



May 24, 2017

**Marshal Brown, Morgan Brown, and Marlene Brown**  
17435 Roller Coaster Road  
Monument, CO 80132

Re: *Water Supply for Jackson Ranch Filing No. 3*  
*Project No. 61044*

Dear Marshal, Morgan, & Marlene Brown:

The following describes the water supply to serve up to twenty four (24) residential lots on 22.21 acres located in the NW1/4 of Section 20, T11S, R66W of the 6<sup>th</sup> P.M., El Paso County, Colorado (Subject Property). This letter is based on a decree entered in Consolidated Case Nos. 13CW3100, Water Division 1, and 13CW3042, Water Division 2 (Decree/copy attached), which decreed the not nontributary Dawson and Denver, and the nontributary Arapahoe and Laramie-Fox Hills groundwater underlying the Subject Property, and approves a plan for augmentation for use of up to 24 individual Dawson aquifer wells to serve each lot for a 300 year water supply period.

#### AMOUNTS DECREED AND AVAILABLE

The decreed amount of Dawson aquifer groundwater is not nontributary and the decreed amount of Laramie-Fox Hills aquifer groundwater is nontributary. The following annual amounts are decreed and are based on annual withdrawals over a 300 year period (one acre-foot is 325,851 gallons):

Depletion's caused by pumping water from the Dawson aquifer shall be replaced as provided and decreed. Annual withdrawals from the Dawson aquifer shall not exceed 0.75 acre feet (244,388 gallons) per well, nor more than 18.00 acre feet total for 24 wells. The State or Division Engineer shall curtail the pumping of more than those amounts from the Dawson aquifer. Applicants shall also reserve 27.7 acre-feet per year of their Laramie-Fox Hills aquifer water rights for the replacement of post-pumping depletions along with 26.3 acre feet per year of the Arapahoe aquifer water rights. These allocations will meet the El Paso County's 300 year water requirement for approval of subdivisions utilizing non-renewable water resources for their source of water supply.

#### WATER SUPPLY

The nine (9) residential lots (up to twenty four (24) potential as assumed in the Decree) will be served by individual not nontributary Dawson aquifer wells to be permitted and to operate pursuant to an augmentation plan as approved in the Decree. The Decree allows each of the Dawson aquifer wells to withdraw 0.75 acre-foot per year for 300 years for the following uses:

*Engineers • Surveyors*  
*1903 Lelaray Street, Suite 200 • Colorado Springs, CO 80909 • Phone 719-635-5736*  
*Fax 719-635-5450 • e-mail mve@mvecivil.com*


- A. In-house use: 0.40 acre-feet per year
- B. Irrigation. 0.30 acre-feet per year limited to irrigation of 5,000 square feet of home lawn or garden.
- C. Water Feature 0.05 acre-feet per year

The water supply for the residential lots using up to 24 Dawson aquifer wells pursuant to the augmentation plan approved in the Decrees is sufficient and satisfies the 300 year supply requirement of El Paso County.

Contact our office should you have any question concerning this water information.

Very truly yours,

M.V.E., Inc.

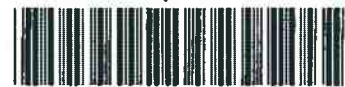


Charles C. Crum, P.E.

CCC:sh

Z:\61044\Documents\Correspondance\61044 Jackson 3 Water Letter.odt

Enc. Water Decree



DISTRICT COURT, WATER DIVISION 1 and 2,  
COLORADO

Court Addresses:  
Water Division 1  
P.O. Box 2038  
Greeley, CO 80632

Water Division 2  
320 W. 10th St., #207  
Pueblo, CO 81003

**MARSHAL G. BROWN, SARA L. BROWN, AND  
MARLENE J. BROWN, Applicants,**  
  
**IN EL PASO COUNTY.**

DATE FILED: April 10, 2014 11:10 AM  
CASE NUMBER: 2013CW3100

σ COURT USE ONLY σ

Consolidated Case Numbers:  
13CW3100 WD#1  
13CW3042 WD#2

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE,**

A claim for change of water rights and approval of plan for augmentation, was filed on September 24, 2013, in Case No. 13CW3100 in Water Division 1, and Case No. 13CW3042 in Water Division 2. The cases were consolidated in Water Division 1 by the Panel on Multidistrict Litigation by Order Pursuant to CRCP. 42.1(i) dated January 23, 2014. All matters contained in the application having been reviewed, testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein, the following is hereby the Judgment and Decree of the Court:

FINDINGS OF FACT

1. Name, Address and Telephone Number of Applicants:

Marshal G., Sara L., and Marlene J. Brown  
c/o 17435 Roller Coaster Road  
Monument, CO 80132-8312  
(970) 339-5225

2. Opposers: A statement of opposition was filed in Case No. 13CW3042 in Water Division 2 by the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities ("Colorado Springs"). Colorado Springs stipulated to entry of a decree which is no less restrictive on Applicants than this decree on February 14, 2014. Said stipulation was approved as an order of the court on February 20, 2014. No other 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. The cases were consolidated in Case No. 13MD26 to be decreed by the Water Court, Water Division 1.

4. Decreed Change:

A. Decree information: Case No. 08CW317 and 08CW318, Water Division 1, both decreed on August 22, 2009. The land associated with Case No. 08CW317 is approximately 50.12 acres (Parcel 4) located in the NW1/4 of Section 21, T11S, R66W of the 6<sup>th</sup> P.M., and the land associated with Case No. 08CW318 is approximately 44.97 acres (Parcel 5) also located in part in the NW1/4 of said Section 21, as described and shown on Attachment A hereto (Subject Property). The groundwater which is the subject of the decrees is not nontributary Dawson and Denver and nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater.

B. Decreed change: The original decrees require that wells to withdraw the decreed groundwater be located on the land which is the subject of that specific decree. By this change, the total combined decreed amounts in each aquifer as decreed in Case No. 08CW317 and Case No. 08CW318, may be withdrawn through wells located anywhere on the Subject Property. No other parts of the original decrees are changed herein.

5. Approval of plan for augmentation:

A. Groundwater to be augmented: 18 acre-feet per year over a 300 year period of not nontributary Dawson aquifer groundwater decreed in Case No. 08CW317 and 08CW318, which is the subject of the change approved above. 77 acre-feet per year of Dawson aquifer groundwater is decreed in Case No. 08CW317 and 08CW318, of which 54 acre-feet per year is the subject of this plan for augmentation.

B. Water to be used for augmentation: Return flows from the use of not nontributary Dawson aquifer water and return flows and direct discharge of nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater decreed in Case No. 08CW317 and 08CW318, which is the subject of the change approved above. There is 40.4 acre-feet per year of nontributary Arapahoe and 27.7 acre-feet per year of nontributary Laramie-Fox Hills aquifer groundwater decreed in Case No. 08CW317 and 08CW318, and all of the Laramie-Fox Hills aquifer groundwater (27.7 acre-feet per year) and 26.3 acre-feet per year of the Arapahoe aquifer groundwater is used in this plan for augmentation.

C. Development and Consumptive Use: The subject Dawson aquifer groundwater may be used to serve up to twenty-four residential lots to be located on approximately 77.63 acres of the Subject Property, through individual wells for a 300 year period. Each well will use 0.75 acre-feet per year for in-house use (0.4 acre-feet), irrigation of 5000 square feet of home lawn and garden (0.3 acre-feet), and use in a water feature (0.05 acre-feet). Sewage treatment for the in-house use will be provided by a non-evaporative septic system. Return flow from in-

house use is 90% of that use, and from return flow from irrigation use is 10% of that use. Use of the water in a water feature is 100% consumed.

D. Replacement of depletions during pumping: Based on annual pumping of 18 acre-feet per year over a 300 year pumping period, it is estimated that the total actual depletion to all stream systems is approximately 23.5% or 4.2 acre-feet. (In the 100<sup>th</sup> year of pumping the total actual depletion to all stream systems is approximately 8% or 1.44 acre-feet). Of the total actual depletion at 300 years, it is estimated that approximately 13% occurs to the South Platte River stream systems and approximately 10.4% occurs to the Arkansas River stream systems. (The remaining approximately 0.1% occurs to streams in designated basins). Applicants do not have the physical ability to replace depletions to the Arkansas River and Monument Creek stream systems, but shall instead replace all such depletions to the South Platte River via the Cherry Creek stream systems. During pumping of the Dawson aquifer groundwater for use on 24 residential lots for 300 years, annual septic return flows are estimated to be 8.64 acre-feet annually, which is in excess of the total annual actual depletion of 4.2 acre-feet to the Arkansas and South Platte River stream systems during pumping for 300 years.

E. Replacement of Post-pumping Depletions: Applicants agree to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicants obtain water court approval for such modification; the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court on relevant cases; or until Applicants petition the water court and after notice to parties in the case and prove that they have complied with all statutory requirements. The court finds that the provisions of this paragraph are adequate to comply with existing law and to prevent injury to others. It is estimated that maximum total actual depletion to all stream systems from pumping of 18 acre-feet per year for 300 years will be approximately 23.8% of average annual pumping in the 300th year and will decline thereafter. Applicants' replacement obligation will be the total stream depletion factor for all stream systems as shown on Attachment B hereto. That required amount of water will be pumped from the nontributary Arapahoe or Laramie-Fox Hills aquifers which is reserved for this purpose herein for diversion into the Cherry Creek stream systems. However, Applicants reserve the right to substitute the use of other nontributary groundwater, including return flows, either decreed in Case Nos. 08CW317 and 08CW318, 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.

F. Applicants shall reserve and dedicate to this plan for augmentation all of the Laramie-Fox Hills aquifer groundwater (27.7 acre-feet per year and 2770 acre-feet total) and 26.3 acre-feet per year and 2630 acre-feet total of the Arapahoe aquifer groundwater decreed in Case Nos. 08CW317 and 08CW318, for the purpose of replacing to the Cherry Creek stream systems all post-pumping depletions. If at some time replacement of post-pumping depletions is no longer required pursuant to paragraph 5.E above, said reservation will become null and void at such time as the obligation to replace post-pumping depletions terminates. Applicants will be required to construct a well into the Arapahoe and/or Laramie-Fox Hills aquifer to provide for post-pumping depletions herein.

6. Applicants or successors and assigns shall be responsible for the operation of this augmentation plan. Applicants shall reserve 27.7 acre-feet per year and 2770 acre-feet total of the Laramie-Fox Hills aquifer and 26.3 acre-feet per year and 2630 acre-feet total of the Arapahoe aquifer groundwater decreed in Case Nos. 08CW317 and 08CW318, for use in this plan. Failure of either the Applicants or successors and assigns 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 or wells. 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.

7. Administration of plan for augmentation:

A. Applicants shall report to the Division Engineer for Water Division 1 upon request, a summary of the annual metered withdrawals of the subject wells from November 1 through October 31, on an accounting form acceptable to the Division Engineer.

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

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

D. The Applicants or successor and assigns at the direction of the Division Engineer, shall make post-pumping replacements to the Cherry Creek stream systems from a well located on Parcel 4 or 5 as shown on Attachment A pursuant to the percentage of depletion referenced on the depletion curve attached hereto on Attachment B.

8. Retained jurisdiction for plan for augmentation:

A. Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also has jurisdiction for the purposes of determining compliance with the terms of the augmentation plan. Objector City of Colorado Springs owns senior water rights on Monument Creek that may be negatively impacted by the operation of this decree wherein depletions to Monument Creek will not be replaced to Monument Creek, but rather will be replaced to the Cherry Creek stream systems. In addition, Colorado Springs reserves the right to claim that the cumulative negative impacts of this and other similar decrees constitutes injury to its senior Monument Creek rights. In the interest of settlement only, Colorado Springs consents to the entry of this decree. However, by doing so, Colorado Springs does not waive its right to claim injury and to seek relief in the future according to this paragraph.

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

Decree shall set forth with particularity the factual basis 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.

C. The Court retains jurisdiction for the purpose of determining whether the continued reservation of the nontributary water for use on the property is required. 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

9. The Water Court has jurisdiction over this proceeding pursuant to Section 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. Sections 37-90-137(4) and (9)(c). The withdrawal of up to 18 acre-feet per year and no more than 5400 acre-feet total of the Dawson aquifer in accordance with the terms of this decree will not result in material injury to vested water rights of others subject to the provisions of this decree.

10. This plan for augmentation satisfies the requirements of Section 37-90-137(9)(c), C.R.S., for replacement of actual depletions to the affected stream systems for withdrawals of the Dawson aquifer water.

11. 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.

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

#### JUDGMENT AND DECREE

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

13. Applicants may withdraw up to 18 acre-feet per year and no more than 5400 acre-feet total of not nontributary ground water from the Dawson aquifer under the plan for augmentation decreed herein pursuant to Section 37-90-137(9)(c), C.R.S.

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

15. The change of water rights and 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.

16. 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 change of water rights and the operation of the plan for augmentation as decreed herein.

17. In considering applications for permits for 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 terms of this decree.

18. Continuing Jurisdiction:

Pursuant to Section 37-92-304(6), C.R.S., the Court retains 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. The Court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

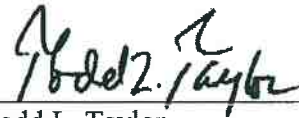
Date: March 19, 2014



John S. Cowan  
Water Referee  
Water Division 1

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

Date: April 10, 2014



Todd L. Taylor  
Alternate Water Judge  
Water Division No. 1



Parcel Four:

The Southwest Quarter of the Northwest Quarter, AND the South half of the South half of the Northwest Quarter of the Northwest Quarter of Section 21, Township 11 South, Range 66 West of the 6th Principal Meridian, EXCEPT any portion thereof lying within County Roads,  
County of El Paso,  
State of Colorado.

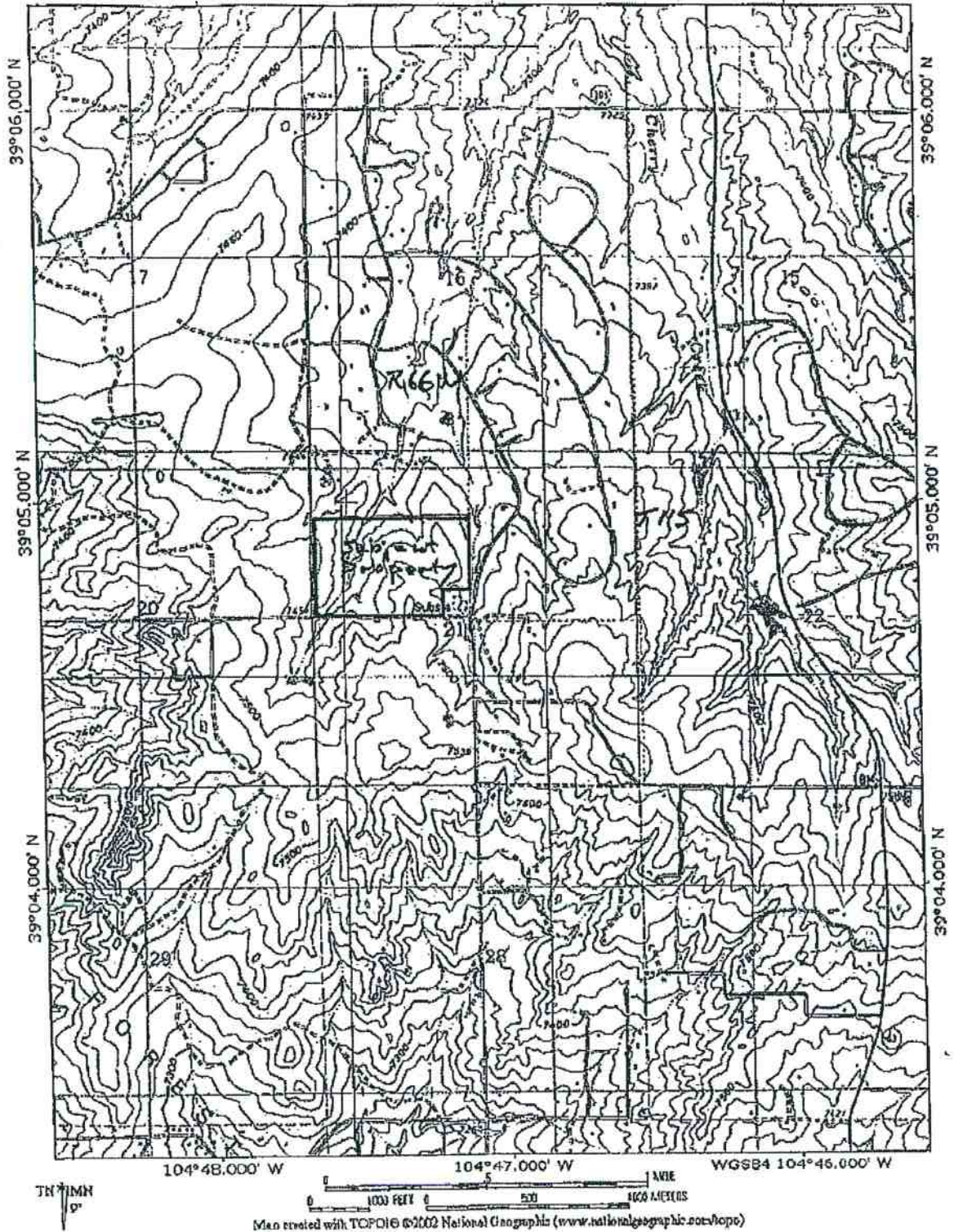
Parcel Five:

The Southeast Quarter of the Northwest Quarter, AND the South half of the South half of the Northeast Quarter of the Northwest Quarter of Section 21, Township 11 South, Range 66 West of the 6th Principal Meridian,

EXCEPT that portion conveyed to Mountain View Electric Association, Inc. by Deed recorded in Book 1982 at Page 56 of the records of the Clerk and Recorder of El Paso County, Colorado,  
AND EXCEPT any portion thereof lying within County Roads.

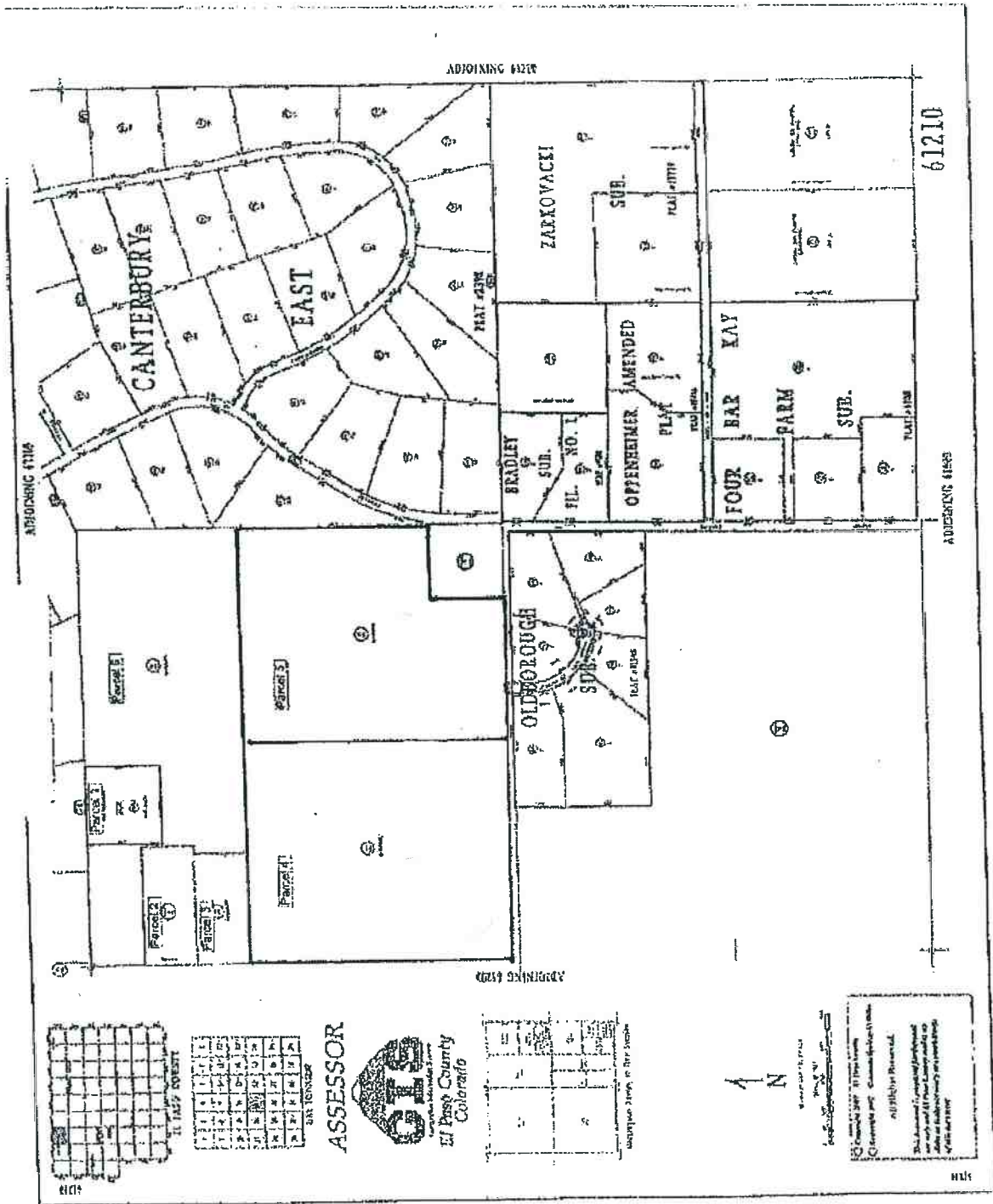
County of El Paso,  
State of Colorado.

TOPOI map printed on 09/19/13 from "COLORADO.tpo" and "united.tpg"  
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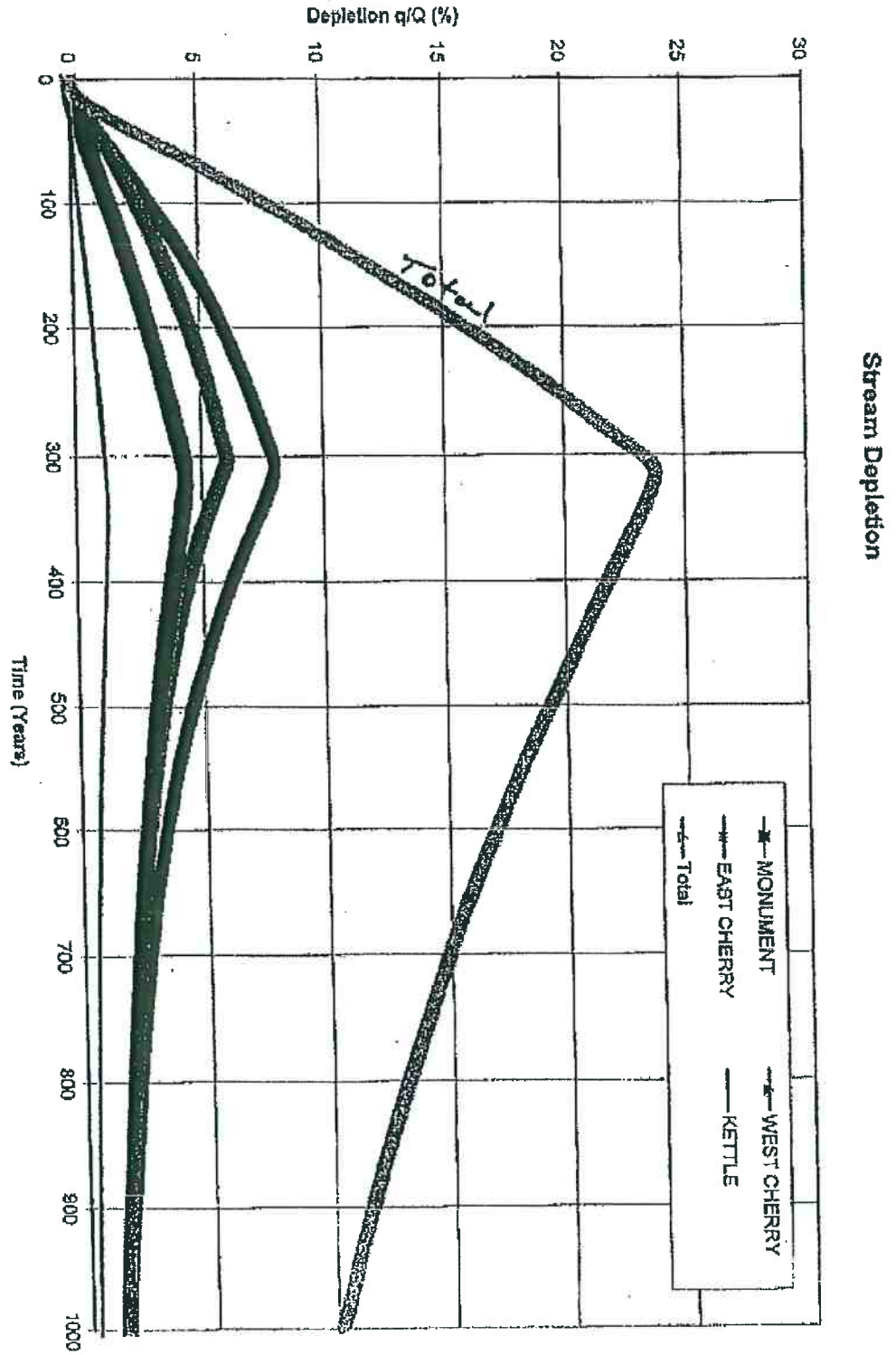
Marshall G., Sara L., and Marlene J. Brown  
Consolidated Case Nos. 13CW3100 and 13CW3042

ATTACHMENT A-2



Marshall G., Sara L., and Marlene J. Brown  
 Consolidated Case Nos. 13CW3100 and 13CW3042

ATTACHMENT A-3



Marshall G., Sara L., and Marlene J. Brown  
 Consolidated Case Nos. 13CW3100 and 13CW3042