

<p>DISTRICT COURT, WATER DIVISION 1 COLORADO</p> <p>Court Addresses: Water Division 1 P.O. Box 2038 Greeley, CO 80632</p> <hr/> <p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p>TC &amp; C, LLC, Applicant,</p> <p>IN EL PASO COUNTY.</p>	<p>DATE FILED: January 29, 2018 10:04 AM CASE NUMBER: 2017CW3076</p> <p>σ COURT USE ONLY σ</p> <p>Consolidated Case Numbers: 17CW3076 WD#1 17CW3027 WD#2</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND JUDGMENT AND DECREE OF THE WATER COURT</p>	

A claim for approval of plan for augmentation was filed in this case on May 30, 2017. The case was also filed in Water Division 2. The cases were consolidated in Water Division 1. All matters contained in the application having been reviewed, testimony having been taken where such testimony is necessary, and such corrections made as are indicated by the evidence presented herein, the following is hereby the Ruling of the Referee and Judgment and Decree of the Court:

FINDINGS OF FACT

1. Name, Address and Telephone Number of Applicant:

TC & C, LLC  
17572 Colonial Park Drive  
Monument, CO 80132  
(719) 651-4013
  
2. Objections: A statement of opposition was filed in Case No. 17CW3027 in Water Division 2 by Cherokee Metropolitan District. No other statements of opposition were filed and the time for filing such statements has expired.
  
3. Subject matter jurisdiction: Timely and adequate notice of the application was published as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over the parties affected hereby, whether they have appeared or not. The cases were consolidated in Case No. 17MD13 to be decreed by the Water Court, Water Division 1.

4. Plan for augmentation:

A. Groundwater to be augmented: 13.2 acre-feet per year for 300 years of not nontributary Dawson aquifer groundwater as decreed in Case No. 08CW164, District Court, Water Division 1. Applicant is the owner of the groundwater decreed in Case No. 08CW164, as evidenced by deed attached as Attachment A-1 hereto. The land which is the subject of Case No. 08CW164 and this decree is 58 acres of land, generally located in the N1/2 of Section 27, T11S, R66W of the 6th P.M., El Paso County, as described and shown on Attachment A-2 hereto (Subject Property).

B. Water rights to be used for augmentation: Return flows from the use of not nontributary Dawson aquifer groundwater and return flows and direct discharge of nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater as decreed in Case No. 08CW164. Applicant is the owner of 22.72 acre-feet per year of Arapahoe and 16.99 acre-feet per year of Laramie-Fox Hills aquifer groundwater.

C. Development and Consumptive Use: The Dawson aquifer groundwater will be used to serve 16 residential lots through individual wells, including through two existing Dawson aquifer wells as permitted in Well Permit Nos. 149714 and 225258 (8.8 acre-feet per year for 300 years), and to provide in building commercial use, and limited irrigation through one or more additional wells (4.4 acre-feet per year for 300 years). Each residential lot and well will use 0.55 acre-feet per year for 300 years for in house use (0.35 acre-feet) and irrigation of 3500 square feet of lawn, garden, and trees (0.2 acre-feet per year). The remaining 4.4 acre-feet per year may be used to provide in building commercial use (4 acre-feet) and irrigation of 7000 square feet of lawn, garden, and trees (0.4 acre-feet). Conservatively, water use in single family dwellings will equal at least 0.2 acre-feet of water annually, and that use of non-evaporative septic systems typically results in consumption of approximately 10% of such use, resulting in return flows of at least 0.18 acre-feet annually from those uses. Various components of this plan for augmentation are predicated on these estimations, and Applicant shall be required to use non-evaporative septic systems to treat and dispose of water used for in house use. 90% of the in building commercial use will be returned to the stream system, and no irrigation return flow is claimed for replacement of depletions in this plan.

D. Replacement of depletions during pumping: Based on annual pumping of 13.2 acre-feet per year over a 300 year pumping period, it is estimated that the total actual depletion to all stream systems is approximately 22.9% or 3.02 acre-feet (0.126 acre-feet for each residential well, and 1.01 acre-feet for the commercial use wells). Return flows from use of the Dawson aquifer groundwater from in house use in residences on each of the 16 residential lots (at least 0.18 acre-feet per year as described above or 2.88 acre-feet total) and from in building commercial use (3.6 acre-feet), are sufficient to replace actual depletions from pumping of 13.2 acre-feet per year for 300 years. Of the total actual depletion from pumping of 13.2 acre-feet per year after 300 years of pumping, it is estimated that approximately 12.2% occurs to the South Platte River stream systems and approximately 10.7% occurs to the Arkansas River stream systems. (The remaining percentages of actual depletions occur to streams in designated basins). Applicant does not have the physical ability to replace depletions to the Arkansas River and Monument Creek stream systems, but shall instead replace all such depletions to the South Platte

River via the Cherry Creek stream systems. During pumping of the Dawson aquifer, return flows from use of the groundwater are in excess of the total actual depletion of 3.02 acre-feet after 300 years of pumping.

E. Replacement of Post-pumping Depletions: Applicant agrees to replace depletions for the shortest of the following periods: the period provided by the Colorado Legislature, should it eventually specify one and if the Applicant obtains water court approval for such modification; the period determined by the State Engineer, should the State Engineer lawfully establish such a period; the period established through rulings of the Colorado Supreme Court on relevant cases; or until Applicant petitions the water court and after notice to parties in the case and prove that they have complied with all statutory requirements. The court finds that the provisions of this paragraph are adequate to comply with existing law and to prevent injury to others. It is estimated that maximum total actual depletion to all stream systems from pumping of 13.2 acre-feet per year for 300 years will be approximately 23.3% of average annual pumping in the 315th year. Applicant's replacement obligation will be the total stream depletion factor for all stream systems as shown on Attachment B for 300 years of pumping. That required amount of water will be pumped from the nontributary Arapahoe or Laramie-Fox Hills aquifers which are reserved for this purpose herein for diversion into the Cherry Creek stream systems. However, Applicant reserves the right to substitute the use of other nontributary groundwater, including from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate.

F. Applicant will begin making post-pumping replacements when the earliest of the following events has occurred: the total amount of Dawson aquifer groundwater allowed to be withdrawn (3960 acre-feet) has been withdrawn from the wells; or the Applicant or successors in interest have acknowledged in writing that all withdrawals for beneficial use of the groundwater have permanently ceased; or for a period of 10 consecutive years no groundwater has been withdrawn; or accounting shows that return flows from the use of the water being withdrawn from the Dawson aquifer are insufficient to replace depletions that already occurred.

G. Applicant shall reserve and dedicate to this plan for augmentation 22.72 acre-feet per year of Arapahoe and 16.99 acre-feet per year of Laramie-Fox Hills aquifer groundwater decreed in Case No. 08CW164, for the purpose of replacing to the Cherry Creek stream systems all post-pumping depletions. If at some time replacement of post-pumping depletions is no longer required pursuant to paragraph 5.E above, said reservation will become null and void at such time as the obligation to replace post-pumping depletions terminates. Applicant will be required to construct a well into the Arapahoe and/or Laramie-Fox Hills aquifer to provide for post-pumping depletions herein.

5. Applicant or successors and assigns shall be responsible for the operation of this augmentation plan. Applicant shall reserve the nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater described in paragraph 5.F. for use in this plan. Failure of either the Applicant or successors and assigns 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 well or wells. This decree shall be recorded in the real property records of El Paso County so that a title examination

of the property, or any part thereof, shall reveal to all future purchasers the existence of this decree.

6. Administration of plan for augmentation:

A. Applicant shall report to the Division Engineer for Water Division 1 upon request, a summary of the annual metered withdrawals of the subject wells from November 1 through October 31, on an accounting form acceptable to the Division Engineer.

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

C. Pursuant to Section 37-92-305(8), C.R.S., the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

D. The Applicant or successor and assigns at the direction of the Division Engineer, shall make post-pumping replacements to the Cherry Creek stream system pursuant to the percentage of depletion referenced on the depletion curve attached hereto on Attachment B.

7. Retained jurisdiction for plan for augmentation:

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

B. Any person seeking to invoke the retained jurisdiction of the Court shall file a verified petition with the Court. The petition to invoke retained jurisdiction or to modify the Decree shall set forth with particularity the factual basis and the requested decretal language to effect the petition. The party lodging the petition shall have the burden of going forward to establish prima facie facts alleged in the petition. If the Court finds those facts to be established, Applicant shall thereupon have the burden of proof to show: (1) that any modification sought by Applicant will avoid injury to other appropriators, or (2) that any modification sought by Objector is not required to avoid injury to other appropriators, or (3) that any term or condition proposed by Applicant in response to the Objector's petition does avoid injury to other appropriators.

C. The Court retains jurisdiction for the purpose of determining whether the continued reservation of the nontributary water for use on the property is required. After notice to the State Engineer's Office, if Applicant can demonstrate to the Court that post-pumping depletions need no longer be replaced, the Court may remove the requirement that the nontributary water must be reserved.

## CONCLUSIONS OF LAW

8. 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 Sections 37-90-137(4) and (9)(c). The withdrawal of up to 13.2 acre-feet per year for 300 years and no more than 3960 acre-feet total of the Dawson aquifer in accordance with the terms of this decree will not result in material injury to vested water rights of others subject to the provisions of this decree.

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

10. 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.

## JUDGMENT AND DECREE

The Findings of Fact and Conclusions of Law set forth above are hereby incorporated into the terms of this Judgment and Decree as if the same were fully set forth herein.

11. Applicant may withdraw up to 13.2 acre-feet per year for 300 years and no more than 3960 acre-feet total of not nontributary ground water from the Dawson aquifer under the plan for augmentation decreed herein pursuant to Section 37-90-137(9)(c), C.R.S.

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

13. 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.

14. The change of water rights and 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.

15. 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 change of water rights and the operation of the plan for augmentation as decreed herein.

16. In considering applications for permits for 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 terms of this decree.

17. Continuing Jurisdiction:

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

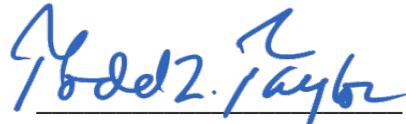
Date: January 5, 2018



John S. Cowan  
Water Referee  
Water Division 1

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

Date: January 29, 2018



Todd L. Taylor  
Alternate Water Judge  
Water Division 1



## Attached Legal Description

### Parcel 1

That portion of the North Half of the North Half of Section 27, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows:

Basis of Bearings is the North line of said Section 27, monumented at its West end with a 3 1/4 inch aluminum cap stamped with PLS 17496 and at its East end with an illegible 3 inch brass cap. Said line bears S 88 degrees 54 minutes 14 seconds E, 5264.06 feet.

Commencing at the Northwest corner of said Section 27,

- 1) thence South 88 degrees 54 minutes 14 seconds E., along the North line of said Section, 1974.02 feet to the Northwest corner of the East half of the Northeast Quarter of the Northwest Quarter of said Section 27;
- 2) thence South 0 degrees 06 minutes 40 seconds E., along the West line of said East Half, 1312.77 feet to the South line of said North Half of the North Half, said line being coincident with the North line of Rollin' Ridge Rancheros;
- 3) Thence South 89 degrees 30 minutes 26 seconds E., along said South line, 443.60 feet to the Point of Beginning of the parcel to be described;
- 4) Thence North 0 degrees 00 minutes 00 seconds W., 585.28 feet;
- 5) Thence South 90 degrees 00 minutes 00 seconds E., 454.78 feet;
- 6) Thence South 0 degrees 00 minutes 00 seconds E., 247.11 feet;
- 7) Thence North 90 degrees 00 minutes 00 seconds W., 127.15 feet;
- 8) Thence South 0 degrees 00 minutes 00 seconds W., 340.99 feet to said South line;
- 9) Thence North 89 degrees 30 minutes 26 seconds W., along said South line, 327.64 feet to the Point of Beginning,

County of El Paso,  
State of Colorado

### Parcel 2

Together with Access Easement described as follows in Easement Agreement recorded April 20, 2011 at Reception No. 211039534;

A 20 foot wide strip of land over and across a portion of the North Half of the North Half of Section 27, Township 11 South, Range 66 West of the 6<sup>th</sup> P.M., El Paso County, Colorado  
The centerline of said strip is described as follows:

Basis of Bearings is the North line of said Section 27, monumented at its West end with a 3 1/4 inch aluminum cap stamped with PLS 17496 and at its East end with an illegible 3 inch brass cap. Said line bears S 88° 54' 14" E, 5264.06 feet.

Commencing at the Northwest corner of said Section 27,

- 1) Thence S 88° 54' 14" E, along the North line of said Section, 1974.02 feet to the Northwest corner of the East Half of the Northeast Quarter of the Northwest Quarter of said Section 27;
- 2) Thence S 0° 06' 40" E, along the West line of said East Half, 1312.77 feet to the South line of said North Half of the North Half, said line being coincident with the North line of Rollin' Ridge Rancheros;

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- 3) Thence S 89° 30' 26" E, along said South line, 443.60 feet;
  - 4) Thence N 0° 00' 00" W, 585.28 feet to a point hereinafter referred to a Point A;
  - 5) Thence S 90° 00' 00" E, 14.06 feet to the Point of Beginning of the centerline to be described;
  - 6) Thence N 47° 42' 33" W, 49.71 feet to a point of curve;
  - 7) Thence Northwesterly along a tangential curve to the Northeast, said curve having a central angle of 33° 59' 25", a radius of 400.00 feet for an arc length of 237.30 feet;
  - 8) Thence N 13° 43' 08" W, tangent to said curve, 456.05 feet to the South line of Hodgen Road as described at Reception Number 206076668 and said centerline there terminating
- The sidelines of said easement are to be lengthened and shortened to terminate at said Hodgen Road right of way and at a line drawn N 90° 00' 00" E and S 0° 00' 00" E from the above described Point A,  
County of El Paso,  
State of Colorado



EXHIBIT A

Legal Description

NW1/4 NE1/4 AND THE E1/2 NE1/4 NW1/4 SECTION 27, T. 11 S., R. 66 W., 6<sup>TH</sup> P.M., EXCEPT THE NORTH 30 FEET THEREOF AND EXCEPT A PARCEL OF LAND DESCRIBED AS FOLLOWS:

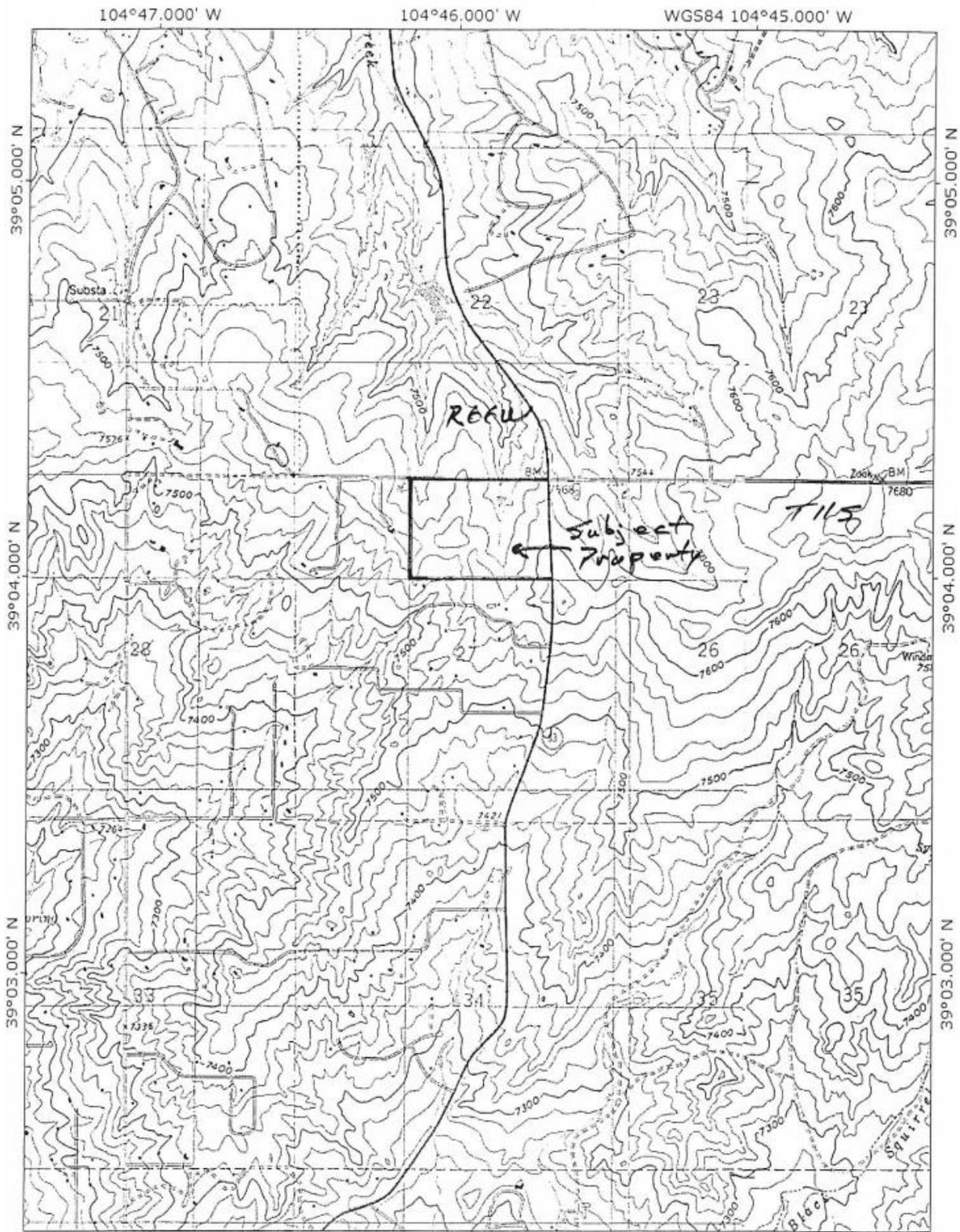
A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN IN EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SUBDIVISION PLATTED AS CHERRY CREEK CROSSING FILING No. 1, RECORDED ON THE 9<sup>TH</sup> DAY OF DECEMBER, 1999 UNDER RECEPTION NUMBER 99185572, SAID CORNER ALSO BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF COLORADO HIGHWAY 83 AND MONUMENTED AS SHOWN IN SAID PLAT, THENCE;

1. ALONG SAID WESTERLY RIGHT-OF-WAY LINE SOUTH 02° 07' 34" EAST, A DISTANCE OF 60.10 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF HODGEN ROAD, THENCE;
2. ALONG SAID SOUTH RIGHT-OF-WAY LINE NORTH 88° 52' 06" WEST, A DISTANCE OF 863.11 FEET TO THE POINT OF BEGINNING, THENCE;
3. SOUTH 01° 07' 54" WEST, A DISTANCE OF 20.00 TO A LINE 20.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE, THENCE;
4. ALONG SAID PARALLEL LINE NORTH 88° 52' 06" WEST, A DISTANCE OF 423.26 FEET TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, THENCE;
5. ALONG SAID WEST LINE NORTH 01° 07' 54" EAST, A DISTANCE OF 20.00 FEET, TO SAID SOUTH RIGHT-OF-WAY LINE, THENCE;
6. ALONG SAID SOUTH RIGHT-OF-WAY LINE SOUTH 88° 52' 06" EAST, A DISTANCE OF 423.26 FEET TO THE POINT OF BEGINNING

SAID TRACT OF LAND CONTAINS 8,465 SQUARE FEET, (0.194 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON SAID PLAT OF CHERRY CREEK CROSSING FILING No. 1.



17CW3076 Stream Depletion from Pumping 13.2 acre-feet in SEC 27 T11S R66W Dawson

