

DISTRICT COURT, WATER DIVISION 1, COLORADO Weld County Courthouse PO Box 2038 Greeley, CO 80632	DATE FILED: February 12, 2021 2:58 PM CASE NUMBER: 2019CW3057
CONCERNING THE APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION OF THE PALMER DIVIDE WATER COMPANY AND KING’S DEER HOMEOWNERS ASSOCIATION, Applicants, IN EL PASO COUNTY	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No. 2019CW3057, Water Div. 1 Consolidated with: Case No. 2019CW3022, Water Div. 2
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT AND DECREE OF THE WATER COURT</p>	

This matter comes on for consideration upon the application of Palmer Divide Water Company and the King’s Deer Homeowners Association, for approval of an augmentation plan. The Court having considered the pleadings, the files herein, the evidence presented, and the comments of the Division Engineer, does find as follows:

FINDINGS OF FACT

1. The application was filed with the Water Clerks, Water Division 1 and Water Division 2, on March 29, 2019. All notices required by law of the filing of this application have been fulfilled, and the court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. The land and water rights involved herein are not included in the boundaries of any designated water basin.
2. On June 19, 2019 a Motion for Transfer and Consolidation of Multidistrict Litigation was filed by the Applicants in Water Division 1 and 2 under Case No. 2019MD12. On July 23, 2019 the Order Pursuant to C.R.C.P. 42.1(i) was issued and both cases were consolidated in Water Division 1 under Case No. 2019CW3057.
3. No statements of opposition have been filed in this matter in Water Division 1 and the time for filing such statements has now expired. The Water Referee in Water Division 1 consulted with the Division Engineer, as required by C.R.S. § 37-92-302(4), on June 10, 2019. A written summary thereof was filed on June 30, 2019.
4. Statements of opposition were filed in Water Division 2 by the Woodmoor Water and Sanitation District No. 1 (“Woodmoor”) and the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities (“Utilities”). The time for filing of additional statements of opposition has now expired.

5. A stipulation was entered into with objector Woodmoor on February 12, 2021. A stipulation was entered into with objector Utilities on February 12, 2021.

6. The mailing addresses for the Applicants are as follows:

Palmer Divide Water Company
 2760 N. Academy, #314
 Colorado Springs, CO 80917
 (“Palmer”)

King’s Deer Homeowners Association
 PO Box 3143
 Monument, CO 80132
 (“King’s Deer”)

7. **Summary of Case:** The purpose of this augmentation plan is to allow increased withdrawals from individual not nontributary Dawson aquifer wells that are decreed and augmented under decrees in Case Nos. 93CW75, District Court, Water Division 2; 93CW147, District Court, Water Division 1; Consolidated Case Nos. 94CW49(A) and (B), District Court, Water Division 2, and 94CW144(A) and (B), District Court, Water Division 1. The land which is the subject of those decrees is an approximate total of 1802 acres, 366 acres under 93CW75/93CW147 and 1436 acres under 94CW49/94CW144, located in Sections 4, 5, 7, 8, 9, and 17, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado, as shown on **Exhibit A** (“Subject Property”).

8. Applicant Palmer Divide Water Company is the owner of the groundwater described in those decrees, which is further described below. Applicant King’s Deer is responsible for the water rights to be used for augmentation and augmentation requirements and the terms and conditions contained in this decree.

DESCRIPTION OF WATER RIGHTS TO BE AUGMENTED

9. **Source of Water Rights:** The groundwater to be withdrawn from the Dawson aquifer under this decree and the decrees referenced above is not-nontributary groundwater as defined in C.R.S § 37-90-103(10.7).

10. **Estimated Amounts of Available Withdrawals:** The estimated average annual amount of withdrawals available from the Dawson aquifer is indicated below, based upon the Denver Basin Rules, 2 CCR 402-6, and in compliance with the Determinations of Fact issued by the Office of the State Engineer on April 7, 1994 in Case No. 93CW75/93CW147, and December 28, 1994 in Case No. 94CW49/94CW144 and the decrees entered in those cases.

Case No.	Acres	Saturated Thickness (Feet)	Available Average Annual Withdrawal (acre-feet)
93CW75/93CW147	366	435	316
94CW49/94CW144	1436	424	1,184
Total	1802		1500

Of those amounts, the following amounts may be used pursuant to the plans for augmentation decreed in the cases identified above and the decree entered in this matter:

Case No.	Decreed Annual Withdrawal (acre-feet)	Proposed Annual Additional Withdrawal (acre-feet)	Total Average Annual Withdrawal (acre-feet)
93CW75/93CW147	54.2		54.2
94CW49/94CW144	163.41		163.41
19CW3057/19CW3022		93.95	93.95
Total	217.61	93.95	311.56

The total annual withdrawals through all 275 wells is limited to a maximum of 311.56 acre-feet/year.

11. Well Field: The Court find that Applicants have the right to withdraw all of the legally available ground water in the Dawson aquifer lying below the Subject Property through the wells described in Paragraph 10 and any additional wells which may in the future become a part of the Applicant’s well field, subject to Paragraph 16 below. The wells may be located anywhere on the Subject Property as long as they are not within 600 feet of any existing wells on adjacent property, except as allowed by statute. The wells in the Dawson aquifer, along with any additional wells completed into the Dawson aquifer, shall be treated as a well field. The pumping rates for each of these wells may exceed the nominal pumping rates set forth below to the extent necessary to withdraw the full annual acre-foot allocation of water or to meet system peaking demands, provided that the pumping rates are approved in well permits issued by the State Engineer. As additional wells are constructed, applications will be filed in accordance with C.R.S. § 37-90-137(10). Applicants hereby waive the 600 foot spacing rule for wells on the Subject Property.

12. Decreed Uses: All water withdrawn from the Dawson aquifer under the decrees referenced herein will be part of a unified water system to be used reused, successively used, and after use leased sold or otherwise disposed of for the following beneficial purposes, including, municipal, domestic, industrial, commercial, irrigation, stock watering, recreational, fish and wildlife, and any other beneficial purpose to be used on or off the Subject Property. Said water will be produced for immediate application to said uses for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, and for augmentation purposes.

PLAN FOR AUGMENTATION

13. Statement of Plan for Augmentation: The purpose of this augmentation plan is to replace depletions from increased withdrawals from individual not-nontributary Dawson aquifer wells. An initial increment of withdrawal and plan for augmentation was previously decreed in the decrees described above and in Paragraphs 14.1 and 14.2 below.

14. Structures to be Augmented

14.1 75 of the 119 wells decreed in Consolidated Case Nos. 93CW75, District Court, Water Division 2, and 93CW147, District Court, Water Division 1 (the “93CW75/93CW147 Decree”). The 93CW75/93CW147 Decree approved an augmentation plan for the use of 119 individual Dawson aquifer wells to each withdraw 15 gpm not to exceed 0.38 acre-feet per year (0.27 for in-house use and 0.11 acre-feet for irrigation of 3,000 square-feet). This decree allows an additional withdrawal of 0.37 acre-feet per well (0.75 acre-feet per well total) through up to 75 of the 119 wells decreed in the 93CW75/93CW147 Decree. Homeowners withdrawing this additional water pursuant to the augmentation plan decreed herein will be allowed additional in-house use (0.26 acre-feet in addition to 0.27 acre feet per year previously decreed, totaling 0.53 af/yr for in-house use) and additional irrigation of 1,000 square feet, for a total of 4,000 square feet of irrigated area (0.11 acre-feet in addition to 0.11 acre feet per year previously decreed, totaling 0.22 acre feet per year for irrigation).

14.1.1 For the purposes of this decree, it is assumed that the first 0.38 acre-feet withdrawn through new or existing Dawson aquifer wells on a maximum of 75 lots will be withdrawn pursuant to the 93CW75/93CW147 Decree, and use of the additional 0.37 acre-feet will be withdrawn second pursuant to this decree. All wells operating under this plan will be permitted or re-permitted to withdraw 0.38 acre-feet per year pursuant to the 93CW75/93CW147 Decree and the additional 0.37 acre-feet per year pursuant to this decree. The maximum rate of flow from each well shall continue to be 15 gpm.

14.1.2 Consumptive Uses for the 75 Wells that are Subject to the 93CW75/93CW147 Decree:

14.1.2.1 In-House Uses: The 75 residential lots on which this water will be provided will be served primarily by non-evaporative septic systems, although it is expected that 5% of the sewage systems will be evaporative sewage systems, for a total estimated overall consumptive use from both types of systems to be approximately 2.03 acre-feet per year, which is 10.4% of the total in-house demand of 19.50 acre-feet per year (0.26 acre-feet per year per lot).

14.1.2.2 Outdoor Uses: Outside irrigation shall be limited to an average total of 1,000 square feet per lot for 75 lots for an irrigation application of approximately 0.11 acre-feet per lot. Irrigation application for the 75 lots is estimated to be 8.25 acre-feet annually. Total annual consumptive irrigation use for the 75 lots

is approximately 90% of the water used, for a total of 7.425 acre-feet per year.

14.2 200 of the 390 wells decreed in Consolidated Case Nos. 94CW49(A) and (B), Water Division 2, and 94CW144(A) and (B), Water Division 1 (the “94CW49/94CW144 Decree”). The 94CW49/94CW144 Decree approved an augmentation plan for the use of 390 individual Dawson aquifer wells to withdraw 0.419 acre-feet per year (0.27 for in-house use and 0.149 acre-feet for irrigation of 3,000 square-feet of irrigated area). This decree allows an additional withdrawal of 0.331 acre-feet (0.75 acre-feet per well total) through 200 of the 390 wells decreed in the 94CW49/94CW144 Decree. Homeowners withdrawing this additional water pursuant to the augmentation plan decree herein will be allowed additional in-house use (0.21 acre-feet in addition to 0.27 acre feet per year previously decreed) and irrigation of 1000 additional square feet, up to a total of 4,000 square feet of total irrigated area per lot (0.12 acre-feet in addition to 0.149 acre feet per year previously decreed, up to 0.269 acre feet per year total for irrigation).

14.2.1 For the purposes of this decree, it is assumed that the first 0.419 acre-feet withdrawn through new or existing Dawson aquifer wells on a maximum of 200 lots will be withdrawn pursuant to the 94CW49/94CW144 Decree, and use of the additional 0.331 acre-feet will be withdrawn second pursuant to this decree. All 200 wells operating under this plan will be permitted or re-permitted to withdraw 0.419 acre-feet per year pursuant to the 94CW49/94CW144 Decree and the additional 0.331 acre-feet per year pursuant to this decree, for a total annual withdrawal of up to 0.75 acre-feet per well. The maximum rate of flow from each well shall continue to be 15 gpm.

14.2.2 Consumptive Uses for 200 Wells that are Subject to the 94CW49/94CW144 Decree:

14.2.2.1 In-House Uses: 200 residential lots on which this water will be provided will be served primarily by non-evaporative septic systems, although it is expected that 5% of the sewage systems will be evaporative sewage systems, for a total estimated overall consumptive use from both systems to be approximately 15% or 6.3 acre-feet per year. In-house demand for the 200 lots is estimated to be 42 acre-feet annually (0.21 acre-feet per lot).

14.2.2.2 Outdoor Uses: Outside irrigation shall be limited to an average total of 1,000 square feet per lot for the 200 lots with an irrigation application of approximately 0.12 acre-feet per lot. Irrigation application for the 200 lots is estimated to be 24 acre-feet annually. Total annual consumptive irrigation use for the

200 lots is approximately 90% of the water used, for a total of 21.6 acre-feet per year.

Summary Table

Decree	Annual Withdrawal per Lot (acre-feet)	In-House Use (acre-feet)	Irrigation Use (acre-feet)	Irrigated Area (sq feet)
93CW75/93CW147	0.38	0.27	0.11	3,000
94CW49/94CW144	0.419	0.27	0.149	3,000
19CW3057/19CW3022 (93CW75/93CW147 Wells)	0.37	0.26	0.11	1,000
19CW3057/19CW3022 (94CW49/94CW144 Wells)	0.331	0.21	0.12	1,000
93CW75/93CW147 TOTAL (75 Wells)	0.75	0.53	0.22	4,000
94CW49/94CW144 TOTAL (200 Wells)	0.75	0.48	0.27	4,000

14.3 Total Groundwater to be Diverted by Individual Wells:

14.3.1 Wells Subject to the 93CW75/93CW147 Decree: 27.75 acre-feet per year of not-nontributary Dawson Aquifer groundwater to be withdrawn over a 100 year pumping period through up to 75 individual wells, in addition to 54.2 acre-feet per year in the 93CW75/93CW147 Decree. The total amount withdrawn under this decree and the 93CW75/93CW147 Decree will be 81.95 acre-feet per year through the above referenced 75 wells.

14.3.2 Wells Subject to the 94CW49/94CW144 Decree: 66.2 acre-feet per year of not-nontributary Dawson Aquifer groundwater to be withdrawn over a 100 year pumping period through up to 200 wells, in addition to 163.41 acre-feet per year in the 94CW49/94CW144 Decree. The total amount withdrawn under this decree and the 94CW49/94CW144 Decree will be 229.61 acre-feet per year through the above referenced 200 wells.

15. Water Rights to be Used for Augmentation: Applicant King’s Deer is responsible for the water rights to be used for augmentation, augmentation requirements, and other terms and conditions in this decree. Augmentation sources include the following:

15.1 Return flows and direct discharge to the Cherry Creek stream system from nontributary Denver Basin groundwater decreed in Case No. 85CW230. Return flows from the use of not-nontributary Dawson Aquifer groundwater in Case Nos. 93CW75/93CW147 and 94CW49/94CW144, and return flows which are the subject of this decree.

- 15.2 Direct Discharge to Monument Creek Stream System from Northgate Company Wells - NT Denver Basin Groundwater Decreed in Case Nos. W-8269-76, 80CW369, 84CW621, 82CW295 and 87CW193 (“Northgate Company Water”) will be used to replace depletions to the Monument Creek Stream System that accrue during pumping under this plan. King’s Deer received rights by assignment to Northgate Company water for use in this plan and agrees to assume the replacement obligation to the Monument Creek basin hereunder, subject to the terms and conditions of this decree. The Northgate Company Water is provided through well U.D. No. 1-17798-F, located in the NE1/4 NE1/4, Section 17, and proposed well A-D-2, located in the NW1/4 SE1/4, Section 17, both in Township 11 South, Range 66 West of the 6th P.M. Well U.D. No. 1-7798-F is in the nontributary Dawson Aquifer and proposed well A-D-2 will be completed in the Denver Aquifer decreed in Case Nos. W-8269-76, 80CW369, 84CW621, 82CW295 and 87CW193, all in Water Division 1. Applicants shall provide such replacement water at or above the confluence of Dirty Woman Creek and Monument Creek located in the N1/2 of Section 22, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado.
- 15.3 Woodmoor Water and Sanitation District Lease: King’s Deer currently has a lease (“Lease”) with Woodmoor that satisfies King’s Deer’s replacement obligations in Case Nos. 93CW75 and 94CW49 (A) and (B) to the Monument Creek stream system. In the event that the Lease is terminated in the future and King’s Deer has no other available supplies sufficient to meet its replacement obligations, King’s Deer must secure an alternative legal replacement water supply and add it to this plan pursuant to the requirements of Paragraph 20 below. In the event the Lease is terminated, King’s Deer must secure an alternative legal replacement water supply and file a Notice of Use as authorized under Paragraph 20 and its subparagraphs, within 60 days after the last effective day of the Lease.
16. Replacement of Depletions During Pumping:
- 16.1 93CW75/93CW147 Decree: Replacements during pumping for the first 0.38 acre-feet per well per year will be made by King’s Deer pursuant to the terms of the 93CW75/93CW147 Decree. Replacements during pumping for the additional 0.37 acre-feet per well per year on a maximum of 75 new or existing wells under this decree will be made pursuant to this decree.
- 16.1.1 Return flows do not accrue to the Arkansas River stream systems. Therefore, total actual depletions to the Arkansas River stream systems shall be made upstream of Woodmoor’s Dirty Woman Creek decreed wells, at a location agreeable to Woodmoor. As shown on **Exhibit B**, the total actual depletions to the Arkansas River streams system is approximately 0.040% of the annual amount withdrawn in the first year of pumping and 3.344% of the annual amount withdrawn in the 100th year of pumping. The amount of annual replacement to Monument Creek for pumping of the additional amount through wells on a maximum of 75 lots

will be calculated using the amount of additional water pumped during the previous year as reported to King's Deer by the water owner, multiplied by the percentage of actual depletion ($q/Q\%$) for the appropriate year of pumping as described on **Exhibit B**. The well owner shall report to King's Deer the yearly total annual amount withdrawn of which the first 0.38 acre-feet is attributed to the original decree and any additional amount up to 0.75 acre-feet is attributed to the terms and conditions of this decree.

- 16.2 94CW49/94CW144 Decree: Replacements during pumping for the first 0.419 acre-feet per year under these plans will be made by King's Deer pursuant to the terms of the 94CW49/94CW144 Decree. Replacements during pumping for the additional 0.331 acre-feet per year on a maximum of 200 new or existing wells in this decree will be made pursuant to this decree.
- 16.2.1 Return flows do not accrue to the Arkansas River stream systems. Therefore, total actual depletions to the Arkansas River stream systems shall be made upstream of Woodmoor's Dirty Woman Creek decreed wells, at a location agreeable to Woodmoor. As shown on **Exhibit B**, the total actual depletions to the Arkansas River streams system is approximately 0.013% of the annual amount withdrawn in the first year of pumping and 2.058% of the annual amount withdrawn in the 100th year of pumping. The amount of annual replacement to Monument Creek for pumping of the additional amount through wells on a maximum of 200 lots will be calculated using the amount of additional water pumped during the previous year as reported to King's Deer by the water owner, multiplied by the percentage of actual depletion ($q/Q\%$) for the appropriate year of pumping as described on **Exhibit B**. The well owner shall report to King's Deer the yearly total annual amount withdrawn of which the first 0.419 acre-feet is attributed to the original decree and any additional amount up to 0.75 acre-feet is attributed to the terms and conditions of this decree.
- 16.3 South Platte/Cherry Creek: Return flows from pumping accrue to the West Cherry Creek system and those return flows are sufficient to replace actual depletions to the South Platte River system caused by pumping of up to 66.2 acre-feet per year from the Dawson Aquifer wells while the wells are being pumped. Because those return flows are estimated rather than measured Applicants agree that such return flows shall be used only to replace depletions under this plan for augmentation and will not be sold traded or assigned in whole or in part for any other purpose
- 16.4 Monument Creek and Dirty Woman Creek: As set forth in the 94CW49/94CW144 Decree, depletions from well pumping under that decree do not accrue to Monument Creek until 30 years after pumping begins. Unless Woodmoor agrees otherwise, any new replacement supply in this decree shall

provide water at or above the confluence of Dirty Woman Creek and Monument Creek located in the N1/2 of Section 22, Township 11 South, Range 67 West of the 6th P.M., El Paso County, Colorado, or at a location agreeable to Woodmoor.

17. Replacement of Post-pumping Depletions: Replacement of post-pumping depletions will be for the shortest of the following periods:
- 17.1 The period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain water court approval for such modification;
 - 17.2 The period determined by the State Engineer, should the State Engineer lawfully establish such a period;
 - 17.3 The period established through rulings of the Colorado Supreme Court on relevant cases; or
 - 17.4 Until Applicants petition the water court, after notice to parties in the case, and Applicant 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. Post-pumping replacement for pumping of the wells herein will be made pursuant to the terms and conditions for such replacement as described in the 93CW75/93CW147 Decree and the 94CW49/94CW144 Decree. Applicants shall dedicate and convey to King's Deer an equal amount of nontributary Denver, Laramie-Fox Hills, or Arapahoe Aquifer groundwater decreed in Case No. 85CW230, District Court, Water Division 1, for the purpose of replacing to Cherry Creek all post-pumping depletions. The Court retains continuing jurisdiction in this matter to determine if the augmentation supply is adequate. At the end of the 100 year pumping period, any water being used for replacement purposes from well U.D. No. 1-17798-F and well A-D-2, or associated wells will be conveyed to the respective home owners associations for replacement of post pumping depletions, or other purposes as they see fit.

18. Failure of either the Applicants or successors and assigns to comply with the terms of this decree may result in an order from 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.

19. Reserves for Post-Pumping Augmentation:

- 19.1 Ground Water Reserve: Applicant, Palmer Divide, will assign a total of 38.1 acre-feet per year (11,430 acre-feet total) of the Denver, Arapahoe, or Laramie-Fox Hills aquifer water for use in this plan, decreed in Case No. 85CW230, to co-applicant King's Deer, but 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. Any such substitute water may be added to this decree under Paragraph 20 and its subparagraphs below. Said reserved water is tied to the Subject Property and will not be sold or leased.

19.1.1 The amount reserved in Paragraph 19.1 is in addition to the following amounts:

19.1.1.1 The 93CW75/93CW147 Decree assigned nontributary water in the amounts of 170 acre-feet per year of Arapahoe aquifer and 111 acre-feet per year of Laramie-Fox Hills aquifer for use in that augmentation plan, to King's Deer.

19.1.1.2 The 94CW49/94CW144 Decree reserved 42,111 acre-feet of Denver and Arapahoe aquifer water for use in that augmentation plan.

19.2 Financial Reserve: King's Deer will maintain a financial reserve ("POPA Fund") to construct, equip, operate, and maintain wells to withdraw and deliver the nontributary water from the Arapahoe, Laramie-Fox Hills, or Denver aquifers or provide for other augmentation solutions required to satisfy its post-pumping augmentation obligations. Funds accumulated in the POPA Fund shall not be assigned, pledged, set aside, hypothecated or committed in any manner to satisfy other obligations of King's Deer. Any such funds are designated by this decree solely for the purposes set forth herein and shall not be subject to the claims or demands of any other person or entity. Funds accumulated in the POPA Fund shall not be used by King's Deer for any purpose other than construction, equipment, operation and maintenance of the wells and other facilities required to satisfy its post-pumping augmentation obligations, except that King's Deer may use such funds to acquire alternative water rights to meet post-pumping augmentation obligations in lieu of the nontributary Denver Basin groundwater held in reserve. Any such alternative sources may be added to this plan for augmentation subject to the terms of Paragraph 20 of this decree and its subparagraphs set forth below. King's Deer shall annually file with the Court a financial statement for the POPA Fund under this case number, including electronic service on the opposers to this Application as well as the State and Division Engineers. The financial statement shall show the total in the fund, all funds received by the fund during the previous twelve months, the sources of the funds received in the previous twelve months, and the amount and purpose of any disbursements from the fund in the previous twelve months.

20. Additional or Alternative Sources: Water from additional and alternative sources may be used for augmentation in this plan for augmentation including, but not limited to, outdoor use and indoor use return flows resulting from use of such water, if such sources are decreed or lawfully available for such use or are part of a substitute water supply plan approved by the State Engineer pursuant to C.R.S. § 37-92-308, or other applicable

and/or successor statutes. In order to add additional and/or alternative sources to this plan for augmentation, the following procedures must be followed:

- 20.1 Additional Water Rights Separately Decreed or Lawfully Available for Augmentation Use: If a water right is decreed or lawfully available for augmentation use and not already approved for such use under this decree, Applicants shall give at least thirty days advance written Notice of Use of Water Right for Augmentation to the court, the Division Engineer and all objectors herein, which shall describe: (1) the water right by name and decree, if any; (2) the annual and monthly amount of water available to the Applicants from the water right; (3) the manner by which the water will be used to in this plan for augmentation in time, location and amount; (4) the date of initial use of the water in this plan for augmentation; (5) the duration of use of the water in this plan for augmentation; (6) identification of any exchange reach, including the exchange “to” and exchange “from” point(s), if the water is to be introduced downstream of the out-of-priority depletion; (7) if an exchange is required for the water to be used, proposed terms and conditions relative to the exchange operation; (8) evidence that the claimed amount of water is available for use in this plan for augmentation and will not be used by another person; and (9) the manner in which the Applicants will account for use of the water in this plan for augmentation. The Notice shall also specifically include a request that the Court enter an Order either affirming or denying the Applicants’ proposal, and that said Order be attached to this decree.
- 20.2 Objection to Use of New Source: If any person wishes to object to the addition of the noticed water rights to this plan for augmentation, a written objection shall be filed with the Court within 30 days after the date the Notice was given by the Applicants. If no objection is so filed, the Court shall promptly enter an Order affirming the Applicants’ immediate use of the noticed water rights. If an objection is so filed, then the Applicants may not use the noticed water rights until the Court has determined whether and under what terms and conditions the water rights may be used in this plan.
- 20.3 Hearing on Use of New Source: Where an objection has been filed to the use of a noticed water right in this plan for augmentation, the Court shall promptly schedule a hearing to determine whether and under what terms and conditions the water right may be used in this plan for augmentation. The Court shall conduct whatever proceedings are needed to appropriately address and resolve the disputed issues. At such hearing, the Court shall impose such terms and conditions as necessary to prevent injury to vested water rights and decreed conditional rights. Applicants shall have the burden of proof that the use of any noticed water right will not cause injury to other water users. If the Notice requested temporary use of the noticed water rights in this plan for augmentation for a period not to exceed one year, then the Court shall grant an expedited hearing.

- 20.4 New Sources Requiring Operation of an Exchange: Where the use of a noticed water right in this plan for augmentation requires the operation of any new exchanges, the Applicants must obtain approval of the Division Engineer and Water Commissioner prior to operating such exchanges. The Applicants must submit a separate water court application if seeking to adjudicate such exchanges.
- 20.5 Additional Water Rights - Temporary Administrative Approval: If a water right is not decreed or otherwise lawfully available for augmentation use, and Colorado statutes or other governing authority provide a mechanism for using such water right without the need of a decree or well permit, the Applicants shall provide written notice to the objectors herein of its request for approval of the State Engineer pursuant to C.R.S. § 37-92-308, or § 37-92-309, or other applicable statute. Such notice shall be in addition to any notice required by the applicable statute. The Applicants may use such water rights in this plan for augmentation upon the State Engineer's approval of the underlying administrative application for the term of such approval, unless such approval is reversed or modified on appeal or under retained jurisdiction.
- 20.6 Agreements: A copy of any agreement for use of a water right shall be provided with the written notice to the objectors and the Division Engineer and/or State Engineer.

ADMINISTRATION OF PLAN FOR AUGMENTATION

21. Reporting: After October 1, and not later than October 31st of each year, each well owner shall report the previous water year's (Defined as October 1 through September 30) total annual pumping from the well owner's well to King's Deer, and King's Deer will then fulfill its obligation to report to the Division Engineer the amount of water pumped pursuant to the 93CW75/93CW147 Decree, the 94CW49/94CW144 Decree, and this decree. Each well owner shall provide King's Deer the total amount of water withdrawn for the prior year under this decree and King's Deer shall calculate the amount of water withdrawn under this decree in addition to the water withdrawn under the 93CW75/95CW147 decree or the 94CW49/94CW144 decree and report this amount in its water rights accounting.
22. Accounting and Recording: King's Deer shall report to the Division Engineer for Water Division 1 a summary of the annual metered withdrawals of the subject wells pursuant to this decree on an accounting form acceptable to the Division Engineer. King's Deer shall also provide an accounting of diversions, depletions, return flows and augmentation replacement associated with the operation of the augmentation plan approved herein. King's Deer shall also maintain such records and provide reports to the State Engineer, Division Engineers and/or the Water Commissioner as instructed or requested by said entities. All such records and reports shall be submitted on an accounting form acceptable to said entities. This initial form is attached as **Exhibit C**. Unless specifically indicated by this decree, all accounting records required by this decree shall be filed with the Division Engineer on an annual basis. Following the acceptance of King's Deer's initial

accounting form by the Division Engineer, the accounting form may be changed so long as the information required by this decree is included in the forms, thirty-five (35) days advance written notice is filed under this case number with the Court, and such changes are approved by the Division Engineers or Water Commissioner.

- 22.1 Well Permits: Well permits will be applied for, or re-applied for, when Applicants are prepared to drill a new well, or transfer the additional water rights to individual well owners.
- 22.2 Well Identification: Each well shall be permanently identified by its permit number, Water Court case number, and the name of the producing aquifer on the above ground portion of the well casing or on the pumphouse.
- 22.3 Names and Legal Descriptions of Wells: Applicants may locate wells which will withdraw ground water from the not nontributary Dawson aquifer anywhere on the Subject Property, which is described in Paragraph 7 above, and subject to the terms and conditions of this decree, and the decrees described above.
- 22.4 Totalizing Flow Meters: A totalizing flow meter shall be installed on each well discharge pipe prior to withdrawing any water therefrom. The well owner shall maintain the meter in good working order and keep accurate records of all withdrawals by the well, report annual withdrawals to King's Deer, and submit such records to the Division Engineer upon request.
- 22.5 Specific Aquifer Limitation: The ground water production shall be limited to the specific aquifer for which the well was designed. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.
- 22.6 The water in the Dawson aquifer is not nontributary and a total of 86,556 acre-feet at the rate of 311.56 acre-feet per year may be withdrawn pursuant to the augmentation plans decreed in Case Nos. 93CW75/93CW147 and 94CW49/94CW144, and decreed herein. The remainder of the not nontributary Dawson aquifer water may not be withdrawn until the Applicant completes adjudication of an augmentation plan to withdraw those additional amounts.
- 22.7 Pursuant to C.R.S. § 37-92-305(8), 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.
- 22.8 The Applicants or successor and assigns at the direction of the Division Engineer, shall make post-pumping replacements to the Cherry Creek and Monument Creek stream systems pursuant to the percentage of depletion referenced on the tables attached hereto as **Exhibit B**.

- 22.9 Depletions to the South Platte River system at 100 years total only approximately 6.236 acre-feet. Depletions to the Arkansas River system, at 100 years total only approximately 2.405 acre-feet. Replacement water for replacement of depletions in this plan will be provided in such amounts and locations so as to protect water users from injury. Depletions to Monument Creek will be replaced using water which is legally available for such use, including without limitation direct pumping or release into Monument Creek or its tributaries. Additional amounts of nontributary groundwater as decreed in Case No. 85CW230 or any other water otherwise acquired by King's Deer may be used for this replacement and will also be reserved to meet post pumping augmentation requirements.
23. Failure of either any well owner, or their successors, to comply with the terms of this decree may result in an order of the Division Engineer's office to curtail or eliminate pumping authorized under the decree herein. This decree shall be recorded in the real property records of El Paso County so that a title examination of lots using groundwater under this decree shall reveal to all future purchasers the existence of this decree. Each well owner herein shall be provided with a deed specifically conveying said groundwater and describing this decree and recording information herein. This decree shall constitute a covenant running with the land.

CONCLUSIONS OF LAW

28. The foregoing Findings of Fact are incorporated herein.
29. The Water Court has jurisdiction over this proceeding pursuant to C.R.S. § 37-90-137(6). This Court concludes as a matter of law that the application herein is one contemplated by law, C.R.S. §§ 37-90-137(4) and (9)(c.5). The withdrawal of the Dawson Aquifer groundwater 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.
30. Timely and adequate notice of the pendency of this action was given in the manner provided by law. The Court has jurisdiction over the subject matter and over the parties whether they have appeared or not.
31. Applicants have met their burden of proof and are therefore entitled to a decree approving their application, subject to the terms and conditions of this decree.
32. Approval of Plan for Augmentation: The plan for augmentation decreed herein meets all the statutory ad case law requirement for approval. The plan for augmentation described herein is contemplated by law and satisfies the requirements of C.R.S. § 37-92-101, *et seq.*, including but not limited to C.R.S. §§ 37-90-137(9)(c.5), 37-92-103(9), 37-92-302, 37-92-304(6), 37-92-305(1), (2), (3), (4), (6), (8), (9).
33. This plan for augmentation satisfies the requirements of C.R.S. § 37-90-137(9)(c.5), for replacement of actual depletions to the affected stream systems for withdrawals of the Dawson Aquifer groundwater.

34. Substitute Water: The substituted water shall be of a quality and quantity so as to meet the requirements for which the water of senior appropriators has normally been used, and such substituted water shall be accepted by senior appropriators in substitution for water derived by the exercise of their decreed rights pursuant to C.R.S. § 37-92-305(5).
35. No Injury: The plan for augmentation decreed herein will not injuriously affect the owner of or persons entitled to use water under any vested water right or decreed conditional water right, so long as it is operated and administered in accordance with the terms and conditions of this decree. C.R.S. § 37-92-305(3).

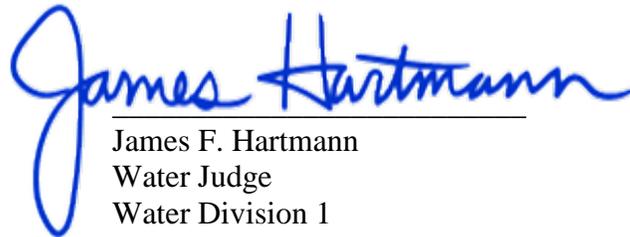
JUDGMENT AND DECREE

36. The foregoing Findings of Fact and Conclusions of Law are approved and incorporated into the terms of this Judgment and Decree as if the same were fully set forth herein.
37. Applicants may withdraw the Dawson aquifer groundwater under the plan for augmentation decreed herein pursuant to C.R.S. § 37-90-137(9)(c.5).
38. 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.
39. No Injury: 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.
40. 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. Further, the Office of the State Engineer is ordered to re-issue well permits as the Applicants or individual well owners within King's Deer Homeowners Association may request to reflect the terms of this decree.
41. Retained Jurisdiction:
 - 41.1 The Court retains jurisdiction as necessary to adjust the average annual amounts of groundwater available under the Subject Property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells pursuant to C.R.S. § 37-92-305(11). Within 60 days after completion of any well decreed herein or any test holes Applicants or any successor in interest to these water rights shall serve copies of such log s upon the State Engineer.
 - 41.2 At such time as adequate data is available any party to this action including the State Engineer may invoke the Court's retained jurisdiction to make a Final Determination of Water Right Within four months of notice that the retained

jurisdiction for such purpose has been invoked the State Engineer shall use the information available to him to make a final determination of water rights findings The State Engineer shall submit such finding to the Water Court and to the Applicant.

- 41.3 If no protest to such finding is made within 60 days the Final Determination of Water Rights shall be incorporated into the decree by the Water Court. In the event of a protest or in the event the State Engineer makes no determination within four months.
42. Continuing Jurisdiction: Pursuant to C.R.S. 37-92-304(6), the court retains continuing jurisdiction over the plan for augmentation decreed herein for consideration 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 retains continuing jurisdiction for the purposes of determining compliance with the terms of the augmentation plan and for the purposes set forth in this decree.

DATE: February 12, 2021


James F. Hartmann
Water Judge
Water Division 1