STATE OF COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

SWSP Approval for the Kauffman No. 1 Pit (Plan ID 3039)

Brucker - DNR, Sarah <sarah.brucker@state.co.us> Mon, Dec 27, 2021 at 11:34 AM
To: Todd Williams <tlwwater@msn.com>
Cc: Michael Hein <michael.hein@state.co.us>, Louis Flink <louis.flink@state.co.us>, Jean Lever <jean.lever@state.co.us>, Amy Eschberger - DNR <amy.eschberger@state.co.us>

Please find attached the Substitute Water Supply Plan Approval for the Kauffman No. 1 Pit (DRMS Permit No. M-1978-327, WDID 0402530, Plan ID 3039). Should you have any questions, please contact me at this office.

Sarah Brucker
Water Resources Engineer

COLORADO
Division of Water Resources
Department of Natural Resources

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Approval 3039.pdf
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COLORADO
Division of Water Resources
Department of Natural Resources

December 27, 2021

Mr. Todd Williams, P.E.
Williams and Weiss Consulting, LLC
5255 Ronald Reagan Boulevard, Ste 220
Johnstown, CO 80534

RE: Kauffman No. 1 Substitute Water Supply Plan (WDID 0402530, Plan ID 3039)
Kauffman No. 1 Pit, DRMS Permit No. M-1978-327 (WDID 0403009)
Sections 20 and 21, T5N, R68W, 6th P.M.
Water Division 1, Water District 4, Larimer County

Approval Period: January 1, 2022 through December 31, 2022
Contact Information for Mr. Todd Williams: 303-653-3940; tlwwater@msn.com

Dear Mr. Williams:

We have reviewed your letter dated December 10, 2021 requesting renewal of the above referenced substitute water supply plan on behalf of Jake Kauffman and Son, Inc. ("Applicant") in accordance with section 37-90-137(11), C.R.S., to cover depletions associated with a sand and gravel pit. The required fee of $257.00 for the renewal of this substitute water supply plan has been submitted (receipt number 10017405). The original substitute water supply plan was approved on April 6, 1992 and it was most recently approved on December 15, 2020 for operations through December 31, 2021.

SWSP Operation

The Kauffman No. 1 Pit (WDID 0403009, well permit no. 42901-F) is located in Larimer County in part of the E½ of Section 20 and the NW¼ of the SW¼ of Section 21, Township 5 North, Range 68 West of the 6th P.M. Active mining at the site has ceased and reclamation activities at the site are limited to the establishment of dry-land grasses. As of 2012, all groundwater exposed to the atmosphere after December 31, 1980 has been backfilled so that there are no new evaporative depletions associated with this site. The site currently contains three unlined ponds of approximately 20.68 acres, 8.89 acres, and 0.12 acres, and an additional pond located outside of the permit area of approximately 1.11 acres, as shown on the attached Map 4. Pursuant to section 37-90-137(11)(b), C.R.S. and 2009CW49, a gravel pit operator or property owner does not need to replace depletions that occur due to evaporation from groundwater exposed prior to January 1, 1981 as a result of open mining of sand and gravel, regardless of whether mining continued after December 31, 1980. Previous SWSPs have recognized that 36.2 acres of water surface was exposed at the Kauffman No. 1 Pit prior to January 1, 1981 ("pre-81"). Due to backfilling at the site and an overall drop in water levels, the pit now has an exposed surface area of 34.8 acres. Per our *"General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits"* updated April 1, 2011, pre-81 areas are tied to the physical location at which the groundwater was exposed prior to January 1,

1981 with the exception for areas whose reallocation was approved by the State Engineer prior to January 1, 2011. The applicant provided a map showing the reallocation of the pre-81 areas as a part of their 2010 SWSP request (see attached Figure 2). The reallocated pre-81 areas consisted of two unlined ponds of approximately 25.2 acres and 9.7 acres, and an additional pond located outside of the permit area of approximately 1.1 acres. Because the pre-81 credit associated with the Kauffman No. 1 Pit (36.2 acres) is greater than the current surface area of the Kauffman No. 1 Pit (34.8 acres), and the location of the currently exposed surface area is entirely within the boundaries of the pre-81 area shown in Figure 2, there are no evaporative depletions associated with the Kauffman No. 1 Pit that require replacement under this SWSP. Please note that the credits for the pre-81 areas are tied to the locations identified on Figure 2 and may not be re-allocated to other areas of groundwater exposure within the gravel pit boundaries. Any pre-81 area that is backfilled will lose the pre-81 exemption should it be excavated in the future. Additionally, the backfilling of a pre-81 area shall not create a credit to be used elsewhere.

Consumption of water at the site during this plan period will be limited to use for dust control purposes at the site required during reclamation, and is expected to end once reclamation is complete. Water for dust control purposes will be pumped from one of the unlined ponds on the site. The replacement water will be supplied through a lease with the City of Loveland.

Depletions

The Applicant projects using 6.60 acre-feet of groundwater at the site for dust control purposes during this plan period, as shown in the attached Table 1. Dust control use is assumed to be 100% consumptive. No other use of groundwater at the site is anticipated during this plan period.

The monthly depletions to the Big Thompson River due to past and projected use were lagged from the pit site using the AWAS program developed by the IDS Group at Colorado State University. The parameters used in the model were: a distance from the site to the river (X) which varied as shown in the table below; a distance from the river through the site to the no flow aquifer boundary (W) of 4,000 ft; an aquifer transmissivity (T) of 50,000 gallons/ft/day; and a specific yield (S) of 0.2.

Years	X (ft)	Basis
2000-11	250	Distance used by Applegate Group (previous consultant) for this time period
2012	1,700	Distance from the river to the pump used to provide water to the City of Loveland property
2013-14	550	Distance from the river to the point water is being pumped for dust control purposes
2015-22	1,450	Distance from the river to the point water is being pumped for dust control purposes

Consumptive use for the period of 2000 through 2012 was obtained from prior SWSP submittals. Consumptive use from 2013 through 2021 is based on records of actual dust control use at the site provided by the Applicant. The lagged stream depletions due to past and projected use at the site are estimated to total 6.18 acre-feet during this plan period, as shown on the attached Table 3. The Kauffmann No. 1 Pit is directly adjacent to the Big Thompson River, and depletions are assumed to impact the river in the E½ of Section 20, Township 5 North, Range 68 West of the 6th P.M.

Replacements

Replacement water for this pit will be made available throughout the year from a lease of up to ten (10) acre-feet of fully consumable water from the City of Loveland ("Loveland"). A copy of the lease, dated December 7, 2021, is attached to this letter. The duration of the lease is from January 1, 2022 through December 31, 2024.

Under the terms of the lease, replacements may be made using a variety of water owned by Loveland including, but not limited to, Windy Gap reusable effluent, water stored in Green Ridge Glade Reservoir (aka Loveland Storage Reservoir) (WDID 0403659) as decreed in case no. 82CW202A, decant water from the Loveland Water Treatment Plant (WDID 0402804), effluent from the Loveland Waste Water Treatment Plant (WDID 0402300), or any other water source legally and physically available to Loveland that may be used for augmentation or replacement. In the event that Loveland plans to use Colorado-Big Thompson Project ("C-BT") water as a replacement source, Loveland shall comply with the Interim Rule issued by the Northern Colorado Water Conservancy District ("Northern District") in May 2005, regarding the use of Colorado-Big Thompson Project water in substitute water supply plans. **Prior to such use of C-BT Project water, Loveland is required to notify this office, the division engineer and the water commissioner of the amount of C-BT Project water dedicated to this plan and provide a copy of the Northern District's approval letter as required by paragraph I(g) of the Northern District's May, 2005 Interim Rule.**

For the 2022 plan period, a total of 6.47 acre-feet of reusable effluent will be provided by Loveland. This leased water is also used to replace depletions at the Wagner-Kauffman No. 3 Pit (M-1999-069, WDID 0403008). A total of 0.036 acre-feet of replacement water has been dedicated to the Wagner-Kauffman No. 3 SWSP (Plan ID 3617, WDID 0402529) during this plan period. The monthly depletions and replacement requirements for the Kauffman No. 1 Pit are indicated on the attached Table 4. A four percent (4%) transit loss has been applied to the required replacement water deliveries, based on the distance from the most upstream augmentation source, Green Ridge Glade Reservoir, to the Kauffman No. 1 Pit. The total amount of replacement water dedicated to the Kauffman No. 1 Pit for this plan period therefore equals 6.43 acre-feet (6.18 acre-feet for replacement of depletions plus 0.25 acre-feet for transit loss).

Long Term Augmentation

In accordance with the attached letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. Unlined ponds will create long-term injurious stream depletions unless otherwise augmented. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long-term injurious stream depletions that result from mining-related exposure of groundwater. The DRMS letter identifies four approaches to satisfy this requirement. Approach no. 4 is to obtain approval from the Division of Water Resources that acknowledges compliance with the SEO's requirements pursuant to section 37-90-137(11), C.R.S. Since the operator has backfilled the site so that only pre-81 groundwater areas remain, there are no long-term injurious stream depletions from mining related exposure of groundwater, and the operator is considered to be in compliance with the SEO's requirements. In addition, there is

currently a surety bond outstanding for this project in the amount of $14,727.00 to ensure reclamation of the site is completed as currently proposed.

Conditions of Approval

I hereby approve the proposed substitute water supply plan in accordance with section 37-90-137(11), C.R.S., subject to the following conditions:

1. This plan is approved with the effective date of January 1, 2022 and shall be valid through December 31, 2022 unless otherwise revoked or superseded by decree. If depletions will extend beyond the plan's expiration date, a renewal request must be submitted to this office with the statutory fee (currently $257) no later than November 1, 2022. If a renewal request is received after the expiration date of this plan, it may be considered a request for a new SWSP, in which case the $1,593 filing fee will apply.
2. Well permit no. 42901-F was obtained for this gravel pit in accordance with sections 37-90-137(2) and (11), C.R.S. On April 6, 2010 the location of this permit was amended in accordance with Policy Memorandum 93-1 to reflect the actual location of the gravel pit. The permit allows groundwater use for dewatering, evaporation, water lost in mined product, gravel washing, and dust control. The permit allows a maximum annual appropriation of 43.38 acre-feet, and a maximum post-81 exposed groundwater surface of 24.3 acres. Actual groundwater uses and amounts shall be limited to those specifically approved under this SWSP.
3. No additional groundwater surface area shall be exposed at the Kauffman No. 1 Pit beyond that which was exposed prior to January 1, 1981. The annual amount of water used for dust control at the Kauffman No. 1 Pit under this SWSP shall not exceed 6.60 acre-feet unless an amendment is made to this plan.
4. Approval of this plan is for the purposes as stated herein. Any additional uses for which the water may be used must first be approved by this office.
5. All pumping for dust control purposes shall be measured in a manner acceptable to the water commissioner or division engineer.
6. All releases of replacement water must be sufficient to cover all out-of-priority depletions in time, place, and amount and must be made under the direction and/or the approval of the water commissioner. Notice must be provided and approval made by the water commissioner at least 48 hours prior to the release of replacement water, or as required by the water commissioner. Replacement of lagged depletions, including those lagged depletions that occur to the stream after the expiration date of this SWSP, must continue until there is no longer an effect on stream flow. According to the projection shown in the attached Table 3, lagged depletions will extend through December 2023.
7. The release of replacement water may be aggregated to maximize beneficial use. The water commissioner and/or the division engineer shall determine the rate and timing of an aggregated release.
8. The replacement water that is the subject of this plan cannot be sold or leased to any other entity. As a condition of subsequent renewals of this substitute water supply plan, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. All replacement water must be concurrent with depletions in quantity, timing and locations.

9. In the event that Loveland plans to use C-BT Project water as a replacement source, Loveland shall comply with the Interim Rule issued by the District in May 2005 regarding the use of C-BT Project water in substitute water supply plans. Prior to the use of the C-BT Project water, Loveland shall notify this office, the division engineer and the water commissioner of the amount of C-BT Project water dedicated to this plan and provide a copy of the District's approval letter as required by paragraph I(g) of the District's May, 2005 Interim Rule.

10. The name, address and phone number of the contact person who will be responsible for the operation and accounting of this plan must be provided with the accounting form to the division engineer and water commissioner.

11. Adequate accounting of depletions and replacements must be provided to the division engineer in Greeley (DNR_Div1Accounting@state.co.us) and the water commissioner (Jean Lever at Jean.Lever@state.co.us) on a monthly basis unless otherwise approved in writing by the Water Commissioner. Submitted accounting shall conform to the Administration Protocol *"Augmentation Plan Accounting, Division One – South Platte River"* (attached).

    In addition, the applicant shall verify that the City of Loveland ("Loveland") included replacement water for this SWSP in their monthly accounting. It is the Applicant's responsibility to ensure Loveland releases the leased water in the correct time, place, and amount.

12. Conveyance loss for delivery of replacement water to the location where depletions from the Kauffman No. 1 Pit impact the Big Thompson River is subject to assessment and modification as determined by the division engineer.

13. In order to prevent injury to other water rights, the division engineer and water commissioner must be able to administer Applicants' replacement water past headgates on the river at times when those headgates would otherwise be legally entitled to divert all available flow in or "sweep" the Big Thompson River or its tributaries. Applicant shall not receive credit for replacement of depletions to the Big Thompson River below such diversion structures unless bypass and measurement structures are in place to allow the division engineer and water commissioner to confirm that Applicant's replacement water is delivered past the headgates. In the event that delivery past dry-up points requires the use of a structure for which a carriage or use agreement with a third party is required, Applicant shall be responsible for securing such agreement. Until such time as the Applicant provides a copy of the carriage or use agreement to the division engineer and water commissioner, no credit will be allowed for replacement of depletions to the Big Thompson River below such diversion structure.

14. The Division of Water Resources will not be responsible for any enforcement or administration of third party agreements that are not included in a decree of the water court.

15. The approval of this substitute water supply plan does not relieve the Applicant and/or the landowner of the requirement to obtain a water court decree approving a permanent plan for augmentation or mitigation to ensure the permanent replacement of all depletions, including any long-term evaporation losses and lagged depletions after gravel mining has ceased. If reclamation of the mine site produces a permanent water surface exposing post-81 groundwater to evaporation, an application for a plan for augmentation must be filed with the Division 1 Water Court at least three (3) years prior to the completion of mining to include, but not be limited to, long-term evaporation losses. **Since there are no new depletions occurring after reclamation is complete, only the replacement of lagged depletions shall**

continue until there is no longer an effect on the stream. Granting of this plan does not imply approval by this office of any such court application(s).

16. In accordance with amendments to section 25-8-202(7), C.R.S., and "Senate Bill 89-181 Rules and Regulations" adopted on February 4, 1992, the State Engineer shall determine whether the substitute supply is of a quality to meet requirements of use to senior appropriators. As such, water quality data or analysis may be requested at any time to determine if the water quality is appropriate for downstream water users.
17. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has or will occur as a result of this plan. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water at the pit must cease immediately.
18. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning this plan. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs, or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant.

Please contact Sarah Brucker in Denver at (303) 866-3581, or Michael Hein in Greeley at (970) 352-8712, if you have any questions concerning this approval.

Sincerely,

for Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Map 4 - Kauffman #1 Exposed Water Surface
Figure 2 - Kauffman #1 Pit Proposed Relocation of Pre-81 Credit (2010)
Tables 1, 3, and 4
City of Loveland Lease
April 30, 2010 letter from DRMS
Accounting Protocol

Cc: Michael Hein, Lead Assistant Division Engineer, Michael.Hein@state.co.us
1809 56th Avenue, Greeley, CO 80634

Louis Flink, Tabulation/Diversion Records Coordinator, Louis.Flink@state.co.us

Jean Lever, Water Commissioner, Water District 4, Jean.Lever@state.co.us

Amy Eschberger, Division of Reclamation Mining and Safety, Amy.Eschberger@state.co.us


Map 4 - Kauffman #1 Exposed Water Surface
Legend
20.68 acres
0.12 acres
1.11 acres
8.89 acres
Google Earth
© 2020 Google
N
900 ft

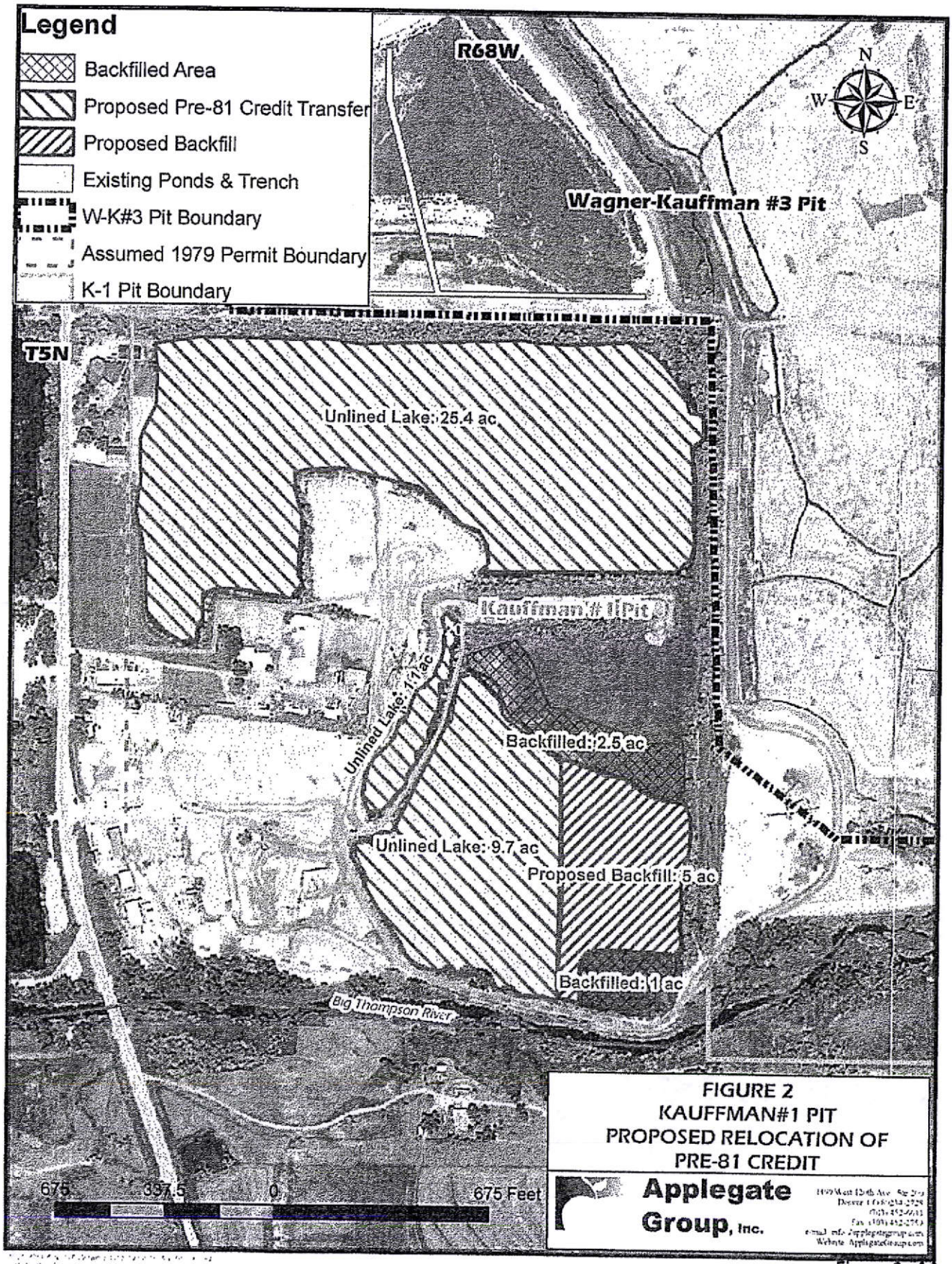

FIGURE 2
KAUFFMAN#1 PIT
PROPOSED RELOCATION OF
PRE-81 CREDIT

Applegate Group, Inc.

Figure 2 of 2

Table 1

Kauffman Pit #1

Jake Kauffman and Son, Inc.

Consumptive Use - 2022

Month	Aggregate Production (Tons)	Water Retained in Product (ac-ft)	Water Used for Dust Control (ac-ft)	Water Used for Irrigation (ac-ft)	Total Operational Consumptive Use (ac-ft)	Evaporative Consumptive Use (ac-ft)	Total Consumptive Use (ac-ft)
January	0	0.00	0.00	0.00	0.00	0.00	0.00
February	0	0.00	0.00	0.00	0.00	0.00	0.00
March	0	0.00	0.46	0.00	0.46	0.00	0.46
April	0	0.00	0.74	0.00	0.74	0.00	0.74
May	0	0.00	0.74	0.00	0.74	0.00	0.74
June	0	0.00	0.83	0.00	0.83	0.00	0.83
July	0	0.00	1.11	0.00	1.11	0.00	1.11
August	0	0.00	0.87	0.00	0.87	0.00	0.87
September	0	0.00	0.86	0.00	0.86	0.00	0.86
October	0	0.00	0.72	0.00	0.72	0.00	0.72
November	0	0.00	0.28	0.00	0.28	0.00	0.28
December	0	0.00	0.00	0.00	0.00	0.00	0.00
Totals	**0**	**0.00**	**6.60**	**0.00**	**6.60**	**0.00**	**6.60**

Table 3

Kauffman Pit #1

Jake Kauffman and Son, Inc.

Lagged Depletion Values (ac-ft) - Consumptive Use from 2000 - 2022 (projected)

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2004	-0.90	-1.04	-1.31	-2.19	-2.96	-3.97	-4.50	-4.21	-2.93	-2.35	-1.41	-1.05	-28.82
2005	-0.80	-0.89	-1.15	-1.88	-2.53	-3.36	-3.79	-3.55	-2.47	-1.98	-1.20	-0.87	-24.47
2006	-0.75	-0.86	-1.12	-1.85	-2.51	-3.34	-3.78	-3.54	-2.46	-1.97	-1.19	-0.86	-24.23
2007	-0.75	-0.85	-1.04	-1.74	-2.33	-3.14	-3.57	-3.35	-2.33	-1.87	-1.12	-0.86	-22.94
2008	-0.73	-0.82	-0.96	-1.61	-2.16	-2.93	-3.33	-3.13	-2.19	-1.76	-1.04	-0.83	-21.48
2009	-0.63	-0.67	-0.79	-1.31	-1.74	-2.35	-2.67	-2.50	-1.74	-1.40	-0.83	-0.67	-17.29
2010	-0.57	-0.64	-0.76	-1.28	-1.72	-2.33	-2.66	-2.49	-1.73	-1.39	-0.83	-0.66	-17.06
2011	-0.57	-0.63	-0.76	-1.28	-1.72	-2.33	-2.65	-2.49	-1.73	-1.39	-0.83	-0.66	-17.03
2012	-0.26	-0.24	-0.33	-0.54	-0.73	-0.95	-1.18	-1.33	-1.37	-1.32	-1.18	-0.96	-10.39
2013	-0.79	-0.64	-0.54	-0.46	-0.43	-0.71	-0.74	-0.70	-0.48	-0.29	-0.21	-0.17	-6.17
2014	-0.15	-0.13	-0.11	-0.09	-0.13	-0.41	-0.49	-0.50	-0.56	-0.44	-0.19	-0.10	-3.30
2015	-0.08	-0.06	-0.09	-0.16	-0.15	-0.11	-0.17	-0.32	-0.39	-0.31	-0.23	-0.16	-2.23
2016	-0.13	-0.11	-0.10	-0.14	-0.21	-0.31	-0.42	-0.48	-0.48	-0.46	-0.39	-0.26	-3.51
2017	-0.21	-0.17	-0.19	-0.27	-0.30	-0.32	-0.39	-0.47	-0.49	-0.37	-0.25	-0.20	-3.63
2018	-0.17	-0.14	-0.18	-0.30	-0.39	-0.45	-0.51	-0.55	-0.58	-0.55	-0.41	-0.29	-4.52
2019	-0.24	-0.20	-0.19	-0.21	-0.24	-0.29	-0.37	-0.45	-0.47	-0.41	-0.32	-0.23	-3.62
2020	-0.18	-0.15	-0.14	-0.18	-0.24	-0.31	-0.40	-0.44	-0.43	-0.42	-0.34	-0.23	-3.46
2021	-0.19	-0.16	-0.14	-0.15	-0.17	-0.25	-0.43	-0.57	-0.60	-0.62	-0.55	-0.41	-4.24
2022	**-0.29**	**-0.24**	**-0.27**	**-0.39**	**-0.50**	**-0.56**	**-0.65**	**-0.73**	**-0.72**	**-0.72**	**-0.63**	**-0.48**	**-6.18**
2023	-0.36	-0.29	-0.24	-0.21	-0.18	-0.15	-0.13	-0.11	-0.10	-0.08	-0.07	-0.06	-1.98

Notes:

For the 2000 - 2011 period, the following parameters were used in the AWAS Model: W -= 4,000 ft, Transmissivity = 50,000, Specific Yield = 0.2, X = 250 ft

For 2012, the following parameters were used in the AWAS Model: W -= 4,000 ft, Transmissivity = 50,000, Specific Yield = 0.2, X = 1,700 ft

For the 2013-2014 period, the following parameters were used in the AWAS Model: W -= 4,000 ft, Transmissivity = 50,000, Specific Yield = 0.2, X = 550 ft

For 2015 - 2023, the following parameters were used in the AWAS Model: W -= 4,000 ft, Transmissivity = 50,000, Specific Yield = 0.2, X = 1,450 ft

Table 4

Kauffman Pit #1
Jake Kauffman and Son, Inc.

2022 Water Balance - Lagged Depletions and Replacement Supplies from City of Loveland

Month	Consumptive Use (ac-ft)	Lagged Depletions (ac-ft)	City of Loveland Transit Losses (ac-ft)	Total Water Required from City of Loveland (ac-ft)
January	0.00	-0.290	-0.012	-0.302
February	0.00	-0.240	-0.010	-0.250
March	0.46	-0.270	-0.011	-0.281
April	0.74	-0.390	-0.016	-0.406
May	0.74	-0.500	-0.020	-0.520
June	0.83	-0.560	-0.022	-0.582
July	1.11	-0.650	-0.026	-0.676
August	0.87	-0.730	-0.029	-0.759
September	0.86	-0.720	-0.029	-0.749
October	0.72	-0.720	-0.029	-0.749
November	0.28	-0.630	-0.025	-0.655
December	0.00	-0.480	-0.019	-0.499
Totals	**6.60**	**-6.18**	**-0.247**	**-6.427**

2023 Water Balance - Lagged Depletions and Replacement Supplies from City of Loveland

Month	Consumptive Use (ac-ft)	Lagged Depletions (ac-ft)	City of Loveland Transit Losses (ac-ft)	Total Water Required from City of Loveland (ac-ft)
January	0.00	-0.360	-0.014	-0.374
February	0.00	-0.290	-0.012	-0.302
March	0.00	-0.240	-0.010	-0.250
April	0.00	-0.210	-0.008	-0.218
May	0.00	-0.180	-0.007	-0.187
June	0.00	-0.150	-0.006	-0.156
July	0.00	-0.130	-0.005	-0.135
August	0.00	-0.110	-0.004	-0.114
September	0.00	-0.100	-0.004	-0.104
October	0.00	-0.080	-0.003	-0.083
November	0.00	-0.070	-0.003	-0.073
December	0.00	-0.060	-0.002	-0.062
Totals	**0.00**	**-1.98**	**-0.079**	**-2.059**

WATER LEASE

THIS WATER LEASE ("Lease") is made and entered into this 7 day of December, 2022, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality, whose address is 500 East Third Street, Loveland, Colorado 80537 ("City"), and JAKE KAUFFMAN & SON, INC. ("Lessee"), A Colorado corporation, whose address is 808 South County Road 9E, Loveland, Colorado 80537.

WHEREAS, Lessee desires to lease water that may be used for augmentation or replacement for the purpose of augmenting certain wells, ponds, or pumps along the Big Thompson River; and

WHEREAS, the City is the owner of certain water that may be used for purposes of augmentation or replacement and is willing to lease, on a temporary basis, a portion of its water to Lessee on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Term. This Water Lease shall be effective for a term of three (3) years commencing January 1, 2022 and ending December 31, 2024, unless sooner terminated as provided herein. It is understood by Lessee that the leased water may not be available to Lessee in any future year and Lessee specifically waives any claim, legal or equitable, for the renewal of this lease and specifically disclaims any expectation for such renewal.

2. Water. The City shall provide up to ten (10) acre-feet of water for Lessee's purposes, which may include, but is not limited to Windy Gap water, water stored in Green Ridge Glade Reservoir, decant water from the Loveland Water Treatment Plant, effluent from the Loveland Waste Water Treatment Plant, and any other source legally and physically available to the City that may be used for augmentation or replacement.

Lessee must use the water for replacement of depletions, including evaporation, at Kauffman #1 Pit and Wagner/Kauffman #3 Pit, M-99-069, or as directed by the River Commissioner or the Office of the State Engineer. Lessee shall use the leased water only for augmentation or replacement purposes according to the terms of a substitute water supply plan (SWSP) approved by the Colorado Division of Water Resources. Lessee may not sell or lease the water and may not use it for any other purposes. Lessee shall take and use the leased water to the fullest extent possible, and shall undertake no action that could be construed as abandonment of the water rights.

3. Annual Lease Payment.

a. Regardless of water supply source, Lessee shall annually pay the City five hundred dollars ($500) per acre-foot of water delivered under this Lease.

b. The City will submit an annual bill to the Lessee for all water supplied, in accordance with this Water Lease.

c. Lessee shall pay said amount to the City within thirty (30) days of receiving the City's bill.

d. Lessee shall supply to the City an anticipated schedule of replacement for the upcoming calendar year by December 1 of the previous calendar year. The Lessee is responsible for notifying the City if this schedule changes.

e. The City shall coordinate replacement or delivery of the leased water to the Big Thompson River with the River Commission or the Office of the Division Engineer for Water Division 1. Accounting of such delivery shall be made available to the River Commission or the Office of the Division Engineer for Water Division 1

4. Termination by City. In the event the City has an urgent need for water, as determined in the sole discretion of the City, the City may unilaterally terminate this Water Lease without cause. The City will endeavor to give Lessee thirty (30) days notice of such termination, but shall not be required to do so.

5. Termination by Lessee. After December 2024, the Lessee may terminate this lease providing written notice to the City prior to January 1 of the year in which the Water Lease is intended to be terminated. So long as lessee provides such advance notice, Lessee shall not be obligated to pay the Annual Lease payment for the year in which the Water Lease is terminated or any subsequent year.

6. Termination of Delivery for Nonpayment. In the event Lessee fails to pay for water when payment is due as set forth in paragraph 3, above, the City, in addition to seeking recovery of sums due, may terminate delivery of irrigation water to Lessee.

7. No Sublease Allowed. The Lessee shall not rent, sublet, or otherwise convey to any person or entity the right to use the leased water.

8. Limitations of Water Lease. The City grants no interest in the leased water to the Lessee other than as explicitly set forth in this Water Lease. Lessee shall make no claims to any rights, title, or interest in the leased water other than as explicitly set forth in this Water Lease. This Water Lease does not create a partnership or joint venture of any kind between the Parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through its use of the leased water on the Property.

9. No Warranties. The City represents that it is the owner of the shares leased to Lessee but does not make any express or implied warranties or representations concerning the quality of the leased water or its suitability for use for irrigation purposes by Lessee. Delivery of water by the City under this Water Lease shall be on an "as is" basis only, and the City neither expressly nor impliedly warrants or guarantees the quality of the water or the quantity of water that will be yielded from the shares leased to Lessee. Lessee shall not hold the City liable for

any failure in delivery of the leased water, including, but not limited to, any failure in delivery due to force of nature or failure of water supply infrastructure.

10. Notices. Written notices required under this Water Lease and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City: City of Loveland Water and Power Department
Attention: Todd Hanlin, Water Resources Manager
200 North Wilson Avenue
Loveland, Colorado 80537

If to Lessee: Jake Kauffman & Son, Inc.
808 South County Road 9E
Loveland, Colorado 80537

11. Lessee agrees to exercise its rights under this Water Lease at its own risk. Lessee shall, to the extent authorized by Colorado law, indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Water Lease or related activities. Nothing in this Water Lease is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as applicable now or hereafter amended.

12. Governing Law and Venue. This Water Lease shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado or the Water Court for Water Division 1 in the State of Colorado.

13. Severability. In the event a court of competent jurisdiction holds any provision of this Water Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Water Lease.

14. Headings. Paragraph headings used in this Water Lease are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Lease.

15. Assignability. Lessee shall not assign this Water Lease without the City's prior written consent.

16. Binding Effect. This Water Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

17. Entire Agreement. This Water Lease contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this Water Lease on the day and year first above written.

CITY OF LOVELAND, COLORADO

By: _____
Todd Hanlin
Department of Water and Power

ATTEST:

_____ 12-9-2021
Assistant City Clerk

CITY OF LOVELAND SEAL COLORADO

APPROVED AS TO FORM:

_____
Assistant City Attorney

Jake Kauffman & Son, Inc.

By: _____

) ss.
COUNTY OF LARIMER)

The foregoing Water Lease was acknowledged before me this 3rd day of December, 2021.

Witness my hand and official seal.

_____
Notary Public

My commission expires 6/2/2024.

MICHELLE KRISTINE SWENSON
Notary Public
State of Colorado
Notary ID # 20204019145
My Commission Expires 08-02-2024

City of Loveland

Department of Water and Power
Service Center • 200 N. Wilson Avenue • Loveland, CO 80537
(970) 962-3000 • (970) 962-3400 Fax • (970) 962-2620 TDD
www.cityofloveland.org

INVOICE

BILL TO: Jake Kauffman & Son Inc.
808 South County Rd 9E
Loveland CO 80537

DATE: 11/30/2021

Quantity	Description of Water	Unit Price	Total
6.47 AF (table attached)	2022 Reusable effluent	$500/AF	$3,235.00

Make all checks payable to City of Loveland
Payment is due within 30 days.
If you have any questions concerning this invoice, contact Ryan Van Pelt | 970-962-3717 | ryan.vanpelt@cityofloveland.org

Thank you for your business!

Attachments:
2022 Kauffman Requested Augmentation Releases from Todd Williams_11-30-2021

2022

Kauffman #1

	Lagged Depletion (ac-ft)	Transit Losses (ac-ft)	Total Replacement Requirement (ac-ft)
January	0.29	0.012	0.302
February	0.24	0.010	0.250
March	0.27	0.011	0.281
April	0.39	0.016	0.406
May	0.50	0.020	0.520
June	0.56	0.022	0.582
July	0.65	0.026	0.676
August	0.73	0.029	0.759
September	0.72	0.029	0.749
October	0.72	0.029	0.749
November	0.63	0.025	0.655
December	0.48	0.019	0.499
Annual Totals	6.18	0.25	6.43

2022

Wagner-Kauffman #3

	Lagged Depletion (ac-ft)	Transit Losses (ac-ft)	Total Replacement Requirement (ac-ft)
January	0.003	0.0001	0.003
February	0.002	0.0001	0.002
March	0.002	0.0001	0.002
April	0.002	0.0001	0.002
May	0.002	0.0001	0.002
June	0.003	0.0001	0.003
July	0.003	0.0001	0.003
August	0.004	0.0002	0.004
September	0.004	0.0002	0.004
October	0.004	0.0002	0.004
November	0.003	0.0001	0.003
December	0.003	0.0001	0.003
Annual Totals	0.035	0.0014	0.036

Total Water Requirement

	Kauffman #1 Requirement (af)	Wagner-Kauffman #3 (af)	**Total Monthly Requirement (af)**
January	0.302	0.003	**0.305**
February	0.250	0.002	**0.252**
March	0.281	0.002	**0.283**
April	0.406	0.002	**0.408**
May	0.520	0.002	**0.522**
June	0.582	0.003	**0.586**
July	0.676	0.003	**0.679**
August	0.759	0.004	**0.763**
September	0.749	0.004	**0.753**
October	0.749	0.004	**0.753**
November	0.655	0.003	**0.658**
December	0.499	0.003	**0.502**
Annual Totals	6.427	0.036	**6.464**

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

1313 Sherman St., Room 215
Denver, Colorado 80203
Phone: (303) 866-3567
FAX: (303) 832-8106

M-1978-327

COLORADO DIVISION OF RECLAMATION MINING & SAFETY

April 30, 2010

Jake Kauffman & Son, Inc
808 SCR 9E
Loveland, CO 805370000

RE: Mining Operations with Exposed Ground water

To Whom It May Concern:

The Division of Reclamation Mining and Safety is responsible for ensuring that Sand and Gravel mining operators comply with the requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). Among these requirements are provisions for the protection of water resources. The Act requires that reclamation plans must ensure minimization of disturbances to the prevailing hydrologic balance, including disturbances to the quantity of water in the area affected by mining and in the surrounding areas. § 34-32.5-116(4)(h). Rule 3.1.6(1)(a) requires compliance with Colorado water laws and regulations governing injury to existing water rights both during and after mining. Permits must specify how the permittee will comply with applicable Colorado water laws and regulations governing injury to existing water right rights. Rule 6.3.3(j); Rule 6.4.5(2)(c). After an extensive review, the Division determined that several operators may not have appropriate permit conditions to address certain reclamation liabilities arising from impacts to water resources.

In September 2009 the Division of Water Resources (DWR) updated its Guidelines for Sand and Gravel Pits. These guidelines provide guidance on achieving compliance with state law regarding replacement of depletions from sand and gravel mining, thus the guidelines provide a benchmark for the protection of hydrologic balance required under the Act and Rules. As noted in the Guidelines, sand and gravel operations which expose groundwater without complying with state law create a reclamation liability by impacting available groundwater.

State law requires that any person exposing ground water must obtain a well permit from the SEO pursuant to § 37-90-137(11). Because exposed groundwater results in out-of-priority water depletions, operations which expose ground water must also eventually obtain a water-court approved augmentation plan. Currently, several operators do not have either an augmentation plan or bonding to provide an alternative method to mitigate injurious stream depletions that result from mining-related exposure of ground water. The Division has a statutory duty to ensure that lands affected by mining are reclaimed in a manner that complies with state law and to ensure that operators have sufficient bonding to achieve reclamation. In order to assist operators in achieving compliance with these requirements, the Division proposes that, by April 30, 2011, operators should contact the Division and agree upon a plan for achieving compliance.

The Division has identified four approaches for operators:

1. File a financial warranty that will ensure backfilling of the pit to cover the exposed ground water to a depth of two feet above the static ground water level or,

2. Obtain a court approved augmentation plan prior to exposing ground water or,

3. File a financial warranty to cover the cost of installing a clay liner or slurry wall that meets the Division of Water Resources requirements for preventing ground water exposure or,

4. Obtain approval from the Division of Water Resources that acknowledges compliance with the SEO's requirements pursuant to § 37-90-137(11).

The Division will work with operators on an individual basis as they move to implement one of these plans. It is likely that options 1 and 3 will require the submittal of a technical revision or an amendment to the existing permit depending on the nature of the current mining and reclamation plan and the proposed changes. Increased financial warranties, as a result of these modifications, may be posted in a phased manner not to exceed three years. Amendments or revisions currently under review will be required to be approved by April 30, 2011 and may use the phased financial warranty approach described above. New applications going forward or presently under review by the Division will be required to meet the requirements of one of the options 1-4 at the time of application approval. Failure of affected operators to initiate contact with the Division and gain compliance as described above could result in an enforcement action being issued by the Division.

If you have any questions, please contact Tony Waldron at 303-866-3567, extension 8150.

cc: M1999069 Wagner/Kauffman Pit #3
M1978327 Kauffman Pit

COLORADO
Division of Water Resources
Department of Natural Resources

ADMINISTRATION PROTOCOL
Augmentation Plan Accounting
Division One - South Platte River
Revised October, 2021

This protocol establishes the accounting and reporting process required to enable the division engineer's office to determine if depletions from all out-of-priority diversions are being replaced so as to prevent injury to vested water rights. The accounting must follow "cradle to grave" accounting practices that track exactly how the data are manipulated from raw data input (e.g., meter readings) to the resultant impact on the river. While this protocol is subordinate to any decreed language addressing specific accounting requirements, it generally addresses the minimum requirements of such accounting.

The accounting must use the standard convention where a depletion is shown as a negative value and an accretion or other replacement source is shown as a positive value. The difference of depletions and replacements will then result in either a negative or positive impact on the stream.

1. Accounting must be submitted electronically to the division engineer and water commissioner through the online data submittal portal at the following link on our website: https://dwr.state.co.us/Tools/reporting. If not already registered, you will need to create a new account through that link.

   Typically, submittals are due within 30 days of the end of the month for which the accounting is being submitted, unless decreed otherwise. Additional data or more frequent submittals may be required by the water commissioner if required for administration. Accounting submittals not submitted through the online data submittal portal or questions regarding accounting submittals may be emailed to dnr_Div1Accounting@state.co.us.

   The following naming convention must be used for all files submitted via email:
   "PlanWDID_YYMMDD"

   where: PlanWDID is the WDID assigned by the division engineer's office

   YYMMDD corresponds to the date the accounting is submitted.

   As an example, the assigned WDID for the former GASP plan was 0103333. If accounting using Excel® was submitted for that plan on May 15, 2004, the file name would be:
   "0103333_040515.xls"

2. The accounting must include a Contact & Plan Information tab, that includes the 7-digit WDID for the plan for augmentation/SWSP, the 4-digit SWSP ID (if applicable), and contact information (i.e., name, phone number, email address) for the augmentation plan accounting including:
   a. the owner(s) of each augmented structure
   b. the person responsible for submitting the accounting
   c. the plan administrator and/or the plan attorney.

3. All of the raw input data (i.e., meter readings, water pumped from wells, etc.) must be provided and organized in a single location, such as an "Input" worksheet, etc. The accounting must include the following input data listed below, as well as relevant WDIDs and permit numbers.

    a. Diversion data from flumes or weirs and unit of measurement.

    b. The required input data for each well is:
        i. the monthly flow meter reading as shown on the flow meter; date of the meter reading; flow meter multiplier (i.e., 0.001, 10, 1); units of volume (i.e., gallons or acre-feet); the meter serial number; correction factor, if any.
        ii. The total volume pumped, showing the calculations using the information in Item "i" above.
        iii. factors from the decree or SWSP that provide for the well consumptive use and depletions (i.e., presumptive depletion factor (PDF), water balance methodology, lagging parameters, etc.).
        iv. Any well permitted or decreed as an alternate point of diversion (APOD) to a surface water right must report pumping on a daily basis if any of the diversions during the month is claimed as being "in priority". (See Administration Protocol - APOD Wells for more details.)

    c. If applicable, data for each recharge structure must be included and comply with the appropriate decree(s) or SWSP Approval requirements and any applicable current statewide Administration Protocol. At a minimum the following should be reported in the accounting:
        i. 7-digit WDID and name of recharge structure
        ii. daily volume in AF diverted into the site;
        iii. monthly volume in AF released from the site;
        iv. monthly gross evaporative loss in AF;
        v. volume of water in AF remaining at the end of the month.

    d. The accounting must identify each source of replacement water actually delivered to the stream and how replacement water at that location offset the depletions. To demonstrate the water was actually delivered to the required location will require the following information:
        i. the name (water court case, lease, etc.) and WDID of the originating source of the replacement water, date released and volume of water released;
        ii. transit losses from point of release to point of depletion or use, if any, using stream loss factors approved by the water commissioner;
        iii. the volume of water actually delivered on a daily basis past any surface water diversion that was sweeping the river as corroborated by the water commissioner. (See Administration Protocol - Delivery of Water for more details on delivering water).

    For each source of replacement water that has been "changed" for use as a source of augmentation, such as changed reservoir shares, changed rights from a ditch, or credits from dry-up, etc., the following input information must be reported:
        i. the decreed volume of return flow obligation;
        ii. if not specified in the decree or SWSP, the location and timing of the owed return flow on the stream(s).

4. If required by the decree or SWSP, the accounting must include a monthly projection of the plan's operation at least through March 31 of the next calendar year, or as specified in the decree or SWSP.

5. The accounting submittal must include output associated with modeling showing monthly delayed depletions (from well pumping or return flow obligations) and/or accretions (from recharge).

6. All accounting must provide a net impact summary that shows a daily balance of the out-of-priority depletions, accretions from each recharge site, volume of replacement water actually delivered and the resultant net impact. If necessary, a net impact must be shown for each applicable river and reach.

   While modeling may use a monthly step function to determine the depletions from pumping and accretions from recharge, the monthly result must then be divided by the number of days in the month in order to simulate a daily impact, as water rights are administered on a daily and not monthly basis.

   The accounting should indicate that the replacement water is equal to the depletion(s) such that the daily net impact (using the simulated daily numbers from the modeling) is not negative, unless the water commissioner approves less frequent aggregation of replacements without injury to downstream water rights.

   In the instance that aggregation is allowed, replacement is needed only for days with out-of-priority depletions. For example, if a well is out-of-priority for 15 days during a month, replacement must be made only for the 15 days the well is out-of-priority. Likewise, any simulated daily accretions will only count toward replacing the depletion on the days the well is out-of-priority. The accretions that accrue to the river when the well is in priority cannot be applied to different days with out-of-priority depletions.

7. The basis for determining that the depletions are out-of-priority should be data from the Division of Water Resources' Administrative Calls & Analysis Tool (https://dwr.state.co.us/Tools/AdministrativeCalls/Active) and should be included in the accounting along with the relative steps in the determination of a structure being in or out of priority. The analysis may be done, unless otherwise limited by decree, for each well or groups of wells, provided the most junior water right associated with the group of wells is used as the reference water right for the group's out-of-priority status.

8. The accounting shall include all the required information for the month of the submittal in addition to the information submitted from previous months such that the information and monthly submittals are a cumulative report each month throughout the 12 month reporting period.

9. If a well is covered in multiple SWSPs or augmentation plans, the monthly meter readings must be the same in the accounting for each plan covering the subject well. The accounting for every plan covering the well shall state the proportionate and total pumping amount covered by each plan to assure all out-of-priority depletions are replaced.

10. The following additional accounting requirements apply when sources of replacement water are used in more than one plan.
    a. The entity providing replacement water to the stream is responsible for accounting for the total amount of replacement water and how much of the total went to each plan.
    b. The amount of replacement water claimed for a particular augmentation plan must match the amount in the accounting from the entity providing the replacement water to the stream.
    c. The amount of replacement water claimed for use by one or more water users shall not exceed the amount of replacement water physically and legally available. (See Administration Protocol – Use Of Unnamed Sources For Replacement for additional requirements concerning required notice and approval of sources of replacement not specifically described in a SWSP or augmentation plan).