

<p>DISTRICT COURT, WATER DIVISION 1 and 2, COLORADO</p> <p>Court Addresses: Water Division 1 P.O. Box 2038 Greeley, CO 80632</p> <p>Water Division 2 320 W. 10th St., #207 Pueblo, CO 81003</p>	<p>CO Pueblo County District Court 10th JD Filing Date: Feb 7 2008 1:45PM MST Filing ID: 18490776 Review Clerk: N/A</p> <p>σ COURT USE ONLY σ</p> <p>Consolidated Case Numbers: 07CW53 WD#2 07CW115 WD#1</p>
<p><b>KING'S DEER DEVELOPMENT, LLC, Applicant, IN EL PASO COUNTY.</b></p>	
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE,</b></p>	

This claim for approval of plan for augmentation, having been filed in May, 2007, in Case No. 07CW53 in Water Division 2, and Case No. 07CW115 in Water Division 1, and all matters contained in the application having been reviewed, and testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein, the following is hereby the Judgment and Decree of the Court:

FINDINGS OF FACT

1. Name, Address and Telephone Number of Applicant:

King's Deer Development, LLC  
2790 N. Academy, #350  
Colorado Springs, CO 80917  
(719) 592-0833

2. Objections: A statement of opposition was filed in Case No. 07CW53 by the City of Colorado Springs. No other statements of opposition were filed and the time for filing such statements has expired.

3. Subject matter jurisdiction: Timely and adequate notice of the application was published as required by statute, and the Court has jurisdiction over the subject matter of this proceeding

and over the parties affected hereby, whether they have appeared or not. The cases were consolidated in Case No. 07MDL24 to be decreed by the Water Court, Water Division 2, and were re-referred to the Water Judge by Order of this Court.

4. Approval of plan for augmentation:

A. Groundwater to be augmented: 13 acre-feet per year of not nontributary Dawson aquifer groundwater to be withdrawn over a 300 year pumping period as decreed in Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1. The land which is the subject of the decree is approximately 1436 acres located in Sections 4, 5, 8, 9, and 17, T11S, R66W of the 6th P.M., as shown on Attachment A hereto (Subject Property).

B. Water to be used for augmentation: Return flows from the use of not nontributary Dawson aquifer water and return flows and direct discharge of nontributary Denver aquifer groundwater as decreed Case No. 85CW230, District Court, Water Division 1.

C. Development and Consumptive Use: The 13 acre-feet per year will be used to serve 31 residential lots on the Subject Property for 300 years, through individual wells which will withdraw at rates of flow of 15 gpm. Each well will withdraw and use 0.419 acre-feet annually for inhouse use (0.27 acre-feet) and irrigation of 3000 square-feet of home lawn and garden (0.149 acre-feet). Sewage treatment for the inhouse use will be provided by a non-evaporative septic system. Consumptive use from inhouse use is estimated to be 10% of that use, and from consumptive use from irrigation use will be approximately 90% of that use.

D. Replacement of Depletions During Pumping: Based on annual pumping of 13 acre-feet over a 300 year pumping period, it is estimated that the depletion to the Cherry Creek stream system is approximately 15% of average annual pumping or approximately 1.95 acre-feet. (Depletion at 100 years of pumping is approximately 7.2% of average annual pumping or 0.94 acre-feet). It is estimated that depletions to Monument Creek at 300 years of pumping is approximately 7.3% of average annual pumping or 0.95 acre-feet. (Depletion at 100 years of pumping is approximately 2.27% of average annual pumping or 0.29 acre-feet). Applicant does not have the physical ability to replace depletions to the Monument Creek stream system, but shall instead replace all such depletions to the Cherry Creek stream system. During pumping of the Dawson aquifer groundwater for use on 31 residential lots for 300 years, annual septic return flows are estimated to be 7.5 acre-feet annually, which is in excess of the combined maximum annual depletion of 2.9 acre-feet to the Monument Creek and Cherry Creek stream systems during pumping for 300 years.

E. Replacement of Post-pumping Depletions: Applicant agrees to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicant obtains water court approval for such modification; the period determined by the State Engineer, should the State Engineer lawfully

establish such a period; the period established through rulings of the Colorado Supreme Court on relevant cases; or until Applicant petitions the water court and after notice to parties in the case and proves that it has complied with all statutory requirements. The court finds that the provisions of this paragraph are adequate to comply with existing law and to prevent injury to others. It is estimated that maximum total depletions to all stream systems from pumping of 13 acre-feet per year for 300 years will be approximately 24.79% of average annual pumping in the 300th year and will decline thereafter. Applicant's replacement obligation will be the total stream depletion factor for all stream systems as shown on Attachment B hereto. That required amount of water will be pumped from the nontributary Denver aquifer which will be reserved for this purpose for diversion into the Cherry Creek stream system. However, Applicant reserves the right to substitute the use of other nontributary groundwater, including return flows, either underlying the Subject Property, or from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.

F. Applicant shall reserve and dedicate to this plan for augmentation 3900 acre-feet total of nontributary Denver aquifer groundwater decreed in Case No. 85CW230, District Court, Water Division 1, underlying the Subject Property, for the purpose of replacing to Cherry Creek all post-pumping depletions. If at some time replacement of post-pumping depletions is no longer required pursuant to paragraph 4.E above, said reservation will become null and void at such time as the obligation to replace post-pumping depletions terminates. Applicant will be required to construct a well into the Denver aquifer to provide for post-pumping depletions herein

5. Applicant or successor and assigns shall be responsible for the operation of this augmentation plan. Applicant shall reserve 3900 acre-feet total of the nontributary Denver aquifer groundwater as decreed in Case No. 85CW230, Water Division 1, for use in this plan. Failure of either the Applicant or successors and assigns to comply with the terms of the decree may result in an order of the Division Engineer's office to curtail or eliminate pumping of the well or wells. This decree shall be recorded in the real property records of El Paso County so that a title examination of the property, or any part thereof, shall reveal to all future purchasers the existence of this decree.

6. Administration of plan for augmentation:

A. Applicant shall report to the Division Engineer for Water Division 1 upon request, a summary of the annual metered withdrawals of the subject wells on an accounting form acceptable to the Division Engineer.

B. All withdrawals which are the subject of this decree will be metered.

C. Pursuant to Section 37-92-305(8), C.R.S., the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

D. The Applicant or successor and assigns at the direction of the Division Engineer, shall make post-pumping replacements to the Cherry Creek stream system pursuant to the percentage of depletion referenced on the depletion curve attached hereto on Attachment B.

7. Retained jurisdiction for plan for augmentation:

A. Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also has jurisdiction for the purposes of determining compliance with the terms of the augmentation plan. Objector City of Colorado Springs owns senior water rights on Monument Creek that may be negatively impacted by the operation of this decree wherein depletions to Monument Creek will not be replaced to Monument Creek, but rather will be replaced to the Cherry Creek stream system. In addition, Colorado Springs reserves the right to claim that the cumulative negative impacts of this and other similar decrees constitutes injury to its senior Monument Creek rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by doing so, Colorado Springs does not waive its right to claim injury and to seek relief in the future according to this paragraph.

B. Any person seeking to invoke the retained jurisdiction of the Court shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the Decree shall set forth with particularity the factual basis and the requested decretal language to effect the petition. The party lodging the petition shall have the burden of going forward to establish prima facie facts alleged in the petition. If the Court finds those facts to be established, Applicant shall thereupon have the burden of proof to show: (1) that any modification sought by Applicant will avoid injury to other appropriators, or (2) that any modification sought by Objector is not required to avoid injury to other appropriators, or (3) that any term or condition proposed by Applicant in response to the Objector's petition does avoid injury to other appropriators.

C. The Court retains jurisdiction for the purpose of determining whether the continued reservation of the nontributary water for use on the property is required. After notice to the State Engineer's Office, if Applicant can demonstrate to the Court that post-pumping depletions need no longer be replaced, the Court may remove the requirement that the nontributary water must be reserved.

#### CONCLUSIONS OF LAW

8. The Water Court has jurisdiction over this proceeding pursuant to Section 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated

by law. Sections 37-90-137(4) and (9)(c). The withdrawal of up to 13 acre-feet per year and no more than 3900 acre-feet total of the Dawson aquifer in accordance with the terms of this decree will not result in material injury to vested water rights of others subject to the provisions of this decree.

9. This plan for augmentation satisfies the requirements of Section 37-90-137(9)(c), C.R.S., for replacement of actual depletions to the affected stream systems for withdrawals of the Dawson aquifer water.

#### JUDGMENT AND DECREE

The Findings of Fact and Conclusions of Law set forth above are hereby incorporated into the terms of this Judgment and Decree as if the same were fully set forth herein.

10. Full and adequate notice of the application was given, and the Court has jurisdiction over the subject matter and over the parties whether they have appeared or not.

11. Applicant may withdraw up to 13 acre-feet per year and no more than 3900 acre-feet total of not nontributary ground water from the Dawson aquifer under the plan for augmentation decreed herein pursuant to Section 37-90-137(9)(c), C.R.S.

12. Applicant has complied with all requirements and met all standards and burdens of proof, including but not limited to Sections 37-90-137(9)(c), 37-92-103(9), 37-92-302, 37-92-304(6), 37-92-305(1), (2), (3), (4), (6), (8), (9), C.R.S., to adjudicate this plan for augmentation and is therefor entitled to a decree confirming and approving this plan for augmentation as described in the findings of fact.

13. Pursuant to Section 37-92-305(5), C.R.S., the replacement water herein shall be of a quality so as to meet the requirements for which the water of the senior appropriator has normally used.

14. The proposed plan for augmentation as described in the findings of fact is hereby approved, confirmed, and adjudicated, including and subject to the terms and conditions specified herein.

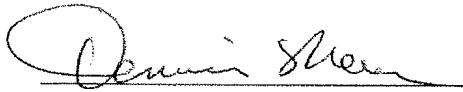
15. No owners of or person entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by the operation of the plan for augmentation as decreed herein.

16. In considering applications for permits for wells to withdraw the groundwater which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with terms of this decree.

17. Continuing Jurisdiction:

Pursuant to Section 37-92-304(6), C.R.S., the Court retains 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. The Court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

DECREE ENTERED this 7 day of February, 2008.



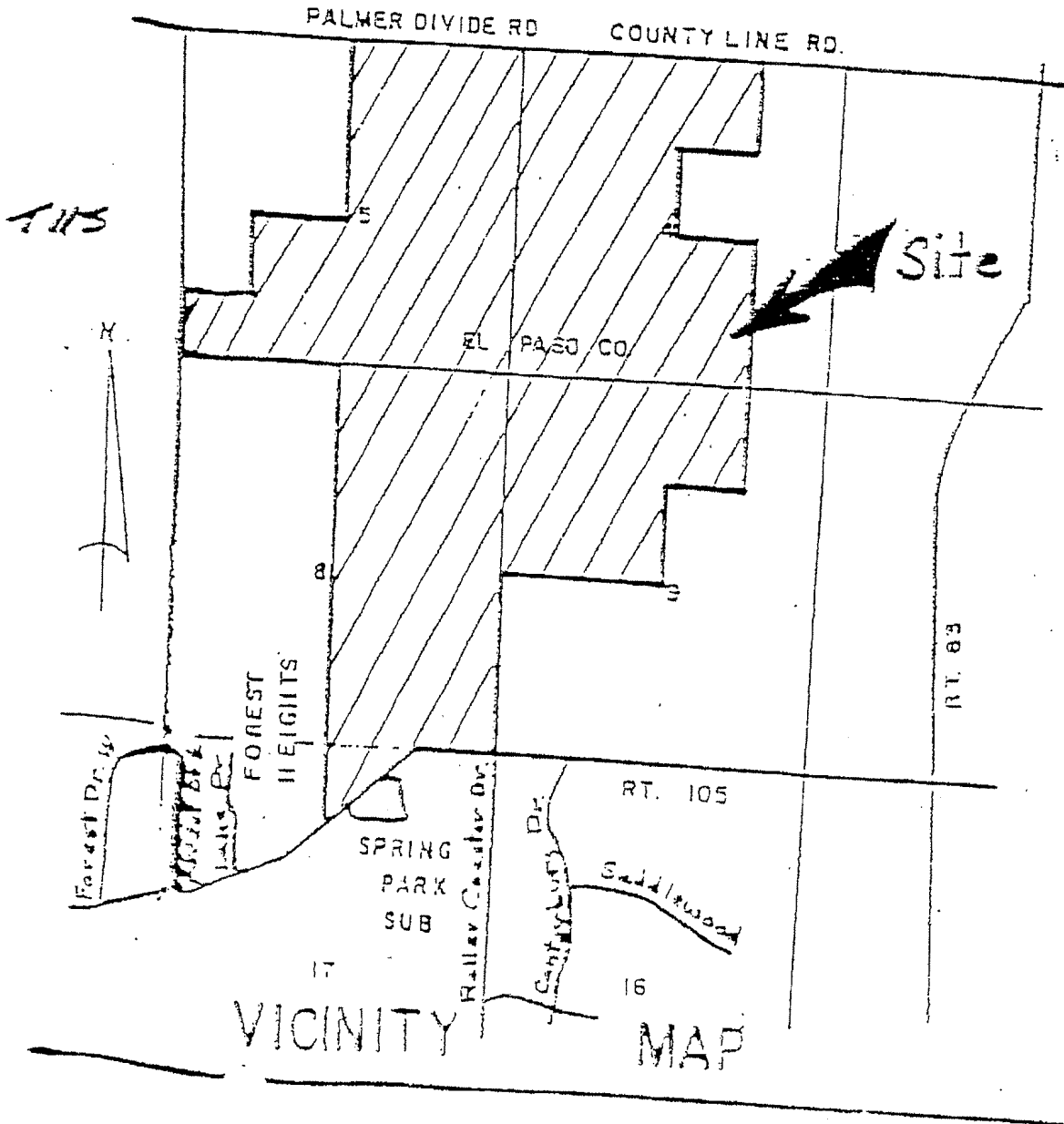
Dennis Maes  
Water Judge  
Water Division 2

C. State & Division Engineers  
Hughes  
Shaw  
Water Div-1  
27-08  
MD

King's Deer Dev  
07CW53

Attachment H

266W



King's Deer Deer  
07CW53

Attachment B

Stream Depletion - Case Nos. 2007CW115, Div. 1 and 2007CW53, Div. 2  
Dawson Aquifer - Model No. DA02

