engineer's computer model "DA02" indicates that during pumping, depletions to the Arkansas River system will gradually increase to a maximum of approximately 34.45 percent of annual pumping in the 300<sup>th</sup> year, or 1.8 acre feet based on annual pumping of 5.225 acre feet. Applicants shall replace those depletions with septic system return flows, which will equal 1.8 acre feet annually for 10 lots, based on assumed average annual indoor use of at least 0.2 acre foot per dwelling. If the Property is subdivided into fewer than 10 lots, with one Dawson aquifer well per lot, return flows from septic systems will still always exceed stream depletions during the 300 year pumping period. Thus, Applicants may subdivide the Property into fewer than 10 lots, with one well per lot, provided that Applicants comply with all other provisions of this decree. If fewer than 10 lots are approved by the relevant department of the El Paso County Government, the annual amount allowed to be pumped from each Dawson aquifer well shall remain 0.5225 acre foot per well.

15. Provision of sufficient return flows during the pumping period.

Nonevaporative septic systems shall be used for treatment of water used for indoor drinking and sanitary uses on all lots. All septic system return flows from the lots are dedicated to this plan for augmentation, and shall not be sold, leased or otherwise used for

any other purpose. Septic system return flows are necessary to provide an adequate source of water to replace stream depletions during the pumping period under the plan for augmentation decreed herein. Accordingly, in order to generate required return flows to replace depletions during pumping, each Dawson aquifer well authorized hereunder must be used to provide water to one or more single family dwellings on the Property, and annual withdrawals shall be limited to withdrawal of 0.5225 acre foot per well. Because this augmentation plan is dependent on return flows from indoor residential uses, no Dawson aquifer well approved pursuant to this plan for augmentation shall be allowed to pump water for any purpose unless it is also used in a residence on the lot on which such well is located. Total post-pumping depletions from Applicants' withdrawals from all Dawson aquifer wells shall in no instance exceed the 1,324 acre feet of water reserved and available for replacement of post pumping depletions from the Arapahoe aquifer, less any replacements of depletions made during the pumping life of the up to 10 Dawson aquifer wells.

16. Replacement of post-pumping depletions.

A. Applicants shall replace post-pumping depletions for the shortest of the following four periods: (1) the period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain Water Court approval for such

modification; (2) the period determined by the State Engineer, should the State Engineer lawfully establish such a period; (3) the period established through rulings of the Colorado Supreme Court in relevant cases; or (4) until Applicants or their successors petition the Water Court and after notice to all parties in this case prove that they have complied with all statutory requirements.

B. Replacement of post-pumping depletions shall commence after the earliest of the five following events has occurred: (1) 1,567.5 acre feet have been pumped from the Dawson aquifer; or (2) ten consecutive years have passed with no pumping from the Dawson aquifer; or (3) when Applicants or their successors acknowledge in writing that all withdrawals for beneficial use from the Dawson aquifer have permanently ceased; (4) when accounting shows that return flows from the use of the water being withdrawn from the Dawson aquifer wells are insufficient to replace depletions that already occurred, or (5) 300 years subsequent to entry of the decree in this case, i.e., 2317 A.D.

C. At the time Applicants or their successors must begin replacing post-pumping depletions, Applicants shall cause a depletion analysis to be conducted, using the computer model generally accepted as being most accurate at that time, to calculate the amount and timing of post-pumping depletions which

must be replaced, based on actual withdrawals during the applicable pumping period. After the depletion analysis has been completed, the Arapahoe aquifer water as decreed herein, or such other source of water as receives judicial approval after notice, shall then be pumped at the appropriate times and delivered to the Arkansas River system in a manner that will adequately replace all post-pumping depletions from pumping of the Dawson aquifer wells approved pursuant to this decree. Applicants' successors in interest shall be required by the terms of this decree to construct an Arapahoe aquifer well pursuant to this plan for augmentation at the time replacement of post-pumping depletions must commence pursuant to this decree, unless after notice a different source of water is approved by the court for replacement of post-pumping depletions, or unless the obligation is modified or terminated pursuant to ¶ 16.A. above.

D. Applicants hereby reserve and dedicate to this plan for augmentation 1,324 acre feet of Arapahoe aquifer ground water rights decreed herein for the purpose of replacing all post-pumping depletions to the Arkansas River system. This amount has been calculated as follows:

- I. Based on a maximum allowable annual Dawson aquifer pumping of 5.225 acre feet for 300 years, a total of 1567.5 acre feet may be pumped from

the up to ten Dawson aquifer wells under this plan for augmentation.

Approximately 270 acre feet of stream depletions will occur during the pumping period, and there will be approximately 1,297.5 acre feet of post-pumping depletions.

II. Rule 8 of the Denver Basin Rules, 2 CCR 406-2, requires that only 98 percent of nontributary Denver Basin water may be consumed. The amount of water which must be reserved to replace post-pumping depletions is 1,324 acre feet, which was calculated by dividing post-pumping depletions of 1,297.5 acre feet by 0.98 and rounding to the next larger whole acre foot.

E. Applicants shall, at the time they must begin replacement of post-pumping depletions, construct an Arapahoe aquifer well from which the post-pumping replacements shall be pumped.

F. If at some time replacement of post-pumping depletions is no longer required pursuant to ¶16.A. above, or if Applicants receive judicial approval to use a different water source for augmentation purposes, Applicants shall petition the court pursuant to its retained jurisdiction to modify or terminate the reservation.

17. Recording of decree and covenants. A certified copy of this decree shall be recorded in the real estate records of El Paso County and shall constitute a covenant

running with the Property, requiring Applicants and their successors in interest to the Property to comply with the requirements of this decree and plan for augmentation, including the requirement to construct an Arapahoe aquifer well or take other measures as necessary to replace post-pumping depletions. Additional covenants shall be recorded in the real estate records of El Paso County and shall clearly indicate that failure of the property owner to comply with the terms of this decree may result in an order from the State Engineer to curtail or eliminate pumping to curtail or eliminate pumping from the Dawson aquifer wells approved hereunder. Said covenants shall be amended as necessary to conform to the provisions of any amendment to this augmentation plan. Any proposed change in the method of wastewater treatment and disposal for Dawson aquifer wells approved hereunder shall require water court approval after notice in the water resume and publication in a newspaper of general circulation in El Paso County.

18. Appurtenances to Property. This plan for augmentation, the right to 1,567.5 acre feet of Dawson aquifer ground water which may be pumped pursuant to the plan for augmentation, and the right to 1,324 acre feet of Arapahoe aquifer ground water Hills aquifer water rights which are reserved for replacement of post-pumping depletions, shall be considered as appurtenances to the Property, and shall be conveyed pursuant to the appurtenance clause in any deed conveying the Property or any portion thereof, whether or

not the plan for augmentation and the water rights are specifically referenced in the deed. It is anticipated that the plan for augmentation and the water rights reserved for replacement of post-pumping depletions will be conveyed by Applicants to a homeowners association or similar organization charged with the responsibility of implementing and carrying out the provisions of this decree.

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

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

#### **CONCLUSIONS OF LAW**

21. 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.

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

23. 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. Applicants have complied with all the conditions of C.R.S. §37-92-305(3), (8) and all other relevant statutes.

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

### **JUDGMENT AND DECREE**

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

26. Adjudication of Dawson aquifer groundwater rights.

A. Applicants are granted a vested right to 1,940 acre feet of ground water in the not nontributary Dawson aquifer located beneath the Property, subject to modification by the Court under its retained jurisdiction. One thousand five

hundred sixty seven and one-half (1,567.5) acre feet are reserved for use in the plan for augmentation decreed herein.

B. Pumping of the Dawson aquifer ground water rights pursuant to this plan for augmentation is limited to 0.5225 acre foot (170,257 gallons) annually per well for up to ten wells, 5.225 acre feet annually from all Dawson aquifer wells, and 1,567.5 acre feet in total. All well permits for Dawson aquifer wells authorized under this the plan for augmentation shall limit withdrawals to 15 gpm per well and to 0.5225 acre foot annually.

C. Because the pumping limits are established by the plan for augmentation decreed herein, the “water banking” provisions of Rule 8.A of 2 CCR 402-7 (“Water Banking Rules”) do not apply to the Dawson aquifer ground water rights.

D. These Dawson aquifer ground water rights decreed herein are approved for all beneficial uses, except municipal uses.

27. Adjudication of Denver aquifer ground water rights.

A. Applicants are granted a vested right to 1,679 acre feet of ground water in the not nontributary Denver aquifer located beneath the Property, subject to modification by the Court under its retained jurisdiction.

B. The Denver aquifer water may only be pumped pursuant to a court-approved plan for augmentation; no such plan for augmentation is decreed herein. Applicants' Denver aquifer ground water rights may be pumped at a rate not to exceed 16.8 acre feet annually except pursuant to the Water Banking Rules, and if allowed by a required plan for augmentation. The pumping rate shall not exceed 150 gpm.

C. These Denver aquifer ground water rights decreed herein are approved for all beneficial uses, except municipal uses.

28. Adjudication of Arapahoe aquifer ground water rights.

A. Applicants are granted a vested right to 1,499 acre feet of ground water in the nontributary Arapahoe aquifer located underneath the Property, subject to modification by the Court under its retained jurisdiction.

B. One-thousand three hundred twenty four (1,324) acre feet of the Arapahoe aquifer water rights are reserved for the replacement of post-pumping depletions pursuant to the plan for augmentation decreed herein. The Arapahoe aquifer ground water rights reserved for replacement of post-pumping depletions shall be pumped in accordance with the requirements established by the computer model referred to in ¶ 16.C above. The 175 acre feet of Arapahoe aquifer ground water

rights which are not reserved for replacement of post-pumping depletions may be pumped at a rate not to exceed 1.75 acre feet annually, except pursuant to the Water Banking Rules. Such water may be pumped at a rate not to exceed 150 gpm.

C. The Arapahoe aquifer ground water rights which are reserved for the replacement of post-pumping depletions are decreed for augmentation use only. The Arapahoe aquifer water rights which are not so reserved are decreed for all beneficial uses except municipal use.

29. Adjudication of Laramie-Fox Hills ground water rights.

A. Applicants are granted a vested right to 1,005 acre feet of ground water in the nontributary Laramie-Fox Hill aquifer located beneath the Property, subject to modification by the Court under its retained jurisdiction.

B. The Laramie-Fox Hills aquifer ground water rights decreed herein may be pumped at rate not to exceed 10.1 acre feet annually except pursuant to the Water Banking Rules, and may be pumped at a rate not to exceed 150 gm.

C. The Laramie-Fox Hills aquifer ground water rights decreed herein are decreed for all beneficial uses, except municipal uses. No more than 98 percent of the Laramie Fox Hills ground water rights may be consumed. Wells in the Laramie-Fox Hills aquifer may be pumped at a rate not to exceed 150 gpm.

30. Vested Water Rights. The Denver Basin aquifer ground water rights decreed herein are vested water rights, and no applications for findings of diligence are required. Pursuant to C.R.S. §37-92-305(11), the Court will retain jurisdiction to finally determine the amount of water available 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 Applicants need not refile, republish, or otherwise amend this decree to request or obtain such adjustment.

31. Approval of Plan for Augmentation. The plan for augmentation described herein is approved. Depletions caused by pumping water from up to ten wells in the Dawson aquifer shall be replaced as provided and decreed herein. Annual withdrawals from the Dawson aquifer shall not exceed 0.5225 acre foot ( 170,257 gallons) per well, nor more than 5.225 acre feet total, and total withdrawals over the 300 year pumping period shall not exceed 1,567.5 acre feet. The State or Division Engineer shall curtail the pumping of more than those amounts from the Dawson aquifer absent prior modification of this plan for augmentation by amendment of this decree or court approval of an additional plan for augmentation which replaces depletions attributable to such additional pumping. The State Engineer shall also curtail all diversions, the depletions from which are not replaced in a manner to prevent injury to vested water rights or decreed conditional water rights.

32. Necessity of residence on a lot prior to pumping. In order to ensure replacement of depletions during the pumping period, pumping and use of the Dawson aquifer wells for any beneficial uses other than indoor residential use shall not be allowed unless ground water is also being pumped and used for indoor residential use. In order for this plan for augmentation to operate, return flows from septic systems shall at all time during pumping be in an amount sufficient to replace the amount of stream depletions.

33. Well spacing. No well in the Dawson aquifer shall be constructed within 300 feet of another well in the same aquifer, other than replacement wells. Minimum spacing between wells in each of the other three aquifers shall be determined pursuant to the provisions of C.R.S. § 37-90-137(2).

34. Issuance of well permits. Upon submission of a properly completed well permit application and filing fee, the State Engineer shall issue a permit for each well approved herein, consistent with the terms of this decree and all applicable statutes and rules upon submission of the filing fee and a properly completed well permit application. The State Engineer shall identify the specific uses which can be made of the ground water to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the application or which would be

inconsistent with the requirements of this decree and the plan for augmentation approved herein, or any modified decree and plan for augmentation.

35. Additional provisions.

A. Applicants may construct replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of groundwater in the subject aquifers underlying the Property. As replacement wells are planned, applications for new well permits shall be filed in accordance with C.R.S. §37-90-137(10).

B. Two or more wells constructed into a given aquifer shall be considered a well field. In effecting production of water from such well field, Applicants may produce the entire amount which may be produced from any given aquifer through any combination of wells within the well field.

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

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

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

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

36. Retained jurisdiction provisions regarding quantity of water appropriated.

A. At such time as adequate data is available, any person, including the State Engineer, may invoke the Court's retained jurisdiction to make a Final Determination of Water Right as to the quantities of water available for appropriation 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 the Final Determination of Water Right, together with proposed decretal language. Within four months of notice that the retained jurisdiction for such purpose has been invoked, the State Engineer shall use the information available to him to make a final determination of water rights findings. The State Engineer shall submit such finding to the Water Court and the Applicants.

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

37. Retained jurisdiction regarding injury/compliance with plan for augmentation. Pursuant to C.R.S. §37-92-304(6), C.R.S., the Court shall perpetual jurisdiction for the purposes of determining compliance with the terms of the augmentation plan decreed herein, and whether, even if the Applicants are complying with the plan for augmentation, the operation of such plan for augmentation is causing injury to the vested

water rights of others. Any person seeking to invoke the retained jurisdiction of the Court pursuant to this paragraph shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the decree shall set forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to effect the petition. The person lodging the petition shall have the burden of going forward to establish *prima facie* facts alleged in the petition. If the Court finds those facts to be established, Applicants shall thereupon have the burden of proof to show: (1) if non-compliance is alleged, that Applicants are complying with the provisions of the plan for augmentation; (2) that if injury is alleged even if the Applicants are complying with the plan for augmentation, (a) that no such injury is occurring, or (b) that any modification sought by Applicants will prevent injury to other appropriators, or (c) that any modification sought by the person filing the petition is not required to prevent injury to other appropriators, or (d) that any term or condition proposed by Applicants in response to the petition will prevent injury to other appropriators.

38. Retained jurisdiction regarding substitution of replacement source for post-pumping depletions. The Court shall retain jurisdiction in perpetuity over the issue whether Applicants may substitute a different source of water in place of the reserved

Arapahoe and Laramie-Fox Hills aquifer water rights for replacement of post-pumping depletions.

Dated: January 19, 2018.

BY THE COURT:



*Larry C. Schwartz*

Larry C. Schwartz  
Water Judge  
Water Division 2

DISTRICT COURT  
WATER DIVISION NO. 2  
STATE OF COLORADO



Certified to be a full, true and correct copy of original on file.

Dated: February 15, 2018

MARDELL R. DiDomenico CLERK

By: M. DiDomenico  
Deputy Clerk

Decree of the Water Court  
Case No. 16CW3095  
Robert Scott General Contractors, Inc.  
Page 24



20 Boulder Crescent, STE 110  
Colorado Springs, CO 80903

DATE FILED: December 29, 2016 1:16 PM  
Mail to: PO Box 1360  
Colorado Springs, CO 80901  
719.955.5485

### Trails at Timberline East Parcel 1

M&S Job No. 10-006  
October 23, 2016  
Revised November 20, 2016

A PARCEL OF LAND LOCATED IN A PORTION OF THE SOUTHWEST ONE-QUARTER (SW1/4) OF SECTION 22, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHWEST ONE-QUARTER (SW1/4) OF SECTION 22, TOWNSHIP 12 SOUTH, RANGE 65 WEST AND IS ASSUMED TO BEAR N00°18'04"E, A DISTANCE OF 2640.26 FEET ;

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER (SW1/4) OF SAID SECTION 22;

THENCE S88°38'37"W ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (SE1/4 SW1/4), A DISTANCE OF 30.01 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED;

THENCE S88°38'37"W ALONG SAID SOUTH LINE, A DISTANCE OF 1300.53 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (SE1/4 SW1/4);

THENCE S88°38'55"W ALONG THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (SW1/4 SW1/4), A DISTANCE OF 898.51 FEET;

THENCE N47°35'42"E, A DISTANCE OF 105.23 FEET;

THENCE N36°59'01"E, A DISTANCE OF 517.38 FEET;

THENCE N56°32'31"E, A DISTANCE OF 489.24 FEET;

THENCE N38°17'19"E, A DISTANCE OF 182.67 FEET;

THENCE N89°41'56"E, A DISTANCE OF 1283.66 FEET;

THENCE S00°18'04"E, A DISTANCE OF 852.14 FEET TO THE POINT OF BEGINNING;

SAID PARCEL OF LAND CONTAINS A CALCULATED AREA OF 35.28 ACRES OF LAND, MORE OR LESS.

PREPARED BY:

CORY L. SHARP, COLORADO P.L.S. NO. 32820

FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC

20 BOULDER CRESCENT, SUITE 110

COLORADO SPRINGS, CO 80903

**EXHIBIT A**

