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DISTRICT COURT, WATER DIVISION 2 **PUEBLO COUNTY, COLORADO** Pueblo County Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo, Colorado 81003	DATE FILED: September 11, 2018 10:27 AM CASE NUMBER: 1994CW68
CONCERNING THE APPLICATION FOR WATER RIGHTS OF **SILVER PONDS PROPERTY OWNERS ASSOCIATION, INC., THE NORTHGATE COMPANY, and GREAT DIVIDE WATER COMPANY,** **In El Paso County**	**Δ COURT USE ONLY Δ**
	Consolidated Case Nos. 94CW68, 94CW69, 94CW75 Division 2 Ctrm.
AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This matter comes before the Court, Water Division 2, upon the petition of Co-Applicant Silver Ponds Property Owner's Association to invoke the Court's retained jurisdiction pursuant to ¶ 53 of the original Findings of Fact, Conclusions of Law, Judgment and Decree in Consolidated Case Nos. 94CW68, 94CW69, and 94CW75 ("Consolidated Cases"), which decree was entered on December 29, 1995 ("Original Decree"). The Court has reviewed the pleadings of the parties, all of whom have consented to entry of this decree, and hereby finds as follows:

FINDINGS OF FACT

I. JURISDICTIONAL FACTS.

1. The applicants herein are:

Silver Ponds Property Owner's Association, Inc. ("Silver Ponds" or "Applicant") / Bryan Bagley, President / 70709 Silver Ponds Heights / Colorado Springs, CO 80908; phone: 719.482.8093 / e-mail: bwjbagley@gmail.com

Silver Ponds is the successor in interest to the water rights of Camp Properties as addressed in the Original Decree, and was substituted for Camp Properties as a co-applicant in this case on September 21, 2015.

2. The State Engineer and the Division Engineer for Water Division 2 ("Engineers") and the City of Colorado Springs acting by and through its enterprise, Colorado Springs Utilities ("Colorado Springs) had filed statements of opposition to the original applications in the Consolidated Cases.

3. Consolidated Case Nos. 94CW68, 94CW69, and 94CW75 involved claims for a change of groundwater rights originally adjudicated in Case No. 92CW78 that allowed for the withdrawal of up to 40 acre-feet of Denver aquifer water from up to 25 wells for residential and commercial uses, adjudication of absolute storage water rights for two storage structures known as the Upper Lake and the Lower Lake, and separate plans for augmentation to replace depletions associated with the 25 wells and the Upper Lake and the Lower Lake. On August 25, 2017, Applicant filed its Petition to invoke the Court's retained jurisdiction and served the Petition on the Engineers and Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities ("Colorado Springs"). The Petition sought to modify the plans for augmentation originally decreed in the Consolidated Cases on December 29, 1995 ("Original Decree") as described below.

4. A telephonic status conference was held on December14, 2017, in which the Hon. Larry Schwartz and counsel for Silver Ponds, the Engineers and Colorado

Springs participated. At that time, Silver Ponds agreed that it was appropriate that the relief it sought should be published in the Resume for Water Division 2 and in a newspaper of general circulation in El Paso County. On December 15, 2017, Applicant filed an unopposed Motion that the changes sought to the Original Decree be published, and the Court ordered the publication of the changes on December 29, 2018. The publication occurred in The Transcript, a newspaper of general circulation in El Paso County. Proof of publication was filed on January 17, 2018.

5. The deadline for filings statements of opposition was February 28, 2018. No statements of opposition were filed. No motions to intervene have been filed.

6. Both opposers to the Consolidated Cases have stipulated to entry of this Amended Findings of Fact, Conclusions of Law, Judgment and Decree.

7. The land and water involved herein are not within the boundaries of a designated ground water basin, except that the "Cherokee" water rights listed in ¶ 13 are located in the Upper Black Squirrel Creek Ground Water Management District, and water attributable to those rights is then exported pursuant to a valid export permit.

II. CHANGE OF WATER RIGHTS/AMENDMENT TO PLANS FOR AUGMENTATION

8. Background.

A. Over the course of a decade subsequent to entry of the Original Decree, it was determined that the plans for augmentation adjudicated in the Original Decree did not replace all injurious depletions resulting from pumping the 25 wells and storing water in the Upper and Lower Lakes. Silver Ponds,

after a cooperative effort with the Division Engineer of Water Division 2, filed a petition to invoke the Court's retained jurisdiction contained in ¶ 53 of the Original Decree to correct deficiencies in the operation of the plans for augmentation. Additionally, Silver Ponds seeks to amend the originally decreed augmentations plans to better reflect the current needs of the owners of the 25 lots within Silver Ponds. The amendments to the Original Decree sought herein include: (1) inclusion of an additional source of augmentation water, (2) a change of 4.13 acre feet of water originally decreed for commercial use on Lot 1 to residential uses, to be used to allow an increase in the amount of water which may be pumped annually from residential Denver aquifer wells on Lots 2 - 24, as well as on Lot 1, from 0.5 acre foot to 0.651 acre foot, and (3) changing well permit 53456-F on Lot 25 to allow 4.376 acre feet to be used annually for commercial uses on that lot, instead of sharing 8.26 acre feet for commercial uses with Lot 1.

B. The previous plans for augmentation anticipated an annual replacement obligation of between 11.5 and 12.3 acre feet annually during the anticipated 200 year pumping period. The Applicant obtained 1.2 annual acre feet of fully consumable water pursuant to its ownership of shares in the Great Divide Water Company and 2.25 annual acre feet of fully consumable water it purchased from Cherokee Metropolitan District. Applicant anticipated that nonevaporative septic systems from 23 of 25 lots in the Silver Ponds subdivision designated to be used for residential purposes would provide an annual average

of 4.97 acre feet of return flows to be used for replacement purposes. It was anticipated that two lots designated for commercial purposes would use about 8.26 acre feet of water, on average, with resulting septic system return flows of 7.02 acre feet annually. The maximum anticipated annual replacement obligation in the post-pumping period is 14.06 acre feet, which includes the maximum post-pumping depletions of 2.56 acre feet (12.8 percent of the maximum annual pumping amount of 20 acre feet from the Denver aquifer in the 150 - 200 year period after pumping begins, as referenced in Paragraph 24.B of the Original Decree) and 11.5 acre feet of net evaporation (as referenced in Paragraph 35 of the Original Decree).

C. The anticipated septic system return flows from the commercial lots did not materialize as expected. One of the two lots, Lot 1, had a single family home built on it, and thus will not be used for any commercial purposes; its septic system return flows are probably about the average of all other homes in the subdivision, or about 0.22 acre foot per year. The other lot, Lot 25, is used for commercial facilities, but the indoor water use is less than anticipated. Thus, the septic system return flows from Lots 1 and 25 are far less than the 7.02 acre feet which were anticipated.

D. The shortfall between the amount of augmentation water owned or controlled by the Applicant and the calculated annual depletions has ranged between a low of approximately 0.76 acre foot in 2009 (a year of abnormally high

calculated septic system return flows) to a high of 4.26 in 2016. Review of the deficits in the intervening years does not reveal a pattern of gradually increasing deficits.

E. Applicant is adding, or proposing to add, additional replacement water to the plans for augmentation in two ways. First, Applicant has entered into a contract with Donala Water and Sanitation District for delivery of 5.0 annual acre feet of fully consumable return flows to Monument Creek. Second, Applicant is re-allocating 4.13 annual acre feet of Denver aquifer water originally designated for commercial use on Lot 1, such that the 24 lots now designated for residential use may each pump an additional 0.151 acre foot annually, for a total of 0.651 acre foot per lot. Subject to the written approval of a majority of the lot owners in Silver Ponds, covenants limiting irrigation to 4,000 square feet per lot will be changed to allow up to 6,500 square feet per lot. After a period of time to adjust to the new allowances, Applicant may, but is not required to, seek to quantify landscape irrigation return flows and utilize them as a source of replacement water pursuant to the procedures enumerated in ¶ 35 below. It is reasonable to believe that irrigation return flows might yield an additional 0.5 - 1.0 acre feet of replacement water, but any actual credit for landscape irrigation return flows will be based on available data if and when Applicant seeks to quantify landscape irrigation return flows. Landscape irrigation return flows can be added as a replacement source only after being quantified pursuant to a new

application filed by the Applicant, with notice given as provided by law. Permit no. 53456-F shall be re-permitted to allow annual withdrawals not to exceed 4.376 acre feet.

F. Other than the changes noted in ¶ 8.E. above, it is not Applicant's intention to change any additional material terms and conditions of the original plans for augmentation including without limitation the adjudication of water rights for the Denver, Arapahoe, and Laramie-Fox Hills aquifers. However, over the years it has become clear that there are any number of terms and conditions which may have been implicit in the Original Decree, but which should be made explicit herein.

9. Scope of amended plans for augmentation. These amended plans for augmentation are designed to replace depletions associated with the pumping of up to 20 acre feet annually of water from the Denver aquifer and the depletions from two lakes, which depletions were previously decreed to equal 11.5 acre feet annually.

10. Depletions.

A. The Denver aquifer at this location is more than one mile from any point of contact between any natural stream including its alluvium, upon which water rights would be injuriously affected by any stream depletion. Pursuant to C.R.S. §37-90-137(9)(c.5), during pumping Applicants shall replace to the affected stream four percent of the water withdrawn on an annual basis, with 87.5 % of depletions to be made to Sand Creek, and 12.5 % to be made to the

Monument Creek drainage. Based on maximum annual withdrawals of 20 acre feet, the annual replacement obligation while pumping the Denver aquifer will not exceed 0.8 acre feet. After pumping from the Denver aquifer ceases, Applicants shall replace actual depletions.

B. Pond depletions. Out-of-priority depletions occur from the two ponds, the Upper Lake and the Lower Lake, when evaporation occurs and is replaced with inflows from Cottonwood Creek which are out-of-priority. For all practical purposes, Cottonwood Creek is never in priority, and Applicant will replace all such depletions. The depletions were found to equal 11.5 acre feet annually in the Original Decree based on 4.6 acres of surface area, and that finding is not disturbed herein. The surface of the Upper Pond and Lower Pond shall not be increased except pursuant to an amendment to these amended plans for augmentation, after notice as required by law.

C. Thus, maximum projected depletions during pumping of the Denver aquifer will not exceed 12.3 acre feet annually; post-pumping depletions due to such pumping will not exceed 14.06 acre feet annually.

11. Sources of Replacement Water. Applicants have four distinct sources of replacement water: 1) septic system return flows from the lots in the subdivision, which has varied in volume from a low of 4.07 acre feet in 2016 to as high of 7.63 acre feet in 2009, with an average volume of 5.32 acre feet from 2009 through 2016; 2) non-tributary water attributable to Applicant's 120 shares of stock in Great Divide Water

Company, allowing Applicant to use up to 1.2 acre feet annually; 3) 2.25 acre feet annually of non-sewered return flows purchased from Cherokee Metro District in two separate purchases of 1.25 and 1.0 acre feet, annually; and 4) up to five acre feet of fully consumable sewered return flows leased from Donala Water and Sanitation District. In total, these replacement sources represent a firm annual yield of slightly over 12.52 acre feet, and an average amount of 13.77 acre feet.

12. Great Divide Water Company Water. As the Northgate Company's successor to a contract between the Northgate Company and the Great Divide Water Company ("Northgate Contract,"), Applicant owns an interest in Well Permit No. 1-17798-F, WDID 0807981decreed in Case Nos. W-8269-76, 80CW369 and 84CW-621, Water Division 1, and Well Permit No. 43217-F, WDID 0810667 in the Denver aquifer, decreed in Case Nos. 82CW295 and 87CW193, Water Division 1, which will yield 1.2 acre feet annually ("Northgate Water"). The wells through which the Northgate Water is delivered to the Monument Creek stream system is owned and operated by co-applicant The Great Divide Water Company, a Colorado nonprofit corporation.

13. Cherokee Metropolitan District water. On March 17, 1994, Applicant's predecessor in interest, Camp Properties, purchased 1.5 annual acre feet of fully consumable sewered return flows, of which 1.25 is dedicated to these amended plans for augmentation, and in an undated contract executed on December 20, 1994 and on December 27, 1994, by authorized representatives of both entities, purchased an additional 1.0 annual acre foot of sewered return flows, from Cherokee Metropolitan

District. These sewered return flows were attributable to the following water rights ("Cherokee Water"), on an annual basis:

A. Ross Well No. 2 (a/k/a Municipal Well "A"), Permit nos. R-16288 and 4857-F, 2.0 c.f.s. absolute, appropriation date December 1, 1954 and 2.0 c.f.s. absolute, appropriation date December 15, 2954.

B. Hill Well No. 2 (a/k/a Municipal Well "B"), Permit nos. R-16297 and 4855-F, 4.0 c.f.s., absolute, appropriation dated December 15, 1954.

C. Hill Well No. 1 (a/k/a Municipal Well "C"), Permit nos. R-16299 and 4854-F, 4.4 c.f.s., absolute, appropriation date March 1, 1954.

D. Cherokee Well No. 4 (a/k/a Salladay No. 5 and Municipal Well "1"), Permit no. 24680-F, most recently decreed in Case No. 87CW7 (C/R W-46, W-4407-(76), 80CW23 (W-46), 83CW47 (W-46) and 84CW45 (W-46); 562 acre feet annually; 898 g.p.m. absolute, appropriation date November 25, 1954; 302 g.p.m. absolute, appropriation date December 1, 1954.

E. Cherokee Well No. 5 (a/k/a Salladay No. 3 or Municipal Well "J") Permit no. 24976-F, most recently decreed in Case No. 87CW7 (C/R W-46, W-4407-(76), 80CW23 (W-46), 83CW47 (W-46) and 84CW45 (W-46); 481 acre feet annually and 550 g.p.m. absolute, appropriation date November 24, 1954.

F. Cherokee Well No. 6 (a/k/a Harding No. 1 or Municipal Well "K"), Permit no. 29089-F, most recently decreed in Case No. 87CW7 (C/R W-46, W-4407- (76), 80CW23 (W-46), 83CW47 (W-46) and 84CW45 (W-46); 368 acre

feet annually, absolute.

G. Cherokee Well No. 7 (a/k/a Harding No. 2 or Municipal Well "K"), Permit no. 29088-F, most recently decreed in Case No. 87CW7 (C/R W-46, W-4407- (76), 80CW23 (W-46), 83CW47 (W-46) and 84CW45 (W-46); 218 acre feet annually, absolute.

Note: Some of the above wells have additional conditional water rights associated with them, which are not included in these amended plans for augmentation.

The Cherokee Wells listed below were not decreed in Case No. B-42135. They appear in the Findings of Fact, Conclusions and Recommendations of the Hearing Officer which resulted from the hearing before the Ground Water Commission on July 24 and 25, 1975, entitled "In the Matter of Objections to the Proposed Change of Use and Place of Use of Ground Water by Rodney J. Preisser in the Upper Black Squirrel Creek Designated Ground Water Basin."

H. Final Permit No. 14145-FP, issued on September 19, 1984 by the State Engineer, 345 acre feet annually and 1,000 g.p.m., absolute, priority date March 7, 1959, accepted for municipal uses.

I. Final Permit No. 14146-FP, issued on September 19, 1984 by the State Engineer, 345 acre feet annually and 1,000 g.p.m., absolute, priority date March 3, 1969, accepted for municipal uses.

J. Final Permit No. 11198-FP, issued on September 19, 1984 by the

State Engineer, 450 acre feet and 1,325 g.p.m., absolute, priority date August 29, 2966, accepted for municipal uses.

K. Final Permit No. 6821-FP, issued on September 19, 1984 by the State Engineer, 640 acre feet annually and 1,650 g.p.m., absolute, priority date April 2, 1965, accepted for municipal uses.

All the water rights listed above are owned or controlled by Cherokee. They divert renewable alluvial ground water from the Upper Black Squirrel Creek Designated Ground Water Basin, which is not tributary to the Arkansas River or its tributaries. Unless otherwise noted, they were initially adjudicated (absolutely or conditionally) in Case No. B-42135, District Court, Pueblo County, Colorado, June 25, 1962, and subsequent cases, as indicated above.

Wells listed above in A. - G. were all adjudicated prior to formation of the Basin. The Ground Water Commission has issued an export order allowing Pikes Peak Water Company, Cherokee's predecessor in interest, to export water from Wells H - K outside the boundaries of the Basin.

Initially, the Cherokee Water was delivered to Sand Creek at the discharge location of Cherokee Metropolitan District's wastewater treatment plant. However, Cherokee Metropolitan District constructed a new wastewater treatment plant within the Black Squirrel Creek Designated Ground Water Basin, and no longer discharges wastewater to Sand Creek. Instead, in Case No. 09CW115, Cherokee Metropolitan District adjudicated its fully consumable

nonsewered (landscape irrigation) return flows which accrue to Sand Creek, and it has been accepted by Cherokee, the Division Engineer, and the Applicant, that 2.25 acre feet of such return flows shall be credited to Applicant pursuant to its contracts with Cherokee. Such depletion analysis shall be provided to the State and Division Engineers and to the Opposers herein as soon as practicable after it has been completed. After the depletion analysis has occurred, water from the replacement sources described herein, or from such other source of replacement water approved pursuant to paragraph 35 below, shall then be pumped at the appropriate times and delivered to the Arkansas River system in a manner that will adequately replace all depletions from pumping of the Denver aquifer wells approved pursuant to this decree. Applicant's successors in interest may be required to construct a Laramie-Fox Hills aquifer well pursuant to these amended plans for augmentation at the time replacement of post-pumping depletions must commence pursuant to this decree, if the other sources of augmentation water as described herein become unavailable for any reason.

14. Donala Water and Sanitation District Water. On August 31, 2016, Applicant entered into a lease of at least 5.0 acre feet of fully consumable sewered and nonsewered return flows, with an option to lease an additional 2.0 acre feet annually upon the occurrence of certain conditions as set forth in the lease. The point of delivery for such water is at the Upper Monument Creek Regional Waste Water Treatment Facility in the SE1/4 of the SE1/4, S35, T11S, R67W of the 6th PM; 39.0422

Latitude North, 104.8524 Latitude West, with Applicant to bear any transit losses between that location and the confluence of Monument Creek and Cottonwood Creek in the SE1/4 Section 7, T. 13 S., R. 66 W., 6th P.M., as determined pursuant to the USGS Transit Loss Model for Fountain Creek and Monument Creek. The lease is for one year, with the lease to be automatically renewed for an indefinite period of successive one year leases, subject to the ability of Donala Water and Sanitation District to be able to suspend delivery of the water under certain conditions specified in ¶ 12 of the lease.

15. Operation of Amended Plans for Augmentation.

A. Meter Reading and Reporting. All Lot Owners in Silver Ponds shall read the meters on their wells twice annually, on November 1 and on the last day of February of the following year, shall report the annual pumping November 1 - October 31), and the winter, or "base use" pumping (November 1 - the end of February) to the Applicant, which in turn shall forward such records to the Water Commissioner or other designated representative of the Division Engineer for Water Division 2. This information will be used to calculate the fully consumable septic system return flows which are a source of replacement water in these amended plans for augmentation. The procedure for calculating septic system return flows is as follows:

B. Calculation of septic system return flows. Applicant shall calculate the annual volume of septic system return flows by taking meter readings on November 1 and the last day of February of the succeeding year, of each year,

subtracting the November 1 reading from the February reading, and inserting those numbers into the following equation:

(A - B) X C X 0.9 = annual septic system return flows, where:

A = end of February reading;

B = November 1 reading;

C = 365 days/yr / 120 days of pumping for indoor use, or 3.042; and

0.9 = portion of indoor pumping which results in septic system return flows.

For simplicity, this equation can be shortened to:

(A - B) X 2.737 = annual septic system return flows.

C. Calculation of Annual Replacement Obligation. While pumping from the Denver aquifer is occurring, aggregate annual pumping from all Denver aquifer wells in the Silver Ponds subdivision shall be determined, and the Applicant's annual pumping shall be multiplied by 0.04 to determine the replacement obligation attributable to such Denver aquifer pumping. That figure shall be added to the previously decreed 11.5 acre feet of pond evaporation from the two ponds, and the result shall represent the annual replacement obligation.

I. While pumping occurs from the Denver aquifer, the annual replacement obligation due to such pumping is four percent of such pumping, with 87.5 percent to be replaced to Sand Creek and 12.5 percent to be replaced to Cottonwood Creek or to Monument Creek above its confluence with Cottonwood Creek.

II. Consistent with the previously approved plans for augmentation, out-of-priority depletions caused by pond evaporation may be replaced to Sand Creek or to Fountain Creek or its tributaries at any location above Fountain Creek's confluence with Sand Creek.

D. Annual septic system return flows to Cottonwood Creek shall be determined pursuant to ¶ 15.B.

E. The difference between the annual replacement obligation amount as determined pursuant to ¶ 15.C. and the septic system return flows as determined pursuant to ¶ 15.B. shall be made up by contributions from the Cherokee Water, the Donala Water, and the Great Divide Water, in that order of preference. The Cherokee Water and the Donala Water will accrue to Sand Creek and Monument Creek, respectively, regardless of any action by Applicant. The Great Divide Water, on the other hand, must be pumped; hence the preference for use of the Cherokee Water and the Donala Water to the extent possible.

F. Timing of Replacements. All opposers in the original case stipulated to entry of a decree in which replacements were made on an annual basis. Because of such stipulations, replacements must balance with depletions no more frequently than annually.

G. Location and Amount of Replacements During Pumping. While

the Denver aquifer wells are being pumped, replacements shall be made as follows:

1) Northgate Water. When requested by Applicant or by the Water Commissioner, the Great Divide Water Company shall pump Applicant's Northgate Water to an unnamed tributary of Jackson Creek at a point from which the Northwest corner of Section 20, T. 11 S., R. 66 W., 6th P.M. bears N 12 degrees West a distance of 1600 feet. Applicant shall be limited to an annual total of 1.2 acre feet of Northgate Water. In the Original Decree, no transit losses were assessed against the Northgate Water.

2) Cherokee Water. Applicant's Cherokee Water shall be credited to Applicant in the general vicinity of Sand Creek above its confluence with Fountain Creek. To be consistent with the requirements of the prior decree, such water shall be credited to Applicant at an amount equal to not less than 17,600 gallons per month. Other than that, Cherokee may credit the 2.25 annual acre feet of Applicant's Cherokee Water at the timing of its choice, so long as the 2.25 are delivered between November 1 of one year, and October 31 of the following year. In the Original Decree, no transit losses were assessed against the Cherokee Water.

3) Donala Water. The place of delivery of the Donala Water will be at the point of discharge of the Upper Monument Creek Regional Waste

Water Treatment Facility to Monument Creek which is located in the SE1/4 of the SE1/4, S35, T11S, R67W of the 6th PM; 39.0422 Latitude North, 104.8524 Latitude West. Silver Ponds shall incur any transit loss which occurs between the point of discharge and the ultimate place of use, which is at the confluence of Monument Creek and Cottonwood Creek in the SE 1/4 Section 7, T. 13 S., R. 66 W., 6th P.M.

H. Reconciliation of Depletions and Replacements. The total amount of annual depletions are expected to vary only marginally over time, so based on prior years' depletions, it should be relatively easy to make sure that depletions and the necessary replacements are occurring at approximately the same time. However, during the month of November, after annual reporting has been done, the Water Commissioner shall inform the Applicant if depletions during the prior water year exceeded the replacements. If that is the case, within 30 days of receiving the water commissioner's notification, Applicant shall cause the shortfall to be credited to its accounting from any combination of the Great Divide Water, the Cherokee Water, and the Donala Water, consistent with the terms and limitations contained in their agreements with those entities.

16. Restrictions on outdoor uses. Pursuant to these amended plans for augmentation, any lot owner may apply for a new well permit allowing the pumping of 0.651 acre foot annually pursuant to the provisions of this decree, and shall be allowed to irrigate no more than 6,500 square feet on such owner's lot, provided that Applicant's

covenants restricting irrigation to 4,000 square feet is first amended by the Applicant as provided in Section 608.a) of Applicant's covenants to allow such increased irrigation. Absent such amendment of the covenants, no increased irrigation shall be allowed. No more than two large animals shall be permitted on each lot. Requirements of the Original Decree regarding other covenants, viz., restriction to no more than 25 lots, restriction of the use of water to those uses allowed by the decree (and as modified by this Amended Decree), restriction of domestic livestock to no more than two head per lot, and the covenants that non-evaporative septic systems must be used for wastewater disposal, are unchanged.

17. Return Flows Dedicated to these Amended Plans for Augmentation. All septic system return flows are dedicated to these amended plans for augmentation, and shall not be sold, transferred, conveyed, or be used for any other purpose.

18. Duration of Denver aquifer plan for augmentation. The original plan for augmentation in the Consolidated Cases which allowed pumping from the Denver aquifer wells did not specify an event or date which would terminate pumping from the Denver aquifer. To clarify this matter, pumping from the Denver aquifer under these amended plans for augmentation must terminate upon the earliest of the following three events: 1) when 4,000 acre feet have been pumped from the Denver aquifer, or 2) when Applicant no longer has the ability to replace annual depletions which are occurring during the pumping period, or 3) it can be demonstrated that Applicant no longer has replacement supply sources, sufficient to replace post-pumping depletions.

19. Duration of plans for augmentation for Lower Lake and Upper Lake. The original plan for augmentation in the Consolidated Cases related to depletions from the lakes did not specify a termination date for the plan for augmentation which allows the Upper Lake and Lower Lake to remain full by replacing evaporative losses. At that time, it was contemplated that septic system return flows would be sufficient to replace all evaporative losses during the pumping period for the Denver aquifer wells, but that has not been the case. At such time as Applicant's replacement water is insufficient to replace evaporation losses from both ponds, Applicant may petition the Court for an amendment to this amended plan for augmentation which allows the plans to remain in effect for one but not both ponds. If Applicant has insufficient augmentation water to replace evaporative losses from even one lake, then the amended plan for augmentation for the lake decreed herein shall terminate at that time. Applicant shall drain the Upper and/or Lower Lakes and breach their dams upon instruction by the Division Engineer to do so, unless prior to that time Applicant obtains approval of a substitute water supply plan or a subsequent plans for augmentation to replace ongoing depletions from the Upper Lake and/or the Lower Lake.

20. Provisions Regarding Replacement of Post-pumping Depletions.

A. Unless modified by the Court under its retained jurisdiction, Applicant shall replace the actual depletions from pumping the Denver aquifer wells that impact Monument Creek and Sand Creek after pumping ceases. The Court finds that this requirement is adequate to comply with existing law and to

prevent injury to others.

B. The requirement to replace post-pumping depletions shall commence once the earliest of the five following events have occurred: (1) 4,000 acre feet have been pumped from the Denver aquifer; or (2) ten consecutive years have passed with no pumping from the Denver aquifer; or (3) when Applicant acknowledges in writing that all withdrawals for beneficial use from the Denver aquifer have permanently ceased; or (4) when accounting shows that Applicant's sources of replacement water are insufficient to replace depletions that already occurred; or (5) the evidence indicates that if additional Denver aquifer water is pumped, Applicant will have insufficient replacement water to replace post-pumping depletions. To determine the post-pumping replacement obligation, upon the occurrence of one of the five events described above, Applicant shall cause a depletion analysis to be conducted, using the computer model generally accepted as being most accurate at that time, to calculate the amount and timing of post-pumping depletions which must be replaced, based on actual withdrawals during the applicable pumping period.

C. To replace injurious post-pumping depletions to Sand Creek, Cherokee Metro District, pursuant to the Cherokee Contracts, shall credit to Applicant no less than 58,000 gallons per month from wastewater return flows into Sand Creek above its confluence with Fountain Creek. The provisions of the Cherokee Contracts, with special reference to ¶ 5, are incorporated herein

and made a part of this decree as if they were fully set forth herein.

D. To replace injurious post-pumping depletions to Monument Creek, each year after pumping of Wells D-1 through D-25 ceases, the Great Divide Water Company shall cause the appropriate amount of the Northgate Water, as determined by the computer model, to be replaced to Monument Creek, in an unnamed tributary of Jackson Creek at a point from which the Northwest corner of Section 20, T. 11 S., R. 66 W., 6th P.M. bears N 12 degrees West a distance of 1600 feet.

E. Applicant has reserved and dedicated to these amended plans for augmentation 300 acre feet of the Laramie-Fox Hills aquifer water decreed in Case No. 92CW78 for replacement of post-pumping depletions to Monument Creek, in case the Northgate Water becomes physically, economically or legally unavailable.

21. Recording of decree and covenants. A certified copy of this decree shall be recorded in the real estate records of El Paso County and shall constitute a covenant running with the land, requiring Applicant and its successors to comply with of the requirements of these amended plans for augmentation, including all measures as necessary to replace post-pumping depletions. Additional covenants shall be recorded in the real estate records of El Paso County and shall clearly indicate that failure of the property owner to comply with the terms of this decree may result in an order from the State Engineer to curtail or eliminate pumping from the Denver aquifer. Said covenants

shall be amended as necessary to conform to the provisions of any amendment to these augmentation plans. Any proposed change in the method of wastewater treatment and disposal shall require Court approval after notice in the water resume and publication in a newspaper of general circulation in El Paso County.

22. In order to ensure replacement of depletions during the pumping period, pumping and use of the Denver aquifer wells for any beneficial uses other than indoor residential use or, in the case of Lot 25, indoor commercial use, shall not be allowed unless ground water is also being pumped and used for indoor residential use or, in the case of Lot 25, indoor commercial use.

23. Use in residences. Each of the Denver aquifer wells to be constructed pursuant to these amended plans for augmentation must be used for a single family residence or, in the case of Lot 25, must be used for drinking water and sanitary purposes in a commercial structure, in order to generate the septic system return flows necessary to replace depletions which occur during pumping of such wells, and shall be limited to a maximum pumping rate of 15 gallons per minute.

24. Issuance of well permits. Upon submission of a properly completed well permit application and filing fee, the State Engineer shall issue a permit for each well approved herein, consistent with the terms of this decree and all applicable statutes and rules. The State Engineer shall identify the specific uses which can be made of the ground water to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the application or

which would be inconsistent with the requirements of this amended decree and the amended plans for augmentation approved herein, or any modified decree and plans.

25. Appurtenances to Property. These amended plans for augmentation, the right to 4,000 acre feet of Denver aquifer water which may be pumped pursuant to the amended plans for augmentation, the right to 300 acre feet of Laramie-Fox Hills aquifer water as decreed in Case No. 92CW78, and the right to the Northgate Water, the Cherokee Water, and the Donala Water shall be considered as appurtenances to the 25 lots which comprise the Silver Ponds subdivision. Each lot owner's *pro rata* equitable interest in such water rights shall be conveyed pursuant to the appurtenance clause in any deed conveying the such owner's lot, whether or not the amended plans for augmentation and the water rights are specifically referenced in the deed.

CONCLUSIONS OF LAW

26. The Court has jurisdiction over this matter pursuant to the retained jurisdiction provisions of the Original Decree in this case.

27. The ability of an owner of a plan for augmentation to take corrective measures to prevent injury from a previously decreed plan for augmentation, pursuant to a period of retained jurisdiction, is contemplated by law. C.R.S. §37-92-304(6)

28. The plan for augmenting depletions caused by pumping the not nontributary Denver aquifer is required by C.R.S. §37-90-137(9), and is subject to the requirement of C.R.S. §§ 37-92-305(3) and 305(8) that no injury will occur to the owners of or persons entitled to use water under an absolute water right or decreed conditional

water right as a result of implementing such plans for augmentation. In these amended plans for augmentation, Applicant has demonstrated by a preponderance of the evidence that no such injury will occur.

29. The replacement of depletions caused by out-of-priority evaporation from the Upper Lake and Lower Lake is required by Colorado law, and is subject to the requirement of C.R.S. §§ 37-92-305(3) and 305(8) that no injury will occur to the owners of or persons entitled to use water under an absolute water right or decreed conditional water right as a result of implementing such plans for augmentation. In these amended plans for augmentation, Applicant has demonstrated by a preponderance of the evidence that no such injury will occur.

JUDGMENT AND DECREE

30. The provisions of ¶¶ 1 - 29 are hereby incorporated into this judgment and decree.

31. Approval of Amended Plans for Augmentation. The amended plans for augmentation described herein are approved. Depletions caused by pumping water from the Denver aquifer and by evaporation from the Upper Lake and Lower Lake shall be replaced as provided and decreed herein. Annual withdrawals from the Denver aquifer shall not exceed 20 acre feet. The State or Division Engineer shall curtail the pumping of more than that amount from the Denver aquifer absent prior modification of these amended plans for augmentation by amendment of this decree or Court approval

of an additional plan for augmentation which replaces depletions attributable to such additional pumping. The State Engineer shall also curtail all diversions, the depletions from which are not replaced in a manner to prevent injury to vested water rights or decreed conditional water rights.

32. Additional provisions regarding issuance of well permits.

A. Subject to the requirements of this decree concerning the allowable volumes of water that may be pumped, lot owners may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands, or to recover the entire amount of ground water in the Denver aquifer and 300 acre feet of Laramie-Fox Hills aquifer water underlying the Property. As additional wells are planned, applications shall be filed in accordance with C.R.S. §37-90-137(10). All new wells in the Silver Ponds subdivision must be constructed pursuant to applicable Colorado laws and regulations of the Division of Water Resources.

B. In considering applications for permits for wells or additional wells to withdraw the ground water which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with provisions of C.R.S. § 37-90-137(10). Each well shall be equipped with a properly functioning totalizing flow meter. Specifically, but not exclusively, each lot owner for lots 1 - 24, and such lot owners' successors in interest, may apply for a well permit to increase the amount of allowable annual

pumping from the Denver aquifer from 0.5 acre foot to 0.651 acre foot, and such permit shall allow the irrigation of no more than 6,500 square feet. Such permit applications shall not be denied on the basis that those changes are requested. However, any new well permits allowing additional irrigation shall not override any covenants which limit irrigation to a lesser amount of land. Within 60 days of entry of this amended decree, Applicant shall make application to re-permit existing well permit no. 53456-G consistent with this amended decree, which limits annual pumping to no more than 4.376 acre feet.

C. Ground water production shall be limited to the subject aquifers. 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 permitted.

D. Each well shall be permanently identified by its permit number, this Water Court case number, and the name of the producing aquifer on the above-ground portion of the well casing or on the pump house.

33. Meters and reporting requirements. All wells permitted pursuant to this decree shall be equipped with a properly installed and calibrated totalizing flow meter. Applicants shall record the metered use on December 1 and the end of February of each year, and report such use to the water commissioner within two weeks after the measurements have been made. The water commissioner may require more frequent metering and reporting.

34. Landscape irrigation return flows. Applicant has not sought to quantify its landscape irrigation return flows, but may apply for a quantification of such return flows in the future. Any such application shall be published in the resume for Water Division 2 and a newspaper of general circulation in El Paso County. To the extent that Applicant proves the amount of such return flows, they shall be incorporated into this decree as an approved source of additional augmentation water pursuant to the provisions of ¶ 35.

35. Additional sources of augmentation water. Pursuant to C.R.S. § 37-92-305(8), the Court may authorize Applicant to use other supplies of augmentation water available to it, including supplies of limited duration, for replacement in these plans if such sources are part of a substitute water supply plan approved pursuant to C.R.S. § 37-92-308, or an interruptible water supply agreement under C.R.S. § 37-92-309, or if such sources are subsequently decreed for such use. This paragraph sets forth the procedure under which these sources may be added to these plans without injury to other water rights.

A. If Applicant proposes to add a water right that is decreed for augmentation use in a decree other than this decree, Applicant shall give written Notice of Use of Water Right for Augmentation to the Court, the Division Engineer and all the objectors, which shall describe: (1) the water right by name and decree; (2) the annual and monthly amount of water available to Applicant for augmentation from the water right; (3) how the water right will augment depletions from the structures in the plans, including but not limited to whether

use of the water right will require the operation of an exchange; and (4) how the water right will be incorporated into the accounting that is required for the plans.

B. Any person, including the Division Engineer, who wishes to object to the addition of the noticed water rights to these plans shall file a written objection with the Court within 35 days after the date the Notice was served on the Division Engineer and all objectors by Applicant.

C. If no objection is so filed, then Applicant may use the noticed water rights in these plans in the manner stated in the Notice, without further action by the Court.

D. If an objection is so filed, then Applicant may not use the noticed water rights until the Court determines that the water rights may be used in these plans and imposes any additional terms and conditions necessary to prevent injury to vested water rights and decreed conditional water rights. The Court shall conduct whatever proceedings are needed to address and resolve the disputed issues appropriately.

E. If a new replacement source is added to the amended plans for augmentation pursuant to the provisions of this ¶ 35, the Court may retain jurisdiction over the addition of that source for a period to be determined at the time the source is added, to ensure that the plans will prevent injury to the vested rights of others based on the use of that replacement source.

36. Additional provisions.

A. Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of ground water in the subject aquifers underlying the Property. As additional wells are planned, applications for new well permits shall be filed in accordance with C.R.S. §37-90-137(10).

B. Two or more wells constructed into the Laramie-Fox Hills aquifer shall be considered a well field. In effecting production of water from such well field, Applicant may produce the entire amount which may be produced from the Laramie-Fox Hills aquifer through any combination of wells within the well field.

C. In considering applications for permits for wells or additional wells to withdraw the ground water which is the subject of this decree, the State Engineer shall be bound by this decree and shall issue said permits in accordance with provisions of C.R.S. § 37-90-137(4) and § 37-90-137(10). Each well shall be equipped with a properly functioning totalizing flow meter.

D. Ground water production shall be limited to the subject aquifers. 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.

E. Each well shall be permanently identified by its permit number, this Water Court case number, and the name of the producing aquifer on the above-ground portion of the well casing or on the pump house.

F. In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicant shall obtain permits to reflect such adjusted average annual amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

37. Pursuant to C.R.S. §37-92-304(6), the Court retains continuing jurisdiction over the amended plans 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 continuing jurisdiction for the purposes of determining compliance with the terms of the amended augmentation plans. Finally, the Court retains jurisdiction for the purpose of determining whether Applicant can prove the existence, timing and location of return flows from lawn irrigation on the Property.

38. 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 upon which the requested reconsideration is premised, together with proposed 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 objectors is not required to avoid injury to other appropriators, or (3) that any term or condition proposed by Applicant in response to the Objectors' petition does avoid injury to other appropriators.

Dated: September 11, 2018.

BY THE COURT:

Larry C. Schwartz

LARRY C. SCHWARTZ,
WATER JUDGE
WATER DIVISION 2

DISTRICT COURT
WATER DIVISION NO. 2
STATE OF COLORADO

Certified to be a full, true and correct copy of original on file.

Dated: October 5, 2018

MARDELL R. DiDomenico CLERK

By: Mardell R. DiDomenico
~~Deputy~~ Clerk