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DECLARATION OF PROTECTIVE COVENANTS
(Poenitsch Subdivision)

Christy L. Mullins and Thomas R. Poenitsch, Jr. (collectively, "Declarant") are the owners of certain real property legally described as follows:

The South half of the Southeast quarter of the Southeast quarter of Section 8, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado
(the "Property").

The Property is being subdivided into three (3) lots (each, a "Lot" and collectively, the "Lots") and will be known as the Poenitsch Subdivision.

This Declaration is executed and recorded (a) in furtherance of a common and general plan for the Property, to include all Lot owners' compliance with the Plan for Augmentation (defined below); (b) to protect and enhance the quality, value, desirability and attractiveness of the Property; (c) to provide for covenant enforcement within the Property; and (d) to define duties, powers and rights of Declarant and the owners of Lots within the Property.

Declarant hereby declares that all the Property shall be used, improved, occupied, owned, resided upon and conveyed subject to the covenants set forth herein for the purpose of enhancing and protecting the Property. The covenants set forth herein shall run with the Property and be binding on and inure to the benefit of all persons or entities having any right, title or interest in the Property, and said persons or entities shall hereby also be bound by the dedications, restrictions, easements and notes on the Poenitsch Subdivision Final Plat, to be recorded in the records of the Clerk and Recorder of El Paso County, Colorado, as well as the regulations and ordinances of the County of El Paso, Colorado.

A. WATER COVENANTS

1. Declarant adjudicated certain water rights in Case No. 18CW3054, Water Division 2, State of Colorado, by the Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court entered on February 25, 2019, a copy of which is recorded in the El Paso County, Colorado Clerk and Recorder's Office at Reception No. 219019567 and is attached hereto as **Exhibit A** and incorporated by reference (the "Plan for Augmentation"). Pursuant to the Plan for Augmentation, a total supply of 900 acre-feet of not non-tributory Dawson Aquifer water is available for use in the Poenitsch Subdivision to satisfy El Paso County's 300 year water supply requirement for the three Lots. Pursuant to the Plan for Augmentation, Lot 3 will be served by a replacement well permitted by Well Permit No. 84059-F, and Lots 1 and 2 will be served by new wells to be permitted pursuant to the Plan for Augmentation.

The Plan for Augmentation requires replacement of post-pumping depletions caused by pumping from the Dawson aquifer. Specifically, the Plan for Augmentation reserves 532 acre-feet of Laramie-Fox Hills aquifer water underlying the Poenitsch Subdivision and 282 acre-feet of Arapahoe aquifer water underlying the Poenitsch Subdivision for such replacement purposes. The

Plan for Augmentation requires the pumping of the Arapahoe Aquifer or the Laramie-Fox Hills aquifer to begin making post-pumping replacements when either: (i) the absolute total amount of water available from the Dawson aquifer allowed to be withdrawn under the Plan for Augmentation has been pumped; (ii) any of the owners of the Dawson aquifer wells acknowledge in writing that all withdrawals for beneficial use through the well(s) have permanently ceased, (iii) a period of 10 consecutive years where either no withdrawals of groundwater from the Dawson aquifer has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn from the Dawson aquifer is insufficient to replace depletions caused by the withdrawals that already occurred. Lot owners are hereby notified of their obligation to pay for the cost of drilling both a Laramie-Fox Hills aquifer well and an Arapahoe aquifer well in the future to replace post-pumping depletions.

Each well may withdraw a maximum of 1 acre-foot per year for up to 300 years for a combination of household use, irrigation of lawn and garden, structure and equipment washing, and the watering of chickens and horses or other equivalent livestock.

2. Each Lot owner will be conveyed 1 acre-foot per year of Dawson aquifer groundwater (the "Water Rights") to be withdrawn over a period of 300 years, and to be permitted pursuant to the Plan for Augmentation. All Lot owners shall be subject to the obligations and requirements of the Plan for Augmentation. The Water Rights shall run with Lots 1, 2 and 3 of the Poenitsch Subdivision, and must be transferred to all successors and assigns of each grantee, may not be separated from transfer of title of each Lot on the Property, and may not be separately sold, traded, bartered, assigned, liened, or encumbered in whole or in part for any other purpose. The Water Rights shall be considered an appurtenance to said Lots and shall be conveyed as such with all future deeds to said Lots. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quality or quantity of water conveyed, only as to the title. No separate deed is required to effect a conveyance of the water rights.

3. Because the amount of water still available will diminish over time, Declarant is not required to warrant the amount of water in any aquifer, but shall warrant title against all persons or entities claiming title under them (i.e., a special warranty deed which does not warrant title to the amount of water that will be used).

4. Declarant and all subsequent owners of the lots within the Property shall be subject to and shall carry out all provisions of the Plan for Augmentation, including without limitation the following:

a. Pumping from each Dawson aquifer well may occur only if there is an occupied single-family dwelling that is generating return flows via a non-evaporative septic system on the Lot upon which the well is located. This will accommodate in-house use return flows, replacing depletions, during the pumping period through an individual on-lot, non-evaporative septic system. The septic system shall be constructed in compliance with all applicable regulations. Each Lot owner shall ensure that return flows from such system are made to the stream system to replace depletions during pumping, and shall reserve said return flows to replace depletions during pumping.

b. Each lot may use a maximum of 1 acre-foot per year of Dawson aquifer groundwater pursuant to the Plan for Augmentation. Said groundwater is the water supply for the Lot and sale or use off the Lot is prohibited.

c. The return flows from the non-evaporative septic system on each Lot shall comply with the amounts, if any, set forth in the Plan for Augmentation. Such return flows shall only be used to replace groundwater depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose.

d. At least one Dawson aquifer well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation, structure or equipment washing, or animal watering is allowed to be served by any of the wells.

e. A totalizing flow meter must be installed on each well, and the Lot owner will maintain the meter in good working order. Annual withdrawal records shall be maintained for each well on a form acceptable to the Division Engineer, Water Division 2, Colorado Division of Water Resources. In addition, all Lot owners are responsible for any metering and data collecting that may be required regarding water withdrawals from future wells which will be constructed in the Laramie-Fox Hills and Arapahoe aquifers.

5. Each Lot owner or its successors in interest are fully responsible for the operation, monitoring, and accounting required by the Plan for Augmentation for the well on their Lot. In the event the Lot is sold, evidence of the sale and notification to the new owner of their responsibility under the Plan for Augmentation shall accompany that year's accounting.

6. The water rights herein shall be explicitly conveyed; however, if a successor Lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said Lot, whether or not the Plan for Augmentation and the water rights are specifically referenced in such deed.

7. Failure to comply with all terms of the Plan for Augmentation may result in an order of the Division Engineer to curtail or eliminate pumping of the Dawson aquifer well of any non-complying Lot owner.

8. All the foregoing terms and conditions constitute covenants running with the Lots and shall be binding upon the owners of the Lots, their heirs and successors, and all subsequent owners of the Lots.

9. These Water Covenants shall not terminate unless the requirements of the Plan for Augmentation are also terminated by order of the Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County. No changes, amendments, alterations or deletions to these Water Covenants may be made which would alter, impair or in any manner compromise the water supply for the Poenitsch Subdivision pursuant to the Plan for Augmentation. Further, written approval of the proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioner, after review by the County Attorney's Office. Any amendments must be pursuant to a Determination from the

Division 2 Water Court approving such amendment, with prior notice to El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication.

B. GENERAL COVENANTS

1. Animals. Except for horses and large livestock, which restrictions are set forth in Section B (2) below, a reasonable number of small livestock and poultry may be raised, bred or kept upon a Lot, provided that the livestock is adequately fenced and does not materially damage the existing vegetation on a Lot. An aggregate number of not more than four cats or dogs may be kept on a Lot. No animal of any kind shall be permitted which makes an unreasonable amount of noise or odor or is otherwise a nuisance. No animals may be kept, bred or maintained on a Lot for any commercial purpose. Kennels for the commercial raising, breeding and/or boarding of animals are prohibited on the Property. All animals must be kept on a Lot in compliance with all El Paso County regulations and ordinances. The owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others. Owners are responsible for cleaning up after their animals on any portion of the Property. All animals kept or present on a Lot may not be allowed to run loose off the Lot. No dangerous dogs or other animals are allowed to be kept or be present on any Lot.

2. Horses and Large Livestock. No more than an aggregate of four (4) horses, cattle, llamas, alpacas, sheep, goats or similar livestock may be kept on a Lot. Horses and other livestock must be kept within an enclosure (corral, stable or barn) at all times when not being used and shall be supplementally fed. Grazing of horses or other livestock outside a corral, stable or barn must be limited to ensure that the natural vegetation on a Lot is not overgrazed. Corrals must have three (3) or more rails or be constructed of sturdy fencing to ensure retention of livestock. All stables and corrals shall be maintained in a sanitary condition.

3. Use of Off Road Motorized Vehicles. Off road motorized vehicles, including but not limited to, dirt bikes, off-road motorcycles, quads and ATVs, may not be operated on the shared driveway for recreational purposes. An owner may use such motorized vehicles on the owner's Lot, provided the use occurs only during daylight hours and does not create a nuisance such as excessive noise or dust.

4. Construction Type. All construction shall be new. No mobile home, pre-cut, manufactured or modular home may be placed on a Lot. No building previously used at another location, nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot, except for temporary construction storage purposes (and not for a temporary residence) for a period not to exceed 12 months.

5. Tree Planting. For the first four (4) years after a Lot is sold to an owner other than Declarant, a Lot owner must plant at least ten (10) native evergreen trees annually and provide sufficient water for survival. Lot owners are encouraged to contact the Colorado State Forest Service for information on the purchase and proper care of the trees.

6. Diseased Trees. Each Lot owner is responsible for immediately removing any diseased trees which might contaminate or spread to adjacent trees and lots, and to meet any other Colorado State Forest Service recommendations or requirements pertaining to thinning of trees, or removal or treatment of pine beetle infested trees.

7. Weeds and Insects. All Lots must be kept free of noxious weeds, diseased vegetation and harmful insects.

8. Marijuana Cultivation and Use. No owner or occupant of a Lot may utilize any portion of a Lot, including the home or any other building or structure on the Lot, for the purpose of cultivation or production of marijuana, including medical marijuana, for other than their own personal use as allowed by applicable laws and ordinances. If an owner or occupant grows or produces marijuana for personal use only, the noise and odor arising from such operation must not emanate from the Lot and must be in full compliance with state and local laws and ordinances. No owner or occupant may use any portion of a Lot for the distribution or sale of marijuana.

9. Persons Entitled to Enforce Declaration; Attorney Fees. Declarant or any owner (acting on such owner's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of this Declaration, and all other rights and remedies provided in this Declaration or available at law or in equity. In any action or proceeding to enforce any provision of this Declaration, the party who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, costs and expert witness fees.

10. Violations of Law. Any violation of any federal, state or county law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

11. Governing Law. This Declaration shall be interpreted and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

12. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

13. Notices. Except as may be otherwise provided in this Declaration, any notice must be in writing and may be served either personally, or by nationally recognized overnight delivery service or by U.S. certified mail. If served by mail or overnight delivery upon an Owner, notice shall be sent postage prepaid, addressed to the Owner's address shown in the El Paso County Assessor records.

14. Amendment of Declaration by Owners or Declarant. Except for any portion of the Water Covenants set forth above, any other covenant, condition or restriction contained in this Declaration may be amended, added, modified or repealed upon the unanimous approval of all owners, with each Lot having one vote. No amendment may be made to a provision that will eliminate any easement or government-required obligation, to include the Plan for Augmentation and the Water Covenants, or that will diminish the quality, value, desirability and attractiveness of the Property. An approved amendment shall be evidenced in a written instrument acknowledged by all Owners and recorded in the records of El Paso County, Colorado.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 9th day of March, 2020.

Christy L. Mullins

Christy L. Mullins

Thomas R. Poenitsch, Jr.

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

The foregoing instrument was acknowledged before me this 9th day of March, 2020, by Christy L. Mullins and Thomas R. Poenitsch, Jr.

My commission expires: January 11, 2022

[SEAL]

Notary Public

TATIANA HENDREN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184001978
MY COMMISSION EXPIRES JANUARY 11, 2022

219019567 2/26/2019 8:45 AM
PGS 15 $83.00 DF $0.00
Electronically Recorded Official Records El Paso County CO
Chuck Broerman, Clerk and Recorder
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DISTRICT COURT, WATER DIVISION 2, CO Court Address: 501 North Elizabeth Street Suite 116 Pueblo, Colorado 81003 Phone Number: (719) 404-8832	DATE FILED: February 25, 2019 4:01 PM CASE NUMBER: 2018CW3054
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **CHRISTY L. MULLINS AND THOMAS R. POENITSCH, JR.** **IN EL PASO COUNTY**	▲ COURT USE ONLY ▲ Case No.: 18CW3054 Ctrm.: 406

FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING AND DECREE OF WATER COURT

THIS MATTER comes before the Water Referee on the Application filed by Christy L. Mullins and Thomas R. Poenitsch, Jr., and having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Water Court makes the following findings and orders:

GENERAL FINDINGS OF FACT

1. The applicant in this case is Christy L. Mullins and Thomas R. Poenitsch, Jr., whose address is P.O. Box 8202, Colorado Springs, CO 80933 ("Applicant"). Applicant is the owner of the land totaling approximately 18.66 acres on which the structures sought to be adjudicated herein are to be located, and are the owners of the place of use where the water will be put to beneficial use.

2. The Applicant filed this Application with the Water Courts for both Water Divisions 1 and 2 on September 28, 2018. The Application was referred to the Water Referee in Division 2 on or about October 1, 2018.

3. The time for filing statements of opposition to the Application expired on the last day of December 2018. No Statements of Opposition were timely filed.

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 November 2, 2018. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on December 5, 2018. Chief Justice, Nathan B. Coats, granted the Motion for Consolidation by Order dated January 16, 2019.

5. On October 1, 2018, the Division 1 Water Court, on Motion from Applicant,

ordered that consolidated publication be made by only Division 2. On October 1, 2018, the Water Court, Division 2 ordered that publication occur in *The 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 October 16, 2018, proof of publication in *The Transcript* was filed with Water Court Division 2. All notices of the Application have been given in the manner required by law.

7. Pursuant to C.R.S. § 37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each aquifer with this Court dated December 4, 2018.

8. Pursuant to C.R.S. § 37-92-302(4), the office of the Division Engineer for Water Division No. 1 filed its Consultation Report dated December 31, 2018, with no response to consultation required. The Division Engineer for Water Division No. 2 filed its Consultation Report dated January 9, 2019 with the Court, and a Response to the Consultation Report was filed by the Applicant on January 25, 2019. Both the Consultation Report and Response have been considered by the Water Referee in the entry of this Ruling.

9. 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

10. The Applicant requested the adjudication of underground water rights for Mullins Wells Nos. 1, 2, and 3 as existing and 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 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:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 18.66 acres located in the SE¼ SE¼ of Section 8, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado, as depicted on the attached **Exhibit A**, ("Applicant's Property"). All groundwater adjudicated herein shall be withdrawn from the overlying land.

12. In accordance with the notice requirements of C.R.S. § 37-92-302, the lienholder on the Applicant's property was sent a Letter of Notice dated October 4, 2018. A Certificate of Notice was filed with Water Division 1 and Water Division 2 on October 4, 2018 and proof of mailing of the notice was filed with Water Division 1 and Water Division 2 on October 16, 2018.

13. Mullins Wells Nos. 1, 2, and 3: Mullins Well No. 1 is currently located on the Applicant's Property and is currently permitted under Colorado Division of Water Resources Permit No. 163813-A. Mullins Well Nos. 2 and 3 are to be constructed on the Applicant's Property. Applicant is awarded the vested right to use Mullins Wells Nos. 1, 2, and 3, 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. 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 and new permits for use of Mullins Wells Nos. 1, 2, and 3 pursuant to C.R.S. § 37-90-137(4), consistent with and referencing the Plan for Augmentation decreed herein.

14. 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 and Denver aquifers underlying the Applicant's Property contain not-nontributary water, while the water of the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property are 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 (ft)	Total Appropriation (Acre Feet)	Annual Appropriation (100-year) (Acre Feet)	Annual Appropriation (300-year) (Acre Feet
Dawson (NNT)	342	1,280.0	12.8	4.27
Denver (NNT)	370	1,170.0	11.7	
Arapahoe (NT)	255	809.0	8.09	
Laramie-Fox Hills (NT)	190	532.0	5.32	

15. 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 stream depletions on an annual basis, to the extent necessary to prevent injurious effect, based upon actual aquifer conditions. The Denver aquifer underlying Applicant's Property is more than one mile from any point of contact between any natural surface stream, including its alluvium, and the aquifer, and therefore pursuant to C.R.S.

§ 37-90-137(9)(c.5), Applicant must replace 4% of pumping for withdrawals from the Denver aquifer. Applicant shall not be entitled to construct a well or use water from the not-nontributary Dawson or Denver 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.

16. 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) with such requirement also satisfying 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 amount of groundwater available for withdrawal from the underlying Dawson aquifer, based upon the 300-year aquifer life is determined and set forth above, based upon the December 4, 2018 Office of the State Engineer Determination of Facts.

17. 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 the aquifer 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 annual volume of water which Applicant is entitled to withdraw from the aquifer 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.

18. 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 ground water for beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes 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 is 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 nontributary aquifer groundwater by 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 aquifer pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

19. Withdrawals of groundwater available from the nontributary aquifers 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

20. The structures to be augmented are the Mullins Wells Nos. 1, 2, and 3 in the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith.

21. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation obligation for Mullins Wells Nos. 1, 2, and 3, and any additional or replacement wells constructed to the Dawson aquifer requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary Mullins Wells Nos. 1, 2, and 3, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are a reserved portion of Applicant's nontributary water rights in the Arapahoe and Laramie-Fox Hills aquifers. Applicant shall provide for the augmentation of stream depletions caused by pumping the Mullins Wells Nos. 1, 2, and 3 as approved herein. Water use criteria as follows:

A. Use: The Mullins Wells Nos. 1, 2, and 3 may each pump up to 1.0 acre feet of water per year within single family dwellings on up to three lots, for a maximum total of 3.0 acre feet being withdrawn from the Dawson aquifer annually, though should fewer than three lots be developed on Applicant's Property, each well thereon shall be entitled to withdraw its proportional share of the total 3.0 acre feet available. Such use shall be a combination of household use, irrigation of lawn and garden, structure and equipment washing, and the watering of chickens and horses or other equivalent livestock. An example breakdown of this combination of use is household use at 0.26 acre feet per single-family home for up to three residences and landscape irrigation of 0.05 acre feet annually per 1,000 square feet. The foregoing figures assume the use of three septic systems, with resulting return flows from each. Should Applicant subdivide

Applicant's property into fewer than two lots, both depletions and return flows for the replacement of the same will be correspondingly reduced, though pumping for uses other than household use may be increased provided at all times septic return flows shall replace the maximum depletions resulting from pumping (23.3%) as described in this Paragraph 22.

B. Depletions: Consistent with the figures provided in the Division Engineer's Consultation Report, maximum stream depletions over the 300-year pumping period will amount to approximately 23.2% of pumping. The maximum annual depletion for total residential pumping from all wells is therefore 0.70 acre feet in year 300. Should Applicant's pumping be less than the total 3.0 annual acre feet described herein, or should fewer lots be developed, 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 maximum three residential Dawson aquifer wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household rate of 0.26 acre-feet per residence per year, 0.234 acre-feet is replaced to the stream system per year. Therefore, yearly replacement from the three residences totals 0.702 acre-feet. This amount is sufficient to meet the maximum depletion amount occurring in year 300 of 0.702 acre-feet.

D. Augmentation of Post Pumping Depletions: This plan for augmentation has a planned pumping period of 300 years. Therefore, for the replacement of any injurious post-pumping depletions which may be associated with the use of the Mullins Wells Nos. 1, 2, and 3, Applicant will reserve up to a total of 814 acre-feet of water, with 532 acre-feet of water from the nontributary Laramie-Fox Hills aquifer being supplemented by 282 acre-feet from the Arapahoe aquifer in order to cover post pumping depletions of 797 acre-feet. 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. 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 Arapahoe and Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. 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 814 acre-feet from the Arapahoe and Laramie-Fox Hills aquifers results in 797 acre-feet available for 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 a new well permit for the Mullins Wells Nos. 1, 2, and 3 for the uses in accordance with this Application and otherwise in compliance with C.R.S. § 37-90-137.

22. 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 augmentation 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 41-45 herein.

23. 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 Arapahoe and Laramie-Fox Hills aquifers and pumping of water to replace any injurious 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, if any, 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 Arapahoe and Laramie-Fox Hills aquifers reserved herein may not be severed in ownership from the overlying subject 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.

24. Applicant or its successors shall be required to initiate pumping from the Arapahoe or 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 Mullins Wells Nos. 1, 2, and 3 have permanently ceased, (iii) a period of 10 consecutive years where either 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.

25. Accounting and responsibility for post-pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (i) the period provided by statute; (ii) the period specified by any subsequent change in statute; (iii) the period required by the Court under its retained jurisdiction; (iv) the period determined by the State Engineer; or (v) the period as established by Colorado Supreme Court final decisions. Should Applicant's obligation hereunder to account for and replace such post-pumping stream depletions be abrogated for any reason, then the Arapahoe and Laramie-Fox Hills aquifer groundwater reserved for such a purpose shall be free from the reservation herein and such groundwater may be used or conveyed by its owner without restriction for any post-pumping depletions.

26. 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 21 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 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.

27. 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, injury to any owner of or person entitled to use water under a vested water right.

28. 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 of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Mullins Wells Nos. 1, 2, and 3. As a result of the operation of this plan for augmentation, the depletions from the Mullins Wells Nos. 1, 2, and 3, and any additional or replacement wells associated therewith, will not result in material injury to the vested water rights of others.

CONCLUSIONS OF LAW

29. 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.

30. 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.

31. 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 subject to the terms of this decree.

32. 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). Applicant is entitled to a decree from this Court confirming its rights to withdraw groundwater pursuant to C.R.S. § 37-90-137(4).

33. 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.

34. 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.

35. 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 Mullins Wells Nos. 1, 2, and 3 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:

36. 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.

37. 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.

38. 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, as requested 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.

39. 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. Ninety-eight percent (98%) of the nontributary groundwater withdrawn may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment.

40. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the Mullins Wells Nos. 1, 2, and 3, so long as the return flows from the annual diversions associated with the Mullins Wells Nos. 1, 2, and 3 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 Mullins Wells Nos. 1, 2, and 3 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 regulation of the State of Colorado. Pursuant to C.R.S. § 37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein, as appropriate, shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

41. 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 characteristic, and that the Applicant need not refile, republish, or otherwise amend this application to request such

adjustments. The Court further retains jurisdiction should the Applicant later seek to amend this decree by seeking to prove that post-pumping depletions are noninjurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 21.D.

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 41 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, 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 41 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 41.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.

42. 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.

43. 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 system, to determine whether the replacement of depletions to the Arkansas stream system instead of the South Platte system is causing material injury to water rights tributary to the South Platte River system.

44. 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 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.

45. Except as otherwise specifically provided in Paragraphs 41-44, 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.

46. 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 essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meters on all Mullins Wells or any additional or replacement wells associated therewith. Applicant is also to maintain records and provide reports to the State Engineer or Division Engineers as instructed by said entities, on at least an annual basis.

47. 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. 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 shall not issue a permit for any 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.

48. 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 31st day of January, 2019.

Mardell R. DiDomenico

Mardell R. 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: February 25, 2019

BY THE COURT:

LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2