

DISTRICT COURT, WATER DIVISION 1, COLORADO Weld County Courthouse P.O. Box 2038 Greeley, CO 80632	DATE FILED: March 11, 2022 11:17 AM CASE NUMBER: 2021CW3156 ▲ COURT USE ONLY ▲
APPLICATION FOR UNDERGROUND WATER RIGHTS AND PLAN FOR AUGMENTATION OF CHRISTOPHER and JESSICA BOYD, Applicants, IN EL PASO COUNTY	Case Number: 2021CW3156 Consolidated with: Case No. 2021CW3041, Water Division 2
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE	

A claim for underground water rights and a plan for augmentation was filed in this case on August 31, 2021. All matters contained in the application having been reviewed, such testimony having been taken and evidence presented as was necessary, and being otherwise fully advised in the premises, it is hereby the Findings of Fact, Conclusions of Law, Ruling of the Referee, and Judgment and Decree, as follows:

FINDINGS OF FACT

1. Name and address of Applicants:

Christopher & Jessica Boyd
6238 Gilmer Way
Westerville, OH 43081

2. Motion to Consolidate: On November 8, 2021 a Motion for Transfer and Consolidation of Multidistrict Litigation was filed by the Applicants in Case No. 2021CW3156, Water Division 1 and Case No. 2021CW3041, Water Division 2, under Case No. 2021MD20. On December 6, 2021, the Order Pursuant to C.R.C.P. 42.1(i) was issued and both cases were consolidated in Water Division 1 under Case No. 2021CW3156.

3. Statements of Opposition: No statements of opposition were filed and the time for filing of such statements has expired.

4. 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.

5. Consultation: The Water Referee consulted with the Division 1 Engineer, as required by C.R.S. § 37-92-302(4), on November 8, 2021, and the Division 1 Engineer filed their summary of consultation on November 30, 2021. The amounts herein are consistent with

and conform to the values and amounts referenced in the State Engineer's Determinations of Facts dated October 12, 2021.

GROUNDWATER RIGHTS

6. Aquifers and Location of Groundwater: Applicants are granted a decree for rights to groundwater in the not-nontributary Dawson Aquifer, and the nontributary Denver, Arapahoe and Laramie-Fox Hills aquifers underlying 35.88 acres of land generally located in the SW1/4 SW1/4, Section 7, Township 11 South, Range 65 West of the 6th P.M., also known as 18735 Brown Road, Colorado Springs, CO, 80908, El Paso County, State of Colorado as shown on **Exhibit A** (“Subject Property”).

7. Well Locations, Pumping Rates, and Annual Amounts: The groundwater may be withdrawn at rates of flow necessary to withdraw the amounts decreed herein. The groundwater will be withdrawn through any number of wells necessary, to be located at any location on the Subject Property. Applicants waive any 600-foot spacing rule for wells located on the Subject Property, but must satisfy C.R.S. § 37-90-137(4), for wells owned by other on adjacent properties. The following average annual amounts are available for withdrawal subject to the Court's retained jurisdiction in this matter.

Aquifer	Saturated Thickness (feet)	Annual Amount 100 Years (acre-feet)	Annual Amount 300 Years (acre-feet)	Total Amount (acre-feet)
Dawson (NNT)	465	33.4	11.13	3,340
Denver (NT)	490	29.9	9.97	2,990
Arapahoe (NT)	260	15.9	5.3	1,590
Laramie-Fox Hills (NT)	205	11	3.67	1,100

8. Well Permits: Well permits will be applied for prior to construction of any wells.

9. Decreed Uses: The water will be used for domestic, commercial, irrigation, including in greenhouses, swimming pool filling, stockwatering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property.

10. Estimated Average Pumping Rate and Well Depths: Wells will withdraw the subject groundwater at rates of flow necessary to withdraw the entire decreed annual amounts of groundwater. A site specific evaluation must be conducted with each well permit to identify the interval due to the varied elevation of the aquifer and surface topography.

11. Final Average Annual Amounts of Withdrawal:
 - 11.1 Final determination of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicants will be made pursuant to the retained jurisdiction of this Court, as described in Paragraph 28 below. The Court shall use the acre-foot amounts in Paragraph 7 herein in the interim period, until a final determination of water rights is made.

11.2 The allowed annual amount of groundwater which may be withdrawn through the wells specified above and any additional wells, pursuant to C.R.S. § 37-90-137(10), may exceed the average annual amount of withdrawal, as long as the total volume of water withdrawn through such wells and any additional wells constructed 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. However, amounts set forth in well permits will not be exceeded.

12. Source of Groundwater and Limitations on Consumption:

12.1 The groundwater to be withdrawn from the Denver, Arapahoe and Laramie-Fox Hills aquifers is "nontributary groundwater" as defined in C.R.S. § 37-90-103(10.5), and in the Denver Basin Rules, the withdrawal of which will not, within 100 years of continuous withdrawal, deplete the flow of a natural stream, including a natural stream as defined in C.R.S. §§ 37-82-101(2) and 37-92-102(1)(b), at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal. The groundwater to be withdrawn from the Dawson Aquifer is "not-nontributary" as defined in C.R.S. §§ 37-90-103(10.7) and 37-90-137(9)(c.5) and will not be withdrawn without a plan for augmentation.

12.2 Applicants may not consume more than 98% of the annual quantity of water withdrawn from the nontributary 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) has been relinquished to the stream system.

12.3 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 not-nontributary and nontributary groundwater or the exercise of the rights and limitations specified in this decree.

13. Additional Wells and Well Fields:

- 13.1 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 C.R.S. § 37-90-137(10).
- 13.2 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.
- 13.3 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 C.R.S. §§ 37-90-137(4) and (10).
- 13.4 In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain permits to reflect such adjusted average annual amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

14. Conditions for Well Operation and Construction:

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

- 14.1 A totalizing flow meter shall be installed on the well discharge pipe prior to withdrawing any water therefrom, and shall be maintained and operational at all times for the life of the well. Applicants shall keep accurate records of all withdrawals by the well, make any calculations necessary, and submit such records to the Water Division 1 Engineer upon request.
- 14.2 The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicants may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement.
- 14.3 Groundwater production shall be limited to the specific identified aquifer. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

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

PLAN FOR AUGMENTATION

15. Plan for Augmentation:

- 15.1 Water to be Augmented: 2.25 acre-feet per year for 300 years of not-nontributary Dawson Aquifer groundwater decreed herein.
- 15.2 Water to be Used for Augmentation: Return flows associated with use of the not-nontributary Dawson Aquifer groundwater and return flows or direct discharge of nontributary groundwater decreed herein.
- 15.3 The Dawson Aquifer groundwater will be used to serve up to three (3) individual wells. Each well will serve one (1) single-family residence (0.3 acre-feet per year), irrigation, including lawn, garden, trees, and use in greenhouses of up to 8,000 square-feet (0.4 acre-feet per year), watering of up to 4 large domestic animals (0.05 acre-feet) (0.75 acre-feet per well per year), through new wells. Conservatively, water use in single-family dwellings will equal at least 0.2 acre-feet of water annually for in-house uses, and that use of non-evaporative septic systems typically results in consumption of approximately 10% of such use, resulting in return flows of at least 0.18 acre-feet per year from each single-family residence, 0.54 acre-feet per year total. Various components of this plan for augmentation are predicated on these estimations, and Applicants shall be required to use a non-evaporative septic system to treat and dispose of water used for in-house use.
- 15.4 Replacement During Pumping: During pumping of the Dawson Aquifer groundwater, Applicants will replace actual depletions to the affected stream system pursuant to C.R.S. § 37-90-137(9)(c.5). In the 300th year, the total depletion is 22.22% of the amount withdrawn or 0.50 acre-feet total. Return flow from in-house use of the Dawson Aquifer groundwater for the residences is at least 0.54 acre-feet per year as described above and such return flow from use in the residences is sufficient to replace actual depletions for pumping of the entire 2.25 acre-feet per year for 300 years. Return flows accrue to the South Platte River system via Cherry Creek. Because return flows from all uses are estimated rather than measured, Applicants agree that such return flows shall be used only to replace depletions under this plan for augmentation and will not be sold, leased, traded, or assigned in whole or in part for any other purpose.
- 15.5 Post-pumping Depletion Augmentation: Assuming maximum pumping of 2.25 acre-feet per year for 300 years from the Dawson Aquifer, the maximum total depletion to the affected stream systems is approximately 22.35% of the annual

amount withdrawn or 0.503 acre-feet in the 301st year. Applicants will reserve 2.25 acre-feet per year, 675 acre-feet total, of the nontributary Laramie-Fox Hills aquifer groundwater decreed herein for use in this plan, but reserve the right to substitute the use of other nontributary groundwater, including return flows, either underlying the Subject Property, or from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. If necessary, the Applicants, or successors in interest, will apply for the necessary well permit and drill a post-pumping augmentation well. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.

- 15.6 Applicants will begin making post pumping replacements when (1) the absolute amount of water (675 acre-feet of Dawson Aquifer groundwater) allowed to be withdrawn has been withdrawn from the well(s), (2) the Applicants or successors in interest have acknowledged in writing that all withdrawals for beneficial use of the Dawson Aquifer groundwater has permanently ceased, or (3) for a period of 10 consecutive years that no Dawson Aquifer groundwater has been withdrawn. Until such time as the post pumping depletions begin the Applicants must continue to replace during pumping depletions to the stream using return flows, by pumping water directly to the stream to replace such depletions or using another replacement source approved by the Division Engineer. At the time that post pumping depletions begin as described in this paragraph, Applicants or successors in interest will be required to construct a well and pump groundwater to replace post-pumping depletions, subject to the terms and conditions of Paragraph 15.5. This condition constitutes a covenant running with the land.
- 15.7 Applicants will replace post-pumping depletions for the shortest of the following periods: (1) The period provided by C.R.S. § 37-90-137(9)(c.5), or (2) the expressed period specified by the Colorado Legislature, should it specify one and providing the Applicants obtain Water Court approval for such modification, or (3) the period determined by the State Engineer, should they choose to set such a period and have jurisdiction to do so, or (4) the period established through rulings of the Colorado Supreme Court on relevant cases, or (5) until Applicants' petitions the Water Court and the State Engineer's Office and prove that they have complied with any statutory requirement.
16. Failure of Applicants or successors in interest 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 well. This decree 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.

17. Administration of Plan for Augmentation:

- 17.1 Applicants shall report to the Division Engineer for Water Division 1 upon request, a summary of the amount of water pumped by each Denver Basin well, the annual depletion, the amount of replacement water provided by each replacement source, the net impact on the stream and any other information required by the Division Engineer to properly administer the decree on an accounting form acceptable to the Division Engineer.
- 17.2 All withdrawals which are the subject of this decree will be metered.
- 17.3 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.
- 17.4 The Applicants or successors in interest at the direction of the Division Engineer shall make post-pumping replacements to the South Platte River stream system via Cherry Creek, or its tributaries, pursuant to the amounts referenced on the depletion curve attached on **Exhibit B**.

18. Retained Jurisdiction for Plan for Augmentation:

- 18.1 Pursuant to C.R.S. § 37-92-304(6), 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.
- 18.2 Any party 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 this decree shall set forth with particularity the factual basis and the requested decretal language to effect the petition. The party lodging the petition shall have the burden of going forward to establish prima facie facts alleged in the petition. If the Court finds those facts to be established, 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 Objector is not required to avoid injury to other appropriators, or (3) that any term or condition proposed by Applicants in response to the objector's petition does avoid injury to other appropriators.
- 18.3 The Court retains jurisdiction for the purpose of determining whether the continued reservation of the nontributary water for use on the Subject Property is required. After notice to the State Engineer's Office, if Applicants can demonstrate to the Court 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

19. 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.
20. Applicants have complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-90-137(9)(c.5), 37-92-103(9), 37-92-302, 37-92-304(6), 37-92-305(3), (4), (6), (8), to adjudicate the plan for augmentation and are entitled to a decree confirming and approving the plan for augmentation as described in the Findings of Fact.
21. The Water Court has jurisdiction over this proceeding pursuant to C.R.S. § 37-90-137(6). This Court concludes as a matter of law that the application herein is one contemplated by law pursuant to C.R.S. § 37-90-137(4). The application for a decree confirming Applicants' right to withdraw and use all unappropriated groundwater from the nontributary aquifer beneath the Subject Property as described herein pursuant to C.R.S. § 37-90-137(4), should be granted, subject to the provisions of this decree. The application for a decree confirming Applicants' right to withdraw and use groundwater decreed herein from the Dawson Aquifer should be granted pursuant to C.R.S. §§ 37-90-137(4) and (9)(c.5), subject to the provisions of this decree. The withdrawal of up to 2.25 acre-feet per year (675 acre-feet total) of the Dawson Aquifer groundwater, and in accordance with the terms of this decree, will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. The remaining amount of Dawson Aquifer groundwater decreed herein will not be withdrawn and used until it is included in a separate plan for augmentation.

JUDGMENT AND DECREE

22. 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.
23. Applicants and/or successors may withdraw the subject groundwater herein through wells to be permitted by the State Engineer's Office located anywhere on the Subject Property in the average annual amounts and at the estimated average rates of flow specified herein, subject to the limitations herein and the retained jurisdiction by this Court.
24. The groundwater rights described in the Findings of Fact are hereby approved, confirmed and adjudicated, including and subject to the terms and conditions specified herein. No owners of or persons entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by the pumping of Applicants' groundwater resources as decreed herein.
25. Pursuant to C.R.S. § 37-92-305(5), 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.

26. The 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.
27. 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.
28. Retained Jurisdiction:
- 28.1 The Court retains jurisdiction as necessary to adjust the average annual amounts of groundwater available under the Subject Property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to C.R.S. § 37-92-305(11). Within 60 days after completion of any well decreed herein or any test hole(s), Applicants or any successor in interest to these water rights shall serve copies of such log(s) upon the State Engineer.
- 28.2 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 the Applicants.
- 28.3 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.
29. Continuing Jurisdiction: Pursuant to C.R.S. § 37-92-304(6), the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration by the water judge on the question of injury to the vested rights of others for such period after the entry of such decision as is necessary or desirable to preclude or remedy any such injury.
30. The groundwater rights decreed herein are vested property rights appurtenant to the Subject Property and shall remain appurtenant unless expressly severed by conveyance to someone other than the property owner. If any deed for the Subject Property is silent to the conveyance of the water rights decreed herein, it is assumed that the water rights have been conveyed as an appurtenance to the Subject Property, unless all or part of the water rights have been previously severed.

31. After the referee ruling was entered in this case on February 10, 2022, a typographical error was discovered in paragraph 16. Elbert County was corrected to El Paso County. The referee finds that this amendment does not require an extension of the protest period.

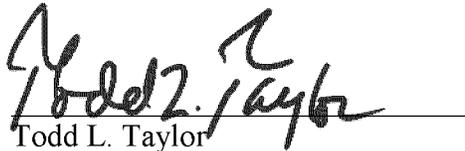
Date: February 10, 2022



John S. Cowan
Water Referee
Water Division One

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

Date: March 11, 2022

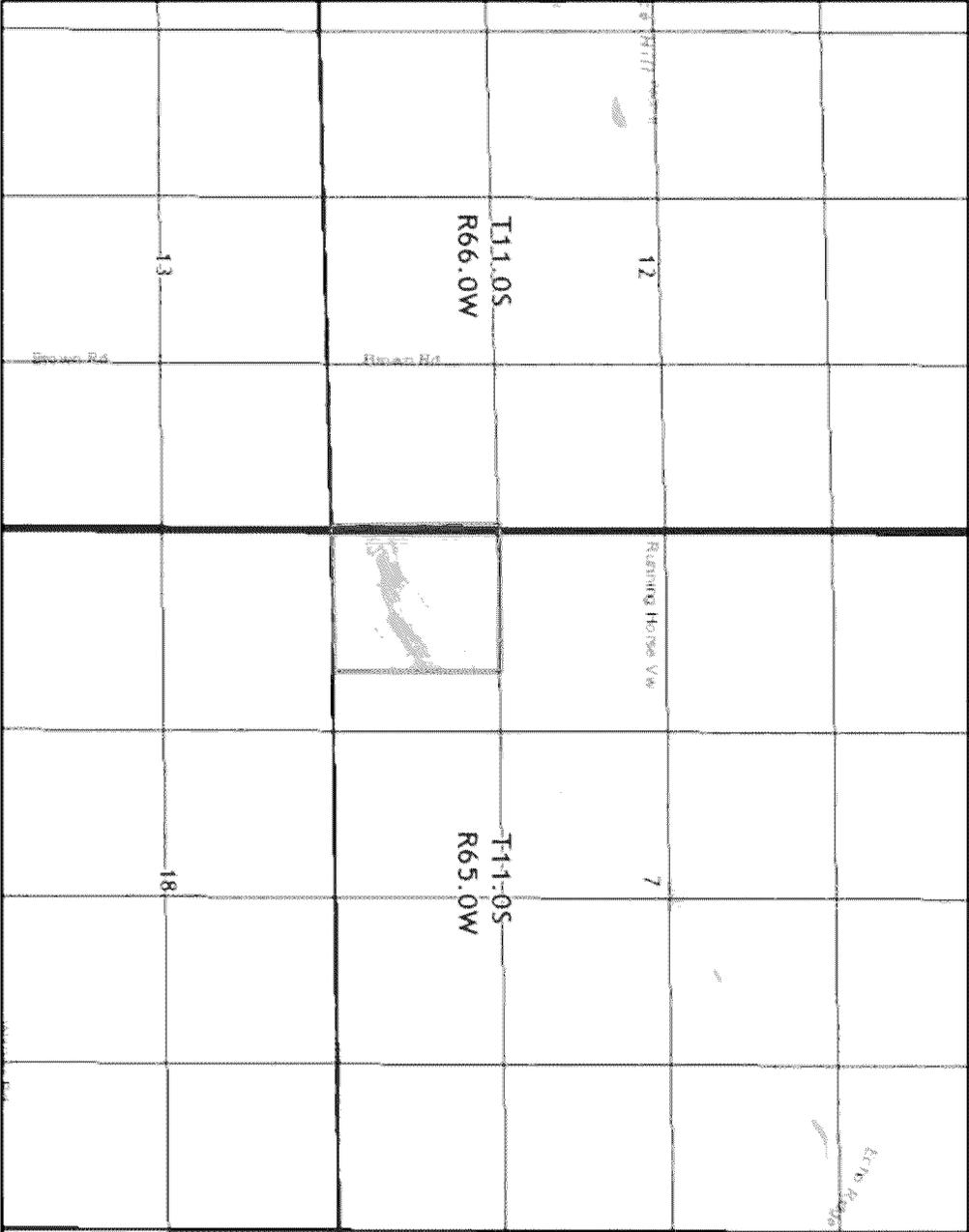


Todd L. Taylor
Water Judge
Water Division One



COLORADO'S
Decision Support Systems
COWCE / DWR

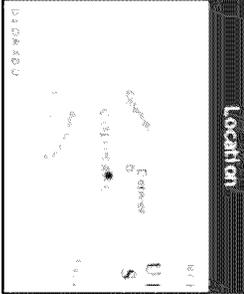
Exhibit A - Map of Boyd Property



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Date Prepared: 8/30/2021 10:38:19 AM

- Legend**
- Township
 - Section
 - QAD
 - County



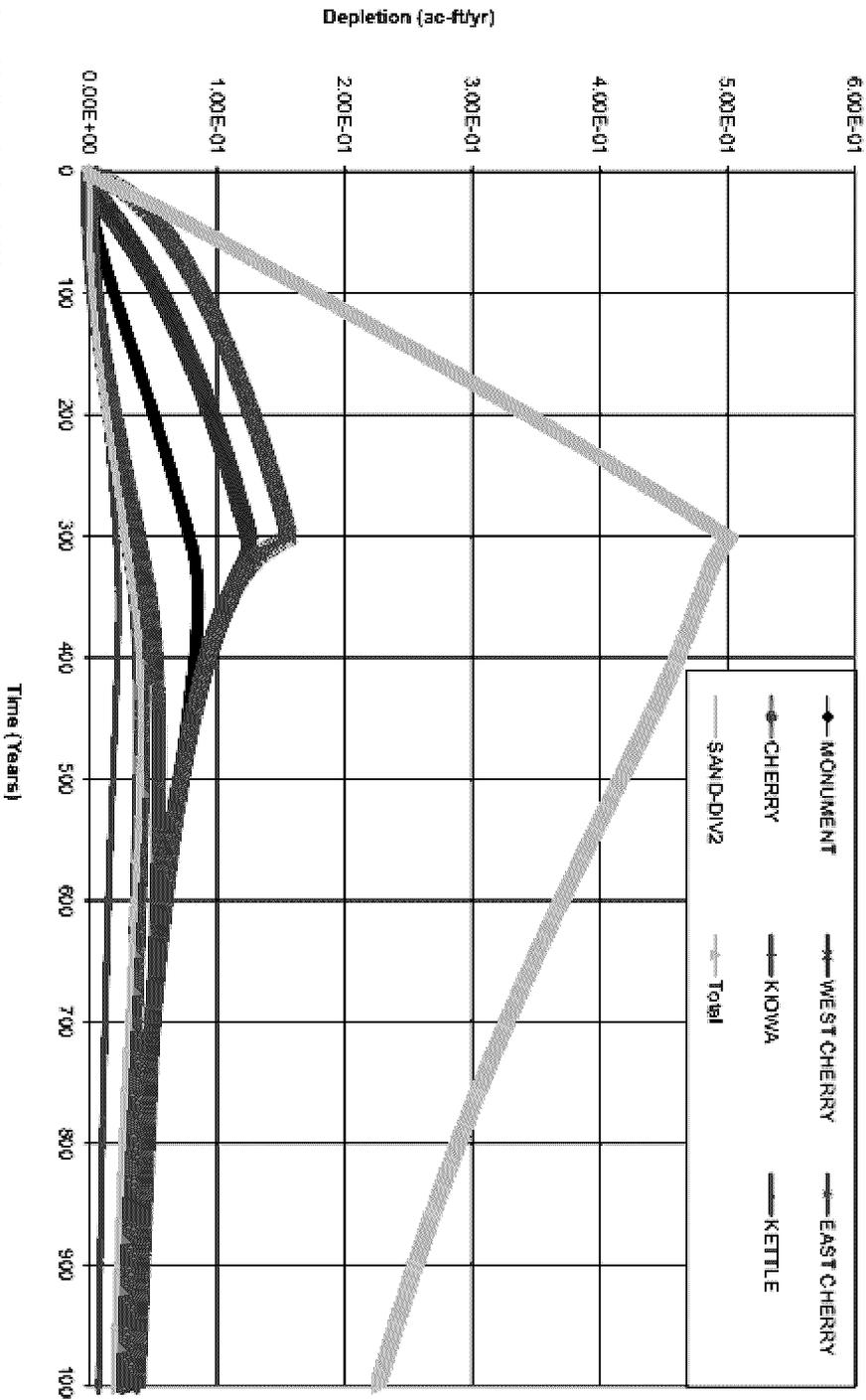
Notes

18735 Bowen Road
Colorado Springs, CO 80908

Boyd
21CW3156

EXHIBIT A

Stream Depletion from Pumping in Sec 7, T11S, R65W 2.25 acre-feet from Dawson aquifer for 300 years



Created by hlc on October 12, 2021