

Weld County District Court Water Division No. 1, Colorado 901 Ninth Avenue P.O. Box 2038 Greeley, CO 80632-2038 (970) 475-2400	DATE FILED: December 19, 2022 10:27 AM CASE NUMBER: 2022CW3023 Court Use Only
CONCERNING THE APPLICATION FOR WATER RIGHTS OF SOVEREIGN ONE, LLC IN ADAMS COUNTY	Case No. 22CW3023 (80CW232, 01CW185)
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND DECREE OF THE WATER COURT	

THIS MATTER comes before the Court on an Application for Change of Water Right. The Referee, having considered the pleadings and the evidence presented, and being fully advised in the premises, hereby enters the following Findings of Fact, Conclusions of Law, and Ruling:

FINDINGS OF FACT

1. Name and address of Applicant:

Sovereign One, LLC
7623 Ingalls Street
Arvada, Colorado 80003

2. Statements of opposition: A statement of opposition was filed by the City of Aurora. No other statements of opposition have been filed and the time for filing of such statements has expired.

3. Notice and 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.

4. Summary of consultation: The Court has considered the Summary of Consultation Report dated May 31, 2022. No response was required, and this Ruling addresses all concerns raised in that report.

5. Water right to be changed: Planet Well No. A-22802-F.

5.1. Original decree entered November 20, 1983, in Case No. 80CW232, Water Division No. 1. Subsequent decree entered December 9, 2002, in Case No. 01CW185, Water Division No. 1.

5.2. Decreed location: Planet Well No. A-22802-F is in the SW ¼ SW ¼, Section 32, Township 3 South, Range 64 West, of the 6th PM, Adams County, 1,200

feet north of the south line and 800 feet east of the west line. See map attached as **ATTACHMENT A**.

- 5.3. Decreed source of water: Nontributary Arapahoe aquifer.
- 5.4. Appropriation Date: September 26, 1977, but not subject to administration on priority basis.
- 5.5. Decreed amount: 57.6 acre-feet per year, 3 gpm (0.0067 cfs).
- 5.6. Decreed use: Agricultural and municipal.
- 5.7. Amount of water that applicant intends to change: 2.43 acre-feet per year. Applicant's pro rata share of the decreed flow rate is 0.00028 cfs (0.127 gpm).

6. History of the water right being changed:

- 6.1. The original decree in Case No. 80CW232 was entered on behalf of Planet Companies. In that decree, Denver, Arapahoe and Laramie-Fox Hills aquifer groundwater was adjudicated underlying approximately 375 acres of land located in the S 1/2 of Section 31 (231 acres) and the SW 1/4 of Section 32 (144 acres), T3S, R64W of the 6th P.M. as shown on **ATTACHMENT A**. The following annual amounts were decreed in Case No. 80CW232:

<u>Aquifer</u>	<u>Annual Amount</u>
Denver	50.0 acre-feet
Arapahoe	124.60 acre-feet
Laramie-Fox Hills	32.4 acre-feet

- 6.2. The Court determined in the decree in Case No. 01CW185 entered on December 2, 2002, that the objector, City of Aurora, is the owner and user of the water decreed in Case No. 80CW232 underlying and associated with the 231 acres located in Section 31 as shown on **ATTACHMENT A** in the following annual amounts:

<u>Aquifer</u>	<u>Annual Amount</u>
Denver	30.7 acre-feet
Arapahoe	76.7 acre-feet
Laramie-Fox Hills	20.0 acre-feet

- 6.3. The Court also determined in Case No. 01CW185 that the Applicants in that case were the owners of the water decreed in Case No. 80CW232 underlying and associated with the 144 acres located in Section 32 in the following annual amounts:

<u>Aquifer</u>	<u>Annual Amount</u>
Denver	16.3 acre-feet
Arapahoe	47.9 acre-feet
Laramie-Fox Hills	12.4 acre-feet

6.4. More specifically, the Court determined in Case No. 01CW185 that, of the 144 acres in Section 32, the GMJ Family Trust owned 76 acres, Derek and Susan Swenger and Roy Enter owned 44 acres, and Lylla Jensen owned 24 acres and the groundwater underlying that land in the following annual amounts:

<u>Aquifer</u>	<u>GMJ Family Trust</u>	<u>Swanger and Enter</u>	<u>Jensen</u>
Denver	9.2 acre-feet	4.9 acre-feet	2.2 acre-feet
Arapahoe	25.2 acre-feet	14.6 acre-feet	8.1 acre-feet
Laramie-Fox Hills	6.6 acre-feet	3.8 acre-feet	2.0 are-feet

6.5. In Case No. 01CW185, the court held that no part of the decree entered in this Case 01CW185 shall affect any water owned and used by the City of Aurora and underlying the land in Section 31, as referenced in that decree, or as decreed in Case Nos. W-1132, 80CW232, and 87CW210, including but not limited to Behrens Well Nos. 1 through 5.

7. Applicant’s ownership of land and ground water in this case: Applicant owns approximately 7.253 acres of land in Section 32 described as Lot 1, Block 1, Watkins Storage Subdivision, a/k/a 1970 Imboden Road, Watkins, CO 80137 (“Applicant’s Land”) as shown on ATTACHMENT A, which is a portion of the 24 acres previously owned by Lylla Jensen. Applicant obtained title to that property pursuant to special warranty deed recorded June 17, 2021, at Reception No. 2021000073247, in Adams County, from Watkins Storage Company, LLC, the successor to Lylla Jensen. By quit claim deed from Watkins Storage Company, LLC recorded June 17, 2021, at Reception No. 2021000073248, in Adams County, Applicant acquired the right to divert and use the following annual amounts of ground water beneath Applicant’s Land:

<u>Aquifer</u>	<u>Annual Amount</u>
Denver	0.66 acre-feet
Arapahoe	2.43 acre-feet
Laramie-Fox Hills	0.60 acre-feet

8. Purpose of application: The State Engineer would not issue a permit for Applicant

to drill an Arapahoe aquifer well on Applicant's Land to withdraw and use this water, because Applicant's Land is not located within 200 feet of the decreed location for Well A-22802-F. Applicant filed this application to vacate that portion of the decree that quantified the water available from the Arapahoe aquifer under Applicant's Land so that Applicant may obtain a permit for a new well in the Upper Arapahoe aquifer on its land pursuant to statute and the Denver Basin Rules. Applicant does not seek to change any other portion of the decree, including Applicant's interest in the ground water in the Denver and Laramie Fox-Hills aquifer, any other person's right to ground water determined in the decree, or the terms of the augmentation plan approved in that decree.

9. **No injury:** The Referee finds that no person will be injured by granting the requested change, and Applicant is entitled to the relief requested in the Application, subject to the following terms of this Ruling:
 - 9.1. No part of the Ruling entered in this Case No. 22CW3023 shall affect any water owned and used by the City of Aurora and underlying the land in Section 31, as referenced in this Ruling, the decree in Case No. 01CW185, or as decreed in Case Nos. W-1132, 80CW232, and 87CW210, including but not limited to Behrens Well Nos. 1 through 5.
 - 9.2. The annual amount of water from the Arapahoe aquifer that may be withdrawn and used from Well A-22802-F is reduced from 57.6 acre-feet per year to 55.17 acre-feet per year. The total maximum amount of Arapahoe aquifer water that may be produced from Wells A-22802-F, C-26522-F and D-26523-F in Case No. 80CW232 is reduced from 124.6 acre-feet per year to 122.17 acre-feet per year, representing a reduction only in the amount that may be diverted from Well A-22802-F described above. There is no reduction in the amount of Arapahoe aquifer water that may be diverted from Wells C-26522-F and D-26523-F. The court finds that it is not necessary to reduce the decreed flow rate of Well A-22802-F to prevent injury to other water rights so long as the decreed volume is reduced by 2.43 acre-feet per year as required by this decree.
 - 9.3. No part of the Ruling entered in this Case No. 22CW3023 shall affect any water right decreed in any other aquifer or any other well included in Case Nos. 80CW232 or 01CW185.
 - 9.4. This Ruling does not approve a specific well location for diversion of Applicant's 2.43 acre-feet of annual withdrawal of water from the Arapahoe aquifer. Applicant may divert that water from any location on Applicant's Land allowed by statute and the Statewide Nontributary Ground Water Rules as permitted by the State Engineer.
 - 9.5. The average annual amount of water that may be diverted by one or more wells on Applicant's Land shall not initially exceed 2.43 acre-feet per year, plus any banked water underlying Applicant's Land. Should the Applicant desire to exceed this limitation it must seek approval therefor from this Court and notify the City of Aurora

Utilities Department of such request.

- 9.6. Any application for exempt well permit on Applicant's Land to withdraw the ground water vacated by this decree shall be evaluated in accordance with the provisions of § 37-92-602, C.R.S. and relevant policies of the State Engineer. Because the original decree in the Arapahoe Aquifer under Applicant's land has been vacated, in the issuance of any new well permit on that land, the State Engineer shall determine the amount of water available from the Upper Arapahoe aquifer and Lower Arapahoe aquifer under Applicant's land pursuant to existing law and regulations and limit combined annual diversions from those aquifers based on paragraph 9.5. Any new well permit shall be limited to one aquifer or the other and not allow a multiply completed well in both aquifers.
10. Applicant has satisfied its burden of proof to demonstrate ownership of the ground water underlying Applicant's Land sufficient to allow the Court to approve the application in this case. However, this Ruling does not quiet title to the ground water rights vacated in this case underlying Applicant's Land, and nothing in this Ruling shall in any way prevent any person from disputing Applicant's title or entitlement to this ground water in a court proceeding with jurisdiction to quiet title to these ground water rights.

CONCLUSIONS OF LAW

11. The Court has jurisdiction over the subject matter of this application and all persons affected hereby, whether or not they have appeared. §§ 37-92-203, 37-92-302, 37-92-304, C.R.S. The application was filed with the Water Clerk in accordance with the provision of § 37-92-302(1)(a), C.R.S. All notices were given as required by law.
12. The owner of a water right may apply to the water court for approval of a change of water right. *Orr v. Arapahoe Water and Sanitation District*, 753 P.2d 1217 (Colo. 1988).
13. A change of water right shall be approved if it will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. § 37-92-305(3)(a), C.R.S.
14. Applicant has complied with all requirements and met all standards and burdens of proof, including but not limited to §§ 37-92-302, 37-92-304 and 37-92-305, to adjudicate its changes of water.
15. The Court is required in any decree approving a change of water right to retain jurisdiction on the question of injury to vested or conditional water rights. § 37-92-304(6), C.R.S.

JUDGMENT AND DECREE

16. The foregoing Findings of Fact and Conclusions of Law are fully incorporated herein as if set out in full.
17. The application is approved.
18. Retained jurisdiction. The Court's approval of Applicant's change of water right shall be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others pursuant to §37-92-304(6), C.R.S. for a period of five (5) years after Applicant provides notice to the Court and to Aurora that it has completed construction of a new well on Applicant's Land and the well is operational.

Dated November 23, 2022

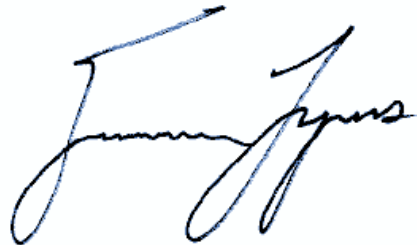


John S. Cowan
Water Referee
Water Division One

The Court finds no protest was filed in this matter. The foregoing ruling is confirmed and approved and is hereby made the judgment and decree of this Court.

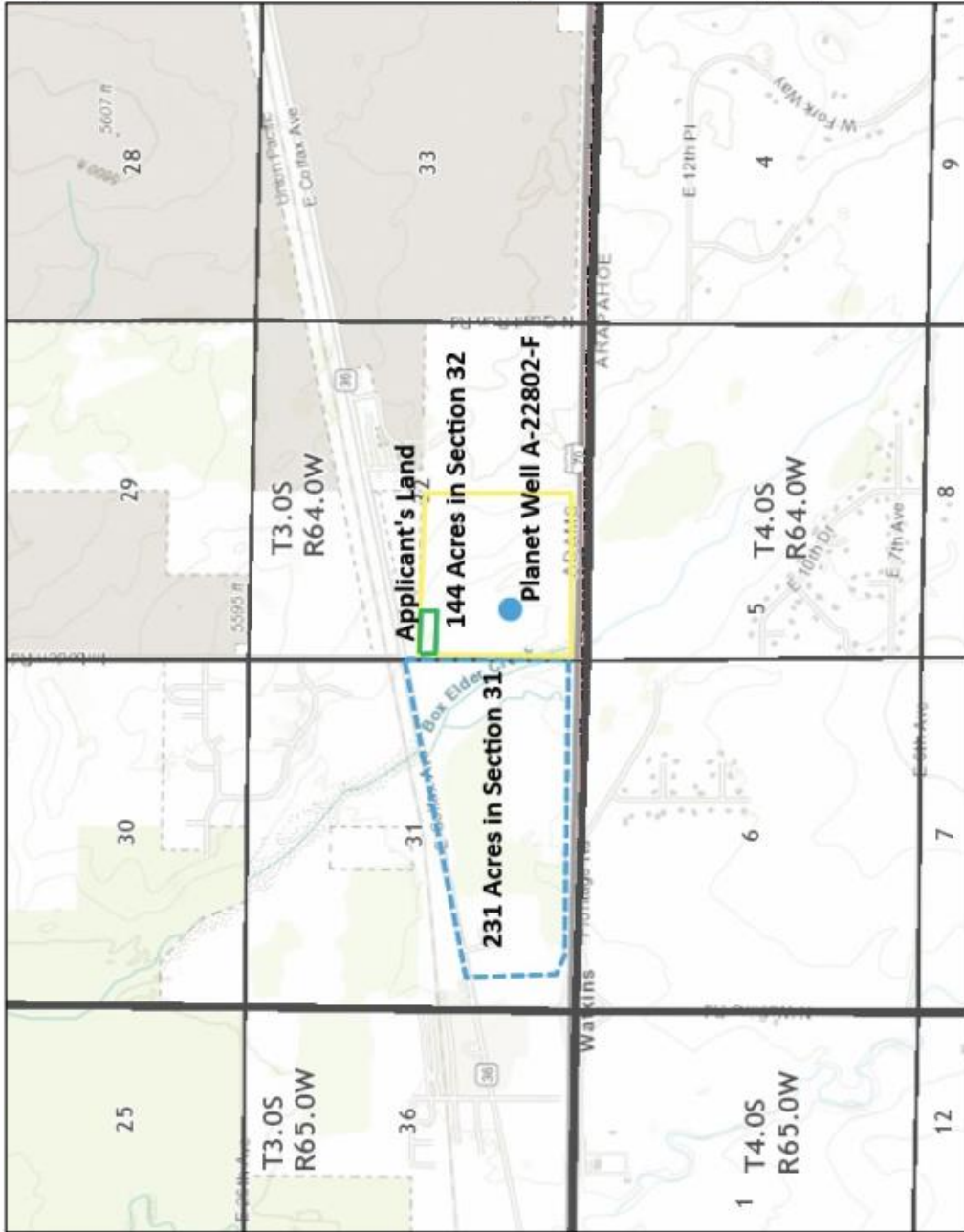
Dated: December 19, 2022

BY THE COURT:



Shannon Lyons
Alternate Water Judge
Water Division One

Map Viewer



Legend

- Township
- Section
- County

Location

Notes

Attachment A to Decree
Sovereign One, LLC
Case No. 22CW3023

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