

<p>DISTRICT COURT, WATER DIVISION , WELD COUNTY, COLORADO</p> <p>Court Address: 901 9th Avenue, P.O. BOX 2038 Greeley, CO 80631</p> <hr/> <p>Concerning the Application for Water Rights of:</p> <p>KELVIN FEIST AND TRACEY FEIST</p> <p>IN ELBERT COUNTY</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 11CW143</p>
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE OF THE WATER COURT</p>	

THIS MATTER has come before the Court upon the application of Kelvin Feist and Tracey Feist, landowners, for adjudication of a well and for a determination of all ground water rights in the Upper Dawson, Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying Applicants' property in Elbert County.

THE COURT, having considered the pleadings and the evidence presented, and being fully advised in the premises, enters the following findings of fact, conclusions of law, ruling of the Referee and Decree of the Water Court:

FINDINGS OF FACT

1. Name and Address of Applicants:

Kelvin Feist and Tracey Feist
34989 Forest Park Drive
Elizabeth, CO 80107

Phone No.: (303)-646-2083

2. History of the Case:

A. The application for adjudication of applicants' well and for a determination of ground water rights underlying Applicants' property was filed with the Water Court, Water Division 1, on August 31, 2011.

B. There is one entity other than the Applicants with a recorded interest in the overlying land. Accordingly, Applicants filed a Certificate of Notice with the court on August 31, 2011 certifying their compliance with the notice requirements set forth in § 37-92-302(2), C.R.S.

C. No statements of opposition or motions to intervene in this matter have been filed, and the time period for filing same has expired.

D. The overlying property that is the subject of this application is described as follows: a tract of land lying in the NW ¼ NE ¼ of Section 8, Township 8 South, Range 64 West of the 6th P.M., Elbert County, Colorado, known and described as Lot 24, Forest Park Subdivision, 34989 Forest Park Drive, Elizabeth, Colorado 80107, consisting of 2.5 acres, more or less ("Applicants' Property").

3. Purpose of the Application: The purpose for filing the application in this matter is to adjudicate the well under Well Permit No. 64080-F, and to adjudicate the Denver Basin aquifer ground water rights underlying Applicants' Property, including both nontributary and nontributary ground water rights. No plan for augmentation was sought in the application for the withdrawal of any not nontributary ground water.

4. Subject Matter Jurisdiction: Timely and adequate notice of the pendency of these proceedings has been given in the manner required by law. The Water Court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties, whether they have appeared or not.

5. Aquifers and Location of Ground Water:

A. This ruling and decree grants the right to withdraw all ground water legally and physically recoverable from the not-nontributary Upper Dawson aquifer, and the nontributary, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying Applicants' Property in Elbert County, Colorado. The water in the Lower Dawson aquifer underlying Applicants' Property was adjudicated in Case No. 88CW018. Accordingly, Applicants' claim to water in the Lower Dawson Aquifer underlying Applicants' Property is DISMISSED.

B. This ruling and decree adjudicates both nontributary and not-nontributary ground water underlying Applicants' Property. Not-nontributary ground water may not be withdrawn and used unless and until Applicants obtain judicial approval of an augmentation plan therefor. This ruling and decree does not adjudicate such a plan.

C. Applicants are the owners of all ground water rights underlying Applicants' Property, subject only to the existing rights to water herein described, and have the right to withdraw such ground water under Colorado law, § 37-90-137(4), C.R.S. No part of such lands lies within a designated ground water basin.

6. Specific Wells Claimed and Well Permits:

A. The specific location for the additional wells to be constructed under this ruling and decree has not been determined at this time. Applicants have the legal right, nevertheless, to construct and complete such well(s) into each aquifer anywhere on the overlying property as necessary to obtain the full average annual amount from each aquifer as indicated in this ruling and decree, in accordance with § 37-90-137(10), C.R.S.

B. Applicants or their successors shall request a well permit from the Division of Water Resources to construct each such well to be located on Applicants' Property described herein at such time as Applicants or their successor determines the need for such well. Such well permit shall be granted pursuant to the terms and conditions of this ruling and decree. Such well permit shall be granted pursuant to the terms and conditions of this ruling and decree. decree, in accordance with § 37-90-137(10), C.R.S.

C. All wells are to be located on Applicants' Property.

D. Existing Well. The well under Permit No. 64080-F is permitted pursuant to 37-90-137(4), CRS, on the condition that it is operated in accordance with the L.E. Frickey & Gene R. Taylor's augmentation plan approved by the Division 1 Water Court in Case No. 88CW018. A copy of the well permit is attached at Exhibit A. This well is located in the NW ¼ NE ¼ of Section 8, Township 8 South, Range 64 West of the 6th P.M., Elbert County, Colorado, at a point 164 feet from the north line and 1672 feet from the east line of said Section 8, known and described as Lot 24, Forest Park Subdivision, , 34989 Forest Park Drive, Elizabeth, Colorado 80107.

Date of Appropriation: February 27, 2006, the date the well permit application was received by the Office of the State Engineer.

Source: Upper Dawson aquifer.

Uses: Household use within one single family dwelling, and 2,500 square-feet of lawn and garden irrigation. No livestock watering.

Amount: 13 gallons per minute, with a maximum annual diversion of 0.46 acre-feet, ABSOLUTE.

7. Average Annual Amounts of Withdrawal Available:

A. The average annual amounts available in acre-feet for withdrawal from each of the aquifers underlying Applicants' Property are as follows:

Aquifer	Area (acres)	Saturated Thickness	Specific yield (percent)	Acre feet per year of production
Upper Dawson	2.5	165	20	0.4*
Lower Dawson**	--	--	--	--
Denver	2.5	265	17	1.1
Arapahoe	2.5	225	17	1.0
Laramie- Fox Hills	2.5	210	15	0.8

* See Sections 7.C. and 7.D.

** See Section 7.D.

B. The above values and amounts listed for each aquifer are consistent with the Office of the State Engineer Determination of Facts for each aquifer, issued on November 30, 2011, in this Case.

C. A review of the records in the State Engineer's Office has disclosed that an existing well under Permit No. 64080-F is withdrawing ground water from the Upper Dawson aquifer underlying the Applicants' land. To prevent material injury to this permit, the quantity of water in the Upper Dawson aquifer underlying the Applicants' Property that is considered available for withdrawal has been reduced by 46 acre feet to a total of 37 acre feet, and the average amount of water available for withdrawal annually from the Upper Dawson aquifer was reduced to 0.4 acre feet as shown in the above table.

D. As part of the county subdivision process, a water supply plan for the Forest Park subdivision was submitted to the State Engineer's Office for review and comment. Pursuant to the comments on that plan provided by the State Engineer in a letter dated November 10, 1986, each lot in the subdivision could have a well in the Lower Dawson aquifer. On June 14, 1989 a decree was entered in Case No. 88CW018 that decreed the waters in the Lower Dawson aquifer underlying multiple lots including the lot that is the subject of this case. The decree also approved an augmentation plan for 55 wells in the Upper Dawson aquifer. Permit No. 64080-F was issued pursuant to the augmentation plan.

8. Estimated Average Pumping Rates and Well Depths:

A. The maximum pumping rates for wells completed into each aquifer are to be specified on the well permit.

B. Depths of each aquifer are shown in the State Engineer's Determinations of Fact, as follows. A site specific evaluation must be conducted with each well permit to identify the interval due to the varied elevation of the aquifer and surface topography.

<u>Aquifer Name</u>	<u>Estimated Depths*</u>	
	<u>Top</u>	<u>Bottom</u>
Upper Dawson	near surface	560
Lower Dawson	610	870
Denver	890	1,660
Arapahoe	1,700	2,110
Laramie-Fox Hills	2,420	2,700

* The depths indicate a range in which the aquifer is located below the land surface.

9. Final Average Annual Amounts of Withdrawal: Final determinations of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicants from each aquifer will be made pursuant to the retained jurisdiction of this Court, as described in Paragraph 28 of this ruling and decree. In the event this ruling and decree is not reopened for a further quantitative determination, the findings herein are final and controlling.

10. Annual Banking of Unused Amounts: The allowed annual amount of ground water that may be withdrawn from such aquifers through the wells initially constructed and any additional wells, pursuant to § 37-90-137(10), C.R.S., may exceed the average annual amount of withdrawal, as long

as the total volume of water actually withdrawn through such wells and any additional wells therefore subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of the well permits or the date of this decree, whichever is earliest in time, multiplied by the average annual amount of withdrawal, as specified above or as subsequently determined pursuant to the Court's retained jurisdiction.

11. Limitations on Consumption of Nontributary Ground Water:

A. The ground water to be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers under this ruling and decree is "nontributary ground water" as defined in. § 37-90-103(10.5), C.R.S. ,and in the Denver Basin Rules, 2 CCR 402-6, the withdrawal of which will not, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in § 37-82-101(2) and § 37-92-102(1)(b), C.R.S. ,at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal.

B. Applicants may not consume more than 98% of the annual quantity of water withdrawn from such nontributary aquifers, Denver Basin Rule 8, 2.C.C.R. 402-6. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules, may be satisfied by any method selected by the Applicants and satisfactory to the State Engineer, so long as Applicants can demonstrate that an amount equal to 2% of such withdrawals (by volume) has been relinquished to the stream system.

12. Condition Precedent to Use of Not-Nontributary Ground Water: The ground water in the Upper Dawson aquifer at this location has been determined by the State Engineer to be not-nontributary, as that term is defined at § 37-90-103(10.7), C.R.S. Pursuant to § 37-90-137(9)(c), C.R.S. , such not-nontributary ground water may not be withdrawn and used until a judicially approved plan of augmentation has been obtained providing replacement for stream depletions caused by such withdrawals. Such an augmentation plan for such withdrawals is not adjudicated in this ruling and decree.

13. Aquifer Life: Withdrawals hereunder are allowed on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years.

14. Finding of No Injury: The vested water rights of others will not be materially injured by such withdrawals as described herein, so long as such withdrawals are made pursuant to the terms of this ruling and decree. Further, no material injury to vested water rights of others will result from the issuance of permits for wells or the exercise of these rights.

15. Well Locations: Applicants propose to construct wells as required by demands over time. Wells may be constructed pursuant to this ruling and decree at any location on the overlying land area described herein, pursuant to well permits to be issued in accordance with § 37-90-137(4), C.R.S. ,and as defined in Rule 4.A.8 of the Statewide Nontributary Ground Water Rules. Applicants waive well spacing requirements within Applicants' Property.

16. Additional Wells:

A. In addition to the initial well(s) to be permitted and constructed pursuant to this ruling and decree, Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water system demands, or to recover the entire amount of ground water in the subject aquifers underlying Applicants' Property. As additional wells are planned or needed, applications shall be filed in accordance with § 37-90-137(10), C.R.S.

B. In considering applications for permits for additional wells to withdraw the ground water adjudicated herein, the State Engineer shall be bound by this ruling and decree and shall issue said permits in accordance with provisions of § 37-90-137(4) and/or (10), C.R.S.

17. Well Fields: Two or more wells constructed into the same aquifer shall be considered a well field. In producing water from such well field, Applicants or their successors may withdraw the entire amount that may be produced hereunder from the particular aquifer through any combination of wells within the well field for that particular aquifer.

18. Adjustment of Well Permits: In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain new well permits prior to withdrawing such adjusted average annual amounts. New permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

19. Proposed Uses of Water: The water withdrawn pursuant to this ruling and decree may be used, reused, and successively used and after use, leased, sold, or otherwise disposed of for domestic, commercial, irrigation, stock watering, recreational, fish and wildlife, fire protection, and any other beneficial purpose, to be used on or off the land described herein. This water will be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of stream depletions resulting from the use of the water, and for augmentation purposes. Municipal use is allowed if such ground water is conveyed to a municipal water supplier.

20. Conditions: For each well constructed pursuant to this decree, Applicants shall comply with the following conditions:

A. A totalizing flow meter shall be installed on each well discharge prior to withdrawing any water from the well. Applicants or their successors shall keep accurate records of all withdrawals by the proposed wells, make any calculations necessary, and submit such records to the Water Division 1 Engineer upon request.

B. The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicants may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement.

C. Applicants will comply with the then existing rules with respect to well design and completion and ground water production.

D. Each well constructed pursuant to this ruling and decree 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 well's pump house.

CONCLUSIONS OF LAW

21. The Water Court has jurisdiction over this proceeding pursuant to § 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. §37-90-137(4) and (9). The application for a decree confirming Applicants' right to withdraw and use all ground water from the named nontributary aquifers beneath the property as described herein pursuant to § 37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree.

22. The nature and extent of the rights to nontributary and not-nontributary ground water determined herein are defined by §§ 37-90-137(4) and (9), C.R.S. The withdrawal of the ground water decreed herein in accordance with the terms of this decree will not result in material injury to vested water rights of others.

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

24. The rights to nontributary and not-nontributary ground water determined herein shall not be administered in accordance with priority of appropriation. Such rights are not "conditional water rights" as defined by § 37-92-103(6), C.R.S. The provisions of § 37-92-301(4), C.R.S., requiring findings of reasonable diligence are not applicable to the ground water rights determined herein. The determination of ground water rights herein need not include a date of initiation of the withdrawal project. See § 37-92-305(11), C.R.S.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

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

26. Right to Withdraw Nontributary Ground Water:

A. Applicants and/or their successors may withdraw the nontributary ground water subject to this decree through wells to be permitted by the State Engineer's Office at any location on the overlying land, or through any duly authorized additional or replacement well thereto, and in the amounts and at the estimated average rates of flow specified therefore, subject to the limitations herein and the retained jurisdiction of this Court. Not-nontributary ground water may not be withdrawn until an augmentation plan therefore has been approved.

B. Rights to use ground water from the wells described in § 37-90-137(4), C.R.S., pursuant to all such determinations shall be deemed to be vested property rights. See § 37-92-305(11), C.R.S.

C. Ground water withdrawals pursuant to this ruling and decree are expressed in terms of a 100-year aquifer life, but such withdrawals may be extended to 200 years or longer with corresponding reductions in such annual withdrawals. Such ground water may be used for all beneficial purposes listed hereinabove.

27. Transfer of Water Rights: The ground water rights decreed herein are vested property rights decreed to the applicants. The ground water rights decreed herein shall be owned by the applicants or the applicants' successors until such time as the applicants or the applicants' successors expressly convey all or a portion of the water to another entity through a deed that identifies this case number, the specific aquifer, and the annual volume (based on a 100-year aquifer life) or total volume of ground water that is being conveyed.

28. Retained Jurisdiction:

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of nontributary and not-nontributary ground water available under Applicants' Property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to § 37-92-305(11), C.R.S. This determination is governed by the Denver Basin Rules and the Statewide Nontributary Ground Water Rules as provided in § 37-90-137(9)(a), C.R.S. Within 60 days after completion of any well decreed herein, or any test hole(s), Applicants or any successor in interest to these water rights shall serve copies of such log(s) upon the State Engineer.

B. At such time as adequate data are available, any person 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 finding. The State Engineer shall submit such finding to the Water Court and to the Applicants.

C. 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, such final determination shall be made by the Water Court after notice and hearing.

D. In the interim, the Court retains jurisdiction pursuant to § 37-92-305(11), C.R.S.

29. Exempt Well: The well under Permit No. 64080-F is hereby adjudicated and decreed subject to the terms and conditions herein.

30. The well under Permit No. 64080-F must be located no more than 200 feet from the location shown on the well permit, being 200 feet from the north line and 800 feet from the west line of Section 5, as described in paragraph 6.D. hereof.

31. The well under Permit No. 64080-F must at all times be operated in accordance with the L.E. Frickey & Gene R. Taylor's augmentation plan approved by the Division 1 Water Court in Case No. 88CW018.

32. Applicants have complied with all requirements and met all standards and burdens of proof as necessary for the entry of this ruling and decree. No owners of or persons entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by the entry of the ruling and decree herein.

Dated: January 19, 2012



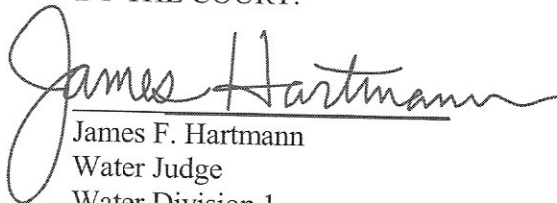
John S. Cowan
Water Referee
Water Division 1

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THE COURT FINDS THAT NO PROTEST TO THE RULING OF THE REFEREE HAS BEEN FILED. THE FOREGOING RULING IS THEREFORE CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS WATER COURT.

BY THE COURT:

Date: February 11, 2012



James F. Hartmann
Water Judge
Water Division 1