

<p>DISTRICT COURT, WATER DIVISION 2, STATE OF COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>RANDALL O'LEARY, ANDREA O'LEARY, AND</p> <p>IN EL PASO COUNTY</p>	
<p><u>Attorneys for Applicant:</u> Ryan W. Farr, #39394 W. James Tilton, #50213 MONSON, CUMMINS, SHOHET & FARR, LLC 13511 Northgate Estates Drive, Suite 250 Colorado Springs, Colorado 80921 Phone Number: (719) 471-1212 E-mail: rwf@cowaterlaw.com wjt@cowaterlaw.com</p>	<p>Case No.: 22CW_____</p> <p>Ctrm.: 406</p>
<p style="text-align: center;">APPLICATION FOR ADJUDICATION OF DENVER BASIN GROUNDWATER AND FOR APPROVAL OF PLAN FOR AUGMENTATION</p>	

I. Name, Address, and Telephone Number of Co-Applicants.

Randall O'Leary and Andrea O'Leary ("Applicants")
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Colorado Springs, CO 80921
(719) 382-9433

Name, Address, and Telephone Number of Attorneys.

Ryan W Farr, #39394
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II. Summary of Application.

Applicants are seeking to quantify the Denver Basin groundwater underlying the Applicants' Property, as defined below, and approval of a plan for augmentation for the use of a not-nontributary Denver aquifer wells to serve a twenty-lot subdivision of the Applicants' Property.

III. Application for Underground Water Rights.

A. Property Information.

1. Property Description. Applicants own an approximately 213-acre property that is depicted on the attached **Exhibit A** map, located in the SE1/4 of Section 33 and the SW1/4 of Section 34, Township 11 South, Range 67 West of the 6th P.M., El Paso County, specifically described on the attached **Exhibit B**.

2. Existing Well. There is one existing well on the Applicants' Property for domestic use permitted under Colorado Division of Water Resources Permit No. 119564 ("O'Leary Well"). It is drilled to a depth of 545 feet to the Denver aquifer, and located 1,020 feet from the south section line and 2,320 feet from the east section line in the SW1/4 of the SE1/4 of Section 33, Township 11 South, Range 67 West of the 6th P.M. This well will be re-permitted to operate pursuant to the herein requested augmentation plan.

3. Proposed Well. Applicants propose the construction of nineteen additional wells to the Denver aquifer to supply water to the individual lots in addition to the O'Leary Well.

B. Water Source.

1. Not-Nontributary. The groundwater to be withdrawn from the Dawson and Denver aquifers underlying Applicants' Property is not-nontributary. Additionally, the Arapahoe aquifer underlying the portion of the Applicants' Property located in Section 34, Township 11 South, Range 67 West of the 6th P.M. ("NNT Arapahoe"). Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Dawson and Denver aquifers require the replacement of actual stream depletions. The requirement for wells in the NNT Arapahoe aquifer requires replacement of four percent of the amount of water withdrawn on an annual basis.

2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicants' Property is nontributary. Additionally, the groundwater in the Arapahoe aquifer underlying the Applicants' Property in Section 33, Township 11 South, Range 67 West of the 6th P.M. is nontributary ("NT Arapahoe").

C. Estimated Rates of Withdrawal and Ground Water Available.

1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 200 g.p.m. per well. The actual pumping rates for the wells will vary according to aquifer conditions and well production capabilities. Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of any wells to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

2. Estimated Average Annual Amounts of Ground Water Available. Applicants request a vested right for the withdrawal of all legally available groundwater in the Denver Basin aquifers underlying Applicants' Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code § 8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to § 37-90-137(4), C.R.S. Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	54	89	8.9	n/a
Denver (NNT)	238	8,630	86.3	28.77
Arapahoe (NNT)	338	7,550	75.5	n/a
Arapahoe (NT)	329	4,560	45.6	n/a
Laramie-Fox Hills (NT)	182	5,810	58.1	n/a

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer.

D. Requested Uses. Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic within a single-family dwelling and guest house, structure and equipment washing, hot tub, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses. Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the requirement of § 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, that Applicants shall only be entitled to construct wells or use water from the not-nontributary Dawson, Denver, and NNT Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with § 37-90-137(9)(c.5), C.R.S.

E. Well Fields. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field and waive any 600-foot spacing requirements.

F. Averaging of Withdrawals. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in 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 a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property.

G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are to be located as well as the underlying groundwater is owned by the Applicants.

IV. Application for Plan for Augmentation.

A. Structures to be Augmented. The structures to be augmented are an existing Denver aquifer well constructed on the Applicants' Property and nineteen additional Denver aquifer wells to be constructed to serve the other nineteen lots, along with any replacement or additional wells as needed that are constructed to the Denver aquifer underlying the Applicants' Property ("O'Leary Wells").

B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Denver aquifer wells, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post-pumping depletions.

C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Denver aquifer.

1. Uses. Pumping from the Denver aquifer will be a maximum of 17.08 acre-feet of water per year combined for twenty wells, with each well pumping a maximum of 0.854 acre-feet per year. Such uses shall be for domestic within a single-family

dwelling and guest house, structure and equipment washing, hot tub, irrigation, commercial, stock water, recreation, wildlife, fire protection, and also for storage and augmentation purposes associated with such uses.

2. Depletions. Applicants' consultant has determined that maximum stream depletions over the 300-year pumping period for the Denver aquifer amounts to approximately 29.6% of pumping. Maximum annual depletions are therefore 5.06 acre-feet in year 300. Should annual pumping be less than the 17.08 acre-feet total described herein, resulting depletions and required replacements will be correspondingly reduced.

3. Augmentation of Depletions During Pumping. Applicants' consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for a non-evaporative septic system is 10% per year. Therefore, at an in-house use rate of 0.30 acre-feet per year from a single-family dwelling and guest house, replacement amounts to 5.40 acre-feet to the stream system annually. Thus, during pumping, stream depletion replacement requirements will be met.

4. Augmentation for Post Pumping Depletions. For the replacement of post-pumping depletions which may be associated with the use of the O'Leary Wells, Applicants will reserve 4,255 acre-feet of the Laramie-Fox Hills aquifer, accounting for during-pumping replacement credit. 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 any decree. If the Court, by order, reduces the Applicants' 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. Applicants also reserve 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, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. 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.

V. Remarks.

A. Applicants request a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S.

B. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan

pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping.

C. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes.

D. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation.

E. All wells shall be installed and metered as reasonably required by the State Engineer. The well will be equipped with a totalizing flow meter and Applicants, or their successors and assigns, shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. Applicants, or their successors and assigns, shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation.

F. Applicants will comply with any lienholder notice provisions set forth in §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), C.R.S., and such notice will be sent within 14 days of the filing of this application.

RESPECTFULLY SUBMITTED this ____ day of December, 2022.

MONSON, CUMMINS & SHOHET, LLC

*(E-filed pursuant to C.R.C.P. 121 §1-26 via Colorado Courts E-Filing Service
A printed or printable copy of this document bearing the original, electronic,
or scanned signature is on file at the offices of Monson, Cummins & Shohet,
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