

Exhibit B to Motion for Summary Judgment  
Case No. 19CW3220

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CASE NUMBER: 2019CW3220

DISTRICT COURT, WATER DIVISION I, COLORADO  Court Address: 901 9 <sup>th</sup> Street Greeley, CO 80632	<b>σ COURT USE ONLY σ</b>  Case Number: 2006CW59 10/13/06
<b>GRANT BENTLEY, Applicant,</b>  <b>IN ELBERT COUNTY.</b>	
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE,  IN THE NONTRIBUTARY LOWER DAWSON, DENVER, ARAPAHOE, AND LARAMIE-FOX HILLS AND THE NOT NONTRIBUTARY UPPER DAWSON AQUIFERS</b>	

This claim for nontributary and not nontributary ground water and approval of plan for augmentation, having been filed in February, 2006, and all matters contained in the application having been reviewed, and testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein, the following is hereby the Ruling of the Referee:

FINDINGS OF FACT

1. Name, address and telephone number of Applicant:

Grant Bentley  
1001 County Road 158  
Elizabeth, CO 80107  
(303) 646-4725

2583

2. Objection: No statements of opposition were filed and the time for filing 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.

APPROVAL OF GROUND WATER RIGHTS

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Kans. State County District Court 19th JD  
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Review Clerk: Connie S Koppes

4. Aquifers and location of groundwater: Applicant is granted a decree for rights to groundwater recoverable from the not nontributary Upper Dawson and nontributary Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying 1012 acres of land located in all of Section 15, and the W1/2 and SW1/4SE1/4 of Section 14, T7S, R65W of the 6th P.M., as shown on Attachment A hereto (Subject Property). The Subject Property is not located within the boundaries of a designated ground water basin.

5. Well locations, pumping rates and annual amounts: The ground water may be withdrawn at rates of flow necessary to efficiently withdraw the amounts decreed herein. The ground water will be withdrawn through any number of wells necessary, to be located at any location on the Subject Property. Applicant waives any 600 foot spacing rule for wells located on the Subject Property, but must satisfy Section 37-90-137(4), C.R.S. for wells owned by others on adjacent properties. The following average annual 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>
Upper Dawson	180 feet	288.3 acre-feet (NNT)*
Lower Dawson	50 feet	101.2 acre-feet (NT)
Denver	275 feet	473.1 acre-feet (NT)
Arapahoe	245 feet	421.5 acre-feet (NT)
Laramie-Fox Hills	180 feet	273.2 acre-feet (NT)

\*Annual amount available reduced by 1 acre-foot per year for existing Well Permit No. 92652 and an additional 75 acre-feet per year which water will be available for any uses which are legally available at the time well permit applications are filed. Said 75 acre-feet (7500 acre-feet total) may also be available to be withdrawn through exempt wells on the Subject Property pursuant to Section 37-92-602, C.R.S. (7.4 acre-feet per surface acre).

The amounts conform with the values and amounts referenced in the State Engineer's Determination of Facts dated May 15, 2006.

6. Proposed use: The water will be used, reused and successively used, for domestic, industrial, commercial, irrigation, stock watering, fire protection, and exchange and augmentation purposes, both on and off the Subject Property.

7. Final average annual amounts of withdrawal:

A. Final determination of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicant will be made pursuant to the retained jurisdiction of this Court, as described in paragraph 23 below. The Court shall use the acre-foot amounts in paragraph 5 herein in the interim period, until a final

determination of water rights is made.

B. The allowed annual amount of ground water which may be withdrawn through the wells specified above and any additional wells, pursuant to Section 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. However, amounts set forth in well permits will not be exceeded.

8. Source of ground water and limitations on consumption:

A. The ground water to be withdrawn from the Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers is "nontributary ground water" as defined in Section 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 Section 37-82-101(2) and Section 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 ground water to be withdrawn from the Upper Dawson aquifer is "not nontributary" as defined in Sections 37-90-103(10.7) and 37-90-137(9)(c), C.R.S., and part of the Upper Dawson aquifer groundwater decreed herein may be withdrawn pursuant to the augmentation plan decreed herein.

B. Applicant 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 Applicant and satisfactory to the State Engineer, so long as Applicant 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 wells which will withdraw not nontributary and nontributary ground water or the exercise of the rights and limitations specified in this decree.

9. Additional wells and well fields:

A. Applicant 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 additional wells are planned, applications shall be filed in accordance with Section 37-90-137(10), C.R.S.

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

C. In considering applications for permits for wells or 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 Section 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, Applicant shall obtain permits to reflect such adjusted average annual amounts. Subsequent permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

E. The water in the Upper Dawson aquifer is not nontributary and up to 75 acre-feet per year of water from the Upper Dawson aquifer may be withdrawn pursuant to the augmentation plan decreed herein.

#### APPROVAL OF PLAN FOR AUGMENTATION

10. Approval of plan for augmentation:

A. Water to be augmented: Up to 75 acre-feet per year of not nontributary Upper Dawson aquifer groundwater as decreed herein.

B. Water to be used for augmentation: Return flows associated with use of the not nontributary Upper Dawson and return flows or direct discharge of nontributary ground water decreed herein.

C. Development and Consumptive Use: Applicant or successors in interest will use the Upper Dawson aquifer water for inhouse and irrigation use on the Subject Property. The water will be withdrawn through individual wells or one or more central wells at rates of flow which are necessary to withdraw the entire annual amount. Sewage treatment may be provided by septic systems or central sewer. Consumptive use from in-house use is estimated to be 10% of that use and consumptive use from irrigation use will be approximately 90% of that use. Return flows from either use are sufficient to replace actual depletions.

D. Replacement during pumping: During pumping of the Upper Dawson aquifer ground water for 100 years, Applicant will replace actual depletions pursuant to Section 37-90-137(9)(c), C.R.S. In the 100th year, the total depletion to the South Platte River system is approximately 2.88% of the amount withdrawn or 2.16 acre-feet. Return flows from either or both inhouse and irrigation use are sufficient to replace actual depletions during pumping to the stream system. Such return flows will accrue to the South Platte River system via Running Creek, Coal Creek, or both, and those return flows are sufficient to replace total actual depletions caused by pumping of up to 75 acre-feet per year for 100 years from the Upper Dawson aquifer while the water is being pumped. Because return flows from uses are estimated rather than measured, Applicant agrees that return flows generated through septic systems shall be used only to replace depletions under this plan for augmentation and will not be sold, traded, or assigned in whole or in part for any other purpose. Return flows from central sewer can be measured and the actual depletion quantified and accounted for as being released on a monthly basis. Excess return flows from treatment through a central sewer treatment system is available for use by Applicant.

E. Post-pumping Depletion Augmentation: Assuming maximum pumping of 75 acre-feet per year for 100 years from the Upper Dawson aquifer, the maximum depletion to the South Platte River stream systems from pumping of the Upper Dawson aquifer will be approximately 5.2% or 3.9 acre-feet in the 240th year. Applicant will reserve 75 acre-feet per year and 7500 acre-feet total of the nontributary Laramie-Fox Hills water decreed herein 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.

F. Applicant shall replace post-pumping depletions for the shortest of the following periods: the period provided by Section 37-90-137(9)(c), C.R.S.; the expressed period specified by the Colorado Legislature, should it specify one and providing the Applicant obtains Water Court approval for such modification; the period determined by the State Engineer, should he choose to set such a period and have jurisdiction to do so; the period established through rulings of the Colorado Supreme Court on relevant cases, or until Applicant petitions the Water Court and after notice to parties in the case and the State Engineer's Office and proves that they have complied with any statutory requirement.

11. Applicant and successors in interest shall pay the cost imposed by operation of this augmentation plan and shall be responsible for all interest, rights and responsibilities in and under this plan for augmentation. Applicant shall reserve 75 acre-feet per year and 7500 acre-feet total of the nontributary Laramie-Fox Hills aquifer water decreed herein for use in this augmentation plan. Failure of Applicant 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 wells. This decree shall be recorded in the real property records of Elbert County so that a title examination of the property, or any part thereof, shall reveal to all future purchasers the existence of this decree.

12. Administration of plan for augmentation:

A. Applicant shall report to the Division Engineer for Water Division 1 upon request, a summary of the annual withdrawals of the subject well on an accounting form acceptable to the Division Engineer.

B. All withdrawals which are the subject of this decree will be metered.

C. Pursuant to Section 37-92-305(8), C.R.S., 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.

D. The Applicant at the direction of the Division Engineer, shall make total post-pumping replacements to the South Platte River stream system via Running Creek or Coal Creek pursuant to the amounts referenced on the depletion curve attached hereto on Attachment B.

13. Retained jurisdiction for plan for augmentation:

A. Pursuant to Section 37-92-304(6), C.R.S., 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.

B. Any person 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 the 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, Applicant shall thereupon have the burden of proof to show: (1) that any modification sought by Applicant 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 Applicant in response to the Objector's petition does avoid injury to other appropriators.

C. 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 Applicant 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

14. The Water Court has jurisdiction over this proceeding pursuant to Section 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. Section 37-90-137(4), C.R.S. The application for a decree confirming Applicant's right to withdraw and use all unappropriated ground water from the nontributary aquifers beneath the Subject Property as described herein pursuant to Section 37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree. The application for a decree confirming Applicant's right to withdraw and use ground water decreed herein from the Upper Dawson aquifer should be granted pursuant to Section 37-90-137(4) and (9)(c), C.R.S., subject to the provisions of this decree. The withdrawal of up to 75 acre-feet per year and no more than 7500 acre-feet total of the Upper Dawson aquifer in accordance with the terms of this decree will not result in material injury to vested water rights of others. The remaining amount of decreed Upper Dawson aquifer groundwater will not be withdrawn until such time as an augmentation plan for withdrawal of that water has been approved by this court in a separate decree.

15. This plan for augmentation satisfies the requirements of Section 37-90-137(9)(c), C.R.S., for replacement of actual depletions to the affected stream systems for withdrawals of part of the Upper Dawson aquifer water decreed herein.

#### JUDGMENT AND DECREE

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. 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.

17. Applicant may withdraw the subject ground water herein through wells to be located anywhere on the Subject Property, including the existing well pursuant to paragraph 5 above, 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.

18. Applicant may withdraw up to 75 acre-feet per year and no more than 7500 acre-feet total of not nontributary ground water from the Upper Dawson aquifer under the plan for augmentation decreed herein pursuant to Section 37-90-137(9)(c), C.R.S.

19. Applicant has complied with all requirements and met all standards and burdens of proof, including but not limited to Sections 37-90-137(9)(c), 37-92-103(9), 37-92-302, 37-92-304(6), 37-92-305(1), (2), (3), (4), (6), (8), (9), C.R.S., to adjudicate the plan for augmentation and is entitled to a decree confirming and approving the plan for augmentation as described in the findings of fact.

20. Pursuant to Section 37-92-305(5), C.R.S., 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.

21. 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.

22. 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.

23. Retained Jurisdiction:

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of ground water available under the property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to Section 37-92-305(11), C.R.S. Within 60 days after completion of any well decreed herein or any test hole(s), Applicant 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 findings. The State Engineer shall submit such finding to the Water Court and the Applicant.

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.

24. Continuing Jurisdiction:

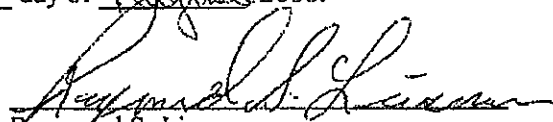
Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of



whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.


25. The groundwater rights decreed herein are vested property rights decreed to the Applicant and shall be owned by the Applicant until such time as the Applicant expressly conveys all the water underlying the Subject Property, or a portion of the water to another entity through a deed that identifies this case number, the specific aquifer, and the annual volume (based on a 100 year aquifer life) or a total volume of groundwater being conveyed. 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 with the Subject Property, unless all or part of the water rights have been specifically reserved by the Grantor in that deed.

RULING ENTERED this 17<sup>th</sup> day of August, 2006.

  
Raymond S. Liesman  
Water Referee  
Water Division 1

THE COURT DOTH FIND THAT NO PROTEST TO THE RULING OF THE REFEREE HAS BEEN FILED. THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

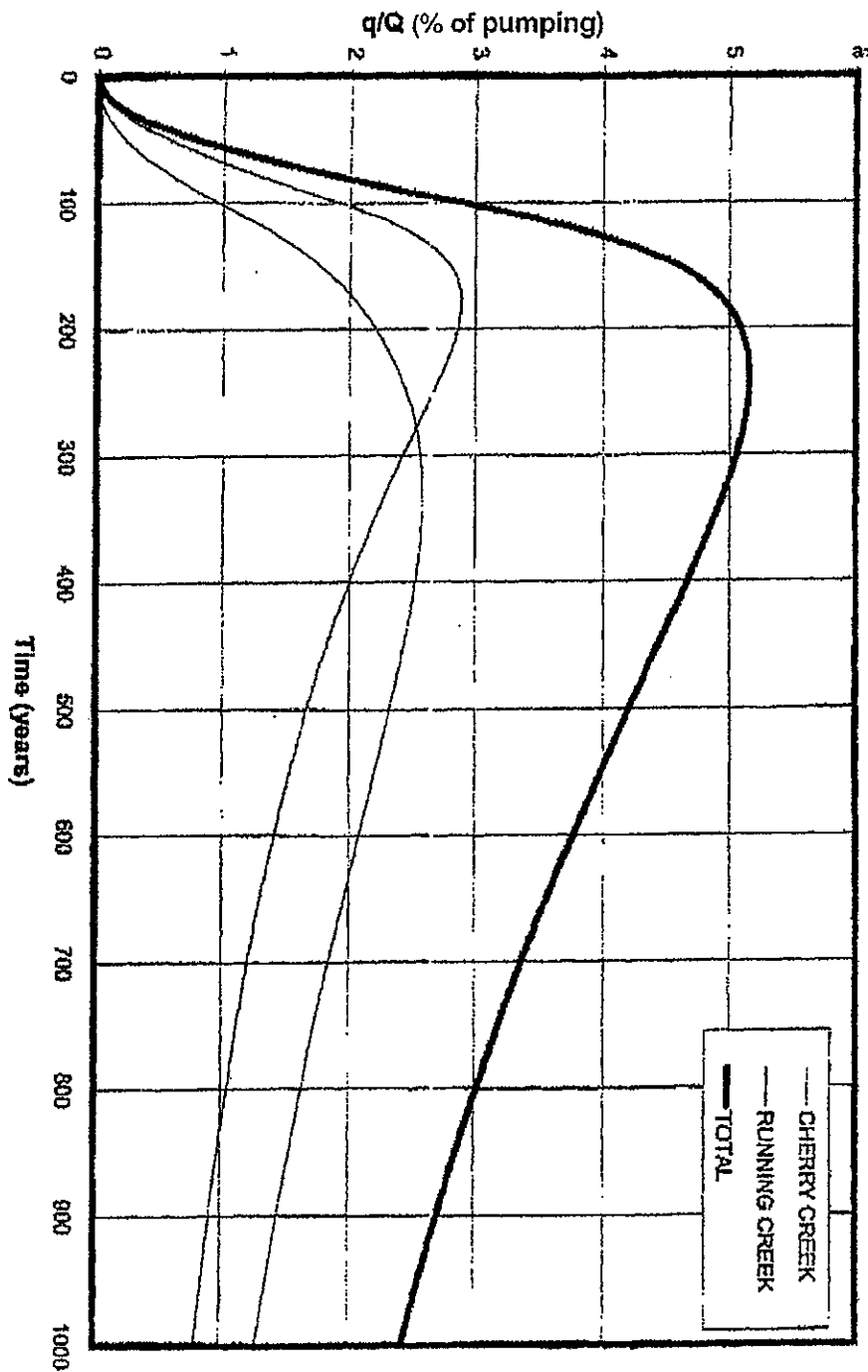
Date: SEP 05 2006

  
Roger A. Klein  
Water Judge  
Water Division 1  
State of Colorado

06CW59

Attachment B

Stream Depletion - Case No. 2006CW59, Div. 1  
Upper Dawson Aquifer - Model No. DA1



06CW 59

Attachment A

Parker Highlands

Franklin Ranches

Thunder Hill

R65W

Subject Property

775

