



swimming pool (0.26 acre-feet), and commercial use (2.3 acre-feet). The land which is the subject of the decree is 40.27 acres generally located in the S1/2SE1/4 of Section 22, T11S, R66W of the 6th P.M., El Paso County, as shown on Attachment A hereto. The 5.26 acre-feet has not previously been withdrawn or used pursuant to Case No. 99CW065.

3. Decreed Change: The use of the Denver aquifer groundwater for in house, irrigation and filling of swimming pools is hereby vacated from the terms of the augmentation plan (2.96 acre-feet), and only the commercial use (2.3 acre-feet) will be used pursuant to the terms of the augmentation plan. The augmentation plan also reserved an equal amount of nontributary Arapahoe aquifer groundwater associated with the amount and uses vacated herein as decreed in Case No. 94CW198 (2.96 acre-feet per year for 300 years and 888 acre-feet total) which amount is available for use in the plan for augmentation decreed herein.

#### PLAN FOR AUGMENTATION

4. Description of plan for augmentation:

A. Groundwater to be augmented: Up to 2.96 acre-feet per year for 300 years of not nontributary Dawson aquifer groundwater decreed in Case No. 94CW198. Applicant is owner of the Dawson aquifer groundwater herein as evidenced by the deed attached as Attachment B.

B. Water rights for augmentation: Return flows from the use of not nontributary Dawson aquifer and direct discharge of nontributary Laramie-Fox Hills aquifer ground water also decreed in Case No. 94CW198 and available for use pursuant to the change above.

C. Statement of plan for augmentation: The Dawson aquifer groundwater will be used through individual wells to serve two residences (0.57 acre-feet per residence) for in house use (0.35 acre-feet), irrigation of 2400 square-feet of home lawn, garden, and trees (0.17 acre-feet), and stock watering of up to 4 large domestic animals (0.05 acre-feet), and individual wells for commercial use (1.82 acre-feet). In the alternative, part of the commercial use described above (1.14 acre-feet per year of the 1.82 acre-feet per year) can be used to serve two additional residences for in house, irrigation, and stock watering use in the same amounts as described above. Conservatively, water use in single family dwellings will equal at least 0.2 acre-feet of water annually for in house uses, 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 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 commercial use and in house use. Return flows from commercial use and in-house use is estimated to be 90% of that use.

D. Replacement during pumping: During pumping of the Upper Dawson aquifer groundwater, Applicant will replace actual depletions to the affected stream system pursuant to Section 37-90-137(9)(c.5), C.R.S. In the 300th year, the total depletion is approximately 22.9% of the annual amount withdrawn or 0.13 acre-feet for each residence. Return flow from in house use of the Dawson aquifer water in each residence is estimated to be at least 0.18 acre-feet per year as described above and return flow from commercial use is approximately 90% of that use.



Such return flows are sufficient to replace actual depletions for pumping for 300 years. Return flows accrue to the South Platte River system via Cherry Creek. 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 2.96 acre-feet per year for 300 years from the Dawson aquifer, the maximum total depletion to the affected stream systems is approximately 23.3% of the annual amount withdrawn or 0.69 acre-feet in the 315th year. Applicants will reserve 2.96 acre-feet per year and 888 acre-feet total of the nontributary Arapahoe aquifer groundwater pursuant to the change decreed herein for use in this plan, but reserve the right to substitute the use of other nontributary groundwater, including return flows, either underlying the Subject Property, or from another location which is legally available for such purpose, for replacement of post-pumping depletions at such time that post-pumping depletions may begin. The Court retains continuing jurisdiction in this matter to determine if the supply is adequate. \*

F. Applicants will begin making post pumping replacements when: the total amount of Dawson aquifer groundwater allowed to be withdrawn (888 acre-feet total) has been withdrawn from the wells; the Applicants or successors in interest have acknowledged in writing that all withdrawals for beneficial use of the groundwater has permanently ceased; or for a period of 10 consecutive years that no groundwater has been withdrawn. At the time that post pumping depletions begin as described in this paragraph, Applicants or successors in interest will be required to construct a well and pump groundwater to replace post pumping depletions, subject to the terms and conditions of paragraph 11.E. This condition constitutes a covenant running with the land.

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 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 proves 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 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.

13. Administration of plan for augmentation:

A. Applicants shall report to the Division Engineer for Water Division 1 upon request, a summary of the annual withdrawals from the wells 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 Applicants or successors in interest at the direction of the Division Engineer shall make post-pumping replacements to the South Platte River stream system via Cherry Creek pursuant to the amounts to be calculated using the percentage referenced on the depletion curve attached hereto on Attachment C.

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 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 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 application for a decree confirming Applicants' right to withdraw and use groundwater from the 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 2.96 acre-feet per year for 300 years and no more than 888 acre-feet total of the 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 actual depletions to the affected stream systems for withdrawals of the 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 2.96 acre-feet per year for 300 years and no more than 888 acre-feet total of the 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 are 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 change of water rights or operation of the plan for augmentation as decreed herein.

25. 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.

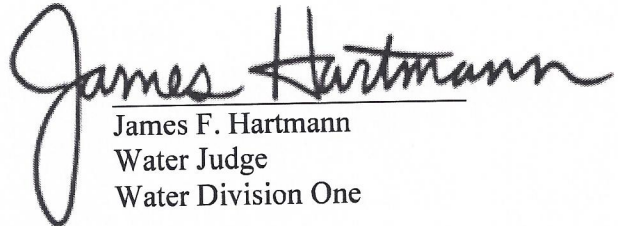
Date: June 29, 2018

A handwritten signature in cursive script, reading "John S. Cowan".

John S. Cowan  
Water Referee  
Water Division One

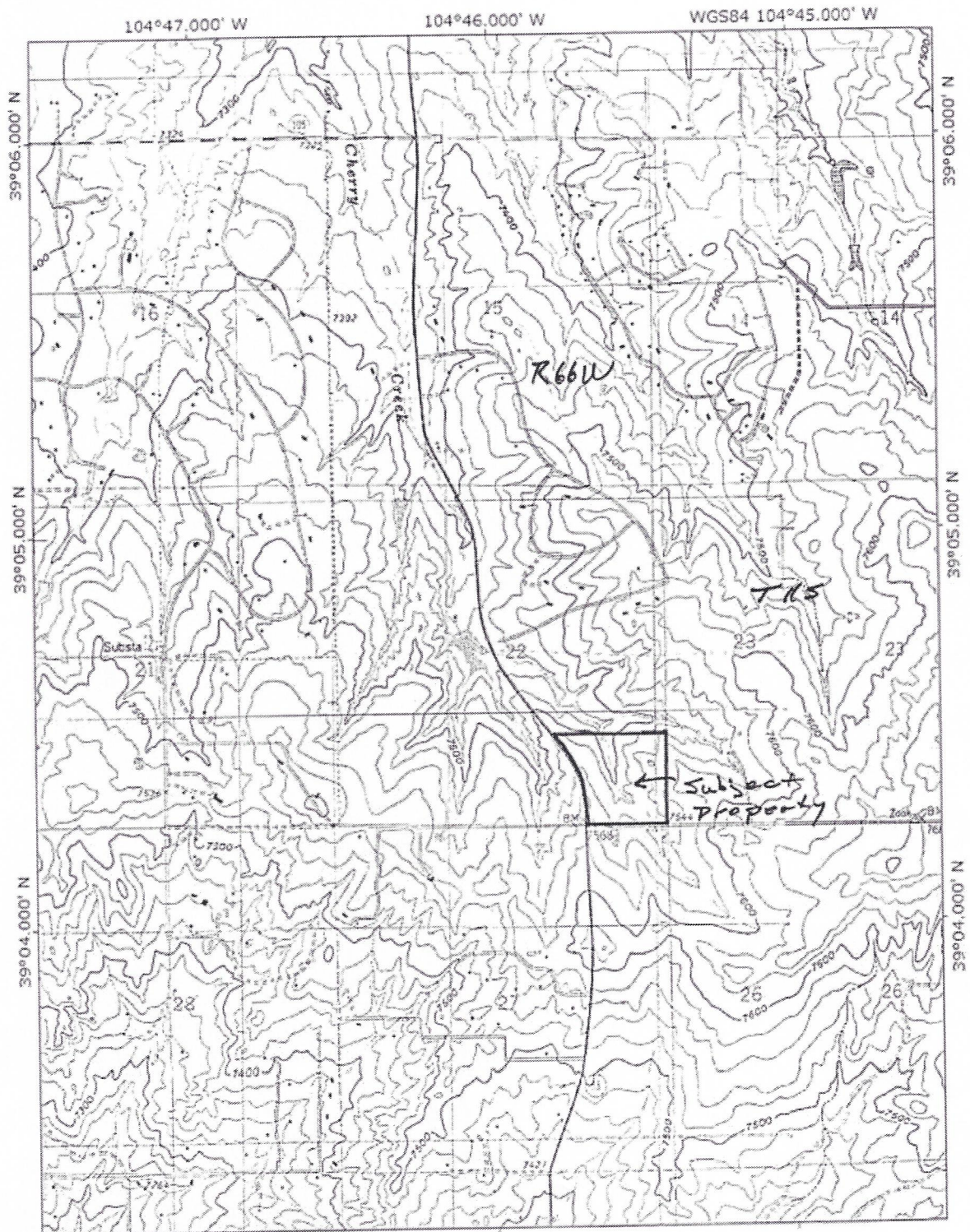
The court finds that no protest was filed in this matter. The foregoing ruling is confirmed and approved, and is made the judgment and decree of this Court.

Date: July 24, 2018

A handwritten signature in cursive script, reading "James F. Hartmann".

James F. Hartmann  
Water Judge  
Water Division One





David and Alyce McElhoes  
18CW3006

ATTACHMENT A



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ARDIS W. SCHMITT

## BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That I, JAMES J. SHANKS

whose address is Box 275, Alma

County of Park, State of Colorado, for the consideration of ONE DOLLAR,

in hand paid, hereby sells and conveys to

DAVID B. MOELHOES AND ALYCE T. MOELHOES, in Joint Tenancy,

whose legal address is: 8115 D Summeret Drive, Colorado Springs

County of El Paso, and State of Colorado, the following real property

situate in the County of El Paso, and State of Colorado, to wit:

Parcel One

SCHEDULE "A" ATTACHED HERETO AND MADE A PART HEREOF; and

Parcel Two

All water and water rights, associated with and appurtenant to the property described on Exhibit A hereto and made a part herein by this reference, including but not limited to all nontributary and not nontributary groundwater, subject to the terms and conditions of the decree in Case No. 84CW188, Water Division 1, dated March 18, 1986, as recorded in the records of El Paso County, Colorado, on May 6, 1986, in Book 6879 at Page 726, and also including any and all rights of Grantor in the augmentation plan decreed in Case No. 84CW188, which annual amounts are estimated to be as follows:

- |                               |                |
|-------------------------------|----------------|
| 1. Dawson aquifer:            | 35.1 acre-feet |
| 2. Denver aquifer:            | 37.8 acre-feet |
| 3. Arapahoe aquifer:          | 18 acre-feet   |
| 4. Laramie-Fox Hills aquifer: | 11.8 acre-feet |

## STATE DOCUMENTARY

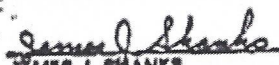
JUNE 14 1996

FEE \$ 1.00

Grantor provides no warranty as to the quality of the water conveyed.

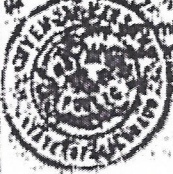
also known by street and number as: VACANT LAND

with all its appurtenances, subject to reservations and restrictions of record.

Signed and delivered this 11 day of June, 1996.
  
 JAMES J. SHANKS

STATE OF COLORADO

COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this 11th day ofJune, 1996, by JAMES J. SHANKS
 My commission expires: July 15, 1998  
 In my hand and official seal.

  
 Notary Public
ATTACHMENT B-1  
18CW3006

18CW3006

ATTACHMENT B-1



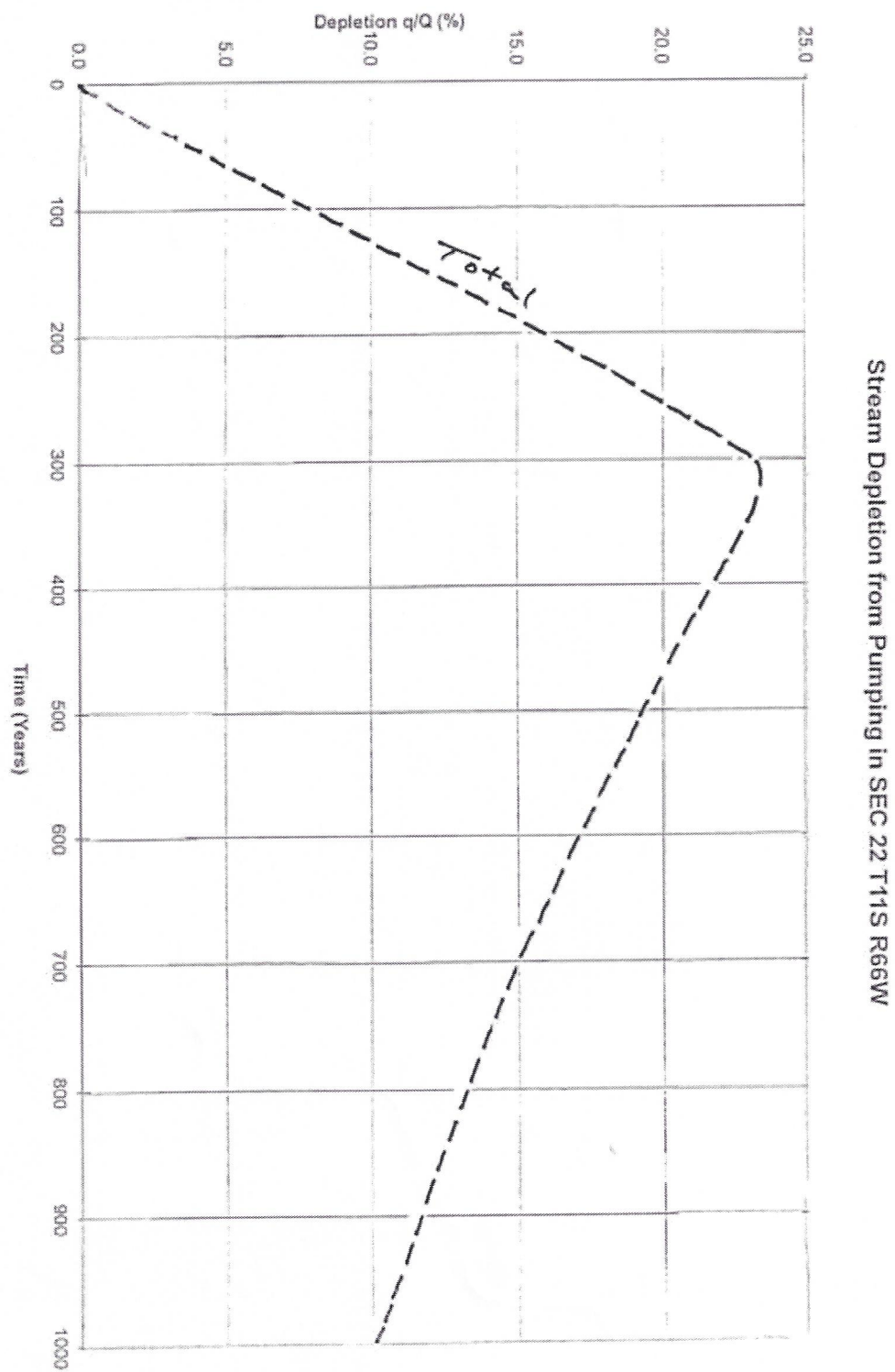
SCHEDULE A

PROPERTY DESCRIPTION

A TRACT OF LAND BEING PORTIONS OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 68 WEST OF THE 6TH P.M., LYING EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF COLORADO STATE HIGHWAY NO. 83, SITUATE IN EL PASO COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22; THENCE S88°31'12"E ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 1318.28 FEET TO THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE S00°03'35"W ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 1293.88 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF MOORE ROAD, A COUNTY ROAD; THENCE N08°34'13"W ON SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 1140.52 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF COLORADO STATE HIGHWAY NO. 83; THE FOLLOWING SIX (6) COURSES ARE ON SAID EASTERLY RIGHT OF WAY LINE: 1.) THENCE N43°56'30"W A DISTANCE OF 135.08 FEET; 2.) THENCE N20°03'30"W A DISTANCE OF 80.80 FEET; 3.) THENCE N3°48'30"W A DISTANCE OF 254.32 FEET; 4.) THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 1482.50 FEET THROUGH A CENTRAL ANGLE OF 25°57'03" AN ARC DISTANCE OF 871.47 FEET, THE LONG CHORD OF WHICH BEARS N20°07'00"W-685.74 FEET; 5.) THENCE N38°24'30"W A DISTANCE OF 254.32 FEET; 6.) THENCE N38°05'25"W A DISTANCE OF 42.52 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE S88°31'12"E ON SAID NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 334.88 FEET TO THE POINT OF BEGINNING. THE HEREIN DESCRIBED TRACT CONTAINING 40.2728 ACRES, MORE OR LESS.

(THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE SOUTH LINE OF WALDEN II (S88°45'11"E) AS SHOWN ON THE RECORDED PLAT THEREOF; PLAT BOOK "H" 2, PAGE 19, THE LINE IS MONUMENTED AS SHOWN.)



David and Alyce McElhoes  
18CW3006

ATTACHMENT C