

<b>DISTRICT COURT, WATER DIVISION 1, COLORADO</b> Weld County Courthouse P.O. Box 2038 Greeley, CO 80632	DATE FILED: February 8, 2022 9:31 AM CASE NUMBER: 2021CW3126  <b>▲ COURT USE ONLY ▲</b>
<b>APPLICATION FOR PLAN FOR AUGMENTATION OF COLT and KATHRYN HAUGEN, Applicants,</b>  IN EL PASO COUNTY	Case Number: 2021CW3126
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE</b>	

A claim for a plan for augmentation was filed in this case on July 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:  
  
Colt and Kathryn Haugen  
18885 Brown 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 October 11, 2021, and the Division Engineer filed its summary of consultation on October 29, 2021.

**GROUNDWATER RIGHTS**

5. Subject Property: 61.55 acres generally located in the SW1/4, NW1/4, and the NW/1/4, SW1/4, Section 7, Township 11 South, Range 65 West of the 6th P.M., also known as 18885 Brown Rd, Colorado Springs, CO, El Paso County, State of Colorado, as shown

on **Exhibit A** (“Subject Property”). Applicants are the sole owners of the Subject Property.

6. Prior Decree Information: The groundwater underlying the Subject Property was decreed in Case No. 2005CW260, District Court, Water Division 1, on May 16, 2006 (“05CW260 Decree”). Applicants were deeded the following amounts of groundwater for use on the Subject Property in the Water Deed dated April 29, 2013, and recorded in the records of the El Paso County Clerk & Recorder under Reception No. 213056460:

Aquifer	Saturated Thickness	Annual Amount (acre-feet)	Total Amount (acre-Feet)
Dawson (NNT)	460 feet	45.0*	4,500
Denver (NT)	480 feet	49.8	4,980
Arapahoe (NT)	265 feet	27.5	2,750
Laramie-Fox Hills (NT)	205 feet	18.7	1,870

\*The total amount of Dawson Aquifer groundwater conveyed to the Applicants is 49.0 acre-feet annually, 4,900 acre-feet total. The annual amount available in the NNT Dawson Aquifer is reduced by 4 acre-feet annually, 400 acre-feet total, as a portion of the groundwater reserved for exempt purposes in the 05CW260 Decree.

7. Decreed Uses in 05CW260: The groundwater will be used, reused, and successively used for domestic, industrial, commercial, irrigation, stock watering, fish and wildlife, and augmentation purposes, both on and off the Subject Property.

### **PLAN FOR AUGMENTATION**

8. Plan for Augmentation:

8.1 Groundwater to be Augmented: 2.35 acre-feet per year of not-nontributary Dawson Aquifer groundwater for 300 years through up to two (2) individual wells on two (2) lots.

8.2 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 in 05CW260.

8.3 The Dawson Aquifer groundwater will be used to serve two (2) individual wells through existing Well Permit No. 280006, which will be re-permitted under this augmentation plan within 60 days of the entry of the final decree, and through a new well, as follows:

8.3.1 Proposed Well No. 1: One (1) single-family residence (0.3 acre-feet annually), irrigation, including lawn, garden, and trees of up to 5,000 square-feet (0.25 acre-feet annually), and up to 4 large domestic animals (0.05 acre-feet annually), for a total of 0.6 acre-feet annually.

- 8.3.2 Proposed Well No. 2: Two (2) single-family residences (0.6 acre-feet annually), irrigation, including lawn, garden, and trees of up to 20,000 square-feet (1 acre-foot annually), and up to 12 large animals (0.15 acre-feet annually), for a total of 1.75 acre-feet annually.
- 8.3.3 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 annually from in-house use per home, and 0.54 acre-feet total from all three residences. 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.
- 8.4 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 22.13% of the amount withdrawn or 0.52 acre-feet total. Return flow from in-house use of the Dawson Aquifer groundwater for a residence is at least 0.18 acre-feet per year as described above and such return flow from use in all three (3) residences, 0.54 acre-feet per year total, is sufficient to replace actual depletions for pumping of the entire 2.35 acre-feet per year for 300 years. Return flows accrue to the South Platte River system via West and East 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.
- 8.5 Post-pumping Depletion Augmentation: Assuming maximum pumping of 2.35 acre-feet per year for 300 years from the Dawson Aquifer, the maximum total depletion to the affected stream systems is approximately 22.13% of the annual amount withdrawn or 0.52 acre-feet in the 300th year. Applicants will reserve 2.35 acre-feet per year, 705 acre-feet total, of the nontributary Laramie-Fox Hills Aquifer groundwater owned by Applicants 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.
- 8.6 Applicants will begin making post pumping replacements when (1) the absolute total amount of water (705 acre-feet of Upper 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 8.5. This condition constitutes a covenant running with the land.

- 8.7 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 petition the Water Court and the State Engineer's Office and prove that they have complied with any statutory requirement.
9. Failure of Applicants and/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.
10. Administration of Plan for Augmentation:
  - 10.1 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.
  - 10.2 All withdrawals which are the subject of this decree will be metered.
  - 10.3 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.
  - 10.4 The Applicants and/or successors in interest at the direction of the Division Engineer shall make post-pumping replacements to the South Platte River stream

system via West and East Cherry Creek, or its tributaries, pursuant to the amounts referenced on the depletion curve attached on **Exhibit B**.

11. Retained Jurisdiction for Plan for Augmentation:

- 11.1 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.
- 11.2 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.
- 11.3 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**

12. 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.
13. 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.
14. 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 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 2.35 acre-feet per year and 705 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 in Case No. 05CW260 will not be withdrawn and used until it is included in a separate plan for augmentation.

### **JUDGMENT AND DECREE**

15. 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.
16. 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.
17. Applicants may withdraw an average annual amount of 2.35 acre-feet per year and not more than 705 acre-feet total of the Dawson Aquifer groundwater under the plan for augmentation decreed herein pursuant to § 37-90-137(9)(c.5), C.R.S.
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 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 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.

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: December 29, 2021



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: February 4, 2022



Todd L. Taylor  
Water Judge  
Water Division One



PARCEL A:

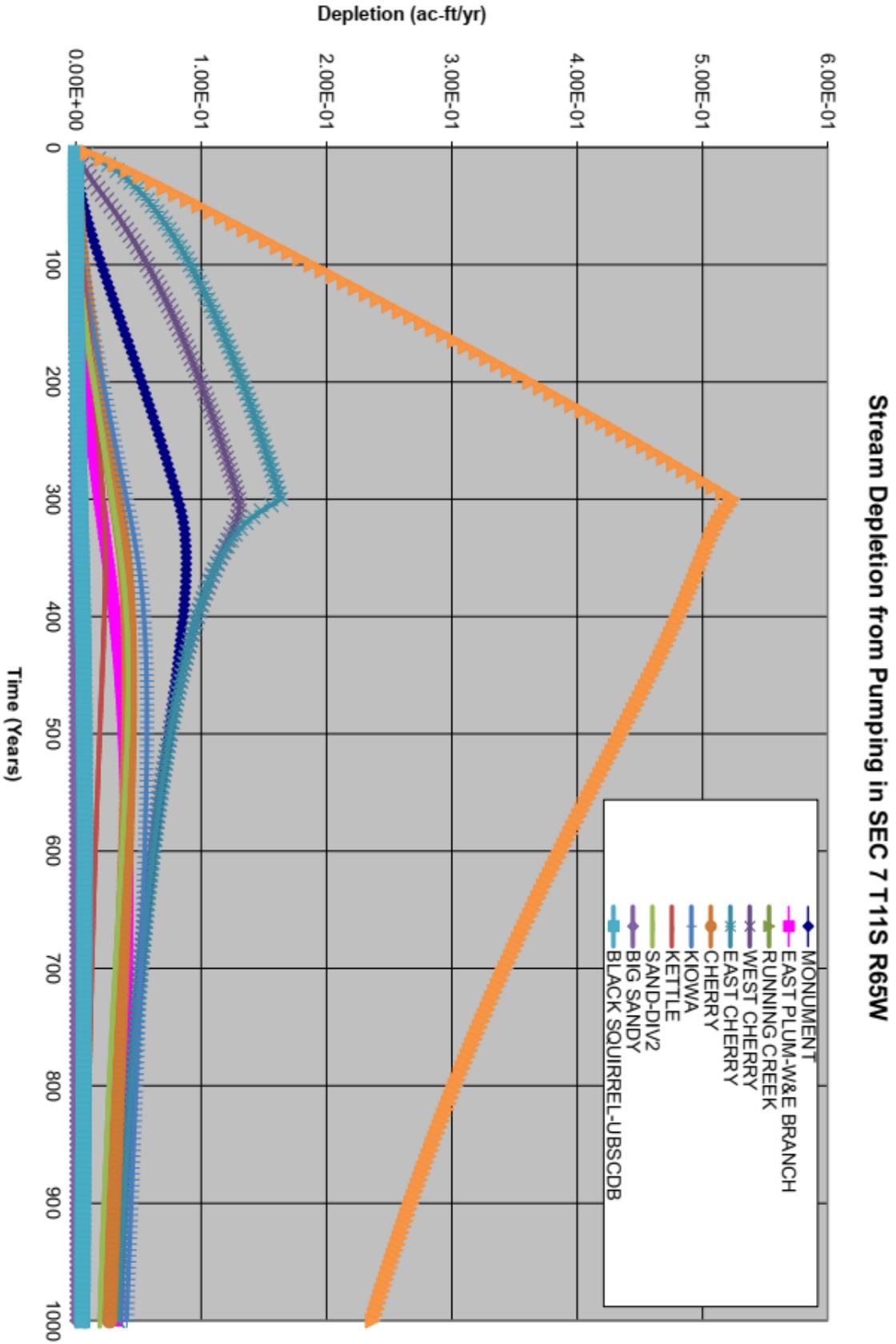
A TRACT OF LAND LOCATED IN THE SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER AND THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 7, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION AND SECTION 12, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH P.M.; THENCE N 00 DEGREES 27 MINUTES 26 SECONDS W ALONG THE COMMON ALIQUOT LINE OF SAID SECTIONS, A DISTANCE OF 270.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N 00 DEGREES 27 MINUTES 26 SECONDS W ALONG SAID COMMON LINE, A DISTANCE OF 2384.23 FEET TO THE NORTH ONE-SIXTEENTH CORNER OF SAID SECTIONS; THENCE N 89 DEGREES 23 MINUTES 54 SECONDS E ALONG THE NORTH ONE-SIXTEENTH LINE OF SAID SECTION 7, A DISTANCE OF 1681.21 FEET TO THE NORTHWEST ONE-SIXTEENTH CORNER OF SECTION 7; THENCE S 00 DEGREES 02 MINUTES 01 SECONDS W ALONG THE WEST ONE-SIXTEENTH LINE OF SAID SECTION 7, A DISTANCE OF 1325.09 FEET TO THE WEST ONE-SIXTEENTH CORNER OF SAID SECTION 7; THENCE S 00 DEGREES 02 MINUTES 13 SECONDS W ALONG THE WEST ONE-SIXTEENTH LINE OF SAID SECTION 7, A DISTANCE OF 111.51 FEET; THENCE S 89 DEGREES 16 MINUTES 27 SECONDS W ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 7, A DISTANCE OF 1608.91 FEET; THENCE S 00 DEGREES 27 MINUTES 26 SECONDS E ALONG A LINE PARALLEL TO THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 7, A DISTANCE OF 944.10 FEET; THENCE S 89 DEGREES 16 MINUTES 27 SECONDS W ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 7, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A TRACT OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 7, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION 7 AND SECTION 12, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH P.M.; THENCE N 00 DEGREES 27 MINUTES 26 SECONDS W ALONG THE COMMON ALIQUOT LINE OF SAID SECTIONS, A DISTANCE OF 270.00 FEET; THENCE N 89 DEGREES 16 MINUTES 27 SECONDS E ALONG A LINE PARALLEL TO THE SOUTH ONE-SIXTEENTH LINE OF SECTION 7, A DISTANCE OF 807.42 FEET; THENCE S 00 DEGREES 27 MINUTES 26 SECONDS E ALONG A LINE PARALLEL TO THE WEST LINE OF SECTION 7, A DISTANCE OF 270.00 FEET; THENCE S 89 DEGREES 16 MINUTES 27 SECONDS W ALONG THE SOUTH ONE-SIXTEENTH LINE OF SECTION 7, A DISTANCE OF 807.42 FEET TO THE POINT OF BEGINNING.



Colt and Kathryn Haugen  
21CW3126