

AFT Ranch Filing No. 2 SUBDIVISION

WATER RESOURCES REPORT

**for
AFT Ranch Vacate and Replat**

August 27, 2026

Prepared By:



13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921

Executive Summary:

Water Resources Report – AFT Ranch Vacate and Replat (Filing No. 2)

Chris D. Cummins of Monson, Cummins, Shohet & Farr, LLC, on behalf of the Applicants, Charles and Nancy Shea, on behalf of the Charles R. And Nancy K. Shea Living Trust, and on behalf of AFT Ranch, LLC, Nancy K. Shea Manager (collectively “Applicant”), provides the following Water Resources Report in support of the AFT Ranch Vacate and Replat (a/k/a AFT Ranch Filing No. 2), which concerns the re-subdivision of Lot 1 of the previously approved AFT Ranch Filing No. 1 (“Subdivision”). The attorneys at Monson, Cummins, Shohet & Farr, LLC (“MCSF”) have extensive experience in water related matters, with Mr. Cummins having practiced water law and related land use matter for in excess of 23 years. Mr. Cummins has substantial experience with Denver Basin groundwater resources, augmentation plans, designated basin replacement plans, subdivision proceedings, and rural water usage. Given his experience, Mr. Cummins should be considered a “qualified professional” as concerns water resources, as discussed at Section 8.4.7(B)(1)(c) of the El Paso County Land Development Code. This Report is intended to demonstrate to the El Paso County Planning Staff, the Planning Commission, and the Board of County Commissioners the sufficiency in terms of quantity and dependability of the water rights and resources to be utilized in the Subdivision.

I. INTRODUCTION.

The purpose of this report is to provide a preliminary outline of the water resources, and associated wastewater requirements, necessary for approval of the Subdivision, as proposed.

1.1 New Development Description: The property where the Subdivision will be located consists of approximately 34.062 acres located in the SE¼ SE¼ of Section 15, Township 12 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado, with current El Paso County Assessor Parcel No. 6215401003 (“Property”). The proposed Subdivision includes two (2) residential lots, Lots 1A and 1B, with an existing home upon Lot 1A. The two (2) residential lots in the Subdivision are to be provided water and sewer/septic services through on-site individual wells and Individual Septic Disposal Systems (“ISDS”). There are two existing wells on the Property permitted under Colorado Division of Water Resources Well Permit Nos. 82423-F and 80236-F for purposes consistent with the Augmentation Plan decreed by the Division 2 Water Court in Case No. 13CW2, as constructed to the Denver aquifer. These wells will be maintained for provision of water service to the dwellings and structures located on Lot 1A of the Subdivision, though re-permitted to remain consistent with the terms and conditions of Case No. 13CW2 as described in more detail below. A new Denver Well will be constructed on Lot 1B for provision of water service to dwellings and structures thereon. There is a fourth such Denver aquifer well permitted and operating on what is Lot 2 of AFT Ranch Filing No. 1, DWR Permit No. 79187-F. All of the existing wells, and the new Denver aquifer well for Lot 1B, will be re-permitted to operate pursuant to and consistent with the previously decreed plan for augmentation described in the decree in Case No. 13CW2, a copy of which is attached as **Exhibit A**. As shown on the **Exhibit B** map, the two (2) residential lots, Lot 1A and Lot 1B, subject of this Subdivision will be approximately

28.980 acres and 5.050 acres in size, respectively.

The decree in Case No. 13CW2 provides for multiple well pumping scenarios based upon how many wells are being utilized within the AFT Ranch project. Presently, with three wells permitted (two upon what will become Lot 1A, and one upon Lot 2), each well is permitted to pump 1.094 acre feet annually, based upon the 300-year schedule prescribed by the El Paso County Land Development Code. With a fourth well to be constructed on what will become Lot 1B, each well will have reduced production of 1.011 acre feet annually, and each well must be permitted/re-permitted accordingly. Should at some point in the future a fifth well be constructed (which is not anticipated as part of this Subdivision), each well will be reduced to a maximum of 0.801 acre feet annually. These terms and conditions are expressly provided in the decree for Case No. 13CW2, and compliance by all lot owners with AFT Ranch with such terms and conditions is mandated by restrictive covenants prepared during this Subdivision process.

There is an existing home and an alternative dwelling unit/bardominium located on Lot 1A of the Subdivision, and it is expected that a single family home will be developed upon Lot 1B. While the Plan for Augmentation decreed in Case No. 13CW2 conservatively presumes indoor residential uses of 0.2 acre feet for each residence, consistent with the El Paso County Land Development Code, it is presumed that on each residence in the Subdivision will require an average of 0.26 annual acre-feet of water supply for such indoor uses, for a total of 0.78 annual acre feet of pumping between the three wells (Lot 1A primary residence and ADU, Lot 1B primary residence) for such purposes. The remaining 2.253 acre feet of annual pumping available to the three wells within the Subdivision (0.751 acre feet per well) will be available for all other accessory water uses as described in Case No. 13CW2.

The water resources to be utilized on the residential lots in the Subdivision are typical of rural residential development in El Paso County, Colorado. This demonstrates a sufficient quantity and reliability of water to support compliance with El Paso County's 300-year water supply rules for subdivisions of this nature. Applicant has provided the County with a separate Water Quality Report prepared by Applicant's engineering consultants at RESPEC.

II. PROJECTION OF WATER NEEDS

2.1 Analysis of Water Demands: As introduced above, it is expected that the two (2) residential lots within this Subdivision will utilize individual wells drilled to the Denver aquifer for each residence located thereon. Such individual wells will each be used for domestic use within a single family dwelling, along with all accessory water uses described in Case No. 13CW2, to include commercial (sanitary and drinking water only), for a stand alone office or guest cottage, for a hot tub/spa and/or swimming pool, for stock water, for landscape irrigation, for dust suppression, for fire fighting, and for augmentation purposes as concerns replacement of depletions from the pumping of the wells. There are two existing wells within the Subdivision (on Lot 1A – Permit Nos. 82423-F and 80236-F) and one additional existing well that is likewise subject of the Plan for Augmentation described in Case No. 13CW2 (Lot 2 of AFT Ranch Filing No. 1, Permit No. 79187-F), with all such wells constructed to the Denver aquifer. It is anticipated that each of the residences served by a well will utilize a maximum total of 1.011 acre-feet of water per year, with 0.26 acre-feet presumed to be used in-house, consistent with

Section 8.4.7(B)(7)(d) of El Paso County Land Development Code, and the restrictions of Case No. 13CW2.

All wells will produce from the not-nontributary Denver aquifer at a flow rate of up to 15 gallons per minute, based upon existing production. Based on past experience with the numerous Denver aquifer wells serving rural residential properties throughout El Paso County, this rate of production should be more than sufficient to meet demand for in-house and accessory uses. All existing wells and the new Denver well for Lot 1B will be repermited/permited for maximum pumping of 1.011 acre feet annually, as required by the decree in Case No. 13CW2.

III. PROPOSED WATER RIGHTS AND FACILITIES

3.1 Water Rights: The decree in Case No. 13CW2 adjudicated the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers beneath the AFT Ranch Filing No. 1 property, finding that the Dawson, Denver, and Arapahoe aquifers at this location are not-nontributary. As such, the non-exempt uses of the Denver aquifer must be made in accordance with a decreed plan for augmentation, pursuant to C.R.S. § 37-90-137(9)(c.5). The Laramie-Fox Hills aquifer beneath the Property is nontributary in nature, so no plan for augmentation is necessary for its use, and it is likewise available for replacement of any post-pumping depletions, as described in Case No. 13CW2. The decree in Case No. 13CW2 vested the following specific quantities of water:

AQUIFER	Saturated Thickness (ft)	Total Water Adjudicated (Acre Feet)	Annual Average Withdrawal – 300 Years (Acre Feet)
Dawson (NNT)	10	79	0.263
Denver (NNT)	400	2,695	9.00
Arapahoe (NNT)	270	1,819	6.07
Laramie-Fox Hills (NT)	190	1,130	3.76

All depletions created by use of the not-nontributary Denver aquifer will be augmented in time, place, and amount through septic return flows during pumping, and post-pumping depletions will be augmented with nontributary Laramie-Fox Hills aquifer groundwater water underlying the Property. The available supplies will meet both legal and physical needs on a 300-year basis.

3.2 Source of Supply: Rural residential water supply demand will be met using three (3) not-nontributary Denver aquifer formation wells, including the two existing wells on Lot 1A, in accordance with the decree in Case No. 13CW2. Consistent with El Paso County Land Development Code Section 8.4.7(B)(3)(c)(v), a subdivision utilizing individual wells need not make a further showing as to source of supply.

3.3 Pumping Rates for Service: The Denver aquifer in the location of the Subdivision is generally known to produce approximately 15 gallons per minute, more than sufficient for

single family residential and accessory uses. Such flow rates are typical of individual wells on subdivisions to the north of the City of Colorado Springs, including for firefighting purposes.

3.4 Water Quality: All wells to be drilled to serve the Subdivision will be to the non-tributary Denver aquifer. Applicant provided County Planning Staff with a separate Water Quality Report prepared by Applicant's engineering consultants at RESPEC, demonstrating that all constituents and compounds legally enforceable for public health purposes were below MCL/SMCL levels.

IV. WASTEWATER AND WASTEWATER TREATMENT. While soils, geology, and geotechnical analysis may be provided, if necessary, by other of Applicant's consultants, Applicant provides a summary of ISDS to be utilized herein, as relates to water usage and resulting return flows.

4.1 Septic/Wastewater Loads: Septic projections are based on similar Denver Basin residential uses on rural residential lots. Average daily wastewater loads are expected to be approximately 180 gallons per day per single-family residence. Maximum daily wastewater loads are expected to be roughly 210 gallons per day per single-family residence, assuming residential in-house use at the 0.26 acre-feet per year rate described in the El Paso County Land Development Code.

4.2 On-Site Wastewater Treatment Systems: The two (2) residential lots within the Subdivision will each be served by at least one non-evaporative ISDS, as the decree in Case No. 13CW2 anticipates an ISDS to be utilized for each well (Lot 1A currently has two separate ISDS for the dwellings served by the existing wells). The ISDS for Lot 1B will be constructed upon approval of the Subdivision. All ISDS will be evaluated and installed according to El Paso County Guidelines and properly permitted and maintained to prevent contamination of surface and subsurface water resources.

Respectfully submitted this ___ day of August 2026.

MONSON, CUMMINS, SHOHET & FARR, LLC

Chris D. Cummins

Exhibits:

- A – Decree in Case No. 13CW2, District Court, Water Division 2
- B – Location Map/Initial Sketch of Property/Subdivision
- C – Form Deed for Lots 1A and 1B of Subdivision
- D – Correction Deed for Lot 2, AFT Ranch Filing No. 1

DISTRICT COURT, WATER DIVISION 2 Pueblo County Judicial Building 320 W. 10 th Street Pueblo, Colorado 81003	DATE FILED: May 28, 2014 1:00 PM CASE NUMBER: 2013CW2
Concerning the Application for Water Rights of: AFT RANCH, LLC In the Arkansas River and its tributaries In El Paso County	<u>Exhibit A</u> ▲ COURT USE ONLY ▲
	Cons. Case Nos.: 2013CW2 (Div. 2) and 2013CW3 (Div. 1)
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

FINDINGS OF FACT

I. Jurisdictional Facts.

1. The original application in this case was filed by Twinflower Point, LLC, Nancy K. Shea, Mgr., 9950 Highland Glen Place, Colorado Springs, CO 80920, phone 719.633.7999. On April 11, 2014, Twinflower Point, LLC moved that AFT Ranch, LLC be substituted for it as the applicant in this case, which motion was granted. The applicant at the time of entry of this decree is AFT Ranch, LLC, Nancy K. Shea, Manager, 3655 Camel Grove, Colorado Springs, CO 80904, phone number 719.633.7999.

2. The application was filed in Water Divisions 1 and 2 on January 11, 2013. The application was published in the resumes for Water Divisions 1 and 2 and in a newspaper of general circulation in El Paso County, as required by law. The publication costs have been paid.

3. There are no liens or encumbrances of record against the Property; thus, the notice provisions of C.R.S. §37-92-302(2)(b) do not apply.

4. A timely statement of opposition was filed by Kettle Creek, LLC, which has stipulated to entry of this ruling. The time for filing of statements of opposition has expired. No motions to intervene have been filed.

5. The Applicant filed a motion to consolidate the Water Division 1 and 2 applications in Water Division 2. That motion was granted on April 30, 2013.

6. The land and water involved herein are not within a designated ground water basin.

II. Denver Basin Water Rights.

7. Applicant owns 39.076 acres of land in El Paso County located in the SE 1/4 Section 15, T. 12 S., R. 66 W., 6th P.M. (the "Property"), as shown on Exhibit B. The legal description is attached as Exhibit A. In addition, Applicant claims the right to appropriate the water underlying a strip of land 30 feet by 880.31 feet, which represents the west half of Howells Road where it is adjacent to the Property. Thus, the total amount of land surface beneath which Applicant claims the right to appropriate the ground water is 39.635 acres. A letter and a copy of the application in this case were sent to the El Paso County Board of County Commissioners by certified mail, return receipt requested, indicating Applicant's intention to appropriate the water underlying the west half of Howells Road.

8. The water in the Dawson, Denver, and Arapahoe aquifers is not nontributary. Water in the Laramie-Fox Hills aquifer underlying the Property is nontributary. The depth below surface of the tops and bottoms of the aquifers are approximately as follows:

Dawson aquifer:	near surface to 165 feet
Denver aquifer:	195 feet to 960 feet
Arapahoe aquifer:	1,050 feet to 1,555 feet
Laramie-Fox Hills aquifer:	1,995 feet to 2,275 feet

9. Based on the saturated thickness for each aquifer underlying the Property, as determined by the State Engineer, the amount of water which Applicant may appropriate is as shown on Table 1:

TABLE 1

Aquifer	Acreage	Specific Yield	Saturated Thickness (ft)	Total Storage (AF)	Ave. Annual Diversion (AF) ¹
Dawson	39.635	.20	10	79	0.79
Denver	39.635	.17	400	2,695	27.0
Arapahoe	39.635	.17	270	1,819	18.2
Laramie-Fox Hills	39.635	.15	190	1,130	11.3

10. Applicant will withdraw water from up to five wells in the Denver aquifer, one of which may be existing well 21806-A, and one well in each other aquifer. After entry of a decree in this case, permit no. 21806-A will either be re-permitted and operated pursuant to the plan for augmentation decreed herein, or will be plugged and abandoned. All such wells may be constructed at any location on the Property, provided, however, that no wells may be located within 50 feet of the Property boundary. Applicant waives the 600 foot spacing requirement for all wells located on the Property. The plan for augmentation decreed herein does not include withdrawals from a well completed into either the Dawson aquifer or the Arapahoe aquifer, and such withdrawals are not authorized by the decree in this case.

11. Subject to the terms, conditions and limitations of this decree, and the issuance by the State Engineer of a well permit that authorizes the specific use or uses, the water rights are decreed for all beneficial uses except municipal uses.

III. Plan for Augmentation.

12. This plan for augmentation is designed to meet all statutory requirements for the replacement of depletions associated with the pumping of up to five wells in the Denver aquifer. Each of such wells would be used to supply water for indoor uses in a single family dwelling on each lot, for commercial uses (sanitary and drinking water only), for a

¹ Based on a 100 year aquifer life.

stand-alone office or guest cottage, for a hot tub/spa and/or swimming pool, for stock water, for landscape irrigation, for dust suppression, for fire-fighting, and for augmentation of depletions in this plan for augmentation through ISDS return flows.

13. The State Engineer has stated in an informal guideline that conservatively, each residence will utilize no less than 0.2 acre foot annually for indoor uses. Disposal of water used indoors for the single family dwellings shall be by nonevaporative septic tanks and leach fields. Consumption of water used for indoor uses and so disposed of is generally agreed to equal no more than 10 percent of diversions, creating annual septic system return flows of approximately 90 percent of diversions. Assuming delivery for indoor residential use of 0.20 acre foot, return flows would be 0.18 acre foot per dwelling. This augmentation plan is designed so septic system return flows will be sufficient to replace stream depletions at all times during a 300 year pumping period. Provided that well pumping is both made and limited in accordance with the terms and conditions of this decree, Applicant's use of the remainder of the allowed annual pumping amounts from the wells – i.e., that amount which is in excess of 0.20 acre foot per residence per year – does not need to be restricted as to type or place of use in order to prevent injury to the owners of or persons entitled to divert water under vested or conditionally decreed water rights. However, as set forth in paragraph 32 of this decree, such additional uses are subject to the State Engineer's discretion to deny a well permit for uses that the State Engineer determines to be speculative at the time of the application for the permit.

14. The amount of Laramie-Fox Hills aquifer water decreed herein is 1130 acre feet. To account for the two percent relinquishment requirement of Rule 8 of the Denver Basin Rules, 2 CCR 402-6, the amount of Laramie-Fox Hills water available to replace post-pumping depletions is 98% of 1,130 acre feet, or 1107.4 acre feet.

15. The State Engineer's office has determined that at the end of pumping from the Denver aquifer for a period of 300 years, depletions which have been "felt" by the stream system will equal 7.8 percent of cumulative pumping; hence, post-pumping depletions will equal 92.2 percent of the cumulative amount pumped. Thus, the maximum amount of Denver aquifer water which can be pumped without resulting in post-pumping depletions which exceed the amount of available Laramie-Fox Hills aquifer water equals 1,201.1 acre feet, i.e., $1107.4 / .922 = 1,201.1$ acre feet, or an average annual amount of 4.004 acre feet. Pumping 4.004 acre feet annually over 300 years will result in depletions during the pumping period of 93.7 acre feet, and in post-pumping depletions of 1,107.4 acre feet.

16. Maximum depletions during the pumping period from annually pumping 4.004 acre feet would occur in the 300th year and will equal 0.659 acre feet, or 16.46 percent of annual pumping. The annual return flows from four or five septic systems, at 0.18 acre foot annually per septic system, would be sufficient to replace all depletions caused by pumping 4.004 acre feet during each year of pumping. The maximum annual amount per well which may be pumped will vary depending upon the number of wells ultimately constructed:

One, two or three wells: 1.094 acre feet (356,481 gallons) per well;

Four wells: 1.001 acre feet (326,177 gallons) per well;

Five wells: 0.801 acre foot (261,007 gallons) per well.

In the event that the number of wells is increased from three to four wells or from four to five wells at any time during the pumping period, the then-owners of the wells shall file applications for new well permits for their wells, which permit shall reflect the reduced allowable annual pumping from each well as described in this paragraph, and shall reduce their annual pumping so as to be in compliance with the applicable annual pumping limit.

17. Replacement of post-pumping depletions.

A. Duration of replacements. With respect to the Denver aquifer, the Property is closer than one mile to any point of contact between any natural surface stream, including its alluvium, and the aquifer. Unless modified by the Court under its retained jurisdiction, Applicant shall replace after pumping ceases the actual out of priority depletions to the stream caused by prior pumping of the Denver aquifer wells. The Court finds that this requirement is adequate to comply with existing law and to prevent injury to others.

B. When the post-pumping obligation begins. The requirement to replace post-pumping depletions shall occur on the earliest of the following events: (1) when 1,201.1 acre feet have been pumped from all such wells in combination, or (2) when ten consecutive years have passed with no pumping from any of the Denver aquifer wells, or (3) when Applicant or its successors acknowledge in writing that all withdrawals for beneficial use from the Denver aquifer wells have permanently ceased, or (4) the accounting shows that return flows from use of the withdrawn water are insufficient to replace stream depletions from prior pumping of the Denver

aquifer well(s). When the obligation to replace such post-pumping depletions commences, Applicant or its successors shall at that time cause a depletion analysis to be conducted, using the best information and computer model available at that time, to calculate the amount and timing of post-pumping depletions attributable to such pumping which must be replaced, based on actual withdrawals over the applicable pumping period. That amount of water shall then be pumped at the appropriate times from the Laramie-Fox Hills aquifer as decreed herein, or shall be made available from such other source of water as receives judicial approval after notice, and delivered to the Arkansas River system in a manner that will adequately replace all depletions from pumping of the Denver aquifer wells approved by this decree or any replacement or additional wells constructed on the Property. Applicant or its successors in interest shall be required by the terms of this decree to construct a Laramie-Fox Hills aquifer well pursuant to this plan for augmentation unless a different source of water is approved by the Court for replacement of post-pumping depletions, or unless the replacement obligation is modified or terminated pursuant to the Court's retained jurisdiction.

C. Reservation of Laramie-Fox Hills aquifer water. All 1,130 acre feet of the Laramie-Fox Hills aquifer water shall be reserved for the replacement of post-pumping depletions under this plan for augmentation.

D. Applicant or its successors in interest may petition the Court under retained jurisdiction to modify or terminate the requirement to replace post-pumping depletions or to utilize a source of augmentation water other than the Laramie-Fox Hills aquifer water reserved herein. In such a proceeding, the Court may modify or terminate the dedication of the Laramie-Fox Hills aquifer water, if appropriate, and the ownership thereof shall be allocated among the surface owners based on their *pro rata* ownership of the surface of the Property, excluding the portion which is located on the west half of Howells Road. Unless and until the reservation is modified by the Court, the reserved Laramie-Fox Hills aquifer water shall be appurtenant to the Property and its use shall be limited as described herein.

18. All septic and irrigation return flows are dedicated to this plan for augmentation, and shall not be sold, leased or otherwise used for any other purpose. Such return flows are necessary to provide an adequate source of water to replace stream depletions during the pumping period under the plan for augmentation as decreed. Accordingly, the Denver aquifer ground water described in the plan for augmentation may be withdrawn and used so long as: (1) there is a well on each lot which provides water to a

single family dwelling on that lot for indoor residential use (to ensure maintenance of septic system return flows); (2) the Denver aquifer wells' withdrawals are made and limited as described herein; (3) the State Engineer has approved the uses to be made and such uses are not inconsistent with this decree and the plan for augmentation approved herein, or any modified decree and plan; and (4) replacement of post-pumping depletions is made in accordance with the requirements of this decree or any modified decree.

19. All wells permitted pursuant to this decree shall be equipped with a properly installed and calibrated totalizing flow meter. Well owners shall record metered usage on a monthly basis, and shall submit reports of such pumping as required by the water commissioner, but no less frequently than annually.

20. The Court finds that under the terms and conditions herein the requirements of C.R.S. §37-90-137(9)(c.5) have been met, and that no injury will be caused to the owner of or anyone entitled to use water under a vested water right or decreed conditional water right.

CONCLUSIONS OF LAW

21. The foregoing Findings of Fact are incorporated herein as part of these Conclusions of Law.

22. Applicant's application in this case is contemplated and authorized by law. See C.R.S. § 37-90-137(9)(c.5).

23. The Water Court has exclusive subject matter jurisdiction over this case pursuant to C.R.S. § 37-92-203 (1), and has personal jurisdiction over every person who could have appeared herein through publication of adequate notice. *In re Water Rights of Columbine Associates*, 993 P.2d 483 (Colo. 2000).

24. All conditions precedent to the granting of this decree have been performed.

25. The plan for augmenting depletions caused by pumping the not nontributary Denver aquifer is required by C.R.S. §37-90-137(9), and is subject to the requirement of C.R.S. §37-92-305(3) and 305(8) that no injury will occur to the owners of or persons entitled to use water under an absolute water right or decreed conditional water right as a result of implementing such plan for augmentation. Applicant has complied with all the conditions of C.R.S. §37-92-305(3), (8) and all other relevant statutes.

26. Applicant can maintain dominion and control over the septic system return flows by determining the quantity of such return flows, as set forth above, and thus has the legal ability to use said return flows in this plan for augmentation. See, Public Service Co. v. Willows Water District, 856 P.2d 829 (Colo. 1993). Additionally, Applicant has the right to appropriate the Denver Basin water underlying the county roads adjoining its lot, to the center of those roads. Such right is based on the holding in *Near v. Calkins*, 946 P.2d 537, 541 (Colo.App. 1997) that in a common law dedication of county roadways to the public, as was the case for Applicant's property, "the owner of a platted lot in a subdivision owns to the center of the abutting street," and that the county's interest in such roads is an easement.

JUDGMENT AND DECREE

27. The forgoing findings of fact and conclusions of law are hereby incorporated into this judgment and decree.

28. Decreed Denver Basin water rights. Subject to the use requirements and limitations set forth in paragraph 11, above, and the other terms and conditions herein:

A. Applicant is awarded a vested right to the ground water from the not nontributary Dawson aquifer underlying the Property, in the amount of 79 acre feet, subject to modification by the Court under its retained jurisdiction. Such water may be pumped only pursuant to a separate court-approved plan for augmentation. The plan for augmentation decreed herein does not include withdrawals from the Dawson aquifer, and this decree does not authorize the pumping of the Dawson aquifer quantified in this case.

B. Applicant is awarded a vested right to the ground water from the not nontributary Denver aquifer underlying the Property, in the amount of 2,695 acre feet, subject to modification by the Court under its retained jurisdiction. Up to 1,201.1 acre feet are dedicated to and may only be pumped pursuant to the plan for augmentation decreed herein; the remaining Denver aquifer water (1,493.9 acre feet) may be pumped only pursuant to a separate court-approved plan for augmentation. The plan for augmentation decreed herein does not include withdrawals of this remaining Denver aquifer water, and this decree does not authorize the pumping of any Denver aquifer wells to produce this remaining

amount.

C. Applicant is awarded a vested right to the ground water from the not nontributary Arapahoe aquifer underlying the Property, in the amount of 1,819 acre feet, subject to modification by the Court under its retained jurisdiction. The Arapahoe aquifer water may be pumped only pursuant to a separate court-approved plan for augmentation. The plan for augmentation decreed herein does not include withdrawals from the Arapahoe aquifer water, and this decree does not authorize the pumping of the Arapahoe aquifer water quantified in this case.

D. Applicant is awarded a vested right to the ground water from the nontributary Laramie-Fox Hills aquifer underlying the Property, in the amount of 1,130 acre feet, subject to modification by the Court under its retained jurisdiction. This water is all reserved for the replacement of post-pumping depletions pursuant the plan for augmentation decreed herein. Said reservation may be modified or terminated upon the determination of the Court under its retained jurisdiction described in Paragraph 36, that a different source of augmentation water be substituted for the Laramie-Fox Hills aquifer water, or that replacement of post-pumping depletions is no longer necessary to prevent injury to the owners of vested or conditionally decreed water rights.

E. The water rights so decreed are vested water rights, but shall not be administered in accordance with priority of appropriation and no applications for findings of diligence are required. Pursuant to C.R.S. §37-92-305(11), the Court will retain jurisdiction to finally determine the amount of water available for appropriation, based on site-specific data when it becomes available, and to adjust upward or downward as appropriate the amount available for withdrawal from each aquifer. The Applicant need not refile, republish, or otherwise amend this decree to request or obtain such adjustment.

29. Approval of plan for augmentation.

A. The plan for augmentation described herein is approved. Depletions caused by pumping water from the Denver aquifer shall be replaced as provided and decreed herein, subject to modification by the Court pursuant to its retained jurisdiction. The State or Division Engineer shall curtail the pumping of more than

the amounts described herein from the Denver aquifer wells absent prior modification of this plan for augmentation by amendment of this decree or court approval of an additional plan for augmentation which replaces depletions attributable to such additional pumping, and shall administer the plan and well pumping in accordance with the requirements of this decree. Pursuant to C.R.S. §37-92-305(8), the State Engineer shall also curtail all diversions, the depletions from which are not replaced in a manner to prevent injury to vested water rights or decreed conditional water rights. To ensure that depletions during the pumping period are being replaced, each Denver aquifer well must supply water to a residence utilizing a nonevaporative septic system as described herein, in order to use additional water for any other beneficial uses.

B. Limitations on annual withdrawals from augmented wells.

(1) Total annual withdrawals from the Denver aquifer shall not exceed a maximum of 4.004 acre feet, or such lesser amount as is authorized under the plan for augmentation described herein. It is anticipated that at least two Denver aquifer wells will be used on the Property, but only one well is also acceptable. If one, two or three wells are constructed, each well shall be allowed to pump a maximum of 1.094 acre feet (356,481 gallons) annually.

(2) Four Denver aquifer wells shall each be limited to annual withdrawals of 1.001 acre feet.

(3) Five Denver aquifer wells shall each be limited to annual pumping of 0.801 acre feet.

30. Prior to implementation of this decree, Applicant shall create and record restrictive covenants reserving and dedicating to the plan for augmentation 1,201.1 acre feet of Denver aquifer water and requiring Applicant and its successors to use nonevaporative septic systems for wastewater disposal, and which inform subsequent purchasers of the requirements of this decree and plan for augmentation, including the requirement to construct a Laramie-Fox Hills aquifer well or take other measures as necessary to replace post-pumping depletions. Said covenants shall indicate clearly that failure of the property owner to comply with the terms of this decree may result in an order from the State Engineer's office to curtail pumping of the Denver aquifer wells. This decree

and the restrictive covenants shall be recorded in the El Paso County records, so that a title examination of the Property will reveal to all future purchasers of the existence of the decree and restrictive covenants. Said covenants shall be amended as necessary to conform to the provisions of any amendment to this augmentation plan. Any proposed change in the method of wastewater treatment and disposal shall require water court approval after notice in the water resume and publication in a newspaper of general circulation in El Paso County. Upon recording, this decree shall constitute a covenant running with the Property, benefitting and burdening said land and requiring compliance with its terms and conditions. Applicant and its successors in interest shall be bound by such covenant. The covenant shall be for the benefit of, and enforceable by, third parties owning vested water rights that would be injured by the failure to provide for the replacement of depletions from pumping of the Denver aquifer wells as decreed herein, and specific performance shall be a remedy available to such third parties against the owner(s) of the Property and Denver aquifer wells.

31. Because the Dawson, Denver, and Arapahoe aquifer water may be pumped only pursuant to a court-approved plan for augmentation, and because all of the Laramie-Fox Hills aquifer water is reserved for use as an augmentation supply for the replacement of post-pumping depletions in the plan for augmentation approved herein, the “water banking” provision of 2 CCR 402-7, Rule 8.A, does not apply to those water rights.

32. Within 90 days after a subdivision plat of the Property is recorded in the records of the El Paso County Clerk and Recorder, Applicant shall either plug and abandon or apply for a new well permit for the existing Denver aquifer well - permit no. 21806-A. The State Engineer shall issue a new permit for such well, or for any other well applied for on the Property, consistent with the terms of this decree and all applicable statutes and rules. The State Engineer shall identify the specific uses which can be made of the ground water to be withdrawn, and shall not issue a permit for any proposed use by the wells approved herein, which use the State Engineer determines to be speculative at the time of the application, or which would be inconsistent with the requirements of this decree and the plan for augmentation approved herein, or any modified decree and plan. If the average allowed annual amounts decreed herein are adjusted by the Court, Applicant shall obtain, as necessary, new well permits to reflect the adjusted amounts.

33. All new wells on the Property must be constructed pursuant to applicable Colorado laws and regulations of the Division of Water Resources. Each well must be

equipped with a totalizing flow meter. All wells shall be cased so as to prevent withdrawal of water from more than one aquifer. The State Engineer may require new wells to be geophysically logged.

34. Pursuant to C.R.S. §37-92-304(6), the Court retains jurisdiction over the plan for augmentation decreed herein for a period of ten years from the date of entry of this decree for reconsideration of the question whether the provisions of this decree are necessary and/or sufficient to prevent injury to the vested water rights of others.

35. The Court shall also retain jurisdiction for so long as Applicant is required to replace depletions to the Arkansas River system, to determine whether the replacement of all depletions to the Arkansas River system, and none to the South Platte River system, is causing material injury to water rights tributary to the South Platte River. Any person may invoke the Court's retained jurisdiction at any time Applicant is causing depletions (including ongoing post-pumping depletions) to the South Platte River system, and is replacing such depletions to the Arkansas River system. The person invoking the Court's retained jurisdiction shall have the burden of establishing a *prima facie* case that Applicant's failure to replace depletions to the South Platte River system is causing injury to water rights owned by the person invoking the Court's retained jurisdiction, except that the State and Division Engineers may invoke the Court's retained jurisdiction and establish a *prima facie* case that injury is occurring to any vested or conditionally decreed water rights. Applicant shall retain the ultimate burden of proving that no injury is occurring, or shall propose terms and conditions which prevent such injury. Among any other remedies it may impose, the Court may require that Applicant replace depletions to the South Platte River system.

36. The Court also retains jurisdiction for so long as Applicant is required to replace depletions to the Arkansas River system, for the purposes of determining compliance with the terms of the augmentation plan, and to reconsider the post-pumping depletion replacement obligation for the Denver aquifer withdrawals and the reservation of all or some of the Laramie-Fox Hills aquifer water for the replacement of post-pumping depletions. Any person seeking to invoke the retained jurisdiction of the Court pursuant to this paragraph shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the decree shall set forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to effect the petition. The person lodging the petition shall have the burden of

going forward and establishing a *prima facie* facts alleged in the petition. If the Court finds those facts to be established, Applicant shall thereupon have the burden of proof to show: (1) that any modification sought by Applicant will prevent injury to other appropriators, or (2) that any modification sought by the person filing the petition is not required to prevent injury to other appropriators, or (3) that any term or condition proposed by Applicant in response to the petition does prevent injury to other appropriators.

37. **No Precedent.** The Findings of Fact, Conclusions of Law, Ruling and Decree were completed as the result of substantial discussions, negotiations and compromises by, between and among Applicant and the Objectors herein pertaining to all parts of the Findings of Fact, Conclusions of Law, Ruling and Decree. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. All parties stipulate and agree that they do not intend the Findings of Fact, Conclusions of Law, Ruling and Decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties further stipulate and agree that they each reserve the right to propose or challenge any legal or factual position in any other matter filed in this or any other court without limitation by these Findings of Fact, Conclusions of Law, Ruling and Decree.

Dated: May 6, 2014.



Marcus R. Dittmer

Water Referee
Water Division 2

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

Dated: May 28, 2014.

BY THE COURT:


LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2

EXHIBIT A

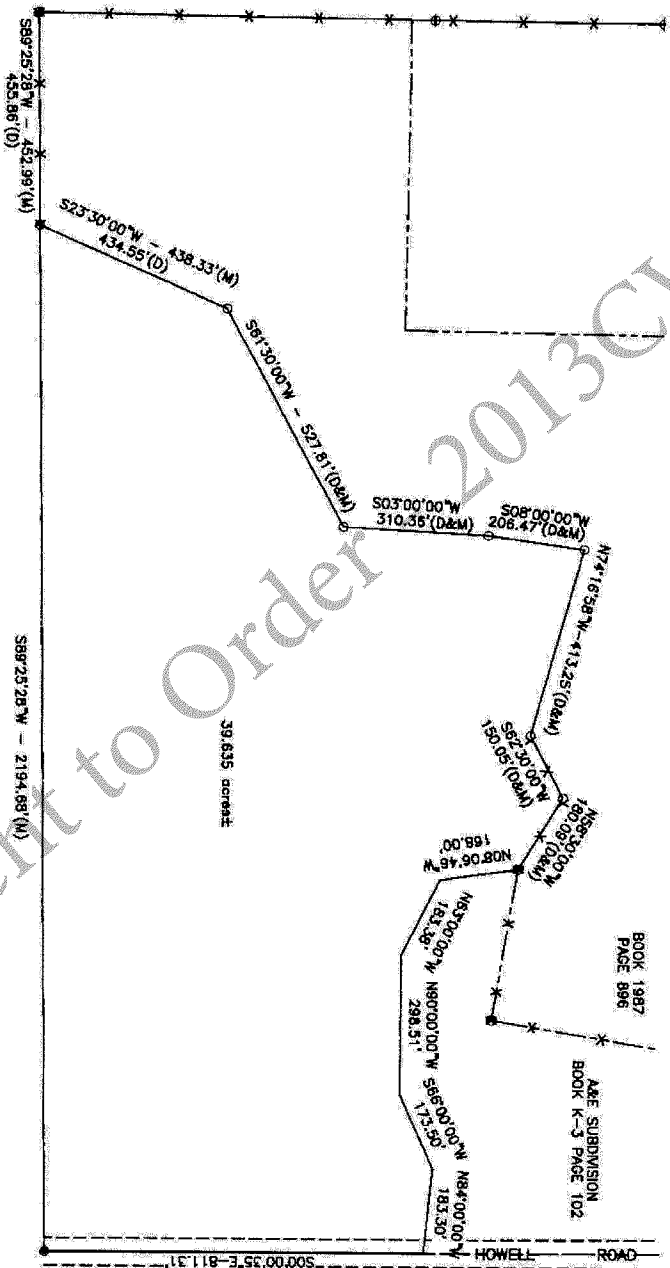
PARCEL A:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 15, RUN THENCE NORTHERLY ALONG THE EAST LINE OF SAID SECTION 15, A DISTANCE OF 811.33 FEET; THENCE ANGLE LEFT 84 DEGREES 00 MINUTES 00 SECONDS WESTERLY 183.30 FEET; THENCE ANGLE LEFT 30 DEGREES 00 MINUTES 00 SECONDS WESTERLY 173.50 FEET; THENCE ANGLE RIGHT 24 DEGREES 00 MINUTES 00 SECONDS WESTERLY 298.51 FEET; THENCE ANGLE RIGHT 27 DEGREES 00 MINUTES WESTERLY 183.38 FEET; THENCE ANGLE RIGHT 70 DEGREES 30 MINUTES NORTHERLY 167.03 FEET; THENCE ANGLE LEFT 66 DEGREES 00 MINUTES NORTHWESTERLY 180.09 FEET; THENCE ANGLE LEFT 59 DEGREES 00 MINUTES SOUTHWESTERLY 150.05 FEET; THENCE ANGLE RIGHT 35 DEGREES 30 MINUTES NORTHWESTERLY 409.58 FEET; THENCE ANGLE LEFT 90 DEGREES 00 MINUTES SOUTHERLY 151.47 FEET; THENCE ANGLE LEFT 5 DEGREES 00 MINUTES SOUTHERLY 310.36 FEET; THENCE ANGLE RIGHT 58 DEGREES 30 MINUTES SOUTHWESTERLY 527.81 FEET; THENCE ANGLE LEFT 38 DEGREES 00 MINUTES SOUTHWESTERLY 434.55 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 15; THENCE EASTERLY ON THE SOUTH LINE OF SAID SECTION 15 A DISTANCE OF 2192.65 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 15, RUN THENCE NORTHERLY ALONG THE EAST LINE OF SAID SECTION 15 A DISTANCE OF 811.33 FEET; THENCE ANGLE LEFT 84 DEGREES 00 MINUTES 00 SECONDS WESTERLY 183.30 FEET; THENCE ANGLE LEFT 30 DEGREES 00 MINUTES 00 SECONDS WESTERLY 173.50 FEET; THENCE ANGLE RIGHT 24 DEGREES 00 MINUTES 00 SECONDS WESTERLY 298.51 FEET; THENCE ANGLE RIGHT 27 DEGREES 00 MINUTES WESTERLY 183.38 FEET; THENCE ANGLE RIGHT 70 DEGREES 30 MINUTES NORTHERLY 167.03 FEET; THENCE ANGLE LEFT 66 DEGREES 00 MINUTES NORTHWESTERLY 180.09 FEET; THENCE ANGLE LEFT 59 DEGREES 00 MINUTES SOUTHWESTERLY 150.05 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE ANGLE RIGHT 35 DEGREES 30 MINUTES WESTERLY 409.58 FEET; THENCE ANGLE RIGHT 90 DEGREES NORTHERLY, 55.0 FEET; THENCE ANGLE RIGHT 97 DEGREES 43 MINUTES 02 SECONDS SOUTHEASTERLY, 413.25 FEET TO THE POINT OF BEGINNING.

EXHIBIT B



LAND DESCRIPTION:

A tract of land located in the Southeast One-Quarter (S.E. 1/4) of Section 15, Township 12 South, Range 66 West of the 6th P.M., County of El Paso, State of Colorado.

For and on Behalf of
Pinnacle Land Surveying Co., Inc.
John W. Towler
P.L.S. #25968

Street Address: 11550 Howells Road, Colorado Springs, CO

Pinnacle Land Surveying, Inc.	
1st County Road B, Divis, CO 80814	
EXHIBIT	LOCATED IN S.E. 1/4 SEC 15, T12S, R66W
SCALE: 1" = 200'	FILE: 12010000-000000
DRAWN BY: JMT	CHECKED BY: JMT
DATE: 01/10/13	JOB NO. 12010000



213045567

El Paso County, CO

WAYNE M. WILLIAMS
04/08/2013 04:47:19 PM
Doc \$0.00
Rec \$11.00
Page 1 of 1

EXHIBIT B

AFT RANCH SUBDIVISION FILING NO. 2

A VACATION AND REPLAT OF LOT 1, "AFT RANCH SUBDIVISION FILING NO. 1" BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

