

DISTRICT COURT, WATER DIVISION 1,
COLORADO

Court Address:
901 9th Street
Greeley, CO 80632

SANDRA AND LOWELL HAUGEN, Applicants,

IN EL PASO COUNTY.

σ COURT USE ONLY σ

Case Number: 2005CW260

FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE,
JUDGMENT AND DECREE,

IN THE NONTRIBUTARY DENVER, ARAPAHOE, AND LARAMIE-FOX HILLS,
AND THE NOT NONTRIBUTARY DAWSON AQUIFERS

THIS APPLICATION, having been filed with the Water Clerk, Water Division 1, in October, 2005, and all matters contained in the application having been reviewed, and such testimony having been taken and evidence presented as was necessary, and being otherwise fully advised in the premises, it is hereby the Ruling of the Referee as follows:

FINDINGS OF FACT

1. Name and Address of Applicants:

Sandra and Lowell Haugen
18885 Brown Road
Colorado Springs, CO 80908-1101
(719) 495-4279

2. Objections: No statements of opposition were filed and the time for filing such statements has expired.

3. **Subject Matter Jurisdiction:** Notice of the application was duly given in the manner required by law and the Court has jurisdiction over the subject matter and over all who have standing to appear as parties, whether they have appeared or not.
4. **Aquifers and Location of Groundwater:** Applicants are granted a decree for rights to groundwater recoverable from the not nontributary Dawson and from the nontributary Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying 98 acres of land located in part of the W1/2 of Section 7, T11S, R65W of the 6th P.M., as described and shown on Attachment A hereto ("Subject Property"). Applicants are the owners of the Subject Property, and such land is not located within the boundaries of a designated groundwater basin.
5. **Well Locations and Annual Amounts:** The wells which will withdraw the groundwater described below will be located at any location on the Subject Property, pursuant to §37-90-137(4), C.R.S. Applicants waive any 600 foot spacing rule for its own wells, but must satisfy §37-90-137(4), C.R.S., for wells owned by others on adjacent properties. The following amounts are available for withdrawal subject to the Court's retained jurisdiction in this matter:

<u>Aquifer</u>	<u>Saturated Thickness</u>	<u>Annual Amount</u>
Dawson	460 feet	81.2 acre-feet (NNT)*
Denver	480 feet	80.0 acre-feet (NT)
Arapahoe	265 feet	44.1 acre-feet (NT)
Laramie-Fox Hills	205 feet	30.1 acre-feet (NT)

*Annual amount reduced by 1 acre-feet annually for Well Permit No. 108262 and by 8 acre-feet annually from the amount available as referenced in the Determination of Facts for the Dawson aquifer issued in this case which water will be available for any uses which are legally available at the time well permit applications are filed. Said 8 acre-feet (800 acre-feet total) may also be available to be withdrawn through two exempt wells the Subject Property pursuant to Section 37-92-602, C.R.S. (8.16 acre-feet per surface acre).

The amounts and values conform with the State Engineer's Determination of Facts for each aquifer dated November 30, 2005.

6. **Decreed Uses of Water:** 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.
7. **Estimated Average Pumping Rate and Well Depths:** The wells decreed herein will withdraw the subject groundwater at rates of flow necessary to efficiently

withdraw the groundwater. The well depths will conform with the locations of the subject aquifers as referenced in the State Engineer's Determination of Facts for each aquifer or actual aquifer characteristics.

8. Final Average Annual Amounts of Withdrawal:

A. Final determination of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicants will be made pursuant to the retained jurisdiction of this Court, as described in Paragraph 16 hereinbelow. In the event this decree is not reopened for a further quantitative determination, the findings herein are final and controlling.

B. The allowed annual amount of groundwater which may be withdrawn through the wells specified above and any additional wells, pursuant to §37-90-137(10), C.R.S., may exceed the average annual amount of withdrawal, as long as the total volume of water withdrawn through such wells and any additional wells therefor subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of any well permits or the date of this decree, whichever is earliest in time, multiplied by the average annual amount of withdrawal, as specified above or as determined pursuant to the retained jurisdiction of the Court.

9. Source of Groundwater and Limitations on Consumption:

A. The groundwater to be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills aquifers is "nontributary groundwater" as defined in §37-90-103(10.5), C.R.S., and in the Denver Basin Rules, the withdrawal of which will not, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in §§37-82-101(2) and 37-92-102(1)(b), C.R.S., at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal. The groundwater to be withdrawn from the Dawson aquifer is "not nontributary" as defined in §§37-90-137(9)(c) and 37-90-103(10.7), C.R.S., and such water may not be withdrawn until such time as a plan for augmentation has been approved by this court in a separate application.

B. Applicants may not consume more than 98% of the annual quantity of water withdrawn from the nontributary aquifers. The relinquishment of 2% of the annual amount of water withdrawn to the stream system, as required by the Denver Basin Rules effective January 1, 1986, may be satisfied by any method selected by the Applicants and satisfactory to the State Engineer, so long as Applicants can demonstrate that an amount equal to 2% of such withdrawals (by volume) has been relinquished to the stream system.

C. There is unappropriated groundwater available for withdrawal from the subject aquifers beneath the Subject Property, and the vested water rights of others will not be materially injured by such withdrawals as described herein. Withdrawals hereunder are allowed on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years. No material injury to vested water rights of others will result from the issuance of permits for the subject wells or the exercise of the rights and limitations specified in this decree.

10. Additional Wells and Well Fields:

A. In addition to the wells described above, Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of groundwater in the subject aquifers underlying the Subject Property, as described herein. As additional wells are planned, applications shall be filed in accordance with §37-90-137(10), C.R.S., for evaluation by the Division of Water Resources.

B. Two or more wells constructed into the aquifer shall be considered a well field. In effecting production of water from such well field, Applicants may produce the entire amount which may be produced hereunder through any combination of wells within the well field.

C. In considering applications for permits and for additional 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 provisions of §37-90-137(10), C.R.S.

D. In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain permits to reflect such adjusted average annual amounts prior to withdrawing the adjusted amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

11. Conditions:

For each well constructed pursuant to this decree, Applicants shall comply with the following conditions:

A. A totalizing flow meter shall be installed on the well discharge pipe prior to withdrawing any water therefrom, and shall be maintained and operational at all times for the life of the well. Applicants shall keep accurate records of all

withdrawals by the well, make any calculations necessary, and submit such records to the Water Division 1 Engineer upon request.

B. The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicants may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement.

C. Groundwater production shall be limited to the subject aquifers. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

D. Each well shall be permanently identified by its permit number, this Water Court Case Number, and the name of the producing aquifer on the above-ground portion of the well casing or on the pumphouse.

CONCLUSIONS OF LAW

12. The Water Court has jurisdiction over this proceeding pursuant to §37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. §37-90-137(4), C.R.S. The application for a decree confirming Applicants' right to withdraw and use all groundwater from the nontributary aquifers beneath the property as described herein pursuant to §37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree. The nature and extent of the rights not tributary and nontributary groundwater determined herein are defined by §§37-90-137(4), 37-90-137(9), and 37-90-137(9)(c), C.R.S. The withdrawal of the groundwater decreed herein in accordance with the terms of this decree will not result in material injury to vested water rights of others.

13. The rights to groundwater determined herein shall not be administered in accordance with priority of appropriation. Such rights are not "conditional water rights" as defined by §37-92-103(6), C.R.S., requiring findings of reasonable diligence are not applicable to the groundwater rights determined herein. The determination of groundwater rights herein need not include a date of initiation of the withdrawal of water. See §37-92-305(11), C.R.S.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

14. The Findings of Fact and Conclusions of Law are incorporated into this Decree of the Water Court.

15. Right to Withdraw Groundwater:

Applicants may withdraw the not nontributary and nontributary groundwater herein through wells located on the Subject Property or any additional wells necessary for the full production of the subject water, in the average annual amount specified herein, subject to the limitations herein and the retained jurisdiction of this Court. In accordance with §37-90-137(9)(c), C.R.S., the water from the not nontributary Dawson aquifer will not be withdrawn until a separate plan of augmentation has been approved by this Court.

16. Retained Jurisdiction:

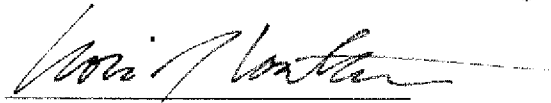
A. The Court retains jurisdiction as necessary to adjust the average annual amount of groundwater available under the property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to §37-92-305(11), C.R.S. Within 60 days after completion 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.

B. 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 finding. The State Engineer shall submit such finding to the Water Court and Applicants or successor and assigns.

C. 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.

D. In the interim, the Court retains jurisdiction in this matter pursuant to §37-92-305(11), C.R.S.

RULING ENTERED April 25, 2006.



Lori Coulter
Water Referee
Water Division 1

THE COURT DOTH FIND THAT NO PROTEST WAS FILED IN THIS
MATTER, THEREFOR THE FOREGOING RULING IS CONFIRMED AND
APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS
COURT.

Dated: MAY 1 6 2006



Roger A. Klein
Water Judge
Water Division 1

05CW260

ATTACHMENT A
HAUGEN

A tract located in the W1/2 of Section 7, T11S, R63W of the 6th P.M., described as follows:

Beginning at the NW corner of said Section 7; thence S00°07'53"E, 1327 feet to the point of beginning.

Thence N89°43'29"E, 1681 feet;

Thence S00°21'33"W, 1325 feet;

Thence S00°21'47"W, 1326 feet;

Thence S89°36'36"W, 1659 feet;

Thence N00°07'53"W, 2654 feet to the point of beginning.

