

DISTRICT COURT, WATER DIVISION 2, COLORADO Court Address: 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003 Phone Number: (719) 404-8832	DATE FILED: March 15, 2022 3:04 PM CASE NUMBER: 2021CW3048
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: PAWEL POSORSKI IN EL PASO COUNTY, COLORADO	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No.: 21CW3048
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND DECREE: APPROVING PLAN FOR AUGMENTATION	

THIS MATTER comes before the Water Referee on the Application filed by Pawel Posorski for revision of plan for augmentation. The Court, having reviewed said Application and other pleadings on file, and being fully advised on this matter, the Water Referee makes the following findings and orders:

GENERAL FINDINGS OF FACT

1. The Applicant in this case is Pawel Posorski, whose address is 6385 Vessey Road, Colorado Springs, CO 80908 ("Applicant"). The Applicant is the owner of land totaling approximately 13.84 acres, located in N½ of Section 6, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, Colorado, more specifically described as 6385 Vessey Road, Colorado Springs, Colorado ("Applicant's Property").

2. The Applicant filed this Application in Water Court Division 2 on September 20, 2021. The Application was referred to the Water Referee in Division 2 on September 21, 2021.

3. The time for filing statements of opposition to the Application expired on the last day of November 2021. No Statements of Opposition were filed.

4. The Clerk of this Court has caused publication of the Application as provided by statute, and the publication costs have been paid. On October 20, 2021, proof of publication in *The Colorado Springs Gazette* was filed with Water Court Division 2. All notices of the Application have been given in the manner required by law.

5. Applicant seeks to revise an existing plan for augmentation decreed in Case No. 18CW3035 (“18CW3035 Decree”).

6. Pursuant to C.R.S. §37-92-302(4), the office of the Division Engineer for Water Division No. 2 filed its Consultation Report dated January 21, 2021, and a Response to the Consultation Report was not required. The Consultation Report has been considered by the Water Referee in the entry of this Ruling.

7. 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. The land and water rights involved in this case are not within a designated groundwater basin.

REVISION TO PLAN FOR AUGMENTATION

8. The original decree in Case No. 18CW3035 stated that a combined 1.2 acre-feet of water may be withdrawn from the not-nontributary Dawson aquifer annually for a two-lot subdivision. The 18CW3035 Decree also set forth the water use as in house (0.26 annual acre-feet), stockwatering for four large animals or their equivalent (0.05 annual acre-feet), and irrigation of lawn, garden, greenhouse irrigation, structure, and equipment washing (0.28 annual acre-feet). These uses were to be augmented by return flows from the individual non-evaporative septic systems on each lot during the pumping life of the wells, and the 18CW3035 Decree reserved a total of 327 acre-feet for replacement of post-pumping depletion obligations (a 300-year aquifer life/plan for augmentation).

9. The Applicant is the current owner of the following quantities of water in the Denver Basin aquifers underlying their property, as determined in the 18CW3035 Decree:

Aquifer	Annual Amount – 100 years (Acre-Feet)	Annual Amount – 300 years (Acre-Feet)	Total (Acre-Feet)
Dawson (NNT) ¹	11.6	3.87	1160
Denver (NNT – 4%)	11.6	3.87	1160
Arapahoe (NT)	5.53	1.84	553
Laramie-Fox Hills (NT)	3.84	1.28	384

10. The Applicant requested to revise the plan for augmentation decreed in Case No. 18CW3035 as applies to the Applicant’s Property as follows:

¹ The Division Engineer’s Office Summary of Consultation described in Paragraph 6 notes that pumping from the Dawson aquifer in the northern portion of Applicant’s Property does not result in actual stream depletions, but is equal to four percent (4%) of the amount of water withdrawn on an annual basis, or an amount of 0.12 acre-feet per year.

A. Amendment: The structures to be augmented are the Posorski Wells Nos. 1 through 3, as existing and to be constructed to the not-nontributary Dawson aquifer underlying the Applicant's Property, along with any additional or replacement wells associated therewith, to support the subdivision of Applicant's Property into three lots. The Posorski Wells Nos. 1 through 3 may each pump up to 1.0 acre-feet of water per year from the Dawson aquifer under the revised plan for augmentation decreed herein.

B. Uses: Indoor use will utilize an estimated 0.26 acre-feet of water per year per residence, with remaining 0.74 acre-feet per year pumping entitlement available for other uses on the Applicant's Property, including, irrigation of lawn and garden, and the watering of horses or equivalent livestock. The foregoing figures assume the use of three non-evaporative individual septic systems (one per lot) with resulting return flows from each.

C. Depletions: Maximum annual depletions for total residential pumping over the 300-year pumping period amounts to approximately 22.46% of pumping, or 0.67 acre-feet. Applicant is required to replace a maximum of 0.674 acre-feet annually as a result of pumping the Posorski Wells Nos. 1 through 3 (i.e. 22.46% of pumping). Should Applicant's pumping be less than the 3.0 total per year, as described herein, resulting depletions and required replacements will be correspondingly reduced.

D. Augmentation of Depletions During Pumping: Depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is estimated at 10% per year per residence. At the household indoor use rate of 0.26 acre-feet per year, total of 0.78, 0.70 acre-feet is replaced to the stream system per year, utilizing three non-evaporative septic systems. Thus, during pumping, total maximum annual stream depletions of 0.672 acre-feet will be adequately augmented.

E. Augmentation of Post- Pumping Depletions: The previous reservation in the 18CW3035 decree of 327 acre-feet of water in the Laramie-Fox Hills aquifer for the replacement of post-pumping depletions is revised to include a reservation of the entirety of the underlying Laramie-Fox Hills aquifer (384 acre-feet) and 433 acre-feet of the underlying Arapahoe aquifer for replacement of post-pumping depletions which may be associated with the Posorski Wells Nos. 1 through 3, and any additional or replacement wells. The Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. Ground Water modeling indicates that pumping a combined 3.0 acre-feet per year for 300 years results in post-pumping stream depletions of approximately 799.3 acre-feet. The reservation of a total of 817 acre-feet of the nontributary Laramie-Fox Hills and Arapahoe aquifers groundwater results in approximately 800.66 acre-feet of available post-pumping augmentation water, which will

be sufficient to replace post-pumping depletions.

F. Well Permits: Pursuant to C.R.S. §37-90-137(4), upon entry of this Decree and submittal by the Applicant of complete well permit applications and filing fees, the State Engineer shall issue a revised permit for the Posorski Well No. 1, and new well permits for the Posorski Wells Nos. 2 and 3, consistent with and referencing the revised plan for augmentation decreed herein.

11. Consideration has been given to the depletions from Applicant's use and proposed uses of water, in quantity, time and location, together with the amount and timing of augmentation water which will be provided by the Applicant, and the existence, if any, injury to any owner of or person entitled to use water under a vested water right.

CONCLUSIONS OF LAW

12. The application for revised plan for augmentation was filed with the Water Clerk for Water Division 2, pursuant to C.R.S. §§37-92-302(1)(a) and 37-90-137(9)(c.5).

13. The Applicant's request for adjudication of these water rights is contemplated and authorized by law, and this Court and the Water Referee have exclusive jurisdiction over these proceedings. C.R.S. §§37-92-302(1)(a), 37-92-203, and 37-92-305.

14. The Applicant's request for approval of revision to plan for augmentation is contemplated and authorized by law. If administered in accordance with this decree, this revised plan for augmentation will permit the uninterrupted diversions from the well without adversely affecting any other vested water rights in the Arkansas River or its tributaries and when curtailment would otherwise be required to meet a valid senior call for water. C.R.S. §§37-92-305(3),(5), and (8).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

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

16. The Application for Revision to Plan for Augmentation proposed by the Applicant is approved, subject to the terms of this decree.

17. The Applicant has furnished acceptable proof as to all claims and, therefore, the Application for Revision to Plan for Augmentation, as requested by the Applicant, is granted and approved in accordance with the terms and conditions of this decree. Approval of this Application will not result in any material injury to senior vested water rights.

18. Pursuant to C.R.S. §37-92-304(6), the Court shall retain 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, as pertains to the use of Denver Basin groundwater supplies adjudicated herein for augmentation purposes. The court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

19. Pursuant to C.R.S. §37-92-502(5)(a), the Applicant shall install and maintain such water measurement devices and recording devices as are deemed essential by the State Engineer or Division Engineers, and the same shall be installed and operated in accordance with instructions from said entities. Applicant is to install and maintain a totalizing flow meters on the well or any additional or replacement wells associated therewith.

20. The vested water rights, water right structures, and revised plan for augmentation decreed herein shall be subject to all applicable administrative rules and regulations, as currently in place or as may in the future be promulgated, of the offices of Colorado State and Division Engineers for administration of such water rights, to the extent such rules and regulations are uniformly applicable to other similarly situated water rights and water users. The State Engineer shall identify in any permits issued pursuant to this decree the specific uses which can be made of the groundwater to be withdrawn, and shall not issue a permit for any proposed use, which use the State Engineer determines to be speculative at the time of the well permit application or which would be inconsistent with the requirements of this decree, any separately decreed plan for augmentation, or any modified decree and augmentation plan.

21. All other terms and conditions in Case No. 18CW3035 remain in full force and effect.

22. This Ruling of Referee, when entered as a decree of the Water Court, shall be recorded in the real property records of El Paso County, Colorado. Copies of this ruling shall be mailed as provided by statute.

DATED: February 21, 2022.

BY THE REFEREE:



Kate Brewer, Water Referee
Water Division 2



DECREE

THE COURT FINDS THAT NO PROTEST WAS MADE IN THIS MATTER, THEREFOR THE FORGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

DATED: March 15, 2022



BY THE COURT:

A handwritten signature in cursive script that reads "Larry C. Schwartz".

LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2