

# CENTRAL FILES

DISTRICT COURT, WATER DIVISION 2, CO

Court Address: 320 W. 10th St., #203  
Pueblo, CO 81003

**CONCERNING THE APPLICATION FOR WATER RIGHTS OF:**

**WILLIAM R. BROWN, JR. EXEMPTION EQUIVALENT TRUST**

**IN EL PASO COUNTY.**

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STATE OF COLORADO

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Case No.: 01CW140

## **FINDINGS OF FACT AND RULING OF REFEREE GRANTING UNDERGROUND WATER RIGHTS**

PURSUANT TO ORDER OF REFERRAL filed and entered in the above case on December 26, 2001, the undersigned Water Referee, having investigated the matter of the Application on file herein, makes the following Findings of Fact and Ruling thereon:

### **FINDINGS OF FACT**

#### **General Findings**

1. The Application in this case was filed on December 20, 2001.
2. The name and address of the Applicant is WILLIAM R BROWN, JR EXEMPTION EQUIVALENT TRUST, c/o Gwilym R Brown, Trustee, 17435 Roller Coaster Rd., Monument, CO 80132, 719-488-9329.
3. The Clerk of the Water Court caused publication of the Application as provided by statute, and the publication costs have been paid. The time for filing Statements of Opposition to the Application expired on the last day of February 2002. No Statements of Opposition were filed in this matter.
4. Timely and adequate notice of the pendency of these proceedings has been given in the manner required by law. The Water Court has jurisdiction over the subject matter

of these proceedings and over all who have standing to appear as parties whether they have appeared or not. There are no encumbrances of record on the Applicant's property. Hence, the notice provisions of C.R.S. § 37-92-302(2) and C.R.S. § 37-92-305(6) are not applicable to this case. The land and water rights involved in this case are not within the boundaries of any designated ground water basin.

5. Determination of Facts relating to each of the aquifers adjudicated herein were issued by the Office of the State Engineer on February 21, 2002 and have been filed with the Court and considered by the Referee in the entry of this Ruling. A Consultation Report was issued by the Division Engineer, Water Division 2, on September 24, 2002 and has been considered by the Referee in the entry of this Ruling.

6. Applicant requests the adjudication of Denver Basin water located within the Dawson, Denver, Arapaho and Laramie-Fox Hills aquifers underlying the Applicant's property in northern El Paso County.

### **GROUND WATER RIGHTS**

7. The land overlying the ground water adjudicated herein is owned by the Applicant and consists of 184.32 acres located in the SE ¼ of Sec. 20 and SW ¼ of Sec 21, T11S, R66W of the 6<sup>th</sup> PM in El Paso County, Colorado, more particularly described as follows:

A tract of land in the Southeast quarter of Section 20 and Southwest quarter of Section 21, Township 11 South, Range 66 West, 6<sup>th</sup> PM in El Paso County, Colorado, more particularly described as follows: Beginning at the Southeast corner of said Section 20; thence S 88°10'10" W, an assumed bearing to which all others are related, along the South line of said Section 20, a distance of 1517.97 feet to a point; thence N 0°52'14" E a distance of 1288.45 feet to a point on the South line of a tract of land recorded in the records of El Paso County in Plat Book 3825 at Page 988; thence N 87°53'42" E along the South line of said tract a distance of 1013.40 feet to a point which is also the Southeast corner of said tract; thence N 0°45'06" W a distance of 1349.19 feet to a point on the North line of the Southeast quarter of said Section 20, which point is also the Northeast corner of said tract and the center of the right-of-way of Higby Road; thence N 88°00'41" E along the North line of said Southeast quarter a distance of 472.00 feet to the East quarter corner of said Section 20, which point is also the West quarter corner of said Section 21 and the center of the right-of-way of Higby Road; thence N 88°46'41" E along the North line of the Southwest quarter of said Section 21 a distance of 907.18 feet to a point; thence S 01°13'19" E

a distance of 880.77 feet to a point; thence N 88°46'41" E parallel with the right-of-way of Higby Road a distance of 1729.48 feet to a point on the East line of the Southwest quarter of said Section 21 which point is also the center of the right-of-way of Roller Coaster Road; thence S 01°01'31" E along the East line of said Southwest quarter a distance of 1767.06 feet to the South quarter corner of said Section 21; thence S 88°52'31" W along the South line of said Southwest quarter a distance of 2616.91 feet to the point of beginning.

The Applicant's property is generally shown on the Exhibit A location map attached hereto.

8. Of the statutorily described Denver Basin aquifers, the Dawson, the Denver, the Arapaho and the Laramie-Fox Hills aquifers underlie the Applicant's property. The depth of the aquifers underlying the land claimed in the Application near the center of the property are as follows:

Aquifer	Aquifer Depth
Dawson	Top of bedrock to 910 feet below land surface
Denver	910 feet to 1690 feet below land surface
Arapaho	1740 to 2210 feet below land surface
Laramie-Fox Hills	2690 to 3010 feet below land surface

The depths of the aquifers underlying Applicant's property are based upon the best information presently available. The actual depth of each well to be constructed within the respective aquifer will be determined by water availability and actual aquifer conditions.

9 Applicant shall be entitled to withdraw all legally available ground water in the Denver Basin aquifers underlying Applicant's property. The amounts can be withdrawn over the 100 year life of the aquifers as set forth in C.R.S. § 37-90-137(4). The character of the aquifers and the average annual amounts of ground water available for withdrawal from the Denver Basin aquifers underlying Applicant's property are determined and set forth as follows:

Aquifer	Status	Acres	Saturated Thickness (FT)	Specific Yield	Total Ground Water Avail. (AF)	Annual Ground Water Avail. (AF/YR)
Dawson	NNT	184.32	360	20%	11,800 <sup>(1)</sup>	118 <sup>(2)</sup>
Denver	NNT-4%	184.32	540	17%	16,900	169
Arapahoe	NNT-4%	59.62 <sup>(3)</sup>	245	17%	2,480	24.8
Arapahoe	NT	124.7 <sup>(4)</sup>	245	17%	5,190	51.9
Laramie Fox Hills	NT	184.32	185	15%	5,390	53.9

- (1) The total quantity of water in the Dawson aquifer, exclusive of artificial recharge, is 13,300 acre feet. Applicant has reduced his request to adjudicate the full amount by 1,500 acre feet to allow for currently existing and future exempt well permits to be located on the property.
- (2) The annual ground water availability has been reduced by 15 acre feet per year to allow up to 5 exempt wells, each well permitted for 3 acre feet of pumping each year.
- (3) All of the Applicant's land located in Section 20, Township 11 South, Range 66 West 6<sup>th</sup> P M.
- (4) All of the Applicant's land located in Section 21, Township 11 South, Range 66 West 6<sup>th</sup> P M.

10. There is currently one well drilled on the property represented by State Engineer Well Permit No. 215641 located in the NW ¼ SW ¼, Section 21, Township 11 South, Range 66 West 6<sup>th</sup> P.M. issued pursuant to § 37-92-601(3)(b)(II)(A) as the only well on a tract of land of 42 acres approved for the watering of livestock on a farm or ranch. Applicant is allocating 3 acre feet per year of the 15 acre feet per year reserved from the water available in the Dawson aquifer for adjudication herein for pumping of this well as it is currently permitted or as it may be modified to another exempt well issued pursuant to C.R.S. § 37-92-602. The State Engineer's Determination of Facts for the Arapaho aquifer notes that the Applicant was issued well permit no. 55431-F for a well to withdraw nontributary Arapaho aquifer water beneath Section 21. That well permit expired on March 6, 2002 without being drilled and the Applicant has voluntarily abandoned that well permit.

11. Applicant shall be entitled to withdraw an amount of ground water in excess of the annual amount decreed to each of the Denver Basin aquifers underlying Applicant's Property, so long as the sum of the total withdrawals from all the wells in the aquifer does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, and the annual volume of water which Applicant is entitled to withdraw from the aquifer underlying Applicant's Property.

12. Applicant shall be entitled to produce the full legal entitlement from the respective

Denver Basin aquifers underlying Applicant's Property through any combination of wells constructed into each aquifer. These wells may be treated as a well field, and may be located at any point within the boundaries of the Applicant's Property without the necessity of filing an amendment to the application, republishing, or petitioning the Court for the opening of this decree. The pumping rates for each well may vary according to aquifer conditions and well production capabilities. The Applicant shall be entitled to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts.

13 Well permit applications for the wells to be drilled pursuant to this decree shall be applied for prior to drilling wells into the Denver Basin aquifers. No exact location is required for the wells in this decree, as that information will be provided when the well permit applications are submitted.

14. The Applicant shall have the right to use the ground water for all beneficial uses, including, without limitation, domestic, commercial, industrial, irrigation, stock water, recreation, fish and wildlife propagation, fire protection, central water supply for such uses, and also for exchange and augmentation purposes. The nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant's Property. Subject, however, to the relinquishment of the right to consume no more than two percent of such nontributary water withdrawn. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein.

15 Withdrawal of ground water from the not nontributary Dawson aquifer, the not nontributary Denver aquifer, and the not nontributary Arapaho aquifer as it may be located under Section 20, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M. of Applicant's property will, within 100 years, deplete the flow of a natural stream at an annual rate greater than 1/10th of 1 percent of the annual rate of withdrawal. Therefore, the ground water is not nontributary ground water as defined in C.R.S. § 37-90-103(10.5). The land of the Applicant is more than one mile from any point of contact between any natural surface stream including its alluvium and the aquifer. C.R.S. § 37-90-137(9)(c) states that judicial approval of a plan for augmentation shall be required prior to the use of ground water of this type. In the case of the not nontributary Dawson aquifer, such augmentation plan shall provide for the replacement of actual stream depletions to the extent necessary to prevent any injurious effect, based on actual aquifer conditions in existence at the time of the Decree. In the case of water withdrawn from the not nontributary Denver aquifer and the not nontributary portion of the Arapaho aquifer beneath Section 20 of the Applicant's land, such augmentation plan shall provide for the replacement to the affected stream systems or system of a total amount of water equal to four (4) percent of the amount of water withdrawn on an annual basis and such additional amounts that may be required pursuant to C.R.S. § 37-90-137(9)(c).

16. Water is currently available from the nontributary Arapaho aquifer beneath Section 21, and the nontributary Laramie-Fox Hills aquifer beneath the Applicant's Property and

the withdrawal of that water from wells in the amounts of water determined in accordance with the provisions of this decree will not result in material injury to any other vested water rights or to any other owners or users of water.

### **CONCLUSIONS OF LAW**

17. Applicant is entitled to the sole right to withdraw all the legally available water in the Denver Basin aquifers underlying Applicant's Property, and the right to use that water to the exclusion of all others subject to the terms of this decree.

18. The Applicant has complied with C.R.S. § 37-90-137(4) (Vol. 10, 2000), and the ground water decreed herein is legally available for withdrawal from wells to be drilled into the nontributary Arapaho aquifer underlying the Section 21 land of the Applicant and the Laramie-Fox Hills aquifer underlying all of Applicant's land all as described herein. Water is legally available for withdrawal from wells to be drilled into the not nontributary Dawson aquifer, the not nontributary Denver aquifer underlying all of Applicant's land and the not nontributary Arapaho aquifer underlying the Section 20 property of the Applicant all as described herein upon the entry of a decree approving an augmentation plan pursuant to C.R.S. § 37-90-137(9)(c) (Vol. 10, 2000). Applicant is entitled to a decree from this Court confirming its rights to withdraw ground water pursuant to C.R.S. § 37-90-137(4) (Vol. 10, 2000).

19. The Denver Basin water rights applied for in this claim are not conditional water rights, but are absolute water rights determined pursuant to C.R.S. § 37-90-137 (Vol. 10, 2000). No applications for diligence are required. The claims for nontributary and not nontributary ground water meet the requirements of Colorado law

20. The determination of the nontributary ground water rights in the Denver Basin aquifers as set forth herein is contemplated and authorized by law. C.R.S. § 37-90-137 and C.R.S. § 37-92-302 to § 37-92-305 (Vol. 10, 2000).

### **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

21. All the foregoing Findings of Fact and Conclusions of Law are incorporated by reference herein, and are to be considered a part of the decretal portion hereof as though set out in full.

22. The Applicant shall comply with C.R.S. §37-90-137(9)(b) (Vol. 10, 2000) and Denver Basin Rule 8 requiring the relinquishment of the right to consume of up to two percent of the amount of the nontributary ground water withdrawn. Ninety-eight percent of the nontributary ground water withdrawn may thereby be consumed. No plan of augmentation shall be required to provide for such relinquishment.

23. The Court retains jurisdiction over this matter to make adjustments in the allowed average annual amount of withdrawal from the Denver Basin aquifers, either upwards or downwards, to conform to actual local aquifer characteristics, and the Applicant need not refile, republish, or otherwise amend this application to request such adjustments.

24. The Court determines and orders that the State Engineer shall issue well permits in accordance with the decree entered herein. Should Applicant fail to construct any well prior to the expiration of the well permit, Applicant may reapply to the State Engineer for a new well permit and the State Engineer shall issue a new well permit with terms and conditions no more burdensome than those contained herein. The State Engineer may require that all wells be cased so as to prevent withdrawal of water from more than one aquifer.

25. The wells shall be installed and metered as reasonably required by the Division Engineer and the State Engineer. Each well shall be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer or his representative on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation.

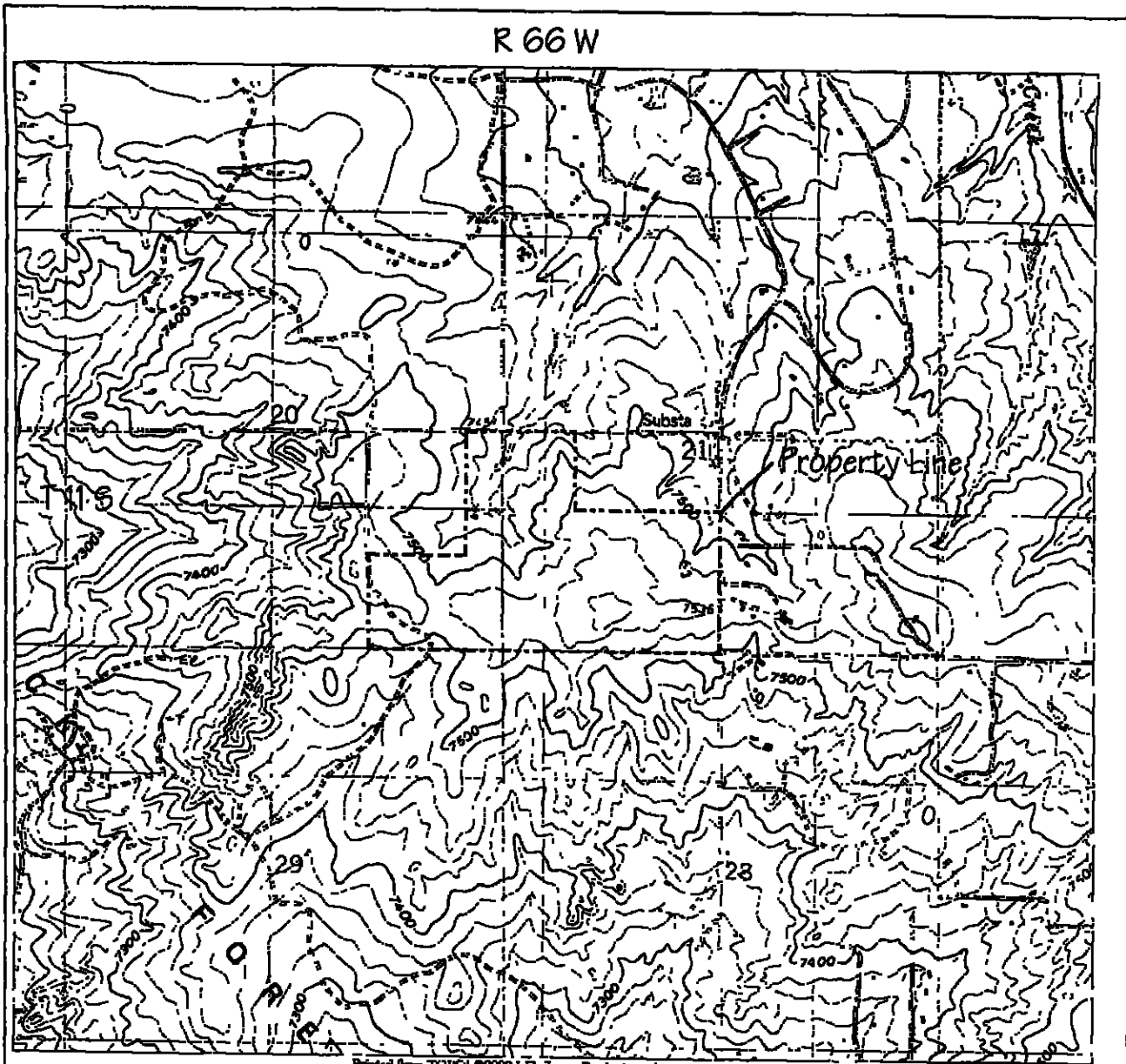
26. This decree shall be recorded. Copies of this decree, when entered by the Court, shall be mailed to the parties as required by statute.

DATED THIS 11th day of December 2002.

BY THE COURT:



Mardell R. Cline  
Water Referee  
Water Division 2  
State of Colorado



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LOCATION MAP

Wm. Curtis Wells & Co.  
consulting ground water geologists

Scale 1" = 2000'

Figure 1