



Declaration of Covenants

For
Driftwood Estates Subdivision

This Declaration of covenants, conditions and obligations (hereinafter referred to as the "Declaration") is made by Andrew C. Alm, (hereinafter referred to as the "Declarant")

WITNESSETH

Whereas, Declarant is the owner of the property situated in El Paso county, being known as Driftwood Estates Subdivision which is described as - A portion of the Northeast Quarter of the Northeast Quarter of Section 33, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado containing a measured area of 12.72 acres, (hereinafter be referred to as "The Property"). Driftwood Estates detailed description attached as **Exhibit A**.

Whereas, Declarant shall establish the obligation and rights to maintain and preserve the existing shared roads and water rights on the property.

NOW, THEREFORE, in consideration of the premises, Declarant does hereby make, declare and publish the following covenants, conditions and easements, all of which shall be covenants running with the Property, and the property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and easements hereinafter set forth.

Article I

Section 1.1 Maintenance of Private roads

Each and every Lot owner shall have equal rights to access and obligation to tend to, maintain and repair an equal portion of the private road that serves as access to their property. Such rights to access and obligation to maintain said roads shall pass with the title to each and every lot. Private road and the two lots are shown on attached plat as **Exhibit B**.



Office of County Clerk and Recorder, El Paso County, State of Colorado.
Certified to be a full, true and correct copy of record in my office.

Instrument: 224090611

Book: _____

Page: _____

Date: 11/13/2024

By: _____

Deputy Clerk

Steve Schleiher, El Paso County, CO Clerk & Recorder

Melissa Richardson

Article II

Section 2.1 Driftwood Estates Water Rights

Pursuant to the ruling on Case No. 23CW3022 dated December 13, 2023 (attached as **Exhibit C**) and to satisfy El Paso County's 300-year water supply requirement, both wells shall be operated such that combined pumping from the Denver aquifer wells from two lots does not exceed 1.7 annual acre-feet (510 acre-feet total) or pumping from one lot using Denver aquifer water does not exceed the 0.85 acre-feet annually (255 acre-feet total) and pumping from the other lot from the Dawson aquifer does not exceed 0.42 acre-feet annually (126 acre-feet total). Lot 1 (7.71 acres) shall use the Denver aquifer and Lot 2 (5.01 acres) shall use either the Denver or the Dawson aquifer.

Section 2.2 Future Conveyances

The water rights referenced 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 Case No. 23CW3022 and the water rights therein are specifically referenced in such deed.

The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.

Section 2.3 Amendments to Article II

Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for Driftwood Estates pursuant to Case No. 23CW3022.

Further, written approval of any such 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 Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to the Colorado Ground Water Commission approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such determination.

Section 2.3 Termination of Article II Covenants

These Covenants shall not terminate unless the requirements of Case No. 23CW3022 are also terminated by the Colorado Ground Water Commission and a change of water



supply is approved in advance of termination by the Board of County Commissioners of El Paso County.

Article III

Section 3.1 Agreement

Every purchaser or grantee of any interest in any property now or hereafter is subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees to be subject to the covenants, conditions and obligations of this declaration.

In WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this document this 13 day of November 2024

By: Andrew C. Alm
Andrew C. Alm

State of Colorado

County of El Paso

The foregoing document was acknowledged before me this 13th day of November 2024 by Andrew Alm.

Witness my hand and official seal.

Notary Public Michelle Lee Rael

My commission expires May 6, 2026

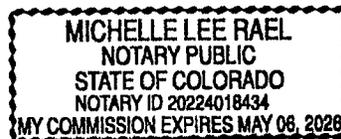


Exhibit A

LWA Land Surveying, Inc.

953 East Fillmore Street
Colorado Springs, CO 80907
719-636-5179
719-636-5199 fax

DRIFTWOOD ESTATES DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 33;

THENCE S00° 43' 31" W, ON THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER SAID SECTION 33, ALSO BEING THE EASTERLY BOUNDARY OF A PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NO. 216068387 OF THE RECORDS OF EL PASO COUNTY, COLORADO, A DISTANCE OF 1307.38 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33 AND OF SAID PARCEL DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NO. 216068387;

THENCE S89° 35' 39"W ON THE SOUTH LINE OF SAID PARCEL AND THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER A DISTANCE OF 404.73 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL;

THENCE ON THE WESTERLY BOUNDARY OF SAID PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NO. 216068387 THE FOLLOWING (5) COURSES:

1. THENCE N00° 00' 11" W A DISTANCE OF 790.12 FEET;
2. THENCE N89° 07' 30" W A DISTANCE OF 309.62 FEET;
3. THENCE N46° 28' 07" E A DISTANCE OF 404.68 FEET TO A POINT OF CURVE;
4. THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 170.00 FEET, THROUGH A CENTRAL ANGLE OF 06° 26' 46", AN ARC DISTANCE OF 19.13 FEET TO A POINT OF TANGENT;
5. THENCE N52° 52' 53" E A DISTANCE OF 370.35 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33 ;

THENCE N89° 46' 34" E ON SAID NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 33 A DISTANCE OF 127.78 FEET TO THE POINT OF BEGINNING.

CONTAINING A MEASURED AREA OF 12.72 ACRES, MORE OR LESS.

Exhibit C

223101494 12/13/2023 8:51 AM
PGS 17 \$93.00 DF \$0.00
Electronically Recorded Official Records El Paso County CO
Steve Schlieker, Clerk and Recorder
TD1000 N

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	DATE FILED: December 13, 2023 7:32 AM CASE NUMBER: 2023CW3022
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: ANDREW ALM IN EL PASO COUNTY	▲ COURT USE ONLY ▲ Case No.: 23CW3022 Ctrm.: 502
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE: ADJUDICATING DENVER BASIN GROUNDWATER AND APPROVING PLAN FOR AUGMENTATION	

THIS MATTER comes before the Water Court on the Application filed by Andrew Alm. 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:

FINDINGS OF FACT

1. The Applicant in this case is Andrew Alm. His address is 2383 Collegiate Drive, Colorado Springs, CO 80918 ("Applicant"). The Applicant is the owner of land totaling approximately 12.7 acres on which the structures sought to be adjudicated and augmented herein are located, and under which lies the Denver Basin groundwater described in this decree, and is the owner of the place of use where the water will be put to beneficial use, except for any potential off-property uses as described in Paragraph 19.
2. The Applicant filed this Application with the Water Court for Water Division 2 on May 15, 2023. The Application was referred to the Water Referee in Division 2 on May 16, 2023.
3. The time for filing statements of opposition to the Application expired on the last day of July 2023. No statements of opposition were filed in this case.
4. Applicant notified the Court in its application that there is no lienholder on the property, satisfying the notice requirements of C.R.S. § 37-92-302(2)(b).
5. On June 2, 2023, the Division 2 Water Court ordered that publication occur in *The Gazette* in El Paso County, and the *Douglas News Press* in Douglas 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 June 22,

2023, proof of publication in the *Douglas News Press* was filed with the Division 2 Water Court. On July 12, 2023, proof of publication in *The Gazette* was filed with the Division 2 Water Court. 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 Denver Basin aquifer with this Court on August 4, 2023 and as amended on October 25, 2023, which have been considered by the Court in the entry of this decree.

8. Pursuant to C.R.S. § 37-92-302(4), the office of the Division Engineer for Water Division No. 2 filed its Consultation Report dated September 26, 2023, and a response to the Consultation Report was not required by the Water Court. However, Applicant filed a Response to Consultation Report on October 16, 2023, to address the inconsistency in the size of the Applicant's property. The Consultation Report and Response to the Consultation Report have been considered by the Water Court in the entry of this decree. The Division Engineer filed a Supplemental Consultation Report on November 14, 2023.

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 Application requested quantification and adjudication of a vested underground water right from the Denver Basin Groundwater underlying the Applicant's property described in Paragraph 13, below, and to use up to two wells on Applicant's property that may be constructed to the underlying aquifers, and any additional or replacement wells associated therewith, for withdrawal of Applicant's full entitlement of supply from the Denver Basin under the plan for augmentation decreed herein. Applicant also requested quantification and adjudication of vested underground water rights and uses from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicant's property. The following findings are made with respect to such underground water rights and use of wells on the Applicant's property:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 12.7 acres located in the NE¼ of the NE¼ of Section 33, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, more specifically described as 3275 Center Ice View, Colorado Springs, CO 80921, as shown on **Exhibit A**. ("Applicant's Property"). Applicant intends

to subdivide the property into up to two (2) lots. All groundwater adjudicated herein shall be withdrawn from the overlying land unless there is a further order of this Court allowing otherwise following the filing of a new water court application.

12. There are no existing wells on the Applicant's Property. Applicant intends to construct two wells on the Applicant's Property, along with any additional or replacement wells ("Alm Wells"). Applicant is awarded the vested right to use the Alm Wells for the extraction and use of groundwater from the not nontributary Dawson and Denver 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 conduct an analysis and issue well permits for the Alm Wells pursuant to C.R.S. § 37-90-137(4), if determined appropriate, consistent with and referencing the plan for augmentation decreed herein.

13. 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 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 (ft)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	50	127	1.27	0.42
Denver (NNT)	260	561	5.61	1.87
Arapahoe (NT)	380	820	8.2	N/A
Laramie-Fox Hills (NT)	125	238	2.38	N/A

The terms and conditions set forth in this decree governing the withdrawal and use of groundwater from the Denver Basin aquifers underlying the Applicant's Property are applicable only to permitted non-exempt wells constructed into the aquifers.

14. 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. The Applicant's Property is located more than 1 mile from any point of contact with a surface stream. Pursuant to C.R.S. §37-90-

137(9)(c.5)(I), depletions from the Denver aquifer would require replacement of actual stream depletions or 4% of the amount of water pumped on an annual basis depending whereupon the wells are located on the Applicant's Property. Applicant shall not be entitled to construct a non-exempt 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.

15. Subject to the herein decree requirements, Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over 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 total amounts available to Applicant as decreed herein and the augmentation requirements of this decree. This decree describes a pumping period of 300-years, as required by El Paso County, Colorado Land Use Development Code §8.4.7(C)(1). The average annual amounts of groundwater available for withdrawal from the underlying Denver Basin aquifers, based upon the 100-year and 300-year aquifer life calculations, are determined and set forth above, based upon the October 25, 2023, Office of the State Engineer Determination of Facts described in Paragraph 7.

16. 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.

17. 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 from the Dawson, Denver, Arapahoe, and Laramie Fox Hills aquifers for beneficial uses upon the Applicant's Property consisting of domestic in a single-family dwelling and guest house, structure and equipment washing, hot tub, lawn, garden and greenhouse, irrigation, stock water, commercial, recreation, wildlife, 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 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 Arapahoe and 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 non-exempt well or use water from the not nontributary Dawson and Denver aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

18. Applicant has waived the 600-foot well spacing requirement for wells to be constructed upon the Applicant's Property. Pumping from the Alm Wells or wells constructed into the Arapahoe and Laramie-Fox Hills aquifers, will not exceed 100 g.p.m., though actual pumping rates for these wells will vary according to aquifer conditions and well production capabilities. The Applicant may withdraw Dawson and Denver aquifer groundwater from the Alm Wells or from wells constructed into the Arapahoe and Laramie-Fox Hills aquifers, at rates of flow necessary to withdraw the entire amounts decreed herein. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

19. Withdrawals of groundwater available from the nontributary Arapahoe and 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 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 Alm Wells, to be constructed to the not nontributary Dawson and Denver aquifers underlying the Applicant's Property.

21. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation obligation for the Alm Wells requires the replacement of actual stream depletions for any well constructed into the Dawson aquifer and the replacement of either actual stream depletions or 4% of the amount of water pumped on an annual basis depending on whereupon the wells are located on the Applicant's Property for any well constructed into the Denver Aquifer. However, Applicant shall replace actual stream depletions rather than 4% of the amount of water pumped on an annual basis for use of the Denver aquifer in order to assure the ability to construct Denver wells at any location upon the Applicant's Property. The water to be used for augmentation during pumping is the septic system return flows of the not nontributary Alm Wells pumped as set forth in this plan for augmentation. The water to

be used for augmentation of depletions following the pumping period described in this decree is the reserved portion of Applicant's noncontributory water rights in the Arapahoe aquifer as described in Paragraph 21.D. Applicant shall provide for the augmentation of stream depletions caused by pumping Alm Wells as approved herein. Water use criteria is determined as follows:

A. Use: Based on a 300-year pumping period, pumping from the Denver aquifer by the Alm Wells will be a maximum of 1.7 acre-feet of water per year per lot, with each lot pumping a maximum of 0.85 acre-feet per year if both wells are constructed to the Denver aquifer. If one lot is utilizing Denver aquifer water and the other lot is using Dawson aquifer water, then maximum pumping from the Denver aquifer will be 0.85 acre-feet per year and maximum pumping from the Dawson will be 0.42 acre-feet per year for a 300-year pumping period. Such uses shall be for domestic, structure and equipment washing, hot tub, lawn, garden and greenhouse, irrigation, stock water, commercial, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses.

B. Depletions: The maximum annual stream depletions over a 300-year pumping period for the Denver aquifer amounts to approximately 26.12% of pumping and depletions over a 300-year pumping period for the Dawson aquifer amounts to 8.11% of pumping. Maximum annual depletions are therefore 0.444 acre-feet in year 300 if both lots are utilizing the Denver aquifer or 0.222 acre-feet if only one lot is utilizing the Denver aquifer. If the Dawson aquifer is also being utilized, maximum annual depletions are therefore 0.034 acre-feet in year 300. Should pumping be less than 1.7 acre-feet annually if both lots are pumping from the Denver aquifer, or should pumping be less than 0.85 acre-feet from the Denver aquifer and 0.42 acre-feet from the Dawson aquifer if one lot is utilizing the Denver aquifer and the other lot is using the Dawson aquifer, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Well: Pursuant to C.R.S. § 37-90-137(9)(c.5) and the above determination as to the Denver aquifer, Applicant shall replace actual stream depletion of the water pumped from the Dawson aquifer (if utilized) and the Denver aquifer. Applicant has shown that, provided water is delivered for indoor use and treated as required by this decree, 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 estimated at 10% per year per residence. At the household indoor use rate of 0.25 acre-feet per year, 0.225 acre-feet per residence is replaced to the stream system per year, utilizing a non-evaporative septic system. Thus, during the pumping period, the total maximum annual stream depletions of 0.444 acre-feet (if both lots are utilizing the Denver aquifer) will be sufficiently augmented, and the total maximum annual stream depletions of 0.256 acre-feet (if one lot is utilizing the Dawson aquifer and one lot is utilizing the Denver

aquifer) will be sufficiently augmented, provided septic system return flows are generated by indoor use in each situation. The calculation of non-evaporative septic system return flows from indoor residential use of 0.25 acre-feet per residence shows that depletions that result from pumping the annual amounts described in Paragraph 21.A for either two lots or one lot will also be adequately replaced during the pumping period for the wells under the plan for augmentation as use on each lot is sufficiently augmented by septic system return flows from each lot.

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of 300 years. For the replacement of post-pumping depletions which may be associated with the use of the Alm Wells, Applicant will reserve 521 acre-feet of the nontributary Arapahoe aquifer groundwater decreed herein, subject to decrease for any during pumping replacement credit. The amount of nontributary Arapahoe aquifer groundwater 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 Arapahoe 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. 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 a total of 521 acre-feet of Arapahoe aquifer groundwater results in approximately 510 acre-feet of available post-pumping augmentation water, which will be sufficient to replace post-pumping depletions from pumping a potential total of 510 acre-feet from the Denver aquifer over 300 years.

E. Permit: Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive well permits for the Alm Wells for the uses in accordance with this decree and otherwise in compliance with C.R.S. § 37-90-137.

F. Additional or Alternative Sources: Pursuant to C.R.S. § 37-92-305(8), the Court may authorize water from additional and alternative sources to be used for replacement in this plan for augmentation if such sources are decreed or lawfully available for such use. This paragraph sets forth the procedures under which such additional and/or alternative sources may be used in this plan for augmentation. In order to add additional and/or alternative sources to this plan for augmentation, the following procedures must be followed. These procedures are adequate to prevent injury to other water rights that might otherwise result from the addition of these sources to this plan for augmentation.

i. Additional Water Rights Separately Decreed or Lawfully Available for Augmentation Use. If a water right is decreed or lawfully available for augmentation use and not already approved for such use under this decree, the Applicant shall give written Notice of Use of Water Right for Augmentation ("Notice") to the Court and the Division Engineer, which shall describe: (1) the water right by name and decree, if any; (2) the annual and monthly amount of water available to the Applicant from the water right; (3) the manner by which the water will be used to replace out-of-priority depletions in time, location and amount; (4) the date of initial use of the water in this plan for augmentation; (5) the duration of use of the water in this plan for augmentation; (6) evidence that the claimed amount of water is available for use in this plan for augmentation and will not be used by another person; and (7) the manner in which the Applicant will account for use of the water in this plan for augmentation. The Notice shall also specifically include a request that the Court enter an Order either affirming or denying the Applicant's proposal, and that said Order be attached to this decree.

ii. Objection to Use of New Source. If any person, including the Division Engineer, wishes to object to the addition of the noticed water rights to this plan for augmentation, a written objection shall be filed with the Court within sixty-three (63) days after the date the Notice was given by the Applicant. If no objection is so filed, the Court shall promptly enter an Order affirming the Applicant's immediate use of the noticed water rights. If an objection is so filed, then the Applicant may not use the noticed water rights until the Court has determined whether and under what terms and conditions the water rights may be used in this plan.

iii. Hearing on Use of New Source. Where an objection has been filed to the use of a noticed water right in this plan for augmentation, the Court shall promptly schedule a hearing to determine whether and under what terms and conditions the water right may be used in this plan for augmentation. The Court shall conduct whatever proceedings are needed to appropriately address and resolve the disputed issues. At such hearing, the Court shall impose such terms and conditions as necessary to prevent injury to vested water rights and decreed conditional rights, including a period of retained jurisdiction for the water right. Applicant shall have the burden of proof that the use of any noticed water right will not cause injury to other water users.

22. 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 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 his successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time the post-pumping obligation commences. Pursuant to this covenant, the water from

the nontributary Arapahoe 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 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.

23. Applicant or his successors shall be required to initiate pumping from the Arapahoe aquifer for the replacement of post-pumping depletions when either: (i) the absolute total amount of water available from the Denver aquifer, or Denver and Dawson aquifers, allowed to be withdrawn under the plan for augmentation decreed herein has been pumped; (ii) the Applicant or his successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Alm Wells have permanently ceased; (iii) a period of 10 consecutive years where no withdrawals of groundwater from the Alm Wells 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 and direct replacement to the stream system from the Alm Wells is insufficient to cover such depletions

24. Unless modified by the Court under its retained jurisdiction, Applicant and his successors shall be responsible for accounting and replacement of post-pumping depletions as 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 Arapahoe aquifer groundwater.

25. 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 through banking 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. The Applicant shall provide notice of the revised model submissions to the State Engineer and this Court and the State Engineer shall have thirty-five (35) days for review and comment about the revised modeling, upon which, the Applicant will be allowed thirty-five (35) days to respond to the comments of the State Engineer. After this notice and comment period, if the revised depletion modeling is acceptable to the State Engineer, this Court may give approval for the

extension of this augmentation plan past the 300-year minimum.

26. 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.

27. 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 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 Alm Wells. As a result of the operation of this plan for augmentation, the depletions from the Alm Wells will not result in injury to the vested water rights of others.

CONCLUSIONS OF LAW

28. The application for adjudication of Denver Basin groundwater and approval of plan for augmentation was filed with the Water Clerk for Water Division 2, pursuant to C.R.S. §§ 37-92-302(1)(a) and 37-90-137(9)(c.5).

29. 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.

30. 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 as decreed herein, and the right to use that water to the exclusion of all others.

31. 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 a plan for augmentation pursuant to C.R.S. § 37-90-137(9)(c.5), and the issuance of a well permit by the State Engineer's Office. Applicant is entitled to a decree from this Court confirming their rights to withdraw groundwater pursuant to C.R.S. § 37-90-137(4).

32. 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.

33. 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.

34. 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 Alm Wells as described herein 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:

35. 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.

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

A. Applicant is awarded a vested right to 127 acre-feet of groundwater from the not nontributary Dawson aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction.

B. Applicant is awarded a vested right to 561 acre-feet of groundwater from the not nontributary Denver aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction.

C. Applicant is awarded a vested right to 820 acre-feet of groundwater from the nontributary Arapahoe aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. 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, including the reservation of 521 acre-feet to be utilized only for replacement of post-pumping depletions under the plan for augmentation decreed herein, as described in Paragraph 21.D., above, Applicant's Arapahoe aquifer groundwater may be utilized for all purposes described in Paragraph 17.

D. Applicant is awarded a vested right to 238 acre-feet of groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, as quantified in Paragraph 13 or as modified by the Court under its retained jurisdiction. 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, Applicant's Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 17.

37. The Applicant has furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation, as 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 injury to senior vested water rights.

38. 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.

39. The Alm Wells shall be operated such that combined pumping from Denver aquifer wells on two lots does not exceed 1.7 annual acre feet (510 acre-feet total) or pumping from one lot using Denver aquifer water does not exceed the 0.85 acre-feet annually (255 acre-feet total) and pumping from the other lot from the Dawson aquifer does not exceed 0.42 acre-feet annually (126 acre-feet total), and are in accordance with the requirements of the plan for augmentation described herein. Consistent with Rule 11.A of the Statewide Nontributary Ground Water Rules, the Denver Basin groundwater decreed herein must be withdrawn from the "overlying land" as defined in Rule 4.A.8 of the Statewide Nontributary Ground Water Rules, and the Alm Wells shall be constructed on the overlying land. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the Alm Wells so long as the return flows from the annual diversions associated with the Alm Wells accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or one of his successors or assigns is ever unable to provide the replacement water required, then the Alm 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, and cannot be

sold, leased, or otherwise used for any purpose inconsistent with the augmentation plan decreed herein. Applicant shall be required to have any wells pumping from the Denver and Dawson aquifers on the Applicant's Property providing water for in-house use and generating septic system returns prior to pumping the wells for any of the other uses identified in Paragraphs 17 or 21.A.

40. 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. The retained jurisdiction described in this Paragraph 40 is applicable only to the quantities of water available underlying Applicant's Property, and does not affect or include the augmentation plan decreed herein, the retained jurisdiction for which is described in Paragraphs 41 and 42, below.

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 40 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 one hundred twenty-six (126) days 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 and Applicant.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty-three (63) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 40 concerning adjustments to the Denver Basin groundwater 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 40.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.

41. 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 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. The Court's retained jurisdiction may be invoked using the process set forth in Paragraph 42.

42. Except as otherwise specifically provided in Paragraphs 40-41, 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 from the date of entry of this decree until five (5) years following the date that Applicant began operation of the plan for augmentation based on the subdivision of the Applicant's Property and withdrawal of water from Alm Wells. 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 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 injured, or (ii) that any modification sought by the petitioner is not required to avoid injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert 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 provisions of the statute, this matter shall become final under its own terms.

43. 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.

44. 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 Alm Wells shall be permitted as non-exempt structures under the plan for augmentation decreed herein, which plan shall be implemented upon the construction

and use of any of the Alm Wells. 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 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.

45. The 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.

DATED: November 20, 2023.

BY THE REFEREE:



Kate Brewer, Water Referee
Water Division 2

DECREE

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

DATED: December 13, 2023.

BY THE COURT:



Honorable Gregory J. Styduhar,
Water Judge, Water Division 2
State of Colorado



Exhibit A - Topo Alm Property

<p>28 SESW SWSE T11.05 R67.0W</p>	<p>28 SWSE</p>	<p>SESE T11.05 R67.0W</p>	<p>27 SWSW 27 SWSW</p>	<p>DATE FILED: November 15 10:39:42 PM</p>
<p>33 NENW NWNE 33 NWNE</p>	<p>33 NWNE</p>	<p>NENE NENE</p>	<p>34 NWNW 34 NWNW</p>	<p>NENW</p>
<p>33 SESW SWNE T11.05 R67.0W</p>	<p>33 SWNE</p>	<p>SENE SENE</p>	<p>34 34 SWNW 34 SWNW</p>	<p>T11.05 R67.0W</p>

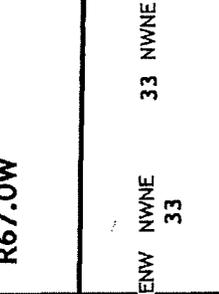
Legend

Township

Q40

County

Location



Notes