



# COUNTY OF ELBERT

**COMMUNITY & DEVELOPMENT SERVICES  
OFFICE**

P.O. BOX 7  
215 COMANCHE STREET  
KIOWA, COLORADO 80117  
303-621-3136 FAX: 303-621-3165



Date: November 4, 2016  
For the Elbert County Planning Commission meeting of  
Date: November 15, 2016

**TO: ELBERT COUNTY PLANNING COMMISSION**

**FROM: ETHAN WATEL, AICP, SENIOR PLANNER (BASELINE CORP.)  
APPROVED BY: KYLE FENNER, DIRECTOR OF CDS**

**RE: RZ-16-0015 COYOTE MEADOWS REZONE. A REQUEST TO REZONE A  
60.36 ACRE PROPERTY FROM AGRICULTURE (A) TO AGRICULTURE  
RESIDENTIAL (AR) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 11,  
TOWNSHIP 7 SOUTH, RANGE 65 WEST OF THE 6<sup>TH</sup> P.M. IN ELBERT  
COUNTY, COLORADO.**

**MD-16-0016 COYOTE MEADOWS MINOR RESIDENTIAL  
DEVELOPMENT. A REQUEST TO CREATE A MINOR RESIDENTIAL  
DEVELOPMENT OF SIX LOTS ON 60.36 ACRES IN THE NORTHEAST  $\frac{1}{4}$   
OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 65 WEST OF THE 6<sup>TH</sup>  
P.M. IN ELBERT COUNTY, COLORADO.**

**APPLICANT:** Brian Able, Nancy Able, and Matthew Snogren (landowners)

**REPRESENTATIVE:** CJ Kirst, Tahoe Consulting LLC  
At the October 18, 2016 meeting of the Elbert County Planning Commission, the  
hearings for the above named cases were continued to November 15, 2016.

Attached are the following documents:

- Email correspondence from June 2016 between CJ Kirst (applicants' representative) and Ron Patera and Terry Wilson of Elizabeth School District concerning school bus service.
- Letter from Petrock and Fendel, P.C. concerning water supply plan and decreed water rights.
- Letter from Wade Gateley, County Attorney.

## Ethan Watel

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**From:** CJ Kirst <cjkirst@tahoelandservices.net>  
**Sent:** Wednesday, October 19, 2016 3:14 PM  
**To:** Kyle Fenner; Ethan Watel  
**Cc:** Brian Able  
**Subject:** Fwd: FW: Elbert County Referral: Coyote Meadows Rezone & Minor Development

Kyle & Ethan - please see the below email that we received from the Elizabeth School District back in June. Is there any way to add this to the new information that the Planning Commission will be looking at?

Thanks,  
-CJ

----- Forwarded message -----

**From:** **Ron Patera** <rpatara@[esdk12.org](mailto:esdk12.org)>  
**Date:** Wed, Jun 22, 2016 at 1:50 PM  
**Subject:** Re: FW: Elbert County Referral: Coyote Meadows Rezone & Minor Development  
**To:** CJ Kirst <cjkirst@tahoelandservices.net>  
**Cc:** Terry Wilson <twilson@[esdk12.org](mailto:esdk12.org)>

Hi CJ,

Enjoyed talking to you this morning about the Coyote Meadows project. Terry and I concur with your summary of the conversation that we had this morning. While the district buses will not pick up students from Coyote Meadows along Ranch Road, the current bus pickup on CR166 will work fine for these new homes.

Good Luck!

Ron Patera

On Wed, Jun 22, 2016 at 1:16 PM, CJ Kirst <[cjkirst@tahoelandservices.net](mailto:cjkirst@tahoelandservices.net)> wrote:

Ron & Terry,

Thanks for speaking with me this morning re: the bus pickup for the Coyote Meadows students. To confirm our discussion we indicated that we were fine with having any students riding the bus from Coyote Meadows to use the current bus pickup location on CR166 and are aware that the school district can not come down Ranch Road since it is not a county maintained road. If you would please respond to this email confirming that you agree with this summary of our conversation. I will then forward these emails to the County.

Please feel free to call me in the meantime if needed.

Thanks,  
-CJ

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Thanks,  
CJ Kirst



----- Forwarded message -----

From: **Ethan Watel** <ethan@baselinecorp.com>

Date: Mon, Jun 20, 2016 at 4:02 PM

Subject: FW: Elbert County Referral: Coyote Meadows Rezone & Minor Development

To: CJ Kirst <cjkirst@tahoelandservices.net>

Cc: "Kyle Fenner (Kyle.fenner@elbertcounty-[co.gov](http://co.gov))" <Kyle.fenner@elbertcounty-[co.gov](http://co.gov)>

CJ,

Attached are comments from Elizabeth School District regarding the Coyote Meadows development.

**ETHAN WATEL, AICP | Senior Planner, Project Manager | Baseline Engineering, Planning, & Surveying |**  
1950 Ford Street | Golden, CO 80401 | Phone: [303.202.5010x218](tel:303.202.5010x218) | Fax: [303.940.9959](tel:303.940.9959) | Cell: [720.239.2835](tel:720.239.2835) |  
[www.baselinecorp.com](http://www.baselinecorp.com)

**From:** Ron Patera [mailto:[rpatera@esdk12.org](mailto:rpatera@esdk12.org)]

**Sent:** Wednesday, June 15, 2016 12:10 PM

**To:** Ethan Watel

**Cc:** [Kyle.Fenner@elbertcounty-co.gov](mailto:Kyle.Fenner@elbertcounty-co.gov); Terry Wilson; Douglas Bissonette

**Subject:** Re: Elbert County Referral: Coyote Meadows Rezone & Minor Development

Greetings,

Attached is the Elizabeth School District's completed referral request, with comments.

Ron

On Wed, May 18, 2016 at 10:09 AM, Ethan Watel <[ethan@baselinecorp.com](mailto:ethan@baselinecorp.com)> wrote:

Good morning,

On behalf of the Elbert County Community & Development Services Department, I am sending you a land use application referral packet. The Department has received an application for a Rezoning and Minor Residential Development referred to as Coyote Meadows.

The property is approximately 60 acres in size and the applicant is proposing to rezone from Agriculture (A) to Agricultural Residential (AR) as well subdivide the property into six 10+ acre lots. The case numbers are RZ-16-0007 and MD-16-0008.

The referral period is open until Wednesday, June 22, 2016 (35 days).

Please see attached a referral form for you to provide comments. The land use application documents can be found at this Dropbox link.

<https://www.dropbox.com/sh/452zc1hyirn64xu/AADXJLMVAbLWzGaQES3ASUPZa?dl=0>

Please contact me if you have any questions. Thank you.

**ETHAN WATEL, AICP | Senior Planner, Project Manager | Baseline Engineering, Planning, & Surveying |**  
1950 Ford Street | Golden, CO 80401 | Phone: [303.202.5010x218](tel:303.202.5010x218) | Fax: [303.940.9959](tel:303.940.9959) | Cell: [720.239.2835](tel:720.239.2835) |  
[www.baselinecorp.com](http://www.baselinecorp.com)

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Ron Patera

Director of Finance

Elizabeth School District

[rpatera@esdk12.org](mailto:rpatera@esdk12.org)

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Thanks,  
CJ Kirst



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Ron Patera  
Director of Finance  
Elizabeth School District

[rpatera@esdk12.org](mailto:rpatera@esdk12.org)

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Thanks,  
CJ Kirst



# Petrock & Fendel, P.C.

Attorneys

James J. Petrock • Frederick A. Fendel, III • Matthew S. Poznanovic • Bradford D. Benning

Gary J. Crosby, Paralegal

June 20, 2016

Elbert County Planning  
215 Comanche Street  
Kiowa, CO 80117

Re: Revised Water Supply Plan/Six Residential Lots/40665 Ranch Road

Dear Sir or Madam:

The following revises our water supply letter dated February 29, 2016, and provides a revised water supply to serve 6 residential lots on 60.8 acres which is generally located in part of the NE1/4 of Section 11, T7S, R65W, Elbert County (Subject Property). This revised letter is based on entry of a final decree in Case No. 15CW3088, District Court, Water Division 1 (copy attached).

## DECREED ANNUAL AMOUNTS

The following annual amounts of Denver Basin groundwater are decreed in Case No. 15CW3088, and are based on pumping each year for 100 years:

<u>Aquifer</u>	<u>Annual Amount</u>
Upper Dawson	13.6 acre-feet (NNT)
Lower Dawson	5.5 acre-feet (NT)
Denver	32.6 acre-feet (NT)
Arapahoe	31.5 acre-feet (NT)
Laramie-Fox Hills	16.4 acre-feet (NT)

The decree approves a plan for augmentation for the use of 4.5 acre-feet per year for 100 years of not nontributary Upper Dawson aquifer groundwater through 6 individual wells. Each well will withdraw 0.75 acre-feet per year for the following uses.

- A. In House Demand: 0.4 acre-feet per year
- B. Irrigation Demand: 0.3 acre-feet per year for irrigation of 5000 square feet of home lawn, garden and trees
- C. Stock Watering Demand: 0.05 acre-feet per year for watering of 4 large domestic animals

The use of the Upper Dawson aquifer wells will provide the supply for the 6 lots for the first 100 year supply period.

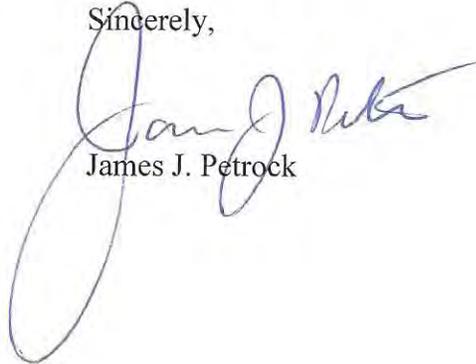
The second and third water supply periods will utilize nontributary Lower Dawson aquifer groundwater and/or nontributary Denver aquifer groundwater and wells pursuant to the decree in Case No. 15CW3088. Each lot owner will be conveyed 0.75 acre-feet per year of Lower Dawson aquifer groundwater and 1.5 acre-feet per year of Denver aquifer groundwater (if lot owner wishes to use a Denver aquifer well for both the second and third water supply periods). Well permits will be issued for an annual withdrawal of 0.75 acre-feet per year from each aquifer for the same uses described above.

#### WATER SUPPLY SUFFICIENCY

The use of Upper Dawson aquifer groundwater pursuant to the plan for augmentation and the use of Lower Dawson and Denver aquifer groundwater pursuant to the decree in Case No. 15CW3088, is sufficient to provide in house, irrigation, and stock watering use to serve 6 lots on the Subject Property for a total of 300 years as described above.

If you have any questions or comments, please call.

Sincerely,

A handwritten signature in blue ink, appearing to read "James J. Petrock", is written over a printed name. The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end.

James J. Petrock

JJP:gjc



APPROVAL OF GROUNDWATER RIGHTS

4. Aquifers and location of groundwater: Applicants are granted a decree for rights to groundwater in the not nontributary Upper Dawson and nontributary Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying 60.8 acres being the SE1/4NE1/4 and the SE1/2SW1/4NE1/4 of Section 11, T7S, R65W of the 6th P.M., Elbert County, as shown on Attachment A hereto ("Subject Property"). Applicants are the owners of the Subject Property.

5. Well locations, pumping rates and annual amounts: The groundwater may be withdrawn at rates of flow necessary to withdraw the annual amounts decreed herein. The groundwater will be withdrawn through any number of wells necessary, to be located at any location on the Subject Property. Applicants waive 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	145 feet	13.6 acre-feet (NNT)*
Lower Dawson	45 feet	5.5 acre-feet (NT)
Denver	315 feet	32.6 acre-feet (NT)
Arapahoe	305 feet	31.5 acre-feet (NT)
Laramie-Fox Hills	180 feet	16.4 acre-feet (NT)

\*Annual amount reduced by 4 acre-feet annually from the amount available as referenced in the Determination of Facts issued in this case for the Upper Dawson aquifer, which water will be available for any uses which are legally available at the time a well permit application is filed. Said 4 acre-feet (400 acre-feet total) may also be available to be withdrawn through one exempt well on the Subject Property pursuant to Section 37-92-602, C.R.S. (6.57 acre-feet per surface acre).

Other than as described above, the amounts conform with the values and amounts referenced in the State Engineer's Determination of Facts dated September 8, 2015.

6. Decreed Uses: The water will be used, reused, and successively used for domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, 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 Applicants will be made pursuant to the

retained jurisdiction of this Court, as described in paragraph 24 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 groundwater 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 groundwater and limitations on consumption:

A. The groundwater to be withdrawn from the Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers is "nontributary groundwater" 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 of continuous withdrawal, 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 groundwater 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.5), C.R.S., and part of the Upper Dawson aquifer groundwater decreed herein may be withdrawn pursuant to the augmentation plan decreed herein.

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

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

9. Additional wells and well fields:

A. Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water supply demands or to recover the entire amount of groundwater in the subject aquifers underlying the Subject Property. As 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, Applicants 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 Sections 37-90-137(4), C.R.S. or 37-90-137(10), C.R.S.

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

10. Conditions:

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

A. A totalizing flow meter shall be installed on the well discharge pipe prior to withdrawing any water therefrom, and shall be maintained and operational at all times for the life of the well. Applicants shall keep accurate records of all withdrawals by the well, make any calculations necessary, and submit such records to the Water Division 1 Engineer upon request.

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

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

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

E. Applicants may not pump for more than 100 years without approval for a new plan for augmentation. Applicants shall obtain a new plan for augmentation if Applicants pump more than 4.5 acre-feet per year of the Upper Dawson water described in paragraph 5, above.

#### APPROVAL OF PLAN FOR AUGMENTATION

11. Approval of plan for augmentation:

A. Water to be augmented: 4.5 acre-feet per year of not nontributary Upper Dawson aquifer groundwater decreed herein.

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

C. The Upper Dawson aquifer groundwater will be used for in house use in six single family residences. Each residence will be allowed a maximum of: 0.75 acre-foot per year for in-house use (0.4 acre-feet); irrigation of 5000 square-feet of home lawn, garden, and trees (0.3 acre-feet); and stockwatering of up to four large domestic animals (0.05 acre-feet). For purposes of this decree, a return flow credit of 0.18 acre-feet per year from each of the 6 wells will be claimed for in house use. Various components of this plan for augmentation are predicated on these estimations, and Applicants shall be required to use a non-evaporative septic system to treat and dispose of water used for inhouse use.

D. Replacement during pumping: During pumping of the Upper Dawson aquifer groundwater, Applicants will replace actual depletions to the South Platte River stream system pursuant to Section 37-90-137(9)(c.5), C.R.S. In the 100th year, the total actual depletion is 2.479% of the annual amount withdrawn or 0.112 acre-feet. Applicants estimate that at least 1.08 acre-feet per year will return to the South Platte River stream system from in-house return flows. Such return flows accrue to the South Platte River stream system and those return flows are sufficient to replace actual depletions to the South Platte River stream system while the wells are being pumped. Because return flows from all uses are estimated rather than measured, Applicants agree that such return flows shall be used only to replace depletions under this plan for augmentation and will not be sold, leased, traded, or assigned in whole or in part for any other purpose.

E. Post-pumping Depletion Augmentation: Assuming maximum pumping of 4.5 acre-feet per year for 100 years from the Upper Dawson aquifer, the maximum total depletion to the South Platte River stream systems is approximately 4.46% of the annual amount withdrawn in the 240th year. Applicants will reserve 4.5 acre-feet per year and 450 acre-feet total of the nontributary Laramie-Fox Hills aquifer groundwater decreed herein for use in this plan. In the event Applicants seek to use any source of augmentation other than the 450 acre-feet of nontributary Laramie-Fox Hills aquifer groundwater described in this paragraph, it shall follow the procedures in subparagraph F, below. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.

F. Additional Supplies of Augmentation Water:

i. Notice of New Source: Prior to using an additional or alternative water source for this plan, Applicants shall give written notice of use of new water right for augmentation (“Notice”) to the Court, the Division Engineer, and Denver Southeast. Such Notice shall state: (1) the water right by name and decree; (2) the annual and monthly amount of water available to Applicants from the water right; (3) the manner by which the augmentation credits will be used to augment depletions from wells or water rights included in this plan and for augmentation in time, location, and amount; (4) the date of initial use of the proposed new source within this plan; (5) duration of the use of the new source; (6) evidence that the claimed amount of water is available for use in this plan and will not be used by any other person; and (7) the manner in which Applicants will account for use of the augmentation credits and make any required return flow replacements. The Notice shall also specifically include a request that the Court enter an Order either approving or denying Applicant’s proposal and that said Order shall be made a part of the final Decree approving the plan for augmentation.

ii. Objection to Use of New Source: If any person wishes to object to the addition of the noticed water rights to this plan, a written objection shall be filed with the Court within 35 days after Applicants provided the Notice. If no objection is so filed, the Court shall promptly enter an Order affirming Applicants’ immediate use of the noticed additional or alternative augmentation source. If an objection is so filed, then Applicants may not use the noticed source until the Court has determined whether and under what terms and conditions the water rights may be used in this plan.

iii. Hearing on Use of New Source: Where an objection has been filed pursuant to paragraph 11.F.ii above to the use of a water right as an additional or alternative augmentation source for this plan, the Court shall promptly schedule a hearing to determine whether and under what terms and conditions the water right may be used in this plan. The Court shall conduct whatever proceedings are needed to address and resolve the disputed issues. At such hearing, the Court shall

impose such terms and conditions as are necessary to prevent injury to vested and decreed conditional water rights. If the notice requested temporary use of the noticed water rights in this plan for a period not to exceed one year, then the Court shall grant an expedited hearing.

iv. New Sources Requiring Operation of an Exchange: Where the use of any new source requires operation of any new exchanges, including the expansion of any existing exchange reach, Applicants must obtain approval of the Division Engineer and/or Water Commissioner prior to operating such exchange. Applicants must submit a separate water court application to adjudicate such exchange.

G. Applicants will replace post-pumping depletions for the shortest of the following periods: the period provided by Section 37-90-137(9)(c.5), C.R.S.; the expressed period specified by the Colorado Legislature, should it specify one and providing the Applicants obtain Water Court approval for such modification; the period determined by the State Engineer, should he or she 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 Applicants petition the Water Court and the State Engineer's Office and prove that they have complied with any statutory requirement.

12. Failure of Applicants or successors in interest 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.

13. Administration of plan for augmentation:

A. Applicants shall form a home owners association or other group which will be responsible for operation of the plan for augmentation, including reading of meters, providing accounting to the Division Engineer as provided herein, and replacement of depletions to the South Platte System as provided in paragraph 11.D. A requirement that the lot owners will provide annual meter readings for their wells to the home owners association so that annual accounting can be calculated will be included in covenants and as a plat note on the final plat for the subdivision. Applicants or the home owners association shall report to the Division Engineer for Water Division 1, a summary of the annual withdrawals of the subject wells on an accounting form acceptable to the Division Engineer. Said reporting period is from November 1st through October 31<sup>st</sup> of the following year, and shall report the number of wells being operated, and the annual amount withdrawn from each well, the percentage of annual depletion for that year of pumping, and a calculation of return flows for in house use, to verify that return flows made up the

required replacement for that year. A copy of such accounting shall be provided to Denver Southeast upon request.

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 Applicants or successors in interest at the direction of the Division Engineer shall make post-pumping replacements to the South Platte River stream system pursuant to the amounts to be calculated using the percentage referenced on the depletion curve attached hereto on Attachment B.

14. 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, Applicants shall thereupon have the burden of proof to show: (1) that any modification sought by Applicants 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 Applicants 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 Applicants 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

15. 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 pursuant to Section 37-90-137(4), C.R.S. The application for a decree confirming Applicants' right to withdraw and use all unappropriated groundwater 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 Applicants' right to withdraw and use groundwater decreed herein from the Upper Dawson aquifer should be granted pursuant to Section 37-90-137(4) and (9)(c.5), C.R.S., subject to the provisions of this decree. The withdrawal of up to 4.5 acre-feet per year and no more than 450 acre-feet total of the Upper Dawson aquifer groundwater and in accordance with the terms of this decree will not result in material injury to vested water rights of others.

16. This plan for augmentation satisfies the requirements of Section 37-90-137(9)(c.5), C.R.S., for replacement of required depletions to the affected stream systems for withdrawals of the Upper Dawson aquifer groundwater.

#### 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.

17. 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.

18. Applicants may withdraw the subject groundwater herein through wells to be located anywhere on the Subject Property 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.

19. Applicants may withdraw up to 4.5 acre-feet per year and not more than 450 acre-feet total of the Upper Dawson aquifer groundwater under the plan for augmentation decreed herein pursuant to Section 37-90-137(9)(c.5), C.R.S.

20. Applicants have complied with all requirements and met all standards and burdens of proof, including but not limited to Sections 37-90-137(9)(c.5), 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.

21. 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.

22. 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.

23. 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.

24. Retained Jurisdiction to Make a Final Determination of Water Right:

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of groundwater available under the Subject 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), Applicants or any successor in interest to these water rights shall serve copies of such log(s) upon the State Engineer and Denver Southeast.

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 parties to this case.

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.

25. Retained Jurisdiction on the Question of Injury:

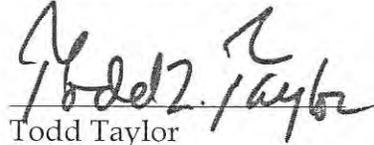
Pursuant to Section 37-92-304(6), C.R.S., the Court retains continuing jurisdiction over the plan for augmentation decreed herein for reconsideration of the question of whether the provisions of this decree are necessary and/or sufficient to prevent injury to vested water rights of others. The Court also retains continuing jurisdiction for the purpose of determining compliance with the terms of the augmentation plan.

26. The groundwater rights decreed herein are vested property rights decreed to the Applicants and shall be owned by the Applicants until such time as the Applicants expressly convey all the groundwater underlying the Subject Property, or a portion of the groundwater 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.

*So Ordered:*  
May 25, 2016

BY THE ACTING REFEREE:

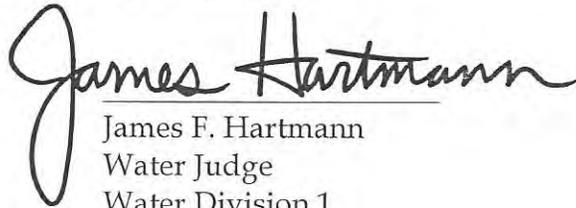


Todd Taylor  
Acting Water Referee  
Water Division 1

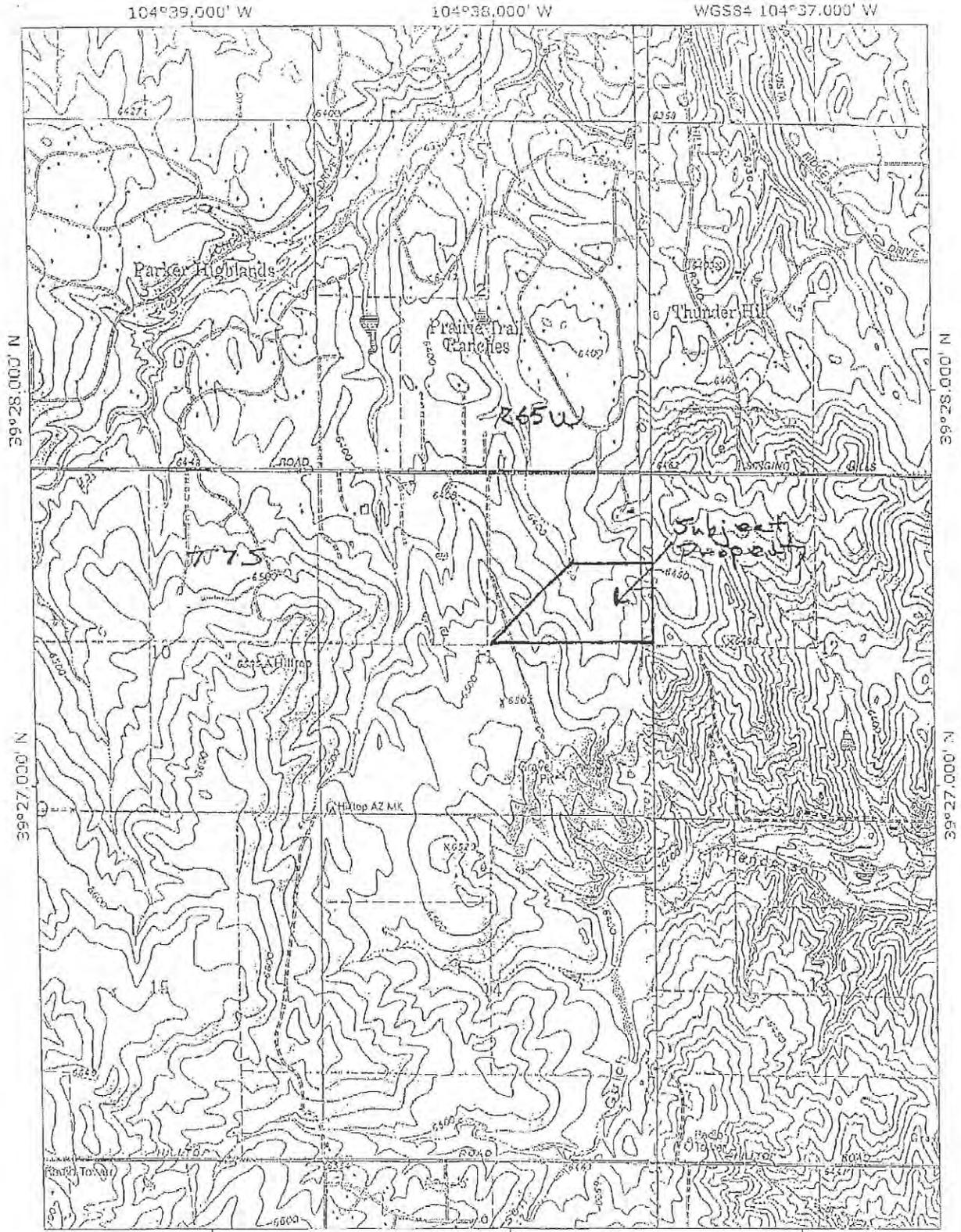
No protest was filed in this matter. The foregoing ruling of the Acting Referee is confirmed, approved, and are hereby made the Judgment and Decree of this Court.

*So Ordered:*  
June 20, 2016

BY THE COURT:



James F. Hartmann  
Water Judge  
Water Division 1

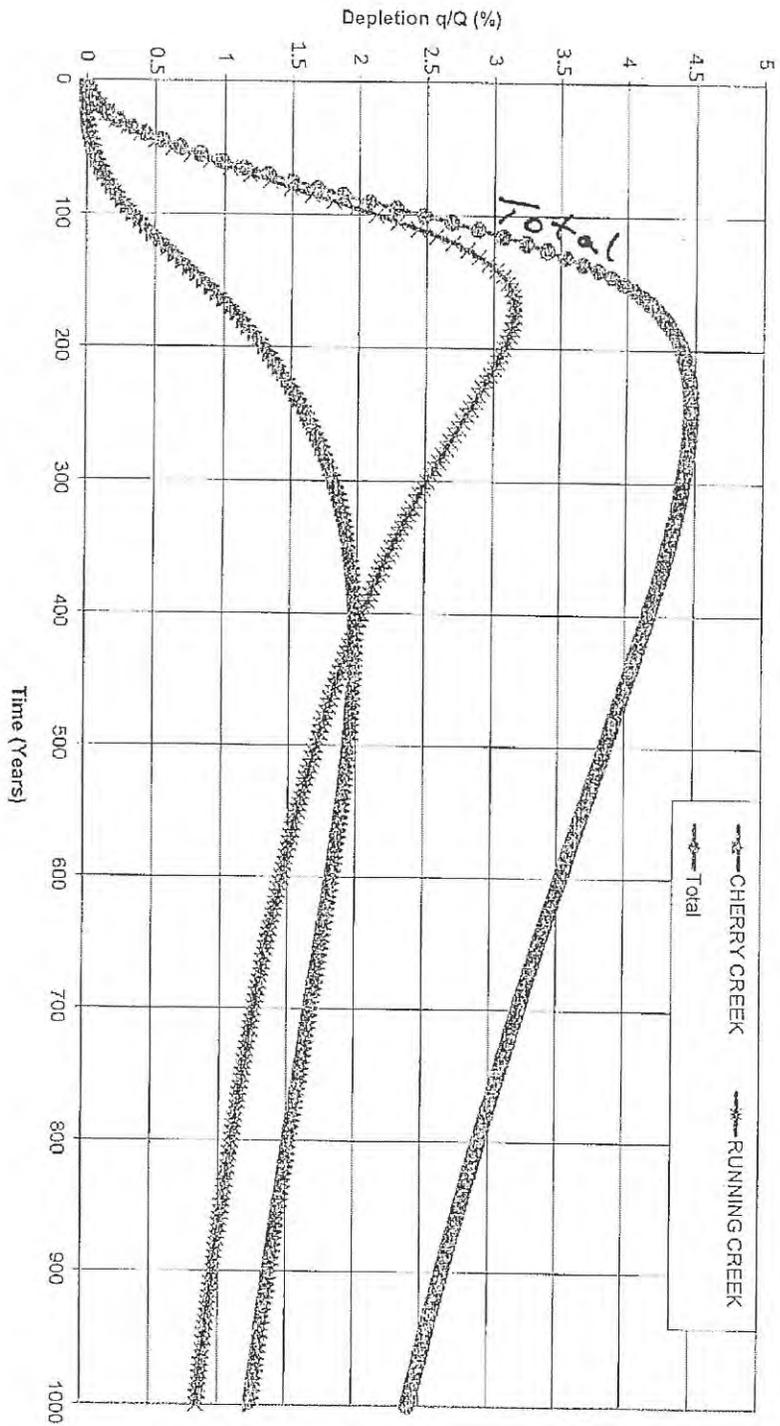


104°39.000' W ATTACHMENT A WGS84 104°37.000' W

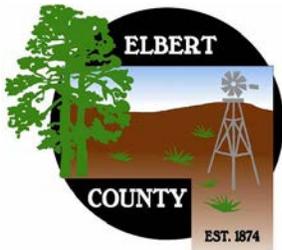
0 1000 FEET Case No. 15CW3088 0 1000 METERS

Map created with TOPO! ©2002 National Geographic (www.nationalgeographic.com/topo)

2015CW3088 Stream Depletion-4.5 acre-feet from Upper Dawson aquifer for 100 years



ATTACHMENT B  
Case No. 15CW3088



# COUNTY OF ELBERT

WADE H. GATELEY, COUNTY ATTORNEY  
P.O. BOX 7  
KIOWA, COLORADO 80117  
303-621-3180

November 3, 2016

Via Electronic Mail Only

Ethan Watel, AICP  
Senior Planner and Project Manager  
Baseline Engineering, Planning and Surveying  
1950 Ford Street  
Golden, CO 80401

RE: Coyote Meadows Rezoning and Minor Residential Subdivision Application

Dear Mr. Watel:

You have requested my comments or other information, for the consideration of the Elbert County Planning Commission, regarding the right of the applicant to use a private easement known as Ranch Road for access to six subdivision lots.

I have received and reviewed your staff report, along with the legal opinion letter of Frederick B. Skillern, Esq. dated February 18, 2016, and the legal opinion letter of Geoffrey P. Anderson, Esq. dated January 22, 2016. I do not believe that it would be proper for me to comment on the strength or validity of these opinions, because that would be substituting my judgment for the judgment of the individual Planning Commission members. The Planning Commission members will be acting in a quasi-judicial capacity in voting on this matter, and I should not act as an expert witness, or attempt to influence the vote in any way.

I can, however, provide advice regarding the procedural aspects of this matter. The Planning Commission members are allowed to consider the lack of any opposing legal opinion letter in their deliberations.

Thank you for your cooperation in this matter. If you have any questions or comments, feel free to contact me.

Sincerely,

Wade H. Gateley  
Elbert County Attorney