

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street Suite 116 Pueblo, Colorado 81003 Phone Number: (719) 404-8832	DATE FILED: November 19, 2018 8:08 PM CASE NUMBER: 2018CW3035
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: JANICE WOODARD IN EL PASO COUNTY, COLORADO	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> 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 (“Woodard 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



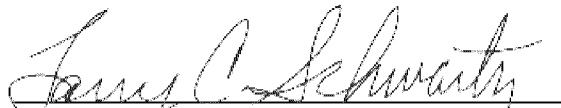
Mardell R. DiDomenico, Water Referee
Water Division 2

DECREE

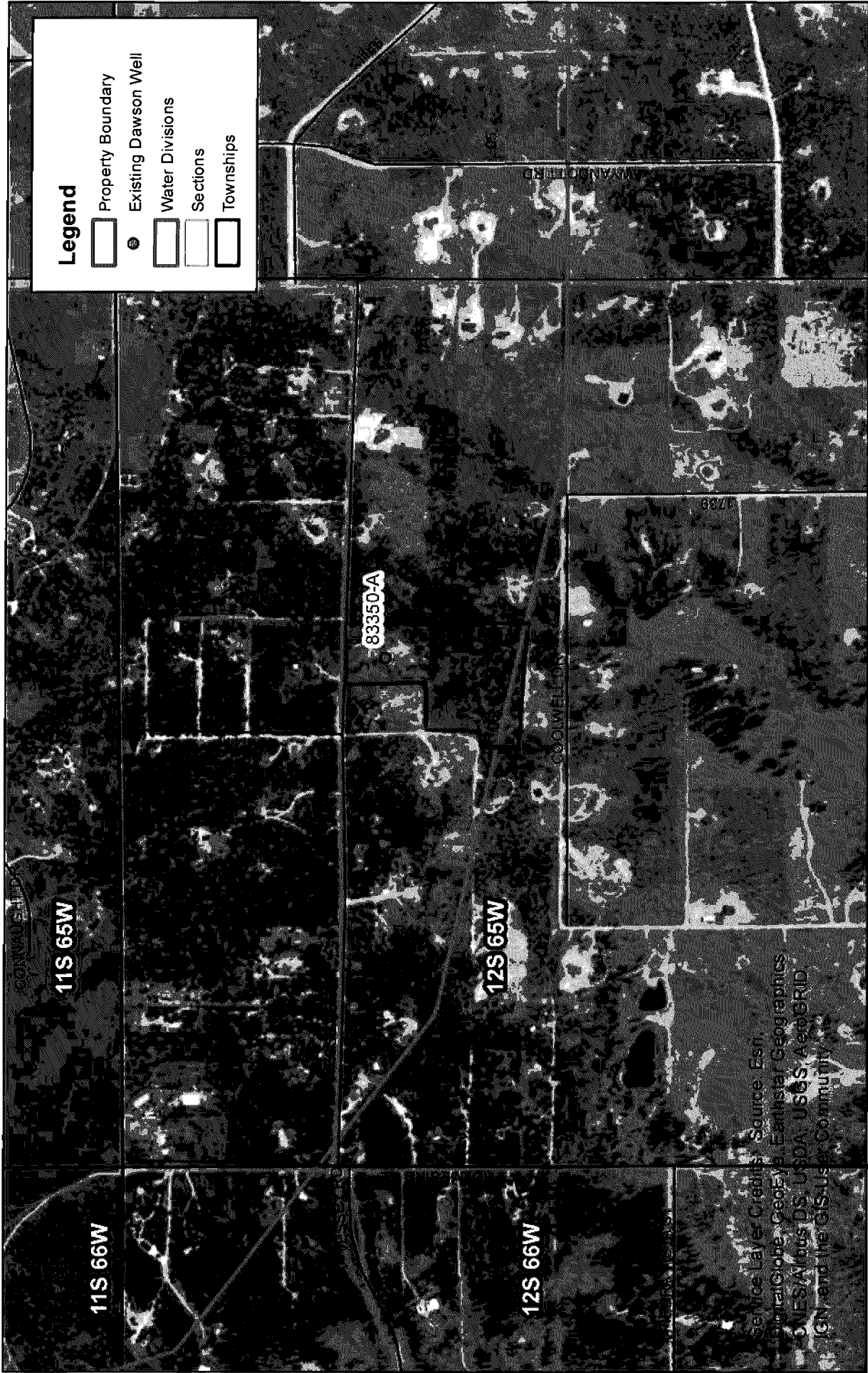
THE COURT FINDS THAT NO PROTEST WAS MADE IN THIS MATTER, THEREFOR THE FORGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: November 19th, 2018.






BY THE COURT:

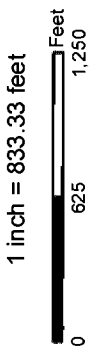
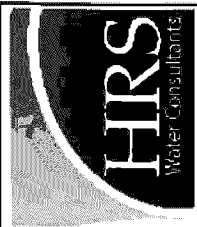


Honorable Larry C. Schwartz
Water Judge, Water Division 2
State of Colorado



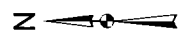
Legend

-  Property Boundary
-  Existing Dawson Well
-  Water Divisions
-  Sections
-  Townships



Client: Janice Woodward
 Job Number: 18-04
 Prepared By: SKB
 Date: May 2018
 Projection: UTM13N
 File Name: Woodward_Figure1

Exhibit A - General Location Map



Service Layer Credits: Source: Esri,
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 CNES/Airbus DS, USDA, USGS, AeroGRID,
 IGN, and the GIS User Community