

DISTRICT COURT, WATER DIVISION 2, STATE OF COLORADO Court Address: 501 N. Elizabeth Street Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	DATE FILED: June 25, 2020 1:54 PM CASE NUMBER: 2019CW3079 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MICHAEL B. CROWE and ROBERT T. CROWE IN EL PASO COUNTY	Case No.: 19CW3079 (consolidated with Division 1 Case No. 19CW3238 pursuant to Order of Panel on Multi-District Litigation 20MD4)
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE ADJUDICATING DENVER BASIN GROUNDWATER AND APPROVING PLAN FOR AUGMENTATION	

THIS MATTER comes before the Water Referee on the Application filed by Michael B. Crowe and Robert T. Crowe, and having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Water Referee makes the following findings and orders:

GENERAL FINDINGS OF FACT

1. The Applicants in this case are Michael B. Crowe and Robert T. Crowe, whose address is 15980 Roller Coaster Road, Colorado Springs, CO 80921("Applicant"). The Applicants are the owners of the land totaling approximately 20.0 acres on which the structures sought to be adjudicated herein are located, and are the owners of the place of use where the water will be put to beneficial use.

2. The Applicants filed this Application with the Water Courts for both Water Divisions 1 and 2 on December 19, 2019. The Application was referred to the Water Referees in both Divisions 1 and 2 on or about December 20, 2019.

3. The time for filing statements of opposition to the Application expired on the last day of February 2020. No Statement of Opposition was filed.

4. A Motion for Consolidation of the Division 1 and Division 2 cases into Water Division 2 was filed with the Colorado Supreme Court on March 3, 2020. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on March 12, 2020. Chief Justice, Nathan B. Coats, granted the Motion for Consolidation by Order dated April 3, 2020.

5. On December 20, 2019, the Division 1 Water Court, on Motion from Applicant, ordered that consolidated publication be made by only Division 2. On

December 27, 2019, the Water Court, Division 2 ordered that publication occur in *The Transcript* within El Paso County.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On January 21, 2020, proof of publication in *The Transcript* was filed with Water Court Division 2. All notices of the Application have been given in the manner required by law.

7. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each aquifer with this Court on January 23, 2020, which have been considered by the Court in the entry of this Ruling and Decree.

8. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division No. 2 filed its Consultation Report dated April 15, 2020, and a Response to the Consultation Report was filed by the Applicants on May 27, 2020. 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 Applicants requested the adjudication of underground water rights for the existing Crowe Well No. 1, as is constructed to the Dawson aquifer, 2408 feet from the South Section Line, 1967 feet from the West Section Line, and up to three wells to be constructed to the Dawson aquifer, for a total of up to four wells, and additional or replacement wells associated therewith, for withdrawal of Applicants' full entitlements of supply under the plan for augmentation decreed herein. Applicants also requested quantification and adjudication of water uses from the Denver, Arapahoe, and Laramie-Fox Hills aquifers. The following findings are made with respect to such underground water rights:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicants and consists of approximately 20.0 acres located in the N½ NE¼ SW¼ of Section 28, Township 11 South, Range 66 West of the 6th.P.M., in El Paso County, Colorado, also known as 15980 Roller Coaster Road, Colorado Springs, CO 80921 ("Applicants' Property"). Applicants intend to subdivide the property into up to four (4) lots of +/- 5 acres each. All groundwater adjudicated herein shall be withdrawn from the overlying land unless there is a further order of this court allowing otherwise.

12. In accordance with the notice requirements of C.R.S. §37-92-302, lienholders of the Applicants' property were sent a Letter of Notice dated December 27,

2019. A Certificate of Notice was filed with the District Court, Water Division 2, on January 3, 2020.

13. Crowe Wells Nos. 1 through 4: Crowe Wells Nos. 1 through 4 are and will be located on the Applicants' property. Applicants are awarded the vested right to use Crowe Wells Nos. 1 through 4, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein. Upon entry of this decree and submittal by the Applicants of complete well permit applications and filing fees, the State Engineer shall issue a revised permit for the existing Crowe Well No. 1, and new permits for Crowe Wells Nos. 2 through 4 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 Applicants' Property. The Dawson, Denver, and Arapahoe aquifers underlying the Applicants' Property contain not-nontributary water, while the water of the Laramie-Fox Hills aquifers underlying the Applicants' Property is nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicants' 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)
Dawson (NNT)	301	12.0	4.0	1200
Denver (NNT)	535.9	18.2	6.1	1820
Arapahoe (NNT)	235	7.99	2.6	799
Laramie-Fox Hills (NT)	191	5.73	1.9	573

15. Pursuant to C.R.S. §37-90-137(9)(c.5)(I), the augmentation requirements for wells in the Dawson aquifer require the replacement to the effected stream systems of actual stream depletions on an annual basis, to the extent necessary to prevent injurious effect, based upon actual aquifer conditions. Applicants shall not be entitled to construct a well or use water from the not-nontributary Dawson, 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 Dawson aquifer.

16. Subject to the augmentation requirements described in Paragraph 21 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 Applicants' Property. Said amounts can be withdrawn over the 300-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 Applicants' water needs provided withdrawals during such longer period are in compliance with the augmentation requirements of this decree. The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, based upon the 300-year aquifer life is determined and set forth above, based upon the January 23, 2020 Office of the State Engineer Determination of Facts.

17. Applicants shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicants' 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 average annual volume of water which Applicants are entitled to withdraw from each of the aquifers underlying Applicants' Property, subject to the requirement that such banking and excess withdrawals do not violate the terms and conditions of the plan for augmentation decreed herein and any other plan for augmentation decreed by the Court that authorizes withdrawal of the Denver Basin groundwater decreed herein.

18. Subject to the terms and conditions in the plan for augmentation decreed herein and final approval by the State Engineer's Office pursuant to the issuance of well permits in accordance with C.R.S. §§37-90-137(4) or 37-90-137(10), the Applicants shall have the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation, stock water, recreation, wildlife, wetlands, fire protection, and also for storage and augmentation purposes associated with such uses. The amount of groundwater decreed for such uses upon the Applicants' Property is reasonable as such uses are to be made for the long-term use and enjoyment of the Applicants' Property and is to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume two percent of such nontributary water withdrawn. 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 wells or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

19. Withdrawals of groundwater available from the nontributary aquifers beneath the Applicants' Property in the amounts determined in accordance with the provisions of this decree will not result in material injury to any other vested water rights or to any other owners or users of water.

PLAN FOR AUGMENTATION

20. The structures to be augmented are the Crowe Wells Nos. 1 through 4, existing, and as may be constructed to the not-nontributary Dawson aquifer underlying the Applicants' 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 the Crowe Wells Nos. 1 through 4, 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 Crowe Wells Nos. 1 through 4 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 Applicants' nontributary water rights in the Laramie-Fox Hills aquifer. Applicants shall provide for the augmentation of stream depletions caused by pumping the Crowe Wells Nos. 1 through 4 as approved herein. Water use criteria as follows:

A. Use: The Crowe Wells Nos. 1 through 4 may pump up to 0.53 acre-feet, for a total of 2.12 acre feet being withdrawn from the Dawson aquifer annually, though should fewer than four lots be developed on Applicant's Property, each well thereon shall be entitled to withdraw its proportional share of the total 2.12 acre feet available. If only three lots are developed, then the Crowe Wells Nos. 1 through 3 are each entitled to pump up to 0.7 acre-feet per lot. However, if only two lots are developed, then pumping will be limited to a maximum of 1.53 acre-feet, or 0.77 acre-feet per lot. Household use will utilize an estimated 0.20 acre feet of water per year per residence, assuming four residences, with remaining pumping entitlements of 1.32 annual acre feet available for other uses on the property including, irrigation of lawn, greenhouse, and garden and the watering of up to four horses or equivalent livestock, per residence. The foregoing figures assume the use of four individual septic systems, with resulting return flows. Should Applicant subdivide Applicant's property into fewer than four lots, both depletions and return flows for the replacement of the same will be correspondingly reduced, though pumping for uses other than household use may be increased provided at all times septic return flows shall replace the maximum depletions resulting from pumping (23.41%) as described in this Paragraph 21.

B. Depletions: Maximum stream depletions over the 300-year pumping period will amount to approximately 23.41% of pumping. Maximum annual depletions for total residential pumping from four wells is therefore 0.496 acre feet in year 300. Should Applicant's pumping be less than the total 2.12 annual acre feet described herein, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream

depletions attributable to pumping of the Dawson aquifer wells. Applicant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At the household use rate of 0.20 acre feet per residence total of 0.80 acre feet (assuming four residences), 0.72 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Assuming three residences, at the household use rate of 0.20 acre feet per residence, for a total of 0.60 acre-feet, 0.54 acre-feet is replaced to the stream system per year. If only two lots are developed, then pumping will be limited to a maximum of 1.53 acre feet, and 0.36 acre-feet will be replaced to the stream system per year. Thus, during pumping, stream depletions 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. During the 300-year pumping period, approximately 128.166 acre-feet of return flows will replace depletions in time, place, and amount, requiring replacement of 507.84 acre-feet post-pumping depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Crowe Wells Nos. 1 through 4, Applicants will reserve the entirety of the nontributary Laramie Fox Hills aquifer, 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 Laramie-Fox Hills aquifer groundwater will be used to replace any injurious post-pumping depletions.

E. Permits: Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the existing Crowe Well No. 1, and new permits for the Crowe Wells Nos. 2 through 4 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

22. Because depletions occur to both the South Platte and Arkansas River systems under the State's groundwater flow model, the Application in this case was filed in both Water Divisions 1 and 2. The return flows set forth above as augmentation will accrue to only the Arkansas River system where most of the depletions will occur and where the Applicant's Property is located. Under this augmentation plan, the total amount of depletions will be replaced to the Arkansas system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan subject to Paragraphs 41-44 herein.

23. This decree, upon recording, shall constitute a covenant running with Applicants' 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 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, 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 Applicants' Property.

24. 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: (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 Applicants or their successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Crowe Wells Nos. 1 through 4 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 Applicants' 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 Applicants 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 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 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, injury to any owner of or person entitled to use water under a vested or conditional 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 Crowe Wells Nos. 1 through 4. As a result of the operation of this plan for augmentation, the depletions from the Crowe Wells Nos. 1 through 4 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 Applicants' 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 Applicants are entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicants' Property, and the right to use that water to the exclusion of all others subject to the terms of this decree.

32. The Applicants have 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. Applicants are 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 nontributary groundwater meet the requirements of Colorado Law.

34. The determination and quantification of the nontributary and 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 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 Crowe Wells Nos. 1 through 4 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 Applicants is approved, subject to the terms of this decree.

38. The Applicants have furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Groundwater and 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.

39. The Applicants 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. Applicants 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.

40. The Crowe Wells Nos. 1 through 4, and any replacement or additional wells, shall be operated such that combined pumping from all wells does not exceed the annual and total pumping limits for the Dawson 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 covered by the Crowe Wells Nos. 1 through 4 or any additional and replacement wells so long as the return flows from the annual diversions associated with the Crowe Wells Nos. 1 through 4 and such other wells 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 Crowe Wells Nos. 1 through 4 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 regulation of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein, as appropriate, shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

41. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristic, and that the Applicants need not refile, republish, or otherwise amend this 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 21.D.

A. At such time as adequate data may be available, Applicants 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 party 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, Applicants, 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 the 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 party to this case 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 Applicants' replacement water. If the Court finds that those facts are established, the Applicants 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 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.

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 five years, except as otherwise provided herein. Any party to this case, within such period, may petition the Court to

invoke its retained jurisdiction. Any party 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: (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 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 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 Applicants 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. Applicants are to install and maintain a totalizing flow meters on the Crowe Wells Nos. 1 through 4 or any additional or replacement wells associated therewith.

47. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses which can be made of the groundwater to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the well permit application or which would be inconsistent with the requirements of this decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

48. This Ruling of Referee, when entered as a decree of the Water Court, shall be recorded in the real property records of El Paso County, Colorado. Copies of this ruling shall be mailed as provided by statute.

DATED THIS 3rd day of June, 2020.

BY THE COURT:



Kate Brewer 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: June 25, 2020

BY THE COURT:



LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2