

DISTRICT COURT, WATER DIVISION 2, COLORADO Pueblo County Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003	DATE FILED: July 22, 2024 8:39 AM CASE NUMBER: 2024CW3005 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION OF CHRISTOPHER and WENDY JEUB, Applicants, IN THE ARKANSAS RIVER OR ITS TRIBUTARIES IN EL PASO COUNTY	Case Number: 2024CW3005 (Case Nos. 2022CW3007)
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE: APPROVING PLAN FOR AUGMENTATION	

A claim for an amended plan for augmentation was filed in this case on January 31, 2024. 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 and Wendy Jeub
16315 Rickenbacker Ave
Monument, CO 80132

2. **Statements of Opposition:** No statements of opposition were filed and the time for filing 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.

4. **Consultation:** The Water Referee consulted with the Division Engineer, as required by C.R.S. § 37-92-302(4), on the application, and the Division Engineer filed its summary of consultation on May 20, 2024. No written response was required.

5. **Prior Decree Information:** The groundwater underlying 6.44 acres generally located in the NW1/4 of NE1/4, Section 27, Township 11 South, Range 67 West of the 6th P.M., also known as 16315 Rickenbacker Ave, Monument, El Paso County, State of Colorado,

as shown on **Exhibit A** (“Subject Property”), was decreed in Case No. 2022CW3007, District Court, Water Division 2, on August 5, 2022 (the “22CW3007 Decree”). Applicants were decreed the following amounts of groundwater for use on the Subject Property:

Aquifer	Saturated Thickness (feet)	Annual Amount 100 Years (acre-feet)	Annual Amount 300 Years (acre-feet)	Total Amount (acre-feet)
Dawson (NNT)	100	1.28	0.43	128
Denver (NNT)	360	3.94	1.31	394
Arapahoe (NT)	385	4.21	1.40	421
Laramie-Fox Hills (NT)	185	1.78	0.59	178

6. Well Permits: There is currently one augmented Denver Aquifer well on the Subject Property under Permit No. 87590-F, which will be cancelled and re-permitted pursuant to the amended augmentation plan approved in this decree. Additional well permits will be applied for prior to construction of additional wells.
7. 22CW3007 Decreed Uses: The water will be used for domestic, including in-house use, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property.
8. 22CW307 Plan for Augmentation: In the 22CW3007 Decree, an augmentation plan was approved for use of up to 2.1 acre-feet per year for 100 years of not-nontributary Denver Aquifer groundwater for up to five (5) single-family residences, or their equivalent (0.3 acre-feet per year each, 1.5 acre-feet per year total), irrigation, including lawn, garden, trees of up to 6,000 square-feet (0.3 acre-feet per year), and commercial sanitary use (0.3 acre-feet per year), (the “22CW3007 Aug Plan”). The 22CW3007 Aug Plan is hereby replaced with the amended plan for augmentation outlined below.

APPROVAL OF AMENDED PLAN FOR AUGMENTATION

9. Water to be Augmented: Up to 3.3 acre-feet per year for 100 years of not-nontributary Denver Aquifer groundwater as decreed in Case No. 22CW3007.
10. Water to be Used for Augmentation: Return flows associated with use of the not-nontributary Denver Aquifer groundwater and return flows or direct discharge of nontributary groundwater.
11. The not-nontributary Denver Aquifer groundwater will be used through existing well Permit No. 87590-F, or through new wells, on the Subject Property. The well, or wells, will provide in-house use in up to nine (9) single-family residences, or their equivalent (0.3 acre-feet per year each, 2.7 acre-feet per year total), irrigation, including lawn,

garden, trees of up to 6,000 square-feet (0.3 acre-feet per year), and commercial sanitary use (0.3 acre-feet per year). Conservatively, water use in each single-family dwelling will equal at least 0.2 acre-feet of water annually for in-house uses, and the 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 dwelling, 1.62 acre-feet at full build-out. 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.

12. Replacement During Pumping. During pumping of the not-nontributary Denver Aquifer groundwater for 100 years, Applicants will replace depletions to the affected stream system in an amount of water equal to the actual depletions pursuant to C.R.S. § 37-90-137(9)(c), C.R.S. In the 100th year, the total actual depletion from withdrawals from the not-nontributary Laramie-Fox Hills Aquifer is approximately 26.13% of the amount withdrawn or 0.86 acre-feet. Based on the uses described above, Applicants estimate that approximately 1.62 acre-feet per year will return to the Monument Creek stream system and such return flows are sufficient to replace total actual depletions. Return flows accrue to the Monument Creek system, and those return flows are sufficient to replace total actual depletions caused by pumping of up to 3.3 acre-foot per year for 100 years from the not-nontributary Denver Aquifer while the well or wells are being pumped. 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, traded, or assigned in whole or in part for any other purpose.
13. Post Pumping Depletion Augmentation. Assuming maximum pumping of 3.3 acre-foot per year for 100 years from the not-nontributary Denver Aquifer, the total maximum depletion from pumping of the Denver Aquifer is 1.07% or 0.011 acre-feet in the 475th year. Applicants will reserve 1.78 acre-feet per year, 178 acre-feet total of the nontributary Laramie-Fox Hills Aquifer, and 1.52 acre-feet per year, 152 acre-feet total, of the nontributary Arapahoe Aquifer groundwater decreed in Case No. 22CW3007 for use in this plan but reserves 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. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.
14. 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.

15. Administration of Plan for Augmentation:

15.1 Applicants shall report to the Division Engineer for Water Division 2 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.

15.2 All withdrawals which are the subject of this decree will be metered.

15.3 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.

15.4 The Applicants, or successors in interest, at the direction of the Division Engineer shall make post-pumping replacements to the Arkansas River stream system via Monument Creek, or its tributaries pursuant to the amounts referenced on the depletion curve attached on **Exhibit B**.

16. No other provisions of the 22CW3007 Decree are changed herein.

CONCLUSIONS OF LAW

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. 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 amended plan for augmentation and are entitled to a decree confirming and approving the amended plan for augmentation as described in the Findings of Fact.

19. 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. C.R.S. § 37-90-137(4). The withdrawal of 3.3 acre-feet per year of the non-tributary Denver Aquifer groundwater in accordance with the terms of this decree and the Original 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.

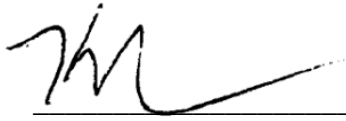
JUDGMENT AND DECREE

20. 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.
21. 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, and in the 22CW3007 Decree, subject to the limitations of the 22CW3007 Decree, and herein, and the retained jurisdiction by this Court.
22. Applicants may withdraw an average annual amount up to 3.3 acre-feet per year of non-tributary Denver Aquifer groundwater under the amended plan for augmentation decreed herein pursuant to C.R.S. § 37-90-137(9)(c.5).
23. 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.
24. The amendment of 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.
25. 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.
26. Retained Jurisdiction for Amended Plan for Augmentation: Pursuant to C.R.S. § 37-92-304(6), the amended plan for augmentation decreed herein shall be subject to the reconsideration of this Court on the question of material injury to vested water rights of other, for a period of five (5) years. 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 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 such petition is filed within such period and the retained jurisdiction period is not extended by the Court in accordance with the provisions of the statute, this matter shall become final under its own terms.

27. 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.

Date: June 20, 2024.

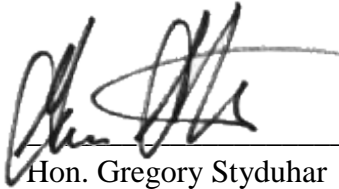


Kate A. Brewer
Water Referee
Water Division 2

DECREE

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

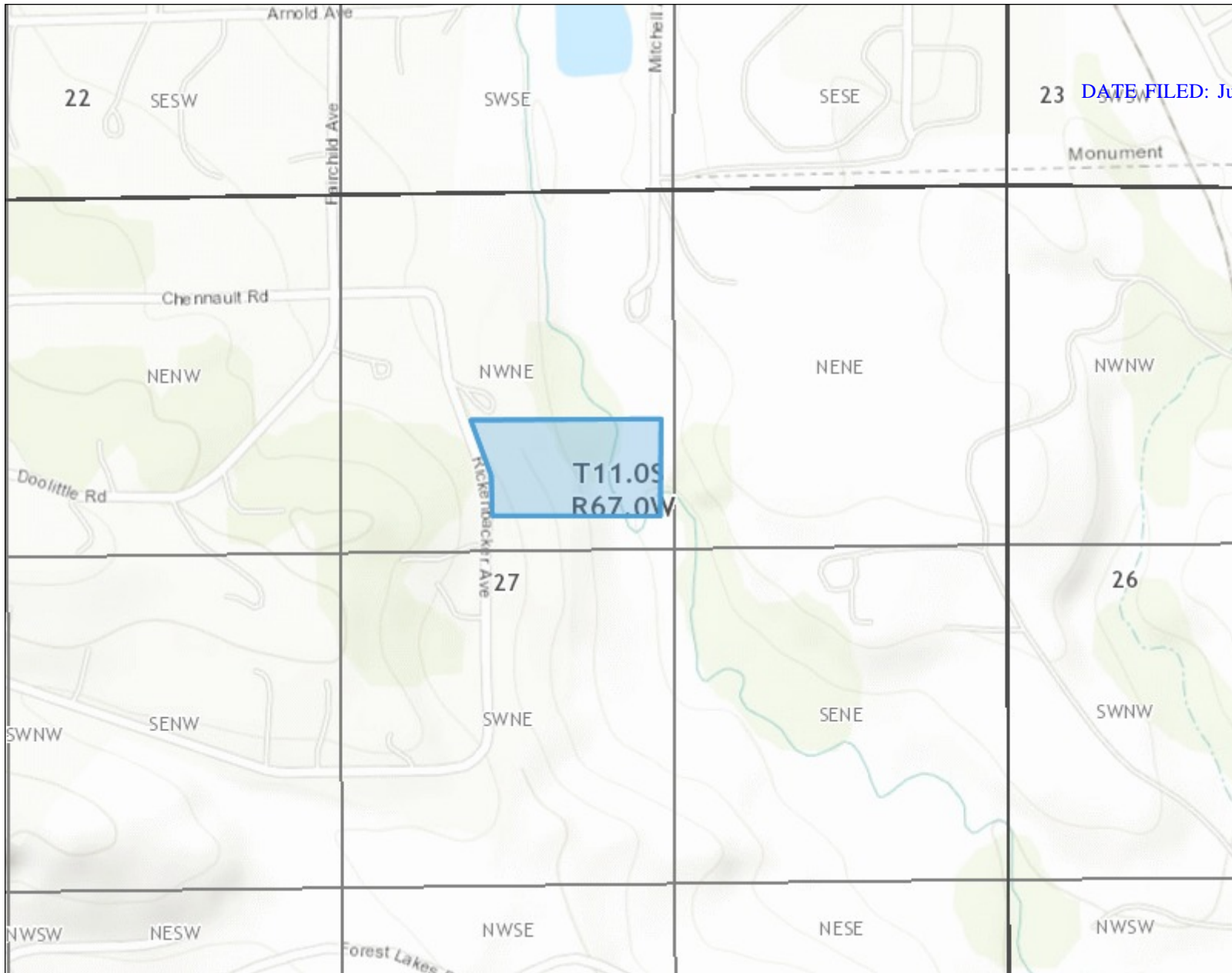
Date: July 22, 2024.



Hon. Gregory Styduhar
Water Judge
Water Division 2



Exhibit A - Jeub Property Map



DATE FILED: June 8, 2022 8:34 AM

Legend

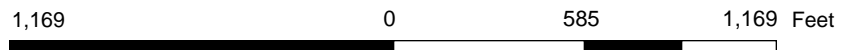
- Township
- Section
- Q40
- County

Location

Notes

16315 Rickenbacker Ave Monument, CO 80132

LOT 2, BLOCK 1, VANS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK F-5 AT PAGE 148, COUNTY OF EL PASO, STATE OF COLORADO.



1: 7,016

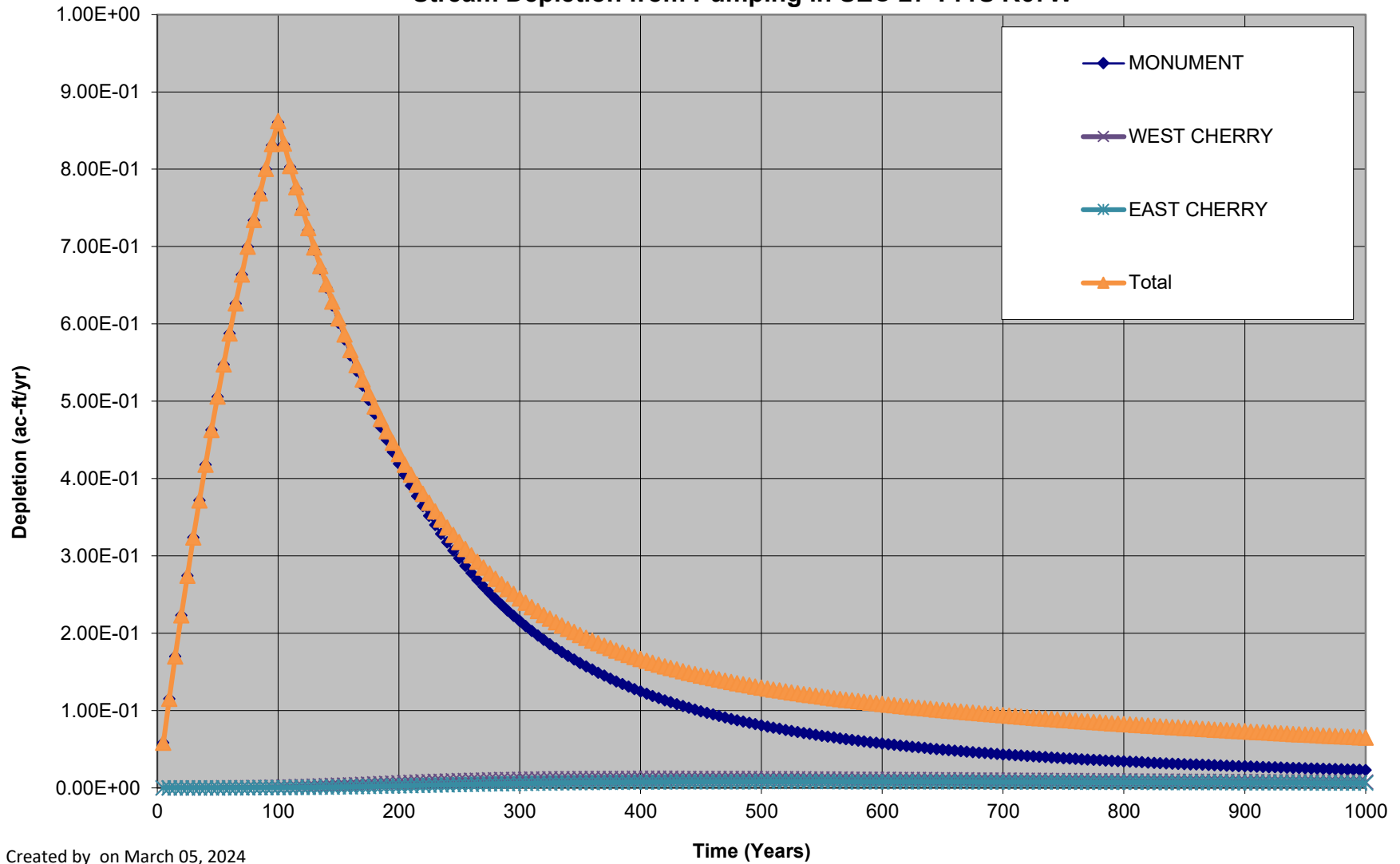


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Date Prepared: 2/21/2022 1:21:18 PM

Exhibit B - Jeub - 24CW3005
Stream Depletion from Pumping in SEC 27 T11S R67W

DATE FILED: June 11, 2024 8:34 AM



Created by on March 05, 2024