

VR. 18.002

500-6322

**Holly I. Holder, P.C.**

Attorneys at Law

Attorneys

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Diana A. Cachey  
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518 Seventeenth Street  
Suite 1500  
Denver, Colorado 80202  
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Paralegals

Gary J. Crosby  
Dean C. Stalnaker

December 8, 1998

Heidi Frey  
Office of the State Engineer  
1313 Sherman Street, Room 818  
Denver, Colorado 80203


Re: Second Revised Decree in Case No. 94CW198 (original decree)

Dear Heidi:

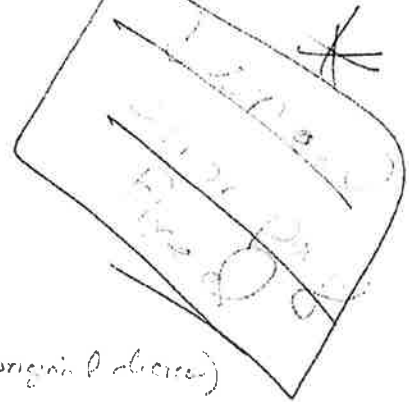
Enclosed for your information, please find a copy of the second revised decree in the above case, which includes the page allowing permits for 7 Dawson aquifer wells on the land of McElhoes.

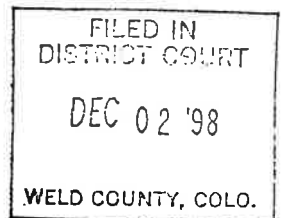
If you have any questions, please call.

Sincerely,

  
Gary J. Crosby  
Paralegal to Holly I. Holder

HIH:gjc  
enclosure  
cc: (w/encl.):  
Alyce McElhoes





DISTRICT COURT, WATER DIVISION 1, COLORADO

Case No. 94CW198

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SECOND REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF  
THE REFEREE, JUDGMENT AND DECREE

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CONCERNING THE APPLICATIONS FOR WATER RIGHTS OF KRISTI AND  
DEAN COUTURE, JAMES SHANKS, AND ELMER AND ANNA HERBERTSON,  
  
IN EL PASO COUNTY.

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This claim for nontributary and not nontributary  
groundwater and approval of plan for augmentation, having been  
filed on October 31, 1994, and all matters contained in the  
application having been reviewed, and such corrections made as  
are indicated by the evidence presented herein, the following  
is hereby the Ruling of the Referee:

FINDINGS OF FACT

1. Names, addresses and telephone numbers of Applicants:

Kristi and Dean Couture  
3365 Needles Drive  
Colorado Springs, Colorado 80908  
(719) 481-8189

James Shanks  
Box 275  
Alma, Colorado 80420  
(719) 836-2498

Elmer and Anna Herbertson  
17675 Highway 83  
Colorado Springs, Colorado 80908-1352  
(719) 481-4304

2. Objections: A timely statement of opposition was filed  
by the State Engineer and Division Engineer for Water Division  
1 and the City of Colorado Springs. No other statements of

opposition have been filed and the time for filing of such statements has expired.

3. Subject matter jurisdiction: Timely and adequate notice of the application was published as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over the parties affected hereby, whether they have appeared or not.

#### APPROVAL OF GROUNDWATER RIGHTS

4. Aquifers and location of ground water: Applicants seek a decree for rights to all groundwater recoverable from the not nontributary Dawson and Denver and nontributary Arapahoe and Laramie-Fox Hills aquifers underlying a total of approximately 114.69 acres of land. Of this total acreage of 114.69 acres, Applicants Dean and Kristi Couture are the owners of approximately 26.2 acres located in part of the NW1/4SE1/4 of Section 22, T11S, R66W of the 6th P.M., lying east of Colorado Highway 83 ("Couture Parcel"). Applicants Elmer and Anna Herbertson are successors in interest to James Shanks and are the owners of approximately 48.22 acres located in parts of the SE1/4SW1/4 of Section 15 and the E1/2NW1/4 of Section 22, T11S, R66W of the 6th P.M., lying east of Colorado Highway 83 ("Herbertson Parcel"). Applicant James Shanks is the owner of approximately 40.27 acres located in parts of the S1/2SE1/4 of Section 22, T11S, R66W of the 6th P.M., lying east of Colorado Highway 83 ("Shanks Parcel"). Said parcels are more particularly described and shown on Attachment A hereto ("Subject Property"). The Subject Property is not located within the boundaries of a designated ground water basin.

5. Well locations, pumping rates and annual amounts: The ground water may be withdrawn at rates of flow necessary to efficiently withdraw the amounts decreed herein. The ground water will be withdrawn through any number of wells necessary, to be located at any location on the Subject Property, in the following annual amounts associated with the Couture, Herbertson, and Shanks Parcels:

Couture Parcel (26.2 acres)

| <u>Aquifer</u>    | <u>Amount</u>        | <u>Saturated Thickness</u> |
|-------------------|----------------------|----------------------------|
| Dawson            | 23.4 acre-feet (NNT) | 442 feet                   |
| Denver            | 25.1 acre-feet (NNT) | 558 feet                   |
| Arapahoe          | 10.7 acre-feet (NT)  | 238 feet                   |
| Laramie-Fox Hills | 7.9 acre-feet (NT)   | 198 feet                   |

Herbertson Parcel (48.22 acres)

| <u>Aquifer</u>    | <u>Amount</u>          | <u>Saturated Thickness</u> |
|-------------------|------------------------|----------------------------|
| Dawson            | 39.6 acre-feet (NNT) * | 442 feet                   |
| Denver            | 45.9 acre-feet (NNT)   | 560 feet                   |
| Arapahoe          | 20.3 acre-feet (NT)    | 248 feet                   |
| Laramie-Fox Hills | 14.6 acre-feet (NT)    | 202 feet                   |

\*The total amount available has been reduced by 3 acre-feet annually for protection of an existing exempt well.

Shanks Parcel (40.27 acres)

| <u>Aquifer</u>    | <u>Amount</u>        | <u>Saturated Thickness</u> |
|-------------------|----------------------|----------------------------|
| Dawson            | 35.1 acre-feet (NNT) | 436 feet                   |
| Denver            | 37.9 acre-feet (NNT) | 554 feet*                  |
| Arapahoe          | 16.0 acre-feet (NT)  | 233 feet                   |
| Laramie-Fox Hills | 11.8 acre-feet (NT)  | 196 feet                   |

\*Amount reduced by 3 acre-feet from 37.9 acre-feet to 34.9 acre-feet annually, which water will be available for any uses which are legally available at the time a well permit application is filed. Said 3 acre-feet (300 acre-feet total) may also be available to be withdrawn through one well to be located on the 40.27 acres of land (7.44 acre-feet per surface acre).

6. Proposed Use: The water withdrawn from the subject aquifers will be used, reused, successively used, and after use leased, sold, or otherwise disposed of for the following beneficial purposes: municipal, domestic, industrial, commercial, irrigation, stock watering, recreational, fish and wildlife, and any other beneficial purpose, both on and 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.

7. Final average annual amounts of withdrawal:

A. Final determination of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicant will be made pursuant to the retained jurisdiction of this Court, as described in paragraph 25 below. The court shall use the acre-foot amounts in paragraph 5 herein in the interim period, until a final determination of water rights is made.

B. The allowed annual amount of ground water which may be withdrawn through the wells specified above 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 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.

8. Source of ground water and limitations on consumption:

A. The ground water to be withdrawn from the Arapahoe and Laramie-Fox Hills aquifers is "nontributary groundwater" as defined in 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 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. The ground water to be withdrawn from the Dawson and Denver aquifers is "not nontributary" as defined in 37-90-137(9)(c), C.R.S. and only the portions of the water in the Dawson aquifer which are part of this augmentation plan may be withdrawn under this decree.

B. Applicants may not consume more than 98% of the annual quantity of water withdrawn from the nontributary Arapahoe and Laramie-Fox Hills 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 Applicants and satisfactory to the State Engineer, so long as Applicants can demonstrate that an amount equal to

2% of such withdrawals (by volume) have 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 wells which will withdraw nontributary groundwater or the exercise of the rights and limitations specified in this decree.

9. Additional wells and well fields:

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 groundwater in the subject aquifers underlying the Subject Property. As additional wells are planned, applications shall be filed in accordance with 37-90-137(10), C.R.S.

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

C. In considering applications for permits for wells or 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 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, the State Engineer shall issue, following the receipt of a proper application, an amended well permit to reflect such adjusted average annual amounts. New permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

E. The water in the Dawson aquifer is not nontributary and only up to 44 acre-feet per year may be withdrawn pursuant to the augmentation plan decreed herein. The remainder of the not nontributary Dawson aquifer water and all of the Denver aquifer water decreed herein, may not be withdrawn until after the Applicants complete adjudication of an additional augmentation plan.

#### APPROVAL OF PLAN FOR AUGMENTATION

#### 10. Approval of plan for augmentation:

A. Groundwater to be augmented: The maximum total annual withdrawal of not nontributary Dawson aquifer groundwater shall be limited to 44 acre-feet per year not to exceed 4400 acre-feet total under this plan for augmentation. The amounts of not nontributary Dawson water which may be withdrawn underlying each parcel is as follows:

- (1) Couture Parcel: 17 acre-feet per year not to exceed 1700 acre-feet total.
- (2) Herbertson Parcel: 15 acre-feet per year not to exceed 1500 acre-feet total.
- (3) Shanks Parcel: 12 acre-feet per year not to exceed 1200 acre-feet total.

B. Water to be used for augmentation: Return flows associated with use of the not nontributary Dawson ground water to replace depletions during pumping and return flows or direct discharge of Arapahoe and Laramie-Fox Hills nontributary ground water to be used only to replace post-pumping depletions, all as decreed herein. Return flows are estimated to be 90% of water used for in-house use and 30% of water used for irrigation purposes.

C. Consumptive Use: The Dawson aquifer groundwater which is the subject of this plan for augmentation may be used for residential development or irrigation purposes. If the water is used for residential purposes, sewage treatment will be provided by non-evaporative septic systems and consumptive use from in-house use will be approximately 10% of diversions. If the water is used only for irrigation, consumptive use is estimated to be 70% of diversions. Water used for

stockwatering purposes will be 100% consumed. Water use for the residential lots to be located on each parcel are as follows:

(1) Couture Parcel: The 17 acre-feet of water may be withdrawn through up to 17 individual wells to serve 17 individual lots. Each well will withdraw at a rate of flow not to exceed 15 gpm and 1 acre-foot per year. Each lot will require approximately 0.4 acre-feet per year for in-house use and will be limited to 10,000 square-feet of irrigation for a total irrigation use of approximately 0.55 acre-feet per year. Each lot will also be limited to watering of up to 4 horses for a use of 0.05 acre-feet per year.

(2) Herbertson Parcel: The 15 acre-feet of water may be withdrawn through up to 5 individual wells to serve 5 individual lots. Each well will withdraw at a rate of flow not to exceed 15 gpm and 3 acre-feet per year. Each lot will require approximately 0.4 acre-feet per year for in-house use and will be limited to approximately 1 acre of irrigation for a total irrigation use of approximately 2.55 acre-feet per year. Each lot will also be limited to watering of up to 4 horses for a use of 0.05 acre-feet per year.

(3) Shanks Parcel: The 12 acre-feet of water may be withdrawn through up to 4 individual wells to serve 4 individual lots. Each well will withdraw at a rate of flow not to exceed 15 gpm and 3 acre-feet per year. Each lot will require approximately 0.4 acre-feet per year for in-house use and will be limited to approximately 1 acre of irrigation for a total irrigation use of 2.55 acre-feet per year. Each lot will also be limited to watering of up to 4 horses for a use of 0.05 acre-feet per year. Alternatively, the property may be developed into seven lots, utilizing the inhouse use and stockwatering amounts described above, limiting irrigation use to 21,000 square feet, and not to exceed 1.7 acre-feet per lot. Exceed a total of 1.7 acre feet per lot.

D. Replacement during pumping: During pumping of the Dawson ground water, Applicants will replace depletions to the affected stream system in an amount of water equal to the actual depletions pursuant to §37-90-137(9)(c). Return flows from the use of the water described above will accrue to the affected stream systems and those return flows are sufficient to replace actual depletions caused by pumping of up to 44 acre-feet per year not to exceed 4400 acre-feet total from the

10<sup>e</sup> of decree

Jan 7, 1999  
ea. year -  
1.4 horse  
1.05  
25,000 sq  
157 - 107  
3500  
107  
HOA



Dawson aquifer while the wells are being pumped. Said supply is sufficient to provide a water supply to the parcels for a period of 100 years or more if the total 4400 acre-feet is not diverted in that time period. At 100 years of pumping, the depletion to the affected stream systems will be approximately 7.863% of the total amount pumped from the Dawson aquifer or approximately 3.45 acre-feet annually if the entire 4400 acre-feet has been withdrawn. Applicants agree that return flows from use of this water 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.

E. Postpumping Depletion Augmentation: After 100 years of pumping, the peak depletion to the affected stream systems will be approximately 8.533% of the total amount pumped from the Dawson aquifer in the 130th year or approximately 3.75 acre-feet annually if the entire 4400 acre-feet has been withdrawn. Applicants believe that depletions which occur after pumping ceases are not injurious as a matter of fact, pursuant to Danielson v. Castle Meadows, 791 P.2d 1106 (Colo. 1990); State Engineer v. Castle Meadows II, 856 P.2d 496 (1993) and Simpson v. Castle Pines Metropolitan District, 886 P.2d 689 (Colo. 1994). The State Engineer disagrees with this position. Nevertheless, in order to reach settlement with the State Engineer, Applicants will reserve all or parts of the underlying nontributary Arapahoe and Laramie-Fox Hills aquifer water underlying their respective properties for augmentation purposes. Coutures shall reserve an annual amount of 9.1 acre-feet (910 acre-feet total) in the Arapahoe aquifer and 7.9 acre-feet (790 acre-feet total) in the Laramie-Fox Hills aquifer. Herbertsons shall reserve an annual amount of 0.4 acre-feet (40 acre-feet total) in the Arapahoe aquifer and 14.6 acre-feet (1460 acre-feet total) in the Laramie-Fox Hills aquifer. Shanks shall reserve an annual amount of 0.2 acre-feet (20 acre-feet total) in the Arapahoe aquifer and 11.8 acre-feet (1180 acre-feet total) in the Laramie-Fox Hills aquifer. Applicants shall replace postpumping depletions if necessary, by pumping of the reserved nontributary ground water or any other legally available augmentation supply that is in sufficient quantity, quality, time and place to meet the requirements of this decree. Applicants shall reserve in any deeds of the property, all of the nontributary ground water decreed herein for possible use in this augmentation plan in the amounts associated with the three parcels as set forth

above; and such water shall not be sold or used for other purposes until another permanent source of replacement water has been approved by the Court. Applicants understand that under the terms and conditions of this decree that they may be required to drill wells sufficient to directly discharge to the stream, after pumping has ceased, water from the reserved Arapahoe and Laramie-Fox Hills aquifers decreed herein.

F. This decree shall be recorded in the real property records of El Paso County, Colorado, and shall be a covenant running with the three parcels which make up the Subject Property. Applicants shall provide future purchasers of the Subject Property, notification of their responsibilities pursuant to the terms of this decree.

G. Applicants shall replace post-pumping depletions for the shortest of the following periods: the period provided by C.R.S. 37-90-137(9)(c); the expressed period specified by the Colorado Legislature, should it specify one and providing the Applicants obtain water court approval for such modification; the period determined by the State Engineer, should he choose to set such a period and have jurisdiction to do so; the period established through rulings of the Colorado Supreme Court on relevant cases, or until Applicants petition the water court and after notice to parties in the case and proves that they have complied with any statutory requirement.

11. Applicants shall pay any costs associated with the operation of this augmentation plan unless Applicants use the Dawson aquifer water for residential use. At that time, Applicants shall create a Property Owners Association which all purchasers of the subject lots shall be required to join. Applicants shall assign to the Property Owners Association, Applicants pro-rata interest and rights and responsibilities in and under this plan for augmentation; Applicants shall also assign to the Property Owners Association their pro-rata interest in the Arapahoe and Laramie-Fox Hills aquifer water in the amounts described in paragraph 10.E. above as decreed herein. If the water is used for residential purposes, Applicants shall also create restrictive covenants upon and running with the property, which shall obligate the individual purchasers and the Property Owners Association to carry out the requirements of this decree. Said covenants shall indicate clearly that failure of either the property owners or the Property Owners Association to comply with the terms of

the decree may result in an order of the Division Engineer's office to curtail or eliminate pumping of the owners' wells. This decree and the covenants 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 and the restrictive covenants.

12. Administration of plan for augmentation:

A. Applicants or the Property Owners Association shall report annually to the Division Engineer for Water Division 1 and the appropriate Water Commissioner the number of wells constructed, the area irrigated by each well and the monthly metered withdrawals of each well on an accounting form acceptable to the Division Engineer.

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

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

D. Applicants at the direction of the Division engineer, shall make post pumping replacements to Cherry Creek pursuant to the percentage of withdrawals as referenced on the table attached hereto on Attachment B.

13. Retained jurisdiction for plan for augmentation:

A. Pursuant to 37-92-304(6), C.R.S. the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also has jurisdiction for the purposes of determining compliance with the terms of the augmentation plan.

B. Any person seeking to invoke the retained jurisdiction of the Court shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the Decree shall set forth with

particularity the factual basis upon which the requested decretial 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, Applicants shall thereupon have the burden of proof to show: (1) that any modification sought by Applicants 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 Applicants in response to the Objectors' petition does avoid injury to other appropriators.

C. The Court retains jurisdiction for the purpose of determining whether the continued reservation of the nontributary water for use on the property is required. If Applicant can demonstrate to the Court or by agreement with Objector that post-pumping depletions need no longer be replaced, the court may remove the requirement that the nontributary water must be reserved.

#### CONCLUSIONS OF LAW

14. 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. Section 37-90-137(4), C.R.S. The application for a decree confirming Applicants' right to withdraw and use all unappropriated ground water from the 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. The application for a decree confirming Applicants' right to withdraw and use all ground water from the Dawson aquifer should be granted pursuant to 37-90-137(4) and (9)(c), C.R.S., subject to the provisions of this decree. The withdrawal of up to 44 acre-feet per year not to exceed 4400 acre-feet total of the Dawson aquifer water in accordance with the terms of this decree will not result in material injury to vested water rights of others.

15. This plan for augmentation satisfies the requirements of 37-90-137(9)(c), C.R.S. for replacement of actual depletions to the affected stream systems for withdrawals of up to 44

acre-feet per year not to exceed 4400 acre-feet total from the Dawson aquifer.

16. The rights to 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., 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.

#### JUDGMENT AND DECREE

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

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

18. For purposes of jurisdiction in this case, § 37-92-302(2), C.R.S., does not require that the application be supplemented with a well permit or evidence of its denial.

19. The Applicants may withdraw the subject ground water herein through wells to be located anywhere on the property, as long as said wells are located within 200 feet of their permitted locations, in the average annual amounts and at the estimated average rates of flow specified herein, so long as the estimated average rates of flow are authorized by a valid well permit, subject to the limitations herein and the retained jurisdiction by this Court.

20. Applicants may withdraw up to 44 acre-feet per year up to 4400 acre-feet total of not nontributary ground water from the Dawson aquifer under the plan for augmentation decreed herein pursuant to § 37-90-137(9)(c), C.R.S. Applicants shall not withdraw the remaining not nontributary Dawson aquifer or Denver aquifer ground water decreed herein until after the Court has adjudicated a plan for augmentation to use that water in a subsequent proceeding brought for that purpose.

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

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

23. 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.

24. 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.

25. Retained Jurisdiction:

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of groundwater available under the 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. 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 findings. The State Engineer shall submit such finding to the Water Court and to 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.

26. Continuing Jurisdiction.

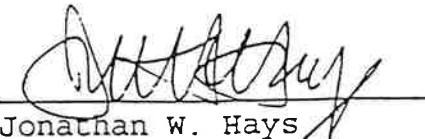
A. Pursuant to § 37-92-304(6), C.R.S. the court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The court also retains continuing jurisdiction for the purposes of determining compliance with the terms of the augmentation plan.

RULING ENTERED this 16 day of February, 1998.

  
Raymond S. Liesman  
Water Referee  
Water Division 1

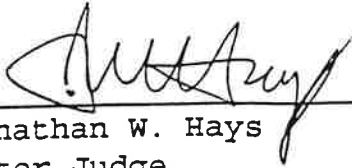
THE COURT DOTH FIND THAT NO PROTEST TO THE RULING OF THE REFEREE HAS BEEN FILED. THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Date: MAR 18 1998

  
Jonathan W. Hays  
Water Judge  
Water Division 1

REVISED JUDGMENT AND DECREE

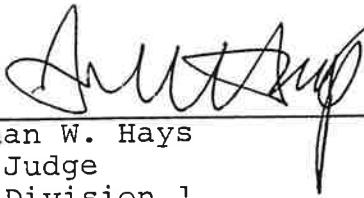
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Jonathan W. Hays  
Water Judge  
Water Division 1  
State of Colorado

SECOND REVISED JUDGMENT AND DECREE  
ENTERED NUNC PRO TUNC: \_\_\_\_\_

DEC 02 1998



Jonathan W. Hays  
Water Judge  
Water Division 1  
State of Colorado



888

mail  
H. Holder, W. K. Dude,  
L. Oberniger, SEO,  
DEO

Date 12/7/98  
Sara W. Dine  
law

APPROVED AS TO CONTENT AND FORM:

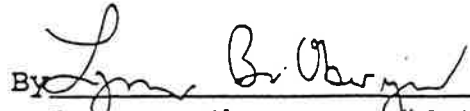
HOLLY I. HOLDER, P.C.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Holly I. Holder, #10216  
Priscilla S. Fulmer, #14936  
Carmen Sower Hall, #19985  
518 17th Street, #1500  
Denver, Colorado 80202

ATTORNEYS FOR APPLICANT

OFFICE OF THE ATTORNEY GENERAL

By  \_\_\_\_\_  
Lynn B. Obernyer, #6809  
Assistant Attorney General  
Natural Resources Section  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
(303) 866-5117

ATTORNEYS FOR OBJECTORS STATE  
ENGINEER AND DIVISION ENGINEER

ANDERSON, DUDE, PIFHER & LEBEL, P.C.

By \_\_\_\_\_  
William Kelly Dude, #13208  
104 S. Cascade Ave., Suite 204  
P.O. Box 240  
Colorado Springs, Colorado 80901  
(719) 632-3545

ATTORNEYS FOR OBJECTOR CITY OF  
COLORADO SPRINGS

APPROVED AS TO CONTENT AND FORM:

HOLLY I. HOLDER, P.C.

Date: 2/1/96

By Holly Holder  
Holly I. Holder, #10216  
Priscilla S. Fulmer, #14936  
Carmen Sower Hall, #19985  
518 17th Street, #1500  
Denver, Colorado 80202

ATTORNEYS FOR APPLICANT

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ATTORNEYS FOR OBJECTOR CITY OF  
COLORADO SPRINGS

## Couture Parcel

A TRACT OF LAND BEING THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF COLORADO STATE HIGHWAY NO. 83, SITUATE IN EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 22, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF WALDEN III AS PLATTED AND RECORDED IN PLAT BOOK H-2 AT PAGE 19 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER; THENCE S88°48'11"E ON THE NORTH LINE OF SAID SOUTHEAST QUARTER, SAID LINE BEING COINCIDENT WITH THE SOUTH LINE OF SAID WALDEN III SUBDIVISION, A DISTANCE OF 1316.49 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SOUTHEAST QUARTER; THENCE S00°03'03"W ON THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 1324.82 FEET TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE N88°51'12"W ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 354.96 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 83; THE FOLLOWING FIVE (5) COURSES ARE ON SAID NORTHEASTERLY RIGHT-OF-WAY LINE; 1) THENCE N38°05'25"W A DISTANCE OF 697.36 FEET; 2) THENCE N32°22'14"W A DISTANCE OF 100.34 FEET; 3) THENCE N38°05'25"W A DISTANCE OF 327.37 FEET; 4) THENCE N37°15'45"W A DISTANCE OF 197.37 FEET; 5) THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 2232.00 FEET, THROUGH A CENTRAL ANGLE OF 7°32'30" AN ARC DISTANCE OF 293.79 FEET, THE LONG CHORD OF WHICH BEARS N31°49'11"W, 293.58 FEET, TO A POINT ON THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE N00°02'32"E ON SAID WEST LINE A DISTANCE OF 47.44 FEET TO THE POINT OF BEGINNING; THE DESCRIBED TRACT CONTAINING 26.462 ACRES, MORE OR LESS.

Feb. 1888, 302

But

N 15886.09  
E 9839.327

$\Delta = 07^{\circ}32'30''$   
 $R = 2232.00'$   
 $L = 293.79'$

CHORD  
N31°48'11"W  
285.58'

N 15418.834  
E 9894.715

N 15258.557  
E 10113.614

1325.98

FOUND A 3-1/4"  
BRASS CAP  
IN CONCRETE

FOUND REBATE  
AND CAP  
LS 9646  
N 14849.288  
E 10282.898

$\frac{N38^{\circ}05'.25''W}{327.57}$

N 15001.904 5ct  
E 10315.570

N 32° 22' 14" W  
100.34'  
N 149  
E 103

N 14917.160 421  
E 10368.289

28.4624 gpt

PENGE CORNER  
10.8' WEST  
6.0' SOUTH

DET 3/4" E. P. 131.5.  
30" IN LENGTH W/IT  
A 2-1/2" ALUMINUM  
CAP, MARKED AS  
551014N

FOUND A 1 1/2" RE  
FROM SET CORREL  
S45°40'40"W  
0.85'

SET A 3/4" REBAR,  
30" IN LENGTH WITH  
A 3-1/2" ALUMINUM  
CAP, PAINTED AS  
SHOWN

CH  
1/10 + 2 2  
FUS 1984  
FUS 1984

N 14368.312  
E 10799.492  
N 88° 51' 12" W  
354.96'

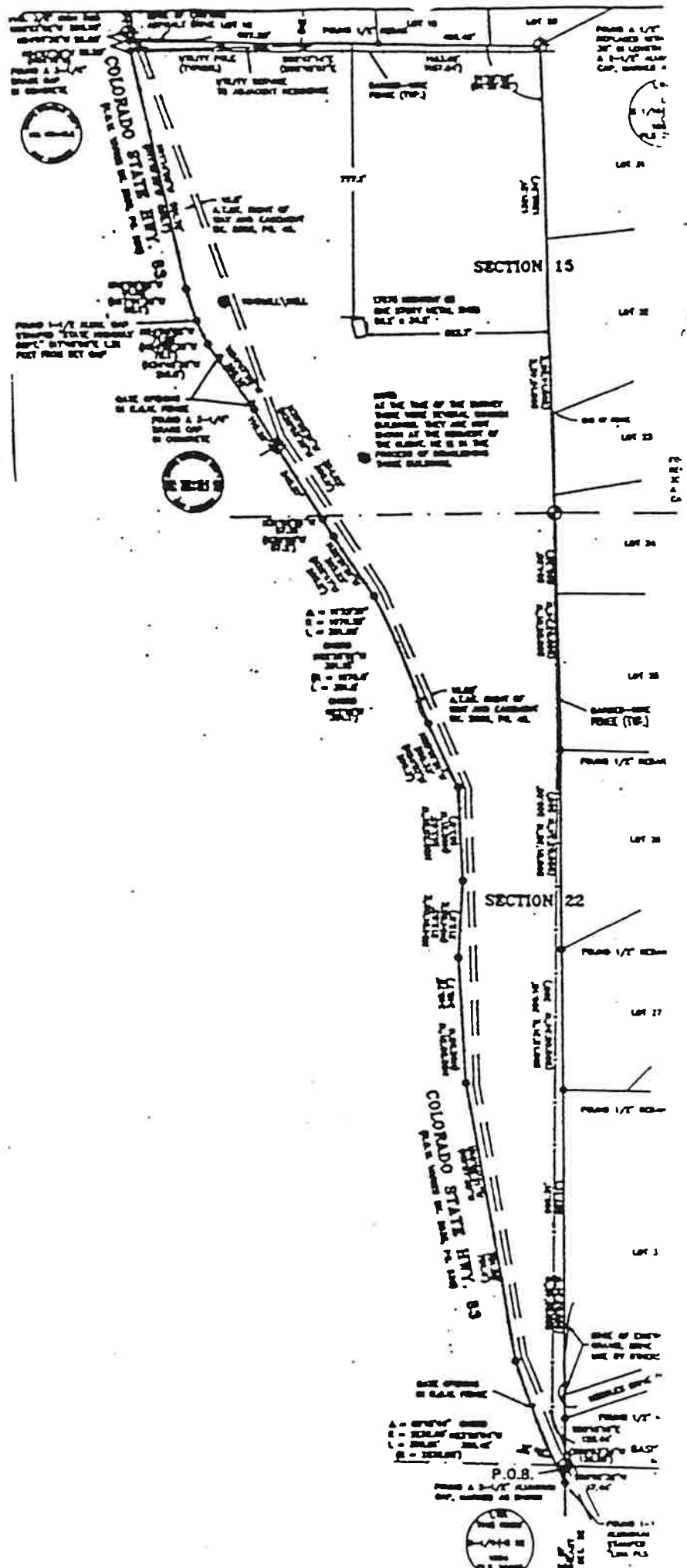
500°03'03"W

PEACE JUNGLES  
(TYPICAL)

A TRACT OF LAND BEING PORTIONS OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, THE EAST HALF OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., ALL LYING EASTERLY OF THE EASTERLY RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 83, SITUATE IN EL PASO COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 22; SAID POINT ALSO BEING THE SOUTHWEST CORNER OF WALDEN III AS PLATTED AND RECORDED IN PLAT BOOK H-2 AT PAGE 19 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER; THENCE S0°02'32"W ON THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22 A DISTANCE OF 47.44 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 83; THE FOLLOWING FIFTEEN (15) COURSES ARE ON SAID EASTERLY RIGHT-OF-WAY LINE; 1) THENCE ON A CURVE TO THE RIGHT, NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 2232.00 FEET THROUGH A CENTRAL ANGLE OF 9°15'44" AN ARC DISTANCE OF 380.81 FEET, THE LONG CHORD OF WHICH BEARS N23°25'04"W 380.42 FEET; 2) THENCE N10°02'21"W A DISTANCE OF 781.50 FEET; 3) THENCE N02°59'51"W A DISTANCE OF 348.75 FEET; 4) THENCE N04°01'09"E A DISTANCE OF 212.83 FEET; 5) THENCE N02°25'51"W A DISTANCE OF 263.03 FEET; 6) THENCE N25°01'51"W A DISTANCE OF 200.33 FEET; 7) THENCE ON A CURVE TO THE LEFT, NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 1970.28 FEET THROUGH A CENTRAL ANGLE OF 11°23'37" AN ARC DISTANCE OF 391.80 FEET, THE LONG CHORD OF WHICH BEARS N22°20'51"W 391.15 FEET; 8) THENCE N32°51'51"W A DISTANCE OF 203.23 FEET; 9) THENCE N31°02'51"W A DISTANCE OF 57.21 FEET; 10) THENCE N30°08'21"W A DISTANCE OF 384.83 FEET; 11) THENCE N34°47'08"W A DISTANCE OF 219.18 FEET; 12) THENCE N24°50'08"W A DISTANCE OF 71.96 FEET; 13) THENCE N16°59'08"W A DISTANCE OF 91.92 FEET; 14) THENCE N11°14'08"W A DISTANCE OF 891.72 FEET; 15) THENCE N04°07'38"W A DISTANCE OF 29.29 FEET TO THE SOUTHWEST CORNER OF LOT 18 OF SAID WALDEN III SUBDIVISION; THENCE S88°47'14"E ON THE SOUTH LINE OF LOTS 18, 19 AND 20 OF SAID SUBDIVISION A DISTANCE OF 1183.86 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15 AS ESTABLISHED BY SAID SUBDIVISION PLAT; THENCE S0°16'42"E ON THE WESTERLY LINE OF LOTS 21, 22, 23 AND 24 OF SAID SUBDIVISION A DISTANCE OF 1321.21 FEET TO THE NORTHEAST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 15 AS ESTABLISHED BY SAID SUBDIVISION; THENCE S0°02'01"W ON THE WESTERLY LINE OF LOTS 24 AND 25 A DISTANCE OF 684.98 FEET TO A FOUND 1/2" REBAR; THENCE S0°01'38"W ON THE WESTERLY LINE OF LOT 26 OF SAID SUBDIVISION A DISTANCE OF 559.86 FEET TO A FOUND 1/2" REBAR; THENCE S0°12'31"E ON THE WESTERLY LINE OF LOT 27 OF SAID SUBDIVISION A DISTANCE OF 390.18 FEET TO A FOUND 1/2" REBAR; THENCE S0°06'42"W ON THE WESTERLY LINE OF LOT 37 AND THE RIGHT-OF-WAY OF NEEDLES DRIVE OF SAID SUBDIVISION A DISTANCE OF 908.31 TO A FOUND 1/2" REBAR; THENCE S0°16'16"E ON THE WESTERLY LINE OF LOT 38 OF SAID SUBDIVISION A DISTANCE OF 128.44 FEET TO THE POINT OF BEGINNING; THE DESCRIBED TRACT CONTAINING 48.2230 ACRES, MORE OR LESS.

Herbertson Parcel



A TRACT OF LAND BEING PORTIONS OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 68 WEST OF THE 6TH P.M., LYING EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF COLORADO STATE HIGHWAY NO. 83, SITUATE IN EL PASO COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22; THENCE S88°51'12"E ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 1316.28 FEET TO THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE S00°03'35"W ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 1293.68 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF HODGEN ROAD, A COUNTY ROAD; THENCE N88°54'13"W ON SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 1149.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF COLORADO STATE HIGHWAY NO. 83; THE FOLLOWING SIX (6) COURSES ARE ON SAID EASTERLY RIGHT OF WAY LINE; 1.) THENCE N43°56'30"W A DISTANCE OF 135.06 FEET; 2.) THENCE N2°08'30"W A DISTANCE OF 90.90 FEET; 3.) THENCE N3°49'30"W A DISTANCE OF 254.32 FEET; 4.) THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 1482.50 FEET THROUGH A CENTRAL ANGLE OF 25°57'03" AN ARC DISTANCE OF 671.47 FEET, THE LONG CHORD OF WHICH BEARS N20°07'00"W-885.74 FEET; 5.) THENCE N38°24'30"W A DISTANCE OF 254.32 FEET; 6.) THENCE N38°05'25"W A DISTANCE OF 42.52 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE S88°51'12"E ON SAID NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 354.98 FEET TO THE POINT OF BEGINNING: THE HEREIN DESCRIBED TRACT CONTAINING 40.2728 ACRES, MORE OR LESS.



SET A 3/4" R  
LENGTH, WITH/  
ALUMINUM CAL  
MARKED AS S

S 22  
PLS

Shanks Parcel

FOUND A 2  
ALUMINUM  
MARKED A:

500'03'35" W

1293.66'

FENCE CORNER  
6.2' WEST  
7.7' NORTH

A-TAT RIGHT  
OF WAY  
BK. 2026, PG. 640

BARBED-WIRE FENCE  
(TYPICAL)

30.00'

NO POSTED ADDRESS  
NO BUILDINGS

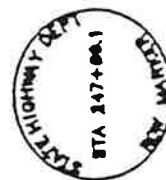
SE 1/4 SE 1/4

WASH AREA  
(BRANCH FILL)

$\Delta = 2537'03"$   
 $R = 1482.50'$   
 $L = 671.47'$   
CHORD  
N20°07'00"W  
665.74'

$(R = 1482.5'$   
 $L = 671.4'$   
CHORD  
N20°08'30"W  
665.7')

FOUND A 3-1/4"  
BRASS CAP  
IN CONCRETE



N02°08'30"W  
90.90'

N03°49'30"W 254.32'

(N03°49'W 254.3') (N2°08') (90.90')

500'03'03" W

N43°36'30"W  
(51.8')

GATE

N88°54'13"W  
1318.04'

HODGEN ROAD 2632.08'

ASPHALT ROAD

S88°54'13"E

COLO. HWY. 83 (R.O.W. VARIES)  
(BOOK 2035, PAGE 523)

1/4

N88°51'12"W

1316.26'

FENCE CORNER  
3.6' WEST  
6.6' SOUTH

P.O.B.

GATE

51'12"E

N38°05'25"W  
42.52'  
(N38°05'W)

IND A 3-1/4"  
ASS CAP  
CONCRETE



AT&T MANHOLE

GATE

N36°24'30"W 254.32'  
(N36°24'W 254.3')

1324.82'

## STREAM DEPLETIONS

| YEAR | UPPER DAWSON |       |        | YEAR | UPPER DAWSON |       |        |
|------|--------------|-------|--------|------|--------------|-------|--------|
|      | CF/DAY       | AF/YR | % q/Q  |      | CF/DAY       | AF/YR | % q/Q  |
| 0    | 0.00         | 0.00  | 0.00%  |      |              |       |        |
| 10   | 16.00        | 0.134 | 0.384% | 310  | 311.21       | 2.610 | 7.477% |
| 20   | 44.41        | 0.372 | 1.067% | 320  | 308.02       | 2.583 | 7.401% |
| 30   | 77.61        | 0.651 | 1.865% | 330  | 304.83       | 2.556 | 7.324% |
| 40   | 112.64       | 0.944 | 2.706% | 340  | 301.63       | 2.529 | 7.247% |
| 50   | 148.35       | 1.244 | 3.564% | 350  | 298.43       | 2.502 | 7.170% |
| 60   | 184.27       | 1.545 | 4.427% | 360  | 295.23       | 2.476 | 7.093% |
| 70   | 220.20       | 1.846 | 5.291% | 370  | 292.05       | 2.449 | 7.017% |
| 80   | 256.04       | 2.147 | 6.152% | 380  | 288.88       | 2.422 | 6.941% |
| 90   | 291.74       | 2.446 | 7.009% | 390  | 285.73       | 2.396 | 6.865% |
| 100  | 327.27       | 2.744 | 7.863% | 400  | 282.60       | 2.370 | 6.790% |
| 110  | 346.65       | 2.907 | 8.329% | 410  | 279.50       | 2.344 | 6.715% |
| 120  | 353.42       | 2.963 | 8.491% | 420  | 276.42       | 2.318 | 6.641% |
| 130  | 355.18       | 2.978 | 8.533% | 430  | 273.37       | 2.292 | 6.568% |
| 140  | 354.89       | 2.976 | 8.526% | 440  | 270.36       | 2.267 | 6.496% |
| 150  | 353.67       | 2.966 | 8.497% | 450  | 267.36       | 2.242 | 6.424% |
| 160  | 352.00       | 2.951 | 8.457% | 460  | 264.40       | 2.217 | 6.352% |
| 170  | 350.05       | 2.935 | 8.410% | 470  | 261.47       | 2.192 | 6.282% |
| 180  | 347.83       | 2.917 | 8.359% | 480  | 258.57       | 2.168 | 6.212% |
| 190  | 345.65       | 2.898 | 8.305% | 490  | 255.70       | 2.144 | 6.143% |
| 200  | 343.26       | 2.878 | 8.247% | 500  | 252.86       | 2.120 | 6.075% |
| 210  | 340.74       | 2.857 | 8.186% |      |              |       |        |
| 220  | 338.11       | 2.835 | 8.123% |      |              |       |        |
| 230  | 335.39       | 2.812 | 8.058% |      |              |       |        |
| 240  | 332.58       | 2.789 | 7.991% |      |              |       |        |
| 250  | 329.69       | 2.764 | 7.921% |      |              |       |        |
| 260  | 326.73       | 2.740 | 7.850% |      |              |       |        |
| 270  | 323.71       | 2.714 | 7.777% |      |              |       |        |
| 280  | 320.64       | 2.689 | 7.704% |      |              |       |        |
| 290  | 317.52       | 2.662 | 7.629% |      |              |       |        |
| 300  | 314.38       | 2.636 | 7.553% |      |              |       |        |

\* Peak depletion at about 130 years.