

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, Colorado 81003 Phone Number: (719) 404-8832	DATE FILED: May 19, 2017 8:16 AM CASE NUMBER: 2016CW3041
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: RICHARD AND JANNA FLANDERS IN EL PASO COUNTY	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Nos.: 16CW3041 (Div. 2) 16CW3095 (Div. 1) Consolidated in Div. 2 16MD16 Ctrm.: 406
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING AND DECREE OF THE WATER COURT</p>	

THIS MATTER comes before the Court on the Application filed by Richard and Janna Flanders 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 Richard and Janna Flanders, whose address is 4575 Burgess Road, Colorado Springs, Colorado, 80908-3761 ("Applicants"). Applicants are the owners of the land totaling approximately 5.0 acres under which lies the Denver Basin groundwater adjudicated herein, and are the owners of the place of use where the water will be put to beneficial use.

2. The Applicants filed an application with both Water Court Divisions 1 and 2 on July 21, 2016 ("Application").

3. A Motion for Consolidation of the cases into Water Division 2 was filed with the Supreme Court on October 14, 2016. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on October 18, 2016. Chief Justice Nancy E. Rice granted the Motion for Consolidation by Order dated November 10, 2016.

4. On July 21, 2016, Water Court, Division 1 ordered that consolidated publication be made by only Division 2. On July 21, 2016, Water Court, Division 2 ordered that publication occur in the *Daily Transcript* within El Paso County.

5. 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 August 11, 2016, proof of publication in *The Transcript* was filed with Water Court, Division 2. All notices of the Application have been given in the manner required by law.

6. Kettle Creek, L.L.C. filed a timely statement of opposition on September 30, 2016.

7. The time for filing statements of opposition to the Application expired on the last day of September, 2016.

8. A stipulation between Kettle Creek L.L.C. and the Applicants was reached and filed with the Court on April 21, 2017. The Court entered an Order approving said stipulation on April 21, 2017.

9. Pursuant to § 37-92-302(2)(a), C.R.S. the Office of the State Engineer filed its Determination of Facts reports with this Court on September 12, 2016, which have been considered by the Court in the entry of this Ruling and Decree.

10. Pursuant to § 37-92-302(4), C.R.S., the Office of the Division Engineer for Water Division 2 filed a Consultation Report on September 20, 2016 ("Consultation Report"). A response to the Consultation Report was filed on March 16, 2017 ("Response"). Both the Consultation Report and the Response have been considered by the Court.

11. 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

12. The Applicants request the adjudication of vested use rights for the available underground water in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying their property. The Applicants also seek approval to use a well constructed to the Denver aquifer (the "Augmented Well") and any additional or replacement wells associated therewith for use by a new guest house on their property in conjunction with the plan for augmentation decreed herein, as described below. The following findings are made with respect to the adjudicated Denver Basin underground water.

13. The land overlying the groundwater subject to the adjudication in this case is wholly owned by the Applicants and consists of approximately 5.0 acres, more or

less, and is located in the N1/2 of the N1/2 of the NE1/4 of Section 23, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado (the "Property"). The 5 acres includes acreage adjacent to Applicants' parcel that underlies Burgess Road. A map of the Property is attached hereto as **Exhibit A**.

14. All groundwater adjudicated herein shall be withdrawn from the overlying land, consisting of the Property.

15. HSBC and Chase Bank hold liens to the Property and notice of the Application was provided to both entities on August 2, 2016, pursuant to the requirements of § 37-92-302(2)(b)(I), C.R.S. Such notices were filed with the Court on August 2, 2016.

16. There is currently an existing exempt well on the Property constructed to the Dawson aquifer that is permitted under Division of Water Resources Permit No. 22918-A and is located at UTM Coordinates: NAD83 13, Easting: 522358.4, Northing: 4316531 ("Existing Well"). The Existing Well shall retain its exempt status, and no reduction of the amount of Dawson aquifer groundwater available for withdrawal is required due to the Existing Well being permitted prior to July 6, 1973, pursuant to the August 4, 1995, Memorandum from the State Engineer addressing deductions for water used by exempt wells from the acre-feet determinations of groundwater within the Denver Basin aquifers underlying the land upon which the exempt wells are located.

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

Aquifer	Saturated Thickness (Feet)	Specific Yield (%)	Total Water Adjudicated (Acre-Feet)	Annual Average Withdrawal: 100 Years (Acre-Feet)
Dawson (NNT)	80	20	80	0.8
Denver (NNT)	395	17	336	3.4
Arapahoe (NNT)	270	17	230	2.3
Laramie-Fox Hills (NT)	190	15	143	1.4

18. The Denver aquifer underlying the Property is located more than one mile from any point of contact with any natural surface stream. Accordingly, pursuant to § 37-90-137(9)(c.5)(l)(C), C.R.S., the augmentation requirement for wells in the Denver aquifer more than one mile from the point of contact between any natural stream including its alluvium is the replacement to the affected stream system or systems of a total amount of water equal to 4% of the amount of water withdrawn on an annual basis. Applicants shall not be entitled to construct a well or use water from the not-nontributary Dawson, Denver, or Arapahoe aquifers except pursuant to an approved augmentation plan in accordance with § 37-90-137(9)(c.5), C.R.S. This decree does not approve a plan for augmentation for pumping from the Dawson or Arapahoe aquifers underlying the Property.

19. Subject to the augmentation requirements described in Paragraph 24 and the other requirements and limitations in this decree, Applicants shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying the Property. The augmentation plan decreed herein for the Denver aquifer is based on a withdrawal time period of 300 years. All other amounts not tied to the plan for augmentation in this case may be withdrawn based on a 100-year life for aquifers as set forth in § 37-90-137(4)(b)(l), C.R.S. Such 100-year life for aquifers may be extended for a longer period of time based upon local governmental regulations or Applicants' water needs, provided however, that withdrawals for such a longer period are in compliance with any applicable augmentation requirements. The average annual amounts of groundwater available for withdrawal from the underlying Denver Basin aquifers, predicated on a 100-year aquifer life, are determined and set forth above, based upon the September 12, 2016 Office of the State Engineer Determination of Facts.

20. Applicants shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from each of the Denver Basin aquifers underlying the 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 Applicants are entitled to withdraw from each of the aquifers underlying the Property, subject to the requirement that such banking and excess withdrawals does 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.

21. Subject to the terms and conditions in the plan for augmentation decreed herein, any other decreed plan for augmentation involving the Property and Denver Basin water decreed herein, and final approval by the State Engineer's Office pursuant to the issuance of a well permit in accordance with § 37-90-137(4) or § 37-90-137(10), C.R.S., the Applicants shall have the right to use the not-nontributary groundwater for

beneficial uses upon the Property consisting of domestic, commercial, irrigation, greenhouse, washing, industrial, stockwater, recreation, wildlife, fire protection, central water supply for such uses, and for exchange, storage and augmentation associated with such uses. The amount of groundwater decreed for such uses upon the Property is reasonable as such uses are to be made for the long term use and enjoyment of the 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 Property for domestic, commercial, irrigation, greenhouse, washing, industrial, stockwater, recreation, wildlife, fire protection, central water supply for such uses, and for exchange, storage and augmentation associated with such uses, and all other beneficial uses subject, however, to the limitations imposed on use of the Laramie-Fox Hills aquifer groundwater by this decree and the requirement under § 37-90-137(9)(b), C.R.S., that no more than 98% of the amount withdrawn annually shall be consumed. Applicants 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, Applicants shall only be entitled to construct a well or use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to a decreed augmentation plan entered by the Court.

22. Water is available from the nontributary Laramie-Fox Hills aquifer beneath the Property and the withdrawal of that water 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

23. The structures to be augmented are the Augmented Well along with any additional or replacement wells associated therewith, constructed to the Denver aquifer underlying the Property.

24. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation obligation for the Augmented Well and any additional or replacement wells constructed to the Denver aquifer requires the replacement of 4% of the water withdrawn annually. The water to be used for augmentation during pumping is the septic return flows of the not-nontributary Denver aquifer Augmented Well or any additional or replacement wells to the Denver aquifer to be pumped as set forth in this plan for augmentation. The water to be used for augmentation after pumping is the reserved nontributary water rights in the Laramie-Fox Hills aquifer belonging to the Applicants as decreed herein. Applicants shall provide for the augmentation of stream depletions caused by pumping the Augmented Well and any additional or replacement Denver aquifer wells as approved herein. Water use criteria is as follows:

A. Use: The Augmented Well or any additional or replacement wells constructed to the Denver aquifer may pump, in total, up to 0.40 acre-feet of water per year from the Denver aquifer (120.0 acre-feet total during the 300-year pumping period). The guest house served by the Augmented Well will use 0.27 acre-feet of water per year for indoor use. The remainder of 0.13 acre-feet per year will be available for irrigation of a small garden and the watering of horses or equivalent livestock.

B. Depletions: The maximum annual depletion to be replaced pursuant to § 37-90-137(9)(c.5)(I)(C), C.R.S., during the pumping period from pumping 0.40 acre-feet per year from the Denver aquifer is 4% of pumping, or 0.016 acre-feet per year.

C. Augmentation of Depletions During Pumping: Pursuant to § 37-90-137(9)(c.5), C.R.S., Applicants are required to replace 4% of total annual pumping attributable to pumping the Augmented Well or any additional or replacement wells. Depletions during pumping will be effectively replaced by residential return flows from a non-evaporative septic system. The estimated consumptive use for residences using non-evaporative septic systems is 10% of the estimated amount pumped and delivered for indoor use. At a household delivery rate of 0.27 acre-feet per year, 0.243 acre-feet is replaced to the stream system per year. Thus, during pumping, stream depletions from pumping the Augmented Well or any additional or replacement well will be adequately augmented, provided septic system return flows from in-house use are made in the amount described in this paragraph.

D. Augmentation of Post-pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. It is necessary for the Applicants to address the replacement of actual out-of-priority post-pumping stream depletions from pumping of the not-nontributary Denver aquifer. According to the Division Engineer's Office Consultation Report, pumping of 0.4 acre-feet per year from the Denver aquifer underlying the Property for 300 years will result in 111.9 acre-feet of post-pumping stream depletions. For the replacement of such post-pumping depletions, the Applicants shall reserve 115.0 acre-feet of water from the nontributary Laramie-Fox Hills aquifer underlying the Property. The amount reserved may be reduced as may be determined through this Court's retained jurisdiction as set forth in Paragraphs 42 through 43, herein. If the Court, by Order, reduces Applicants' obligation hereunder to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein. Pursuant to § 37-90-137(9)(b), C.R.S. no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed. Therefore, the reservation of 115.0 acre-feet from the Laramie-Fox Hills aquifer by the Applicants results in 112.7 acre-feet of post-pumping augmentation credit, which is sufficient to cover maximum post-pumping depletions of 111.9 acre-feet.

25. This decree, upon recording, shall constitute a covenant running with the Property, benefitting and burdening said land, and requiring construction of a well to the nontributary Laramie-Fox Hills aquifer and pumping of water to replace any post-pumping depletions under this decree. Subject to the requirements of this decree, to determine the amount and timing of post-pumping replacement obligations under this augmentation plan from pumping the Denver aquifer, Applicants or their successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time. Pursuant to this covenant, the water from the nontributary Laramie-Fox Hills aquifer reserved herein may not be severed in ownership from the 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 Property.

26. Applicants or their successors shall be required to initiate pumping from the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions when either: (1) the absolute total amount of water (120 acre-feet) allowed to be withdrawn from the Denver aquifer under this plan for augmentation has been withdrawn; (2) the Applicants or their successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Augmented Well or any additional or replacement wells have permanently ceased, (3) a period of 10 consecutive years where no withdrawals of groundwater has occurred, or (4) accounting shows that return flows from the use of the water being withdrawn are insufficient to replace depletions caused by the withdrawals that already occurred.

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

28. Consideration has been given to the depletions from Applicants' 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 Applicants, and the existence, if any, of injury to any owner of or person entitled to use water under a vested water right.

29. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior

appropriators has normally been used, and if provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of Augmented Well or any additional or replacement wells. As a result of the operation of this plan for augmentation, the depletions from the Augmented Well and any additional or replacement wells associated therewith will not result in material injury to the vested water rights of others.

CONCLUSIONS OF LAW

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

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

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

33. The Applicants have complied with § 37-90-137(4), C.R.S., 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 in the Denver aquifer upon the entry of this decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S., and issuance of well permits by the State Engineer's Office. Applicants are entitled to a decree from this Court confirming their rights to withdraw groundwater pursuant to § 37-90-137(4), C.R.S.

34. The Denver Basin water rights applied for in this case are not conditional water rights, but are vested use rights determined pursuant to §§ 37-90-137(4) and 37-92-305(11), C.R.S. No applications for diligence are required. The claims for nontributary and not-nontributary groundwater meet the requirements of Colorado Law.

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

36. The Applicants' 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 Augmented Well or additional or replacement wells without adversely affecting any other vested water rights in the Arkansas River or its tributaries and when curtailment would otherwise be required to meet a valid senior call for water. § 37-92-305(3), (5), and (8), C.R.S.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

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

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

A. Applicants are awarded a vested right to use the groundwater from the not-nontributary Denver aquifer underlying the Property, as quantified in Paragraph 17 or as modified by the Court under its retained jurisdiction. Subject to the limitations on total pumping under the plan for augmentation decreed herein, this decree and plan for augmentation authorize the pumping of up to 120.0 acre-feet. Withdrawal and use of the remaining 216 acre-feet shall not be made until Applicants or their successors in interest have obtained a separate decreed plan for augmentation that allows such withdrawal and use.

B. Applicants are awarded a vested right to use the groundwater from the not-nontributary Dawson aquifer underlying the Property, as quantified in Paragraph 17 or as modified by the Court under its retained jurisdiction. Withdrawal and use of the Dawson aquifer groundwater shall not be made until Applicants or their successors in interest have obtained a separate decreed plan for augmentation that allows such withdrawal and use.

C. Applicants are awarded a vested right to use the groundwater from the not-nontributary Arapahoe aquifer underlying the Property, as quantified in Paragraph 17 or as modified by the Court under its retained jurisdiction. Withdrawal and use of the Arapahoe aquifer groundwater shall not be made until Applicants or their successors in interest have obtained a separate decreed plan for augmentation that allows such withdrawal and use.

D. Applicants are awarded a vested right to use the groundwater from the nontributary Laramie-Fox Hills aquifer underlying the Property, as quantified in Paragraph 17 or as modified by the Court under its retained jurisdiction. A total of 115.0 acre-feet has been reserved for use in the plan for augmentation decreed herein.

Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to 98% of the amount withdrawn, and the other terms and conditions of this decree, Applicants' Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 21.

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

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

41. The Augmented Well and any additional or replacement wells shall be operated such that combined pumping from all wells does not exceed the annual and total pumping limits for the Denver aquifer as decreed herein, and is in accordance with the requirements of the plan for augmentation described herein. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the Augmented Well or any additional or replacement wells so long as the return flows from the annual diversions associated with the well(s) accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicants or one of their successors or assigns is ever unable to provide the replacement water required, then the Augmented Well and any additional or replacement wells shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulations of the State of Colorado. Pursuant to § 37-92-305(8)(c), C.R.S., 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 the plan for augmentation decreed herein to operate, return flows from the non-evaporative septic system shall, at all times during pumping, be in an amount sufficient to replace the amount of stream depletions. Applicants shall be required to have the Augmented Well and any additional or replacement wells providing water for the guest house and returning water to a non-evaporative septic system prior to pumping these wells for any of the other uses identified in Paragraphs 21 and 24.A.

42. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either

upwards or downwards, to conform to actual local aquifer characteristics, and the Applicants need not file a new application to request such adjustments. The Court further retains jurisdiction should the Applicants 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 24.D.

- A. When adequate data may be available, Applicants or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 42 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to effect the petition. Within 120 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, Applicants, opposers in this case, and, as necessary, the petitioning party.

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

43. Except as specifically provided in Paragraph 42, pursuant to the provisions of § 37-92-304(6), C.R.S., 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 from the date withdrawals of Denver aquifer water through the Augmented Well commence and the plan for augmentation operations begin. 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, Applicants shall thereupon have the burden of proof to show: (a) that the petitioner is not materially injured, or (b) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (c) that any term or condition proposed by Applicants 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 provisions of the statute, this matter shall become final under its own terms.

44. Pursuant to § 37-92-502(5)(a), C.R.S., the Applicants shall install and maintain such water measurement devices and recording devices as are deemed necessary by the State Engineer or Division Engineer, and the same shall be installed and operated in accordance with instructions from said entities. Applicants are to install and maintain a totalizing flow meter on any wells constructed and thereafter to maintain records and provide reports to the State Engineer or Division Engineer for Water Division 2 as instructed by said entities.

45. The Augmented Well or additional or replacement wells shall be permitted as a nonexempt structure under this plan for augmentation. The Court determines and orders that the State Engineer shall issue a well permit for the Augmented Well with terms and conditions no more burdensome and no less restrictive than those contained herein pursuant to § 37-90-137(4) and (10), C.R.S. upon submittal by the Applicants of a complete well permit application and filing fee. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses that can be made of the ground water to be withdrawn, and to the extent the well permit application requests a use that has not been specifically identified in this decree, shall not issue a permit for any such proposed use that the State Engineer determines to be speculative at the time of the application or to be inconsistent with the requirements of this decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

46. This ruling 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 27th day of April, 2017.

BY THE REFEREE:



Mardell R. DiDomenico

Mardell R. DiDomenico, Water Referee
Water Division 2

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: May19, 2017.

BY THE COURT:

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