

<p><b>DISTRICT COURT, WATER DIVISION 2, COLORADO</b> Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832</p>	<p>DATE FILED: June 22, 2017 10:42 AM CASE NUMBER: 2016CW3098</p>
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>MATTHEW ARVIDSON and JENNA ARVIDSON</b>  <b>IN EL PASO COUNTY</b></p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 16CW3098 (c/r 16CW3192 Div. 1)</p>
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE</b></p>	

THIS MATTER comes before the Water Referee on the Application filed by Matthew Arvidson and Jenna Arvidson, and having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Water Referee makes the following findings and orders:

**GENERAL FINDINGS OF FACT**

1. The applicants in this case are Matthew Arvidson and Jenna Arvidson, whose address is 2310 Wakonda Way Monument, CO 80132 (Applicants). Applicants are the owners of the land totaling approximately 5.01 acres on which the structures sought to be adjudicated herein are located, and are the owners of the place of use where the water will be put to beneficial use.
2. The Applicants filed this Application with the Water Courts for both Water Divisions 1 and 2 on December 29, 2016. The Application was referred to the Water Referees in both Divisions 1 and 2 on or about December 30, 2016.
3. The time for filing statements of opposition to the Application expired on the last day of February, 2017, and a single statement of opposition was timely filed by the Castle Pines Metropolitan District.
4. A Motion for Consolidation of the cases into Water Division 2 was filed with the Colorado Supreme Court on March 2, 2017. The Panel on Consolidated Multidistrict Litigation certified the Motion for Consolidation to the Chief Justice on March 6, 2017. Chief Justice, Nancy E. Rice, granted the Motion for Consolidation by Order dated April 3, 2017.

5. On December 30, 2016, the Water Court, Division 1 on Motion from Applicants, ordered that consolidated publication be made by only Division 2. On December 30, 2016, the Water Court, Division 2 ordered that publication occur in the *Daily Transcript* within El Paso County.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On January 24, 2017, proof of publication in the *Daily Transcript* was filed with both Water Court Divisions 1 and 2. All notices of the Application have been given in the manner required by law.

7. On May 9, 2017, a stipulation between the Applicants and the Castle Pines Metropolitan District was filed with the Water Court, Division 2. By Order dated May 9, 2017, the Water Court, Division 2, approved such stipulation.

8. Pursuant to C.R.S. §37-92-302(2), the Office of the State Engineer has filed Determination of Facts for each aquifer with this Court on February 13, 2017.

9. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division 2 has filed its Consultation Report dated March 10, 2017, with the Court, and a Response to the Consultation Report was filed by the Applicants on March 23, 2017. Both the Consultation Report and Response have been considered by the Water Referee in the entry of this Ruling.

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

## **GROUNDWATER RIGHTS**

11. The Applicants request the adjudication of an underground water right for Arvidson Well No. 1, and an additional well, Arvidson Well No. 2, both to be constructed to the Dawson aquifer, and additional or replacement wells associated therewith for withdrawal of Applicants' full entitlements of supply under the plan for augmentation sought herein. Applicants also seek quantification and adjudication of water uses from the Denver, Arapahoe, and Laramie-Fox Hills aquifers. The following findings are made with respect to such underground water rights:

12. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicants and consists of approximately 5.01 acres located in the SE1/4 SE1/4 of Section 3, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, as more particularly described on the attached **Exhibit A**, and

depicted on the attached **Exhibit B** map. Applicants intend to subdivide the property into two lots of approximately 2.5 acres each. All groundwater adjudicated herein shall be withdrawn from the overlying land.

13. Notice was provided to the lienholders on the Applicants' Property, consistent with the notice requirements of C.R.S. §37-92-302.

14. Arvidson Well No. 1: Arvidson Well No. 1 was permitted as an exempt well pursuant to C.R.S. §37-92-602(3)(b)(II) under Well Permit No. 25919, and is constructed into the Dawson Aquifer. Arvidson Well No. 1 is located on the Applicants' Property in the SE1/4 SE1/4 of Section 3, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M. Applicants are awarded the vested right to use Arvidson Well No. 1, and an additional Dawson aquifer well, Arvidson Well No. 2, also to be located on the Applicants' Property, along with any necessary additional or replacement wells associated with such structures, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the Plan for Augmentation decreed herein. Upon entry of this decree and submittal by the Applicants of a complete well permit application and filing fee, the State Engineer shall issue a revised permit for Arvidson Well No. 1 pursuant to C.R.S. §37-90-137(4), consistent with and references the Plan for Augmentation decreed herein.

15. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicants' Property. The Dawson aquifer underlying the Applicants' Property contains not-nontributary water, while the water of the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicants' Property is nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicants' Property is as follows:

<b>Aquifer</b>	<b>Saturated Thickness (Feet)</b>	<b>Specific Yield (%)</b>	<b>Total Water Adjudicated (Acre Feet)</b>	<b>Annual Average Withdrawal (Acre Feet)<sup>1</sup></b>
Dawson	420	20	421	1.40
Denver	150	17	128	0.43
Arapahoe	300	17	256	0.86
Laramie-Fox Hills	190	15	143	0.48

16. Pursuant to §37-90-137(9)(c.5)(I), C.R.S., the augmentation requirements for wells in the Dawson aquifer require the replacement to the effected stream systems

<sup>1</sup> The average annual acre feet available as described in this table reflect the El Paso County land use requirements for a 300-year water supply, as opposed to the 100-year aquifer life proscribed by Statute and by the Denver Basin Rules.

of actual stream depletions on an annual basis, to the extent necessary to prevent injurious effect, based upon actual aquifer conditions. Applicants shall not be entitled to construct a well or use water from the not-nontributary Dawson aquifer except pursuant to an approved augmentation plan in accordance with C.R.S. §37-90-137(9)(c.5), including as decreed herein.

17. Applicants shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicants' Property. Said amounts can be withdrawn over the 300-year life of the aquifers as set forth in El Paso County, Colorado Land Development Code §8.4.7(C)(1) which requirements also satisfy the 100-year life for the aquifers as set forth in C.R.S. §37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or Applicants' water needs. The average annual amounts of ground water available for withdrawal from the underlying Denver Basin aquifers, based upon the 300-year aquifer life is determined and set forth above, based upon the February 13, 2017 Office of the State Engineer Determination of Facts. As the Applicants are to re-permit Arvidson Well No. 1 as a nonexempt well upon issuance of this decree, the reservation of four (4) acre feet of water per year for the existence of an exempt well on the Applicants' Property as described in Paragraph 6 of the SEO Dawson aquifer Determination of Facts is unnecessary, and all water available in the not-nontributary Dawson aquifer, without reservation, is available for Applicants' use subject only to the terms and conditions of the Plan for Augmentation decreed herein.

18. Applicants shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicants' Property, so long as the sum of the total withdrawals from wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of the decree herein, whichever comes first, and the annual volume of water which Applicants are entitled to withdraw from the aquifer underlying Applicants' Property.

19. The Applicants shall have the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial, and for storage and augmentation associated with such uses. The amount of groundwater decreed for such uses upon the Applicants' Property is reasonable as such uses are to be made for the long term use and enjoyment of the Applicants' Property and are to establish and provide for adequate water reserves. The nontributary groundwater, excepting such water reserved for post pumping depletions in the Plan for Augmentation decreed herein, may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the relinquishment of the right to consume two percent of such nontributary water withdrawn. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses

and purposes stated herein. Provided however, as set forth above, Applicants shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein.

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

### **PLAN FOR AUGMENTATION**

21. The structures to be augmented are Arvidson Well No. 1 and Arvidson Well No. 2 in the not-nontributary Dawson aquifer underlying the Applicants' Property, along with any additional or replacement wells associated therewith. Arvidson Well No. 1 is currently permitted as an exempt well under Permit No. 25919, and shall be re-permitted as a nonexempt structure under this plan for augmentation. Arvidson Well No. 2 is yet to be constructed.

22. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation obligation for Arvidson Well Nos. 1 and 2, and any additional or replacement wells constructed to the Dawson aquifer requires the replacement of actual stream depletions to the extent necessary to prevent any injurious effect. The water rights to be used for augmentation during pumping are the septic return flows of the not-nontributary Arvidson Well Nos. 1 and 2, to be pumped as set forth in this plan for augmentation. The water rights to be used for augmentation after pumping are a reserved portion of Applicants' nontributary water rights in the Arapahoe and Laramie-Fox Hills aquifers. Applicants shall provide for the augmentation of stream depletions caused by pumping the Arvidson Well Nos. 1 and 2 as approved herein. Water use criteria as follows:

A. Use: The Arvidson Well Nos. 1 and 2 may each pump up to 0.7 acre feet of water per year, for a maximum total of 1.40 acre feet being withdrawn from the Dawson aquifer annually. Households will utilize up to 0.25 acre feet of water per year per residence, with the additional 0.45 acre feet per year per residence available for irrigation of approximately 8,100 square feet of lawn and garden and the watering of up to four horses or equivalent livestock, per residence. The foregoing figures assume the use of two septic systems, with resulting return flows from each. Should Applicants utilize only a single septic system (maintaining municipal sewer service for one of the two lots/residences, as is currently available), each well would pump a maximum of 0.45 acre feet annually (0.9 total), with irrigation and stockwater uses reduced to supply from the 0.2 acre feet per residence remaining after household uses (i.e. for example, 3550 square feet of irrigation and 2 horses or similar livestock).

B. Depletions: Applicants' consultants have determined that maximum stream depletions over the 300-year pumping period will amount to approximately 24.75% of pumping. Therefore, the maximum annual depletion will be 0.347 acre feet per year, assuming pumping of 0.7 acre feet per residence (1.40 acre feet, total). If pumping is reduced to 0.45 acre feet per residence per year to account for the use of a single septic system, maximum annual depletions will be correspondingly reduced to a maximum of 0.223 annual acre feet.

C. Augmentation of Depletions During Pumping Life of Wells: Pursuant to C.R.S. §37-90-137(9)(c.5), Applicants are required to replace actual stream depletions attributable to pumping of the Arvidson Well Nos. 1 and 2. Applicants' consultants determined that if each of the two planned residences utilize septic treatment systems, combined annual return flows of 0.45 acre feet per year will accrue to the stream. This amount represents ninety percent (90%) of the in-house water use ( $0.5 * 90\%$ ). This amount will be sufficient to support the uses of water described above, and broken down in the following example: (i) 0.25 acre feet for in-home use, and (ii) 0.45 acre feet for irrigation of up to 8,100 square feet of lawn and garden, and (iii) the watering of up to four (4) head of livestock. If only a single septic system were utilized, with one residence remaining on municipal sewer treatment, total annual return flows from a single system would be 0.225 annual acre feet ( $0.25 * 90\%$ ), with irrigation and stockwater uses correspondingly decreased. Based on these various scenarios of diversions and consumptive use, the maximum depletions described in Paragraph 22.B., above will be adequately replaced during the pumping life of the Arvidson Well Nos. 1 and 2. Because this augmentation plan is dependent upon the return flow from in-house uses during the pumping life of the wells, this plan for augmentation shall only operate provided such uses are continually made so as to provide the augmentation water necessary for replacement of out-of-priority depletions during the pumping life of Arvidson Well Nos. 1 and 2. Such return flows are dedicated to this plan and may not be used, sold, traded or assigned in whole or in part for any other purpose.

D. Augmentation of Post Pumping Depletions: This plan for augmentation shall have a pumping period of a minimum of 300 years. It is necessary for the Applicants to address the replacement of any injurious post-pumping depletions which may be caused to the stream system by the pumping of the not-nontributary Arvidson Well Nos. 1 and 2 beyond the operational lives of the wells. The Division Engineer's Office in its consultation report advised that maximum post-pumping depletions would total 370.55 acre feet. For the replacement of such post-pumping depletions, the Applicants hereby reserve up to 123 acre feet of water from the nontributary Laramie-Fox Hills aquifer, and 256 acre feet of water from the nontributary Arapahoe aquifer (total 379 acre feet reserved) underlying Applicants' Property. The amount reserved may be reduced as may be determined through this Court's retained jurisdiction as set forth in Paragraphs 42 through 46, herein. Pursuant to C.R.S. §37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer

shall be consumed. Therefore, the reservation of 256 acre-feet from the Arapahoe Aquifer and 143 acre-feet from the Laramie-Fox Hills aquifer results in 371.42 acre-feet available for post-pumping augmentation water, which is sufficient to cover maximum post-pumping depletions of 370.55 acre-feet. If the Court, by Order, reduces Applicants' obligation hereunder to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Arapahoe and Laramie-Fox Hills aquifer groundwater reserved for such purposes, as described herein.

23. Because depletions occur to both the South Platte and Arkansas River systems under the State's groundwater flow model, the Application in this case was filed in both Water Divisions 1 and 2. The return flows set forth above as augmentation will accrue to only Arkansas River system where most of the depletions will occur and where the Applicants' 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 42-46 herein, and that the depletions to the South Platte River System will not materially affect vested water rights in Water Division 1.

24. This decree, upon recording, shall constitute a covenant running with Applicants' Property, benefitting and burdening said land, and requiring construction of wells to the nontributary Arapahoe and Laramie-Fox Hills aquifers and pumping of water to replace any injurious post-pumping depletions under this decree. Subject to the requirements of this decree, in order to determine the amount and timing of post-pumping replacement obligations, if any, under this augmentation plan, Applicants or their successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time. Pursuant to this covenant, the water from the nontributary Arapahoe and Laramie-Fox Hills aquifers reserved herein may not be severed in ownership from the overlying subject property. This covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights who would be materially injured by the failure to provide for the replacement of post-pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner of the Applicants' Property.

25. Applicants or their successors shall be required to initiate pumping from the Arapahoe and Laramie-Fox Hills aquifers 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 his successors in interest have acknowledged in writing that all withdrawals for beneficial use through the Arvidson Well Nos. 1 and 2 have permanently ceased, (iii) a period of 10 consecutive years where either no withdrawals of groundwater has occurred, or (iv) accounting shows that return flows from the use of the water being withdrawn is insufficient to replace depletions caused by the withdrawals that already occurred.

26. Accounting and responsibility for post-pumping depletions in the amount set forth herein shall continue for the shortest of the following periods: (i) the period provided by statute; (ii) the period specified by any subsequent change in statute; (iii) the period required by the Court under its retained jurisdiction; (iv) the period determined by the State Engineer; or (v) the period as established by Colorado Supreme Court final decisions. Should Applicants' obligation hereunder to account for and replace such post-pumping stream depletions be abrogated for any reason, then the Arapahoe and Laramie-Fox Hills aquifer groundwater reserved for such a purpose shall be free from the reservation herein and such groundwater may be used or conveyed by its owner without restriction for any post-pumping depletions.

27. 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 22 such that annual diversions are increased or the duration of the plan is extended, the Applicants must prepare and submit a revised model of stream depletions caused by the actual pumping schedule. This analysis must utilize depletion modeling acceptable to the State Engineer, and 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.

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

29. It is determined that the timing, quantity and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate material injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Arvidson Well Nos. 1 and 2. As a result of the operation of this plan for augmentation, the depletions from the Arvidson Well Nos. 1 and 2 and any additional or replacement wells associated therewith will not result in material injury to the vested water rights of others.



## CONCLUSIONS OF LAW

30. The application for adjudication of Denver Basin groundwater and approval of plan for augmentation was filed with the Water Clerks for Water Divisions 1 and 2, pursuant to C.R.S. §§37-92-302(1)(a) and 37-90-137(9)(c). These cases were properly consolidated before Water Division 2.

31. The Applicants' request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings. C.R.S. §§37-92-302(1)(a), 37-92-203, and 37-92-305.

32. Subject to the terms of this decree, the Applicants are entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicants' Property, and the right to use that water to the exclusion of all others subject to the terms of this decree.

33. The Applicants have complied with C.R.S. §37-90-137(4), and the groundwater is legally available for withdrawal by the requested nontributary well(s), and legally available for withdrawal by the requested not-nontributary well(s) upon the entry of this decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). Applicants are entitled to a decree from this Court confirming their rights to withdraw groundwater pursuant to C.R.S. §37-90-137(4).

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

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

The Applicants' request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the Arvidson Well Nos. 1 and 2 without adversely affecting any other vested water rights in the Arkansas River and South Platte River or their tributaries and when curtailment would otherwise be required to meet a valid senior call for water. C.R.S. §§37-92-305(3),(5), and (8).

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

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

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

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

39. The Applicants shall comply with C.R.S. §37-90-137(9)(b), requiring the relinquishment of the right to consume two percent (2%) of the amount of the nontributary groundwater withdrawn. Ninety-eight percent (98%) of the nontributary groundwater withdrawn may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment.

40. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water covered by the Arvidson Well Nos. 1 and 2 so long as the return flows from the annual diversions associated with the Arvidson Well Nos. 1 and 2 accrue to the stream system pursuant to the conditions contained herein. To the extent that Applicants or one of their successors or assigns is ever unable to provide the replacement water required, then the Arvidson Well Nos. 1 and 2 shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulation of the State of Colorado. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall curtail all out-of-priority diversions which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the one or both of the septic systems discussed herein, as appropriate, shall at all times during pumping be in an amount sufficient to replace the amount of stream depletions.

41. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristic, and that the Applicants need not refile, republish, or otherwise amend this application to request such adjustments. The Court further retains jurisdiction should the Applicants later seek to amend this decree by seeking to prove that post-pumping depletions are

noninjurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 22.D.

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 42 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, 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 42 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 42.A., above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

42. Pursuant to C.R.S. §37-92-304(6), the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

43. As pertains to the Denver Basin groundwater supplies, the court shall retain continuing jurisdiction for so long as Applicants are 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 Applicants are 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 Applicants' failure to replace depletions to the South Platte River system is causing material injury to water rights owned by that party invoking the Court's retained jurisdiction, except that the State and Division Engineer may invoke the Court's retained jurisdiction by establishing a prima facie case that material injury is occurring to any vested or conditionally decreed water rights in the South Platte River system due to the location of Applicants' replacement water. If the Court finds that those facts are established, the Applicants shall thereupon have the burden of proof to show (i) that petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicants in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others.

45. Except as otherwise specifically provided in Paragraphs 42-45, above, pursuant to the provisions of C.R.S. §37-92-304(6), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of others, for a period of 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, Applicants shall thereupon have the burden of proof to show: (i) that the petitioner is not materially injured, or (ii) that any modification sought by the petitioner is not required to avoid material injury to the petitioner, or (iii) that any term or condition proposed by Applicants in response to the petition does avoid material injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert material injury to the vested water rights of others. If no such petition is filed within such period and the retained jurisdiction period is not extended by the Court in accordance with the revisions of the statute, this matter shall become final under its own terms.

46. Pursuant to C.R.S. §37-92-502(5)(a), the Applicants shall install and maintain such water measurement devices and recording devices as are deemed essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicants are to install and maintain a totalizing flow meter on Arvidson Well Nos. 1 and 2 or any additional or replacement wells associated therewith. Applicants are 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.

48. Arvidson Well No. 1 is permitted as an exempt well under Permit No. 25919, and shall be re-permitted as a nonexempt structure under this plan for augmentation. The Court determines and orders that the State Engineer shall issue a new well permit for Arvidson Well No. 1 with terms and conditions no more burdensome than those contained herein pursuant to C.R.S. §37-90-137(4),(10) upon submittal by the Applicants of a complete well permit application and filing fee.

49. **No Precedent:** There was no trial in this matter and no factual issues were litigated. The findings of fact, conclusions of law, and decree were completed as a result of discussions, negotiations, and compromises by, between, and among the Applicants and the objector pertaining to all parts of the findings, conclusions, and decree. It is specifically understood and agreed by the parties hereto, and found by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this particular matter and upon the compromises reached by the parties shall never give rise to any argument, claim, defense, or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any party hereto in any other matter, case, or dispute. The parties agree that they do not intend the findings, conclusions, and this decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter.

50. 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 31st day of May, 2017.

BY THE REFEREE:

*Mardell R. DiDomenico*



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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: June 22, 2017.



BY THE COURT:

*Larry C. Schwartz*  
LARRY C. SCHWARTZ, WATER JUDGE  
WATER DIVISION 2

**EXHIBIT A – Arvidson Property Legal Description**

That portion of the SE1/4 of Section 3, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., described as follows: Beginning in the Southeast corner of said Section 3; thence N 2°30' W, a distance of 393.61 feet; thence N 56°59' W, a distance of 309.70 feet; thence S 87°23' W parallel to the South line of said Section 3 a distance of 212.82 feet; thence S 4°51'15" E, a distance of 574.48 feet to intersect the South line of said Section 3 at a point 441.30 feet Westerly thereon from the Southeasterly corner thereof; thence N 87°23 'E on said South line 441.30 feet to the point of Beginning. El Paso County, Colorado. Being 5.01 acres, more or less.

Attachment to Order - 2016CW3098

# El Paso County Assessor's Office

## EXHIBIT B

2310 WAKONDA WAY  
SCHEDULE: 7103001034  
OWNER: ARVIDSON MATTHEW P  
ARVIDSON JENNA M

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