

District Court, Water Division 1, State of Colorado Court Address: 901 9 <sup>th</sup> Ave P. O. Box 2038 Greeley, CO 80632	▲ COURT USE ONLY ▲  Case Number: 08CW037
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>LEROY R. NITSCH</b>  <b>IN DOUGLAS COUNTY</b>	
<b>NOTICE OF REFEREE RULING</b>	

James Petrock  
 700 17<sup>th</sup> St., Ste. 1800  
 Denver, CO 80202

Division Engineer

State Engineer

The Water Court Referee for Water Division No. 1 has instructed me to forward a copy of this Ruling. Please check the Ruling carefully. If any errors are found, notify the Water Clerk's Office immediately. If you have any questions regarding this matter, please direct them to the Water Referee at (970) 351-7300, ext. 5406 or by e-mail to [ray.liesman@judicial.state.co.us](mailto:ray.liesman@judicial.state.co.us).

You have twenty days after the above mailing to file with the Water Clerk any pleading in protest to or in support of the Referee's Ruling. Any such pleading must be filed on or before

**July 8, 2008** plus any additional time allowed by Rule 6(e) C.R.C.P. In the absence of any pleading, the Judge of the Water Court will enter the Referee's Ruling as a Decree the day after **July 8, 2008**.

Certificate of Service

I hereby certify that I served via LexisNexis File & Serve, a true and correct copy of the foregoing Ruling to the parties listed above.

Dated: June 18, 2008

By:   
 Connie Koppes  
 Water Clerk, Water Division 1

This ruling was filed electronically pursuant to Rule 121, §1-26. The original is in the Court's file.

<p>DISTRICT COURT, WATER DIVISION 1, COLORADO</p> <p>Court Address: 901 9<sup>th</sup> Avenue P.O. Box 2038 Greeley, CO 80632</p>	<p style="text-align: center;">σ COURT USE ONLY σ</p> <p style="text-align: center;">Case Number: <b>2008CW037</b></p>
<p><b>LEROY R. NITSCH</b>, Applicant,</p> <p>IN <b>DOUGLAS</b> COUNTY.</p>	
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE, IN THE NONTRIBUTARY LOWER DAWSON, DENVER, ARAPAHOE, AND LARAMIE-FOX HILLS AQUIFERS</b></p>	

THIS APPLICATION, having been filed with the Water Clerk, Water Division 1, in February, 2008, and all matters contained in the application having been reviewed, and such testimony having been taken and evidence presented as was necessary, and being otherwise fully advised in the premises, it is hereby the Ruling of the Referee as follows:

FINDINGS OF FACT

1. Name and Address of Applicant:

Leroy Nitsch  
567 South Lake Gulch Road  
Castle Rock, CO 80104

2. Objections: No statements of opposition to the application were filed and the time for filing such statements has expired.

3. Subject Matter Jurisdiction: Notice of the application was duly given in the manner required by law and the Court has jurisdiction over the subject matter and over all who have standing to appear as parties, whether they have appeared or not. Applicant is the owner of the Subject Property which is the subject of this decree.

4. **Aquifer and Location of Groundwater:** Applicant is granted a decree for rights to all groundwater recoverable from the nontributary Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying approximately 10.7 acres of land located in part of the NW1/4SE1/4 of Section 13, T8S, R67W of the 6th P.M., as described and shown on Attachment A hereto ("Subject Property").

5. **Well Locations and Annual Amounts:** The wells which will withdraw the groundwater described below from the nontributary Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers will be located at any location on the Subject Property, pursuant to Section 37-90-137(4), C.R.S. Applicant waives any 600 foot spacing rule for his own wells, but must satisfy Section 37-90-137(4), C.R.S. for wells owned by others on adjacent properties. The following amounts are available for withdrawal subject to the Court's retained jurisdiction in this matter:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Annual Amount</u>
Lower Dawson	110 feet	2.4 acre-feet (NT)
Denver	370 feet	6.7 acre-feet (NT)
Arapahoe	350 feet	6.4 acre-feet (NT)
Laramie-Fox Hills	150 feet	2.4 acre-feet (NT)

The amounts and values conform with the State Engineer's Determinations of Facts dated May 21, 2008.

6. **Proposed Uses of Water:** The water will be used for domestic, industrial, commercial, irrigation, livestock watering and augmentation purposes, both on and off the Subject Property.

7. **Estimated Average Pumping Rate and Well Depths:** The wells which will withdraw water subject to this decree will be withdrawn at rates of flow necessary to efficiently withdraw the decreed amount of groundwater. The well depths will conform with the locations of the subject aquifer as referenced in the State Engineer's Determination of Facts or actual aquifer characteristics.

8. **Final Average Annual Amounts of Withdrawal:**

A. Final determination of the applicable average saturated sand thickness and resulting average annual amount available to Applicant will be made pursuant to the retained jurisdiction of this Court, as described in paragraph 16 hereinbelow. In the event this decree is not reopened for a further quantitative determination, the findings herein are final and controlling.

B. The allowed annual amount of groundwater which may be withdrawn through the wells specified above and any additional wells, pursuant to Section 37-90-137(10), C.R.S., may exceed the average annual amount of withdrawal, as long as the total volume of water withdrawn through such wells and any additional wells therefor subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of any 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 determined pursuant to the retained jurisdiction of the Court.

9. Source of Groundwater and Limitations on Consumption:

A. The groundwater to be withdrawn from the subject aquifers is "nontributary groundwater" as defined in Section 37-90-103(10.5), C.R.S., and in the Denver Basin Rules, the withdrawal of which will not, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in Sections 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. Applicant may not consume more than 98% of the annual quantity of water withdrawn from the subject aquifers. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicant and satisfactory to the State Engineer, so long as Applicant can demonstrate that an amount equal to 2% of such withdrawals (by volume) has been relinquished to the stream system.

C. There is unappropriated groundwater available for withdrawal from the subject aquifers beneath the Subject Property, and the vested water rights of others will not be materially injured by such withdrawals as described herein. Withdrawals hereunder are allowed on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years. No material injury to vested water rights of others will result from the issuance of permits for the subject wells or the exercise of the rights and limitations specified in this decree.

10. Additional Wells and Well Fields:

A. In addition to the wells described above, Applicant 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 groundwater in the subject aquifer underlying the Subject Property, as described herein. As additional wells are planned, applications shall be filed in accordance with Section 37-90-137(10), C.R.S., for evaluation by the Division of Water Resources.

B. Two or more wells constructed into the 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 hereunder through any combination of wells within the well field.

C. In considering applications for permits and for additional 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 provisions of Section 37-90-137(10), C.R.S.

D. 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 prior to withdrawing the adjusted amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

11. Conditions:

For each well constructed pursuant to this decree, Applicant shall comply with the following conditions:

A. A totalizing flow meter shall be installed on the well discharge pipe prior to withdrawing any water therefrom, and shall be maintained and operational at all times for the life of the well. Applicant shall keep accurate records of all withdrawals by the well, 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. Applicant 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. Groundwater 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.

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 pumphouse.

CONCLUSIONS OF LAW

12. The Water Court has jurisdiction over this proceeding pursuant to Section 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. Section 37-90-137(4), C.R.S. The application for a decree confirming Applicant's right to withdraw and use all groundwater from the nontributary aquifers beneath the Subject Property as described herein pursuant to Section 37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree. The nature and extent of the nontributary groundwater determined herein is defined by Sections 37-90-137(4), C.R.S. The withdrawal of the groundwater decreed herein in accordance with the terms of this decree will not result in material injury to vested water rights of others.

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

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

14. The Findings of Fact and Conclusions of Law are incorporated into this Decree of the Water Court.

15. Right to Withdraw Groundwater:

Applicant may withdraw the nontributary groundwater herein through wells located on the subject property or any additional wells necessary for the full production of the subject water, in the average annual amount specified herein, subject to the limitations herein and the retained jurisdiction of this Court.

16. Retained Jurisdiction:

A. The Court retains jurisdiction as necessary to adjust the average annual amount of groundwater available under the property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to Section 37-92-305(11), C.R.S. Within 60 days after completion of any well decreed herein, or any test hole(s), Applicant 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 is 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

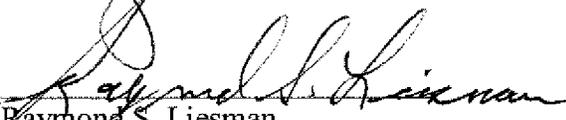
final determination of water rights finding. The State Engineer shall submit such finding to the Water Court and the Applicant.

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 in this matter pursuant to Section 37-92-305(11), C.R.S.

25. The groundwater rights decreed herein are vested property rights decreed to the Applicant and shall be owned by the Applicant until such time as the Applicant expressly conveys all the water underlying the Subject Property, 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 a total volume of groundwater being conveyed. If any deed for the Subject Property is silent to the conveyance of the water rights decreed herein, it is assumed that the water rights have been conveyed with the Subject Property, unless all or part of the water rights have been specifically reserved by the Grantor in that deed.

RULING ENTERED this 18th day of June, 2008.

  
Raymond S. Liesman  
Water Referee  
Water Division 1

THE COURT DOTH FIND THAT NO PROTEST WAS FILED IN THIS MATTER, THEREFOR THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Roger A. Klein  
Water Judge  
Water Division 1  
State of Colorado

Nitsch  
08cw37

## Attachment A

That part of the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, Township 8 South, Range 67 West of the 6th P.M. lying West of Lake Gulch Road as described in Book 104 at Page 87 and Northerly of Hay Stack Road as described in Book 148 at Page 242 (Note Book 148 Page 242 Part 1 requires approximately a 10° clockwise rotation to fit existing roadway - Part 2 is only relatively similar to roadway as constructed and following boundary approximates roadway as constructed) Beginning at the center of Section 13, Township 8 South, Range 67 West of the 6th P.M.; thence North 89°44'30" East along the East-West center line of said Section 13, 534.1 feet, more or less, to the Westerly right of way line of Lake Gulch Road as described in Book 104 at Page 87; thence Southeasterly along a curve to the right having a back tangent of North 33°21'45" West, a central angle of 3°52'15", a radius of 2725 feet (2° curve record), a distance of 184.1 feet; thence South 37°14' East 478.5 feet; thence along a curve to the left having a central angle of 2°40'30" a radius of 5770 feet (1° curve record), a distance of 269.4 feet; thence Southwesterly along a curve to the right having a back tangent of North 50°05'30" East a central angle of 78°39'30", a radius of 307.78 feet, 422.52 feet; thence North 51°15' West, 400.05 feet; thence North 52°45' West, 158.1 feet; thence along a curve to the left having a central angle of 23°48' a radius of 123.76 feet, a distance of 51.4 feet; thence continuing along a curve to the left having a central angle of 36°44'30", a radius of 362.11 feet, a distance of 232.21 feet, more or less, to the North-South center line of said Section 13; thence North 0°55'30" West along said North-South center line, 387.48 feet to the point of beginning, EXCEPT a 30 foot easement described as follows: Beginning at the center of said Section 13; thence North 89°44'30" East, 30.0 feet; thence South 0°55'30" East, 216.11 feet; thence South 52°45' East, 250.99 feet, more or less, to a point on Hay Stack Road; thence Westerly along a curve to the left having a back tangent of South 76°32'40" East a central angle of 09°53', a radius of 362.11 feet, a distance of 62.46 feet; thence North 52°45' West, 210.85 feet, more or less, to the North-South center line of said Section 13; thence North 0°55'30" West, 231.03 feet, more or less, to the point of beginning.

County of Douglas,  
State of Colorado.

Nitsch  
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Castle Rock

Castle Rock

R67W

T8S

Subject Property

A-2

