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El Paso County Clerk & Recorder: Index in Grantee Indexes under Ivilo Subdivision, and under Grantor as Pawel Posorski

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS OF USE FOR THE IVILO SUBDIVISION

THIS DECLARATION, is made and entered into as of the date shown below, by Pawel Posorski ("Declarant"), his successors, and assigns.

WITNESSETH:

WHEREAS, Declarant is the sole owner of real property more particularly described as:

> That portion of the North Half of Section 6 in Township 12 South, Range 65 West of the 6th Principal Meridian, El Paso County, Colorado described as follows:
>
> Beginning at a point that is S 00°27'18" E 1400.36 feet and N 89°55'58" W 2038.83 feet from the Northeast Corner of the North Half of said Section 6; thence S 00°26'10" E 1086.04 feet to a found 5/8" rebar; thence N 89°50'38" W 697.38 feet to a found 1/2" rebar; thence N 01°09'00" W 307.34 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence N 03°25'41" E 318.10 feet to the South Line of the Eric F. and Carol A. Morrow tract recorded in the El Paso County Clerk and Recorder's Office, Reception No. 20112554, and a found 3/4" iron pipe; thence S 88°40'09" E 303.22 feet to the Southeast Corner of the said Morrow tract and a found 3/4" pipe; thence N 02°10'23" W 467.62 feet to the Northeast Corner of the said Morrow tract and a found 3/4" pipe; thence S 89°51'34" E 390.85 feet to the point of beginning, containing 14.0 acres.
>
> Subject to easements and restrictions of record.

to be platted as:

Lots 1-3, inclusive, Ivilo Subdivision, County of El Paso,
State of Colorado

(each of Lots 1 through 3, hereinafter referred to as a "Lot"), generally known as the Ivilo Subdivision ("Subdivision" or "Property").

WHEREAS, Declarant desires to submit the property to the limited covenants, terms, and conditions hereof, the Subdivision's quality residential living environment, to protect its desirability, attractiveness, and value,

WHEREAS, Declarant hereby declares that all of the Subdivision as herein defined, with all appurtenances, facilities, and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions of this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

WHEREAS, by acceptance of a deed to the Property, each successor shall be deemed to have agreed, submitted to, and subordinated all rights to the provisions of this Declaration;

WHEREAS, Declarant further declares that pursuant to C.R.S. § 38-33.3-103(8), the Subdivision is not a Common Interest Community Subject to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act (hereinafter called "CCIOA"), because the Declaration does not require by virtue of such person's ownership of property within the Subdivision, payment of real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. See C.R.S. § 38-33.3-103(8) (2021).

NOW, THEREFORE, the Declarant hereby declares as follows:

I. DESIGNATION OF USE.

All Lots shall be known and described as residential lots and shall not be improved, used or developed for more than one single-family dwelling on each such Lot. No full-time or part-time business activity may be conducted on any Lot or in any dwelling or structure constructed or maintained on any Lot except those activities permitted under the terms of the zoning ordinance of El Paso County. No portion of the Lot, including any outbuilding or accessory living quarters, may be leased or rented separately from the primary dwelling. No lease or rental shall be permitted for an initial term less than thirty (30) days.

II. BUILDING RESTRICTIONS AND REQUIREMENTS.

A. No building or structure shall be constructed, altered, or maintained on any Building Lot other than one detached single-family dwelling with an attached private garage, one outbuilding (being an enclosed, covered structure other than a dwelling or attached garage, such as a barn or garden shed, which may contain accessory living quarters), and such other structures customarily incidental and subordinate to a single-family home.

B. No building or structure of any kind shall be moved onto any Lot.

C. The construction of any building or structure on any Lot shall be performed utilizing on-site "stick-built" construction methods and procedures and not off-site modular or panelized construction.

D. All dwellings construction shall meet the following:

(1) One story dwellings must have not less than 3000 square feet of finished floor area.

(2) One and one-half story dwellings must have not less than 3500 square feet of finished floor area. This also applies to all split level and split entry dwellings.

(3) Two story dwellings must have not less than 4000 square feet of finished floor area.

(4) **In computation of finished floor area, the same shall not include porches, breezeways, attached or built-in garages, or finished basement areas.**

(5) All dwellings shall have at least a two-car attached garage.

(6) No less than six (6) inches[1] and no more than thirty (30) inches of concrete block or poured concrete foundation shall be exposed on any building, excepting the rear of a walkout basement type residence or of a daylight type residence, and any such exposed materials shall be painted or covered with brick or stone veneer.

(7) Pitched roof material shall be slate, tile, or composition shingles and may not be cedar shake. Flat roof materials shall be black or charcoal membrane. Composition shingles shall be architectural grade with a minimum of a twenty-five year warranty. Shingle colors shall be black,

[1] Less than six (6) inches of vertical clearance between ground and home siding shall be considered a fire hazard.

charcoal, or muted earth tones and be compatible with and complimentary to the exterior materials and colors. White or white blend roof shingles are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall closely match the colors of the surfaces to which they are attached.

(8) Decks attached to a single-family dwelling must be built from cedar, redwood, treated lumber, composite decking material, concrete, or natural stone. Unpainted wood decks are not acceptable as front entry porches. All steps to front porches must be cast in place concrete. No wood steps or precast concrete steps to front porches are permitted.

(9) The finished grades for single-family dwellings shall be established to permit positive drainage away from such dwelling and shall conform to the as-built grades on file with the County unless changes to such as-built grades are approved by the County.

(10) No house shall be erected on any Lot outside of the building setback lines as shown on the recorded Plat.

(11) No new house, additional dwelling unit, outbuilding, structure, addition thereto, or other improvement shall be placed so as to directly obstruct all or any substantial portion of the existing view plane of or sightline to Pikes Peak as measured from the sightline of a six-foot tall human located anywhere in or upon a prior existing primary dwelling belonging to any other Lot.

E. No Lot shall be subdivided so as to be reduced in size to be less than the greater of (a) the minimum lot size required under the applicable zoning ordinance of the City, or (b) 95% of the original platted Lot, unless all portions of such subdivided Lot are added to and made part of an adjacent Lot.

F. All structures built in the plat shall be of modern architectural style and shall not be predominantly colonial, adobe, or log style.

G. The use of natural materials is encouraged, i.e. stained wood, stone, brick, as well as soft/muted earth tones and neutral colors (black, brown, grey, white). No house shall be painted in bright colors (for example, and not by way of limitation, orange, purple, mint green, bright blue, yellow, or other colors that cannot be characterized as neutral or earth tone).

H. All fence construction shall meet the following:

(1) No fence shall be built within two (2) feet of any shared access drive.

(2) No fence shall be built within eight (8) feet of any Lot boundary which forms a part of the boundary of the Subdivision.

(3) No fence shall be built to a height greater than six (6) feet.

(4) No fence shall be built forward of the centering line of the house built on a Lot.

(5) Unless otherwise specified, all fence material shall be natural in color, stained or painted in soft earth tone colors so as to blend in with the terrain.

(6) The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing.

(7) All fences shall be kept in good repair.

(8) All fences shall be wood split rail, vinyl split rail, or post-and-wire with wire or black chain link between wood posts.

(9) All fencing of boundaries between Subdivision Lots and any fencing visible from the common access off Vessey road shall be wood split rail.

(10) Green steel T-posts shall be allowed in lieu of wood posts for perimeter fencing along a Lot boundary which forms a part of the boundary of the Subdivision.

(11) Notwithstanding all of the foregoing, precast concrete fence panels not more than six feet in height in a brick, stone, stucco, or other architectural pattern shall be permitted: on Lot 1 along the boundary of Vessey Road and either side of the shared access drive; and on any Lot along a Lot boundary which forms a part of the boundary of the Subdivision.

I. No satellite dish or parabolic device used to receive television signals from satellites shall be located on any Lot unless it meets the following requirements:

(1) It shall not be mounted on a trailer or other temporary or portable device, but shall be permanently installed pursuant to this Declaration;

(2) If at all possible, it shall be located so that no part of the dish is in front of the home it serves;

(3) It shall not exceed two feet in diameter;

(4) It shall be black or gray in color.

J. No exterior towers or antennas of any kind shall be constructed or permitted on the ground of any Lot. Reasonable television or radio antennas are permitted on the residential dwelling or garage.

K. To prevent light pollution, no light poles shall be used or placed upon any Lot that extend more than 10 feet above grade. All light poles shall be of residential design. All light poles, external security lighting and external decorative lighting shall be located, positioned and directed so that the light shines on the Lot on which the light is constructed and does not provide direct lighting or measurable indirect lighting onto adjoining Lots and does not constitute a nuisance to wildlife or any adjoining property Owner.

L. All utility connection facilities and services shall be underground. Utility meters shall be hidden architecturally or through the use of remote reading devices.

M. No trash receptacles or garbage cans shall be permitted to be placed on a Lot outside a dwelling, garage or Outbuilding unless hidden by an attractive screen or landscaping of suitable height and density and shall not be located closer than twenty (20) feet from any Lot boundary. However, unscreened trash in proper containers and/or bags shall be allowed to be placed on a Lot outside a dwelling, garage or Outbuilding at the place designate for trash pickup no earlier than the evening prior to a scheduled pick up of such trash. Such unscreened trash containers must be returned to the screened area, or inside a dwelling, garage or Outbuilding, within twelve (12) hours following the scheduled pick up of such trash.

N. Firewood shall not be stored on the front or side of a house. No more than one stack of firewood is allowed, which shall not be in excess of ten (10) feet long by three (3) feet high and must be stacked in the rear yard and at least twenty (20) feet from any side or rear lot line. No material of any kind whatsoever may be stored in the front yard or side yard of a dwelling, except that garden hoses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel. No material may be stored in a rear yard unless appropriately covered or screened from view by neighbors.

O. All swimming pools and hot tubs shall be located only in rear yards and screened by a privacy fence or hedge, and all outdoor hot tubs must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed.

P. No foil or other reflective materials visible from outside the house shall be used on any windows or on any sunscreens, blinds, shades or for any other purpose.

Q. All buildings, structures or improvements of any kind must be completed within twenty-four (24) months of the commencement date of construction.

R. Solar or renewable energy devices shall be placed to the rear of the dwelling in such location as to be shielded from view of other Lots and from the common

access off Vessey Road. Wind devices shall further be located, shielded, or installed as to be inaudible from other Lots. The effect of this section shall be limited to the maximum restriction allowable by the requirements of C.R.S. § 38-30-168 (2023) or such similar law as may be in place from time to time.

III. DRIVEWAYS.

All dwellings shall have an asphalt blacktop, portland cement concrete, brick paver, concrete paver, or other non-gravel finished surface driveway not less than 17 feet in width and running from the right-of-way or public road access to the garage. All driveways shall provide off street parking for at least two vehicles outside of the garage.

IV. TEMPORARY STRUCTURES; RECREATIONAL VEHICLES AND WORK EQUIPMENT.

No temporary building or structure shall be built or maintained on any Lot. No camper, motor home, watercraft, boat, trailer, unfinished dwelling, tent, shack, garage, or outbuilding shall be used at any time as a dwelling.

No vehicle with a gross vehicle weight greater than 7,000 pounds, and no camper, motor home, watercraft, boat, snowmobile, trailer, work van, work truck or mechanical equipment or similar property (hereafter referred to as "Recreational Vehicles and Work Equipment") may be parked or maintained on any Lot (except inside a garage) for more than thirty (30) consecutive days at any time or for more than thirty (30) days in aggregate during any calendar year, unless: located within a garage or outbuilding, parked in a side yard on a driveway extension and completely screened from view at ground level from other Lots by shrubbery (with or without leaves) or opaque fencing (otherwise in compliance with these covenants) which provide no gaps through which the object being screened can be seen; provided that this restriction shall not apply to what are customarily considered sport utility vehicles, passenger vans or "conversion vans," or to trucks, equipment or trailers used in connection with and during the construction or rebuilding of a dwelling or outbuilding on any Lot. At no time may any non-functioning, disabled, "junk" or unregistered Recreational Vehicles and Work Equipment, automobile, motorcycle, or other vehicle be parked or maintained in the yard of any Lot. At no time shall any Recreational Vehicles or Work Equipment, automobile, motorcycle, or other vehicle be disassembled, repaired or serviced on any Lot, except inside a garage or dwelling.

V. CERTAIN ANIMALS PROHIBITED.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that:

A. Dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes. In no event, however,

shall more than a total of five (5) dogs and/or cats be kept at any one Lot at any one time.

B. Livestock not exceeding 2.0 livestock units in aggregate may be kept on a Lot as selected from of the below categories shall be permitted if not kept for commercial purposes and if fenced and enclosed by fences and enclosures otherwise in compliance with the Declaration:

(1) Each poultry bird (excepting rooster chickens, which are not allowed) = .1 unit

(2) Each Honeybee hive or colony - 0.1 unit

VI. FIRE MITIGATION, WEED, RUBBISH, AND DEBRIS CONTROL AND MAINTENANCE

The Owner of each Lot shall be responsible to maintain the exterior of any dwelling, the driveway, fence, screening and all other improvements.

The Owner of each Lot, whether vacant or improved, shall keep the Lot free from dead, dying, diseased, or stressed trees, especially beetle kill, and shall keep the ground free from buildup of pine needles, pine cones, leaves, mulch, brush, rubbish, weeds, and debris.

Each owner of each Lot shall keep the lawn and landscaping well maintained and healthy, including (but not limited to) the following minimum maintenance standards: a fire break zone of five (5) feet around each dwelling free from all vegetation and flammable cover, e.g. wood mulch; mowing all grass and weeds within 30 feet of the dwelling to a height of 4 inches or less; mowing all grasses at least annually; and promptly removing all debris, yard waste, clippings, slash to off-site disposal.

The Owner of each Lot shall remedy a violation of this provision within ten (10) days after such Owner receives written notice given by certified mail, receipt return request, or delivered in person, from the Owner of any other Lot. If not cured within said ten (10) day period, then the person giving such notice shall have the right and easement to enter upon the premises and mow or cut the grass or weeds or remove the offending debris or otherwise cure the violation at the expense of the Owner of the Lot where such grass or weeds were not so mowed or where such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus reasonable costs, including reasonable attorney's fees, of collecting such amount, if it is not paid within three (3) days of demand for reimbursement, plus interest on all such amounts at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred until paid in

full, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the El Paso County Clerk and Recorder, until such amount, the reasonable costs of collection of the same, including, but not limited, to reasonable attorney's fees and the costs of filing such lien and any release of such lien upon payment, together with interest thereon at the rates stated in this section above, that are incurred by the lienholder, are paid in full.

VII. AMENDMENT

This document may be subsequently amended by written agreement of the owners of not less than 67% of the Lots.

VIII. ENFORCEMENT

This Declaration shall be deemed to run with the land, and the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Declaration to enjoin its violation or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs.

IN WITNESS WHEREOF, the Declarant has caused these Declarations to be executed this 2ND day of NOVEMBER, 2023.

By: _____
Pawel Posorski, Declarant

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Subscribed and sworn to before me this 2nd day of November 2023 by Pawel Posorski, as Declarant of the Ivilo Subdivison.

My commission expires: Aug. 23, 2026

Witness my hand and seal.

MIRANDA BENSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20224033144
MY COMMISSION EXPIRES AUGUST 23, 2026

Notary Public Miranda Benson

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PRIVATE ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

This Private Access and Utility Easement and Maintenance Agreement ("Easement") dated for reference this 2 day of November, ~~2022~~ 2023, is hereby reserved by Pawel Posorski ("Owner") as owner of

Lots 1-3, inclusive, Ivilo Subdivision, County of El Paso,
State of Colorado

(each of Lots 1 through 3, hereinafter referred to as a "Lot"). The Easement shall burden Lots 1, 2, and 3 (collectively, the "Servient Estate"), shall inure to the benefit of Lots 1, 2, and 3 (collectively, the "Dominant Estate"), and shall be located upon a portion of land located on the Servient Estate and more particularly described as follows:

[legal description for shared access drive area]

(the "Easement Area").

1. Reservation of Easement. This Easement is hereby reserved of record and shall become fully in force automatically upon severance of the unity of title in the Owner by the recording of any deed in the real estate records of El Paso County, Colorado transferring any ownership interest in any Lot. Any deed or other transfer of ownership shall be made subject to this reserved easement of record, without the necessity of further reservation or explicit incorporation to such future instrument. By acceptance of a deed to or interest in all or any portion of a Lot, each grantee and successor shall be deemed to have agreed, submitted to, and subordinated all rights to the provisions of this Easement.

2. Easement Appurtenant. The benefits and burdens of this Easement shall be appurtenant to the Dominant Estate and Servient Estate and shall "run with the land." References herein to owners shall include any owner of any Lot, together with the owner's grantees, heirs, lessees, agents, successors, guests, licensees, transferees, and assigns.

3. Purpose of the Easement. The Easement shall be solely for the location of a temporary and final Shared Access Drive and ingress, egress, access, utilities, overland flowage, and drainage over the same. Rights of the Dominant Estate shall be limited in scope and volume to those customarily associated with private residential use and occupancy and such uses as may be necessary and incidental thereto.

4. Terms of Use and Prohibitions. Subject to the terms of the Easement, the owner of the Servient Estate shall have full use and occupancy of the Easement Area.

    a. Unusual Use or Abuse. No owner shall cause unusual use or abuse of the improvements within the Easement Area. Notwithstanding the fact permissible residential use of the Shared Access Drive may necessitate occasional incidental traffic by agricultural vehicles, commercial vehicles, construction vehicles, utility vehicles, delivery vehicles, and any other vehicles over 6,000 pounds gross vehicle weight ("Heavy Traffic"), any damage to the improvements within the Easement Area resulting from Heavy Traffic shall constitute unusual use for the purposes of cost allocations.

    b. Impediments. No owner shall construct or permit fences or other obstructions, including trees, landscaping, vegetative growth, or parked vehicles, on the Easement Area in a manner which would prevent or unreasonably impede permissible uses of the Easement Area.

    c. No Grading. After construction of the final paved Shared Access Drive, no owner shall change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written unanimous consent of the owners of other Lots.

    d. Non Exclusive Use. Nothing in this Easement shall be construed to confer any exclusive rights of use or possession.

5. Initial Construction. The Lot owners shall be individually responsible for clearing existing vegetation from the Easement Area and conducting any initial grading and graveling necessary for temporary vehicular access to their Lot. The responsibility and cost of such initial construction and clearing shall be borne by the Lot owner seeking to create such initial access. Upon issuance of a certificate of occupancy for a dwelling on both Lot 2 and 3, the Administrator shall cause the final shared access drive (the "Shared Access Drive") to be constructed, which shall be a minimum of seventeen feet (17') wide and constructed of blacktop or concrete pavement with sand or gravel underlayment, with graded entry

points to intersecting private drives, and which shall otherwise meet the standards set forth herein.

6. Maintenance Standards. The Shared Access Drive shall, at a minimum, meet current county standards for gravel or paved private roads, as applicable, and shall continue from Vessey Road through the Easement Area such distance as necessary to meet the driveway serving the primary dwelling on each Lot. The Shared Access Drive will, at all times, be kept in passable condition without potholes, sinkholes, obstructions, or other unstable or unpassable conditions, and otherwise in all respects in a condition to enable the Owners and emergency vehicles to use the Easement Area for its intended purposes as set forth herein. "Maintenance" or "repair" includes, but is not limited to construction, paving or re-paving, draining, removing snow, clearing, grading, cleaning culverts, weed treatment, tree and debris removal, or providing any other maintenance or repair-type service, including replacement, however defined, on the Shared Access Drive, in order to meet the minimum standards set forth herein.

7. Maintenance Process. Decisions about maintenance shall be determined by the Administrator, and unless a majority of the Owners of Lots shall otherwise agree, the Administrator shall be the Owner of Lot 1. The Administrator shall arrange for final construction of the paved Shared Access Drive and any subsequent maintenance and repair. The Administrator shall either (i) pay for such maintenance directly and be reimbursed by each Lot owner according to each Lot's proportionate share; (ii) arrange to have each Lot owner directly pay the proportionate cost of such maintenance; (iii) require periodic payments into a fund to be held in trust and used for such maintenance; or (iv) use some combination of the foregoing. To the extent the Administrator pays for any Lot's share, the Administrator shall have a lien on each such Lot until such Lot's share is paid in full with interest accruing on any unpaid amount at the rate of 10% per annum simple interest and the Administrator shall be entitled to recover the costs of enforcing such lien and collecting such amount, including reasonable legal fees, expert witness fees and costs. The Administrator may refuse to order such maintenance until there is, in the Administrator's opinion, sufficient commitment or actual payment to reimburse the Administrator and pay for such maintenance.

8. Sharing Maintenance Costs. The cost and expense of constructing, maintaining in good operating condition, repairing, and replacing the improvements within the Easement Area shall be shared by the Lots and their respective owners upon the following terms. All costs shall be allocated among the Lots according to the following proportions:
    a. For the cost of initial construction of the temporary access drive, one hundred percent (100%) to the Lot seeking new access.
    b. The cost of any maintenance, repair, or replacement of any improvement caused by unusual use or abuse: 100% to the Lot whose owner occasioned such unusual use or abuse.
    c. For the cost of initial construction of the permanent Shared Access Drive and ALL other costs:

i. Lot 1: Twenty Percent (20%);
ii. Lot 2: Forty Percent (40%); and
iii. Lot 3: Forty Percent (40%).

9. Binding Agreement. The agreement for granting the Easement and for the maintenance of the Shared Access Drive on the Easement Area shall be binding upon the relevant Owners, and their respective successors, assigns, and personal representatives.

10. Amendment/Termination. This Agreement may not be amended or revoked without the written unanimous consent of the Owners of all Lots and of El Paso County.

11. Enforcement. This Easement shall be deemed to run with the land, and the Owner of any Lot may bring an action in any court of competent jurisdiction to enforce this Easement, to enjoin its violation, or for damages for the breach thereof, or for any other remedy or combination of remedies recognized at law or in equity, and shall further be entitled to recover reasonable legal fees and costs.

Owner:

Pawel Posorski

MIRANDA BENSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20224033144
MY COMMISSION EXPIRES AUGUST 23, 2026

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

This instrument was acknowledged before me on Nov. 2nd, 2023, by Pawel Posorski.

[Seal]

Miranda Benson
_____, Notary Public
My commission expires: Aug. 23, 2026

MS-22-8

El Paso County Clerk & Recorder: Index in Grantee Indexes under Ivilo Subdivision, and under Grantor as Pawel Posorski

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS OF USE AND WATER FOR THE IVILO SUBDIVISION

THIS DECLARATION, is made and entered into as of the date shown below, by Pawel Posorski ("Declarant"), his successors, and assigns.

WITNESSETH:

WHEREAS, Declarant is the sole owner of real property more particularly described as:

> Beginning at a point that is S 00°27'18" E 1400.36 feet and N 89°55'58" W 2038.83 feet from the Northeast Corner of the North Half of said Section 6; thence S 00°26'10" E 1086.04 feet to a found 5/8" rebar; thence N 89°50'38" W 697.38 feet to a found ½" rebar; thence N 01°09'00" W 307.34 feet to a found ½" rebar with Surveyor's Cap, P.L.S. #37631; thence N 03°25'41" E 318.10 feet to the South Line of the Eric F. and Carol A. Morrow tract recorded in the El Paso County Clerk and Recorder's Office, Reception No. 20112554, and a found ¾" iron pipe; thence S 88°40'09" E 303.22 feet to the Southeast Corner of the said Morrow tract and a found ¾" pipe; thence N 02°10'23" W 467.62 feet to the Northeast Corner of the said Morrow tract and a found ¾" pipe; thence S 89°51'34" E 390.85 feet to the point of beginning, containing 14.0 acres. Subject to easements and restrictions of record.

to be platted as:

> Lots 1-3, inclusive, Ivilo Subdivision, County of El Paso, State of Colorado

(each of Lots 1 through 3, hereinafter referred to as a "Lot") as depicted on the **Exhibit A** draft Plat, attached hereto and incorporated by this reference, generally known as the Ivilo Subdivision ("Subdivision" or "Property").

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WHEREAS, Declarant desires to submit the property to the limited covenants, terms, and conditions hereof, the Subdivision's quality residential living environment, to protect its desirability, attractiveness, and value, and to ensure compliance with all applicable groundwater determinations concerning water and water rights to be utilized within the Subdivision.

WHEREAS, Declarant hereby declares that all of the Subdivision as herein defined, with all appurtenances, facilities, and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions of this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and for assurance of legal water usage, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

WHEREAS, by acceptance of a deed to the Property, each successor shall be deemed to have agreed, submitted to, and subordinated all rights to the provisions of this Declaration;

WHEREAS, Declarant further declares that pursuant to C.R.S. § 38-33.3-103(8), the Subdivision is not a Common Interest Community Subject to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act (hereinafter called "**CCIOA**"), because the Declaration does not require by virtue of such person's ownership of property within the Subdivision, payment of real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. See C.R.S. § 38-33.3-103(8) (2021).

WHEREAS, certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception numbers noted below, and referred to in this Declaration as pertaining to the Subdivision. These include:

- Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court dated November 19, 2018, as recorded November 20, 2018, at Reception No. 218134502

- Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Approving Plan for Augmentation, dated March 15, 2022, as recorded on March 15, 2022 at Reception No. 222037346

all attached hereto as **Exhibit B**.

NOW, THEREFORE, the following Declarations of Water Covenants are made:

1. Water Decree and Augmentation Plan.

A. Decree/Summary. The subdivision shall be subject to the obligations and requirements set forth in in Case No. 18CW3035, the Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court dated November 19, 2018, as recorded November 20, 2018, at Reception No. 218134502 as amended and supplemented in Case No. 21CW3048, by the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Approving Plan for Augmentation, dated March 15, 2022, as recorded on March 15, 2022 at Reception No. 222037346 of the El Paso County Clerk and Recorder, which is incorporated by reference (together, the "Augmentation Plan"). The Augmentation Plan concerns the water rights and water supply for the Ivilo Subdivision and creates obligations upon the Ivilo Subdivision and the Lot owners, which run with the land. The water supply for the Ivilo Subdivision shall be by individual wells to the not-nontributary Dawson aquifer under the Augmentation Plan. The Augmentation Plan contemplates that each Lot owner will be responsible for obtaining a permit from the Colorado Division of Water Resources and drilling an individual well for water service to their residence and lot to the Dawson aquifer and use of such well as consistent with the terms of the Augmentation Plan, including wastewater treatment through a non-evaporative individual septic disposal system ("ISDS"). Lot Owners will be the owners of the water within the aquifers underlying their lots, and also own the plan for augmentation. The Lot Owners will be responsible for reporting and administration based on pumping records, and eventually for replacement of any injurious post-pumping depletions requiring construction of deep wells to the Laramie-Fox Hills or Arapahoe aquifers at such time as all Dawson aquifer pumping ceases.

2. Water Rights Ownership. **Water rights and obligations as set forth in this Declaration shall be appurtenant to the Property, shall be indivisible from, and shall run with the land, and the same may not be separately sold, traded, bartered, assigned, or encumbered in whole or in part by any Lot owner. The water rights shall be explicitly conveyed, by special warranty deed, with no warranty as to the quantity or quality of water conveyed, only as to title. However, if a successor Lot owner fails to so explicitly convey the water rights, such water rights shall be conveyed without specific reference, whether or not the conveyance instrument references the Decree or Augmentation Plan or water rights.**

A. **Declarant will transfer and assign to each Lot owner a one-third interest in the not-nontributary Dawson aquifer, as well as the nontributary Denver aquifer, the nontributary Arapahoe aquifer, and nontributary Laramie-Fox Hills aquifer, as adjudicated in the Water Decree as the physical source of supply for each Lot.**

B. The Dawson aquifer well on each Lot shall be augmented per the Augmentation Plan as administered by the Lot Owners. Ground Water Determinations apply for Designated Basins Only. The water was quantified in Case No. 18CW3035, Water Court, Water Division 2. Based on the Declarant's intent expressed in these Covenants that each Lot owner will be able to withdraw water from the Dawson aquifer, in order to comply with

El Paso County's 300-year water supply requirement, Declarant shall convey to each Lot owner **at least** 300 acre-feet total (1.0 acre-feet/year x 300 years) of Dawson aquifer water.

C. Declarant will transfer and assign to each Lot Owner their portion of all right, title and interest in the Augmentation Plan and water rights thereunder. Those water rights assigned include ground water in the nontributary Laramie-Fox Hills aquifer, and nontributary Arapahoe aquifer, as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions. The Declarant will further transfer and assign to each Lot owner all obligations and responsibilities for compliance with the Augmentation Plan, including monitoring, accounting and reporting obligations as applied to each Lot. The owners shall assume and perform these obligations and responsibilities, and by this assignment to the Lot owners, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Augmentation Plan. Such conveyance shall be subject to the obligations and responsibilities of the Augmentation Plan and said water rights may not be separately assigned, transferred, or encumbered by the Lot owners. The Lot owners shall maintain such obligations and responsibilities in perpetuity, unless relieved of such replacement responsibilities by Order of the Water Court or another Court with appropriate jurisdiction, rule, regulation, governmental authority, or other properly entered administrative relief.

D. Each Lot owner's water rights in the not-nontributary Dawson aquifer underlying their respective Lot shall remain subject to the Augmentation Plan, and shall, transfer automatically upon the transfer of title to each Lot as an appurtenance, including the transfer by the Declarant to the initial owner of each Lot, whether or not separately deeded. The ground water rights in the Dawson aquifer subject to the Augmentation Plan cannot and shall not be severable from each respective Lot, and each Lot owner covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the Lot.

E. All Denver Basin groundwater in the nontributary Denver aquifer, and nontributary Arapahoe and Laramie-Fox Hills aquifers underlying each Lot, are likewise to be deeded, assigned and transferred to the overlying Lot owner on a pro rata-per-acre basis, and may be used in said Lot owner's sole and complete discretion, subject to the terms and conditions of this Declaration and the Augmentation Plan requiring that the water be used exclusively for primary or replacement water supply.

F. The Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifer water rights conveyed to each Lot Owner, and return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Augmentation Plan and these Covenants, and shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered.

3. Water Administration.

A. Each Lot owner shall limit the pumping of each individual Dawson aquifer well per Lot to a maximum of 1.0 acre-feet annually, consistent with the Augmentation Plan. Each Lot owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Augmentation Plan is maintained, as between in-house, irrigation of lawn and garden, watering of horses or equivalent livestock, and other allowed uses permitted under the Augmentation Plan, to-wit: 0.26 acre-feet of water per year per residence, with the remaining 0.74 acre-feet per year for other permissible uses. **Each Lot owner shall use non-evaporative ISDS in order to ensure that return flows from such systems are made to the stream system to replace depletions during pumping. Each Lot shall have an occupied, single-family dwelling that is generating return flows from a non-evaporative ISDS before any irrigation or animal watering is allowed. Return flows from the non-evaporative ISDS shall only be used for replacement purposes and shall not be sold, traded, bartered, assigned, encumbered, or used in whole or in part for any other purpose.**

B. The Lot Owners, as the owners of all obligations and responsibilities under the Augmentation Plan, shall administer and enforce the Augmentation Plan as it applies to each Lot Owner's respective Lot and pumping from individual Dawson aquifer well(s). Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Augmentation Plan and taking all necessary and required actions under the Augmentation Plan to protect and preserve the ground water rights for all Lot owners.

C. Each Lot owner has the right to specifically enforce, by injunction if necessary, the Augmentation Plan against any other Lot owner for failing to comply with the Lot owner's respective obligations under the Augmentation Plan, including the enforcement of the terms and conditions of well permits issued pursuant to the Augmentation Plan, and the reasonable legal costs and fees for such enforcement shall be borne by the non-prevailing party.

D. **The use of the not-nontributary Dawson ground water rights owned by each Lot owner is restricted and regulated by the terms and conditions of the Augmentation Plan and this Declaration, including, without limitation, that each Lot owner is subject to the maximum annual well pumping of 1.0 acre feet.** Failure of a Lot owner to comply with the terms of the Augmentation Plan may result in an order from the Division of Water Resources under the Augmentation Plan to curtail use of ground water rights, or further actions as deemed necessary by a Water Court or regulating authority with applicable jurisdiction.

E. Each Lot owner shall promptly and fully account to the Division of Water Resources for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Lot, including for any irrigation, stockwater or other permitted/allowed uses as may

be required under the Augmentation Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources.

4. Well Permits.

A. Each Lot Owner shall be responsible for obtaining a well permit for the individual well to the not-nontributary Dawson aquifer for provision of water supply to their respective Lot, to the extent quantities deeded to such Lot owner therein are sufficient for such Lot owner's needs or are responsible for ensuring an existing permit is in the Lot owners name. Existing permits, e.g. Well Permit 82898-F, shall be re-permitted to operate pursuant to the Augmentation Plan. All such Dawson aquifer wells shall be constructed and operated in compliance with the Augmentation Plan, the well permit obtained from the Colorado Division of Water Resources, and the applicable rules and regulations of the Colorado Division of Water Resources. **The costs of the construction, operation, maintenance and repair of such individual well, and delivery of water therefrom to the residence located on such Lot, shall be at each Lot owner's respective expense**. Each Lot owner shall comply with any and all requirements of the Division of Water Resources to log their well, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide the diversion information necessary for the accounting and administration of the Augmentation Plan. It is acknowledged that well permits, and individual wells, may be in place on some of the Lots at the time of sale, and by this Declaration no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

B. The Lot Owners shall be responsible for obtaining any well permits, rights and authorities necessary for the construction of well(s) to the nontributary Laramie Fox Hills or Arapahoe aquifer, though such wells shall be constructed only for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and shall not be constructed unless and until such post-pumping depletions must be replaced. The Lot Owners shall comply with any and all requirements of the Division of Water Resources to log such wells, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide all necessary accounting under the Augmentation Plan.

C. No party guarantees to the Lot owners the physical availability or the adequacy of water quality from any well to be drilled under the Augmentation Plan. The Denver Basin aquifers which are the subject of the Augmentation Plan are considered a nonrenewable water resource and due to anticipated water level declines the useful or economic life of the aquifers' water supply may be less than the 100 years allocated by state statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

5. Continuing Jurisdiction. The Augmentation Plan issued is subject to the court's continuing jurisdiction over the plan for reconsideration and compliance. By acceptance of a

deed or any interest in any part of the Property, each Lot owner or other grantee thereby consents to the continuing personal jurisdiction of the water court.

6. Compliance. The Lot owners shall perform and comply with all terms, conditions, and obligations of the Augmentation Plan, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources pursuant to the Augmentation Plan, as well as all applicable statutory and regulatory authority.

7. Amendments. **No changes, amendments, alterations, or deletions to these Water Covenants may be made which would alter, impair, or in any manner compromise the water supply as set forth in the Augmentation Plan, or the water rights of the Lot owners without the prior written approval of said parties, El Paso County, and an adjudicated amendment to the Augmentation Plan from the Water Court.**

8. Termination. **These Covenants shall not terminate unless the requirements of the Augmentation Plan are also terminated by the Water Court and a change of water supply is approved in advance of termination by El Paso County.**

9. County Enforcement. El Paso County may enforce the provisions regarding the Augmentation Plan as set forth in this Declaration, should the Lot Owners fail to adequately do so.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 2ND day of NOVEMBER, 2023.

By: _____
Pawel Posorski, Declarant

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

Subscribed and sworn to before me this 2nd day of November, 2023, by Pawel Posorski, as Declarant of the Ivilo Subdivision.

My commission expires: Aug. 23, 2026

MIRANDA BENSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20224033144
MY COMMISSION EXPIRES AUGUST 23, 2026

Witness my hand and seal.

Miranda Benson
Notary Public

Exhibit A

Final Plat

IVILO SUBDIVISION

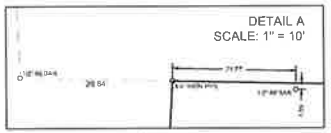
PART OF THE NORTH 1/2, SECTION 6, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO

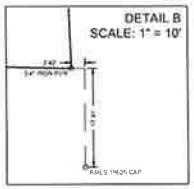
KNOW ALL MEN BY THESE PRESENTS:
That the undersigned, Pawel Posorski, being the owner of the following described tract of land

TO WIT (SURVEYED DESCRIPTION):
That portion of the North Half of Section 6 in Township 12 South, Range 65 West of the 6th Principal Meridian, El Paso County, Colorado described as follows:

Beginning at a point that is S 00°27'18" E 1400.36 feet and N 89°55'58" W 2038.83 feet from the Northeast Corner of the North Half of said Section 6, thence S 00°26'10"E 1086.04 feet to a found 5/8" rebar; thence N 89°50'38"W 647.38 feet to a found ½" rebar; thence N 01°09'00"W 397.34 feet to a found ½" rebar with Surveyor's Cap, P.L.S. #37531; thence N 03°23'41" E 319.10 feet to the South Line of the Eric F. and Carol A. Morrow tract recorded in the El Paso County Clerk and Recorder's Office, Reception No. 201125542, and a found ½" iron pipe; thence S 88°40'09"E 303.22 feet to the Southeast Corner of the said Morrow tract and a found ½" pipe; thence N 02°10'23"W 467.62 feet to the Northeast Corner of the said Morrow tract and a found ¾" pipe; thence S 89°51'34" E 390.85 feet to the point of beginning containing 14.0 acres.

Subject to easements and restrictions of record.





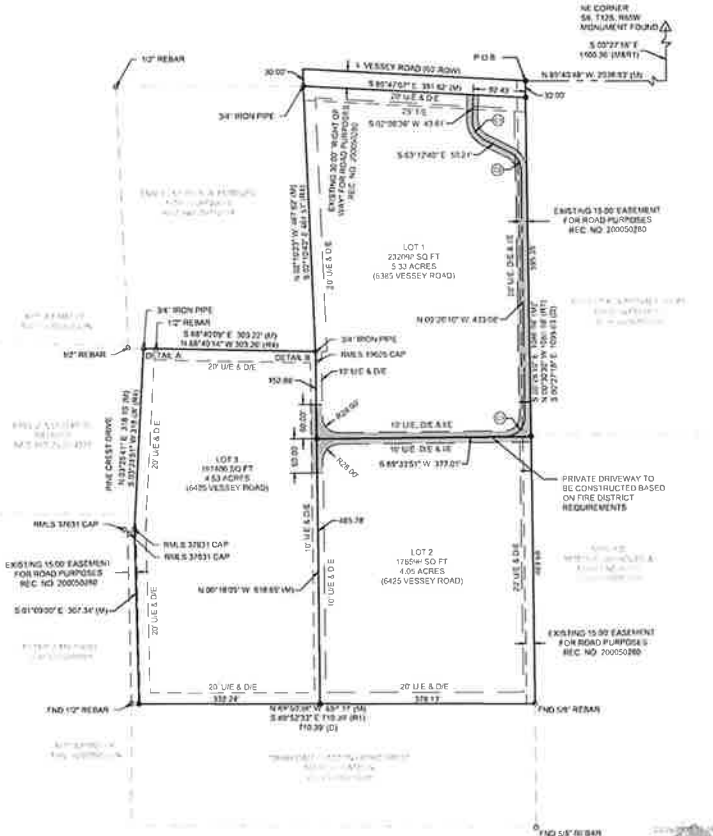
DENSITY AND DIMENSIONAL STANDARDS FOR RESIDENTIAL DISTRICTS							
ZONING DISTRICT	AREA	MINIMUM SETBACKS FRONT / SIDE / REAR	HEIGHT	MINIMUM LOT WIDTH	SIZE	MAXIMUM LOT COVERAGE	MAXIMUM HEIGHT
RR-5	5 ACRES	25 FT / 25 FT / 25 FT	30 FT	200 FT	5 ACRES	NONE	30 FT

CENTERLINE CURVE DATA

CURVE #	LENGTH	CHORD	DELTA	TANGENT	BEARING
C1	49.74	49.68	5°27'17"	24.91	S 32°39'57" E
C2	36.68	36.68	62°46'27"	21.55	N 27°43'35" W
C3	54.68	49.68	90°00'00"	35.00	N 44°03'59" E

LEGEND

- Monument Found (1/2" Rebar, Origin unless otherwise noted)
- 1/2"x24" Rebar with Surveyor's Cap PLS 37531 Set
- Section Corner NGS* (* All section corner monuments found or set are referenced unless otherwise noted)
- (a) Assumed Bearing
- (C) Calculated Dimension
- (M) Measured Dimension
- (R1) Recorded Dimension per Subject Survey Plat by Rocky Mountain Land Services dated December 14, 2015
- (R2) Recorded Dimension per Land Survey Plat by Emmanuel Hollins Surveying Services dated June 28, 2022
- Ingress/Egress Easement
- Ingress/Egress Easement Hatch
- Utility Easement
- Drainage Easement
- Trail Easement



VICINITY MAP
(NOT TO SCALE)

NOTES:

1. NO GAPS OR GORES EXIST.
2. THERE ARE NO LINES OF POSSESSION THAT AFFECT THIS SURVEY.
3. PARENT TRACT IS RECORDED AS INSTRUMENT #201329[illegible], EL PASO & RECORDER'S OFFICE, EL PASO COUNTY, COLORADO.
4. ALL BUILDING SETBACK REQUIREMENTS SHALL BE AS DETERMINED BY THE ZONING DISTRICT UNLESS OTHERWISE NOTED.
5. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SMH CONSULTANTS TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR INFORMATION REGARDING EASEMENTS AND RIGHT OF WAY, SMH CONSULTANTS RELIED UPON THE TITLE POLICY PREPARED BY STEWART TITLE COMPANY ORA LEGACY TITLE, DATED AUGUST 19, 2022.
6. BASIS OF BEARINGS IS THE EAST LINE OF SECTION 6, TOWNSHIP 12 SOUTH, RANGE 65 WEST MONUMENTED AS SHOWN AND ASSUMED TO BEAR SOUTH 00 DEGREES 27 MINUTES 18 SECONDS EAST 1400.36 FEET.
7. SEWAGE TREATMENT IS THE RESPONSIBILITY OF EACH INDIVIDUAL PROPERTY OWNER. THE EL PASO COUNTY PUBLIC HEALTH DEPARTMENT MUST APPROVE EACH SYSTEM AND IN SOME CASES, THE DEPARTMENT MAY REQUIRE AN ENGINEER DESIGNED SYSTEM PRIOR TO PERMITTING APPROVAL.
8. INDIVIDUAL WELLS ARE THE RESPONSIBILITY OF EACH PROPERTY OWNER. PERMITS FOR INDIVIDUAL WELLS MUST BE OBTAINED FROM THE STATE ENGINEER'S OFFICE WHO BY LAW HAS THE AUTHORITY TO SET CONDITIONS FOR THE ISSUANCE OF THESE PERMITS.
9. WATER IN THE DENVER WATER BASIN AQUIFERS IS ALLOCATED BASED ON A 100 YEAR AQUIFER LIFE. HOWEVER, FOR EL PASO COUNTY PLANNING PURPOSES, WATER IN THE DENVER BASIN AQUIFERS IS ELEVATED BASED ON A 300-YEAR AQUIFER LIFE. APPLICANTS, THE HOME OWNERS ASSOCIATION, AND ALL FUTURE OWNERS IN THE SUBDIVISION SHOULD BE AWARE THAT THE ECONOMIC LIFE OF A WATER SUPPLY BASED ON WELLS IN A GIVEN DENVER BASIN AQUIFER MAY BE LESS THAN EITHER THE 100 YEARS OR 300 YEARS INDICATED DUE TO ANTICIPATED WATER LEVEL DECLINES. FURTHERMORE, THE WATER SUPPLY PLAN SHOULD NOT RELY SOLELY UPON NON-RENEWABLE AQUIFERS. ALTERNATIVE RENEWABLE WATER RESOURCES SHOULD BE ACQUIRED AND INCORPORATED IN A PERMANENT WATER SUPPLY PLAN THAT PROVIDES FUTURE SUSTAINABILITY WITH A WATER SUPPLY.
10. THE OWNER, ITS SUCCESSORS AND ASSIGNS SHALL ADVISE THE FUTURE OWNERS OF THIS LOTS OF ALL APPLICABLE REQUIREMENTS OF THE DETERMINATION OF WATER RIGHT 2W5048 RECORDED AT RECEPTION NO. 219073349.
11. ALL PROPERTY OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPERTY'S DRAINWAYS, INCLUDING THROUGH THEIR PROPERTY. PUBLIC DRAINAGE EASEMENTS AS SPECIFICALLY NOTED ON THE PLAT SHALL BE MAINTAINED BY THE INDIVIDUAL LOT OWNER UNLESS OTHERWISE NOTED. STRUCTURES, FENCES, MATERIALS OR LANDSCAPING THAT COULD IMPEDE THE FLOW OF RUNOFF SHALL NOT BE PLACED IN DRAINAGE EASEMENTS.
12. DUE TO WILDFIRE CONCERNS, THE PROPERTY OWNER IS ENCOURAGED TO INCORPORATE WILDFIRE MITIGATION PROVISIONS AS PROVIDED FOR BY THE COLORADO STATE FOREST SERVICE AND AS ILLUSTRATED THROUGH PUBLICATIONS AVAILABLE THROUGH THE STATE FOREST SERVICE.
13. ACCESS TO LOTS 1 & 3 SHALL BE THROUGH THE SHOWN INGRESS/EGRESS EASEMENT. THE RESPONSIBILITY AND MAINTENANCE OF SAID EASEMENT IS SUBJECT TO THE MAINTENANCE AGREEMENT AND ALL COVENANTS AND RESTRICTIONS CONTAINED THEREIN AS RECORDED AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY CLERK AND RECORDER.
14. NO DRIVEWAY SHALL BE ESTABLISHED ON THIS ACCESS PERMIT HAS BEEN GRANTED BY EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT. INDIVIDUAL LOT PURCHASERS ARE RESPONSIBLE FOR CONSTRUCTING DRIVEWAYS, INCLUDING NECESSARY DRAINAGE CULVERTS FROM VESSEY ROAD TO THEIR LAND DEVELOPMENT CODE SECTION 8.3.3.C.2 AND 8.3.3.C.3.
15. DUE TO THE HILLSIDE SLOPE OF THE DRIVEWAYS WITH WESTERN STREETLAY, APPROVAL BY THE BLACK FOREST FIRE PROTECTION DISTRICT.
16. NO STRUCTURES OR MULCH MATERIAL STORAGE ACTIVITIES ARE PERMITTED WITHIN THE DESIGNATED DRAINAGE EASEMENTS. EXCEPT FENCES. FENCES SHALL NOT IMPEDE RUNOFF FROM REACHING DRAINAGE SWALES.
17. THE SUBDIVIDER(S) AGREES ON BEHALF OF HIMSELF/HERSELF AND ANY DEVELOPER OR BUILDER, SUCCESSORS AND ASSIGNS, THAT SUBDIVIDER AND/OR SAID SUCCESSORS AND ASSIGNS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR COMPLIANCE WITH ALL EL PASO COUNTY AND MS4 PERMIT REQUIREMENTS AND ALL APPLICABLE PROVISIONS OF THE EL PASO COUNTY STORMWATER QUALITY POLICY MANUAL AND RESOLUTION (RESOLUTION NO. 19-471), OR ANY AMENDMENTS THEREOF, AT OR PRIOR TO THE TIME OF BUILDING PERMIT SUBMITTALS. THE SPECIFIC OBLIGATION, IF NOT PAID AT FINAL PLAT RECORDING, SHALL BE DOCUMENTED ON ALL SALES DOCUMENTS AND PLAT NOTES TO ENSURE THAT A TITLE SEARCH WOULD FIND THE FEE OBLIGATION BEFORE SALE OF THE PROPERTY.
18. MAILBOXES SHALL BE INSTALLED IN ACCORDANCE WITH ALL EL PASO COUNTY DEPARTMENT OF TRANSPORTATION AND THE UNITED STATES POSTAL SERVICE REGULATIONS.
19. THE FOLLOWING REPORTS HAVE BEEN SUBMITTED IN ASSOCIATION WITH THE FINAL PLAT FOR THIS SUBDIVISION AND ARE ON FILE AT THE COUNTY DEVELOPMENT SERVICE DEPARTMENT: DRAINAGE REPORT, WATER RESOURCES REPORT, WASTEWATER DISPOSAL REPORT, GEOLOGY AND SOILS REPORT, FIRE PROTECTION REPORT, AND TRAFFIC MEMO.
20. THE ADDRESSES EXHIBITED ON THIS PLAT ARE FOR INFORMATIONAL PURPOSES ONLY. THEY ARE NOT THE LEGAL DESCRIPTION AND ARE SUBJECT TO CHANGE.
21. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO C.R.S. § 18-4-508.
22. SEWAGE TREATMENT IS THE RESPONSIBILITY OF EACH INDIVIDUAL PROPERTY OWNER. THE EL PASO COUNTY DEPARTMENT OF HEALTH (DEPARTMENT) MUST APPROVE EACH SYSTEM AND IN SOME CASES, THE DEPARTMENT MAY REQUIRE AN ENGINEER DESIGNED SYSTEM PRIOR TO PERMIT APPROVAL. THE SYSTEM OWNER MUST CONTRACT TO OPERATE, INSTALL AND MAINTAIN.
23. A LOT-SPECIFIC SUBSURFACE SOIL INVESTIGATION WILL BE REQUIRED FOR ALL PROPOSED STRUCTURES INCLUDING BUT NOT LIMITED TO, BASEMENTS, RETAINING WALLS, ETC. NO BASEMENTS OR PARTIAL BASEMENTS OR BELOW-GRADE AREAS ARE ALLOWED UNLESS GROUNDWATER MONITORING THROUGH THE ANNUAL SEASONAL FLUCTUATIONS BEFORE CONSTRUCTION DEMONSTRATES THAT BELOW-GRADE AREAS CAN MAINTAIN 3 FEET BETWEEN THE BOTTOM OF THE FOUNDATION AND THE GROUNDWATER ON SITE GRADING INDICATES THAT IT WILL MITIGATE THE PERTINENT GROUNDWATER.
24. ALL LOTS ARE SUBJECT TO DECLARATION OF COVENANTS AND WAIVER OF COVENANTS AS RECORDED AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY CLERK AND RECORDER.
25. FUTURE OWNERS OF LOTS 2 AND 3 SHALL SUBMIT AN ENGINEERED SITE PLAN AT TIME OF BUILDING PERMIT. ENGINEERED SITE PLAN SHALL SPECIFY LOCATION OF THE SINGLE-FAMILY HOUSE, DRIVEWAY AND ANY CULVERTS NECESSARY BASED ON HOUSE AND DRIVEWAY LOCATION.
26. FUTURE OWNERS OF LOTS 1, 2 AND 3 ARE RESPONSIBLE FOR FOLLOWING ALL FIRE EXCAVATION GUIDELINES AS OUTLINED BY THE UNITED STATES ARMY CORPS OF ENGINEERS (USACE) AND SHALL COORDINATE WITH THE LOCAL USACE OFFICE PRIOR TO COMMENCING EARTHWORK ACTIVITIES.

DEDICATION:
The undersigned, being all the Owners, Mortgagee, Beneficiaries of Deeds of Trust and holders of other interests in the land described hereon, have laid out, subdivided, and platted said lands into lots, tracts, streets, and easements as shown hereon under the name and subdivision of "IVILO SUBDIVISION". All public improvements so platted are hereby dedicated to public use and said Owner does hereby covenant and agree that the public improvements will be constructed to El Paso County standards and that proper drainage and erosion control for same will be provided at said Owner's expense; all to the satisfaction of the Board of County Commissioners of El Paso County, Colorado. Upon acceptance by resolution, all public improvements so dedicated will become matters of maintenance by El Paso County, Colorado. The utility easements shown hereon are hereby dedicated for public utilities and communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress from and to all adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

IN WITNESS WHEREOF:
The aforementioned PAWEL POSORSKI, has executed this instrument this _____ day of _____, 2022 A.D.

_____
PAWEL POSORSKI

NOTARIAL:
STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 A.D. by PAWEL POSORSKI.

Witness my hand and seal _____

Address _____
_____

My Commission expires _____

BOARD OF COUNTY COMMISSIONERS CERTIFICATE:
This Plat IVILO SUBDIVISION was approved for filing by the El Paso County, Colorado Board of County Commissioners on the _____ day of _____, 2022, subject to any notes specified hereon and any conditions included in the resolution of approval. The dedications of land to the public streets and easements are accepted, but public improvements thereon will not become the maintenance responsibility of El Paso County until preliminary acceptance of the public improvements in accordance with the requirements of the Land Development Code and Engineering Criteria Manual, and the Subdivision Improvements Agreement.

_____ _____
Chair, Board of County Commissioners — Date

_____ _____
Director, Planning and Community Development Department — Date

_____ _____
El Paso County Assessor — Date

RECORDINGS:
STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

I hereby certify that this instrument was filed for record in my office at _____ O'clock ____ M. this _____ day of _____, 2022 A.D., and is duly recorded under Receptionn Number _____ of the records of El Paso County, State of Colorado.

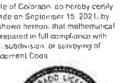
By _____ _____
El Paso County Clerk and Recorder — Date

SURVEYOR'S CERTIFICATE:
I, Tim Sloan, a duly registered Professional Land Surveyor in the State of Colorado, do hereby certify that this plat truly and correctly represents the results of a survey made on September 15, 2021, by me or under my direct supervision and that all monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and all applicable provisions of the El Paso County Land Development Code.

I attest on this _____ day of _____, 20__.

_____ _____
Tim Sloan, Professional Land Surveyor — Date

Colorado Registered PLS #_____



FURTHER SUBDIVISION
ANY FUTURE RE-SUBDIVISION SHOULD CONFORM TO THE USE OF THE PROPERTY SHALL HAVE A MINIMUM LOT SIZE OF 4 ACRES WITHIN THE RR-5 ZONING DISTRICT.

ENVIRONMENTAL
DEVELOPER SHALL COMPLY WITH FEDERAL AND STATE LAWS AND REGULATIONS ON PONDS, LAKES, REVIEW AND PERMIT REQUIREMENTS AND OTHER AGENCY REQUIREMENTS, IF ANY, OR AS MAY BE APPLICABLE, AS LOTS INCLUDING BUT NOT LIMITED TO THE COLORADO DEPARTMENT OF WILDLIFE, COLORADO DEPARTMENT OF TRANSPORTATION, U.S. ARMY CORPS OF ENGINEERS, THE U.S. FISH & WILDLIFE SERVICE, HIGHLIGHTING THE ENDANGERED SPECIES ACT, PARTICULARLY AS IT RELATES TO THE PREBLE'S MEADOW JUMPING MOUSE AS A LISTED THREATENED SPECIES.

FLOODPLAIN NOTE
FLOOD INSURANCE RATE MAP MAP NUMBER 08041C0310 G EFFECTIVE DATE DECEMBER 7, 2018 INDICATES THAT THE AREA WITHIN THE SURVEYED PROPERTY IS LOCATED IN ZONE A WHICH IS DETERMINED TO BE OUTSIDE THE 500-YEAR FLOOD PLAIN.

EASEMENTS
UNLESS OTHERWISE INDICATED, ALL SIDE, FRONT, AND REAR LOT LINES ARE HEREBY PLATTED OR EITHER SIDE WITH A 10-FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT. ALL FURTHER SUBDIVISION ROADWAYS ARE HEREBY PLATTED WITH A 25-FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT. THE SOLE RESPONSIBILITY FOR THE MAINTENANCE OF THESE EASEMENTS IS HEREBY VESTED WITH THE INDIVIDUAL PROPERTY OWNERS.

UTILITY NOTES
ANY UTILITY COMPANY THAT LOCATES FACILITIES IN ANY EASEMENT SHALL HAVE THE RIGHT TO PRUNE, REMOVE, FRANCHISE, CUT AND CLEAR AWAY ANY TREES, LIMBS, VINES, AND BRUSH ON THE UTILITY EASEMENT NOW OR AT ANY FUTURE TIME AND PRUNE AND CLEAR AWAY ANY TREE LIMBS, VINES AND BRUSH ON LANDS ADJACENT TO THE UTILITY EASEMENT WHENEVER IN THE UTILITY COMPANY'S JUDGMENT SUCH MAY BE NECESSARY IN ORDER TO ENDANGER THE CONSTRUCTION, OPERATION OR MAINTENANCE OF ITS FACILITIES. TOGETHER WITH THE RIGHT OF ACCESS TO AND EGRESS FROM THE LANDS HEREIN SHOWN AND CONVEYED FOR SAID PURPOSES. THE UTILITY COMPANY SHALL BE OBLIGATED TO RESTORE ANY DISTURBED LANDSCAPING, INCLUDING, BUT NOT LIMITED TO, SOD, TREES, SHRUBS, FENCING, CONCRETE, AND ASPHALT, RESULTING FROM INSTALLING, REPAIRING, REBUILDING, REPLACING AND WITHIN ENHANCEMENTS OF THE CONSTRUCTION, OPERATION OR MAINTENANCE OF SAID FACILITIES.

NOTICE
ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

FUTURE PROPERTY OWNERS ARE ADVISED THAT EL PASO COUNTY'S APPROVAL OF THIS PLAT DOES NOT INCLUDE CERTIFICATION OF WATER RIGHTS OR THE STRUCTURAL STABILITY OF THE EXISTING STOCK POND LOCATED ON THE SUBJECT PROPERTY. THE STATE OF COLORADO HAS JURISDICTION REGARDING SUBSEQUENT ENLARGEMENTS OF THE POND.

TOTAL ACREAGE	
LOT 1	5.33 ACRES
LOT 2	4.05 ACRES
LOT 3	4.53 ACRES
RIGHT-OF-WAY	0.07 ACRES
TOTAL	13.98 ACRES

SERVICE PROVIDERS
BLACK FOREST FIRE PROTECTION DISTRICT
MOUNTAIN VIEW ELECTRIC ASSOC.
BLACK HILLS ENERGY
COMCAST CABLE
INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

FEES
PARK FEE: $7,560.00
SCHOOL FEE: $612.00
SURCHARGE: _____
FEE: _____
DRAINAGE FEE: _____

DATE SUBMITTED: 11/29/2022
REVISIONS
1.
2.
3.
4.
5.

OWNER:
PAWEL POSORSKI
6385 VESSEY ROAD
COLORADO SPRINGS, COLORADO
970-397-1308

SURVEYOR:
TIM SLOAN, VICE PRESIDENT
SMH CONSULTANTS, P.A.
411 SOUTH NEVADA AVENUE, SUITE 1
COLORADO SPRINGS, CO 80903
719-465-2145

ENGINEER:
MATT FOUT
SMH CONSULTANTS, P.A.
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SMH CONSULTANTS
Civil Engineering • Land Surveying • Landscape Architecture
Manhattan, KS • MS • Parker, CO • Salina, KS • Colorado Springs, CO
Overland Park, KS • (913) 814-9445 • Kansas City, MO • (816) 888-2145

Survey Prepared September 15, 2021
Drawn By: JTH Project #21317.0331 DD #TDSK PCD File # MS-22-23

AUGUST 2023

EXHIBIT B

218134502 11/20/2018 10:00 AM
PGS 16 $88.00 DF $0.00
Electronically Recorded Official Records El Paso County CO
Chuck Broerman, Clerk and Recorder
TD1000 N

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street Suite 116 Pueblo, Colorado 81003 Phone Number: (719) 404-8832	DATE FILED: [illegible] [illegible] CASE NUMBER: 2021CW3048
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **JANICE WOODARD** **IN EL PASO COUNTY, COLORADO**	▲ COURT USE ONLY ▲ Case No.: 18CW3035 (c/r 18CW3077 Div. 1) Ctrm.: 406
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING AND DECREE OF WATER COURT	

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

GENERAL FINDINGS OF FACT

1. The applicant in this case is Janice Woodard, whose address is 6385 Vessey Road, Colorado Springs, Colorado ("Applicant"). Applicant is the owner of the land totaling approximately 13.84 acres on which the structures sought to be augmented are or will be located and under which lies the Denver Basin groundwater described in this decree. Applicant is the owner of the place of use where the water will be put to beneficial use.

2. Applicant filed the Application with the Water Courts for both Water Divisions 1 and 2 on May 21, 2018. The Application was subsequently referred to the Water Referees in both Divisions 1 and 2.

3. The time for filing statements of opposition to the Application expired on the last day of July, 2018. No statements of opposition were filed.

4. A Motion for Consolidation of the cases into Water Division 2 was filed with the Colorado Supreme Court on August 3, 2018. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on August 8, 2018. Chief Justice, Nathan B. Coats, granted the Motion for Consolidation by Order dated August 29, 2018.

5. On May 23, 2018, the Division 2 Water Court, on Motion from Applicant, ordered that consolidated publication be made by only Division 1.

6. The Clerk of this Court, in cooperation with the Clerk for Water Division 1, has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On June 18, 2018, proof of publication in the *Daily Transcript* was filed with Water Court Division 1 and on October 5, 2018 proof of publication in the *Daily 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 § 37-92-302(2), C.R.S., the Office of the State Engineer has filed Determination of Facts for each Denver Basin aquifer with this Court on August 8, 2018, which have been considered by the Court in the entry of this Ruling and Decree.

8. Pursuant to § 37-92-302(4), C.R.S., the office of the Division Engineer for Water Division 2 filed its Consultation Report dated September 14, 2018, with the Court, and a Response to the Consultation Report was filed by the Applicant on October 15, 2018. Both the Consultation Report and Response have been considered by the Court in the entry of this Ruling and Decree.

9. The Water Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties whether they have appeared or not. The land and water rights involved in this case are not within a designated groundwater basin.

GROUNDWATER RIGHTS

10. The Applicant is seeking to subdivide a single 13.84-acre lot in the Black Forest into two lots, each to be served by an individual well constructed to the Dawson aquifer. Applicant seeks to quantify the Denver Basin groundwater underlying the Applicant's Property as described below, and for approval of a plan for augmentation. The following findings are made with respect to such underground water rights:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and is located in the N/12 of Section 6, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado as more particularly described in attached **Exhibit A** containing approximately 13.84 acres, more or less ("Applicant's Property"). All groundwater adjudicated herein shall be withdrawn from the Applicant's Property.

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

13. There is currently a permitted well constructed in the Dawson aquifer located in the SW1/4 of the NE1/4 of Section 6, Township 12 South, Range 65 West of the 6th P.M., approximately 1,630 feet from the north section line and 2,285 feet from the east section line, El Paso County, Colorado, permitted under Division of Water Resources Permit No. 83350-A ("Woodward Well No. 1"). Applicant intends to subdivide the Applicant's Property into two lots and to supply water to the additional lot through the construction of a second well to be completed in the Dawson aquifer ("Woodard Well No. 2"). Applicant is awarded the vested right to use Woodard Well No. 1 and Woodard Well No. 2, along with any necessary additional or replacement wells associated with such structures as may be constructed in the not-nontributary Dawson aquifer, for the extraction and use of groundwater therefrom 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 revised permit for Woodard Well No. 1 and new well permit for Woodard Well No. 2 pursuant to § 37-90-137(4), C.R.S., consistent with and referencing the plan for augmentation decreed herein. Additionally, Applicant has expressly waived all 600-foot spacing requirements as may concern Woodard Well No. 1 and Woodard Well No. 2, replacements thereof, or any other additional non-exempt well structures on the Applicant's Property, as would be otherwise considered under § 37-90-137(2)(b)(I), C.R.S.

14. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Dawson and Denver aquifers underlying the Applicant's Property contain not-nontributary groundwater, while the groundwater of the Arapahoe and Laramie-Fox Hills aquifers 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	Specific Yield	Total Appropriation	100 Year Annual Appropriation	300 Year Annual Appropriation	Tributary Status
Dawson	420	0.20	1,160	11.60	3.87	NNT
Denver	495	0.17	1,160	11.60	3.87	NNT
Arapahoe	235	0.17	553	5.53	1.84	NT
Laramie-Fox Hills	185	0.15	384	3.84	1.28	NT

15. Pursuant to § 37-90-137(9)(c.5)(I)(B), C.R.S. the augmentation requirement for wells in the Dawson aquifer require the replacement to the affected stream systems of actual out-of-priority stream depletions on an annual basis. The augmentation requirements for wells in the Denver aquifer, being greater than one mile from any point of contact with a surface stream, will require replacement of four percent

of pumping pursuant to § 37-90-137(9)(c.5)(I)(C), C.R.S. Applicant shall not be entitled to construct a well or use water from the not-nontributary Dawson and Denver aquifers except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9), including as decreed herein.

16. Subject to the augmentation requirements described in Paragraph 15 and Paragraph 21 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 can be withdrawn over the 300-year life of the aquifers as set forth in El Paso County, Colorado Land Development Code § 8.4.7(C)(1) with such requirement also satisfying the 100-year life for the aquifers as set forth in § 37-90-137(4), C.R.S., 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 augmentation requirements of this decree. The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, based upon a 300-year aquifer life, are determined and set forth above, based upon the August 8, 2018 Office of the State Engineer Determination of Facts.

17. Applicant shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from wells in 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 does not violate the terms and conditions of the plan for augmentation decreed herein and any other plan for augmentation decreed by the Court that authorizes withdrawal of the Denver Basin groundwater decreed herein.

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 a well permit in accordance with §§ 37-90-137(4) or 37-90-137(10), C.R.S., the Applicant shall have the right to use the groundwater for beneficial uses upon the Applicant's Property consisting of domestic, commercial, indoor and outdoor irrigation, stock watering, recreation, wildlife, wetlands, fire protection, equipment and structure washing, and also for storage and augmentation purposes associated with such uses. The amount of groundwater decreed for such uses upon the Applicant's Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicant's Property and 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 Applicant's Property subject, however, to the limitations imposed on the use of the Arapahoe aquifer and Laramie-Fox Hills aquifer groundwater by this decree and the requirement under § 37-90-137(9)(b), C.R.S. that no more than ninety-eight percent (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 well or use water from the not-nontributary Dawson and Denver aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

19. Withdrawals of groundwater available from the nontributary Arapahoe and Laramie-Fox Hills aquifers beneath the Applicant's Property in the amounts determined in accordance with the provisions of this decree will not result in material injury to any other vested water rights or to any other owners or users of water.

PLAN FOR AUGMENTATION

20. The structures to be augmented are Woodard Well No. 1 and Woodard Well No. 2 as currently constructed and as will be constructed in the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith constructed to the Dawson aquifer.

21. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation obligation for Woodard Well No. 1 and Woodard Well No. 2, and any additional or replacement wells constructed in the Dawson aquifer requires the replacement of actual stream depletions. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary Woodard Wells, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping ceases are a reserved portion of Applicant's nontributary water rights in the Laramie-Fox Hills aquifer. Applicant shall provide for the augmentation of stream depletions caused by pumping of Woodard Well No. 1, Woodard Well No. 2, and any additional or replacement wells as approved herein. Water use criteria is as follows:

A. Use: Woodward Well No. 1 and Woodward Well No. 2 will pump a maximum of 1.20 acre-feet of water per year from the Dawson aquifer. Such use shall be a combination of household use, irrigation of lawn and garden, greenhouse irrigation, equipment and structure washing, and the watering of horses, chickens, or equivalent livestock. The quantified amount planned for each use is 0.26 acre-feet per year per residence for in home use, 0.05 acre-feet per year for up to four large animals or a combination of large animals and other livestock such as pigs and chickens, 0.28 acre-feet per year for watering of lawn and gardens, greenhouse irrigation, and structure and equipment washing. Wastewater will be treated via non-evaporative septic systems.

B. Depletions: Applicant's consultants, in consultation with the Division Engineer's Office, have estimated that maximum stream depletions over a 300-year pumping period for the Dawson aquifer amounts to approximately twenty-two percent (22%) of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 0.269 acre-feet in year 300. Should Applicant's pumping be less than the 1.20 acre-foot described herein, resulting depletions will be correspondingly reduced thereby maintaining proper replacement by non-evaporative septic return flows from household use.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to § 37-90-137(9)(c.5), C.R.S., Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. 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 ten percent (10%) per year per residence. At a household use rate of 0.26 acre-feet per residence per year, 0.234 acre-feet is replaced to the stream system per year per residence as the houses will utilize non-evaporative septic systems for a total annual return flow for both residences of 0.47 acre-feet. With up to 5,000 square feet of lawn and garden using 0.0566 acre-feet per 1000 square feet, the amount of water applied per year would be up to 0.28 acre-feet per residence. With eighty-five percent (85%) of such irrigation application consumed, the fifteen percent (15%) return flow for both residences would be 0.084 acre-feet. Adding this to the in-home return flow totals 0.55 acre-feet of return flow. Thus, during pumping for 300 years at a rate of 1.20 acre-feet per year, stream depletions will be adequately augmented by septic return flows with additional return flows also being generated from irrigation return flows. Therefore, stream depletions occurring during the life of Woodard Well No. 1 and Woodard Well No. 2 will be sufficiently replaced.

D. Augmentation of Post Pumping Depletions: For the replacement of any injurious post-pumping depletions which may be associated with the use of Woodard Well No. 1 and Woodard Well No. 2, Applicant will reserve 327 acre-feet of water from the nontributary Laramie-Fox Hills aquifer in order to cover post-pumping depletions totaling 320 acre-feet. Applicant 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. 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. Pursuant to § 37-90-137(9)(b), C.R.S., no more than ninety-eight (98%) of water withdrawn annually from a nontributary aquifer shall be consumed. The reservation of up to 327 acre-feet from the Laramie-Fox Hills aquifer results in 320 acre-feet of available post-pumping augmentation water, which

will be sufficient to cover maximum post-pumping depletions. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a new well permit for Woodard Well No. 1 and for Woodard Well No. 2 for the uses in accordance with this Application and otherwise in compliance with § 37-90-137, C.R.S.

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 the augmentation source during the pumping period 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 River system as set forth herein, and the Court finds that those replacements are sufficient under this augmentation plan subject to Paragraphs 41 – 45 herein.

23. This decree, upon recording, shall constitute a covenant running with Applicant's Property, benefitting and burdening said land, and requiring the construction of wells 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 her 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 Applicant's Property. This covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights who would be materially injured by the failure to provide for the replacement of post-pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner of the Applicant's Property.

24. Applicant or her 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 Applicant or her successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Woodard Well No. 1 and Woodard Well No. 2 have permanently ceased, (iii) a period of ten (10) consecutive years where 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. Unless modified by the Court under its retained jurisdiction, Applicant and its successors shall be responsible for accounting and replacement of post-pumping depletions in the amounts 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.

26. The term of this augmentation plan is for a minimum of 300 years, however, the length of the plan for a particular well or wells may be extended beyond such time provided the total plan pumping allocated to such well or wells is not exceeded. Should the actual operation of this augmentation plan depart from the planned diversions described in Paragraph 21 such that annual diversions are increased or the duration of the plan is extended, the Applicant must prepare and submit a revised model of stream depletions caused by the actual pumping 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.

27. Consideration has been given to the depletions from Applicant's use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicant, and the existence, if any, of injury to any owner of or person entitled to use water under a vested water right.

28. It is determined that the timing, quantity, and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided the water is of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of Woodard Well No. 1 and Woodard Well No. 2. As a result of the operation of this plan for augmentation, the depletions from the Woodward Wells 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 §§ 37-92-302(1)(a) and 37-90-137(9)(c), C.R.S. These cases were properly consolidated before Water Division 2.

30. The Applicant's request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have

exclusive jurisdiction over these proceedings. §§ 37-92-302(1)(a), 37-92-203, and 37-92-305, C.R.S.

31. Subject to the terms of this decree, the Applicant is entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicant's Property, and the right to use that water to the exclusion of all others.

32. The Applicant has complied with § 37-90-137(4), C.R.S., and the groundwater is legally available for withdrawal by the requested nontributary well(s), and legally available for withdrawal by the requested not-nontributary well(s) upon the entry of this decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S., and the issuance of a well permit by the State Engineer's Office. Applicant is entitled to a decree from this Court confirming its rights to withdraw groundwater pursuant to § 37-90-137(4), C.R.S.

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

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

35. The Applicant's request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the Woodard Well No. 1 and Woodard Well No. 2 and any additional or replacement wells in the Dawson aquifer 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. §§ 37-92-305(3),(5), and (8), C.R.S.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

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

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

A. Applicant is awarded a vested right to use the groundwater from the not-nontributary Dawson aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. Subject to the limitations on total pumping under the plan for augmentation decreed herein, this decree and plan for augmentation authorize the pumping of 360 acre-feet of the Dawson aquifer groundwater decreed herein.

B. Applicant is awarded a vested right to use the groundwater from the not-nontributary Denver aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. Withdrawal and use of the Denver aquifer groundwater shall not be made until Applicant or her successors in interest have obtained a separate decreed plan for augmentation that allows such withdrawal and use.

C. Applicant is awarded a vested right to use the groundwater from the nontributary Arapahoe aquifer underlying Applicant's Property, as quantified in Paragraph 14 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 (98%) of the amount withdrawn, and the other terms and conditions of this decree, Applicant's Arapahoe aquifer groundwater may be utilized for all purposes described in Paragraph 18.

D. Applicant is awarded a vested right to use the groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. 326 acre-feet of the 384 total acre-feet awarded has been reserved for use in the plan for augmentation decreed herein. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent (98%) of the amount withdrawn, and the other terms and conditions of this decree, Applicant's Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 18.

38. The Applicant has furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Denver Basin Groundwater and For Approval of Plan for Augmentation, 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 material injury to senior vested water rights.

39. The Applicant shall comply with § 37-90-137(9)(b), C.R.S. 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.

40. Woodard Well No. 1 and Woodard Well No. 2 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 by the Woodard Wells or any additional and replacement wells so long as the return flows from the annual diversions associated with the Woodard Wells and such other wells accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicant or one of her successors or assigns is ever unable to provide the replacement water required, then the Woodard Well No. 1 or the Woodard 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 curtailment in accordance with the laws, rules, and regulation of the State of Colorado. Pursuant to § 37-92-305(8), C.R.S, the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from one or both of the septic systems discussed herein shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions. Applicant shall be required to have any wells pumping on the Applicant's Property providing water for in-house uses and generating septic system returns prior to pumping the wells for any of the other uses identified in Paragraphs 18 or 21.

41. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristic, and that the Applicant need not file a new application to request such adjustments.

A. At such time as adequate data may be available, Applicant or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 41 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to effect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicant, 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 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 § 37-92-304(6), C.R.S., 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 non-injurious, 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. The Court's retained jurisdiction may be invoked using the process set forth in Paragraph 45.

43. As pertains to the Denver Basin groundwater supplies, the court shall retain continuing jurisdiction for so long as Applicant is required to replace depletions to the Arkansas stream system, to determine whether the replacement of depletions to Arkansas stream system instead of the South Platte stream system is causing material injury to water rights tributary to the South Platte stream system.

44. Any person may invoke the Court's retained jurisdiction at any time that Applicant is causing depletions, including ongoing post-pumping depletions, to the South Platte River system and is replacing such depletions to only the Arkansas River system. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for the alleged material injury and to request that the Court reconsider material injury to petitioners' vested water rights associated with the above replacement of depletions under this decree, together with the proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof going forward to establish a prima facie case based on the facts alleged in the petition and that Applicant's failure to replace depletions to the South Platte River system is causing material injury to water rights owned by that party invoking the Court's retained jurisdiction, except that the

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

45. Except as otherwise specifically provided in Paragraphs 41 – 44, above, pursuant to the provisions of § 37-92-304(6), C.R.S., this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of others, for a period of three years, except as otherwise provided herein. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court reconsider material injury to petitioner's vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (i) that the petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicant in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not extended by the Court in accordance with the revisions of the statute, this matter shall become final under its own terms.

46. Pursuant to § 37-92-502(5)(a), C.R.S., 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 all decreed wells or any additional or replacement wells associated therewith. Applicant is also to maintain records and provide reports to the State Engineer or Division Engineers as instructed by said entities, on at least an annual basis.

47. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as

currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. Woodard Well No. 1 and Woodard Well No. 2 shall be permitted as non-exempt structures under the plan for augmentation decreed herein. 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 such 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 22nd day of October, 2018.

BY THE REFEREE:

Mardell R. DiDomenico

Mardell R. DiDomenico, Water Referee
Water Division 2

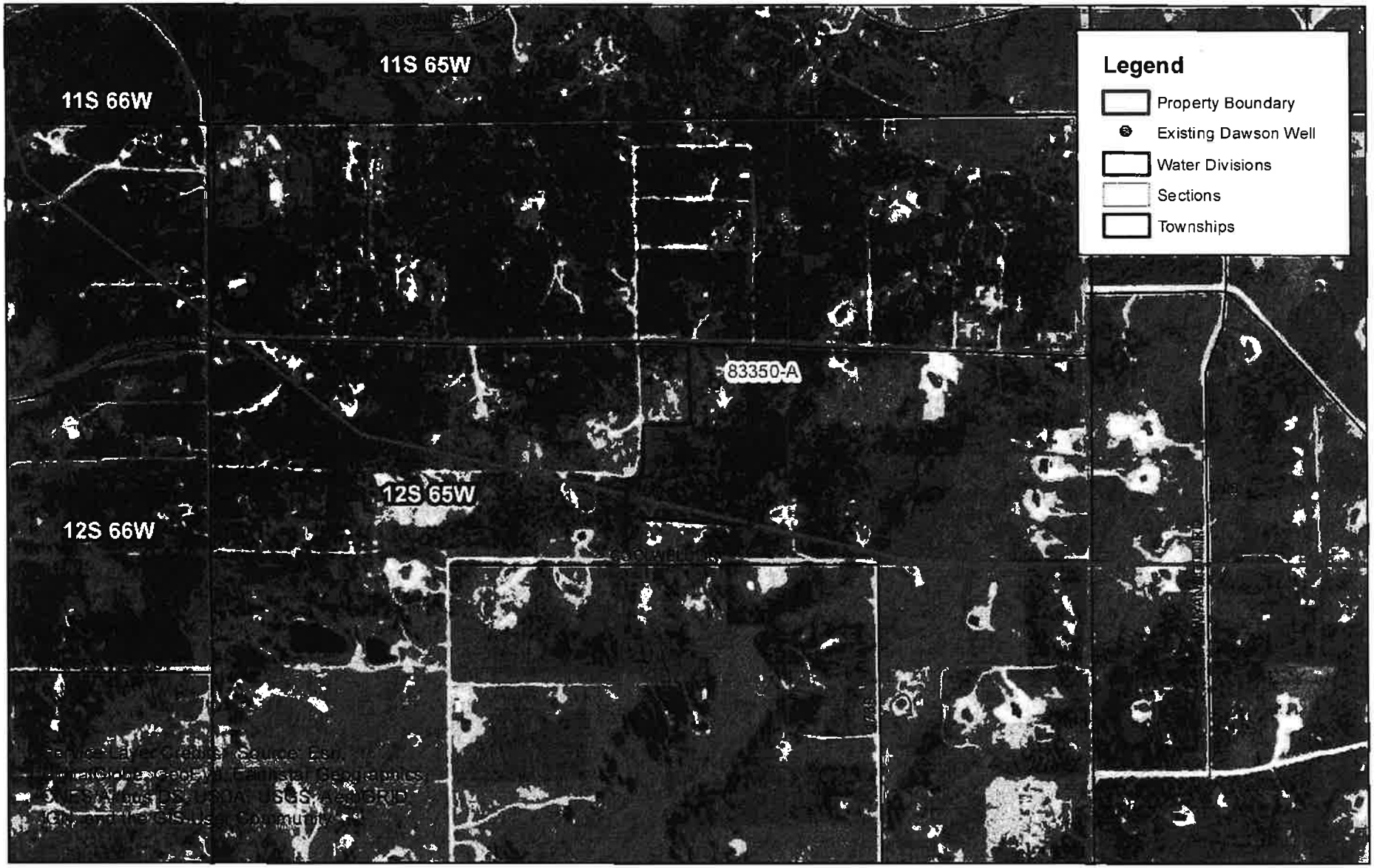
DECREE

THE COURT FINDS THAT NO PROTEST WAS MADE IN THIS MATTER, THEREFOR THE FORGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: November 19th, 2018.

BY THE COURT:

Honorable Larry C. Schwartz
Water Judge, Water Division 2
State of Colorado



N

Exhibit A - General Location Map

Client: Janice Woodard
Job Number: 18-04
Prepared By: SKB
Date: May 2018
Projection: UTM13N
File Name: Woodard_Figure1

1 inch = 833.33 feet

0 625 1,250 Feet

HRS Water Cons. Hands

222037346 3/15/2022 4:01 PM
PGS 6 $38.00 DF $0.00
Electronically Recorded Official Records El Paso County CO
Chuck Broerman, Clerk and Recorder
TD1000 N

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	DATE FILED: March 15, 2022 3:04 PM CASE NUMBER: 2021CW3048
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: **PAWEL POSORSKI** **IN EL PASO COUNTY, COLORADO**	▲ COURT USE ONLY ▲ Case No.: 21CW3048

FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE: APPROVING PLAN FOR AUGMENTATION

THIS MATTER comes before the Water Referee on the Application filed by Pawel Posorski for revision of plan for augmentation. The Court, 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 Applicant in this case is Pawel Posorski, whose address is 6385 Vessey Road, Colorado Springs, CO 80908 ("Applicant"). The Applicant is the owner of land totaling approximately 13.84 acres, located in N½ of Section 6, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, Colorado, more specifically described as 6385 Vessey Road, Colorado Springs, Colorado ("Applicant's Property").

2. The Applicant filed this Application in Water Court Division 2 on September 20, 2021.The Application was referred to the Water Referee in Division 2 on September 21, 2021.

3. The time for filing statements of opposition to the Application expired on the last day of November 2021. No Statements of Opposition were filed.

4. The Clerk of this Court has caused publication of the Application as provided by statute, and the publication costs have been paid. On October 20, 2021, proof of publication in *The Colorado Springs Gazette* was filed with Water Court Division 2. All notices of the Application have been given in the manner required by law.

5. Applicant seeks to revise an existing plan for augmentation decreed in Case No. 18CW3035 ("18CW3035 Decree").

6. 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 January 21, 2021, and a Response to the Consultation Report was not required. The Consultation Report has been considered by the Water Referee in the entry of this Ruling.

7. 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.

REVISION TO PLAN FOR AUGMENTATION

8. The original decree in Case No. 18CW3035 stated that a combined 1.2 acre-feet of water may be withdrawn from the not-nontributary Dawson aquifer annually for a two-lot subdivision. The 18CW3035 Decree also set forth the water use as in house (0.26 annual acre-feet), stockwatering for four large animals or their equivalent (0.05 annual acre-feet), and irrigation of lawn, garden, greenhouse irrigation, structure, and equipment washing (0.28 annual acre-feet). These uses were to be augmented by return flows from the individual non-evaporative septic systems on each lot during the pumping life of the wells, and the 18CW3035 Decree reserved a total of 327 acre-feet for replacement of post-pumping depletion obligations (a 300-year aquifer life/plan for augmentation).

9. The Applicant is the current owner of the following quantities of water in the Denver Basin aquifers underlying their property, as determined in the 18CW3035 Decree:

Aquifer	Annual Amount – 100 years (Acre-Feet)	Annual Amount – 300 years (Acre-Feet)	Total (Acre-Feet)
Dawson (NNT)[1]	11.6	3.87	1160
Denver (NNT – 4%)	11.6	3.87	1160
Arapahoe (NT)	5.53	1.84	553
Laramie-Fox Hills (NT)	3.84	1.28	384

10. The Applicant requested to revise the plan for augmentation decreed in Case No. 18CW3035 as applies to the Applicant's Property as follows:

[1] The Division Engineer's Office Summary of Consultation described in Paragraph 6 notes that pumping from the Dawson aquifer in the northern portion of Applicant's Property does not result in actual stream depletions, but is equal to four percent (4%) of the amount of water withdrawn on an annual basis, or an amount of 0.12 acre-feet per year.

A. Amendment: The structures to be augmented are the Posorski Wells Nos. 1 through 3, as existing and to be constructed to the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith, to support the subdivision of Applicant's Property into three lots. The Posorski Wells Nos. 1 through 3 may each pump up to 1.0 acre-feet of water per year from the Dawson aquifer under the revised plan for augmentation decreed herein.

B. Uses: Indoor use will utilize an estimated 0.26 acre-feet of water per year per residence, with remaining 0.74 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 horses or equivalent livestock. The foregoing figures assume the use of three non-evaporative individual septic systems (one per lot) with resulting return flows from each.

C. Depletions: Maximum annual depletions for total residential pumping over the 300-year pumping period amounts to approximately 22.46% of pumping, or 0.67 acre-feet. Applicant is required to replace a maximum of 0.674 acre-feet annually as a result of pumping the Posorski Wells Nos. 1 through 3 (i.e. 22.46% of pumping). Should Applicant's pumping be less than the 3.0 total per year, as described herein, resulting depletions and required replacements will be correspondingly reduced.

D. Augmentation of Depletions During Pumping: 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 0.26 acre-feet per year, total of 0.78, 0.70 acre-feet is replaced to the stream system per year, utilizing three non-evaporative septic systems. Thus, during pumping, total maximum annual stream depletions of 0.672 acre-feet will be adequately augmented.

E. Augmentation of Post- Pumping Depletions: The previous reservation in the 18CW3035 decree of 327 acre-feet of water in the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions is revised to include a reservation of the entirety of the underlying Laramie-Fox Hills aquifer (384 acre-feet) and 433 acre-feet of the underlying Arapahoe aquifer for replacement of post-pumping depletions which may be associated with the Posorski Wells Nos. 1 through 3, and any additional or replacement wells. The 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. Ground Water modeling indicates that pumping a combined 3.0 acre-feet per year for 300 years results in post-pumping stream depletions of approximately 799.3 acre-feet. The reservation of a total of 817 acre-feet of the nontributary Laramie-Fox Hills and Arapahoe aquifers groundwater results in approximately 800.66 acre-feet of available post-pumping augmentation water, which will

be sufficient to replace post-pumping depletions.

F. Well Permits: Pursuant to C.R.S. §37-90-137(4), upon entry of this Decree and submittal by the Applicant of complete well permit applications and filing fees, the State Engineer shall issue a revised permit for the Posorski Well No. 1, and new well permits for the Posorski Wells Nos. 2 and 3, consistent with and referencing the revised plan for augmentation decreed herein.

11. Consideration has been given to the depletions from Applicant's use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicant, and the existence, if any, injury to any owner of or person entitled to use water under a vested water right.

CONCLUSIONS OF LAW

12. The application for revised plan for augmentation 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).

13. 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.

14. The Applicant's request for approval of revision to plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this revised plan for augmentation will permit the uninterrupted diversions from the well 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).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

15. 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.

16. The Application for Revision to Plan for Augmentation proposed by the Applicant is approved, subject to the terms of this decree.

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

18. 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.

19. Pursuant to C.R.S. §37-92-502(5)(a), the Applicant shall install and maintain such water measurement devices and recording devices as are deemed essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meters on the well or any additional or replacement wells associated therewith.

20. The vested water rights, water right structures, and revised 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.

21. All other terms and conditions in Case No. 18CW3035 remain in full force and effect.

22. 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: February 21, 2022.

BY THE REFEREE:

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: March 15, 2022

BY THE COURT:

LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2