

DISTRICT COURT, WATER DIVISION 1, COLORADO Court Address: 901 9th Avenue, P.O. Box 2038 Greeley, CO 80632 Phone Number: (970) 475-2540	DATE FILED October 21, 2024 9:22 AM CASE NUMBER: 2024CW3038 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: JOHN M. BERKHEIMER IN EL PASO COUNTY	Case No.: 24CW3038
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE: ADJUDICATING DENVER BASIN GROUNDWATER, AND APPROVING PLAN FOR AUGMENTATION	

THIS MATTER comes before the Water Court on the Application filed by John M. Berkheimer. Having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Water Court makes the following findings and orders:

FINDINGS OF FACT

1. The applicant in this case is John M. Berkheimer. His address is 6485 Connaught Drive, Colorado Springs, CO 80908 (“Applicant”). The Applicant is the owner of the land totaling approximately 13.4 acres on which the structures sought to be adjudicated and augmented herein are and will be located, and under which lies the Denver Basin groundwater described in this decree, and is the owner of the place of use where the water will be put to beneficial use, except for any potential off-property uses as described in Paragraph 19.

2. The Applicant filed this Application with the Water Court for Water Division 2, and in Water Court for Water Division 1 on March 29, 2024. The Application was referred to the Water Referee in Division 2, and the Water Referee for Division 1 on the same day. After the publication period ended, the Applications were consolidated into Division 1 on July 9, 2024.

3. The time for filing statements of opposition to the Application expired on the last day of May 2024. No Statements of Opposition were filed.

4. In accordance with the notice requirements of C.R.S. § 37-92-302(2), a Notice of No Lienholders on the Applicant’s Property was filed with the Division 2 Water Court, and the Division 1 Water Court on April 8, 2024.

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5. On April 3, 2024, the Division 2 Water Court ordered that no publication need occur in Division 2, and that publication shall occur in Division 1.

6. The Clerk of this Court has caused publication of the Application filed in this matter as provided by statute and the publication costs have been paid. On April 17, 2024, proof of publication in *The Gazette* was filed with Division 1 Water Court. All notices of the Application have been given in the manner required by law.

7. Pursuant to C.R.S. § 37-92-302(2), the Office of the State Engineer has filed a Determination of Facts for each Denver Basin aquifer with this Court on May 3, 2024, which have been considered by the Court in the entry of this decree.

8. Pursuant to C.R.S. § 37-92-302(4), the office of the Division Engineer for Water Division No. 1 filed its Consultation Report dated June 28, 2024, and a response to the Consultation Report was not required by the Water Court. The Consultation Report and the Applicant's response have been considered by the Water Court in the entry of this decree.

9. 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. The land and water rights involved in this case are not within a designated groundwater basin.

GROUNDWATER RIGHTS

10. The Application requested quantification and adjudication of vested underground water rights from the Denver basin groundwater underlying the Applicant's property described in Paragraph 13, below, and use of the Berkheimer Well No. 1 located on the Applicant's Property constructed to the Dawson aquifer, and the Berkheimer Well No. 2, which is a proposed well that may be constructed to the Dawson aquifer, and any additional or replacement wells associated therewith, for withdrawal of Applicant's full entitlement of supply from the Dawson aquifer under the plan for augmentation decreed herein. Applicant also requested quantification and adjudication of vested underground water rights and uses from the Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Applicant's property. The following findings are made with respect to such underground water rights and use of wells on the Applicant's Property:

11. The land overlying the groundwater subject to the adjudication in this case is owned by the Applicant and consists of approximately 13.4 acres located in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6, Township 12 South, Range 65 W. of the 6th P.M., with a street address of 14060 Black Forest Road, Colorado Springs, CO 80908, as described on the **Exhibit A** deed and shown on the **Exhibit B** map ("Applicant's Property"). Applicant intends to subdivide the property into two (2) lots. All groundwater adjudicated herein shall be withdrawn from the overlying land unless there is a further order of this Court allowing otherwise following the filing of a new water court application.

12. Berkheimer Well No. 1: Berkheimer Well No. 1, is located on the Applicant's Property and is permitted and constructed into the Dawson aquifer as an exempt domestic well

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pursuant to C.R.S. § 37-92-602(5) under Well Permit No. 215326. This well will be re-permitted under the plan for augmentation adjudicated herein for use on one of the subdivided lots on Applicant's Property. Applicant is awarded the vested right to use the Berkheimer Well No. 1, along with any necessary additional or replacement wells associated with such structure, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the plan for augmentation decreed herein. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, if the State Engineer finds that a permit can be issued, the State Engineer shall issue a new well permit for the Berkheimer Well No. 1, pursuant to C.R.S. § 37-90-137(4), consistent with and referencing the plan for augmentation decreed herein.

13. Berkheimer Well No. 2: Applicant is awarded the vested right to use the Berkheimer Well No. 2, along with any additional or replacement wells associated with such structure, for the extraction and use of groundwater from the not-nontributary Dawson aquifer pursuant to the plan for augmentation decreed herein. Upon entry of this decree and submittal by the Applicant of a complete well permit application and filing fee, the State Engineer shall issue a well permit for Berkheimer Well No. 2, pursuant to C.R.S. § 37-90-137(4), consistent with and referencing the plan for augmentation decreed herein.

14. Of the statutorily described Denver Basin aquifers, the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers all exist beneath the Applicant's Property. The Dawson and Denver aquifers underlying the Applicant's Property contain not-nontributary water, while the water of the Arapahoe and Laramie-Fox Hills aquifers underlying the Applicant's Property is nontributary. The quantity of water in the Denver Basin aquifers exclusive of artificial recharge underlying the Applicant's Property is as follows:

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT Actual)	400	1070	10.70	3.566
Denver (NNT 4%)	480	1090	10.90	N/A
Arapahoe (NT)	240	547	5.47	N/A
Laramie Fox Hills (NT)	185	372	3.72	N/A

The terms and conditions set forth in this decree governing the withdrawal and use of groundwater from the Denver Basin aquifers underlying the Applicant's Property are applicable only to permitted non-exempt wells constructed into the aquifers.

15. Pursuant to C.R.S. § 37-90-137(9)(c.5)(I), the augmentation requirements for wells in the Dawson aquifer require the replacement to the affected stream systems of actual stream depletions on an annual basis. Applicant shall not be entitled to construct a non-exempt well or use water from the not-nontributary Dawson aquifer except pursuant to an approved augmentation

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plan in accordance with C.R.S. § 37-90-137(9)(c.5), including as decreed herein as concerns the Dawson aquifer. In addition, Applicant shall be required to comply with the requirements of Paragraph 38.A prior to constructing and using a non-exempt well completed into the Dawson aquifer.

16. Pursuant to C.R.S. § 37-90-137(9)(c.5)(I)(C), the augmentation requirements for wells in the Denver aquifer require the replacement to the affected stream systems of four percent (4%) of stream depletions on an annual basis. Applicant shall not be entitled to construct a non-exempt well or use water from the not-nontributary Denver aquifer except pursuant to an approved augmentation plan in accordance with C.R.S. § 37-90-137(9)(c.5), including as decreed herein as concerns the Denver aquifer. In addition, Applicant shall be required to comply with the requirements of Paragraph 38.B prior to constructing and using a non-exempt well completed into the Denver aquifer.

17. Subject to the augmentation requirements described in Paragraphs 15, 16 and 23 and the other requirements and limitations in this decree, Applicant shall be entitled to withdraw all legally available groundwater in the Denver Basin aquifers underlying Applicant's Property. Said amounts may be withdrawn over the 100-year life for the aquifers as set forth in C.R.S. § 37-90-137(4), or withdrawn over a longer period of time based upon local governmental regulations or Applicant's water needs, provided withdrawals during such longer period are in compliance with the total amounts available to Applicant as decreed herein and the augmentation requirements of this decree. This decree describes a pumping period of 300-years as to pumping from the Dawson aquifer, as required by El Paso County, Colorado Land Use Development Code § 8.4.7(C)(1). The average annual amounts of groundwater available for withdrawal from the underlying Denver Basin aquifers, based upon the 100-year and 300-year aquifer life calculations, are determined and set forth above, based upon the May 3, 2024, Office of the State Engineer Determination of Facts described in Paragraph 7.

18. Applicant shall be entitled to withdraw an amount of groundwater in excess of the average annual amount decreed herein from the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from wells in each of the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of the decree herein, whichever comes first, and the average annual volume of water which Applicant is entitled to withdraw from each of the aquifers underlying Applicant's Property, subject to the requirement that such banking and excess withdrawals do not violate the terms and conditions of the plan for augmentation decreed herein and any other plan for augmentation decreed by the Court that authorizes withdrawal of the Denver Basin groundwater decreed herein. Applicant shall be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant's Property through any combination of wells. The wells shall be treated as a well field

19. Subject to the terms and conditions in the plan for augmentation decreed herein and final approval by the State Engineer's Office pursuant to the issuance of well permits in accordance with C.R.S. §§ 37-90-137(4) or 37-90-137(10), the Applicant shall have the right to use the groundwater from the Dawson, Denver, Arapahoe, and Laramie Fox Hills aquifers for beneficial uses upon the Applicant's Property consisting of domestic, irrigation, stock watering, fire

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protection, recreation, and also for storage and augmentation purposes associated with such uses. The amount of groundwater decreed for such uses upon the Applicant's Property is reasonable as such uses are to be made for the long-term use and enjoyment of the Applicant's Property and is to establish and provide for adequate water reserves. The nontributary groundwater may be used, reused, and successively used to extinction, both on and off the Applicant's Property subject, however, to the limitations imposed on the use of the Arapahoe and Laramie-Fox Hills aquifers groundwater by this decree and the requirement under C.R.S. § 37-90-137(9)(b) that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided however, as set forth above, Applicant shall only be entitled to construct a non-exempt well and use water from the not-nontributary Dawson and Denver aquifers pursuant to a decreed augmentation plan entered by the Court, including that plan for augmentation decreed herein for the Dawson aquifer.

20. Applicant has waived the 600-foot well spacing requirement for wells to be constructed upon the Applicant's Property. The Applicant may withdraw groundwater from the Berkheimer Wells No. 1 and 2 and any additional or replacement wells for those wells, or from wells constructed into the Arapahoe and Laramie-Fox Hills aquifers, at rates of flow necessary to withdraw the entire amounts decreed herein. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions.

21. Withdrawals of groundwater available from the nontributary Arapahoe and Laramie-Fox Hills aquifers beneath the Applicant's Property in the amounts determined in accordance with the provisions of this decree will not result in injury to any other vested water rights or to any other owners or users of water.

PLAN FOR AUGMENTATION

22. The structures to be augmented are the Berkheimer Wells No. 1 and 2, as constructed and to be constructed to the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith ("Berkheimer Wells"). This plan for augmentation does not cover depletions associated with diversions from the Denver aquifer. Absent entry of a separate decreed plan for augmentation that allows such pumping, no groundwater in the Denver aquifer underlying the Applicant's Property is available for withdrawal by any well except if reserved and used under an exempt well permit or plan for augmentation. If Applicant would like to divert their entitlement in the Denver aquifer, they must do so under a separate future decreed augmentation plan.

23. Pursuant to C.R.S. § 37-90-137(9)(c.5), the augmentation obligation for the Berkheimer Wells requires the replacement of actual stream depletions attributable to pumping of the residential wells from the Dawson aquifer. The water to be used for augmentation during pumping are the septic system return flows of the not-nontributary Dawson aquifer to be pumped from the Berkheimer Wells No. 1 and 2 as set forth in this plan for augmentation. The water to be used for augmentation of depletions following the pumping period described in this decree is the reserved portion of Applicant's nontributary water rights in the Laramie-Fox Hills aquifer as described in Paragraph 23.D. Applicant shall provide for the augmentation of stream depletions

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caused by pumping the Berkheimer Wells, as approved herein. Water use criteria is determined as follows:

A. Use: Based on a 300-year pumping period, the Berkheimer Wells may pump a maximum combined total of 1.566 acre feet from the Dawson aquifer annually, with each lot pumping a maximum of 0.783 acre-feet per year (469.8 acre-feet total) pursuant to the plan for augmentation authorized by this decree. Indoor use will utilize an estimated 0.2 acre-feet of water per year for each residence (0.4 acre-feet combined), with the remaining 0.583 acre-feet (1.166 acre-feet combined) per year pumping entitlement available for other uses on the Applicant's Property, including: irrigation of lawn and garden and the watering of livestock. An example of the use breakdown for El Paso County land use planning purposes is household use of 0.26 acre-feet of water per year with the additional 0.523 acre-feet of available for irrigation of lawn and garden and the watering of livestock annually. The foregoing figures assume the use of individual non-evaporative septic systems, with resulting return flows from such systems as described below in Paragraph 23.C.

B. Depletions: Pumping from the Dawson aquifer will require replacement of actual stream depletions of the pumped amount over the 300-year pumping period. Maximum stream depletions over the 300-year pumping period for the Dawson aquifer amounts to approximately 22.40% of pumping. Maximum annual depletions from the Berkheimer Wells are therefore 0.351 acre-feet in year 300. Should Applicant's pumping be less than the 1.566 total per year described herein, resulting depletions and required replacements will be correspondingly reduced.

C. Augmentation of Depletions During Pumping Life of Well: Pursuant to C.R.S. § 37-90-137(9)(c.5), Applicant is required to replace actual stream depletions of the water pumped from the Dawson aquifer. Applicant has shown that, provided water is delivered for indoor use and treated as required by this decree, depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is estimated at 10% per year per residence. At the household indoor use rate of 0.2 acre-feet per year, 0.18 acre-feet per residence is replaced to the stream system per year, utilizing a non-evaporative septic system. Thus, during the pumping period, the total maximum annual stream depletions of 0.351 acre-feet will be augmented provided septic system return flows are generated by indoor use of water in the residence ($(2 \times 0.2) \times 0.9 = 0.36$ acre-feet of return flows). This calculation of septic system return flows from indoor residential use of 0.2 acre-feet per residence shows that depletions that result from pumping the annual amounts described in Paragraph 23.A will be adequately replaced during the pumping period for the wells under this plan for augmentation.

D. Augmentation of Post-Pumping Depletions: This plan for augmentation shall have a pumping period of 300 years. For the replacement of post-pumping depletions which may be associated with the use of the Berkheimer Wells, Applicant will reserve 479.4 acre-feet of the nontributary Arapahoe aquifer groundwater decreed herein, with such reserved amount reduced based on the amount of actual stream depletions replaced by non-evaporative septic system return flows from Dawson withdrawals during the plan pumping period, to replace any injurious post pumping depletions. The amount of nontributary Arapahoe aquifer groundwater

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reserved may be reduced as may be determined through this Court's retained jurisdiction as described in this decree. If the Court, by order, reduces the Applicant's obligation to account for and replace such post-pumping depletions for any reason, it may also reduce the amount of Arapahoe aquifer groundwater reserved for such purposes, as described herein. Applicant also reserves the right to substitute other legally available augmentation sources for such post-pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post-pumping depletions will be noninjurious. Pursuant to C.R.S. § 37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed. The reservation of a total of 479.4 acre-feet of Arapahoe aquifer groundwater results in approximately 469.8 acre-feet of available post-pumping augmentation water, which, combined with credits for replacements made during pumping, will be sufficient to replace post-pumping depletions obligations from the pumping of 469.8 acre-feet from the Dawson aquifer over 300 years. Post-pumping replacement obligations equal the total amount of water pumped from the not-nontributary Dawson aquifer minus credits received for replacement obligations made during pumping.

E. Permits: Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive well permits for the Berkheimer Wells for the uses in accordance with this decree and otherwise in compliance with C.R.S. § 37-90-137.

24. This decree, upon recording, shall constitute a covenant running with Applicant's Property, benefitting and burdening said land, and requiring construction of well(s) to the nontributary Arapahoe aquifer and pumping of water to replace post-pumping depletions under this decree. Subject to the requirements of this decree, in order to determine the amount and timing of post-pumping replacement obligations under this plan for augmentation, Applicant or its successors shall use information commonly used by the Colorado Division of Water Resources for augmentation plans of this type at the time the post-pumping obligation commences. Pursuant to this covenant, the water from the nontributary Arapahoe aquifer reserved herein may not be severed in ownership from the Applicant's Property. This covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights who would be injured by the failure to provide for the replacement of post-pumping depletions under the decree, and shall be specifically enforceable by such third parties against the owner(s) of the Applicant's Property.

25. Applicant or its successors shall be required to initiate pumping from the Arapahoe aquifer for the replacement of post-pumping depletions when either: (i) the absolute total amount of water available from the Dawson aquifer allowed to be withdrawn under the plan for augmentation decreed herein (469.8 acre-feet) has been pumped; (ii) the Applicant or its successors in interest have acknowledged in writing that all withdrawals for beneficial use through any of the Berkheimer Wells have permanently ceased; (iii) a period of 10 consecutive years where no withdrawals of groundwater from the Berkheimer Wells has occurred; or (iv) accounting shows that return flows from the use of the water being withdrawn are insufficient to replace depletions caused by the withdrawals that already occurred and no modification of pumping or treatment of the Berkheimer Wells is sufficient to make up for such insufficiency.

26. Unless modified by the Court under its retained jurisdiction, Applicant and its

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successors shall be responsible for accounting and replacement of post-pumping depletions as set forth herein. Should Applicant's obligation hereunder to account for and replace such post-pumping stream depletions be reduced or abrogated for any reason, Applicant may petition the Court to also modify or terminate the reservation of the Arapahoe aquifer groundwater.

27. Consideration has been given to the depletions from Applicant's use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicant, and the existence, if any, of injury to any owner of or person entitled to use water under a vested water right.

28. It is determined that the timing, quantity, and location of replacement water under the protective terms in this decree are sufficient to protect the vested rights of other water users and eliminate injury thereto. The replacement water shall be of a quantity and quality so as to meet the requirements for which the water of senior appropriators has normally been used, and provided of such quality, such replacement water shall be accepted by the senior appropriators for substitution for water derived by the exercise of the Berkheimer Wells. As a result of the operation of this plan for augmentation, the depletions from the Berkheimer Wells will not result in injury to the vested water rights of others.

CONCLUSIONS OF LAW

29. The application for adjudication of Denver Basin groundwater and approval of plan for augmentation was filed with the Water Clerk for Water Division 2 and Water Division 1, pursuant to C.R.S. §§ 37-92-302(1)(a) and 37-90-137(9)(c.5).

30. The Applicant's request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings. C.R.S. §§ 37-92-302(1)(a), 37-92-203, and 37-92-305.

31. Subject to the terms of this decree, the Applicant is entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying the Applicant's Property as decreed herein, and the right to use that water to the exclusion of all others.

32. The Applicant has complied with C.R.S. § 37-90-137(4), and the groundwater is legally available for withdrawal by the requested nontributary well(s), and legally available for withdrawal by the requested not-nontributary well(s) upon the entry of this decree approving a plan for augmentation pursuant to C.R.S. § 37-90-137(9)(c.5), and the issuance of a well permit by the State Engineer's Office. Applicant is entitled to a decree from this Court confirming his right to withdraw groundwater pursuant to C.R.S. § 37-90-137(4).

33. The Denver Basin water rights applied for in this case are not conditional water rights, but are vested water rights determined pursuant to C.R.S. § 37-90-137(4). No applications for diligence are required. The claims for nontributary and not-nontributary groundwater meet the requirements of Colorado Law.

34. The determination and quantification of the nontributary and not-nontributary

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groundwater rights in the Denver Basin aquifers as set forth herein are contemplated and authorized by law. C.R.S. §§ 37-90-137, and 37-92-302 through 37-92-305.

35. The Applicant's request for approval of a plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this plan for augmentation will permit the uninterrupted diversions from the Berkheimer Wells without adversely affecting any other vested water rights in the South Platte River or its tributaries, or the Arkansas River and its tributaries and when curtailment would otherwise be required to meet a valid senior call for water. C.R.S. §§ 37-92-305(3), (5), and (8).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

36. All of the foregoing Findings of Fact and Conclusions of Law are incorporated herein by reference, and are considered to be a part of this decretal portion as though set forth in full.

37. The Application for Adjudication of Denver Basin Groundwater and Plan for Augmentation filed by the Applicant is approved, subject to the terms of this decree.

A. Applicant is awarded a vested right to 1070 acre-feet of groundwater from the not-nontributary Dawson aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. Of this total amount, 469.8 acre-feet may be pumped pursuant to the plan for augmentation decreed herein. The remaining 600.2 acre-feet shall not be withdrawn for any purpose except pursuant to a separate court-approved plan for augmentation authorizing the pumping of such amount.

B. Applicant is awarded a vested right to 1090 acre-feet of groundwater from the not-nontributary Denver aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. Such water shall not be withdrawn for any purpose except pursuant to a separate court-approved plan for augmentation authorizing the pumping of such amount.

C. Applicant is awarded a vested right to 547 acre-feet of groundwater from the nontributary Arapahoe aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent (98%) of the amount withdrawn, including the reservation of the 479.4 acre-feet awarded to be utilized only for replacement of post-pumping depletions under the plan for augmentation decreed herein, as described in Paragraph 23.D., above, and the other terms and conditions of this decree. Applicant's Arapahoe aquifer groundwater may be utilized for all purposes described in Paragraph 19.

D. Applicant is awarded a vested right to 372 acre-feet of groundwater from the nontributary Laramie-Fox Hills aquifer underlying Applicant's Property, as quantified in Paragraph 14 or as modified by the Court under its retained jurisdiction. Subject to the provisions of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, limiting consumption to ninety-eight percent (98%) of the amount withdrawn, and the other terms and conditions of this decree. Applicant's

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Laramie-Fox Hills aquifer groundwater may be utilized for all purposes described in Paragraph 19.

38. The Applicant has furnished acceptable proof as to all claims and, therefore, the Application for Adjudication of Denver Basin Groundwater, and Plan for Augmentation, as filed by the Applicant, is granted and approved in accordance with the terms and conditions of this decree. Approval of this Application will not result in any injury to senior vested water rights.

39. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur. Applicant consolidated this matter into Water Division 1 upon completion of publication. The Court hereby finds that the total amount of depletions to both the South Platte River and the Arkansas River systems shall be replaced to the South Platte River as set forth herein, and finds that replacements to the South Platte River system as described are sufficient for this plan for augmentation

40. The Applicant shall comply with C.R.S. § 37-90-137(9)(b), requiring the relinquishment of the right to consume two percent (2%) of the amount of the nontributary groundwater withdrawn annually. Ninety-eight percent (98%) of the nontributary groundwater withdrawn annually may therefore be consumed. No plan for augmentation shall be required to provide for such relinquishment. Applicant shall be required to demonstrate to the State Engineer prior to the issuance of a well permit that no more than ninety-eight percent (98%) of the groundwater withdrawn annually will be consumed.

41. The Berkheimer Wells shall be operated such that pumping from each well does not exceed the annual (0.783 acre-feet per residence, 1.566 acre-feet combined total) and total (469.8 acre-feet) pumping limits for the Dawson aquifer as decreed herein, and is in accordance with the requirements of the plan for augmentation described herein. Consistent with Rule 11.A of the Statewide Nontributary Ground Water Rules, the Denver Basin groundwater decreed herein must be withdrawn from the "overlying land" as defined in Rule 4.A.8 of the Statewide Nontributary Ground Water Rules, and the Berkheimer Wells shall be constructed on the overlying land. The State Engineer, the Division Engineer, and/or the Water Commissioner shall not curtail the diversion and use of water by the Berkheimer Wells so long as the return flows from the annual diversions associated with the Berkheimer Wells accrue to the stream system pursuant to the conditions contained herein and all other applicable conditions of the decree are complied with. To the extent that the Applicant or one of his successors or assigns is ever unable to provide the replacement water required, then the Berkheimer Wells shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulations of the State of Colorado. Pursuant to C.R.S. § 37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights. In order for this plan for augmentation to operate, return flows from the septic systems discussed herein shall at all times during pumping be in an amount sufficient to replace the amount of caused stream depletions, and cannot be sold, leased, or otherwise used for any purpose inconsistent with the plan for augmentation decreed herein. Applicant shall be required to have any wells pumping from the Dawson aquifer on the

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Applicant's Property providing water for in-house use and generating septic system return flows prior to pumping the wells for any of the other uses identified in Paragraphs 19 or 23.A.

42. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristics, and the Applicant need not file a new application to request such adjustments. The retained jurisdiction described in this Paragraph 43 is applicable only to the quantities of water available underlying Applicant's Property, and does not affect or include the augmentation plan decreed herein, the retained jurisdiction for which is described in Paragraphs 44 and 45, below.

A. At such time as adequate data may be available, Applicant or the State Engineer may invoke the Court's retained jurisdiction as provided in this Paragraph 43 for purposes of making a final determination of water rights as to the quantities of water available and allowed average annual withdrawals from any of the Denver Basin aquifers quantified and adjudicated herein. Any person seeking to invoke the Court's retained jurisdiction for such purpose shall file a verified petition with the Court setting forth with particularity the factual basis for such final determination of Denver Basin water rights under this decree, together with the proposed decretal language to effect the petition. Within four months of the filing of such verified petition, the State Engineer's Office shall utilize such information as available to make a final determination of water rights finding, and shall provide such information to the Court, Applicant, opposer, and the petitioning party.

B. If no protest is filed with the Court to such findings by the State Engineer's Office within sixty-three (63) days, this Court shall incorporate by entry of an Amended Decree such "final determination of water rights", and the provisions of this Paragraph 43 concerning adjustments to the Denver Basin groundwater rights based upon local aquifer conditions shall no longer be applicable. In the event of a protest being timely filed, or should the State Engineer's Office make no timely determination as provided in Paragraph 43.A, above, the "final determination of water rights" sought in the petition may be made by the Water Court after notice to all parties and following a full and fair hearing, including entry of an Amended Decree, if applicable in the Court's reasonable discretion.

43. Pursuant to C.R.S. § 37-92-304(6), the Court shall retain continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The Court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan. The Court further retains jurisdiction should the Applicant later seek to amend this decree by seeking to prove that post-pumping depletions are noninjurious, that the extent of replacement for post-pumping depletions is less than the amount of water reserved herein, and other post-pumping matters addressed in Paragraph 23.D. The Court's retained jurisdiction described in this paragraph may be invoked using the process set forth in Paragraph 45.

*Ruling of Referee and Decree
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44. Except as otherwise specifically provided in Paragraphs 43-44, pursuant to the provisions of C.R.S. § 37-92-304(6), this plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of injury to vested water rights of others, for a period from the date of entry of this decree until five years following the date that Applicant begins operation of the plan for augmentation based on the subdivision of the Applicant's Property and withdrawal of water from the Berkheimer Wells. Applicant shall file a notice with the Court confirming the start of operations under the plan for augmentation within thirty-five (35) days of the start date. Any person, within such period, may petition the Court to invoke its retained jurisdiction. Any person seeking to invoke the Court's retained jurisdiction shall file a verified petition with the Court setting forth with particularity the factual basis for requesting that the Court reconsider injury to petitioner's vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. The party filing the petition shall have the burden of proof of going forward to establish a prima facie case based on the facts alleged in the petition. If the Court finds those facts are established, Applicant shall thereupon have the burden of proof to show: (i) that the petitioner is not injured, or (ii) that any modification sought by the petitioner is not required to avoid injury to the petitioner, or (iii) that any term or condition proposed by the Applicant in response to the petition does avoid injury to the petitioner. The Division of Water Resources as a petitioner shall be entitled to assert injury to the vested water rights of others. If no petition concerning the subject of the Court's retained jurisdiction described in this paragraph 45 is filed within the period described in this paragraph, and the retained jurisdiction period is not extended by the Court in accordance with the provisions of the statute, the matter described in this paragraph shall become final under its own terms.

45. Pursuant to C.R.S. § 37-92-502(5)(a), the Applicant shall install and maintain such water measurement devices and recording devices as are deemed necessary by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meter on the Berkheimer Wells and any wells operating pursuant to this decree, and are required to include geophysical logging on each newly constructed well. Any well constructed to withdraw the herein decreed groundwater may only withdraw groundwater from a single aquifer. Applicant shall read and record the well meter readings on March 31 and October 31 of each year and shall submit the meter readings, and any accounting required to administer this plan, to the Water Commissioner by April 15 and November 15 of each year, or more frequently as requested by the Water Commissioner.

46. The vested water rights, water right structures, and plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. The Berkheimer Wells shall be permitted as non-exempt structures under the plan for augmentation decreed herein, which plan shall be implemented upon the repermitting of the Berkheimer Well No. 1 and/or construction and use of the Berkheimer Well No. 2. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses which can be made of the groundwater to be withdrawn, and, to the extent the well permit application requests a use that has not been specifically identified in this decree, shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the well permit application or which would be inconsistent with the

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requirements of this decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

47. The Ruling of Referee, when entered as a decree of the Water Court, shall be recorded in the real property records of El Paso County, Colorado. Copies of this ruling shall be mailed as provided by statute.

Dated September 23, 2024

BY THE REFEREE:

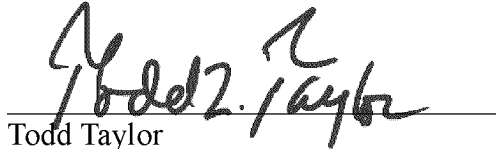


John Cowan, Water Referee
Water Division One

The Court finds that no protest was filed in this matter. The foregoing ruling is confirmed and approved and is hereby made the judgment and decree of this Court.

Dated: October 21, 2024

BY THE COURT:



Todd Taylor
Water Judge
Water Division One

223084462 11/14/2023 2:36 PM
 PGS 5 \$33.00 DF \$90.00
 Electronically Recorded Official Records El Paso County CO
 Steve Schaefer, Clerk and Recorder
 101000 Y

EXHIBIT A



Order No.: 370-F14008-23

GENERAL WARRANTY DEED

Doc Fee: \$90.00

THIS DEED, Made this 13th day of November, 2023, between

Monica D. Bowen, and Matthew K. Bowen,

grantor, and

John Matthew Berkheimer, as Tenant in Severally

whose legal address is 14060 Black Forest Rd 913 CO 80909

grantees:

WITNESS, That the grantor, for and in consideration of the sum of Nine Hundred Thousand And No/100 Dollars (\$900,000.00), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the grantees, their heirs and assigns forever, all the real property together with improvements, if any, situate, lying and being in the County of El Paso, State of COLORADO, described as follows:

That Portion of the Northeast Quarter of Section 6 in Township 12 South, Range 65 West of the 6th P.M. in El Paso County, Colorado, described as follows:

Beginning at the Southeast Corner of the Northeast Quarter of said Section 6;
 thence West on the South Line thereof 1320 feet;
 thence North 643 feet parallel with the East line of said Northeast Quarter;
 thence East parallel with the South line of said Northeast Quarter 825 feet;
 thence South 165 feet parallel with the East line of said Northeast Quarter;
 thence East parallel with the South line of the Northeast Quarter 495 feet to the East line of said Northeast Quarter;
 thence South 478 feet on said East line to the point of beginning;

Except that portion thereof described as follows:

Beginning at the Southeast corner of said Northeast Quarter;
 thence West 750 feet;
 thence North 225 feet;
 thence East 475 feet;
 thence Southeasterly 275 feet a point on the East line of said Northeast Quarter that is 175 feet North from the point of beginning;
 thence South 175 feet to the Point of Beginning.
 County of El Paso, State of Colorado.

also known by street and number as 14060 Black Forest Road, Colorado Springs, CO 80909-2853

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

Deed (General Warranty)
 CDD1258.doc / Updated: 09/28/22

Page 1

Berkheimer
 24CW3038

EXHIBIT A

GENERAL WARRANTY DEED

(continued)

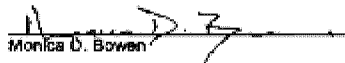
TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantees, their heirs and assigns forever. And the grantor, for themselves, their heirs and personal representatives, does covenant, grant, bargain and agree to and with the grantees, their heirs and assigns, that at the time of the executing and delivery of these presents, they are well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except for taxes for the current year, a lien but not yet due and payable, subject to statutory exceptions as defined in CRS 38-30-113, revised.

The grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of the grantees, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

GRANTOR:


Monica D. Bowen

Matthew K. Bowen

GENERAL WARRANTY DEED
(continued)

STATE OF COLORADO

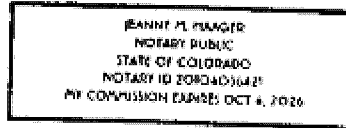
COUNTY OF Arapahoe

The foregoing instrument was acknowledged before me this 13th day of November, 2023, by Monica D. Bowen.

[Signature]
Notary Public

My Commission Expires: 10/4/2026

(SEAL)



STATE OF COLORADO

COUNTY OF _____

The foregoing instrument was acknowledged before me this 13th day of November, 2023, by Matthew K. Bowen.

Notary Public

My Commission Expires: _____

(SEAL)

GENERAL WARRANTY DEED
(continued)

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantees, their heirs and assigns forever. And the grantor, for themselves, their heirs and personal representatives, does covenant, grant, bargain and agree to and with the grantees, their heirs and assigns, that at the time of the enrolling and delivery of these presents, they are well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except for taxes for the current year, a lien but not yet due and payable, subject to statutory exceptions as defined in CRS 38-30-113, revised.

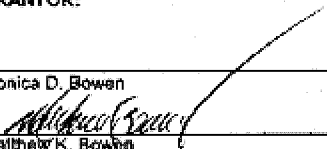
The grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of the grantees, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

GRANTOR:

Monica D. Bowen



Matthew K. Bowen

GENERAL WARRANTY DEED

(continued)

STATE OF COLORADO

COUNTY OF _____

The foregoing instrument was acknowledged before me this 13th day of November, 2023, by Monica D. Bowen.

Notary Public

My Commission Expires: _____

(SEAL)

MICHIGAN
STATE OF ~~COLORADO~~

COUNTY OF *St. Joseph*

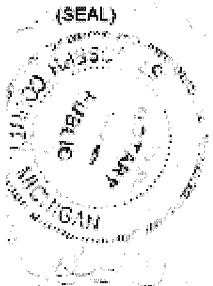
The foregoing instrument was acknowledged before me this 9th day of November, 2023, by Matthew K. Bowen.

Kelsey McClish

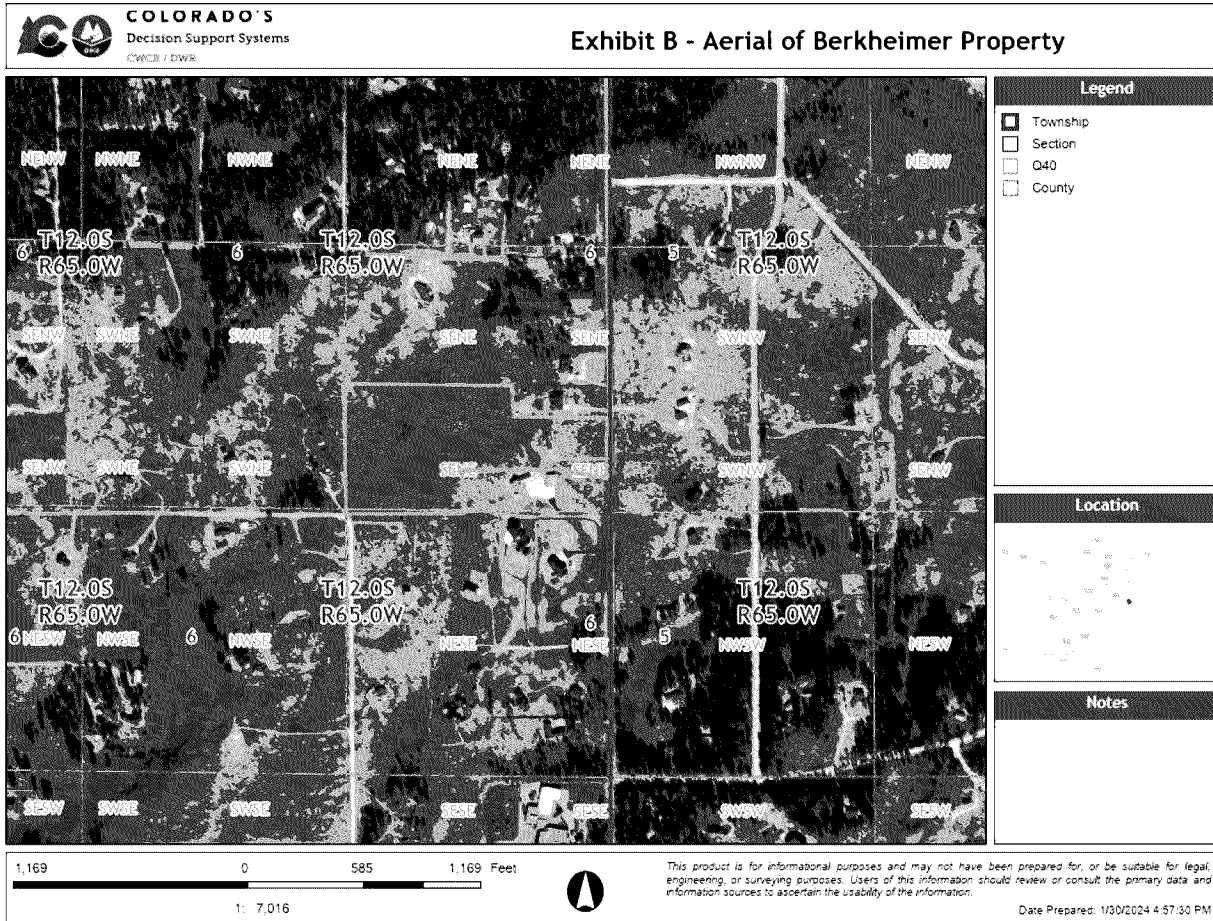
Notary Public

My Commission Expires: *1/11/2025*

(SEAL)

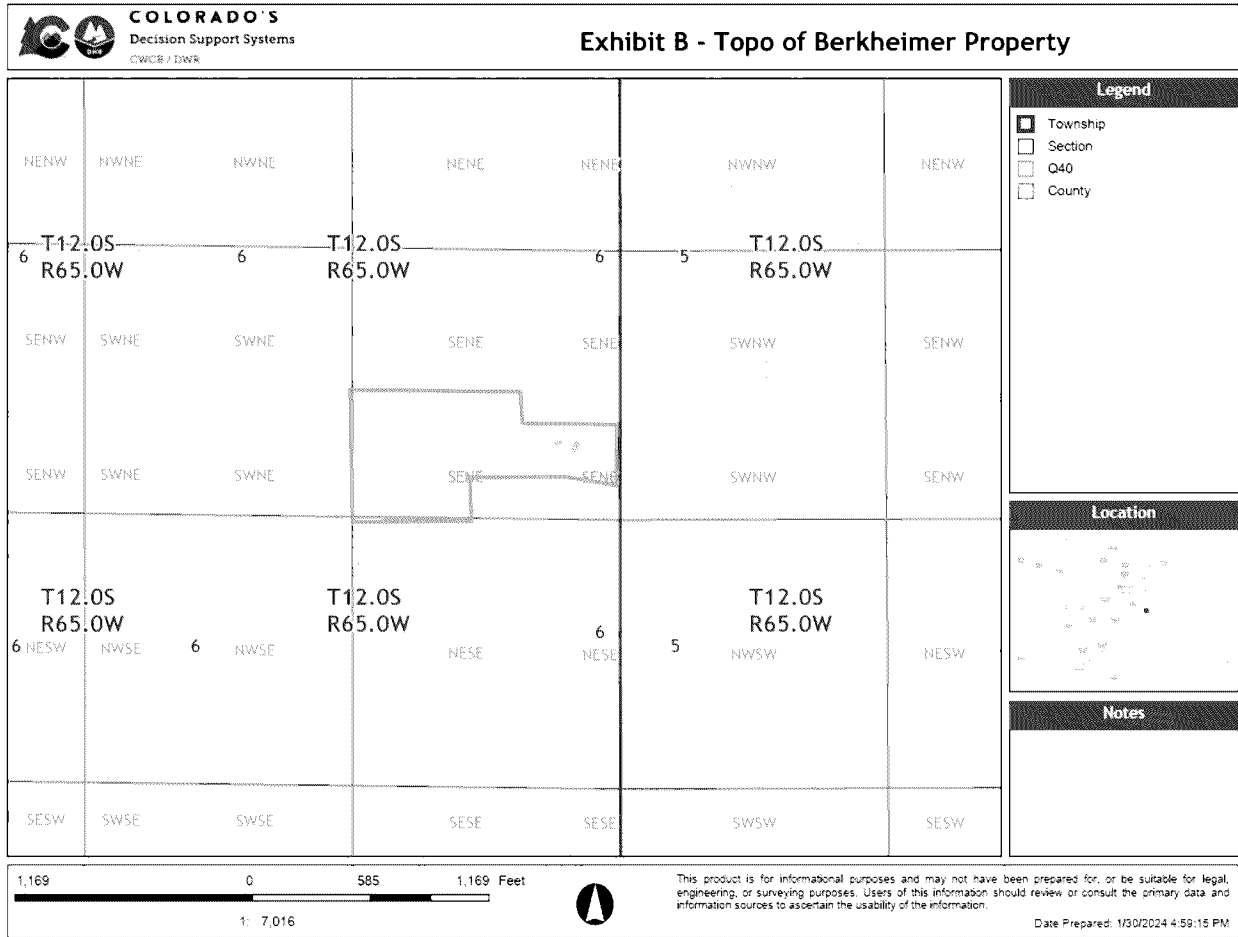


KELSEY MCCLISH
Notary Public, Saint Joseph County, MI
My Commission Expires 07/16/2025
Acting in Saint Joseph County, MI



Berkheimer
24CW3038

EXHIBIT B



Berkheimer
24CW3038

EXHIBIT B