

DISTRICT COURT, WATER DIVISION 2, COLORADO Pueblo County Judicial Building 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003	DATE FILED: October 7, 2021 3:46 PM CASE NUMBER: 2021CW3023 ▲ COURT USE ONLY ▲
APPLICATION FOR AMENDMENT OF PLAN FOR AUGMENTATION OF CRAIG and SALLY MCDERMOTT, Applicants, IN EL PASO COUNTY	Case Number: 2021CW3023
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 April 30, 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:

Craig and Sally McDermott
12930 Herring Road
Colorado Springs, CO 80908
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 July 20, 2021, and the Division Engineer filed its summary of consultation on August 24, 2021. No written response was required.
5. Prior Decree Information: Case No. 2019CW3031, District Court, Water Division 2, decreed on February 20, 2020 ("Original Decree"), associated with 30 acres generally

located in the NE1/4 SE1/4 of Section 8, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado, as shown on **Exhibit A** (“Subject Property”).

6. Decreed Change: In the Original Decree, an augmentation plan was approved for use of 1.25 acre-feet per year for 300 years of not-nontributary Dawson Aquifer groundwater in up to 2 houses. By this decree, Applicants are granted an increase in use of not-nontributary Dawson Aquifer groundwater, as follows:
 - 6.1 In-house use in up to two (2) additional residences: 0.3 acre-feet per residence, 0.6 acre-feet total.
 - 6.2 6,000 sq/ft of lawn, garden, and trees per additional residence: 0.3 acre-feet per residence, 0.6 acre-feet total.
 - 6.3 Stockwatering of up to 4 large animal per additional residence: 0.05 acre-feet per residence, 0.1 acre-feet total.
 - 6.4 Total additional use of up to 1.3 acre-feet annually of Dawson Aquifer groundwater.

Depletions occur to the Monument Creek stream system and return flows accrue to that stream system. See **Exhibit B**.

APPROVAL OF AMENDMENT TO PLAN FOR AUGMENTATION

7. Water to be Augmented: 2.55 acre-feet per year of not-nontributary Dawson Aquifer groundwater as decreed in Case No. 19CW3031.
8. 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 in Case No. 19CW3031.
9. Use and Consumptive Use: Applicants will use the Dawson Aquifer groundwater as described in Paragraph 6. Sewage treatment for commercial and in-house use will be provided by non-evaporative septic systems. Consumptive use associated with commercial and in-house use will be approximately 10% of water used for that purpose and consumptive use associated with irrigation use will be approximately 90% of water used for that purpose. Stock watering and storage use is considered to be 100% consumptively used.
10. Replacement During Pumping: During pumping of the Dawson Aquifer groundwater for 300 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 Dawson Aquifer is approximately 7.33% of the amount withdrawn or 0.19 acre-feet. Based on the uses described above, Applicants estimate that approximately 0.72 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 2.55 acre-feet per year for 300 years from the Dawson 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.

11. Post-pumping Depletion Augmentation: Assuming maximum pumping of 2.55 acre-feet per year for 300 years from the Dawson Aquifer, the total maximum depletion from pumping of the Dawson aquifer is 23.14% or 0.59 acre-feet in the 325th year. Applicants will reserve an **additional 397.8 acre-feet, or 780.3 acre-feet total**, of the nontributary Laramie-Fox Hills Aquifer groundwater decreed in Case No. 19CW3031 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.
12. No other provisions of the Original Decree are changed herein.

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 withdrawal of the Dawson Aquifer groundwater, and 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

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 at the estimated average rates of flow specified herein and in the Original Decree, subject to the limitations of the Original Decree and herein, and the retained jurisdiction by this Court.
18. Applicants may withdraw up to 2.55 acre-feet per year of Dawson Aquifer groundwater under the plan for augmentation decreed in Case No. 19CW3031 and as decreed herein pursuant to C.R.S. § 37-90-137(9)(c.5).
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 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.
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. 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 of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others.
23. 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: September 13, 2021.



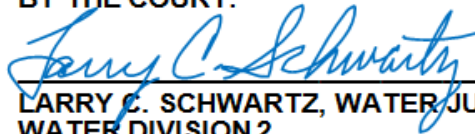
Kate A. Brewer
Water Referee
Water Division 2

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: October 7, 2021



BY THE COURT:



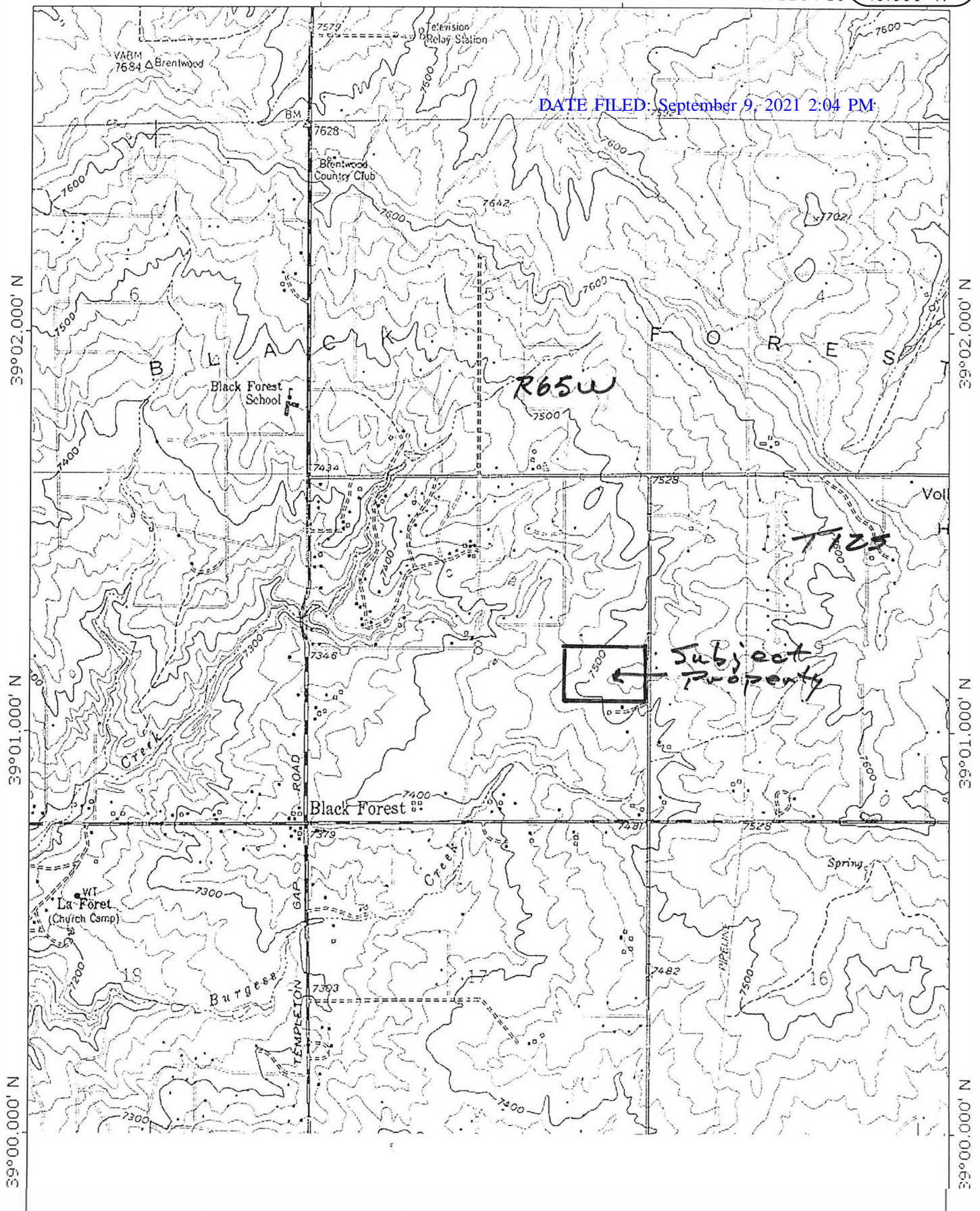
LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2

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DATE FILED: September 9, 2021 2:04 PM



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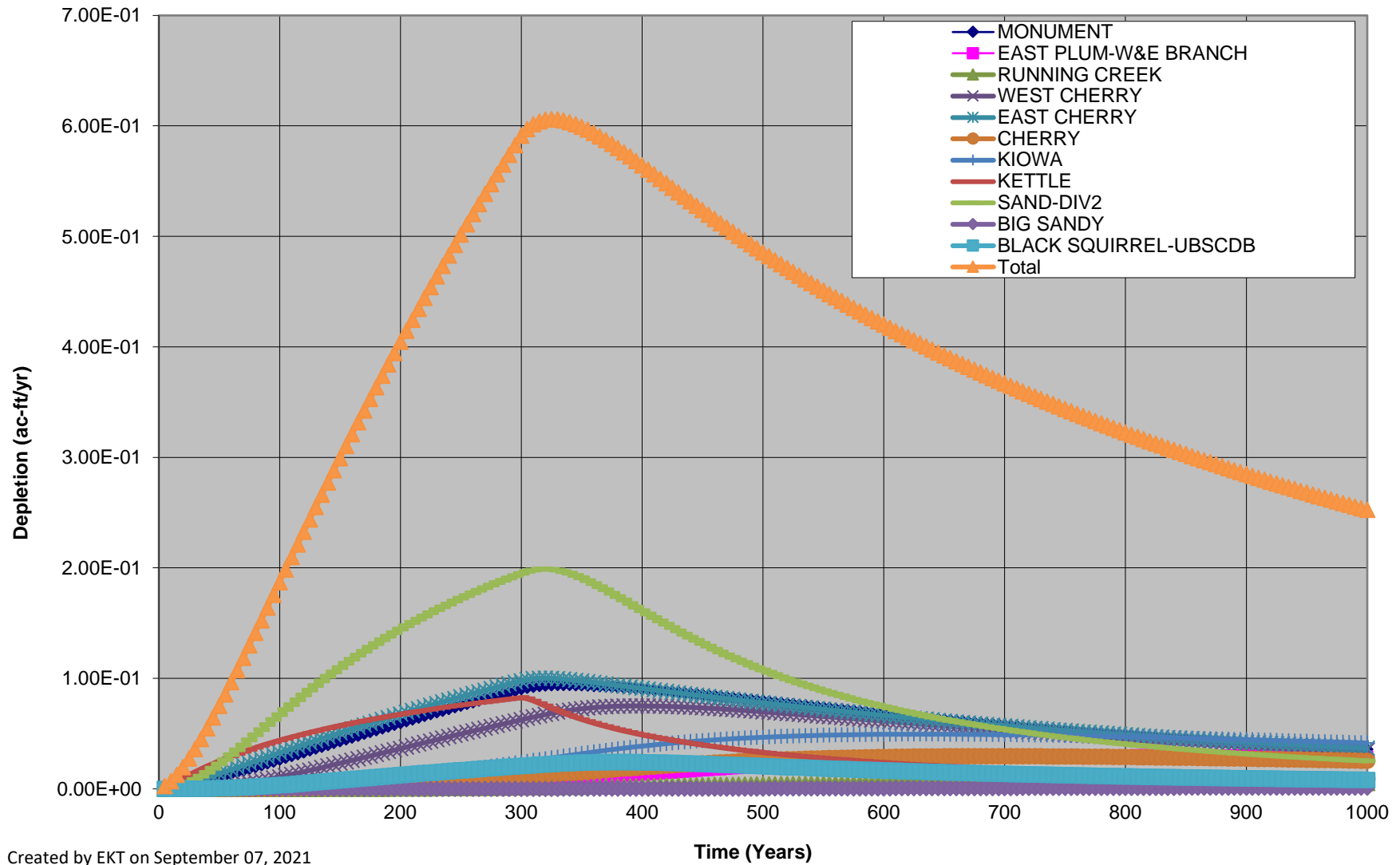
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Map created with TOPO! 8 ©2002 National Geographic (www.nationalgeographic.com/topo)

Stream Depletion from Pumping in SEC 8 T12S R65W

DATE FILED: September 9, 2021 2:04 PM



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