

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 3, 2024 8:21 AM CASE NUMBER: 2023CW3045 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: J + M INVESTMENTS, LLC IN THE ARKANSAS RIVER OR ITS TRIBUTARIES IN EL PASO COUNTY, COLORADO	Case No.: 23CW3045
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE: ADJUDICATING DENVER BASIN GROUNDWATER, APPROVING PLAN FOR AUGMENTATION, AND ADJUDICATING EXEMPT RESIDENTIAL WELL	

THIS MATTER comes before the Water Court on the Application filed by J + M Investments, LLC. 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 J + M Investments, LLC, a Colorado Limited Liability Company, C/O Jay D. Stoner. Its address is 5655 Bridlespur Ridge Pl, Colorado Springs, CO 80918 ("Applicant"). The Applicant is the owner of the land totaling approximately 5.13 acres on which the structures sought to be adjudicated and augmented herein are located, and under which lies the Denver Basin groundwater adjudicated 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 22.

2. The Applicant filed this Application with the Water Court for Water Division 2 on October 30, 2023. The Application was referred to the Water Referee in Division 2 on October 31, 2023. Per request from the Court, an amended Application was filed in Water Division 2 on November 8, 2023, to add a corrected legal description for the Applicant's property.

3. The time for filing statements of opposition to the Application expired on the last day of December 2023. A Statement of Opposition was timely filed by Kettle Creek, LLC on December 29, 2023.

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4. In accordance with the notice requirements of C.R.S. §37-92-302(2), a Notice of No Lienholders on the Applicant's Property described in Paragraph 15, below, was filed with the Division 2 Water Court on December 11, 2023.

5. On November 13, 2023, the Division 2 Water Court ordered that publication occur in *The Gazette* in El Paso County, and *The Douglas County 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 November 22, 2023, proof of publication in *The Gazette* was filed with the Division 2 Water Court. On November 27, 2023, proof of publication in *The Douglas County News Press* was filed with the Division 2 Water Court. All notices of the Application have been given in the manner required by law.

7. On October 11, 2024, a stipulation between the Applicant and Kettle Creek, LLC was filed with the Division 2 Water Court. By Order dated October 15, 2024, the Division 2 Water Court approved such stipulation.

8. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts reports for each Denver Basin aquifer identified in Paragraph 18, below, with this Court on January 12, 2024, which have been considered by the Court in the entry of this decree.

9. 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 February 12, 2024, and an updated consultation report and depletion analysis on August 8, 2024. A response to the February 12, 2024, Consultation Report was required by the Water Court, no response to the updated consultation report was required. Applicant filed a response to the February 12, 2024, Consultation Report on March 15, 2024, to address an issue concerning the amount of allowed annual pumping from the Arapahoe aquifer based on available post pumping replacement supplies. The Consultation Report and the Applicant's response have been considered by the Water Court in the entry of this decree.

10. 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.

ADJUDICATION OF EXEMPT WELL

11. The Application requested the adjudication of one existing exempt well

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pursuant to C.R.S. § 37-92-602(4) and 37-92-302 through 37-92-306. The following findings are made with respect to the Applicant's existing exempt well.

a. Name of Structure. J + M Well No. 1

i. Legal Description of Well: The well is located on the Applicant's Property in the NE¼ NW¼ of Section 28, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, located 3,997 feet from the south line and 3153 feet from the east line of said Section 28. The J + M Well No. 1 is permitted as an exempt well under C.R.S. § 37-92-602(3)(b)(II)(A) pursuant to Division of Water Resources Permit No. 172655. The J + M Well No. 1 will be re-permitted in accordance with the terms of this decree and it will remain an exempt well pursuant to C.R.S. §§ 37-92-602(3)(b)(II)(A) and 37-92-602(3)(b)(IV) for use only on the new lot to be created on the north portion of Applicant's property.

ii. Source: The J + M Well No. 1 is permitted to withdraw water from the not-nontributary Denver Aquifer.

iii. Date of Initiation of Appropriation: June 23, 1993

iv. How Appropriation was Initiated: Completion of the construction of the well and placement into operation during the year 1997.

v. Date Water Applied to Beneficial Use: March 10, 1997

vi. Amount: 15 g.p.m., absolute, up to 0.29 acre-feet per year

vii. Uses: Ordinary household uses in a single family residence and the watering of noncommercial domestic animals, all uses to be made on and limited to the new lot to be created on the north portion of Applicant's Property as described in Paragraph 11.a.i, above.

12. For the absolute groundwater right for J + M Well No. 1, the Applicant has completed all of the elements necessary for the appropriation of a water right to wit:

a. Formation of the intent to appropriate water;

b. Performance of overt acts in concurrence with this intent to manifest the intention to appropriate water to beneficial use and to demonstrate taking a substantial step toward applying water to beneficial use by the construction of the well and applying for and receiving Permit No. 172655. Such acts were of such nature to provide interested third parties with notice of the nature and extent of the proposed diversion and consequent

demand on the river system.

c. Groundwater in the not-nontributary Denver aquifer in the Denver Basin has been diverted and otherwise captured, possessed, or controlled by J + M Well No. 1, and has been beneficially used in the amount claimed and for the uses stated herein.

13. The J + M Well No. 1 is an exempt well under C.R.S. § 37-92-602(3)(b)(II)(A) for the uses included in Permit Number 176255 and described in this decree. Therefore, the priority date of the J + M Well No. 1 shall be the appropriation date set forth above, regardless of the date of application or the date of this decree. C.R.S. § 37-92-602(4). So long as the uses of the J + M Well No. 1 are limited to those uses allowed under Permit Number 176255, as decreed herein (or any new exempt well permit issued by the Colorado Division of Water Resources in accordance with this decree), J + M Well No. 1 will be exempt from administration under the priority system pursuant to C.R.S. § 37-92-602.

GROUNDWATER RIGHTS

14. The Application requested quantification and adjudication of vested underground water rights from the Denver and Arapahoe Denver basin aquifers underlying the Applicant's Property described in Paragraph 15, below, and adjudication and use of J + M Well No. 1, and the use of J + M Well No. 2, which is a proposed well that may be constructed to the Arapahoe aquifer, and any additional or replacement wells associated therewith, for withdrawal of Applicant's full entitlement of supply from the Arapahoe aquifer under the plan for augmentation decreed herein. Applicant also requested quantification and adjudication of vested underground water rights and uses from the Laramie-Fox Hills aquifer 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:

15. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 5.13 acres located in the E ½ of the NW ¼ of Section 28, Township 12 South, Range 66 W. of the 6th P.M., also known as Lot 1, Kettle Creek Estates, as recorded in the records of the El Paso County Clerk and Recorder under Reception No. 223715184, with a street address of 10245 Otero Ave, Colorado Springs, CO 80921, as shown on **Exhibit A** and **Exhibit B** maps ("Applicant's Property"). Applicant intends to subdivide the property into 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.

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16. J + M Well No. 1: J + M Well No. 1, as more particularly described above in Paragraphs 11-13, is located on the Applicant's Property and is permitted and constructed into the Denver aquifer as an exempt domestic well pursuant to C.R.S. §37-92-602(3)(b)(II)(A) under Well Permit No. 172655. This well will continue to be used as an exempt domestic well on one of the subdivided lots on Applicant's Property pursuant to its issued well permit pursuant to C.R.S. §37-92-602(3)(b)(II)(A), and this structure and well pumping is not, and need not be, included in the plan for augmentation decreed herein. As described in Paragraph 18, below, Applicant is reserving the full amount of the Denver aquifer groundwater underlying Applicant's Property that is adjudicated herein for use by J + M Well No. 1. Pumping and use of the Applicant's Denver aquifer entitlement shall be made in accordance with the amounts and uses described in Paragraphs 11-13 of this decree and Permit No. 172655, or any replacement exempt well permit, and shall be limited to no more than the total amount adjudicated to Applicant from the Denver aquifer as described herein.

17. J + M Well No. 2: Applicant is awarded the vested right to use the J + M Well No. 2, along with any necessary additional or replacement wells associated with such structure, for the extraction and use of groundwater from the not-nontributary Arapahoe aquifer pursuant to the plan for augmentation decreed herein. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, the State Engineer shall issue a well permit for J + M Well No. 2 pursuant to C.R.S. §37-90-137(4), consistent with and referencing the plan for augmentation decreed herein.

18. Of the statutorily described Denver Basin aquifers, the Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Denver and Arapahoe aquifers underlying the Applicant's Property contain not-nontributary water, while the water of the Laramie-Fox Hills aquifer 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)	Annual Average Withdrawal 100 Years (Acre-Feet)	Annual Average Withdrawal 300 Years (Acre-Feet)	Total Withdrawal (Acre-Feet)
Denver* (NNT)	100	0.872	0.29	87.2
Arapahoe (NNT)	260	2.27	0.75	227
Laramie-Fox Hills (NT)	175	1.35	0.45	135

*Applicant has reserved all of the available Denver Aquifer supplies to support pumping from the existing exempt well, J+M

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Well No. 1, this brings the remaining available Denver Aquifer supplies to 0.

Except as specifically identified for J + M Well No. 1, 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.

19. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirement for wells in the Denver and Arapahoe aquifers requires the replacement to the affected stream systems of actual stream depletions on an annual basis. Applicant shall not be entitled to construct a non-exempt well or use water from the not-nontributary Denver and Arapahoe 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 Arapahoe aquifer. In addition, Applicant shall be required to comply with the requirements of Paragraph 42.A prior to constructing and using a non-exempt well completed into the Denver aquifer.

20. Subject to the augmentation requirements described in Paragraphs 19 and 26 and the other requirements and limitations in this decree, 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 to pumping from the Denver and Arapahoe aquifers, as required by El Paso County, Colorado Land Use Development Code §8.4.7(C)(1). The average annual amounts of ground water 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 January 12, 2024, Office of the State Engineer Determination of Facts described in Paragraph 8.

21. 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. Applicant

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shall be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. The wells shall be treated as a well field.

22. Subject to the terms and conditions of this decree and 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 groundwater from the Arapahoe and Laramie Fox Hills aquifers for beneficial uses upon the Applicant's Property consisting of domestic, irrigation for lawn, garden, and greenhouse, domestic animal and livestock watering, fire protection, and also for storage and augmentation purposes associated with such uses.¹ 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 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 and use water from the not-nontributary Denver and Arapahoe aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein for the Arapahoe aquifer.

23. Applicant has waived the 600-foot well spacing requirement for wells to be constructed upon the Applicant's Property. Pumping from J + M Well No. 2 and any additional or replacement wells for that well, or wells constructed into the Laramie-Fox Hills aquifer, 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 groundwater from the J + M Well No. 2 and any additional or replacement wells for that well, or from wells constructed into the Laramie-Fox Hills aquifer, 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.

24. Withdrawals of groundwater available from the nontributary 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

¹ These uses would also apply to any non-exempt wells constructed into the Denver aquifer, should Applicant or its successors comply with the requirements of this decree to allow pumping from the Denver aquifer by a non-exempt well.

or to any other owners or users of water.

PLAN FOR AUGMENTATION

25. The structure to be augmented is the J + M Well No. 2, to be constructed to the not-nontributary Arapahoe aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith. This plan for augmentation does not cover depletions associated with diversions from the Denver aquifer. Absent compliance with the requirements of this decree concerning the reservation of the Denver aquifer groundwater to J + M Well No. 1 and entry of a separate decreed plan for augmentation that allows such pumping, no groundwater in the Denver aquifer underlying the Applicant's Property is available for withdrawal by any well other than the J + M Well No. 1 under its exempt permit. If Applicant would like to divert its entitlement in the Denver aquifer under a non-exempt well, it must do so under a separate future decreed augmentation plan.

26. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation obligation for the J + M Well No. 2, and any additional or replacement wells constructed to the Arapahoe aquifer, requires the replacement of actual stream depletions. The water to be used for augmentation during pumping is the septic system return flows of the not-nontributary Arapahoe aquifer to be pumped from the J + M Well No. 2 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 nontributary water rights in the Laramie-Fox Hills aquifer as described in Paragraph 26.D. Applicant shall provide for the augmentation of stream depletions caused by pumping J + M Well No. 2 and any additional or replacement wells as approved herein. Water use criteria is determined as follows:

A. Use: Based on a 300-year pumping period, the J + M Well No. 2 may pump a maximum total of 0.50 acre-feet from the Arapahoe aquifer annually (150 acre-feet total) pursuant to the plan for augmentation authorized by this decree. Indoor use will utilize an estimated 0.2 acre-feet of water per year for a single-family residence, with the remaining 0.3 acre-feet per year pumping entitlement available for other uses on the Applicant's Property, including: irrigation of lawn and garden, and the watering of up to two horses, or equivalent livestock. An example of the use breakdown for El Paso County land use planning purposes is household use of 0.26 acre-feet of water per year for a residence, with the additional 0.24 acre-feet available for irrigation of lawn and garden and the watering of up to two horses or equivalent livestock on the lot annually. The foregoing figures assume the use of one individual non-evaporative septic system, with resulting return flows from such system, as described below in Paragraph 26.C.

B. Depletions: Pumping from the Arapahoe aquifer will require

replacement of actual stream depletions of the pumped amount over the 300-year pumping period. Maximum stream depletions over the 300-year pumping period for the Arapahoe aquifer amounts to approximately 22.55% of pumping. Maximum annual depletions from the J+M Well No. 2 are therefore 0.11 acre-feet in year 300. Should Applicant's pumping be less than the 0.50 total per year described herein, 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 of the water pumped from the Arapahoe 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 0.2 acre-feet per year, 0.18 acre-feet per residence is replaced to the stream system per year, utilizing a non-evaporative septic system $((1 \times 0.2) \times 0.9 = 0.18)$. Thus, during the pumping period, annual depletions in amounts up to the total maximum annual stream depletions of 0.11 acre-feet will be augmented provided septic system return flows are generated by indoor use of water in the residence. This calculation of septic system return flows from indoor residential use of 0.2 acre-feet per residence shows that depletions that result from pumping the annual amount described in Paragraph 26.A for one lot will be adequately replaced during the pumping period for the well under the plan for augmentation.

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 J + M Well No. 2, and any additional or replacement wells, Applicant will reserve the entirety of the nontributary Laramie-Fox Hills aquifer groundwater decreed herein (135 acre-feet) to replace any injurious post pumping depletions. The amount of nontributary Laramie-Fox Hills 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 Laramie-Fox Hills 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 135 acre-feet of Laramie-Fox Hills aquifer groundwater results in approximately 132.3 acre-feet of available post-pumping

augmentation water. If the J + M Well No. 2 is pumped in an amount of 0.50 acre-feet annually for the entire 300-year pumping period, the amount of the total modeled depletions from the well pumping that occurs during the pumping period and is replaced by septic system return flows will be approximately 18.3 acre-feet. Based on total pumping of 150 acre-feet, replacement of 18.3 acre-feet during the pumping period will leave approximately 131.7 acre-feet of post-pumping depletions. Applicant's available 132.3 acre-feet of Laramie-Fox Hills aquifer groundwater will be sufficient to replace post-pumping depletions obligations from the pumping of 150 acre-feet from the Arapahoe aquifer over 300 years. Post pumping replacement obligations equal the total amount of water pumped from the not-nontributary Arapahoe aquifer under the plan for augmentation decreed herein.

E. Permit: Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a well permit for the J + M Well No. 2 for the uses in accordance with this decree and otherwise in compliance with C.R.S. §37-90-137.

27. 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 Laramie-Fox Hills 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 its 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 Laramie-Fox Hills 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.

28. Applicant or its successors shall be required to initiate pumping from the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions when either: (i) the absolute total amount of water available from the Arapahoe aquifer allowed to be withdrawn under the plan for augmentation decreed herein (150 acre-feet) has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through the J + M Well No. 2 have permanently ceased; (iii) a period of 10 consecutive years where no withdrawals of groundwater from the J + M Well No. 2 has occurred; or (iv) 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.

29. Unless modified by the Court under its retained jurisdiction, Applicant and its 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 Laramie-Fox Hills aquifer groundwater.

30. 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 26 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, this Court, and the opposer in this case, and the State Engineer and opposer will have thirty (30) days for review and comment about the revised modeling, upon which, the Applicant will be allowed thirty (30) days to respond to the comments of the State Engineer and the opposer. 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.

31. 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.

32. 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 J + M Well No. 2. As a result of the operation of this plan for augmentation, the depletions from the J + M Well No. 2 and any additional or replacement wells associated therewith will not result in injury to the vested water rights of others.

CONCLUSIONS OF LAW

33. The application for adjudication of Denver Basin groundwater, approval of plan for augmentation, and adjudication of exempt residential well 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).

34. 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.

35. 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.

36. 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), and the issuance of a well permit by the State Engineer's Office for pumping from the Arapahoe aquifer. Applicant is entitled to a decree from this Court confirming its rights to withdraw groundwater pursuant to C.R.S. §37-90-137(4).

37. 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.

38. 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.

39. 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 J + M Well No. 2 and any additional or replacement wells for that well as described herein 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. C.R.S. §§37-92-305(3), (5), and (8).

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40. Pursuant to § 37-92-602(3)(b)(IV), C.R.S., the J + M Well No. 1 shall not lose its status as exempt from administration within the prior appropriation system under C.R.S. § 37-92-602(3)(b)(II)(A). This decreed exempt well structure is a vested water right entitled to protection as such, and the owner of this well shall be entitled to assert injury in any pending or future water rights application. Provided however, that the owner of this decreed exempt well shall not be entitled to assert its respective priority date for purposes of placing a call or curtailments upon other vested or conditional water rights junior in priority to J +M Well No. 1 under the prior appropriation system.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

41. 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.

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

A. Applicant is awarded a vested right to 87.2 acre-feet of groundwater from the not-nontributary Denver aquifer underlying Applicant's Property, as quantified in Paragraph 18 or as modified by the Court under its retained jurisdiction. The Denver aquifer groundwater is reserved to and will be pumped by J + M Well No. 1, an exempt well, pursuant to its permit, No. 172655. Unless Applicant or its successors in interest have amended this decree to terminate pumping by the J + M Well No. 1 under its exempt permit and the reservation of the Denver aquifer groundwater decreed herein for use by this well, and have also obtained a separate decree approving a plan for augmentation for pumping from the Denver aquifer, no groundwater in the Denver aquifer underlying the Applicant's Property is available for withdrawal by any well other than the J + M Well No. 1 under its exempt permit. Applicant and its successors in interest shall be required to cease pumping from J + M Well No. 1, or from any other well drilled into the Denver aquifer as described herein (either exempt or non-exempt), once Applicant has pumped the 87.2 acre-feet of groundwater from the Denver aquifer vested by this decree unless the amount is modified under the Court's retained jurisdiction pursuant to Paragraph 46.

B. Applicant is awarded a vested right to 227 acre-feet of groundwater from the not-nontributary Arapahoe aquifer underlying Applicant's Property, as quantified in Paragraph 18 or as modified by the Court under its retained jurisdiction. Of this total amount, 150 acre-feet may be pumped pursuant to the plan for augmentation decreed herein. The remaining 77 acre-feet shall not be withdrawn for any purpose except pursuant to a separate court-approved plan for augmentation authorizing the pumping of such amount.

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C. Applicants are awarded a vested right to 135 acre-feet of groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, as quantified in Paragraph 18 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 the entire 135 acre-feet awarded to be utilized only for replacement of post-pumping depletions under the plan for augmentation decreed herein, as described in Paragraph 26.D., above, Applicant's Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 22.

43. The Applicant has furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Denver Basin Groundwater, Approval of Plan for Augmentation, and Adjudication of Exempt Residential Well 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.

44. 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.

45. The J + M Well No. 2, and any replacement or additional wells, shall be operated such that pumping from the well does not exceed the annual (0.50 acre-feet) and total (150 acre-feet) pumping limits for the Arapahoe aquifer as decreed herein, and is 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 J + M Well No. 2 and any additional or replacement wells for this well shall be constructed on the Applicant's Property. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the J + M Well No. 2 or any additional and replacement wells so long as the return flows from the annual diversions associated with the J + M Well No. 2 and such other wells accrue to the stream system pursuant to the conditions contained herein. To the extent that the Applicant or one of its successors or assigns is ever unable to provide the replacement water required, then the J + M Well No. 2 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

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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, the depletions from 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 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 Arapahoe aquifer 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 22 or 26.A.

46. 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 46 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 47 and 48, 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 46 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, opposer, 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 46 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 46.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.

47. 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 26.D. The Court's retained jurisdiction described in this paragraph may be invoked using the process set forth in Paragraph 46.

48. Except as otherwise specifically provided in Paragraphs 46-47, 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 injury to vested water rights of others, for a period from the date of entry of this decree until five years following the date that Applicant begins operation of the plan for augmentation based on the subdivision of the Applicant's Property and withdrawal of water from the J + M Well No. 2. Applicant shall file a notice with the Court confirming the start of operations under the plan for augmentation within thirty-five (35) days of the start date. Any person, within the retained jurisdiction 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 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 the 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 petition concerning the subject of the Court's retained jurisdiction described in this Paragraph 48 is filed within the period described in this paragraph, and the retained jurisdiction period is not extended by the Court in accordance with the provisions of the statute, the matter described in this paragraph shall become final under its own terms.

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49. 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. Applicant is to install and maintain a totalizing flow meter on the J + M Wells Nos. 1 and 2 or any additional or replacement wells associated therewith and is required to include geophysical logging on each newly constructed well. Applicant shall read and record the well meter readings on March 31st and October 31st of each year and shall submit the meter readings to the Water Commissioner by April 15th and November 15th of each year, or more frequently as requested by the Water Commissioner.

50. 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 J + M Well No. 2 shall be permitted as a non-exempt structure under the plan for augmentation decreed herein, which plan shall be implemented upon the construction and use of the J + M Well No. 2. 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.

51. J + M Well No. 1 is an exempt structure and may be used for one of the two lots of the subdivision described herein, and its use does not need to be augmented.

52. 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. Copies of this ruling shall be mailed as provided by statute.

DATED: October 23, 2024.

BY THE REFEREE:



Kate Brewer, Water Referee
 Water Division 2



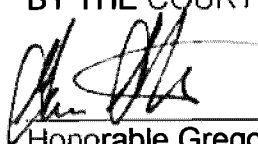
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DECREE

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 3, 2024.

BY THE COURT:



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



EXHIBIT B to Decree
23CW3045
Application of
J + M Investments, LLC

Steve Schleiker
08/25/2023 10:28:45 AM
Doc \$0.00
Rec \$13.00

El Paso County, CO

DATE FILED
October 16, 2024 10:43 AM



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SUBDIVISION/CONDOMINIUM PLAT

Reception Number Date Time

Reception Fee Number of Pages File Number

Kettle Creek Estates

Name of Plat

J+M Investments LLC, Mark Shern Powers, Mary Suzette Powers

Owner's Name

Subdivision

Condominium

