



September 12, 2019

**Benet Hill Monastery of Colorado Springs, Inc.**

3190 Benet Lane  
Colorado Springs, CO 80921

**Re: *Water Supply for Sanctuary of Peace Filing No. 1  
Project No. 61087***

Dear Benet Hill Monastery:

The following describes the water supply to serve the proposed Sanctuary of Peace residential community located on approximately 49.58 acres being a portion of the SE1/4 & SW1/4 Section 27, T11S, R66W of the 6<sup>th</sup> P.M., El Paso County, Colorado (Subject Property).

The Sanctuary of Peace residential community will be composed of 27 single-family residential lots, 4 tracts with private access road, parking, landscaping, three (3) full spectrum sand filter basins and four (4) Onsite Wastewater Treatment Systems. The residential structures are single-family attached, so that the proposed development will have 13 single-family-attached structures (26 residential units) on 26 lots and one (1) Private Sanctuary Club House Building on one (1) lot. These lots are clustered on 3.11 acres with 0.59 acres of paved roads, totaling 3.70 acres which is to be developed out of the parcel's total acreage of 49.58 acres. Planned housing types include single story one (1) and two (2) bedroom attached units. The plan proposes 14 one-bedroom, 12 two-bedroom single-story residences, and one (1) private Sanctuary Club House having 4 guest bedrooms for use by guests of property owners within the development.

This letter is based on a decree entered in Consolidated Case Nos. 18CW3019, and c/r 18CW3040, Div.1 (decree/copy attached), and the decree establishes the right to one central/communal well, Benet Well No. 1 to be located on the Applicant's Property at a specific location not yet determined, to be constructed to the not-nontributary Dawson aquifer for use as a central water supply to communal development of a portion on Applicant's property. The system will be designed by a Colorado registered professional engineer and will be reviewed and approved by the State of Colorado Department of Public Health and Environment (CDPHE). Proposed wastewater treatment will be by non-evaporative septic leach field systems installed and operated as described in a separate wastewater disposal report. The wastewater disposal system is key to maintaining compliance with the provisions of said decree.

The decreed plan for augmentation uses the nontributary water rights in the Arapahoe and Laramie-Fox Hills aquifers, and approves a plan for augmentation for use of the Dawson aquifer well to serve each lot for a minimum 300 year water supply period.

AMOUNTS DECREED AND AVAILABLE

The decreed amount of Dawson aquifer groundwater is not-nontributary, and the decreed amount of Laramie-Fox Hills aquifer groundwater is nontributary. The following annual amount is decreed and is based on annual withdrawals over a 300 year period (one acre-foot is 325,851 gallons):

*Engineers • Surveyors*  
*1903 Lelaray Street, Suite 200 • Colorado Springs, CO 80909 • Phone 719-635-5736*  
*Fax 719-635-5450 • e-mail mve@mvecivil.com*

Depletions caused by pumping water from the Dawson aquifer shall be replaced as provided and decreed. Annual withdrawals from the Dawson aquifer shall not exceed 8.37 acre feet (2,727,373 gallons) per Benet Well No.1, nor more than 8.37 acre feet total. The State or Division Engineer shall curtail the pumping of more than those amounts from the Dawson aquifer. Applicants shall also reserve 1,414 acre-feet of their nontributary Laramie-Fox Hills aquifer and 1087 acre-feet of water from the nontributary Arapahoe aquifer water rights for the replacement of post-pumping depletions. The remaining 282 acre feet of Laramie-Fox Hills aquifer water rights will also be reserved, to serve as a source of water for Applicants' wells for 50 years after the expiration of the augmentation plan, as required to meet El Paso County's 300 year water requirement for approval of subdivisions utilizing non-renewable water resources for their source of water supply.

WATER SUPPLY

The residential lots (up to twenty-six potential as assumed in the Decree) will be served by individual nontributary Dawson aquifer wells to be permitted and to operate pursuant to an augmentation plan as approved in the Decree. The Decree allows Benet Well No.1 to pump 8.37 acre feet of water from the Dawson aquifer annually for 300 years for the following uses:

- A. Household Use Only: 5.3 acre-feet per year
- B. Landscape Irrigation 1.3 acre-feet per year limited to irrigation of 26,000 square feet of landscape irrigation
- C. Community Building (Inside Use) 0.13 acre-feet per year
- D. Common Garden 1.64 acre-feet per year

The water supply for the residential lots using Benet Well No.1 pursuant to the augmentation plan approved in the Decrees is sufficient and satisfies the 300 year supply requirement of El Paso County.

Contact our office should you have any question concerning this water information.

Very truly yours,

M.V.E., Inc.

Charles C. Crum, P.E.

CCG:sh

Z:\61087\Documents\Correspondance\61087 Water Resource & Supply Letter.odt

Enc. Water Decree

# Exhibit B to Sanctuary of

<b>DISTRICT COURT, WATER DIVISION 2, CO</b> Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	<b>Peace Declarations</b>  DATE FILED: August 28, 2018 8:42 AM CASE NUMBER: 2018CW3019
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>SISTERS OF THE BENET HILL MONASTERY</b>  <b>IN EL PASO COUNTY</b>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No.: 18CW3019 (c/r 18CW3040, Div. 1)
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE</b>	

THIS MATTER comes before the Court on the Application filed by the Sisters of the Benet Hill Monastery, and having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Court makes the following findings and orders:

### GENERAL FINDINGS OF FACT

1. The applicants in this case are the Sisters of the Benet Hill Monastery, whose address is 3190 Benet Lane, Colorado Springs, CO 80921 ("Applicant"). Applicant is the owner of the land totaling approximately 50.36 acres on which the structure sought to be adjudicated herein is located, and is the owner 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 February 28, 2018. The Application was referred to the Water Referees in both Divisions 1 and 2 on or about March 2, 2018.
3. The time for filing statements of opposition to the Application expired on the last day of April 2018. No Statements of Opposition were timely filed, and the time for filing such statements of opposition has now passed.
4. A Motion for Consolidation of the cases into Water Division 2 was filed with the Colorado Supreme Court on May 1, 2018. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on May 2, 2018. Chief Justice, Nancy E. Rice, granted the Motion for Consolidation by Order dated May 30, 2018.

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

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On March 23, 2018, proof of publication in the *Daily Transcript* was filed with both Water Court Divisions 1 and 2. All notices of the Application have been given in the manner required by law.

7. 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 on May 10, 2018.

8. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division 2 has filed its Consultation Report dated June 22, 2018, with the Court, and a Response to the Consultation Report was filed by the Applicant on July 30, 2018. 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 requests the adjudication of an underground water right for Benet Well No. 1 to 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 sought herein. Applicant also seeks quantification and adjudication of water 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 50.36 acres, more or less. As more particularly described on attached **Exhibit A**, and depicted in the attached **Exhibit B** map, Applicant's Property is located in:

The  $W\frac{1}{2} W\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$ , and the  $S\frac{1}{2} N\frac{1}{2} SW\frac{1}{4}$  and the  $S\frac{1}{2} S\frac{1}{2} NW\frac{1}{4} SE\frac{1}{4}$  of Section 27, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado.

Applicant is decreed the right to one central/communal well, Benet Well No. 1, to be located on the Applicant's Property at a specific location not yet determined, to be

constructed to the Dawson aquifer for use as a central water supply to communal development of a portion of Applicant's Property. All groundwater adjudicated herein shall be withdrawn from the overlying land.

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

13. Benet Well No. 1: Benet Well No. 1 is to be located on the Applicant's Property. Applicant is awarded the vested right to use Benet Well No. 1, along with any necessary additional or replacement wells associated with such structure, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein, or as may in the future be supplemented or amended. 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 permit for Benet Well No. 1 pursuant to C.R.S. §37-90-137(4), consistent with and references 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:

<b>Groundwater Quantification</b>								
<b>AQUIFER</b>	<b>ELEVATION</b>		<b>NET SAND (ft)</b>	<b>DEPTH (ft)</b>		<b>TOTAL (AF)</b>	<b>Annual Average Withdrawal (Acre Feet)</b>	
	<b>Bottom</b>	<b>Top</b>		<b>Bottom</b>	<b>Top</b>		<b>100 Years</b>	<b>300 Years</b>
Dawson (NNT)	6595	7329	365	905	171	3680	36.8	12.26
Denver (NNT)	5777	6604	545	1723	896	4670	46.7	-
Arapahoe (NT)	5237	5720	225	2263	2263	1930	19.3	-
Laramie Fox Hills (NT)	4484	4799	190	3016	2701	1440	14.4	-

15. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirements for wells in the not-nontributary Dawson requires 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 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 non-tributary 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 and Benet Well No. 1.

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) which requirements also satisfy the 100-year life for the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or Applicant's water needs. The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, based upon both a 100-year and 300-year aquifer life, as applicable, is determined and set forth above, based upon the May 10, 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.

18. Applicant shall have the right to use the ground water for all beneficial uses upon the Applicant's Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial, and for storage and augmentation associated with such uses. The amount of groundwater decreed for such uses upon the Applicant's Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicant's Property and are to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the relinquishment of the right to consume two percent of such nontributary water withdrawn. 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 and Denver aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein as concerns the Dawson aquifer and Benet Well No. 1.

19. Withdrawals of groundwater available from the Denver Basin 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 structure to be augmented is Benet Well No. 1 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 Benet Well No. 1 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 Benet Well No. 1, 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 Benet Well No. 1 as approved herein. Water use criteria as follows:

A. Use: The Benet Well No. 1 may pump up to 8.37 acre feet of water from the Dawson aquifer annually for the following uses:

i. Household Use Only: 0.20 acre feet annually within up to 26 residential dwellings and 0.10 average acre feet annually within the community building, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal system(s). The annual consumptive use for all indoor use would therefore be 5.3 acre feet, with total return flows of 4.77 acre feet. Any other type of waste water disposal shall require an amendment to this plan of augmentation.

ii. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for all lawn and landscape irrigated is therefore 1.19 acre feet, assuming a maximum of 1,000 square feet per communal residence, or a total of 26,000 square feet of landscape irrigation.

iii. Community Building (inside use): Varying inside uses of water within the Community Building are anticipated to require pumping of approximately 0.13 acre feet on average, which being 10% consumptive will result in consumptive use of 0.013 acre feet annually, and return flows of 0.117 acre feet annually.

iv. Common Garden: At an application rate of 2.18 acre feet annually per irrigated acre and an 85% assumed consumptive use rate, based 0.75 acre of garden

to be irrigated, consumptive use will be approximately 1.38 acre feet.

v. Fire Cisterns: Applicant has agreed to maintain a total amount of 60,000 gallons (0.18 acre feet) of water in storage for emergency firefighting uses. Such quantities are conservatively estimated to be replaced/used annually, though these nonpotable supplies may be maintained for extended periods of time when no firefighting uses are necessary.

The foregoing figures assume the use of the equivalent of 26 septic systems, with resulting return flows from each, or one-or more multi-dwelling commercial-type septic systems with similar resulting return flows. Should Applicant construct fewer than 26 residential dwellings on Applicant's property, 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%) as described in Paragraph 21.B., below.

B. Depletions: Applicant's consultant has determined that maximum stream depletions over the 300-year pumping period will amount to approximately twenty-three percent (23%) of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 1.93 acre feet in year 300. Should Applicant's pumping be less than the 8.37 acre feet per lot described herein, or should fewer residences or amenities be developed, 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), Applicant is required to replace actual stream depletions attributable to pumping of the Benet Well No. 1. Applicant's consultant has determined that depletions during pumping will be effectively replaced by return flows from non-evaporative septic system(s). The annual consumptive use for non-evaporative septic systems is 10% per year. At a use rate of 0.20 acre feet per residence per year and a community building indoor use of 0.10 average acre feet per year, a total of approximately 5.30 acre feet will be pumped for indoor uses, with 4.77 acre feet replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, the estimated maximum stream depletions of 1.93 annual acre feet will be more than adequately augmented.

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Benet Well No. 1, Applicant will reserve 1,414 acre feet of water from the nontributary Laramie Fox Hills aquifer and 1,097 acre feet of water from the nontributary Arapahoe aquifer, representing maximum pumping of 2,511 acre feet less stream depletions replaced during the plan pumping period, or such greater amounts from the



nontributary Laramie-Fox Hills aquifer and/or Arapahoe aquifer as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary groundwater will be used to replace any injurious 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 Benet Well No. 1 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 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 therefrom 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 reserved portions of the nontributary Arapahoe and Laramie-Fox Hills aquifers, as 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 and/or Laramie-Fox Hills aquifers 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 Benet Well No. 1 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 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 Benet Well No. 1. As a result of the operation of this plan for augmentation, the depletions from the Benet Well No. 1 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 Benet Well No. 1 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 Groundwater and 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 Benet Well No. 1 so long as the return flows from the annual diversions associated with the Benet Well No. 1 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 Benet Well No. 1 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 system(s) discussed herein 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 stream system, to determine whether the replacement of depletions to Arkansas stream system instead of the South Platte stream system is causing material injury to water rights tributary to the South Platte stream system.

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 River system due to the location of Applicant's replacement water. If the Court finds that those facts are established, the Applicant shall thereupon have the burden of proof to show (i) that petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others.

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 totalizing flow meters on all wells decreed herein 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.

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 6th day of August, 2018.

BY THE REFEREE:

*Mardell R. DiDomenico*



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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: August 28, 2018.



**BY THE COURT:**

A handwritten signature in cursive script, reading 'Larry C. Schwartz', is written over a horizontal line.

**LARRY C. SCHWARTZ, WATER JUDGE  
WATER DIVISION 2**

## Exhibit A – Legal Description

### PARCEL A.

THAT PORTION OF THE WEST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27, IN TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 13, IN BLOCK 4, IN BLACK FOREST PARK, AS SHOWN BY PLAT RECORDED IN PLAT BOOK B, PAGES 42 AND 43 AND RUN THENCE EAST ALONG AN EXTENSION OF THE NORTH LINE OF SAID LOT 13, TO THE EAST LINE OF SAID WEST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH ALONG SAID EAST LINE TO THE POINT OF INTERSECTION WITH AND EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 12, IN SAID BLOCK 4; THENCE WEST ALONG SAID EXTENSION OF THE SOUTH LINE OF LOT 12, TO THE SOUTHEAST CORNER OF SAID LOT 12; THENCE NORTH 200 FEET TO THE POINT OF BEGINNING, EXCEPT THE WEST 30 FEET THEREOF WHICH HAS BEEN RESERVED FOR ROAD PURPOSES.

### PARCEL B:

THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, IN TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EXCEPT THAT PORTION CONVEYED TO THE DEPARTMENT OF HIGHWAYS, STATE OF COLORADO, AS DESCRIBED IN DEED RECORDED SEPTEMBER 21, 1964 IN BOOK 2035 AT PAGE 537, UNDER RECEPTION NO. 368570, AND EXCEPT THAT PORTION LYING EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 83 CONVEYED TO C.T. MCLAUGHLIN BY DEED RECORDED DECEMBER 18, 1974 IN BOOK 2723 AT PAGE 644. COUNTY OF EL PASO, STATE OF COLORADO.

