

DISTRICT COURT, WATER DIVISION 2, COLORADO Pueblo County Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003	DATE FILED: May 24, 2023 9:42 AM CASE NUMBER: 2022CW30 ▲ COURT USE ONLY ▲
APPLICATION FOR AMENDED PLAN FOR AUGMENTATION OF AARON and SARAH ATWOOD, Applicants, IN EL PASO COUNTY	Case Number: 2022CW0030 Change of Venue: Water Division 1 2022CW3115
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE: APPROVING PLAN FOR AUGMENTATION	

A claim for a plan for augmentation was filed in this case on August 31, 2022. 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:

Aaron and Sarah Atwood
701 Airman Lane
Colorado Springs, CO 80921
2. Statements of Opposition: No statements of opposition were 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.
4. Consultation: The Water Referee consulted with the Division Engineer, as required by C.R.S. § 37-92-302(4), on the application, on December 21, 2022, and the Division Engineer filed its summary of consultation on December 21, 2022. Supplemental summaries of consultation were filed on March 7, 2023 and May 1, 2023.

GROUNDWATER RIGHTS

5. Subject Property: Applicants are the sole owners of the Subject Property and there are no liens on the property. Therefore notice to any mortgage and lien holders was not required under C.R.S. 37-92-302(2)(b).

6. Well Permits: There are no wells on the Subject Property. Well permits will be applied for prior to construction of wells.
7. Source of Water Rights: The Upper Dawson, Denver, and Arapahoe aquifers are not-nontributary as defined in C.R.S. § 37-90-103(10.7), and the Laramie-Fox Hills Aquifer is nontributary as defined in C.R.S. § 37-90-103(10.5).
8. Prior Decree Amounts: The groundwater underlying the 5.04 acres generally located in the NW1/4 NE1/4, Section 36, Township 11 South, Range 67 West of the 6th P.M., Lot 38, Chaparral Hills, also known as 515 Struthers Loop, Colorado Springs, CO, 80921, El Paso County, State of Colorado, as shown on **Exhibit A** (“Subject Property”), was decreed in Case No. 21CW3010, District Court Water Division 1, on September 22, 2021 (the “21CW3010 Decree”). The volumes below are based on a 300-year withdrawal period:

Aquifer	Annual Amount (acre-feet)	Total Amount (acre-feet)
Dawson (NNT)	0.337	101
Denver (NNT)	0.927	278.2
Arapahoe (NNT)	0	0
Laramie-Fox Hills (NT)	0.47	140

9. 21CW3010 Plan for Augmentation: The 21CW3010 Decree approved a plan for augmentation for the use of up to 1.4 acre-feet per year of not-nontributary Denver Aquifer groundwater for use in two single family residences, stock watering of large domestic animals, and irrigation of lawn, garden, pasture, hay, and trees on the Subject Property.
10. 21CW3010 Decreed Uses: Domestic, commercial, irrigation, stockwatering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property.

AMENDED PLAN FOR AUGMENTATION

The amended plan for augmentation outlined below is intended to completely replace the plan for augmentation in the 21CW3010 Decree.

11. Amended Plan for Augmentation:
 - 11.1 Groundwater to be Augmented: 0.457 acre-feet per year for 300 years of Denver Aquifer groundwater.
 - 11.2 Water Rights to be Used for Augmentation: Return flows from the use of not-nontributary and nontributary groundwater and direct discharge of nontributary groundwater.
 - 11.3 The Denver Aquifer groundwater will be used in up to two (2) wells on the Subject Property, each well using 0.2285 acre-feet per year. Each well will be used in one (1) single-family residence (0.2285 acre-feet per residence, 0.457 acre-feet total) and for fire protection, on the Subject Property. This plan includes no outdoor irrigation or animal watering. Conservatively, water use in single-family dwellings 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 residence, 0.36 acre-feet per year total from all residences 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.

- 11.4 Replacement During Pumping: During pumping of the Denver 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 27.418% of the amount withdrawn or 0.125 acre-feet total. Return flow from in-house use of the Denver Aquifer water in the two single-family residences is at least 0.36 acre-feet per year as described above and such return flow from use in each residence is sufficient to replace actual depletions for pumping of the entire 0.457 acre-feet per year for 300 years. Return flows accrue to the Arkansas River system via Monument 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.
- 11.5 Post-pumping Depletion Augmentation: Assuming maximum pumping of 0.457 acre-feet per year for 300 years from the Denver Aquifer, the maximum total depletion to the affected stream systems is approximately 27.418% of the annual amount withdrawn or 0.125 acre-feet in the 300th year. Applicants will reserve 0.457 acre-feet per year, 137.10 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. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.
- 11.6 Applicants will begin making post pumping replacements when, (1) the absolute amount of water (137.10 acre-feet of Denver Aquifer groundwater) allowed to be withdrawn has been withdrawn from the well(s); or (2) the Applicants or successors in interest have acknowledged in writing that all withdrawals for beneficial use of the Denver Aquifer groundwater has permanently ceased; or (3) for a period of 10 consecutive years that no Denver 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 11.5. This condition constitutes a covenant running with the land.

12. Administration of Amended Plan for Augmentation:

- 12.1 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.

- 12.2 All withdrawals which are the subject of this decree will be metered.
- 12.3 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.
- 12.4 The Applicants, or successors in interest, at the direction of the Division Engineer shall make post-pumping replacements to the Arkansas stream system via Monument Creek, or its tributaries, pursuant to the amounts referenced on the depletion curve attached on **Exhibit B**.
- 12.5 No other provisions of the 21CW3010 Decree are changed by this decree.

CONCLUSIONS OF LAW

13. 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.
14. 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.
15. 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 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 Denver 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 0.457 acre-feet per year and 137.10 acre-feet total of the Denver Aquifer groundwater, and in accordance with the terms of this decree, and the 21CW3101 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 Denver Aquifer groundwater decreed herein will not be withdrawn and used until it is included in a separate plan for augmentation.

JUDGMENT AND DECREE

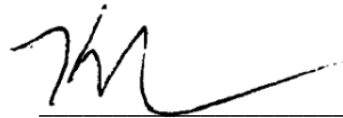
16. The Findings of Fact and Conclusions of Law set forth above are hereby incorporated into the terms of this Ruling and Decree as if the same were fully set forth herein.
17. Applicants and/or successors may withdraw the subject groundwater herein through wells to be permitted by the State Engineer's Office located anywhere on the Subject Property in the average annual amounts and the estimated rates of flow specified herein, subject to the limitations herein and the retained jurisdiction by this Court.

18. 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.
19. 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.
20. The amended 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.
21. 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.
22. Retained Jurisdiction:
 - 22.1 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.
 - 22.2 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.
 - 22.3 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.
 - 22.4 Except as otherwise provided in Paragraphs 21.1-21.3, above, pursuant to C.R.S. § 37-92-304(6), the 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 others, for a period of ten (10) years, which will begin after both wells identified in Paragraph 11 have been constructed. 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, Applicants 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 Applicants 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.

23. 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.
24. 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.

Dated: May 24, 2023.



Kate Brewer
Water Referee
Water Division Two

DECREE

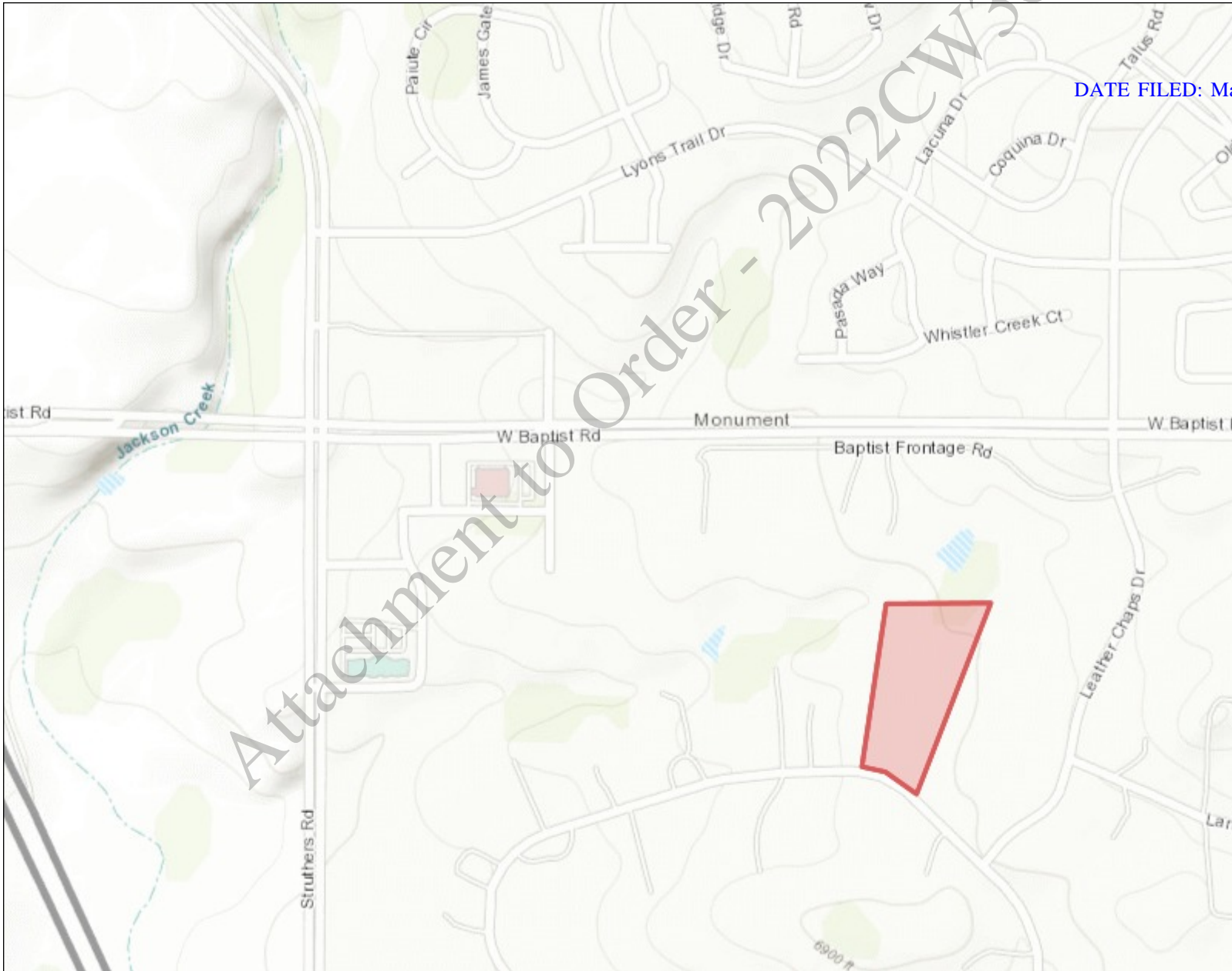
The Court finds that no protest was filed in this matter. The foregoing ruling is confirmed and is made the judgment and decree of this Court.

Dated:

Gregory Styduhar
Water Judge
Water Division Two



Exhibit A - Subject Property



DATE FILED: May 16, 2023 11:50 AM

Legend

Location



Notes

Atwood, Aaron
NW1/4 NE1/4, Section 36, Township 11
South, Range 67 West of the 6th P.M.

1,169 0 585 1,169 Feet

1: 7,016

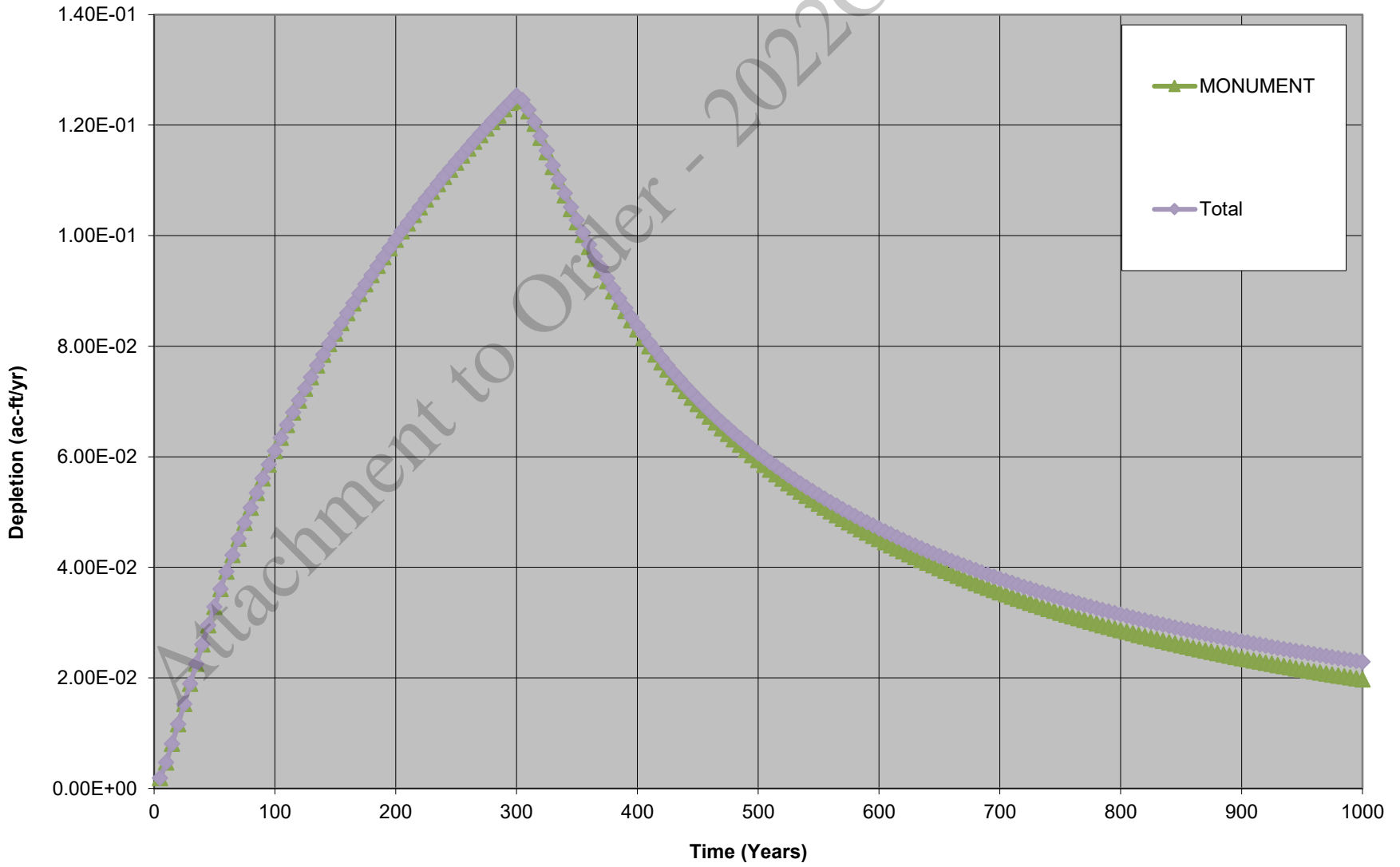


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Date Prepared: 2/17/2021 2:39:09 PM

Exhibit B - 22CW0030 - Stream Depletion from Pumping in SEC 36 T14S R67W

DATE FILED: 11/16, 2023 11:50 AM



DISTRICT COURT, WATER DIVISION 2, COLORADO Pueblo County Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 (719) 404-8832	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
IN THE MATTER OF THE APPLICATION OF THE WATER RIGHTS OF: AARON and SARAH ATWOOD IN THE ARKANSAS RIVER OR ITS TRIBUTARIES IN EL PASO COUNTY	Case Number: 2022CW30 Change of Venue: Water Division 1 2022CW3115
NOTICE OF TRANSMITTAL AND CERTIFICATE OF SERVICE	

To: All Parties

Ruling of Referee enclosed. If you wish to protest said Ruling, a pleading in protest must be filed within the time provided by statute. (Forms available at Clerk's Office).

Please check carefully, and if you find any errors or have any questions, call the Water Referee right away. In the absence of any protest, the Water Judge will enter a judgment and decree, or may reverse, or reverse and remand any ruling which he deems contrary to law, or may modify same, after the expiration of the time for protests.

I hereby certify that I served through the approved judicial branch e-filing service provider a true and correct copy of the foregoing and Ruling to:

Name	Party	Attorney
Atwood, Aaron	Applicant	Trout, Eric Krisberg #48640 Petrock, James Joseph #2881
Atwood, Sarah	Applicant	Trout, Eric Krisberg #48640 Petrock, James Joseph #2881
Division 1 Engineer	Division Engineer	Division 1 Water Engineer #906201
Division 2 Engineer	Division Engineer	Division 2 Water Engineer #905101

Name	Party	Attorney
State Engineer	State Engineer	Colorado Division of Water Resources #900040

Witness my hand and the seal of this Court. Date: May 24, 2023.

Michele M. Santistevan, Clerk
District Court Water Div. 2
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003
Telephone: (719) 404-8832



By: Michele Santistevan
Clerk

Attachment to Order - 2022 W30