

MAYBERRY COLORADO SPRINGS

WATER RESOURCES REPORT AND WASTEWATER TREATMENT REPORT FOR PUD
AMMENDMENT:
240 HOMES
3 INDUSTRIAL LOTS (FILING 2 PREVIOUSLY APPROVED)
ALL LANDSCAPING PERTAINING TO THE PUD AMENDMENT

Prepared for:

Ellicott Utilities Company, LLC
P.O. Box 86
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Revised:

5-11-2021

6-2-2021

Prepared By:



Bradley A. Simons, P.E.
Principal

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INTRODUCTION

The purpose of this Water Resources Report and Wastewater Treatment Report is to provide a summary of water resources planning issues in support of the development of Mayberry, Colorado Springs. This PUD Amendment addresses 240 Homes, 3 industrial lots, and all landscaping pertaining to the subject development. The report will identify water demands, plans for central water service, and fire flow requirements for the proposed development, as well as wastewater generation and treatment. This report is intended to fulfill the requirements set forth to satisfy the ultimate demand of water projected by the development as well as speak to owned water rights and commitments in place to fulfill the demand of the development.

Mayberry Communities, LLC currently has the following plats recorded for Mayberry, Colorado Springs that are located in the development. Mayberry, Colorado Springs Filing No. 1 consisting of 98 residential lots, and Mayberry, Colorado Springs Filing No. 2 consisting of 3 industrial lots. Filing No. 2 will also be amended in the near future to increase the size of the industrial lots. Subsequent filings are under way in order to plat and record the remaining 142 homes that would build out the amended PUD.

THIS WATER RESOURCE REPORT WILL REPLACE THE WATER RESOURCE REPORT SUBMITTED BY JPS ENGINEERING AND LAST REVISED ON NOVEMBER 17, 2020, AND APPROVED WITH THE ORIGINAL PUD. AS NO DEVELOPMENT HAS TAKEN PLACE AND FURTHER RESEARCH WAS CONDUCTED TO ESTABLISH DEMAND, THIS REPORT WILL ALSO REPLACE THE PREVIOUS COMMITMENT LETTERS FROM ELLICOTT UTILITIES COMPANY TO MAYBERRY. ALL PREVIOUS COMMITMENTS ARE VOID AND THE NEW ONES CONTAINED IN THIS REPORT STAND.

ESTABLISH DEMAND PER HOME

On behalf of the Mayberry Colorado Springs Metropolitan Districts (Districts), this report outlines Ellicott Utilities Company’s establishment that less than the presumptive value of 0.26 AFY per home is required to meet the potable water needs of the Mayberry Colorado Springs development located in unincorporated El Paso County near the Town of Ellicott.

Chapter 8 (Subdivision Design, Improvements, and Dedications) of The El Paso County Land Development Code references values typically used to calculate annual water demands. Section 8.4.7(B)(7)(d) of the El Paso County Land Development Code indicates:

8.4.7(B)(7)(d) – In the absence of data on water use to the contrary or other minimum values established as acceptable by the State Engineer, the following presumptive values will be used to calculate the annual water demand:

- Residential inside use 0.26 acre feet per year for single family residences and 0.20 acre feet per year for each occupancy unit in multiple family residences other than single family. A duplex contains 2 occupancy units, a triplex contains 3 occupancy units, etc.
- Residential and commercial landscaping use 0.0566 acre per 1,000 square feet of landscaping.
- Commercial and industrial inside use 0.1 gallon per day for each square foot of developed space; and

Although the calculations contained within this report do provide contrary information on residential consumption ultimately showing a Residential Demand of less than 0.26 AFY per home, we are using the 0.26 AFY per home to calculate the projected water demand of single family residential housing for the development.

These calculations were determined by assessing actual water usage of two different developments (Viewpoint Estates/Antelope Park Ranchettes, and Sunset Village). Both developments are in close proximity of Mayberry, Colorado Springs and the water that is provided to these existing developments derives from existing water commitments held by Ellicott Utilities Company. The lot sizes in these developments exceed the lot sizes proposed by Mayberry. The lot sizes of Viewpoint Estates/ Antelope Park Ranchettes range from 2.5 acres – 5 acres, Sunset Village lot sizes range from 8,600 square feet to 16,000 square feet. Whereas Mayberry, Colorado Springs lot is an average 7,000 square feet. Research of calculations and determinations are detailed below.

Viewpoint Estates/ Antelope Park Ranchettes lot sizes from 2.5 acres to 5 acres.

Water usage calculations from the above referenced developments are from the existing contractual commitment from the Cherokee Metropolitan District to serve Viewpoint

Estates/Antelope Park Ranchettes 50 Acre Feet Per Year, this agreement is shown for support in Appendix A.

Under the terms of the 1988 water agreement between the Cherokee Metropolitan District and R. W. Case and C.H. McAllister, there is 50 acre feet of water available annually. The 1988 water agreement also includes a storage right of 200,000 gallons in the tank owned and operated by the Cherokee Metropolitan District.

In 2020, MMI Water Engineers conducted an analysis of the 50 acre feet per year contractual commitment and the status of annual usage. The analysis reviewed water usage in Viewpoint Estates/Antelope Park Ranchettes over two 12-month periods spanning 2019 and 2020 and projected the domestic and irrigation water usage for 114 homes to be 8,858,500 gallons annually (0.238 acre feet per year per tap).

The ultimate water demand for a total of 121 taps in Viewpoint Estates/Antelope Park Ranchettes allowing for the replating of Lots 71 and 72 therefore computes to be 31.46 acre feet per year.

- $0.238 \text{ AFY} \times 1.10 \text{ (10\% system loss)} = 0.26 \times 121 = 31.46$

This results in a balance of 18.54 acre feet per year to be available for use on other properties in accordance with the 1998 water agreement and the 2003 assignment. The ability to use this particular water commitment on other properties will have to be accomplished by a change of location pursued jointly by Cherokee Metropolitan District and Mayberry Colorado Springs Metropolitan District No. 2 due to a judicial requirement placed on the commitment in 2017

In anticipation of low central distribution system losses on the new Mayberry Colorado Springs properties, the water loss percentage is five percent (5%), resulting in an average use per tap of less than 0.26 acre feet per year.

Sunset Village Lot sizes from 8,600 square feet to 16,000 square feet

Water usage calculations from the above referenced development is from the existing contractual commitment from the Cherokee Metropolitan District to serve Sunset Village 60 Acre Feet Per Year, this agreement is shown for support in Appendix A.

Cherokee Metropolitan District’s annual water usage as metered and billed to the customers in Sunset Village is tabulated below.

Year	Acre-Feet Billed	Accounts	Acre Feet/ Account
2011	16.03	90	0.178
2012	14.94	91	0.164
2013	13.79	89	0.155
2014	12.06	88	0.137

2015	11.13	87	0.128
2016	12.05	90	0.134
2017	13.91	91	0.153
2018	14.80	92	0.161
2019	16.22	92	0.176
2020	13.48	92	0.147

The two highest average water usages per account occurred in 2011 and 2019 at 0.178 and 0.176 acre feet annually per tap, respectively.

Allowing for a 10 percent loss in the distribution system, the average use per tap in Sunset Village computes to be 0.20 acre feet per year.

The ultimate water demand for the platted total of 143 taps in Sunset Village computes to be 28.60 acre feet per year.

- $0.178 \text{ AFY} \times 1.10 \text{ (10\% system loss)} = 0.20 \times 143 = 28.60$

This results in a balance of 31.40 acre feet per year to be available for use on other properties in accordance with the existing 60 AFY commitment with Cherokee Metropolitan District. Due to a judicial requirement placed on the commitment in 2017, the ability to use this particular water commitment on other properties requires a change of location pursued jointly by Cherokee Metropolitan District and Mayberry Colorado Springs Metropolitan District No. 2.

In summary, historical data supports the projected balances of water from Viewpoint Estates/ Antelope Park Ranchettes and Sunset Village that will be moved to Mayberry. Based on the proposed 240 single family homes with proposed average lot size of 7,000 square feet, the historical data also supports demands of less than 0.26 acre feet per home.

PROJECTED WATER DEMAND

The PUD Amendment consists of 240 residential homes, 3 industrial lots, and associated parks and street landscaping.

The demands of the 240 residential homes with the use of 0.26 acre feet per year per home, there is an ultimate demand of 62.40 AF.

The demands of the 3 industrial lots are as follows:

- Lot 1 (Intelifab of Colorado, LLC) - The Intelifab facility will be located on 1.5 acres of industrial property and have 24,000 square feet of developed space. Based upon the presumed value of 0.1 gallon per day for each square foot of developed space, the inside use computes to 2.68 acre feet per year. Based upon the actual landscape plans for Intelifab, 4,115 square feet of the lot will be irrigated landscaping and based upon the presumed value of 0.0566 acre feet per 1,000 square feet of landscaping, the landscape

use computes to 0.23 acre feet per year. The projected water demand for the Intelifab Facility is 2.91 acre feet per year.

- Lot 2 (Father Sons Whiskey, LLC) - A storage warehouse will be located on 1.48 acres of industrial property and have 35,000 square feet of developed space. Based upon the presumed value of 0.1 gallon per day for each square foot of developed space, the inside use computes to 3.92 acre feet per year. Based upon the assumption fifteen percent (15%) of the 1.48 acres will be landscaped and based upon the presumed value of 0.0566 acre feet per 1,000 square feet of landscaping, the landscape use computes to 0.55 acre feet per year. The projected water demand for the storage warehouse is 4.47 acre feet per year.
- Lot 3 (Mayberry RV Storage, LLC) - An RV storage facility will be located on 0.83 acres of industrial property and have 25,500 square feet of canopy style covered parking which will not have any indoor water demand. The inside use computes to 0.00 acre feet per year. Based upon the assumption fifteen percent (15%) of the 0.83 acres will be landscaped and based upon the presumed value of 0.0566 acre feet per 1,000 square feet of landscaping, the landscape use computes to 0.31 acre feet per year. The projected water demand for Industrial Lot 3 is 0.31 acre feet per year.

The water demands of the proposed parks and street landscaping are determined using the guidance in the El Paso County Land Development Code.

The landscape area for the Log Road/Village Main open space is 100,166 square feet. Based upon the presumed value of 2.46 acre feet per acre of landscaping, the landscape use computes to 5.66 acre feet per year.

The landscape area for the Tract O Park open space is 109,427 square feet. Based upon the presumed value of 2.46 acre feet per acre of landscaping, the landscape use computes to 6.18 acre feet per year.

The projected water demands for the development are summarized in the following table.

MAYBERRY, COLORADO SPRINGS PROJECT WATER DEMAND SUMMARY

<u>USE</u>	<u>DEMAND</u>
240 Single Family Residential Homes at 0.26 AFY	62.40 AF
3 industrial Lots	7.7 AF
Parks and Street Landscaping	11.84
Total Demand	81.94

WATER SOURCES AND WASTEWATER TREATMENT

Ellicott Utilities Company, LLC owns several water supply sources as detailed in Appendix A. EUC proposes to utilize Denver Basin groundwater wells determination number 598-BD, and a portion of the water interest from the Tipton Well that is also owned by EUC and further detailed in Appendix A. Ellicott Utilities Company will provide central wastewater service to Mayberry with available capacity at the existing Wastewater Treatment Plant.

Denver Basin Water Determination 598-BD Laramie Fox Hills Wells

The first water source immediately available to serve the development, Mayberry, Colorado Springs and support the PUD Amendment is the Denver basin water decreed through Determination No. 598-BD. Determination No. 598-BD allows for a total water supply of 161 acre feet per year over a 100-year period from the Laramie-Fox Hills aquifer. The Laramie-Fox Hills groundwater supply translates to an available supply of 53.67 acre feet per year under a 300-year rule. The 300-year requirement is based upon paragraph 8.4.7(B)(9)(a)(iii) of the El Paso County Land Development Code. The Laramie-Fox Hills groundwater will be withdrawn from two existing wells under the assumption the wells can be re-equipped to produce the required amount of water annually. It is also assumed there will be a 5 percent loss of water from the wells through treatment/storage/distribution, leaving a balance of 50.98 acre feet of water available annually. The allocation of the 50.98 AFY is shown in the below table.

DENVER BASIN WATER DETERMINATION 598-BD WATER ALLOCATION 50.98 AFY

Determination No. 598-BD	Acre Feet Allocation to The Development
3 Industrial Lots	7.7 AFY
Parks and Street Landscaping	11.84 AFY
120.92 Single Family Residential at 0.26 AFY	31.44 AFY
Total AFY	50.98

Tipton Well Water Interest

The second water source immediately available to serve the development, Mayberry Colorado Springs, and support the PUD Amendment is 30.96 AFY of the 82 AFY of Tipton Well Interest owned by EUC. The Tipton Well is an exportable well located inside the Upper Black Squirrel Basin and is supported through Colorado Ground Water Commission Case No. 91-GW-01 attached in Exhibit A. This well is owned by Cherokee Water, LLC in which EUC holds an interest. Cherokee Metropolitan District is the manager of this LLC and further manages this well.

A PORTION OF THE 82 AFY TIPTON WELL WATER INTEREST

Tipton Well 91-GW-01	Acre Feet Allocation to the Development
119.08 Single Family Residential at 0.26 AFY	30.96 AFY
Total AFY	30.96

These two sources combined will satisfy the demand of 81.94 AFY that is created by the PUD Amendment containing 240 homes 3 industrial lots and the associated street and park landscaping. The projected balances of water from Viewpoint Estates/Antelope Park Ranchettes and Sunset Village which were mentioned previously will not be relied upon for this PUD Amendment, but the change of location process will be started, and that water will be utilized for future construction at Mayberry.

PLEASE BE ADVISED THIS WATER RESOURCE REPORT WILL REPLACE THE WATER RESOURCE REPORT SUBMITTED BY JPS ENGINEERING AND LAST REVISED ON NOVEMBER 17, 2020, AND APPROVED WITH THE ORIGINAL PUD. AS NO DEVELOPMENT HAS TAKEN PLACE AND FURTHER RESEARCH WAS CONDUCTED TO ESTABLISH DEMAND, THIS REPORT WILL ALSO REPLACE THE PREVIOUS COMMITMENT LETTERS FROM ELLICOTT UTILITIES COMPANY TO MAYBERRY. ALL PREVIOUS COMMITMENTS TO THIS DEVELOPMENT ARE VOID AND THE NEW ONES CONTAINED IN THIS REPORT STAND.

WATER SYSTEM PLAN

Water Service

The water service plan for the proposed development is to connect to the existing central public water system of Ellicott Utilities Company, LLC. EUC currently owns and operates the public water system serving the Viewpoint Estates and Antelope Park Ranchettes Subdivisions under PWSID No. 121245. EUC will serve the Mayberry, Colorado Springs Subdivision as an extension of the existing central water system.

EUC currently has sufficient water rights to serve the proposed 240 homes, 3 industrial lots, parks and street landscaping that are addressed in the PUD Amendment, by using Determination 598-BD, as well as a portion of the Tipton Well Water Interests. EUC has the system capacity to meet the anticipated demands for the proposed development. Builders will purchase water taps from EUC for each home and commercial building.

Ellicott Utilities Company, LLC’s interests are expected to be acquired by the Mayberry, Colorado Springs Metropolitan District No. 2, so that long-term utility service will be provided by a quasi-governmental entity.

Fire Flow Requirements

Based on a report provided to El Paso County, and Pikes Peak Regional Building Department by JPS Engineering for Filing 1 and Filing 2, fire flow requirements are typically based on the largest building area and classification within the development. Within residential areas, assuming maximum home sizes of 4,800 square feet and Type V-N (wood frame) construction, the International Fire Code (IFC) requires a fire flow of 1,750-gpm for a duration of 2 hours. Fire

hydrants will be installed to provide an average hydrant spacing of 500 feet in typical residential areas, consistent with IFC recommendations.

Within commercial areas, assuming a maximum building size of 12,600 square feet and Type II-B construction, the International Fire Code (IFC) requires a fire flow of 2,250-gpm and an average fire hydrant spacing of 450 feet. Fire protection requirements for commercial areas may also include sprinkler systems serving individual buildings depending on the building size and construction type.

EUC owns the existing 500,000-gallon Viewpoint Water Storage Tank located at the northwest corner of the Ellicott Town Center subdivision, and EUC also has the contractual water storage right of 200,000 gallons within the existing 500,000-gallon Cherokee Metropolitan District tank adjacent to the property.

WASTEWATER SERVICE (Originally Provided by the JPS Engineering Report and updated to reflect current numbers)

Mayberry, Colorado Springs is planning to connect to the central water and wastewater system that is owned and operated by Ellicott Utilities Company, LLC. It is understood that improvements to the central system will need to be made and the developer has agreed to make these improvements and dedicate them to Ellicott Utilities Company. Ellicott Utilities Company has sufficient wastewater treatment capacity at the Ellicott Springs Wastewater Treatment Plant (formerly known as the “Sunset Wastewater Treatment Plant”) to accept flow from the 240 homes and 3 industrial lots contained in this PUD Amendment. Above infrastructure improvements being dedicated to EUC, the builders will purchase sewer taps from EUC for each home and industrial lot at the rate published.

PUD AMENDMENT WASTEWATER DEMAND

	Single Family Equivalent Units (SFE)	Average Daily WW Flow (gpd)
240 Single Family Homes	240	48,000
3 industrial lots	23.1	4,620
Total	263.1	52,620

Currently the treatment plant serves existing customers in the Sunset Village development and the Ellicott schools. Sunset Village wastewater is conveyed from a lift station located at 23799 Jayhawk Avenue Colorado Springs, Colorado 80928. This lift station pumps sewage through a force main to the treatment plant. The second lift station is located just outside the bus barn at Ellicott School District Property. This lift station pumps sewage to a gravity line which is then carried south to the wastewater treatment plant. In January 2002, the Sunset Wastewater Treatment Plant completed an upgrade to a permitted capacity of 250,000 gallons per day (gpd), discharging to an unnamed tributary to Black Squirrel Creek.

CDPS Permit No. CO0047252 for Ellicott Utilities Co., LLC’s wastewater treatment plant with a facility flow of 250,000 gallons per day was issued on July 31, 2014 and expired at midnight on August 31, 2019. The Water Quality Control Division (Division) received an application from Ellicott Utilities Co., LLC for an Individual permit renewal on August 7, 2019.

The Division has 180 days to issue a permit from the date received. In the event that the Division does not issue a renewal permit in advance of the permit expiration date, the expired permit shall be administratively extended and continue in force to the effective date of the new permit. The permit’s duration may be extended only through administrative extensions and not through interim modifications. No permit renewal has been issued at this time.

The Division has notified Ellicott Utilities Co., LLC of its eligibility of administrative extension and the permit has been administratively extended on the date following the permit expiration.

The Ellicott Springs Wastewater Treatment Plant is a 3-cell aerated lagoon facility with chlorine disinfection. The WWTP has not discharged effluent to date based on the limited development and low flows from the service area. The GMS “Application for Site Approval” report for the treatment plant upgrade project utilized an average wastewater flow of 200 gpd/SFE, allowing for connection of up to 1,250 single-family equivalent (SFE) units to the upgraded treatment plant (250,000 gpd capacity).

The Ellicott Utilities Company wastewater service commitment status is summarized as follows: **this was originally provided by JPS Engineering on the previous report and has been updated with current numbers**.

Wastewater Service Commitments Summary
****Updated from the original JPS Engineering Report****

	SFE ^{1,2}	WWTP Capacity (gpd)	Committed % of Hydraulic Plant Capacity
Total Capacity		250,000	
Historic Commitments:			
Sunset Village Filings 1-5	184	36,800	
Ellicott Schools (1,203 students)	126.5	25,300	
Proposed Commitments:			
240 Single Family Homes	240	48,000	
3 Industrial Lots	23.1	4620	
Total Current Commitments	573.6	114,720	45.88%

¹ Wastewater SFE calculated based on 200 gpd/SFE (2) Single Family Equivalent calculated based on 297.3 GPD/SFE. Industrial demand of 7.7 AF computed to 23.1 SFE by determining the average daily use and using the SFE equivalent calculation to determine wastewater projections.

The existing wastewater treatment facility has sufficient capacity to accept the flows from the PUD Amendment to encompass 240 Single Family Residential Homes, and 3 industrial buildings. Future upgrades to this facility will begin before reaching 80% of the capacity based on the guidelines set forth by CDPHE.

SUMMARY

The PUD Amendment of Mayberry, Colorado Springs including 240 homes, 3 industrial lots, and respective landscaping, will connect to the existing central water and sewer systems currently owned and operated by Ellicott Utilities Company, LLC. EUC currently has adequate water rights and water system infrastructure to serve 240 single family residential homes, three industrial lots, and all parks and street landscaping in the development.

Water and wastewater system improvements will be designed and constructed in accordance with Ellicott Utilities Company Standard Specifications for provision of municipal water and domestic wastewater treatment, and these facilities will ultimately be dedicated to EUC or Mayberry, Colorado Springs Metropolitan District No. 2 upon satisfactory completion.

APPENDIX A

WATER/ WASTEWATER COMMITMENT LETTERS



Ellicott Utilities Company, LLC
P.O. Box 86
Rancho Santa Fe, CA 92067

May 14, 2021
Revised June 2, 2021

Mayberry Communities, LLC
3296 Divine Heights No. 207
Colorado Springs, CO 80922

**Re: Mayberry, Colorado Springs
PUD Amendment
Water and Wastewater Service Commitment (240 Homes 3 industrial Lots and
associated landscaping)**

Gentlemen:

It is our understanding that Mayberry Communities, LLC (the “Developer”) is interested in obtaining water and sewer service from Ellicott Utilities Company, LLC (the “Company”) for that property known as Mayberry, Colorado Springs for the Amended PUD. (the “Development”). It is our understanding that the El Paso County has previously approved Filing No. 1 and No. 2 and that the property is undergoing a PUD Amendment for 240 single family residential homes, 3 industrial lots and associated landscaping.

Ellicott Utilities Company further recognizes that we have issued two prior commitments, one for Filing No. 1 and one for Filing No. 2 both attached hereto. *This commitment is intended to replace the prior two commitments and to further commit to provide water and wastewater service to the remaining 142 homes.*

Ellicott Utilities Company, LLC will provide water and sewer service to the Development in accordance with the Company Rules and Regulations. Ellicott Utilities Company, LLC understands that the Developer has committed to construct water and sewer facilities as required to serve the Development in accordance with the subdivision construction drawings, and the Developer has provided for dedication of necessary easements and rights of way for the water and sewer improvements through the subdivision plans and related plat documents.

The proposed development will be served by the Ellicott Utilities Company’s central water and sewer system. Ellicott Utilities Company, LLC hereby provides an unconditional commitment to serve this PUD amendment of 240 single family residential homes, 3 Industrial lots and associated landscaping within Mayberry, Colorado Springs. There is a projected water demand of 81.94 AFY.

This commitment is based on the following water sources owned and controlled by the Company:

- Determination No. 598-BD (Laramie Fox Hills Wells) 50.98 AFY
- A portion of the Tipton Well Water Interest 30.96 AFY



Ellicott Utilities Company, LLC commits to providing the water supply to meet the El Paso County 300-year water supply requirement for this subdivision.

Ellicott Utilities Company anticipates that this PUD Amendment for 240 homes and 3 industrial lots will generate 263.1 SFE of wastewater. This is equivalent to an average daily wastewater flow of 52,620 gallons. Under Permit No CO0047252, Ellicott Utilities Company has the capacity for 250,000 gallons per day. With the current flows and the addition of this PUD amendment the wastewater treatment plant will be operating at 45.88% capacity.

Ellicott Utilities Company commits to provide wastewater services to the Development.

ELLICOTT UTILITIES COMPANY, LLC

John Mick

John Mick (Jun 2, 2021 09:40 MDT)

Signature

John Mick

Jun 2, 2021

Name

Date

Ellicott Utilities Company, LLC
P.O. Box 86
Rancho Santa Fe, CA 92067

April 23, 2020

Colorado Springs Mayberry, LLC
32823 Temecula Parkway
Temecula, CA 92592

**Re: Mayberry, Colorado Springs (formerly known as "Ellicott Town Center")
Filing No. 2 Final Plat
Water and Wastewater Service Commitment**

Gentlemen:

It is our understanding that Colorado Springs Mayberry, LLC (the "Developer") is interested in obtaining water and sewer service from Ellicott Utilities Company, LLC (the "Company") for that property known as Mayberry, Colorado Springs Filing No. 2 (the "Development"). It is our understanding that the Development is being processed for a Final Plat approval through El Paso County for 3 Commercial Lots.

Ellicott Utilities Company, LLC will provide water and sewer service to the Development in accordance with the Company Rules and Regulations. Ellicott Utilities Company, LLC understands that the Developer has committed to construct water and sewer facilities as required to serve the Development in accordance with the subdivision construction drawings, and the Developer has provided for dedication of necessary easements and rights of way for the water and sewer improvements through the subdivision plans and related plat documents.

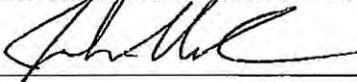
The proposed development will be served by the Ellicott Utilities Company's central water and sewer system. Ellicott Utilities Company, LLC hereby provides an unconditional commitment to serve 3 commercial lots within Mayberry, Colorado Springs Filing No. 2, with an estimated annual water demand of 2.78 af/yr.

This commitment is based on the following water source that is owned and controlled by the Company:

- Ellicott Town Center Denver Basin Wells – LFH rights (Determination of Water Right No. 598-BD)

Ellicott Utilities Company, LLC commits to providing the water supply from the source listed above to meet the El Paso County 300-year water supply requirement for this subdivision.

ELLICOTT UTILITIES COMPANY, LLC



Signature
John Mick 11/17/2020
Name Date

APPENDIX B

OWNED WATER RIGHTS AND COMMITMENT RIGHTS

B.1. DENVER BASIN WATER DETERMINATION NO. 598 BD LARAMIE FOX HILLS

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR DETERMINATION OF WATER RIGHT TO
ALLOW THE WITHDRAWAL OF GROUND WATER IN THE UPPER BLACK SQUIRREL
CREEK DESIGNATED GROUND WATER BASIN

APPLICANT: ELLICOTT SPRINGS RESOURCES, LLC

AQUIFER: LARAMIE-FOX HILLS

DETERMINATION NO.: 598-BD

In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, Ellicott Springs Resources, LLC, (hereinafter "applicant") submitted an application for determination of water right to allow the withdrawal of designated ground water from the determinations of water right to allow the withdrawal of designated ground water from the Laramie-Fox Hills Aquifer.

FINDINGS

1. The application was received complete by the Colorado Ground Water Commission on July 23, 2004.
2. The applicant requests a determination of rights to designated ground water in the Laramie-Fox Hills Aquifer (hereinafter "aquifer") underlying 551.26 acres generally described as the W1/2 and the W1/2 of the NE1/4 of Section 14 and the E1/2 of the E1/2 of Section 15, all in Township 14 South, Range 63 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated February 18, 2004, and two signed statements dated July 19, 2004, the applicant claims control of and right to allocation of the ground water in the aquifer under the above-described land area based on written consent of the overlying landowners, as further described in said affidavits which are attached hereto as Exhibit A.
3. The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.
4. The above described land area overlying the ground water claimed by the applicant is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission (hereinafter "Commission") has jurisdiction.
5. The applicant intends to apply the allocated ground water to the following beneficial uses: domestic, irrigation, commercial, industrial, firefighting, and recreation. The applicant's proposed place of use of the allocated ground water is the above described 551.26 acre land area.
6. The quantity of water in the aquifer underlying the 551.26 acres of land claimed by the applicant is 16,124 acre-feet. This determination was based on the following as specified in the Designated Basin Rules:

- a. The average specific yield of the saturated permeable material of the aquifer underlying the land under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 15 percent.
 - b. The average thickness of the saturated permeable material of the aquifer underlying the land under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 195 feet.
7. At this time, there is no substantial artificial recharge that would affect the aquifer within a one hundred year period.
 8. Pursuant to Section 37-90-107(7), C.R.S., and in accordance with the Designated Basin Rules, the Commission shall allocate ground water in the aquifer based on ownership of the overlying land and an aquifer life of one hundred years. Therefore, the maximum average annual amount of ground water in the aquifer that may be allocated for withdrawal pursuant to the data in the paragraphs above for the 551.26 acres of overlying land claimed by the applicant is 161 acre-feet.
 9. The ability of wells permitted to withdraw the authorized amount of water from this non-renewable aquifer may be less than the one hundred years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines.
 10. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the aquifer underlying the 551.26 acres of land claimed by the applicant will not, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the ground water is nontributary ground water as defined in Rule 4.2.19 of the Designated Basin Rules. No more than 98% of the amount of ground water withdrawn annually shall be consumed, as required by the Designated Basin Rules.
 11. A review of records in the Office of the State Engineer discloses that a portion of the ground water in the aquifer underlying the 551.26 acre land area has been previously allocated, based on ownership of overlying land and a one hundred year aquifer life. Such allocations occurred by issuance of well permits and construction of wells to appropriate and withdraw ground water from the aquifer, permit numbers 50040-F and 50041-F. The applicant claims ownership of these wells and water rights and has provided a written request, as an attachment to the application, that these permits and rights shall be cancelled by the Commission upon approval of this determination. For this reason, these previous allocations will not decrease the amount of ground water to be allocated for this determination. Except for these two wells, review of the records in the Office of the State Engineer has not disclosed any other water in the aquifer underlying the land claimed by the applicant that has been previously allocated or permitted for withdrawal.
 12. Pursuant to Section 37-90-107(7)(c)(III), C.R.S., an approved determination of water right shall be considered a final determination of the amount of ground water so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.

13. In accordance with Section 37-90-107(7), C.R.S., upon Commission approval of a determination of water right, well permits for wells to withdraw the authorized amount of water from the aquifer shall be available upon application, subject to the conditions of this determination and the Designated Basin Rules and subject to approval by the Commission.
14. On July 29, 2004, in accordance with Rule 9.1 of the Designated Basin Rules, a letter was sent to the Upper Black Squirrel Creek Ground Water Management District requesting written recommendations concerning this application. No written recommendations from the district were received in response to this request.
15. The Commission Staff has evaluated the application relying on the claims to control of the ground water in the aquifer made by the applicant.
16. In accordance with Sections 37-90-107(7) and 37-90-112, C.R.S., the application was published in the Gazette newspaper on August 5 and 12, 2004.
17. No objections to the determination of water right and proposed allocation of ground water were received within the time limit set by statute.
18. In order to prevent unreasonable impairment to the existing water rights of others within the Upper Black Squirrel Creek Designated Ground Water Basin it is necessary to impose conditions on the determination of water right and proposed allocation of ground water. Under conditions as stated in the following Order, no unreasonable impairment of existing water rights will occur from approval of this determination of water right or from the issuance of well permits for wells to withdraw the authorized amount of allocated ground water from the aquifer.

ORDER

In accordance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for determination of rights to designated ground water in the Laramie-Fox Hills Aquifer underlying 551.26 acres generally described as the W1/2 and the W1/2 of the NE1/4 of Section 14 and the E1/2 of the E1/2 of Section 15, all in Township 14 South, Range 63 West of the 6th Principal Meridian, is approved subject to the following conditions:

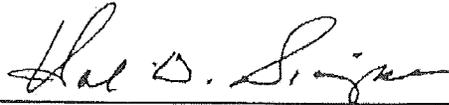
19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed 161 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product of the number of years since the date of approval of this determination times the allowed average annual amount of withdrawal.
20. To conform to actual aquifer characteristics, the Commission may adjust the allocated average annual amount of ground water to be withdrawn from the aquifer based on analysis of geophysical logs or other site-specific data if such analysis indicates that the initial estimate of the volume of water in the aquifer was incorrect.

21. No more than 98% of the ground water withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the water withdrawn is being consumed.
22. The use of ground water from this allocation shall be limited to the following beneficial uses: domestic, irrigation, commercial, industrial, firefighting, and recreation. The place of use shall be limited to the above-described 551.26 acre land area.
23. Well permit numbers 50040-F and 50041-F are hereby cancelled and are of no further force or effect.
24. The applicant, or subsequent persons controlling this water right, shall record in the public records of the county - in which the claimed overlying land is located - notice of transfer of any portion of this water right to another within sixty days after the transfer, so that a title examination of the above described 551.26 acre land area, or any part thereof, shall reveal the changes affecting this water right. Such notice shall consist of a signed and dated deed which indicates the determination number, the aquifer, a description of the above described land area, the annual amount of ground water (acre-feet) transferred, name of the recipient, and the date of transfer.
25. Subject to the above conditions, well permits for wells to withdraw the authorized annual amount of water from the aquifer shall be available upon application subject to approval by the Commission and the following conditions:
 - a. The wells shall be located on the above described 551.26 acre overlying land area.
 - b. The wells must be constructed to withdraw water from only the Laramie-Fox Hills Aquifer. Upon application for a well permit to construct such a well, the estimated top and base of the aquifer at the proposed well location will be determined by the Commission and indicated on the approved well permit. Plain non-perforated casing must be installed, grouted and sealed to prevent diversion of ground water from other aquifers and the movement of ground water between aquifers.
 - c. The entire depth of each well must be geophysically logged prior to installing the casing as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - d. Each well shall be constructed within 200 feet of the location specified on the approved well permit, but must be more than 600 feet from any existing large-capacity well completed in the same aquifer.
 - e. The wells may withdraw the allowed average annual amount of water from the aquifer together in any combination. The total combined annual withdrawal of the wells shall not exceed the allowed average annual amount described in this Order.
 - f. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and maintained by the well owner and submitted to the Commission or the Upper Black Squirrel Creek Ground Water Management District upon their request.

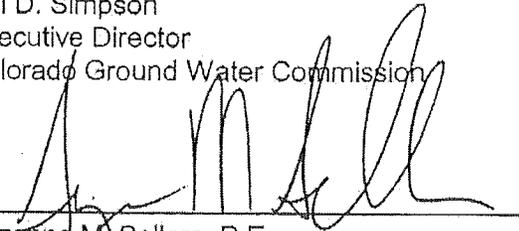
g. The well owner shall mark the well in a conspicuous place with the permit number and the name of the aquifer. The well owner shall take necessary means and precautions to preserve these markings.

26. A copy of this Findings and Order shall be recorded by the applicant in the public records of the county – in which the claimed overlying land is located - so that a title examination of the above described 551.26 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 8th day of November, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By: 

Suzanne M. Sellers, P.E.
Designated Basins Chief

Prepared by: RAC

FIND-510

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

APR 06 2004

NONTRIBUTARY GROUND WATER CONSENT CLAIM
(FOR AREAS IN A DESIGNATED GROUND WATER BASIN)

WATER RESOURCES
STATE ENGINEER
COLO.

Laramie Fox Hills AQUIFER

I (we) Ellicott Springs Resources, LLC
(Name)

claim and say that I (we) have the consent of the owners of 472.81 acres of overlying land to withdraw ground water from the aquifer indicated above.

The names of the landowners whose consent is claimed are as follows and their Landownership Statements (form GWS-3B), legal descriptions of all claimed land areas and copies of deeds or other transfer documents, recorded in the county or counties in which the land areas are located, are attached.

R.W. Case

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

[Signature] 2-18-04
(Signature) (Date)
Rayney J. PREISSEN partner Ellicott Springs RES. LLC.

(Signature) (Date)

.....
INSTRUCTIONS:

The consent claim must be submitted with an application for determination of water right in all cases where the applicant believes or claims that water to be withdrawn is ground water from the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers and the applicant is claiming consent of the overlying landowners. Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means.

RECEIVED

GWS-3B (Rev. Sept. 1996)

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

APR 06 2004

WATER RESOURCES
STATE ENGINEER
COLO.

NONTRIBUTARY GROUND WATER CONSENT LANDOWNERSHIP STATEMENT

I (We) R.W. Case
(Name)

whose mailing address is 102 E. Pikes Peak Ave., Suite 200
Street

Colorado Springs, CO 80903
(City) (State) (Zip)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 472.81 acres in the County of El Paso, State of Colorado: (Insert Property Legal Description)

See attached legal description

and that I (we) have granted written consent to others to withdraw ground water from the Laramie Fox Hills aquifer as evidenced by the attached copy of a deed or other document in the County or Counties in which the land is located, and that said ground water has not been conveyed or reserved to another, nor has consent been given for withdrawal by another except as indicated in the attached deed or other recorded document.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

R.W. Case 3-2-04
(Signature) (Date)

(Signature) (Date)

.....
INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

1313 SHERMAN ST RM 818 DENVER CO 80203 (303)866-3581

EXHIBIT A

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APR 06 2004

WATER RESOURCES
STATE ENGINEER
COLO.

RECEIVED

JAN 02 2004

WATER RESOURCES
STATE ENGINEER
COLO.

LEGAL DESCRIPTION: VIEWPOINT VILLAGE

THE EAST HALF OF THE EAST HALF OF SECTION 15 AND THE WEST HALF OF SECTION 14,
ALL IN TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PASO COUNTY,
COLORADO AND CONTAINING 472.814 ACRES MORE OR LESS, EXCEPT THAT PORTION
CONVEYED BY BOOK 5527 AT PAGE 376.

EXHIBIT A

QUIT CLAIM DEED

THIS DEED is a conveyance from the person(s) or legal entity named below as GRANTOR to the person(s) or legal entity named below as GRANTEE of whatever interest the GRANTOR may have in the real property described below.

The GRANTOR hereby sells and quit claims to the GRANTEE the real property described below with all its appurtenances.

If the Grantor intends this Deed to convey less than his entire interest in the Property or if the Grantor intends to impose restrictions on the Grantee's use of the Property, then appropriate language has been added below under "Reservations And/Or Restrictions."

If there are two or more Grantees named in this Deed, they are accepting this conveyance as tenants in common, unless the words "joint tenancy with right of survivorship" or "joint tenancy" have been added below under "Form of Co-Ownership."

The following information completes this Deed:

GRANTOR: (Give Name(s), Address(es), and Marital Status)

R.W. Case
102 E. Pikes Peak Ave., Suite 200
Colorado Springs, Colorado 80903

GRANTEE: (Give Name(s), Address(es))

Ellicott Springs Resources, LLC, a Colorado limited liability company
c/o Rodney J. Preisser, President
90 S. Cascade Avenue, Suite 950
Colorado Springs, CO 80903

PROPERTY DESCRIPTION:

All groundwater (including without limitation tributary, non-tributary, not non-tributary and other groundwater), rights to withdraw such groundwater, rights to consent to the withdrawal of such groundwater, and all water rights relating to such groundwater, including without limitation all groundwater and rights to withdraw groundwater within the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers, that are appurtenant to or that underlie the following described real property:

VIEWPOINT VILLAGE

THE EAST HALF OF THE EAST HALF OF SECTION 15 AND THE WEST HALF OF SECTION 14, ALL IN TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO AND CONTAINING 472.814 ACRES MORE OR LESS, EXCEPT THAT PORTION CONVEYED BY BOOK 5527 AT PAGE 376.

RECEIVED

APR 06 2004

WATER RESOURCES
STATE ENGINEER
COLO.

Robert C. Balink El Paso
01/12/2004 03:
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Rec \$15.00 1 of

EXHIBIT A

Page 5 of 129

11/11/03

PROPERTY ADDRESS:

N/A

RESERVATIONS AND/OR RESTRICTIONS: (If none, leave blank)

Signed on 12-19, 2003.

RECEIVED

APR 06 2004

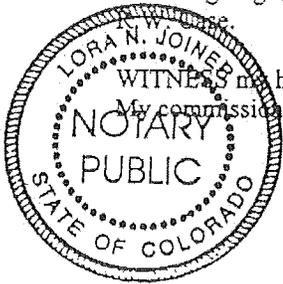
WATER RESOURCES
STATE ENGINEER
COLO.

R.W. Case
Grantor

By [Signature]
Title: _____

STATE OF COLORADO)
)ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 19th day of December, 2003 by



WITNESSES my hand and official seal.
My commission expires: 06-07-2006

Lora N. Joiner
Notary Public

EXHIBIT A

Page 6 of 1230

VIEWPOINT ESTATES

APR 06 2004

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 10, TOWNSHIP 14 SOUTH, RANGE 63 WEST, 6TH P.M., COMMENCING NORTH 01°10'40" WEST ALONG THE WEST SECTION LINE A DISTANCE OF 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST SECTION LINE NORTH 01°10'40" WEST A DISTANCE OF 1271.31 FEET, THENCE SOUTH 89°52'52" EAST A DISTANCE OF 2617.39 FEET, THENCE NORTH 01°11'11" WEST A DISTANCE OF 3960.76 FEET, THENCE NORTH 89°54'31" EAST A DISTANCE OF 1311.15 FEET, THENCE SOUTH 00°55'21" EAST A DISTANCE OF 5214.40 FEET TO THE NORTH RIGHT OF WAY OF COLORADO STATE HIGHWAY 94, THENCE ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89°47'46" WEST A DISTANCE OF 3904.36 FEET TO THE TRUE POINT OF BEGINNING. SAID ACREAGE CONTAINS 231 ACRES MORE OR LESS.

WATER RESOURCES
STATE ENGINEER
COLO.

ANTELOPE PARK RANCHETTES

THAT PORTION OF SECTION 10, TOWNSHIP 14 SOUTH, RANGE 63 WEST, 6TH P.M., AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SECTION 10, THENCE NORTH 89°54'31" EAST ON THE NORTH LINE OF SAID SECTION A DISTANCE OF 2622.49 FEET TO THE NORTH 1/4 CORNER THEREOF, THENCE SOUTH 01°11'11" EAST A DISTANCE OF 3960.76 FEET ON THE CENTERLINE OF SAID SECTION TO THE SOUTHEAST CORNER OF THE NORTH 1/2, SOUTHWEST 1/4, THENCE NORTH 89°52'52" WEST ON THE SOUTH LINE OF SAID N1/2, SW1/4 A DISTANCE OF 660 FEET, THENCE SOUTH 01°11'11" EAST A DISTANCE OF 1261.46 FEET TO INTERSECT THE NORTHERLY LINE OF STATE HIGHWAY NO. 94, THENCE SOUTH 89°49'51" WEST ON SAID NORTHERLY LINE A DISTANCE OF 60.02 FEET, THENCE NORTH 02°11'11" WEST A DISTANCE OF 1261.76 FEET TO INTERSECT THE AFOREMENTIONED SOUTH LINE OF THE N 1/2, SW 1/4, THENCE NORTH 89°52'52" WEST A DISTANCE OF 1897.37 FEET TO THE SW CORNER THEREOF, THENCE NORTH 01°15'48" WEST A DISTANCE OF 3951.26 FEET TO THE POINT OF BEGINNING, CONTAINING 239.63 ACRES, MORE OR LESS.

EXHIBIT A

RECEIVED

JUL 23 2004

WATER RESOURCES
STATE ENGINEER
COLO.

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

NONTRIBUTARY GROUND WATER CONSENT CLAIM
(FOR AREAS IN A DESIGNATED GROUND WATER BASIN)

Laramie-Fox Hills AQUIFER

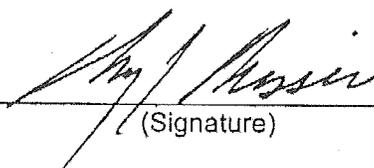
I (we) Ellicott Springs Resources, LLC
(Name)

claim and say that I (we) have the consent of the owners of 78.45 acres of overlying land to withdraw ground water from the aquifer indicated above.

The names of the landowners whose consent is claimed are as follows and their Landownership Statements (form GWS-3B), legal descriptions of all claimed land areas and copies of deeds or other transfer documents, recorded in the county or counties in which the land areas are located, are attached.

- Even-Preisser Investments, LLC
- Even-Preisser, Inc.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

 7-19-04
(Signature) (Date)

(Signature) (Date)

.....
INSTRUCTIONS:

The consent claim must be submitted with an application for determination of water right in all cases where the applicant believes or claims that water to be withdrawn is ground water from the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers and the applicant is claiming consent of the overlying landowners. Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means.

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

JUL 23 2004

WATER RESOURCES
STATE ENGINEER
COLO.

NONTRIBUTARY GROUND WATER CONSENT LANDOWNERSHIP STATEMENT

I (We) Even-Preisser Investments, LLC
(Name)

whose mailing address is 520 E. Costilla Street
Street

Colorado Springs CO 80903
(City) (State) (Zip)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 38.99 acres in the County of El Paso, State of Colorado: (Insert Property Legal Description)

See attached legal description

and that I (we) have granted written consent to others to withdraw ground water from the Laramie-Fox Hills aquifer as evidenced by the attached copy of a deed or other document in the County or Counties in which the land is located, and that said ground water has not been conveyed or reserved to another, nor has consent been given for withdrawal by another except as indicated in the attached deed or other recorded document.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

Even-Preisser Investments, LLC
Ray R. [Signature] 7/19/04
(Signature) (Date)

(Signature) (Date)

.....
INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

QUIT CLAIM DEED

THIS DEED is a conveyance from the person(s) or legal entity named below as GRANTOR to the person(s) or legal entity named below as GRANTEE of whatever interest the GRANTOR may have in the real property described below.

RECEIVED

JUL 23 2004

WATER RESOURCES
STATE ENGINEER
COLO

The GRANTOR hereby sells and quit claims to the GRANTEE the real property described below with all its appurtenances.

If the Grantor intends this Deed to convey less than his entire interest in the Property or if the Grantor intends to impose restrictions on the Grantee's use of the Property, then appropriate language has been added below under "Reservations And/Or Restrictions."

If there are two or more Grantees named in this Deed, they are accepting this conveyance as tenants in common, unless the words "joint tenancy with right of survivorship" or "joint tenancy" have been added below under "Form of Co-Ownership."

The following information completes this Deed:

GRANTOR: (Give Name(s), Address(es), and Marital Status)

Even-Preisser Investments LLC
520 E. Costilla Street
Colorado Springs, CO 80903

GRANTEE: (Give Name(s), Address(es))

Ellicott Springs Resources, LLC, a Colorado limited liability company
c/o Rodney J. Preisser, President
90 S. Cascade Avenue, Suite 950
Colorado Springs, CO 80903

Robert C. Balink El Paso Cty, CO
04/02/2004 04:06
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Rec \$5.00 1 of 1

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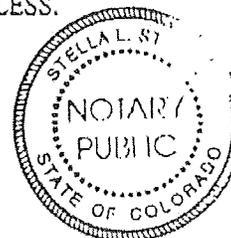
PROPERTY DESCRIPTION:

All groundwater (including without limitation tributary, non-tributary, not non-tributary and other groundwater), rights to withdraw such groundwater, rights to consent to the withdrawal of such groundwater, and all water rights relating to such groundwater, including without limitation all groundwater and rights to withdraw groundwater within the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers, that are appurtenant to or that underlie the following described real property:

THE WEST 1/2 OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PASO
COUNTY, COLORADO, EXCEPT THE NORTH 30 FEET FOR ROADWAY
PURPOSES, AND CONTAINING 38.99 ACRES MORE OR LESS.

PROPERTY ADDRESS:

22325 Highway 94
El Paso County, CO



RESERVATIONS AND/OR RESTRICTIONS: (If none, leave blank)

Signed on April 2, 2004

MY COMMISSION EXPIRES
09/04/2006

Even-Preisser Investments, LLC
Grantor

By [Signature]
Title: MEMBER

STATE OF COLORADO)
)ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 02 day of April
David Even, as member of Even-Preisser Investment
liability company.

WITNESS my hand and official seal.
My commission expires: 09-04-2006

[Signature]

EXHIBIT A

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

JUL 23 2004

WATER RESOURCES
STATE ENGINEER
COLORADO

NONTRIBUTARY GROUND WATER CONSENT LANDOWNERSHIP STATEMENT

I (We) Even-Preisser, Inc.
(Name)

whose mailing address is 520 E. Costilla St.
Street

Colorado Springs CO 80903
(City) (State) (Zip)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 39.46 acres in the County of El Paso, State of Colorado: (Insert Property Legal Description)

See attached legal description

and that I (we) have granted written consent to others to withdraw ground water from the Laramie-Fox Hills aquifer as evidenced by the attached copy of a deed or other document in the County or Counties in which the land is located, and that said ground water has not been conveyed or reserved to another, nor has consent been given for withdrawal by another except as indicated in the attached deed or other recorded document.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

Even-Preisser, Inc.
By [Signature], Secretary 7/19/04
(Signature) (Date)

(Signature) (Date)

INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589

www.water.state.co.us



Bill Owens
Governor

Russell George
Executive Director

Hal D. Simpson, P.E.
State Engineer

November 10, 2004

RODNEY PREISSER
ELLICOTT SPRINGS RESOURCES LLC
90 S CASCADE AVENUE #950
COLO SPGS CO 80903

RE: Permit to Use Existing Well

Dear Mr. Preisser:

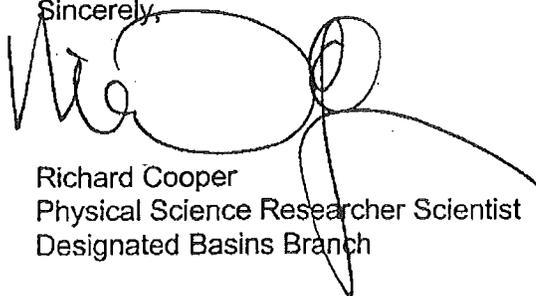
Enclosed is a copy of well Permit No. 61972-F, issued to use an existing well to withdraw ground water from the Laramie-Fox Hills aquifer in accordance with the Ground Water Commission's Findings and Order for Determination of Water Right No. 598-BD.

Please review the permit conditions of approval. Permit condition #10 requires that a totalizing flow meter shall be installed on the well and maintained in good working order. The well owner must maintain permanent records of total annual withdrawals from the well. Be advised that the total combined annual amount of ground water withdrawn by this well, together with any other wells permitted to withdraw the allowed allocation, shall not exceed 161 acre-feet, subject to the withdrawal limitations and conditions in the above described Order of the Commission.

Within 30 days after commencement of beneficial use of ground water, pumped from the well in accordance with the conditions of this permit, a Notice of Commencement of Beneficial Use, form no. GWS-19, must be completed and filed with this office. A copy of this notice is enclosed for your use.

If you have any questions, please contact this office.

Sincerely,



Richard Cooper
Physical Science Researcher Scientist
Designated Basins Branch

enclosures: a/s

cc: Upper Black Squirrel Creek GWMD

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

WELL PERMIT NUMBER 61972 -F-
DIV. 8 WD 10 DES. BASIN 4 MD 12

APPLICANT

ELLCOTT SPRINGS RESOURCES LLC
90 S CASCADE STE 950
COLORADO SPRINGS, CO 80903-

(719) 442-2614

APPROVED WELL LOCATION

EL PASO COUNTY
NW 1/4 NE 1/4 Section 14
Township 14 S Range 63 W Sixth P.M.

DISTANCES FROM SECTION LINES

300 Ft. from North Section Line
2310 Ft. from East Section Line

UTM COORDINATES (NAD83)

Easting: Northing:

PERMIT TO USE AN EXISTING WELL

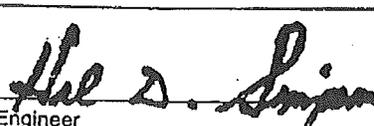
CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this existing well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to Section 37-90-107(7), C.R.S., and the Findings and Order of the Colorado Ground Water Commission, dated November 8, 2004, for Determination of Water Right No. 598-BD. This permit allows the use of an existing well originally constructed under cancelled permit no. 50040-F.
- 4) The maximum pumping rate of this well shall not exceed 200 GPM.
- 5) The annual withdrawal of ground water from this well shall not exceed 161 acre-feet, subject to the total annual withdrawal limitations and conditions in paragraphs 19, 20, and 25.e of the above described Order of the Commission.
- 6) The use of ground water from this well is limited to domestic, irrigation, commercial, industrial, firefighting, and recreation. Place of use shall be limited to the 551.26 acre land area claimed in the above described Order of the Commission.
- 7) This well must be constructed to withdraw ground water from only the Laramie-Fox Hills aquifer.
- 8) The owner shall mark the well in a conspicuous place with well permit number and name of aquifer as appropriate, and shall take necessary means and precautions to preserve these markings.
- 9) This well shall be located within 200 feet of the location specified on this permit, on overlying land claimed in the above Order. The well shall not be located within 600 feet of another large-capacity well completed in the Laramie-Fox Hills aquifer.
- 10) A totalizing flow meter or other Commission approved measuring device must be installed on the well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (collected at least annually) and submitted to the Upper Black Squirrel Creek Ground Water Management District or the Ground Water Commission upon request.
- 11) No more than 98% of the ground water withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the water withdrawn is being consumed.

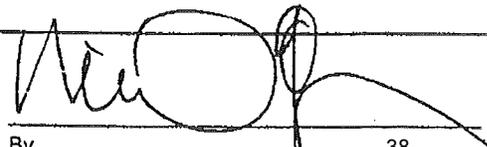
NOTE: The ability of this well to withdraw its authorized amount of water from this non-renewable aquifer may be less than the 100 years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines.

NOTE: This well is located within a Ground Water Management District where local District Rules may apply to the withdrawal of designated ground water currently authorized under this permit.

APPROVED
RAC


State Engineer

DATE ISSUED 11-10-2004

By 

EXPIRATION DATE 11-10-2005

38

Receipt No. 0522751A

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589

www.water.state.co.us



Bill Owens
Governor

Russell George
Executive Director

Hal D. Simpson, P.E.
State Engineer

November 10, 2004

RODNEY PREISSER
ELLICOTT SPRINGS RESOURCES LLC
90 S CASCADE AVENUE #950
COLO SPGS CO 80903

RE: Permit to Use Existing Well

Dear Mr. Preisser:

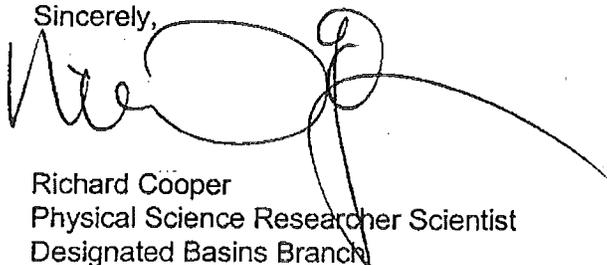
Enclosed is a copy of well Permit No. 61973-F, issued to use an existing well to withdraw ground water from the Laramie-Fox Hills aquifer in accordance with the Ground Water Commission's Findings and Order for Determination of Water Right No. 598-BD.

Please review the permit conditions of approval. Permit condition #10 requires that a totalizing flow meter shall be installed on the well and maintained in good working order. The well owner must maintain permanent records of total annual withdrawals from the well. Be advised that the total combined annual amount of ground water withdrawn by this well, together with any other wells permitted to withdraw the allowed allocation, shall not exceed 161 acre-feet, subject to the withdrawal limitations and conditions in the above described Order of the Commission.

Within 30 days after commencement of beneficial use of ground water, pumped from the well in accordance with the conditions of this permit, a Notice of Commencement of Beneficial Use, form no. GWS-19, must be completed and filed with this office. A copy of this notice is enclosed for your use.

If you have any questions, please contact this office.

Sincerely,



Richard Cooper
Physical Science Researcher Scientist
Designated Basins Branch

enclosures: a/s

cc: Upper Black Squirrel Creek GWMD

Form No.
GWS-25

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

WELL PERMIT NUMBER 61973 -F-
DIV. 8 WD 10 DES. BASIN 4 MD 12

APPLICANT

ELLCOTT SPRINGS RESOURCES
90 S CASCADE STE 950
COLORADO SPRINGS, CO 80903-

(719) 442-2614

APPROVED WELL LOCATION
EL PASO COUNTY
NW 1/4 NE 1/4 Section 14
Township 14 S Range 63 W Sixth P.M.

DISTANCES FROM SECTION LINES
300 Ft. from North Section Line
1650 Ft. from East Section Line

UTM COORDINATES (NAD83)
Easting: Northing:

PERMIT TO USE AN EXISTING WELL

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this existing well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to Section 37-90-107(7), C.R.S., and the Findings and Order of the Colorado Ground Water Commission, dated November 8, 2004, for Determination of Water Right No. 598-BD. This permit allows the use of an existing well originally constructed under cancelled permit no. 50041-F.
- 4) The maximum pumping rate of this well shall not exceed 200 GPM.
- 5) The annual withdrawal of ground water from this well shall not exceed 161 acre-feet, subject to the total annual withdrawal limitations and conditions in paragraphs 19, 20, and 25.e of the above described Order of the Commission.
- 6) The use of ground water from this well is limited to domestic, irrigation, commercial, industrial, firefighting, and recreation. Place of use shall be limited to the 551.26 acre land area claimed in the above described Order of the Commission.
- 7) This well must be constructed to withdraw ground water from only the Laramie-Fox Hills aquifer.
- 8) The owner shall mark the well in a conspicuous place with well permit number and name of aquifer as appropriate, and shall take necessary means and precautions to preserve these markings.
- 9) This well shall be located within 200 feet of the location specified on this permit, on overlying land claimed in the above Order. The well shall not be located within 600 feet of another large-capacity well completed in the Laramie-Fox Hills aquifer.
- 10) A totalizing flow meter or other Commission approved measuring device must be installed on the well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (collected at least annually) and submitted to the Upper Black Squirrel Creek Ground Water Management District or the Ground Water Commission upon request.
- 11) No more than 98% of the ground water withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the water withdrawn is being consumed.

NOTE: The ability of this well to withdraw its authorized amount of water from this non-renewable aquifer may be less than the 100 years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines.

NOTE: This well is located within a Ground Water Management District where local District Rules may apply to the withdrawal of designated ground water currently authorized under this permit.

APPROVED
RAC

Hal D. Smith
State Engineer

By *[Signature]*

EXPIRATION DATE 11-10-2005

Receipt No. 0522751B

DATE ISSUED 11-10-2004

ORDER OF THE COLORADO GROUND WATER COMMISSION

IN THE MATTER OF WELL PERMIT NO. 50040-F

LOCATION: NW1/4 OF THE NE1/4 OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 63
WEST OF THE 6TH PRINCIPAL MERIDIAN

OWNER OF RECORD: ELLICOTT SPRINGS RESOURCES, LLC

The Colorado Ground Water Commission finds that:

1. Well permit no. 50040-F was issued by the Commission on June 10, 1998, to construct a well to withdraw and appropriate ground water in accordance with the Findings and Order of the Commission, dated May 26, 1998. A well completion report filed with the Commission indicates that the well was timely constructed to withdraw ground water from the Laramie-Fox Hills aquifer at its permitted location.
2. On July 23, 2004, Ellicott Springs Resources, LLC, filed a statement with the Commission claiming ownership of the subject well and requesting that permit no. 50040-F be cancelled upon approval of a determination of water right for the Laramie-Fox Hills aquifer underlying a 551.26 acre overlying land area. An application for said determination was filed with the Commission in a complete form on July 23, 2004.

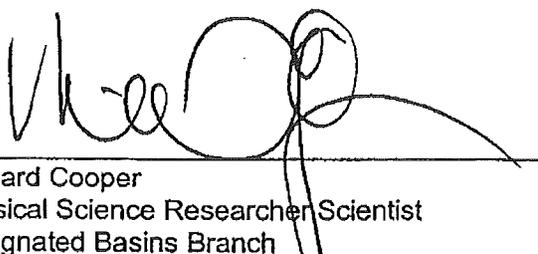
ORDER

3. At the request of the well owner, and in accordance with the Findings and Order of the Commission for Determination of Water Right No. 598-BD, dated November 8, 2004, well permit no. 50040-F is cancelled and is of no further force or effect. Any water right associated with this permit is abandoned.

Dated this 10th day of November, 2004.

Hal D. Simpson

Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By: 
Richard Cooper
Physical Science Researcher/Scientist
Designated Basins Branch

ORDER OF THE COLORADO GROUND WATER COMMISSION

IN THE MATTER OF WELL PERMIT NO. 50041-F

LOCATION: NW1/4 OF THE NE1/4 OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 63
WEST OF THE 6TH PRINCIPAL MERIDIAN

OWNER OF RECORD: ELLICOTT SPRINGS RESOURCES, LLC

The Colorado Ground Water Commission finds that:

1. Well permit no. 50041-F was issued by the Commission on June 10, 1998, to construct a well to withdraw and appropriate ground water in accordance with the Findings and Order of the Commission, dated May 26, 1998. A well completion report filed with the Commission indicates that the well was timely constructed to withdraw ground water from the Laramie-Fox Hills aquifer at its permitted location.
2. On July 23, 2004, Ellicott Springs Resources, LLC, filed a statement with the Commission claiming ownership of the subject well and requesting that permit no. 50041-F be cancelled upon approval of a determination of water right for the Laramie-Fox Hills aquifer underlying a 551.26 acre overlying land area. An application for said determination was filed with the Commission in a complete form on July 23, 2004.

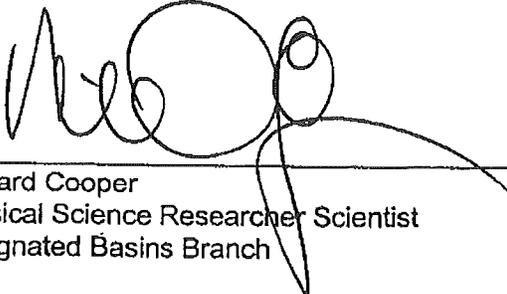
ORDER

3. At the request of the well owner, and in accordance with the Findings and Order of the Commission for Determination of Water Right No. 598-BD, dated November 8, 2004, well permit no. 50041-F is cancelled and is of no further force or effect. Any water right associated with this permit is abandoned.

Dated this 10th day of November, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission



By: _____
Richard Cooper
Physical Science Researcher Scientist
Designated Basins Branch

Form No.
GWS-25

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

WELL PERMIT NUMBER 61972 -F-
DIV. 8 WD 10 DES. BASIN 4 MD 12

APPLICANT

ELLICOTT SPRINGS RESOURCES LLC
90 S CASCADE STE 950
COLORADO SPRINGS, CO 80903-

(719) 442-2614

APPROVED WELL LOCATION

EL PASO COUNTY
NW 1/4 NE 1/4 Section 14
Township 14 S Range 63 W Sixth P.M.

DISTANCES FROM SECTION LINES

300 Ft. from North Section Line
2310 Ft. from East Section Line

UTM COORDINATES (NAD83)

Easting: Northing:

PERMIT TO USE AN EXISTING WELL

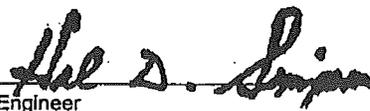
CONDITIONS OF APPROVAL

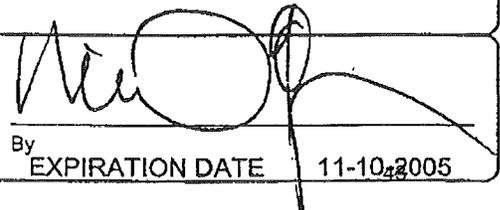
- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this existing well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to Section 37-90-107(7), C.R.S., and the Findings and Order of the Colorado Ground Water Commission, dated November 8, 2004, for Determination of Water Right No. 598-BD. This permit allows the use of an existing well originally constructed under cancelled permit no. 50040-F.
- 4) The maximum pumping rate of this well shall not exceed 200 GPM.
- 5) The annual withdrawal of ground water from this well shall not exceed 161 acre-feet, subject to the total annual withdrawal limitations and conditions in paragraphs 19, 20, and 25.e of the above described Order of the Commission.
- 6) The use of ground water from this well is limited to domestic, irrigation, commercial, industrial, firefighting, and recreation. Place of use shall be limited to the 551.26 acre land area claimed in the above described Order of the Commission.
- 7) This well must be constructed to withdraw ground water from only the Laramie-Fox Hills aquifer.
- 8) The owner shall mark the well in a conspicuous place with well permit number and name of aquifer as appropriate, and shall take necessary means and precautions to preserve these markings.
- 9) This well shall be located within 200 feet of the location specified on this permit, on overlying land claimed in the above Order. The well shall not be located within 600 feet of another large-capacity well completed in the Laramie-Fox Hills aquifer.
- 10) A totalizing flow meter or other Commission approved measuring device must be installed on the well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (collected at least annually) and submitted to the Upper Black Squirrel Creek Ground Water Management District or the Ground Water Commission upon request.
- 11) No more than 98% of the ground water withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the water withdrawn is being consumed.

NOTE: The ability of this well to withdraw its authorized amount of water from this non-renewable aquifer may be less than the 100 years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines.

NOTE: This well is located within a Ground Water Management District where local District Rules may apply to the withdrawal of designated ground water currently authorized under this permit.

APPROVED
RAC


State Engineer


By

Receipt No. 0522751A

DATE ISSUED 11-10-2004

EXPIRATION DATE 11-10-2005

Form No.
GWS-25

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

WELL PERMIT NUMBER 61973 -F-
DIV. 8 WD 10 DES. BASIN 4 MD 12

APPLICANT

ELLICOTT SPRINGS RESOURCES
90 S CASCADE STE 950
COLORADO SPRINGS, CO 80903-

(719) 442-2614

APPROVED WELL LOCATION

EL PASO COUNTY
NW 1/4 NE 1/4 Section 14
Township 14 S Range 63 W Sixth P.M.

DISTANCES FROM SECTION LINES

300 Ft. from North Section Line
1650 Ft. from East Section Line

UTM COORDINATES (NAD83)

Easting: Northing:

PERMIT TO USE AN EXISTING WELL

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this existing well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to Section 37-90-107(7), C.R.S., and the Findings and Order of the Colorado Ground Water Commission, dated November 8, 2004, for Determination of Water Right No. 598-BD. This permit allows the use of an existing well originally constructed under cancelled permit no. 50041-F.
- 4) The maximum pumping rate of this well shall not exceed 200 GPM.
- 5) The annual withdrawal of ground water from this well shall not exceed 161 acre-feet, subject to the total annual withdrawal limitations and conditions in paragraphs 19, 20, and 25.e of the above described Order of the Commission.
- 6) The use of ground water from this well is limited to domestic, irrigation, commercial, industrial, firefighting, and recreation. Place of use shall be limited to the 551.26 acre land area claimed in the above described Order of the Commission.
- 7) This well must be constructed to withdraw ground water from only the Laramie-Fox Hills aquifer.
- 8) The owner shall mark the well in a conspicuous place with well permit number and name of aquifer as appropriate, and shall take necessary means and precautions to preserve these markings.
- 9) This well shall be located within 200 feet of the location specified on this permit, on overlying land claimed in the above Order. The well shall not be located within 600 feet of another large-capacity well completed in the Laramie-Fox Hills aquifer.
- 10) A totalizing flow meter or other Commission approved measuring device must be installed on the well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (collected at least annually) and submitted to the Upper Black Squirrel Creek Ground Water Management District or the Ground Water Commission upon request.
- 11) No more than 98% of the ground water withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the water withdrawn is being consumed.

NOTE: The ability of this well to withdraw its authorized amount of water from this non-renewable aquifer may be less than the 100 years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines.

NOTE: This well is located within a Ground Water Management District where local District Rules may apply to the withdrawal of designated ground water currently authorized under this permit.

APPROVED
RAC

She D. Smith

State Engineer

[Signature]

By

Receipt No. 0522751B

DATE ISSUED 11-10-2004

EXPIRATION DATE 11-10-2005

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES

818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581



WELL PERMIT NUMBER	050040	-	F
DIV. 8	CNTY. 21	WD 10	DES. BASIN 4 MD 12

APPLICANT

EVEN PREISSER INVESTMENTS, LLC
90 S CASCADE STE 950
COLO SPRINGS CO 80903-4217

(719)442-2514

APPROVED WELL LOCATION

EL PASO COUNTY

NW 1/4 NE 1/4 Section 14
Twp 14 S RANGE 63 W 6th P.M.

DISTANCES FROM SECTION LINES

300 Ft. from North Section Line

2310 Ft. from East Section Line

PERMIT TO CONSTRUCT A WELL

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of the permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to Sections 37-90-107 and 37-90-111(5), C.R.S., and the findings of the Colorado Ground Water Commission dated May 26, 1998.
- 4) The maximum pumping rate shall not exceed 200 GPM.
- 5) The allowed average annual amount of ground water to be withdrawn is 9.3 acre-feet, subject to the conditions in paragraph 18.c of the above described Findings of the Commission.
- 6) The use of ground water from the well shall be limited to the following: commercial use for all uses associated with a concrete production facility, residential use and the irrigation of lawn, garden and landscaped areas. Place of use shall be limited to the 40 acre land area claimed in the above described Findings of the Commission.
- 7) The well must be constructed to withdraw water from only the Laramie-Fox Hills aquifer. The top of the aquifer is located approximately 650 feet below the ground surface. The bottom of the aquifer is located approximately 910 feet below the ground surface. Plain casing must be installed and sealed to prevent diversion of water from other aquifers and the movement of water between aquifers.
- 8) This well shall be constructed within 200 feet of the location specified on this permit, and shall not be located within 600 feet of another large-capacity well completed in the Laramie-Fox Hills aquifer.
- 9) The entire length of the hole shall be geophysically logged according to the attached instructions prior to installing the casing.
- 10) A totalizing flow meter must be installed on the well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (collected at least annually) and submitted to the Upper Black Squirrel Creek Ground Water Management District and the Ground Water Commission upon request.
- 11) No more than 98% of the ground water withdrawn annually from this well shall be consumed. The Commission may require the well owner to demonstrate periodically that no more than 98% of the ground water withdrawn by the well is being consumed.
- 12) The owner shall mark this well in a conspicuous place with the permit number and the name of the aquifer. He shall take necessary means and precautions to preserve these markings.

NOTE: The ability of this well to withdraw its authorized amount of water from this non-renewable aquifer may be less than the 100 years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines. RAC 8-13-98

APPROVED
RAC

State Engineer

By

Receipt No. 0422850

DATE ISSUED JUN 10 1998

EXPIRATION DATE JUN 10 1999

GWS-J
12/24

WELL CONSTRUCTION AND TEST REPORT
STATE OF COLORADO, OFFICE OF THE STATE ENGINEER

For Office Use only

RECEIVED

DEC 29 1998

STATE OF COLORADO
STATE ENGINEER
D.D.

1. WELL PERMIT NUMBER D30040-F

2. OWNER NAME(S) EVEN PREISSER INVESTMENTS LLC
 Mailing Address 90 S CASCADE STE 950
 City, St. Zip CO, CO 80903-4217
 Phone (719) 442-2614

3. WELL LOCATION AS DRILLED: NW 1/4 NE 1/4, Sec. 14 Twp. 14S, Range 63D 64W
 DISTANCES FROM SEC. LINES:
300 ft from NORTH Sec. line. and 2310 ft from EAST Sec. line. OR
(north or south) (east or west)
 SUBDIVISION: _____ LOT _____ BLOCK _____ FILING(UNIT) _____
 STREET ADDRESS AT WELL LOCATION: _____

4. GROUND SURFACE ELEVATION _____ ft. DRILLING METHOD Mud Rotary
 DATE COMPLETED 11/20/98 TOTAL DEPTH 900 ft. DEPTH COMPLETED 900 ft.

5. GEOLOGIC LOG:

Depth	Description of Material (Type, Size, Color, Water Location)
0-1	TOPSOIL
1105	SAND, GRAVEL
175	CLAY
190	SHALE
210	SANDROCK
225	SHALE
250	SANDROCK
310	SHALE
370	SANDROCK
450	SHALE
480	SANDROCK
505	CLAY
550	SHALE
675	SANDROCK
695	SHALE
715	SANDROCK
775	SHALE
820	SANDROCK
830	SHALE
850	SANDROCK
REMARKS:	<u>900 SHALE</u> <u>Approved 8/23</u>

6. HOLE DIAM. (in.) From (ft) To (ft)

<u>12 1/2</u>	<u>0</u>	<u>130</u>
<u>7 1/2</u>	<u>190</u>	<u>650</u>
<u>6 1/2</u>	<u>650</u>	<u>900</u>

7. PLAIN CASING

OD (in)	Kind	Wall Size	From (ft)	To (ft)
<u>4 1/2</u>	<u>STEEL</u>	<u>1 1/8</u>	<u>1</u>	<u>130</u>
<u>4 1/2</u>	<u>STEEL</u>	<u>1 1/8</u>	<u>7</u>	<u>650</u>

PERF. CASING: Screen Slot Size: Torched
4 1/2 STEEL 1 1/8 650 900

8. FILTER PACK: Material Gravel Size #4 Interval 20-350 410-590

9. PACKER PLACEMENT: Type Rubber Depth 650

10. GROUTING RECORD:

Material	Amount	Density	Interval	Placement
<u>Cement</u>	<u>450 lbs</u>	<u>140 pcf</u>	<u>6-20</u>	<u>Poured</u>
<u>Cement</u>	<u>350 lbs</u>	<u>140 pcf</u>	<u>110-140</u>	<u>Poured</u>
<u>Cement</u>	<u>250 lbs</u>	<u>140 pcf</u>	<u>370-410</u>	<u>Poured</u>
<u>Cement</u>	<u>850 lbs</u>	<u>140 pcf</u>	<u>590-650</u>	<u>Pumped</u>

11. DISINFECTION: Type HTR Amt. Used 600

12. WELL TEST DATA: Check box if Test Data is submitted on Form No. GWS 39 Supplemental Well Test.
 TESTING METHOD DAILED
 Static Level 325 ft. Date/Time measured _____ Production Rate 25 gpm.
 Pumping level 651 ft. Date/Time measured 11/24/98 Test length (hrs.) 4
 Remarks _____

13. I have read the statements made herein and know the contents thereof, and that they are true to my knowledge. [Pursuant to Section 24-4-104 (13)(a) C.R.S., the making of false statements herein constitutes perjury in the second degree and is punishable as a class 1 misdemeanor.]

CONTRACTOR KUNAW DRILLING & EXC. Phone (719) 683-3720 Lic. No. 1148
 Mailing Address 23945 LUCKY LN, CAULON, CO 80903

Name/Title (Please type or print) TIM KUNAW/OWNER Signature Tim Kunaw Date 11-24-98

FORM NO. GWS-32 10/94

PUMP INSTALLATION AND TEST REPORT

STATE OF COLORADO, OFFICE OF THE STATE ENGINEER

For Office Use only

RECEIVED RECEIVED

DEC 29 1998 DEC 29 1998

WATER RESOURCES STATE ENGINEER COLO.

WATER RESOURCES STATE ENGINEER COLO.

1. WELL PERMIT NUMBER D50040-F

2. OWNER NAME(S) EVAN PREISER INVESTMENTS LLC
Mailing Address 90 S. CASCADE #930
City, St. Zip CO. CO. 80903-4817
Phone (719) 442-2614

3. WELL LOCATION AS DRILLED: NW 1/4 NE 1/4, Sec. 14 Twp. 14 S, Range 12W 6th
DISTANCES FROM SEC. LINES:
300 ft. from NORTH Sec. line, and 2310 ft. from EAST Sec. line.
SUBDIVISION: _____ LOT _____ BLOCK _____ FILING(UNIT) _____
STREET ADDRESS AT WELL LOCATION: _____

4. PUMP DATA: Type SUBMERSIBLE Installation Completed 11/24/98
Pump Manufacturer BOWLUS Pump Model No. 7GS30412
Design GPM 7 at RPM 3450, HP 3.0, Volts 230, Full Load Amps 17
Pump Intake Depth 1251 Feet, Drop/Column Pipe Size 1" inches, Kind STEEL

ADDITIONAL INFORMATION FOR PUMPS GREATER THAN 50 GPM:

TURBINE DRIVER TYPE: Electric Engine Other _____
Design Head _____ feet, Number of Stages _____, Shaft size _____ inches.

5. OTHER EQUIPMENT:

Airline Installed Yes No, Orifice Depth ft. _____, Monitor Tube Installed Yes No, Depth ft. _____
Flow Meter Mfg. MASTER Meter Serial No. _____
Meter Readout Gallons, Thousand Gallons, Acre feet, Beginning Reading 0

6. TEST DATA:

Check box if Test data is submitted on Supplemental Form.
Date 11/24/98

Total Well Depth 900 Time _____
Static Level 325 Rate (GPM) _____
Date Measured 11/20/98 Pumping Lvl. 1251

7. DISINFECTION: Type H+H Amt. Used 60z.

8. Water Quality analysis available. Yes No

9. Remarks _____

10. I have read the statements made herein and know the contents thereof, and that they are true to my knowledge. [Pursuant to Section 24-4-104 (13)(a) C.R.S., the making of false statements herein constitutes perjury in the second degree and is punishable as a class 1 misdemeanor.]

CONTRACTOR KUNAN DRILLING & EXC Phone (719) 683-3720 Lic. No. 1148
Mailing Address 23945 LUCKY LN, CALHAN, CO. 80909

Name/Title (Please type or print)

Signature

Date

TIM KUNAN / OWNER

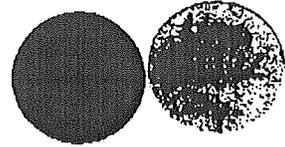
Tom Kunan

11-24-98

618
Form No. GWS-25

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES

818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581



1148

WELL PERMIT NUMBER 050041 - F -
DIV. 8 CNTY. 21 WD 10 DES. BASIN 4 MD 12

APPLICANT

EVEN PREISSER INC
90 S CASCADE STE 950
COLO SPRINGS CO 80903-4217

(719)442-2614

Lot: Block: Filing: Subdiv:

APPROVED WELL LOCATION
EL PASO COUNTY

NW 1/4 NE 1/4 Section 14
Twp 14 S RANGE 63 W 6th P.M.

DISTANCES FROM SECTION LINES

300 Ft. from North Section Line
1650 Ft. from East Section Line

PERMIT TO CONSTRUCT A WELL

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of the permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to Sections 37-90-107 and 37-90-111(5), C.R.S., and the Findings of the Colorado Ground Water Commission dated May 26, 1998.
- 4) The maximum pumping rate shall not exceed 200 GPM.
- 5) The allowed average annual amount of ground water to be withdrawn is 9.3 acre-feet, subject to the conditions in paragraph 18.c of the above described Findings of the Commission.
- 6) The use of ground water from the well shall be limited to the following: commercial use for all uses associated with a concrete production facility, residential use and the irrigation of lawn, garden and landscaped areas. Place of use shall be limited to the 40 acre land area claimed in the above described Findings of the Commission.
- 7) The well must be constructed to withdraw water from only the Laramie-Fox Hills aquifer. The top of the aquifer is located approximately 640 feet below the ground surface. The bottom of the aquifer is located approximately 900 feet below the ground surface. Plain casing must be installed and sealed to prevent diversion of water from other aquifers and the movement of water between aquifers.
- 8) This well shall be constructed within 200 feet of the location specified on this permit, and shall not be located within 600 feet of another large-capacity well completed in the Laramie-Fox Hills aquifer.
- 9) The entire length of the hole shall be geophysically logged according to the attached instructions prior to installing the casing.
- 10) A totalizing flow meter must be installed on the well and maintained in good working order. Permanent records of all diversions must be maintained by the well owner (collected at least annually) and submitted to the Upper Black Squirrel Creek Ground Water Management District and the Ground Water Commission upon request.
- 11) No more than 98% of the ground water withdrawn annually from this well shall be consumed. The Commission may require the well owner to demonstrate periodically that no more than 98% of the ground water withdrawn by the well is being consumed.
- 12) The owner shall mark this well in a conspicuous place with the permit number and the name of the aquifer. He shall take necessary means and precautions to preserve these markings.

**GEOPHYSICAL LOGGING
REQUIREMENT WAIVED**
By SAC 7-27-99

NOTE: The ability of this well to withdraw its authorized amount of water from this non-renewable aquifer may be less than the 100 years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines. RAC 5-15-98

PERMIT EXPIRATION DATE EXTENDED TO JUNE 10, 2000 SAC 7-27-99

APPROVED
RAC

Hal D. Simpson
State Engineer

Purnell
By

Receipt No. 0422851

DATE ISSUED JUN 10 1998

EXPIRATION DATE JUN 10 1999

FORM NO. 6WS-32 10/84

PUMP INSTALLATION AND TEST REPORT

STATE OF COLORADO, OFFICE OF THE STATE ENGINEER

For Office Use only

RECEIVED

JUN 18 2000

WATER DIVISION STATE ENGINEER GOLD

1. WELL PERMIT NUMBER D50041 E

2. OWNER NAME(S) EVEN PREISSER INC.
Mailing Address 90 S CASCADE STE 950
City, St. Zip COLO SPRING CO 80903
Phone (719) 442-2614

3. WELL LOCATION AS DRILLED: NW 1/4 NE 1/4, Sec. 14 Twp. 19 S, Range 63 W
DISTANCES FROM SEC. LINES:
300 ft. from NORTH Sec. line. and 1150 ft. from EAST Sec. line.
(north or south) (east or west)
SUBDIVISION: _____ LOT _____ BLOCK _____ FILING(UNIT) _____
STREET ADDRESS AT WELL LOCATION: _____

4. PUMP DATA: Type SUBMERSIBLE installation Completed 6/9/00
Pump Manufacturer Goulds Pump Model No. 1065AD912
Design GPM 10 at RPM 3450, HP 5, Volts 230, Full Load Amps 27.5
Pump Intake Depth 861 Feet, Drop/Column Pipe Size 1 1/4" inches, Kind _____

ADDITIONAL INFORMATION FOR PUMPS GREATER THAN 50 GPM:

TURBINE DRIVER TYPE: Electric Engine Other _____
Design Head _____ feet, Number of Stages _____ Shaft size _____ inches.

5. OTHER EQUIPMENT:

Airline Installed Yes No, Orifice Depth ft. _____, Monitor Tube Installed Yes No, Depth ft. _____
Flow Meter Mfg. MASTER Meter Serial No. 271D28
Meter Readout Gallons, Thousand Gallons, Acre feet, Beginning Reading 0

6. TEST DATA:

Check box if Test data is submitted on Supplemental Form.

Date 6-9-00
Total Well Depth 900 Time _____
Static Level 330 Rate (GPM) 15
Date Measured 6/7/00 Pumping Lvl. 861

7. DISINFECTION: Type HTH Amt. Used 6 oz.

8. Water Quality analysis available. Yes No

8. Remarks _____

10. I have read the statements made herein and know the contents thereof, and that they are true to my knowledge. [Pursuant to Section 24-4-104 (13)(a) C.R.S., the making of false statements herein constitutes perjury in the second degree and is punishable as a class 1 misdemeanor.]

CONTRACTOR KUNAU DRILLING LLC Phone (719) 683-3720 Lic. No. 1140
Mailing Address 23945 LUCKY LANE CAHAN CO 80808

Name/Title (Please type or print)

Signature

Date

TIM KUNAU-OWNER

Tim Kunau

6-9-00

STATE OF COLORADO, OFFICE OF THE STATE ENGINEER
1313 Sherman St., Rm 818, Denver, CO 80203

RECEIVED

JUN 12 2000

WATER RESOURCES
STATE ENGINEER
COLO

1. WELL PERMIT NUMBER 050041 F

2. OWNER NAME(S) EVEN PREISSER INC
Mailing Address 90 S. CASCADE STE 950
City, St. Zip COLO SPRGS CO 80903
Phone (719) 442-2614

3. WELL LOCATION AS DRILLED: NW 1/4 NE 1/4, Sec. 14 Twp. 14 S, Range 63 W
DISTANCES FROM SEC. LINES:
300 ft. from North Sec. line, and 1650 ft. from East Sec. line. OR
SUBDIVISION: _____ LOT _____ BLOCK _____ FILING(UNIT) _____
STREET ADDRESS AT WELL LOCATION: _____

4. GROUND SURFACE ELEVATION _____ ft. DRILLING METHOD Mud Rotary
DATE COMPLETED 6-7-00 TOTAL DEPTH 900 ft. DEPTH COMPLETED 900 ft.

5. GEOLOGIC LOG:

Depth	Description of Material (Type, Size, Color, Water Location)
D-1	Topsoil
170	SAND GRAVEL CLAY
205	CLAY SHALE
218	SANDROCK
240	CLAY SHALE
320	CLAY SANDROCK
345	CLAY SHALE
360	CLAY SANDROCK
380	SANDROCK
390	CLAY
410	SANDROCK
560	CLAY SHALE
585	SANDROCK
630	CLAY SHALE
695	SANDROCK COAL
697	ROCK
830	SANDROCK
890	CLAY SANDROCK

6. HOLE DIAM. (in.) From (ft) To (ft)

<u>12 1/4</u>	<u>0</u>	<u>185</u>
<u>6 1/2</u>	<u>185</u>	<u>900</u>

7. PLAIN CASING

OD (in)	Kind	Wall Size	From (ft)	To (ft)
<u>8 5/8</u>	<u>STEEL</u>	<u>182</u>	<u>±1</u>	<u>185</u>
<u>4 1/2</u>	<u>STEEL</u>	<u>188</u>	<u>1</u>	<u>695</u>

PERF. CASING: Screen Slot Size: toeched
4 1/2 STEEL 188 695 900

8. FILTER PACK: Material GRAVEL Size 1/2" Interval 20-165/185-390

9. PACKER PLACEMENT: Type Rubber Depth 695

10. GROUTING RECORD:

Material	Amount	Density	Interval	Placement
<u>CEMENT</u>	<u>6 sacks</u>	<u>36 gal</u>	<u>6-20</u>	<u>Trimmed</u>
<u>CEMENT</u>	<u>6 sacks</u>	<u>36 gal</u>	<u>165-185</u>	<u>Trimmed</u>
<u>CEMENT</u>	<u>12 sacks</u>	<u>72 gal</u>	<u>390-420</u>	<u>Trimmed</u>
<u>CEMENT</u>	<u>2 sacks</u>	<u>12 gal</u>	<u>615-695</u>	<u>Pumped</u>

Am't Used 6.02

11. DISINFECTION: Type HTH AROUND 6 1/2

12. WELL TEST DATA: Check box if Test Data is submitted on Form No. GWS 39 Supplemental Well Test.
TESTING METHOD Airlifted
Static Level 330 ft. Date/Time measured _____
Pumping level 610 ft. Date/Time measured 6/7/00 Production Rate 25 gpm.
Remarks _____ Test length (hrs.) 4

13. I have read the statements made herein and know the contents thereof, and that they are true to my knowledge. (Punishable to Section 24-4-104 (13)(e) C.R.S., the making of false statements herein constitutes perjury in the second degree and is punishable as a class 1 misdemeanor.)

CONTRACTOR KUNAU Drilling LLC Phone (719) 683-3720 Lic. No. 1148
Mailing Address 23945 LUCKY LANE CALHAN CO 80808

Name/Title (Please type or print) TIM KUNAU-DRAINER Signature [Signature] Date 6-9-00

B.2. DENVER BASIN WATER DETERMINATION NO. 599 BD ARAPAHOE AQUIFER

COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER

IN THE MATTER OF AN APPLICATION FOR DETERMINATION OF WATER RIGHT TO
ALLOW THE WITHDRAWAL OF GROUND WATER IN THE UPPER BLACK SQUIRREL
CREEK DESIGNATED GROUND WATER BASIN

APPLICANT: ELLICOTT SPRINGS RESOURCES, LLC

AQUIFER: ARAPAHOE

DETERMINATION NO.: 599-BD

In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, Ellicott Springs Resources, LLC, (hereinafter "applicant") submitted an application for determination of water right to allow the withdrawal of designated ground water from the determinations of water right to allow the withdrawal of designated ground water from the Arapahoe Aquifer.

FINDINGS

1. The application was received complete by the Colorado Ground Water Commission on July 23, 2004.
2. The applicant requests a determination of rights to designated ground water in the Arapahoe Aquifer (hereinafter "aquifer") underlying 551.26 acres generally described as the W1/2 and the W1/2 of the NE1/4 of Section 14 and the E1/2 of the E1/2 of Section 15, all in Township 14 South, Range 63 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated February 18, 2004, and two signed statements dated July 19, 2004, the applicant claims control of and right to allocation of the ground water in the aquifer under the above-described land area based on written consent of the overlying landowners, as further described in said affidavits which are attached hereto as Exhibit A.
3. The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.
4. The above described land area overlying the ground water claimed by the applicant is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission (hereinafter "Commission") has jurisdiction.
5. The applicant intends to apply the allocated ground water to the following beneficial uses: domestic, irrigation, commercial, industrial, firefighting, and recreation. The applicant's proposed place of use of the allocated ground water is the above described 551.26 acre land area.
6. The quantity of water in the aquifer underlying the 551.26 acres of land claimed by the applicant is 7965 acre-feet. This determination was based on the following as specified in the Designated Basin Rules:

- a. The average specific yield of the saturated permeable material of the aquifer underlying the land under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 17 percent.
 - b. The average thickness of the saturated permeable material of the aquifer underlying the land under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 85 feet.
7. At this time, there is no substantial artificial recharge that would affect the aquifer within a one hundred year period.
 8. Pursuant to Section 37-90-107(7), C.R.S., and in accordance with the Designated Basin Rules, the Commission shall allocate ground water in the aquifer based on ownership of the overlying land and an aquifer life of one hundred years. Therefore, the maximum average annual amount of ground water in the aquifer that may be allocated for withdrawal pursuant to the data in the paragraphs above for the 551.26 acres of overlying land claimed by the applicant is 79.7 acre-feet.
 9. The ability of wells permitted to withdraw the authorized amount of water from this non-renewable aquifer may be less than the one hundred years upon which the amount of water in the aquifer is allocated, due to anticipated water level declines.
 10. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the aquifer underlying the 551.26 acres of land claimed by the applicant will, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the ground water is considered to be not-nontributary ground water. Also, the location of the land claimed by the applicant is closer than one mile from the aquifer contact with the alluvium. Withdrawal of water from the aquifer underlying the claimed land area would impact the alluvial aquifer of Black Squirrel Creek or its tributaries, which has been determined to be over-appropriated. Commission approval of a replacement plan - pursuant to Section 37-90-107.5, C.R.S., and Rule 5.6 of the Designated Basin Rules - providing for the actual depletion of the alluvial aquifer and adequate to prevent any material injury to existing water rights, would be required prior to approval of well permits for wells to be located on this land area to withdraw the allocated ground water from the aquifer.
 11. In accordance with Rule 5.3.2.4 of the Designated Basin Rules, the maximum average annual amount of ground water available for allocation from the aquifer underlying the 551.26 acres of land claimed by the applicant is reduced to 78.7 acre-feet to allow for the annual withdrawal of a small capacity well which is completed in the aquifer, permit number 76247. Except for this well, review of the records in the Office of the State Engineer has disclosed that none of the water in the aquifer underlying the land claimed by the applicant has been previously allocated or permitted for withdrawal.
 12. Pursuant to Section 37-90-107(7)(c)(III), C.R.S., an approved determination of water right shall be considered a final determination of the amount of ground water so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.

13. In accordance with Section 37-90-107(7), C.R.S., upon Commission approval of a determination of water right, well permits for wells to withdraw the authorized amount of water from the aquifer shall be available upon application, subject to the conditions of this determination and the Designated Basin Rules and subject to approval by the Commission.
14. On July 29, 2004, in accordance with Rule 9.1 of the Designated Basin Rules, a letter was sent to the Upper Black Squirrel Creek Ground Water Management District requesting written recommendations concerning this application. No written recommendations from the district were received in response to this request.
15. The Commission Staff has evaluated the application relying on the claims to control of the ground water in the aquifer made by the applicant.
16. In accordance with Sections 37-90-107(7) and 37-90-112, C.R.S., the application was published in the Gazette newspaper on August 5 and 12, 2004.
17. No objections to the determination of water right and proposed allocation of ground water were received within the time limit set by statute.
18. In order to prevent unreasonable impairment to the existing water rights of others within the Upper Black Squirrel Creek Designated Ground Water Basin it is necessary to impose conditions on the determination of water right and proposed allocation of ground water. Under conditions as stated in the following Order, no unreasonable impairment of existing water rights will occur from approval of this determination of water right or from the issuance of well permits for wells to withdraw the authorized amount of allocated ground water from the aquifer.

ORDER

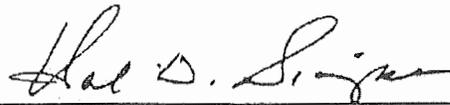
In accordance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for determination of rights to designated ground water in the Arapahoe Aquifer underlying 551.26 acres generally described as the W1/2 and the W1/2 of the NE1/4 of Section 14 and the E1/2 of the E1/2 of Section 15, all in Township 14 South, Range 63 West of the 6th Principal Meridian, is approved subject to the following conditions:

19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed 78.7 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product of the number of years since the date of approval of this determination times the allowed average annual amount of withdrawal.
20. To conform to actual aquifer characteristics, the Commission may adjust the allocated average annual amount of ground water to be withdrawn from the aquifer based on analysis of geophysical logs or other site-specific data if such analysis indicates that the initial estimate of the volume of water in the aquifer was incorrect.

21. Commission approval of a replacement plan, providing for actual depletion of affected alluvial aquifers and adequate to prevent any material injury to existing water rights in such alluvial aquifers is required prior to approval of well permits for wells to be located on the overlying land area to withdraw ground water from the aquifer.
22. The use of ground water from this allocation shall be limited to the following beneficial uses: domestic, irrigation, commercial, industrial, firefighting, and recreation. The place of use shall be limited to the above-described 551.26 acre land area.
23. The applicant, or subsequent persons controlling this water right, shall record in the public records of the county - in which the claimed overlying land is located - notice of transfer of any portion of this water right to another within sixty days after the transfer, so that a title examination of the above described 551.26 acre land area, or any part thereof, shall reveal the changes affecting this water right. Such notice shall consist of a signed and dated deed which indicates the determination number, the aquifer, a description of the above described land area, the annual amount of ground water (acre-feet) transferred, name of the recipient, and the date of transfer.
24. Subject to the above conditions, well permits for wells to withdraw the authorized annual amount of water from the aquifer shall be available upon application subject to approval by the Commission and the following conditions:
 - a. The wells shall be located on the above described 551.26 acre overlying land area.
 - b. The wells must be constructed to withdraw water from only the Arapahoe Aquifer. Upon application for a well permit to construct such a well, the estimated top and base of the aquifer at the proposed well location will be determined by the Commission and indicated on the approved well permit. Plain non-perforated casing must be installed, grouted and sealed to prevent diversion of ground water from other aquifers and the movement of ground water between aquifers.
 - c. The entire depth of each well must be geophysically logged prior to installing the casing as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - d. Each well shall be constructed within 200 feet of the location specified on the approved well permit, but must be more than 600 feet from any existing large-capacity well completed in the same aquifer.
 - e. The wells may withdraw the allowed average annual amount of water from the aquifer together in any combination. The total combined annual withdrawal of the wells shall not exceed the allowed average annual amount described in this Order.
 - f. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and maintained by the well owner and submitted to the Commission or the Upper Black Squirrel Creek Ground Water Management District upon their request.

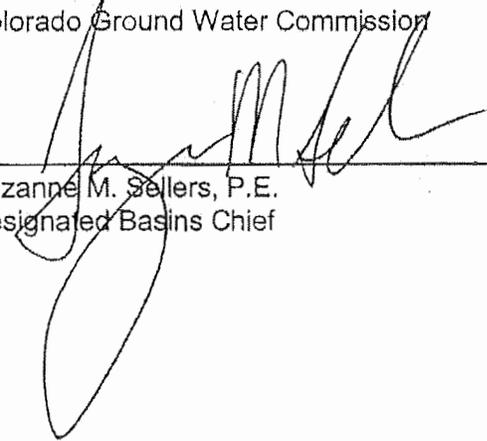
- g. The well owner shall mark the well in a conspicuous place with the permit number and the name of the aquifer. The well owner shall take necessary means and precautions to preserve these markings.
25. A copy of this Findings and Order shall be recorded by the applicant in the public records of the county – in which the claimed overlying land is located - so that a title examination of the above described 551.26 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 7th day of November, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By: _____



Suzanne M. Sellers, P.E.
Designated Basins Chief

Prepared by: RAC

FIND-511

EXHIBIT A - 599-BD

Page 1 of 12

08/98-FORM NO. GWS-48

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

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APR 06 2004

WATER RESOURCES
STATE ENGINEER
COLO.

NONTRIBUTARY GROUND WATER CONSENT CLAIM
(FOR AREAS IN A DESIGNATED GROUND WATER BASIN)

Arapahoe AQUIFER

I (we) Ellicott Springs Resources, LLC
(Name)

claim and say that I (we) have the consent of the owners of 472.81 acres of overlying land to withdraw ground water from the aquifer indicated above.

The names of the landowners whose consent is claimed are as follows and their Landownership Statements (form GWS-3B), legal descriptions of all claimed land areas and copies of deeds or other transfer documents, recorded in the county or counties in which the land areas are located, are attached.

R.W. Case

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

[Signature] 2-18-04
(Signature) (Date)
Rodney J. Preisser partner Ellicott Springs Resources, LLC

(Signature) (Date)

.....
INSTRUCTIONS:

The consent claim must be submitted with an application for determination of water right in all cases where the applicant believes or claims that water to be withdrawn is ground water from the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers and the applicant is claiming consent of the overlying landowners. Please type or print neatly in **black ink**. This form may be reproduced by photocopy or word processing means.

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

APR 06 2004

WATER RESOURCES
STATE ENGINEER
COLORADO

NONTRIBUTARY GROUND WATER CONSENT LANDOWNERSHIP STATEMENT

I (We) R. W. Case
(Name)

whose mailing address is 102 E. Pikes Peak Ave., Suite 200
Street

Colorado Springs, CO 80903
(City) (State) (Zip)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 472.81 acres in the County of El Paso, State of Colorado: (Insert Property Legal Description)

See attached legal description

and that I (we) have granted written consent to others to withdraw ground water from the Arapahoe aquifer as evidenced by the attached copy of a deed or other document in the County or Counties in which the land is located, and that said ground water has not been conveyed or reserved to another, nor has consent been given for withdrawal by another except as indicated in the attached deed or other recorded document.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

Randy Wilson 3-2-04
(Signature) (Date)

(Signature) (Date)

INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

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APR 06 2004

JAN 02 2004

LEGAL DESCRIPTION: VIEWPOINT VILLAGE

WATER RESOURCES
STATE ENGINEER
COLO.

WATER RESOURCES
STATE ENGINEER
COLO.

THE EAST HALF OF THE EAST HALF OF SECTION 15 AND THE WEST HALF OF SECTION 14,
ALL IN TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PASO COUNTY,
COLORADO AND CONTAINING 472.814 ACRES MORE OR LESS. EXCEPT THAT PORTION
CONVEYED BY BOOK 5527 AT PAGE 376.

EXHIBIT A

Page 3 of 129

QUIT CLAIM DEED

THIS DEED is a conveyance from the person(s) or legal entity named below as GRANTOR to the person(s) or legal entity named below as GRANTEE of whatever interest the GRANTOR may have in the real property described below.

The GRANTOR hereby sells and quit claims to the GRANTEE the real property described below with all its appurtenances.

If the Grantor intends this Deed to convey less than his entire interest in the Property or if the Grantor intends to impose restrictions on the Grantee's use of the Property, then appropriate language has been added below under "Reservations And/Or Restrictions."

If there are two or more Grantees named in this Deed, they are accepting this conveyance as tenants in common, unless the words "joint tenancy with right of survivorship" or "joint tenancy" have been added below under "Form of Co-Ownership."

The following information completes this Deed:

GRANTOR: (Give Name(s), Address(es), and Marital Status)

R.W. Case
102 E. Pikes Peak Ave., Suite 200
Colorado Springs, Colorado 80903

GRANTEE: (Give Name(s), Address(es))

Ellicott Springs Resources, LLC, a Colorado limited liability company
c/o Rodney J. Preisser, President
90 S. Cascade Avenue, Suite 950
Colorado Springs, CO 80903

PROPERTY DESCRIPTION:

All groundwater (including without limitation tributary, non-tributary, not non-tributary and other groundwater), rights to withdraw such groundwater, rights to consent to the withdrawal of such groundwater, and all water rights relating to such groundwater, including without limitation all groundwater and rights to withdraw groundwater within the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers, that are appurtenant to or that underlie the following described real property:

VIEWPOINT VILLAGE

THE EAST HALF OF THE EAST HALF OF SECTION 15 AND THE WEST HALF OF SECTION 14, ALL IN TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PAÑO COUNTY, COLORADO AND CONTAINING 472.814 ACRES MORE OR LESS, EXCEPT THAT PORTION CONVEYED BY BOOK 5527 AT PAGE 376.

RECEIVED

APR 06 2004

WATER RESOURCES
STATE ENGINEER
COLO.

Robert C. Balink El Par
01/12/2004 0.
Doc \$0.00 Paç
Rec \$15.00 1

None

PROPERTY ADDRESS:

N/A

RESERVATIONS AND/OR RESTRICTIONS: (If none, leave blank)

Signed on 12-19, 2003.

RECEIVED

APR 06 2004

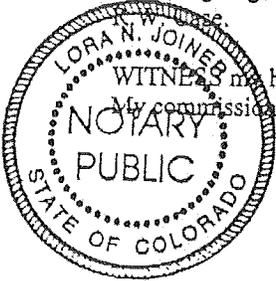
WATER RESOURCES
STATE ENGINEER
COLO.

R.W. Case
Grantor

By *RWC*
Title: _____

STATE OF COLORADO)
)ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 19th day of December, 2003 by



WITNESSES my hand and official seal.
My commission expires: 06-07-2006

Lora N. Joiner
Notary Public

EXHIBIT A

Page 6 of 1262

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VIEWPOINT ESTATES

APR 06 2004

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 10 TOWNSHIP 14 SOUTH, RANGE 63 WEST, 6TH P.M., COMMENCING NORTH 01°10'40" WEST ALONG THE WEST SECTION LINE A DISTANCE OF 50.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST SECTION LINE NORTH 01°10'40" WEST A DISTANCE OF 1271.31 FEET, THENCE SOUTH 89°52'52" EAST A DISTANCE OF 2617.39 FEET, THENCE NORTH 01°11'11" WEST A DISTANCE OF 3960.76 FEET, THENCE NORTH 89°54'31" EAST A DISTANCE OF 1311.15 FEET, THENCE SOUTH 00°55'21" EAST A DISTANCE OF 5214.40 FEET TO THE NORTH RIGHT OF WAY OF COLORADO STATE HIGHWAY 94, THENCE ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89°47'46" WEST A DISTANCE OF 3904.36 FEET TO THE TRUE POINT OF BEGINNING. SAID ACREAGE CONTAINS 231 ACRES MORE OR LESS.

WATER RESOURCES
STATE ENGINEER
COLO.

ANTELOPE PARK RANCHETTES

THAT PORTION OF SECTION 10, TOWNSHIP 14 SOUTH, RANGE 63 WEST, 6TH P.M., AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SECTION 10, THENCE NORTH 89°54'31" EAST ON THE NORTH LINE OF SAID SECTION A DISTANCE OF 2622.49 FEET TO THE NORTH 1/4 CORNER THEREOF, THENCE SOUTH 01°11'11" EAST A DISTANCE OF 3960.76 FEET ON THE CENTERLINE OF SAID SECTION TO THE SOUTHEAST CORNER OF THE NORTH 1/2, SOUTHWEST 1/4, THENCE NORTH 89°52'52" WEST ON THE SOUTH LINE OF SAID N1/2, SW1/4 A DISTANCE OF 660 FEET, THENCE SOUTH 01°11'11" EAST A DISTANCE OF 1261.46 FEET TO INTERSECT THE NORTHERLY LINE OF STATE HIGHWAY NO. 94, THENCE SOUTH 89°49'51" WEST ON SAID NORTHERLY LINE A DISTANCE OF 60.02 FEET, THENCE NORTH 02°11'11" WEST A DISTANCE OF 1261.76 FEET TO INTERSECT THE AFOREMENTIONED SOUTH LINE OF THE N 1/2, SW 1/4, THENCE NORTH 89°52'52" WEST A DISTANCE OF 1897.37 FEET TO THE SW CORNER THEREOF, THENCE NORTH 01°15'48" WEST A DISTANCE OF 3951.26 FEET TO THE POINT OF BEGINNING, CONTAINING 239.63 ACRES, MORE OR LESS.

EXHIBIT A

RECEIVED

JUL 23 2004

WATER RESOURCES
STATE ENGINEER
COLO.

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

NONTRIBUTARY GROUND WATER CONSENT CLAIM
(FOR AREAS IN A DESIGNATED GROUND WATER BASIN)

Arapahoe AQUIFER

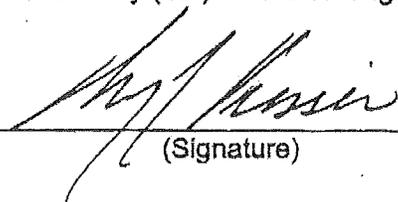
I (we) Ellicott Springs Resources, LLC
(Name)

claim and say that I (we) have the consent of the owners of 78.45 acres of overlying land to withdraw ground water from the aquifer indicated above.

The names of the landowners whose consent is claimed are as follows and their Landownership Statements (form GWS-3B), legal descriptions of all claimed land areas and copies of deeds or other transfer documents, recorded in the county or counties in which the land areas are located, are attached.

- Even-Preisser Investments, LLC ~~LLC~~
- Even-Preisser Inc.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

 7-19-04
(Signature) (Date)

(Signature) (Date)

.....
INSTRUCTIONS:

The consent claim must be submitted with an application for determination of water right in all cases where the applicant believes or claims that water to be withdrawn is ground water from the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers and the applicant is claiming consent of the overlying landowners. Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means.

EXHIBIT A

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

JUL 23 2004

NONTRIBUTARY GROUND WATER CONSENT LANDOWNERSHIP STATEMENT

WATER RESOURCES
STATE ENGINEER
COLO.

I (We) Even-Preisser Investments, LLC
(Name)

whose mailing address is 520 E. Castilla Street
Street

Colorado Springs CO 80903
(City) (State) (Zip)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 38.99 acres in the County of El Paso, State of Colorado: (Insert Property Legal Description)

See attached legal description

and that I (we) have granted written consent to others to withdraw ground water from the Arapahoe aquifer as evidenced by the attached copy of a deed or other document in the County or Counties in which the land is located, and that said ground water has not been conveyed or reserved to another, nor has consent been given for withdrawal by another except as indicated in the attached deed or other recorded document.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

Even-Preisser Investments, LLC
By [Signature], MEMBER 7/19/04
(Signature) (Date)

(Signature) (Date)

.....
INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

QUIT CLAIM DEED

THIS DEED is a conveyance from the person(s) or legal entity named below as GRANTOR to the person(s) or legal entity named below as GRANTEE of whatever interest the GRANTOR may have in the real property described below.

RECEIVED

JUL 23 2004

The GRANTOR hereby sells and quit claims to the GRANTEE the real property described below with all its appurtenances.

WATER RESOURCES
STATE ENGINEER
COLO.

If the Grantor intends this Deed to convey less than his entire interest in the Property or if the Grantor intends to impose restrictions on the Grantee's use of the Property, then appropriate language has been added below under "Reservations And/Or Restrictions."

If there are two or more Grantees named in this Deed, they are accepting this conveyance as tenants in common, unless the words "joint tenancy with right of survivorship" or "joint tenancy" have been added below under "Form of Co-Ownership."

The following information completes this Deed:

GRANTOR: (Give Name(s), Address(es), and Marital Status)

Even-Preisser Investments LLC
520 E. Costilla Street
Colorado Springs, CO 80903.

GRANTEE: (Give Name(s), Address(es))

Ellicott Springs Resources, LLC, a Colorado limited liability company
c/o Rodney J. Preisser, President
90 S. Cascade Avenue, Suite 950
Colorado Springs, CO 80903

Robert C. Ballink El Paso Cty, CO 204053279
04/02/2004 04:06
Doc \$0.00 Page
Rec \$5.00 1 of 1

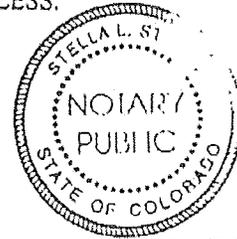
PROPERTY DESCRIPTION:

All groundwater (including without limitation tributary, non-tributary, not non-tributary and other groundwater), rights to withdraw such groundwater, rights to consent to the withdrawal of such groundwater, and all water rights relating to such groundwater, including without limitation all groundwater and rights to withdraw groundwater within the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers, that are appurtenant to or that underlie the following described real property:

THE WEST 1/2 OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PASO
COUNTY, COLORADO, EXCEPT THE NORTH 30 FEET FOR ROADWAY
PURPOSES, AND CONTAINING 38.99 ACRES MORE OR LESS.

PROPERTY ADDRESS:

22325 Highway 94
El Paso County, CO



RESERVATIONS AND/OR RESTRICTIONS: (If none, leave blank)

Signed on April 2, 2004

Even-Preisser Investments, LLC
Grantor

MY COMMISSION EXPIRES
09/04/2006

By [Signature]
Title: MEMBER

STATE OF COLORADO)
)ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 02 day of April
David Even, as member of Even-Preisser Investments
liability company.

WITNESS my hand and official seal
My commission expires: 09-04-2006

[Signature]

EXHIBIT A

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

JUL 23 2004

WATER RESOURCES
STATE ENGINEER
COLO.

NONTRIBUTARY GROUND WATER CONSENT LANDOWNERSHIP STATEMENT

I (We) Even-Preisser, Inc.
(Name)

whose mailing address is 520 E. Castilla St.
Street

Colorado Springs CO 80903
(City) (State) (Zip)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 39.46 acres in the County of El Paso, State of Colorado: (Insert Property Legal Description)

See attached legal description

and that I (we) have granted written consent to others to withdraw ground water from the Arapahoe aquifer as evidenced by the attached copy of a deed or other document in the County or Counties in which the land is located, and that said ground water has not been conveyed or reserved to another, nor has consent been given for withdrawal by another except as indicated in the attached deed or other recorded document.

Further, I (we) claim and say that I (we) have read the statements made herein; know the contents hereof; and that the same are true to my (our) own knowledge.

Even-Preisser, Inc.
Ray [Signature], Secretary 2/19/04
(Signature) (Date)

(Signature) (Date)

.....
INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

QUIT CLAIM DEED

THIS DEED is a conveyance from the person(s) or legal entity named below as GRANTOR to the person(s) or legal entity named below as GRANTEE of whatever interest the GRANTOR may have in the real property described below.

RECEIVED

JUL 23 2004

The GRANTOR hereby sells and quit claims to the GRANTEE the real property described below with all its appurtenances.

WALTER RESOURCES
STATE ENGINEER
COLO.

If the Grantor intends this Deed to convey less than his entire interest in the Property or if the Grantor intends to impose restrictions on the Grantee's use of the Property, then appropriate language has been added below under "Reservations And/Or Restrictions."

If there are two or more Grantees named in this Deed, they are accepting this conveyance as tenants in common, unless the words "joint tenancy with right of survivorship" or "joint tenancy" have been added below under "Form of Co-Ownership."

The following information completes this Deed:

GRANTOR: (Give Name(s), Address(es), and Marital Status)

Even-Preisser Inc.
520 E. Costilla Street
Colorado Springs, CO 80903

GRANTEE: (Give Name(s), Address(es))

Ellicott Springs Resources, LLC, a Colorado limited liability company
c/o Rodney J. Preisser, President
90 S. Cascade Avenue, Suite 950
Colorado Springs, CO 80903

Robert C. Ballink El Paso Cty, CO 204053280
04/02/2004 04:06
Doc \$0.00 Page
Res \$5.00 1 of 1

PROPERTY DESCRIPTION:

All groundwater (including without limitation tributary, non-tributary, not non-tributary and other groundwater), rights to withdraw such groundwater, rights to consent to the withdrawal of such groundwater, and all water rights relating to such groundwater, including without limitation all groundwater and rights to withdraw groundwater within the Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers, that are appurtenant to or that underlie the following described real property:

THE EAST 1/2 OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 63 WEST OF THE 6TH P.M., EL PASO
COUNTY, COLORADO, AND CONTAINING 39.46 ACRES MORE OR
LESS.

PROPERTY ADDRESS:

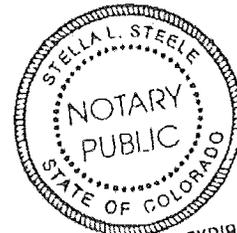
22325 Highway 94
El Paso County, CO

RESERVATIONS AND/OR RESTRICTIONS: (If none, leave blank)

Signed on April 2, 2004

Attest:

Even-Preisser Inc.
Grantor



By [Signature]
Title: SECRETARY/TREASURER

MY COMMISSION EXPIRES
09/04/2006

Title: [Signature]

STATE OF COLORADO)

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 02 day of April
Berneth Preisser, as Vice President and David Eves
Sec./Treasurer of Even-Preisser Inc., a Colorado corporation.

WITNESS my hand and official seal.

[Signature]

EXHIBIT A

Page 12 of 1268

B.3. 50 AF 1988 CHEROKEE METROPOLITAN DISTRICT AGREEMENT

ASSIGNMENT

This Assignment is made from R.W. Case ("Assigner") to Ellicott Springs Resources, LLC, a Colorado limited liability company ("Assignee"), having an address of 90 S. Cascade Ave., Suite 950, Colorado Springs, CO 80903.

RECITALS

Assignor entered an Agreement entitled "Water Agreement" with Cherokee Water and Sanitation District dated June 9, 1998 (the "Water Agreement"). Assignor desires to assign to Assignee all right, title and interest of Assignor in the Water Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars and other good and valuable consideration given by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns and transfers to Assignee, its successors and assigns, all right, title and interest of Assignor in the Water Agreement.

The undersigned has made this Assignment as of the 19th day of December, 2003.

By: [Signature]
R.W. Case

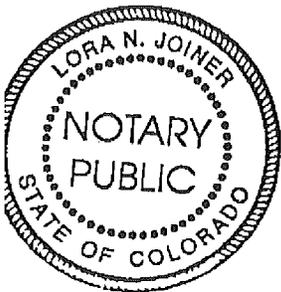
State of Colorado)
) ss
County of El Paso)

The foregoing instrument was acknowledged before me this 19th day of December, 2003 by R.W. Case.

Witness my hand and official seal.

My commission expires: 06-07-2006

[Signature]
Notary Public



WATER AGREEMENT

THIS AGREEMENT is made by and between R. W. CASE and C. H. McALLISTER, hereinafter referred to as "First Party", and CHEROKEE WATER AND SANITATION DISTRICT, hereinafter referred to as "Second Party".

WHEREAS, First Party is the owner of property described as follows:

The Northerly 180.00 feet of the Easterly 290.00 feet of the NW 1/4 of Section 14, T 14 S, Range 63 West, El Paso County, Colorado, except the Northerly 50.00 feet thereof for state highway right-of-way purposes and being more particularly described as follows:

Commencing at the Northeast corner of said NW 1/4; (the basis of bearing for the following described legal description is based upon the consideration that the North line of said Section 14 bears S88° 41'59"E) then S0°32'57"W along the East line of said NW 1/4, 50.00 feet to the point of beginning, which point is also on the Southerly right-of-way line of existing State Highway No. 94; thence continue S00°32'57" West along said East line, 130.00 feet; thence N88°41'59" W along a line 180.00 feet South of and parallel to the North line of said NW 1/4, 290.00 feet; thence N00°32'57"E along a line parallel to said East line, 130.00 feet to a point on said Southerly right-of-way line of State Highway No. 94; thence S88°41'59"E along said Southerly right-of-way line, 290.00 feet to the point of beginning and containing 0.865 acres, more or less

hereinafter referred to as the "Property"; and

WHEREAS, Second Party owns and controls certain water rights and delivery systems.

NOW, THEREFORE, in consideration of the mutual covenants herein stated, and other good and valuable consideration, the parties hereto agree as follows:

1. First Party shall convey Property to Second Party by Quit Claim Deed, in fee simple, free of all encumbrances.
2. Second Party shall construct and make operational a 500,000 gallon water storage tank on the Property which shall be completed not later than 2 months from the date of conveyance of the Property.
3. Upon completion of the storage tank and making it

41,713 ⁶²  *am*

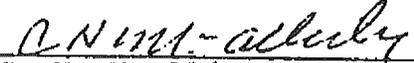
operational, First Party shall pay \$40,000 to Second Party in exchange for the right to store a minimum of 200,000 gallons of water in the tank. This storage right shall exist in perpetuity. This water shall be available to First Party and shall be applied and used as exclusively determined by First Party. Second Party will provide a 12-inch tap from the store tank for the use of First Party. First and Second Party agree to enter into such additional agreements concerning storage and use of the stored water as shall be necessary to carry out the full intent of this Agreement.

4. Second Party shall provide and First Party shall have the right to 50 acre feet per year of potable transdiversion water from the pipeline owned and maintained by Second Party and located on State Highway 94 which right shall exist in perpetuity. The water may be taken directly from the pipeline, or it may be stored in the water storage tank for later use. First Party shall have no obligation or duty to take, divert, or use the 50 acre feet per year of potable transdiversion water or the water stored in the tank until needed. First Party shall not loose, waive, forfeit or in any other way suffer the loss of any rights under this Agreement by not applying or using the said water or storage rights. First Party shall have no obligation to show due diligence in the use of said water or storage rights, and such rights shall be construed under contract law. The water may be used as and where determined exclusively by First Party.

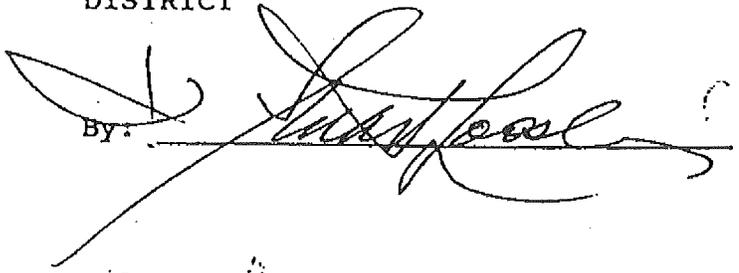
THIS AGREEMENT shall be binding upon the heirs, successors and assigns of all parties, construed under Colorado law, and enforceable in the District Court of El Paso County, Colorado. All parties shall have the right to specific performance, damages, or both, and the prevailing party shall have the right to recover reasonable attorney's fees and costs.

DATED: June 9, 1988.


R. W. Case, First Party


C. H. McAllister, First Party

CHEROKEE WATER AND SANITATION DISTRICT

BY: 

casemcal.agt

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone: (303) 866-3581
FAX: (303) 866-3589

<http://water.state.co.us/default.htm>

February 8, 1999

RECEIVED

FEB 09 1999

Planning Dept.



Bill Owens
Governor

Greg E. Walcher
Executive Director

Hal D. Simpson, P.E.
State Engineer

Mr. Mark Gebhart
El Paso County Planning Department
27 East Vermijo Avenue
Colorado Springs, CO 80903

Subject: Viewpoint Estates, SP-98-006
Sec. 10, T14S, R63W, 6th PM
Upper Black Squirrel Creek Designated Ground Water Basin
Division 2, District 10.

Dear Mr. Gebhart:

We have reviewed the additional information submitted by Pacific Summits Engineering concerning the above referenced subdivision since our last letter of December 15, 1998. Although we have not received a written request from your office to review and respond to this new information, the information submitted by Pacific Summits Engineering on January 6, 1999 appears to be clarifications to the previous filing. As a result, this office felt that it could provide comments to this additional information.

Based upon the new information provided by the applicant, 233 acres would be subdivided into 72 single family residences with the water for this subdivision to be supplied by Cherokee Metropolitan District (Cherokee), through a contract with C.H. McAllister. However, on November 5, 1998, C. H. McAllister transferred this contract to Viewpoint Estates, LLC. As a result, Cherokee is providing 50 acre-feet of water annually to Viewpoint Estates, LLC who will in turn provide water to the Viewpoint Estate subdivision. The estimated consumptive water usage per lot is proposed as 0.381 acre-feet per year, which will provide water for household use (0.3 acre-feet per year) and the irrigation of approximately 2,000 square feet of lawn or garden (0.081 acre-feet per year). The total annual amount of water required for the Viewpoint Estates subdivision is estimated at 27.43 acre-feet.

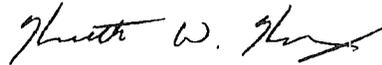
According to Pacific Summits Engineering, Viewpoint Estates, LLC is also committed to provide water for Antelope Park Ranchettes subdivision. This subdivision totals 46 lots and has the same proposed water usage per lot of 0.381 acre-feet per year, 17.52 acre-feet per year for the entire subdivision. As a result, the total commitment for Viewpoint Estates, LLC totals 44.96 acre-feet per year. Finally, Pacific Summits Engineering clarified the role of Global Water Systems, LLC. as the entity employed by Viewpoint Estates, LLC to manage and operate the water distribution system.

El Paso County Planning Department
View Point Estates
Page 2

Pursuant to Section 30-28-136(1)(h)(I), C.R.S., the State Engineer's office offers the opinion that the proposed water supply will not cause material injury to existing water rights, and the supply is adequate, provided that Cherokee Metropolitan District is the water supplier.

If you have any questions, please contact William H. Fronczak of this office.

Sincerely,



Kenneth W. Knox
Assistant State Engineer

KK/WHF/Globalwater3.doc

cc: Steve Witte, Division Engineer
Linda McCalib, Upper Black Squirrel Creek GWMD
Designated Basins Branch

B.4. 60 AF CHEROKEE METROPOLITAN DISTRICT COMMITMENT

**Cherokee Metropolitan District
Meter Readings & Usage Report: In-Basin Users (AF)
December 2019**

Meter Site Location	Meter Units	Nov-19		Dec-19		Nov-19		Dec-19		2019 Beginning Reading	2019 YTD Usage (AF)	Annual Max Usage (AF)	2019 Remaining (AF)
		End of Month Reading	End of Month Reading	End of Month Usage (AF)									
Woodmen Hills	(gals.)	717,229,355.0	723,843,144.0	23.078	20.297	615,478,381.0	332,559	350	17,441				
Viewpoint / Antelope Acres (High Read)	(100 cu. ft.)	18,103.0	20,820.0	1.836	6.237	10,083.0	24,647 30	50	25,353				
EPC Telephone	(100 cu. ft.)	4,218.0	4,219.1	0.003	0.003	4,209.6	0.022	1	0.978				
Ellicott Springs	(gals.)	28,177,720.0	28,552,390.0	0.954	1.150	22,899,966.0	<u>17,347</u> 20	60	42,653				
Ellicott School	(100 cu. ft.)	3,057.2	3,229.7	0.474	0.396	1,061.0	4.978	10	5.022				
Diamond Moon Ranch	(100 cu. ft.)	909.8	974.1	0.168	0.148	25.0	2.179	2	-0.179				
Harding North	(gals.)	17,267,240.3	17,267,240.3	0.000	0.000	1,533,402.9	48,285	180	34,733				
Harding South	(gals.)	52,956,528.6	53,113,146.3	0.735	0.481	21,511,653.8	96,981						
Combined Production for Wells 1 - 8 (AF)											?		
27,248											28,710		
526,999											653		126,001

66?

Permit # 24680-F
Receipt # 0201038

**BEFORE THE GROUND WATER COMMISSION, STATE OF COLORADO
CASE NO. 15-GW-15**

ORDER OF THE COMMISSION

CHEROKEE METROPOLITAN DISTRICT, PLAINTIFF

v.

**UPPER BLACK SQUIRREL GROUND WATER MANAGEMENT DISTRICT and
DICK WOLFE, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF THE
COLORADO GROUND WATER COMMISSION**

On July 17, 2017, the Hearing Officer entered his Findings of Fact, Conclusions of Law, and Initial Decision and Order of the Hearing Officer for the Colorado Ground Water Commission ("Order") in the above captioned matter. No appeal having been filed in a timely manner, the Order of July 17, 2017 is therefore the Final Order of the Commission in this case.

Dated this 6th day of September, 2017.



Kevin G. Rein
Executive Director
Colorado Ground Water Commission

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the within **ORDER OF THE COMMISSION** to the parties herein by email this 6th day of September 2017, addressed as follows:

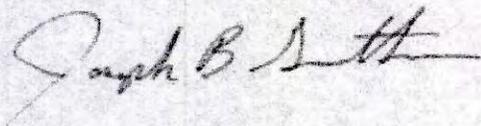
Peter C. Johnson, Esq
John C. Cyran, Esq.
Attorneys for Petitioner, Cherokee Metropolitan Dist.
pcjohnson2479@gmail.com
john@jicyranlaw.com

Lisa M. Thompson, Esq.
Attorney for Upper Black Squirrel Creek Ground Water Management District
lthompson@troutlaw.com

Jennifer M. DiLalla, Esq.
Attorney for Wayne E. Booker Revocable Living Trust and Frances G. Booker Revocable Living Trust
jdilalla@mwhw.com

Jennifer Mele, Esq.
First Assistant Attorney General
Attorney for Staff of the Colorado Ground Water Commission
jennifer.mele@coag.gov

Keith Vander Horst and Rick Nielsen
Staff for the Colorado Ground Water Commission
keith.vanderhorst@state.co.us
rick.nielsen@state.co.us



Best Copy Available

BEFORE THE GROUND WATER COMMISSION, STATE OF COLORADO

CASE NO. 15-GW-15

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL DECISION AND ORDER OF THE HEARING OFFICER FOR THE COLORADO GROUND WATER COMMISSION

CHEROKEE METROPOLITAN DISTRICT, PLAINTIFF

v.

UPPER BLACK SQUIRREL GROUND WATER MANAGEMENT DISTRICT, and DICK WOLFE, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF THE COLORADO GROUND WATER COMMISSION, DEFENDANTS

This matter has come before the Colorado Ground Water Commission (“Commission”) on the Complaint of the Cherokee Metropolitan District (“Cherokee”) for declaratory relief pursuant to C.R.C.P. 57 and C.R.S. § 13-51-101 *et seq.*

The Hearing Officer, having reviewed all pleadings, and otherwise being fully advised in the premises, does hereby enter the following Findings of Fact, Conclusions of Law, and Initial Order (“Order”) in this matter.

FINDINGS OF FACT

1. Parties and Jurisdiction:

- 1.1. Cherokee initiated this case by filing a complaint for declaratory judgment naming the Upper Black Squirrel Creek Ground Water Management District (“UBS”) and the Colorado Ground Water Commission as Defendants. The Colorado Ground Water Commission was dismissed as a Defendant and replaced by Dick Wolfe, in his capacity as the Executive Director of the Commission (“Director Wolfe”), by the Hearing Officer’s January 19, 2016 Order. Counsel for both UBS and Director Wolfe each accepted personal service of the complaint.
- 1.2. In order to alert any other water user who may have an interest in this application, Cherokee caused the complaint to be published in the Ranchland News pursuant to the Hearing Officer’s October 28, 2015 Order and in accordance with C.R.S. § 37-90-107 and 112.
- 1.3. Wayne E. Booker Revocable Living Trust and Frances G. Booker Revocable Living Trust (collectively “Booker Trusts”) timely filed a statement of opposition to the published notice.

- 1.4. UBS, Director Wolfe, and Booker Trusts are referred to collectively as the “Opposing Parties.”
 - 1.5. Staff of the Commission (“Staff”) works on behalf of Director Wolfe, and Director Wolfe supervises Staff in carrying out the day to day administrative duties of the Commission.
 - 1.6. Timely and adequate notice of the pendency of these proceedings in rem and matters determined herein was given in the manner required by law. The subject water rights are ground water rights with points of diversion located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin (the “UBS Basin”). Pursuant to C.R.S. § 37-90-111, the Commission has jurisdiction over the subject matter of these proceedings and over all persons and owners of property who may be affected hereby, whether they have appeared or not. UBS and the Ground Water Commission have jurisdiction over the administration and enforcement of the subject water rights and the subject water rights are subject to the rules and regulations of UBS and the Commission.
2. Description of subject water rights: Cherokee has the right to withdraw ground water from the alluvial aquifer of the UBS Basin from eight wells now known as Cherokee Wells 1-8 (“Wells 1-8”).
 - 2.1. Original Decree: Wells 1-8 were originally decreed by the Pueblo County District Court in Case No. 42135-B, by Water Court Decree issued on June 25, 1962 (the “Decree”).¹ Well #3 was decreed as an absolute water right in Case No. 42135-B, but the remaining wells 1, 2, 4, 5, 6, 7, and 8 were decreed therein as conditional water rights.
 - 2.2. Subsequent Diligence Decrees: Diligence was maintained and the subject water rights were partially perfected through the following series of cases: Case No. 42135-B (supplemental), Case No. W-46 on April 28, 1972, as amended on May 11, 1973, in Case No. W-4407(76), Case No. 80CW23 (W-46), Case No. 83CW47 (W-46); Case No. 84CW45; Case No. 87CW07; Case No. 88CW35; and consolidated Case Nos. 94CW23, 95CW19, and 95CW150.
 - 2.3. Absolute Decree: In Consolidated Case Nos. 94CW23, 95CW19, and 95CW150, Cherokee made portions of Wells 1-8 absolute and abandoned other portions, resulting in absolute water rights in the following amounts:
 - 2.3.1. Cherokee Well #1 (Well Permit nos. 4857-FP & 27577-FP): 1 cfs, 700 acre-feet per year, priority date of December 1, 1954.
 - 2.3.2. Cherokee Well #2 (Well Permit no. 16297-RFP): 1 cfs, 700 acre-feet per year, priority date of December 1, 1954.

¹ Cherokee’s water rights for Wells 1-8 are referenced in the Decree as: Ross #2 (Cherokee Well #1); Hill #2 (Cherokee Well #2); Hill #1 (Cherokee Well #3); Salladay #3 (Cherokee Well #4); Salladay #5 (Cherokee Well #5); Harding #1 (Cherokee Well #6); Harding #2 (Cherokee Well #7); and Guyer Ranch #7 (Cherokee Well #8).

- 2.3.3. Cherokee Well #3 (Well Permit no. 4854-FP): 1 cfs, 700 acre-feet per year, priority date of March 1, 1954
 - 2.3.4. Cherokee Well #4 (Well Permit no. 24680-F): 1 cfs, 700 acre-feet per year, priority date of November 25, 1954.
 - 2.3.5. Cherokee Well #5 (Well Permit no. 24976-F): 0.82 cfs, 591 acre-feet per year, priority date of November 24, 1954.
 - 2.3.6. Cherokee Well #6 (Well Permit no. 29089-F): 1 cfs, 700 acre-feet per year, priority date of September 15, 1932.
 - 2.3.7. Cherokee Well #7 (Well Permit no. 29088-F): 0.67 cfs, 469 acre-feet per year, priority date of December 1, 1954.
 - 2.3.8. Cherokee Well #8 (Well Permit no. 31060-F): 1 cfs, 700 acre-feet per year, priority date of August 1, 1954.
3. 1999 Stipulation in Case No. 98CW80: In a Stipulation and Release entered into in Case No. 98CW80, Water Division No. 2, on January 25, 1999 (“1999 Stipulation”), Cherokee agreed to use Wells 1-8 “only for supplying in-basin beneficial uses that discharge any unconsumed water back into the Upper Black Squirrel Designated Basin and for emergency and backup purposes.”
4. Active Controversy: There is an active controversy between Cherokee, UBS, and Staff with respect to the scope of uses of water from Wells No. 1-8 authorized by the Decree in Case No. 42135-B and the 1999 Stipulation in Case No. 98CW80. Cherokee asserts the Decree authorizes use of water from Wells 1-8 anywhere within the UBS Basin and that the 1999 Stipulation restricts Cherokee’s use of Wells 1-8 only insofar as such use must be within the UBS Basin and return flows from such use must return to the UBS Basin. The Opposing Parties assert that the Decree and 1999 Stipulation restrict in-basin use of water from Wells 1-8 to domestic and irrigation, both of which can only be used at the acreage identified in the Statements of Claim, and that any additional in-basin uses required a change of water right. Staff, however, is not claiming that Cherokee should be prohibited from providing water to satisfy its commitments for mechanical, irrigation and domestic uses that existed at or near the time of the 1999 Stipulation.
- 4.1. Cherokee has undertaken contractual obligations that are dependent on its ability to use Wells 1-8 within the UBS Basin. UBS and Staff have threatened to curtail or enjoin such uses of Wells 1-8. Accordingly, resolution of this controversy is necessary to afford Cherokee relief from the uncertainty and insecurity regarding the scope of its water rights, and to protect Cherokee’s interests.
 - 4.2. This controversy over the legal types and locations of use of Wells 1-8 involves the administration and enforcement of designated ground water, and is thus resolvable by the Commission. C.R.S. § 37-90-111.

CONCLUSIONS OF LAW

5. The Colorado Uniform Declaratory Judgment Law, C.R.S. §13-51-101 *et seq.*, is to be “liberally construed and administered” in order “to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations....” C.R.S. § 13-51-102.
6. Through a declaratory judgment action, a party may request a determination regarding the scope of water rights adjudicated in a prior decree. *S. Ute Indian Tribe v. King Consolidated Ditch Co.*, 250 P.3d 1226, 1235 (Colo. 2011).

INITIAL DECISION AND ORDER

7. To settle this dispute, the parties have stipulated and the Hearing Officer hereby orders as follows:
8. Cherokee’s use of the water rights associated with Wells 1-8 pursuant to the Decree is lawful so long as such use is restricted to providing such water to the following commitments within the UBS Basin:

Name	Place of Use	Type of Use	Maximum Production Amount (AF/YR)
Woodmen Hills Metro District	Within the boundaries of the Woodmen Hills Metropolitan District	Mechanical (Municipal)	350
Ellicott Springs/Sunset Village	The Northeast ¼ and the South ½ of Section 12 and the W ½ of Section 13, Township 15 South, Range 63 West, 6 th P.M.	Mechanical (Municipal)	60
View Point / Antelope Acres	The West ½, the West ½ of the Northeast ¼, and the West ½ of the Southeast ¼ of Section 10, Township 14 South, Range 63 West of the 6 th P.M.	Mechanical (Municipal)	50
Ellicott School District	The Southwest ¼ of the Southwest ¼ of Section 18, Township 14 South, Range 62 West of the 6 th P.M, and the Southeast ¼ of the Southeast ¼ of Section 13, Township 14 South, Range 63 West of the 6 th P.M.	Mechanical (Municipal)	10
El Paso County Telephone	A Tract 2 acres square in the Northeast Corner Section 17, Township 14 South, Range 63 of the P.M.	Mechanical (Municipal)	1
Diamond Moon Ranch	The Northeast ¼ of Section 18, Township 14 South, Range 63 West of the 6 th P.M.	Mechanical (Municipal)	2

Harding Nursery*	The Northwest ¼ of Section 7, Township 13 South, Range 62 West of the 6th P.M.; and the North ½ and the Northeast ¼ of Southeast ¼ of Section 12, Township 13 South, Range 63 West of the 6 th P.M.	Irrigation and Domestic (with limited mechanical (municipal) uses described below)	180
		Total Maximum Production (AF/YR)	653

*Cherokee delivers water for irrigation and domestic use to Harding Nursery pursuant to a reservation in a 1962 lease agreement, as well as water for limited mechanical (municipal) use at the Harding Nursery, from Cherokee Wells #6 and #7, also known as Harding #1 and Harding #2, in an amount up to 180 acre feet per year. Cherokee is limited to providing water to Harding Nursery from Cherokee Wells #6 and #7 only. See paragraph 12 below.

9. Cherokee's places of use for Wells 1-8 are limited to the above listed places of use. Cherokee's use of water from Wells 1-8 at any locations, or for any uses, other than those places of use and types of use listed in the above table is unlawful and in violation of the Decree unless Cherokee is awarded a change of such water rights.
10. Cherokee shall not deliver water to any of its commitments as listed above from Wells 1-8 in excess of the Maximum Production Amount listed in the table above for each commitment in acre-feet per year.
11. The total annual production of Wells 1-8 for the commitments listed above shall not exceed the Total Maximum Production Amount of 653 acre-feet in a given calendar year.
12. 1954 and 1962 Leases: Cherokee's predecessor-in-interest to its Wells 1-8 water rights executed leases related to these water rights in 1954, and supplements to those leases in 1962 (Cherokee's predecessor-in-interest being the Lessee and the other parties being the Lessors).
 - 12.1. This order applies only to Cherokee's interest in and use of the Wells 1-8 water rights for its commitments as listed above, and is not intended to alter, amend, confirm, authorize or affect the terms of the 1954 and 1962 Leases in any way, except as specifically stipulated for Harding Nursery herein.
 - 12.2. Harding Nursery: Cherokee owns the structures of wells CMD Well #6 and CMD Well #7 (Harding #1 and #2) and the pipelines leading away from those wells. Cherokee pumps water from those wells and delivers water by way of taps from its pipelines to Harding Nursery in an amount up to 180 acre-feet per year, and such is listed above as a commitment. This delivery occurs under a reservation in the lease agreement dated December 20, 1954, a reservation in the supplemental lease dated September 17, 1962 between Cherokee's predecessor-in-interest and Alvin and Effie Harding, a October 8, 1985 delivery agreement between Mr. Alvin Harding and Cherokee, and mechanical (municipal) deliveries by Cherokee, as described below. Such pumping and delivery of water to Harding Nursery for the nursery's non-irrigation and non-domestic uses occurs

under Cherokee's use of the mechanical (municipal) aspect of the wells' rights, and such pumping and delivery of water to the nursery for the nursery's irrigation and domestic uses occurs under the aspect of the of the rights reserved by the Lessors. The 1962 Lease and October 8, 1985 delivery agreement allow for use for the nursery's irrigation and domestic uses under the specific rights reserved by the Lessors, and limited to a total volume of 180 acre-feet per year at a flow rate of 1 cfs. Any mechanical (municipal) use at the Harding Nursery is limited use for drinking and sanitary at the Harding Nursery and are of such a limited amount (less than 5 acre-feet/year) that they are included within the 180 acre-feet per year total volume limit of delivery under the aspect of the rights reserved by the Lessors. Because Cherokee made such October 8, 1985 delivery agreement with the Hardings prior to 1999, for purposes of this decree, the parties stipulate that Cherokee's use of the water rights associated with Wells 1-8 pursuant to the Decree for this purpose is lawful. However, neither UBS nor the Commission waive any claims regarding use by the Harding Nursery beyond that which was expressly provided for under the 1962 lease and the October 8, 1985 delivery agreement, and within the legal uses provided for in the original water rights adjudicated in Case No. 42135-B .

- 12.3. Leases: Any pumping, delivery and use of water from Wells 1-8 that may be included in the 1954 and 1962 Leases, and claimed by Lessors, or the successors-in-interest to the Lessors, other than by Harding Nursery, are not herein addressed. Neither Cherokee, Staff, nor UBS waive any claims regarding the 1954 and 1962 Leases, and Lessors' (or Lessors' successors-in-interest) use of water based on such leases. Cherokee certifies that it is not delivering water to any other water users through Wells 1-8, other than what is provided for in the table above.

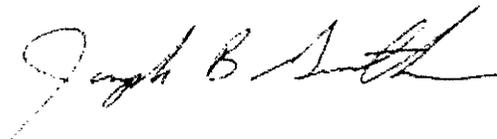
Specifically, except as provided for herein for Harding Nursery, this stipulated Initial Order makes no findings, factual or legal, as to any issue related to the Lessors' (or their successors) alleged existing or reserved water interests associated with the Wells 1-8 water rights, including without limitation, legal type and place of use, legal acreage of irrigation, abandonment and/or whether the Lessors' (or their successors) maintained diligence on any water rights.

13. Accounting: Cherokee shall conduct monthly accounting that includes pumping from each of the wells and amount of water delivered to each of its commitments as listed above, and submit that accounting on a monthly basis to the Upper Black Squirrel Creek Ground Water Management District and the Ground Water Commission Staff, unless otherwise required by Staff or the District. Because Cherokee cannot precisely match the production and demand for Wells 1-8 for any given month, the monthly amount of water Cherokee produces from Wells 1-8 is based on a projected in-Basin demand. At the end of each month, Cherokee reviews the well production for Wells 1-8 and compares such production with the actual in-Basin demand (the amount of water actually provided to Cherokee's in-Basin commitments) for the same month. To the extent the production of Wells 1-8 exceeds the in-Basin demand in any given month, Cherokee shall reconcile such excess by a corresponding reduction in its pumping of Wells 1-8 during the next month. This practice is reasonable, lawful, and may

continue as long as the production of Wells 1-8 for any given year does not exceed the annual volumetric limits described in the table above.

14. Mechanical Use: The mechanical type of use described in the Decree was intended by the original appropriators to describe what is now commonly known as municipal use, which includes various subcategories including, but not limited to, domestic, fire protection, sanitary, irrigation of lawns, parks and open spaces, commercial, and recreational purposes. Accordingly, the mechanical (municipal) uses as listed above are lawful for Wells 1-8 pursuant to the Decree.
15. Future Changes: This Order does not authorize Cherokee to make any uses of Wells 1-8 beyond those described herein. To change the type of use, place of use, or any other aspect of the subject water rights that requires a change of water rights adjudication, Cherokee must obtain the Commission's approval for such change pursuant to applicable laws and regulations.
16. No Effect on 1999 Stipulation: This Order does not alter, amend, or affect any provision pertaining to Wells 1-8 in the January 25, 1999 Stipulation between Cherokee, UBS, and the Commission in Case No. 98CW80, Water Division 2.
17. No Precedent: The findings and order in this matter were completed as a result of substantial discussions, negotiations, and compromises by, between and among the Parties pertaining to all parts of this Order. It is specifically understood and agreed by the parties hereto, and found by the Ground Water Commission, that the acquiescence of the parties to a stipulated order under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, *stare decisis*, *res judicata*, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any matter, case, or dispute involving other water rights, nor shall testimony concerning such acquiescence of any party to a stipulated finding and order herein be allowed in any matter, case or dispute involving other water rights. This order shall not be construed as a commitment to include any specific findings of fact, conclusions of law or specific engineering methodologies or administrative practices in proceedings before the Colorado Ground Water Commission, including any findings and orders entered by the Commission.

Dated this 17th day of July, 2017.



Joseph (Jody) Grantham, Hearing Officer
Colorado Ground Water Commission
Email: jody.grantham@state.co.us

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the within **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL DECISION AND ORDER OF THE HEARING OFFICER FOR THE COLORADO GROUND WATER COMMISSION** to the parties herein by email at Denver, Colorado, this 17th day of July 2017, addressed as follows:

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Best Copy Available

Felt, Monson & Culichia, LLC
 319 North Weber
 Colorado Springs, CO 80903

WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT (the "Agreement") is entered into as of this 11 day of October, 2006 (the "Effective Date") by and between **CHEROKEE METROPOLITAN DISTRICT ("Cherokee")** and Ellicott Springs Resources, LLC., and Triple Bar Ranch, LLC., **Colorado limited liability companies and/or their successors and assigns** (the "Customer"), all with respect to the following:

RECITALS

- A.** Cherokee is the owner of or has rights to acquire certain water rights, water infrastructure, facilities and assets associated with the provision of water services to the Serviced Property (as defined below),
- B.** Customer has an existing 1300 AF contractual commitment from Cherokee for water service to certain lands in El Paso County Colorado pursuant to the terms of that certain contract entered into between Cherokee and Customer dated January 13, 1999 (the "Serviced Property"). The legal description of the Serviced Property is set forth in Exhibit B, attached hereto and incorporated herein by this reference.
- C.** The State of Colorado Division of Water Resources has recognized Cherokee's 1300 AF commitment to Customer as a valid legal and physical supply of water for the Serviced Property which is located inside the Upper Black Squirrel Creek Designated Ground Water Basin (the "Basin"). Cherokee and Customer desire to modify the terms of that contractual commitment as set forth in this Water Service Agreement in order to provide a source of water for the proposed Development (as defined herein), to reduce the extent of Cherokee's commitment to Customer from 1300 acre feet to 800 acre feet, and to provide the terms and conditions governing Customer's connection to Cherokee's water system and Cherokee's providing water to Customer hereunder
- D.** Customer has advised Cherokee that Customer is in the process of selling to a third party approximately 960 acres of development land (the "Development") located in El Paso County, Colorado, part of which is "preliminarily planned" for high density residential development. The Development is located within the legal description of the overall property described on Exhibit "B" attached hereto. That third party (the "Developer") will be seeking to amend the existing preliminary planning to allow for single family residences, an executive golf course and a small commercial development. The Development is located within the Serviced Property;
- E.** Cherokee and Customer intend that this Agreement shall be appurtenant only to the Serviced Property which includes the Development and may be assigned to future owners of all or part of the Serviced Property in connection with development of such properties or to entities responsible for the provision of water service to the Development or the Serviced Property.

ROBERT C. "BOB" BALINK El Paso County, CO

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F. Cherokee and Customer desire to reduce their agreements to writing.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Cherokee and Customer agree as follows:

1. **Service Commitment.** Subject to the terms and conditions of this Agreement, Cherokee agrees to provide permanent water service to the Serviced Property. The water service commitment shall be for up to a maximum of 800 acre feet ("AF") per year to be used for residential units, an executive golf course, commercial uses and other permissible municipal or domestic uses anywhere within the Serviced Property, including the Development.

1.1. The source of the 800 acre feet of water from Cherokee to the Customer may be derived from all or any of Cherokee's water sources as determined in the sole discretion of Cherokee; provided, however, that Cherokee shall assure that at least 200 acre feet of return flows from the 800 acre feet are legally reusable to extinction by Customer and are available to Customer at its Ellicott wastewater plant after use in the Serviced Property or at a mutually agreeable location within the Upper Black Squirrel Designated Ground Water Basin, or at Cherokee's option, at Cherokee's future wastewater treatment recharge facility to be constructed within the Upper Black Squirrel Creek Designated Ground Water Basin. And further provided that if Cherokee determines in its sole discretion that it is necessary for the Customer to physically connect the Serviced Property to Cherokee's treated water distribution system at Cherokee's Highway 94 treated water transmission line, so that Cherokee's Wells 1-8 can constitute a direct physical water supply to the Property, then, as a condition to Cherokee's commitment hereunder, Customer or its assigns shall build a transmission line from Cherokee's Highway 94 treatment plant to the Serviced Property (the "Transmission Line"). Cost reimbursement for construction of this Transmission Line, if it is required by Cherokee and constructed, shall be as provided in the Cost Recovery provision of Paragraph 1.2 below. Any water provided to Customer from Cherokee Wells No. 1-8 shall be used in accordance with the Stipulation and Release dated January 25, 1999 entered into between Cherokee, the Upper Black Squirrel Creek Designated Ground Water Management District, Dean Goss, the Colorado Groundwater Commission and the State Engineer as now in effect or may hereafter be revised or amended.

1.2. **Cost Recovery.** In the event that Customer is required by Cherokee to construct the Transmission Line from below the discharge side of the booster station adjacent to the Highway 94 treatment plant and said Line is actually constructed per Cherokee's standards as provided below, then Cherokee will pay cost recovery reimbursements to Customer as follows: Cherokee will reimburse Customer up to fifty percent (50%) of the cost of construction of the Transmission Line, without interest accruing on the construction costs, by paying cost recovery

to Customer equal to fifty percent (50%) of the water tap fees collected by Cherokee for water taps issued within the Serviced Property. The Customer shall bear the other 50% of the cost of construction of the Transmission Line. For purposes of this Agreement, costs of construction shall include all costs actually incurred and paid by Customer for engineering, design, construction, right of way acquisition, mitigation requirements and interest. The parties agree that while a remittance obligation remains in effect, Cherokee is collecting and holding the Customer's portion of the water tap fee for remittance to Cherokee and such remittance shall be promptly paid by Cherokee. Cherokee's cost recovery obligation shall terminate upon payment of 50% of the construction costs of the Transmission Line or upon remittance of 50% of the Tap fees, whichever first occurs. In no event will Cherokee's cost recovery obligation exceed 50% of the Tap fees collected by Cherokee.

1.3. Customer shall bear all costs of construction of all infrastructure necessary to connect all or any part of the Serviced Property to Cherokee's potable water system, including but not limited to right-of-way acquisitions, if necessary. All water service will be provided by Cherokee to the "Responsible Entity" (as that term is defined in Section 4.5 below) for the Serviced Property at the same rates as Cherokee charges its in-District customers. Water tap fees payable for Cherokee's providing water service to the Service Property shall be charged under the provisions of this Agreement. As a condition to receiving taps or water service, Customer shall not be required to pay additional fees such as Cherokee's Water Development Charge adopted in Resolution 2006-6 (currently \$6,300.00 per Single Family Equivalent residential tap) or other fees in addition to the amount provided herein for Tap fees in this agreement for water service.

1.4 Customer agrees that except for the water commitment by Cherokee as expressly set forth in this Agreement, there are no other water or sewer service commitments, formal or informal, written or unwritten, between Cherokee and Rodney Preisser, PLW, Inc., Sunset Metropolitan District, or any other entity owned, controlled, managed or operated by Rodney Preisser (the "Preisser Entities") or any of the other entities mentioned herein and that this water service commitment represents all of Cherokee's obligations to Preisser or any such entity. The Preisser Entities are signatories to this Agreement solely for the purposes of this Subsection 1.4.

2. Out of District water service to the Serviced Property. The portions of the Serviced Property that are not already included in the Cherokee Metropolitan District shall not be formally included within the Cherokee Metropolitan District according the provisions of Title 32, Article 4 of the Colorado Revised Statutes. Rather, except as otherwise stated herein, this Agreement shall be considered to be solely an out-of-District water service agreement for those areas not already included in the Cherokee Metropolitan District. The Customer, or the owner of the Serviced Property, as the case may be, will be obligated to construct the Transmission Line, if required, and all water distribution lines, mains, hydrants, water storage tanks, water service lines and all additional water infrastructure within and without the Serviced Property as determined

by Cherokee as being necessary to provide water service to Customer at the Serviced Property (the "Water Infrastructure"), all of which Water Infrastructure shall be constructed and maintained to the specifications set forth in Cherokee's Rules and Regulations as a condition to receiving such services.

2.1 The parties acknowledge that the W ½ of Section 13 and the Northeast ¼, the Southeast ¼ and the Southwest ¼ of Section 12, Township 15 South, Range 63 West, 6th P.M., El Paso County, is already included within Cherokee's service area pursuant to previous inclusion agreements. With respect to this portion of the Serviced Property that is already included within the Cherokee boundaries, Cherokee and the Customer agree that the Customer, its successors and assigns, including the Responsible Entity (as defined in 4.5 below), shall assume and perform and hold Cherokee harmless from any obligations that Cherokee may have to provide services to such property pursuant to such inclusions other than the water services being provided by Cherokee pursuant to the terms herein.

2.2 The parties acknowledge and agree that Cherokee is only agreeing to provide water service to the Serviced Property and not any wastewater service. Though the Serviced Property may be included with Cherokee's service area, the Serviced Property shall not be entitled to any services from Cherokee other than water service which is to be provided in accordance with and subject to the terms of this Agreement. Any water service provided by Cherokee to the Serviced Property shall be as a bulk provider of water to Customer and not as a direct provider to residents and property owners within the Serviced Property. Rather, the direct service to individual customers and water users shall be by the Responsible Entity (as defined in Section 4.5). Any water supplied by Cherokee to the Responsible Entity for the Serviced Property shall be potable at the point of delivery by Cherokee and thereafter the quantity and quality of the water shall be the sole responsibility and obligation of the Responsible Entity. Though Cherokee will provide a bulk supply of water for the Serviced Property at the point of delivery, Cherokee shall be paid each month not at a bulk rate, but rather at Cherokee's in-District rate then in effect for each comparable use (i.e., a single family residence in the Serviced Property will pay the same monthly water service charge for an in-District single-family residence). Cherokee will provide the billing and collection of service charges.

2.3. Operation, maintenance and replacement of infrastructure. Cherokee and the Customer agree that Customer shall be solely responsible for all installation, construction, maintenance, repair and replacement of all Water Infrastructure necessary to provide water service to the Serviced Property. Customer's obligation does not apply to Cherokee's wells, treatment plants, mains or other points above where customer's connection to Cherokee's system is made, which points above shall be Cherokee's responsibility.

a. Cherokee agrees that to offset Customer's maintenance and other costs as provided in 2.3 above, Cherokee will remit to Customer thirty-three

percent (33%) of Cherokee's monthly water service charges received for water service within the Serviced Property. Said remittance shall be paid by the end of the month following collection by Cherokee of the applicable service charges for the previous month's service. Cherokee will continue to read the meters and bill the customers for the water service.

3. Water Tap Purchase Obligation. Customer agrees to purchase from Cherokee each year water taps equivalent to the quantity of acre feet from Cherokee's 800 AF service commitment according to the schedule set forth in Exhibit "A". For purposes of this Agreement, each acre foot shall yield the equivalent of three (3) single family equivalent residential taps utilizing a ¾" service line and an estimated annual demand of 0.33 acre feet ("SFE"). The parties agree that the 0.33 AF per SFE demand is an estimate only and that El Paso County and/or the State of Colorado may approve a higher or lower amount of water per SFE tap for uses within the Serviced Area.

Under no circumstances shall Cherokee be obligated to provide additional water to the Customer in the event that the Development is approved utilizing a higher AF quantity per SFE than the 0.33 AF per SFE that is the basis of Customer's prepayment obligation.

The Initial Tap purchase from Customer to Cherokee due on or before October 1, 2008 as provided in Exhibit A shall be based upon Cherokee's present water tap fee of \$5,608.00 per SFE tap. Thereafter, the Tap purchase obligation shall be based upon Cherokee's then existing water tap fee charged to all other "in-district" customers, adjusted as provided below.

Customer acknowledges that the 0.33 AF per year SFE used in this Agreement is based upon the projected average demand of a single family residence in the Serviced Property. For water uses that are potentially higher or lower than the estimated SFE equivalent, i.e., commercial, multi-family residential, residential lots with limited lawn irrigation, or turf irrigation, or other uses which will result in a water use that is less than or more than the SFE equivalent amount, the parties agree that SFE equivalent tap fee due Cherokee under this Agreement shall be adjusted up or down to assure that Cherokee is paid the same amount per AF as Cherokee then receives under the tap fees in effect for the same types of uses for in-District customers.

4. Water Tap Purchase Procedure: Cherokee agrees that the Tap Purchase Schedule in Exhibit A establishes the Customer's minimum purchase obligations and that, in accordance with the provisions of this Paragraph 3, Customer may purchase additional water Taps in a given year at the 0.33 AF per SFE as provided in Paragraph 2 above. Customer's purchase of any additional taps in excess of the minimum quantity specified in Exhibit A during a given year will not relieve the Customer of its obligations in future years.

4.1 Customer's Notices Regarding Expected Development Plans. In order to provide Cherokee with reasonable advanced written notice of Customer's development plans and development schedule for the Serviced

Property, and to enable Cherokee to assure that it will be able to make timely provision for Customer's water needs, Customer agrees to provide Cherokee with annual updates as to the general status and timing of its future development plans, the status of any submittals then pending before El Paso County and/or the expected timing of any future submittals to El Paso County regarding future phases of development of the Development (or other lands as set forth in this Agreement) (hereinafter, the "Annual Updates"). Cherokee understands that the Annual Updates will represent Customer's reasonable estimates concerning the timing and extent of proposed development; provided, however, that such Annual Updates are not intended to be and shall not be interpreted as being an absolute commitment or assurance regarding the timing of any such future development.

In addition to the Annual Updates, Customer agrees to provide Cherokee with written notice at least three (3) months prior to Customer's appearance before the El Paso County Planning Commission or the El Paso Board of County Commissioners (the "County") in connection with any future phase or phases of development within the Development (or other lands as set forth in this Agreement). Upon receipt of such written notice Cherokee shall participate in good faith with Customer's submittals and to provide assurances to the County that Customer has sufficient quality, quantity and dependability of water service necessary to support such phase or phases of its development. Customer further agrees to keep Cherokee apprised of the status of the County's approvals for such phase or phases of its development, and of Customer's estimates as to when actual water service will be required (the "Proposed Service Date"). The intent of this provision is to allow Cherokee sufficient opportunity to effectively participate with Customer in the County development process and to allow Cherokee reasonable lead time before commencement of water service for any future phase of development within the Development (or other lands as set forth in this Agreement).

4.2 Cherokee's Cooperation and Obligation to Make Provision For Services. Upon Cherokee's receipt of Customer's Notice, and in furtherance of Cherokee's agreement to make provision for water service to the single family residential lots, executive golf course and commercial taps within the Development, as set forth in this Agreement, Cherokee agrees that it will cooperate in good faith with Customer and/or Developer and in connection with submittals to and appearances before the County, will appear with Customer and/or Developer before the County as reasonably required, and will provide Customer, Developer and/or the County with requisite documentation and information regarding Cherokee's then existing Assets and facilities, together with written assurances regarding Cherokee's willingness and ability to serve the proposed phase or phases of development on or before the Proposed Service Date (hereinafter, the "Cherokee Assurances"). Customer and Cherokee expect that such assurances shall be in the form of specific written commitments for the phase or phases of development for which County approval is sought.

4.3 Customer's Purchase Rights and Obligations; Status of Purchased Additional Taps. Customer agrees to purchase the minimum of 70 Taps for the initial water Tap purchase on or before October 1, 2008 and all subsequent purchases shall be within the time frames established in the Schedule shown in attached Exhibit "A". In the event Customer fails to timely purchase the minimum number of such Taps as provided in this Schedule, then Cherokee and Customer each agree that, as Cherokee's sole remedy for such failure, Cherokee will no longer be required under this Agreement to sell to Customer the Taps that have not been purchased in accordance with the schedule of minimum Tap purchases in the Schedule in attached Exhibit "A" under the terms and conditions of this Agreement. In such event, Cherokee's overall 800 AF annual commitment shall automatically be reduced on that date by the number of AF represented by the number of Taps not purchased under the Schedule multiplied by 0.33 AF, and the balance of the 800 AF commitment shall remain in place, subject to the schedule of minimum Tap purchases. The Customer and Cherokee agree that the purchased Taps do not constitute a perpetual obligation of Cherokee and that all taps not physically connected to Cherokee's system such that they are capable of being actually used to deliver water for beneficial use by the Customer within the Serviced Property or Alternate Serviced Property within thirty (30) years of the date of purchase under this Agreement shall expire and be cancelled, with no reimbursement or repayment obligation by Cherokee to the Customer. The Tap purchase schedule in Exhibit A represents the minimum obligation of the Customer and nothing herein shall prevent the Customer from purchasing additional Taps during a given year as provided herein. The parties understand and acknowledge that the Colorado State Engineer and El Paso County, and other regulatory authorities, may show the 800 acre foot water service commitment as being water that is unavailable for other water service commitments by Cherokee, whether inside or outside the Upper Black Squirrel Basin. However, subject to the other terms and conditions of this Agreement and until such time as the water Taps are actually purchased as provided herein, Cherokee's commitment vests Customer only with the right to obtain legal sufficiency findings from the State Engineer and El Paso County utilizing the 800 acre feet as the water source for development within the Serviced Property. Once purchased, and unless cancelled as provided above, then Customer shall have an enforceable commitment as of the date of such payment.

4.4 Use of Taps Purchased under this Agreement. Cherokee's 800 AF water service commitment is appurtenant only to the Serviced Property. All Taps that Customer purchases under this Agreement are intended for use only within the Serviced Property and may not be transferred or sold for use outside of the Serviced Property. The 800 acre foot commitment represents the total water commitment for the entire Serviced Property, including for any existing commitments or existing water services and water taps. The parties acknowledge and agree that although this Agreement refers to water Taps, and Taps are purchased pursuant to the schedule in Exhibit A, Cherokee's commitment is for up to 800 acre feet of water per year and Cherokee does not

guarantee that Customer, or the developers, will attain any certain number of water taps for development within the Serviced Property.

4.5 Assignment of Agreement. At such time as Customer determines is appropriate, Customer's rights and obligations under this Agreement may be assigned to a single entity with jurisdiction over the entire Serviced Property (a special district or homeowners association, hereafter the "Responsible Entity") without further consent of Cherokee provided that Customer provides Cherokee written notice of the effective date of the assignment. Such assignment shall relieve Customer of all further obligations under this Agreement.

5. Miscellaneous Provisions.

5.1 Binding Effect. This Agreement is a contractual obligation and shall be binding on and inure to the benefit of the parties hereto as provided herein and their respective successors and assigns. Each of the individuals executing this Agreement represent and warrant that they have the full power and authority to bind their respective parties, and that the contractual obligations herein set forth are binding on each party according to their terms. This Agreement shall be governed by and interpreted according to the laws of the State of Colorado, and there is no law or regulation that restricts or prohibits the enforcement of this Agreement. All recitals and the exhibits attached to this Agreement are incorporated herein by this reference. In the event of any dispute arising out of this Agreement, the prevailing party in any litigation shall be entitled to reimbursement of all costs, including reasonable attorneys' fees, court costs and the cost of expert witnesses. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one and the same Agreement. If any term of this Agreement is determined to be invalid or unenforceable, it will not affect the validity of the remaining terms. This Agreement represents the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this Agreement, unless stated in writing signed by the parties. All notices and payments required hereunder shall be sent to the following addresses:

Ellicott: Ellicott Springs Resources, LLC, Attn: Rodney Preisser, 31 East Platte Avenue, Suite 200, Colorado Springs, CO 80903, Fax No. (719) 314-0184 ;

Cherokee: 6250 Palmer Park Blvd., Colorado Springs, CO 80915, Fax No. (719) 597-5145

Addresses and Fax numbers for notice to a party may be changed at any time by providing notice of the changes to the other party as provided herein.

5.2 Liability of Cherokee. Cherokee shall not be liable for damages to Customer or any successor of all or any portion of the Serviced Property for any

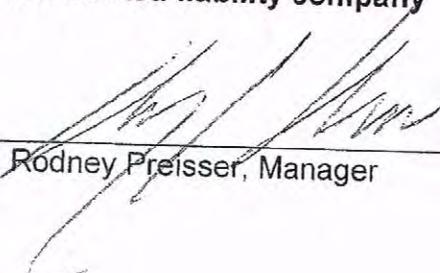
losses or damages resulting from the inability of Cherokee to supply water services due to governmental regulations, statutes or orders imposed or that become the subject of enforcement after the date of this agreement, electrical or other power failures, temporary shut down due to repairs, maintenance, construction, alterations, acts of God, or other occurrences beyond the direct control of Cherokee, or resulting from the lack of availability of capacity of Cherokee's facilities. However, if any such events restrict Cherokee's ability to supply water services and taps under this Agreement, Customer's obligations to purchase a minimum number of taps under this Agreement shall be tolled automatically during such event and the dates for payment of minimum taps and provision of such taps by Cherokee shall be extended automatically an equal amount of time as the event restricting Cherokee's ability to supply water lasts. Cherokee may impose water usage restrictions as necessary, so long as Cherokee does so on an equitable or *pro rata* basis to all users for the type of in-Basin water service being restricted. However, if any such restrictions preclude Cherokee from issuing taps under this Agreement, Customer's obligations to purchase a minimum number of taps under this Agreement shall be tolled automatically during such the time such restrictions are in effect and the dates for payment of minimum taps and provision of such taps by Cherokee shall be extended automatically an equal amount of time as Cherokee keeps the restrictions in effect.

5.3. Non-Exclusive Water Provider. Cherokee shall be the primary water provider to the Serviced Property to the extent of the 800 AF available under this Agreement. Customer shall have the right, but not any obligation, to develop any other water source for use within the Serviced Property without Cherokee's consent to the extent Cherokee does not provide water for use under this Agreement and for uses in excess of the amount of water provided by Cherokee under this Agreement. Any water provided by Customer shall not reduce the amount of water committed by Cherokee under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

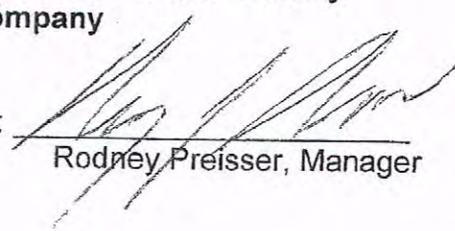
**ELLCOTT SPRINGS RESOURCES, LLC, a
Colorado limited liability company**

By:


Rodney Preisser, Manager

**TRIPLE BAR RANCH, LLC., a
Colorado Limited Liability
Company**

By:


Rodney Preisser, Manager

APPROVED AND ACCEPTED AS TO PARAGRAPH 1.4:



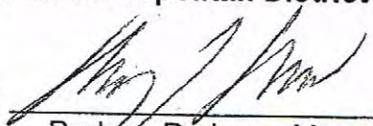
Rodney Preisser

PLW, Inc., a Colorado Corporation

By: 

Rodney Preisser, President

Sunset Metropolitan District

By: 

Rodney Preisser, Manager

Acknowledgment

This Agreement was executed before me this 11th day of October by Rodney Preisser, Manager of Ellicott Springs Resources, LLC.

Judith A. Delmer
Notary Public

319 N. Weber St. Colorado Springs, CO 80903
Address

4/20/10
My Commission Expires



Acknowledgment

This Agreement was executed before me this 11th day of October by Rodney Preisser, Manager of Triple Bar Ranch, LLC.

Judith A. Delmer
Notary Public

319 N. Weber St. Colorado Springs, CO 80903
Address

4/20/10
My Commission Expires



CHEROKEE METROPOLITAN DISTRICT

By: Theodore R. Schubert
Ted Schubert, President

Acknowledgment

This Agreement was executed before me this 11th day of October by Ted Schubert,
President of the Cherokee Metropolitan District Theodore R.

Dian D Hardekopf
Notary Public



6250 Palmer Park Blvd
Address As, CO 80915

2-26-07
My Commission Expires

EXHIBIT "A"
(Tap Purchase Schedule)

Takedown Schedule

<i># Taps/Takedown</i>	<i>Takedown Due on or Before:</i>	<i>Annual AF Equivalent</i>
70 Taps	October 1, 2008	23.1 AF
70 Taps	October 1, 2009	23.1 AF
130 Taps	October 1, 2010	42.9 AF
130 Taps	October 1, 2011	42.9 AF
150 Taps	October 1, 2012	49.5 AF
150 Taps	October 1, 2013	49.5 AF
200 Taps	October 1, 2014	66.0 AF
200 Taps	October 1, 2015	66.0 AF
350 Taps	October 1, 2016	115.5 AF
350 Taps	October 1, 2017	115.5 AF
600 Taps	October 1, 2018	198.0 AF
<i>Totals:</i>		
2,400 Taps	On or before October 1, 2018	800 AF

EXHIBIT "B"

Description of Serviced Property

All of sections 14, 15 and 22;
the South $\frac{1}{2}$ of Section 11;
the West $\frac{1}{2}$ of Section 13;
the Northeast $\frac{1}{4}$ of Section 12,
the Southeast $\frac{1}{4}$ of Section 12;
the Southwest $\frac{1}{4}$ of Section 12;
the Southwest $\frac{1}{4}$ of Section 23;
the North $\frac{1}{2}$ of Section 21;
the North $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 21

All located in Township 15 South, Range 63 West, 6th P.M., El Paso County, CO.

B.5. 27.97 AFY OF THE TIPTON WELL WATER INTEREST

B.6. 54.03 AFY OF THE TIPTON WELL WATER INTEREST

AND SUPPORTING DOCUMENTS.



PURCHASE AND SALES AGREEMENT

This PURCHASE AND SALES AGREEMENT (“Agreement”) is dated May 7, 2021 (the “Effective Date”) and entered into by and among **Ellicott Utilities Company, LLC, a Colorado limited liability company/ and or Assigns**, as “Buyer”, and **Marksheffel Business Center, LLC a Colorado limited liability company, and Grant Langdon** (together as “Seller”).

RECITALS

WHEREAS, certain Tipton Well water rights are held in title by Cherokee Metropolitan District and Cherokee Metropolitan District committed water amounts to members of Cherokee Water, LLC

WHEREAS, Marksheffel Business Center, LLC entered into an operating agreement as a member of Cherokee Water, LLC on December 4, 2006 for the commitment of 68.29 acre-feet of water from the Tipton Well (the “MBC Tipton Water Rights”).

WHEREAS, based on information provided to Buyer by the Manager of Cherokee Water LLC, 27.97 acre-feet of the 68.29 acre-feet of water that comprises the MBC Tipton Water Rights remain unused because approximately 40.32 acre-feet of such water rights have been consumed by Seller as of the Effective Date. This 27.97 acre-feet constitutes excess water rights available for Seller to sell to Buyer (the “Excess Water Rights”), pursuant to the terms and conditions set forth in the Cherokee Water, LLC Operating Agreement (a copy of which is attached as Exhibit “A” hereto).

WHEREAS, Seller confirms that not more than 40.32 of the MBC Tipton Water Rights have been committed and used by Seller thus resulting in the Excess Water Rights.

WHEREAS, Seller is interested in selling the Excess Water Rights to Buyer through the process outlined in the Cherokee Water, LLC Operating Agreement attached hereto, and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Buyer and Seller, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. **Agreement.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey, and Buyer agrees to purchase the Excess Water Rights.

(a) *Further Assurances.* Buyer and Seller hereby agree to diligently work towards the completion of the sale of the Excess Water Rights, including taking such actions and executing such agreements, contracts, notices, filings, and/or instruments as may be required by the Cherokee Water, LLC Operating Agreement, or any and all other ancillary documents reasonably required or otherwise necessary to accomplish the transaction contemplated herein (collectively, the “Transaction”), all which must be, as to form and substance, satisfactory and acceptable to Buyer.



(b) *Time of Essence.* Time is of the essence for this Agreement.

2. **Purchase Price.** The purchase price for the purchase of the above-referenced interest shall be \$419,550.00 (“Purchase Price”). As independent consideration Buyer will pay \$100.00 to enter into this Agreement. If the Agreement is terminated at any time for any such reason this consideration will be non-refundable to Buyer. Upon payment of the Purchase Price by Buyer to Seller, Seller shall deliver or cause to be delivered to Buyer a valid warranty deed, or functional equivalent, conveying the Excess Water Rights.

3. **Due Diligence Review.** Buyer shall have 90 days from the Effective Date to conduct a due diligence review of the Transaction (the “Due Diligence Period”), which review shall include, but not be limited to: (i) verification of compliance with all Cherokee Metropolitan District documents pertaining to the conveyance of the Excess Water Rights; (ii) signed sufficiency letter from Cherokee Metropolitan District evidencing the current availability of the Excess Water Rights; and (iii) approval of the members of Cherokee Water, LLC as to Buyer’s purchase of the Excess Water Rights. Buyer shall be permitted to terminate this Agreement, in its sole and absolute discretion, at any time during the Due Diligence Period, provided that the \$100.00 consideration set forth in Section 2 above shall remain non-refundable to Buyer.

4. **Conditions to Closing.** Closing of the Transaction shall be subject to:

(a) **Financing.** Buyer shall have obtained lending approval, and proof thereof, on or before the Closing Date (as defined in Section 5 below) for the transaction and other financing in an amount and upon terms satisfactory to the Buyer, in the Buyer’s sole and absolute discretion.

(b) **Third-Party Consent.** Receipt of all required regulatory, governmental, and third-party consents or approvals necessary to consummate the Transaction.

(c) **Cherokee Metropolitan District Approval.** Buyer obtaining a written sufficiency letter executed by Cherokee Metropolitan District evidencing the current availability of the Excess Water Rights.

(d) **Cherokee Water, LLC Approval.** Buyer obtaining written approval signed by all members of Cherokee Water, LLC confirming, ratifying and consenting to Buyer’s purchase of the Excess Water Rights and the successful change of real property location the Excess Water Rights shall be appurtenant to, which location Seller shall specify after the Effective Date but prior to the Closing Date, as voted on by the members of Cherokee Water, LLC pursuant to its Operating Agreement.

(e) **Other Documents.** Buyer obtaining any and all other documents requested by Buyer from Seller that are necessary or reasonably required to consummate the Transaction, including, but not limited to, a warranty deed conveying the Excess Water Rights.



(f) Seller receiving confirmation from Cherokee Metropolitan District, satisfactory to Seller based on Seller's subjective criteria, that Cherokee Metropolitan District will have sufficient water to serve property of Seller and parties related to Seller, after sale of the water rights herein.

5. **Closing; Termination.** The closing of the Transaction (the "Closing") will occur no more than 30 days after expiration of the Due Diligence Period (whether such period expires on its own terms or if Buyer earlier waives any remaining balance of the Due Diligence Period), provided that Closing shall occur only after Buyer has determined that all Conditions to Closing set forth in Section 4 above have been satisfied (the "Closing Date"). Notwithstanding the foregoing, the Closing Date shall occur no later than October 1, 2021, subject to extension only by mutual agreement of both parties.

6. **Indemnification from Third-Parties.** The Buyer and Seller represent and warrant to the other that neither the matters set forth in this Agreement, nor the consummation of the Transaction contemplated herein, will breach or interfere with any contractual or other obligations to any third-party. Buyer and Seller hereby unconditionally agree to indemnify and hold harmless the other and their respective officers, directors, employees and agents from and against all liability, claim, injury, damage, cost, or expense of any kind, including reasonable attorney's fees, directly or indirectly related to, associated with, or arising out of any breach of any representation and warranties contained within this Agreement.

7. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer as follows:

(a) Seller is the true and lawful 100% owner of the Excess Water Rights being sold to Buyer, and the conveyance of the Excess Water Rights is not subject to any mortgages, encumbrances, pledges, or other encumbrances affecting title and ownership of the Excess Water Rights. Seller further covenants not to pledge, encumber or otherwise use the Excess Water Rights as security for any debt from the date hereof through the Closing Date.

(b) There is no action, suit, or legal proceedings or other proceedings pending or threatened (or, to the best knowledge of Seller, any basis therefor) against Seller which may adversely affect the transactions contemplated by this Agreement, or affecting any portion of the Excess Water Rights in any court or before any arbitrator of any kind or before any governmental body which may adversely affect the transactions contemplated by this Agreement.

(c) The execution and delivery of this Agreement by Seller and the consummation of the contemplated Transaction is not subject to the issuance of a novation by any applicable governmental authority, nor the approval or consent of any third-party, except as otherwise set forth herein.



(d) The undersigned representative of Seller has the full and complete authority to bind Seller and otherwise enter into this Agreement and convey the Excess Water Rights to Buyer on behalf of Seller.

8. **IRREVOCABILITY.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT IS IRREVOCABLE BY SELLER AND SELLER SHALL HAVE AN OBLIGATION TO CONVEY THE EXCESS WATER RIGHTS TO BUYER IN STRICT ACCORDANCE WITH THIS AGREEMENT, SUBJECT ONLY TO BUYER'S UNILATERAL RIGHT TO TERMINATE THIS AGREEMENT AS SET FORTH HEREIN.

9. **Non-Disclosure.** Except as required by law or as the Buyer and Seller agree in connection with ongoing due diligence pursuant to this Agreement will be kept strictly confidential, and neither Buyer, nor Seller nor their affiliates, shall disclose Buyer's interest in the proposed transaction, or any of the terms and conditions thereof.

10. **Governing Law.** This Agreement shall be interpreted and enforced by the law of the State of Colorado.

11. **Survival of Representations, Warranties and Agreements.** All of the representations, warranties, covenants, promises and agreements of the parties contained in this Agreement shall survive the execution, acknowledgement, sealing and delivery of this Agreement.

12. **No Brokers.** Each party hereby represents and warrants to the other party that neither it nor its representatives have made any arrangements for the payment of any finders' fees, brokerage fees, agents' commissions, or like payments in connection with the Agreement. Each party shall indemnify and hold harmless the other party from any claim that is asserted by any person or entity for a finder's or broker's fee or like payment with respect to this Agreement arising from any act, representation or promise of the indemnifying party or its representative.

13. **Amendments; Waivers.** No provision of this Agreement may be amended, waived, or otherwise modified without the prior written consent of all of the parties. The waiver by any party hereto of a breach of any provision or condition contained in this Agreement shall not operate as a waiver of any subsequent breach or of any other conditions hereof.

14. **Attorney Fees.** In the event of any dispute arising out of this Agreement, the court or arbitrator shall award to the prevailing party all reasonable costs and expenses, including without limitation, attorneys' fees.

15. **Incorporation.** The Recitals set forth above and any and all exhibits to this Agreement are expressly incorporated into this Agreement as if fully set forth herein.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“BUYER”

“SELLER”

**Ellicott Utilities Company, LLC,
a Colorado limited liability company/ and
or Assigns**

**Marksheffel Business Center, LLC,
a Colorado limited liability company**

By: 
R. Randy Goodson (May 8, 2021 19:00 PDT)
Randy Goodson, President

By: Grant Langdon
Grant Langdon (May 8, 2021 18:29 MDT)
Grant Langdon, Member

Date: May 8, 2021

Date: May 8, 2021



EXHIBIT A
CHEROKEE WATER, LLC OPERATING AGREEMENT

[SEE ATTACHED]

Return TO
Felt Manson & Cutler
319 N Weber St.
Colo Spgs CO 80903

ROBERT C. "BOB" BAEINK El Paso County, CO
12/15/2006 09:51:39 AM
Doc \$0.00
Rec \$131.00 1 of 26 206182330

**OPERATING AGREEMENT
OF
Cherokee Water, LLC
a Manager-Managed Limited Liability Company**

RECITALS

A. Formation.

Cherokee Water, L.L.C., was formed by filing Articles of Organization with the State of Colorado Secretary of State's Office on November 30th, 2006 pursuant to the provisions of the Colorado Limited Liability Company Act, C.R.S. § 7-80-101.

B. Effective Date.

This Operating Agreement of Cherokee Water L.L.C., effective on the date of signing, is adopted by each Initial Member of the LLC and the Manager whose signatures appear at the end of this Agreement.

C. General Statement of Purpose.

The Cherokee Metropolitan District is a Colorado special district organized under the provisions of Title 32 of the Colorado Revised Statutes. The Cherokee Metropolitan District ("Cherokee Metro") provides water, sewer, streetlight, and park services to its service area which is generally located east of Powers Boulevard and north of Highway 24 in El Paso County, Colorado. The Members of the LLC are property owners or contract purchasers who are developing commercial and residential developments within the Cherokee Metro service area. In the past, Cherokee Metro issued water service commitments to the Members for their proposed developments located within Cherokee Metro's service area. Due to an adverse ruling by the Division 2 Water Court in Case No. 98CW80, however, Cherokee's ability to provide water service for the Members' new developments has been delayed and Cherokee has been determined by the Colorado State Engineer and El Paso County as having insufficient water resources to meet the water service commitments of the Members. In order for the Members' developments to proceed and receive water sufficiency findings from the State of Colorado and El Paso County, new sources of water must be acquired and/or provided to Cherokee Metro.

Accordingly, Cherokee Metro has identified certain water rights located within the Upper Black Squirrel Creek Designated Ground Water Basin as described on the attached Exhibit A (the "Water Rights") and Cherokee Metro has entered into a contract to purchase said Water Rights.

Because the State of Colorado has determined that Cherokee Metro has insufficient water to meet its current commitments, the State has also determined that to the extent that

Cherokee Metro acquires any new water rights, that new water will be used to reduce Cherokee Metro's current water balance sheet deficit and said new water would not be available to the Members for obtaining water sufficiency findings from the Colorado State Engineer and El Paso County. Accordingly, the Members and Cherokee Metro are creating this LLC for the purposes of the LLC's holding title to the Water Rights and providing the water service commitment to the State of Colorado and El Paso County for the Members' proposed new developments within Cherokee Metro, and for entering into a water service agreement with Cherokee Metro establishing the terms and conditions for the acceptance and delivery of such water by Cherokee Metro to the Members. The terms of the water service agreement between Cherokee Metro and the Members shall be set forth in a separate agreement.

ARTICLE I **DEFINITIONS**

For the purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- 1.1 Act - The Colorado Limited Liability Company Act and all amendments to the Act.
- 1.2 Additional Member - A Member other than an Initial Member or a Substitute Member who has acquired an Ownership Interest in the LLC
- 1.3 Articles - The Articles of Organization of the LLC as properly adopted and amended from time to time by the Members and filed with the Colorado Secretary of State.
- 1.4 Assignee - A transferee of all or any part of a Member's Ownership Interest in the LLC who has not been admitted as either an Additional Member or a Substitute Member.
- 1.5 Capital Account - The account maintained for a Member or Assignee in accordance with the applicable tax code.
- 1.6 Operating Agreement - This Operating Agreement which includes all amendments adopted in accordance with this Operating Agreement and the Act.
- 1.7 Dissociation - Any action which causes a person to cease to be a Member as described in Article VII hereof.
- 1.8 Dissolution Event - An event, the occurrence of which will result in the dissolution of the LLC under Article VIII unless the Members unanimously agree to the contrary.
- 1.9 Initial Capital Contribution - The Capital Contribution agreed to be made by the Initial Members as described in Article V hereof.

- 1.10 Initial Members - Those persons identified in Article III who have executed the Operating Agreement.
- 1.11 LLC - Cherokee Water, LLC, a limited liability company formed under the laws of the State of Colorado, and any successor limited liability company.
- 1.12 Manager - Shall mean the general manager of Cherokee Metro or such other person as designated by the Board of Directors of Cherokee Metro.
- 1.13 Member - Initial Member, Substituted Member, or Additional Member, and unless the context expressly indicated to the contrary, includes Assignees.
- 1.14 Cherokee Metropolitan District is a metropolitan district organized under the laws of the State of Colorado ("Cherokee Metro").
- 1.15 Water Rights - are the water rights purchased by the LLC through the capital contributions of its Members.
- 1.16 Serviced Property - are the proposed commercial and/or residential subdivision developments of the Members described in the attached Exhibits B - E for which water service will be provided by the LLC through its contract(s) with Cherokee Metro.

ARTICLE II

COMPANY INFORMATION

2.1 Name.

The formal name of this LLC is as stated above. All business related to the operation of the LLC shall be conducted under the full name, including the LLC designation.

2.2 Organization.

The Members hereby organize Cherokee Water, LLC (hereinafter "LLC") as a Manager-managed Colorado limited liability company pursuant to the provisions of the Act.

2.3 Purpose.

The purpose of this LLC is limited to the express purposes stated in this Operating Agreement: (1) to hold title to the Water Rights of its Members; (2) to institute procedures for the admission of new Members; (3) to act as the entity providing water service commitments to El Paso County and the State of Colorado to the Serviced Property of the Members; (4) to enter into contracts with Cherokee Metro for the provision of water service by Cherokee Metro to the Serviced Property owned or under contract to purchase by the

Members in accordance with the terms of this Operating Agreement, a water service agreement between Cherokee Metro and the LLC, and the specific water service agreements to be entered into between Cherokee Metro and the Members.

2.4 Registered Office and Registered Agent.

The registered office address of this LLC is:

c/o Cherokee Metropolitan District
6250 Palmer Park Boulevard
Colorado Springs, CO 80915

The Colorado registered agent of this LLC is:

Kevin I. Petersen
Cherokee Metropolitan District
6250 Palmer Park Boulevard
Colorado Springs, CO 80915

The Manager may, from time to time, change the registered agent or office through appropriate filings with the Colorado Secretary of State. In the event the registered agent ceases to act as such for any reason or the principal place of business shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.

2.5 Duration.

The duration of this LLC shall be perpetual. This LLC shall terminate when the Board of Directors of Cherokee Metro elects to dissolve and transfer the Water Rights to Cherokee Metro as provided herein.

2.6 Agreement.

For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing the Operating Agreement hereby agree to the terms and conditions of the Operating Agreement. It is the express intention of the Members that the Operating Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of the Operating Agreement expressly incorporates federal income tax rules by reference to sections of the Code of Regulations or is expressly prohibited or ineffective under the Act, the Operating Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of the Operating Agreement is prohibited or ineffective under the Act, the Operating Agreement shall be considered amended to the

smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of the Operating Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

ARTICLE III MANAGEMENT

3.1 Initial Members.

The names and addresses of the Initial Members are as follows:

Morley Companies Family Development, LLLP
15 N. Nevada
Colorado Springs, CO 80903

Sand Creek Investments North LLC
90 South Cascade, Suite 1500
Colorado Springs, Colorado 80903

Powers & Galley Water LLC
1720 Wazee, Suite 1A
Denver, CO 80202

Marksheffel Business Center, LLC
6040 N. 22nd Place
Phoenix, AZ 85016

3.2 Management.

The business and affairs of the LLC shall be managed exclusively by its Manager. The Manager shall manage, direct, and control the business of the LLC to the best of his/her ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by any non-waivable provisions of the applicable law, the Manager shall have the full and complete authority, power, and discretion to manage and control the day to day business affairs and properties of the LLC, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the LLC's business. Unless a different manager shall be approved by the Board of Directors of Cherokee Metro, the Manager of the LLC shall be the General Manager of Cherokee Metro.

3.3 Agency Limitation.

Unless authorized to do so by this Operating Agreement or by the Members, no

attorney-in-fact, employee, or other agent of the LLC shall have any power or authority to bind the LLC in any way, to pledge its credit or to render it liable for any purpose. The Manager is authorized to act as an agent on behalf of the LLC regarding the day to day business affairs and operation of the LLC, as provided by the terms of this Operating Agreement.

3.4 Restrictions on the Authority of Members to Change Manager or alter Duties of Manager.

The Members shall have no authority to change the Manager or modify the duties of the Manager absent the express consent of the Board of Directors of Cherokee Metro.

3.5 Liability of Manager.

Any Manager who so performs the duties as Manager in good faith and using ordinary care, shall not have any liability by reason of being or having been a Manager of the LLC. The Manager shall not be liable to the LLC or to any Member for any loss or damage sustained by the LLC or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a wrongful taking by the Manager.

No Manager of this LLC shall be personally liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it. The failure of the LLC to observe any formalities or requirements relating to the exercise of its powers, or management of its business or affairs, under this Operating Agreement or the Act shall not be grounds for imposing personal liability on any Member or Manager for liability of the LLC.

3.6 Duties of Manager.

The Manager is responsible for the management, operation, and supervision of the LLC. The Manager shall perform its duties in good faith, acting in a manner it reasonably believes to be in the best interests of the LLC, and with such care as an ordinary prudent person in a like position would use under similar circumstances. The Manager shall not engage in any activities that would compete with the LLC's goals.

3.7 Indemnification of Manager.

The LLC shall indemnify the Manager and make advances for expenses to the maximum extent permitted under the Act.

3.8 Resignation or Vacancy.

The Manager of the LLC may resign at any time by giving written notice to the

Members of the LLC. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified therein, the acceptance of such resignation shall not be necessary to make it effective. In the event of a resignation of the Manager or any vacancy in the Manager position, a new Manager shall be appointed by Cherokee Metro. No consent of the Members shall be required for the appointment of a new Manager.

3.9. Compensation.

The Manager shall not receive any base compensation for day-to-day duties performed in connection with their role as Manager.

3.10. Limitations on Manager's Authority.

As provided in this Operating Agreement and the water service agreements, a Member's interest in the Water Rights is appurtenant to the Serviced Property and is held by the LLC and managed by Cherokee Metro for the Member's benefit. Accordingly, except as specifically provided herein regarding transfer of title of the Water Rights from the LLC to Cherokee Metro upon plat approval and recording for a Member's development, the Manager shall have no authority to pledge, encumber, assign, convey or otherwise transfer the Water Rights in any manner, absent the specific written consent of the Member.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF MEMBERS

4.1 Liability of Members.

No Member of this LLC shall be personally liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it. The failure of the LLC to observe any formalities or requirements relating to the exercise of its powers, or management of its business or affairs, under this Operating Agreement or the Act shall not be grounds for imposing personal liability on any Member or Manager for liability of the LLC.

4.2 Member Compensation.

Members shall not be compensated as members of the LLC for performing any duties associated with such membership.

ARTICLE V
CONTRIBUTIONS AND CAPITAL ACCOUNTS

5.1 Member Contributions.

The Initial Members have provided Cherokee Metro with the funds to purchase the Water Rights as provided below:

<u>Name of Member</u>	<u>Water Rights</u>	<u>Amount paid to purchase Water Rights</u>
Morley Companies Family Development, LLLP	22.68 acre feet	\$340,200.00
Sand Creek Investments North LLC	76 acre feet	\$1,140,000.00
Powers & Galley Water LLC	54.03 acre feet	\$810,450.00
<u>Marksheffel Business Center, LLC</u>	<u>68.29 acre feet</u>	<u>\$1,024,350.00</u>
Total:	221 acre feet	\$3,315,000.00

Title to the Water Rights shall be held in the name of the LLC until such time as the Board of Directors of Cherokee Metro elects to have title to the Water Rights transferred to Cherokee Metro as provided herein.

The legal descriptions of the Serviced Property of each of the Members is set forth in Exhibits B through E, respectively. Pursuant to the Water Service Agreement to be entered into simultaneously with this Operating Agreement, the Members' beneficial interest in the Water Rights as stated above are intended to be an appurtenance to the Serviced Property and may not be transferred separate or apart from the Serviced Property except as provided herein. Unless an alternate serviced property has been approved as provided herein, Cherokee Metro shall have no obligation to provide water service to any other property or development than the Serviced Property. Each Member shall have the right to allocate its share of the Water Rights within its Serviced Property in the order and manner as the Member determines.

5.2 Ownership Interest and Capital Accounts.

A Member's capital interest in this LLC shall be as stated in Section 5.1. It is not anticipated that Members shall be required to make additional capital contributions nor shall there be any profit or loss distribution as the purpose of the LLC is to hold title to the Water Rights and to enter into the Water Service Agreement with Cherokee Metro.

ARTICLE VI

TRANSFER OF MEMBERSHIP INTEREST AND ADDITION OF NEW MEMBERS

6.1 Limitations on Transfer of Interest.

Except as specifically authorized in this Agreement, no Member shall have the right to sell, assign, encumber, transfer, exchange, or otherwise transfer or dispose of the

Membership Interest or any interest in the Water Rights. In the event that any Member, without the Manager's authorization, attempts to sell, transfer, assign, convey, lease, encumber, pledge as collateral, or otherwise attempts to transfer or encumber any of its Membership Interest in any way, including as security for repayment of a liability, any such attempted transfer, pledge or encumbrance shall be null and void from its inception and unenforceable. If a Member wants to pledge its Membership Interest as security for a loan, it may do so only with the Manager's express written consent, Cherokee's express agreement with the lender regarding the loan terms, and provided that the same lender holds the security on the Serviced Property and the Membership Interest.

6.2. Sale or Exchange of Interest and admission of Additional Members.

Except as provided in this Section 6.2, a Members' interest in the LLC shall not be transferable except as an appurtenance that passes with title to the Serviced Property. In the event that a development proposed by a Member is not approved, or is approved for less density and water demand than is needed for the number of acre feet of the Water Rights allocated to the Member's Serviced Property as provided in 5.1 above, then (1) the Membership Interest may be transferred to the Owner of the Serviced Property if the Member is not the owner of the Serviced Property, or (2) with Cherokee Metro's approval and upon such terms as Cherokee Metro deems reasonably necessary, the Member may assign said excess water to other property owned by the Member within Cherokee Metro; or, the Member may, in accordance with the following procedure, transfer all or part of its Membership Interest (and the corresponding interest in the Water Rights) to a third party: (1) the Member with excess water shall notify the Manager that it does not require use of all of the Water Rights comprised of the Member's share and that such excess water is available; (2) the Manager shall then notify the other Members who shall have an equal right to purchase the excess water from the Member; (3) if any Member wishes to purchase additional water, then within fifteen (15) days of the notice from the Manager, they shall commit in writing to the Manager specifying the amount of water they would like to acquire from the other Member's excess share; (4) if more than one Member commits to acquiring the excess water, then absent specific agreement between these Members agreeing to a different allocation, the excess water shall be prorated between said committing Members according to the amount of their commitments and the purchasing Members shall have 30 days, or such additional time as may be agreed between the Members, to complete the purchase of the excess water; (5) in the event no Members timely commit to purchasing the excess water or fail to timely complete the purchase of said excess water, then the Member with the excess water may seek third party buyers for the excess water; (6) regardless of whether the purchaser of the excess water is an existing member or a third party, the purchase price shall be no greater than \$15,000.00 per acre foot; (7) upon completion of the purchase, the excess water shall be appurtenant to the new, specific parcel of property and said property shall be located within Cherokee Metro's existing service area; (8) Cherokee Metro must approve of the specific property proposed to be serviced with the excess water; and (9) whether the Buyer is a Member or a third-party, a new water service agreement must be entered into between Cherokee Metro and the buyer of the excess water establishing the terms and conditions for Cherokee Metro's water service to the proposed property. If the buyer of the excess water is not an existing

Member, then, assuming all of the above conditions are met and that the need for the LLC still exists, the third-party may be admitted as a new Member of the LLC.

ARTICLE VII MEMBER DISSOCIATION

7.1. Upon a Member's obtaining final plat approval for the proposed development within the Serviced Property and the recording of said final plat, the Manager may with the approval of the Board of Directors of Cherokee Metro, transfer title to Cherokee Metro of that Member's interest in the Water Rights. Upon such transfer of title of the Water Rights, the Member's membership interest in this LLC shall terminate.

ARTICLE VIII DISSOLUTION

8.1 Dissolution.

The LLC shall be dissolved and its affairs wound up upon the first to occur of the following events:

- (I) Upon final plat approval and recording of the final plats for all developments utilizing the full amount of the Water Rights, the parties anticipate that the need for this LLC will cease. However, to ensure that the dissolution of the LLC and conveyance of the Water Rights from the LLC to Cherokee Metro does not jeopardize the water sufficiency findings for the Serviced Properties, the parties agree that the LLC will be dissolved and the Water Rights conveyed to Cherokee Metro at such time as the State Engineer and County have acknowledged that the need for the LLC owning title to the Water Rights no longer exists. At such time as this determination has been made, the Board of Directors of Cherokee Metro may adopt a resolution calling for the conveyance of title of the Water Rights to Cherokee Metro. Upon the completion of the conveyance of title of all of the Water Rights from the LLC to Cherokee Metro, the LLC shall be dissolved.
- (II) The entry of a decree of dissolution of the LLC under state law.

8.2 Effect of Dissolution.

Upon dissolution, the LLC shall cease carrying on as distinguished from the winding up of the LLC business. However, the LLC shall not be terminated but shall continue until the winding up of the affairs of the LLC is completed and the Certificate of Dissolution has been issued by the Colorado Secretary of State.

ARTICLE IX MEETINGS AND RECORD KEEPING

9.1 Meetings.

An annual meeting of the Members shall not be required but may be held by the Members and the Manager at their option.

Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by 75% of the Members. No meeting may take place without the attendance of the Manager. All meetings shall be at Cherokee Metro's offices.

9.2 Notice.

Notice of meetings shall be as prescribed by law.

9.3 Quorum.

Members constituting a 75% interest in the LLC shall constitute a quorum.

9.4 Proxy.

At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney in fact.

9.5 Action Taken by Members Without a Meeting.

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more consents describing the action taken by each Member entitled to vote and delivered to the remaining Members. Action taken under this Section is effective when all Members entitled to vote have consented.

9.6 Minutes of Meetings.

The LLC shall not be subject to the statutory provisions of C.R.S. § 7-80-411 (1)(e) requiring minutes of every annual and special meeting; nor shall the LLC be bound by the requirements of C.R.S. § 7-80-711 requiring written consent for certain actions.

ARTICLE X
MISCELLANEOUS PROVISIONS

10.1 Membership Certificates.

The LLC shall be authorized to obtain and issue certificates representing or certifying Membership Interests in the LLC. Each certificate shall show the name of the LLC and the name of the Member, and shall state that the person named is a member of the LLC and is entitled to all the rights granted members of the LLC under the Articles of Organization, Operating Agreement, or the Act.

10.2 Title to LLC Assets.

All personal and real property of the LLC shall be held in the name of the LLC, and not in the names of individual Members.

10.3 Amendment or Modification.

The Articles of Organization and the Operating Agreement may only be amended or modified with the express written consent of the Board of Directors of Cherokee Metro.

10.4 Entire Agreement.

This Operating Agreement represents the entire and only agreement of the parties with respect to the subject matter covered herein. All negotiations, considerations, representations, and understandings between the parties are incorporated and merged herein.

10.5 Dispute Resolution.

In any dispute over the provisions of this Operating Agreement and in other disputes among the Members, if the Members cannot resolve the dispute to their mutual satisfaction, the matter shall be submitted to mediation. The terms and procedure for mediation shall be arranged by the parties to the dispute.

If good-faith mediation of a dispute proves impossible or if an agreed-upon mediation outcome cannot be obtained by the members who are parties to the dispute, the dispute may be submitted to arbitration in accordance with the rules of the American Arbitration Association. Any party may commence arbitration of the dispute by sending a written request for arbitration to all other parties to the dispute. The request shall state the nature of the dispute to be resolved by arbitration, and, if all parties to the dispute agree to arbitration, arbitration shall be commenced as soon as practical after such parties receive a copy of the written request.

All parties shall initially share the cost of arbitration, but the prevailing party or parties may be awarded attorney fees, costs and other expenses of arbitration. All arbitration decisions shall be final, binding and conclusive on all the parties to arbitration, and judgement may be entered by a court of appropriate jurisdiction upon such decision in accordance with the applicable law.

10.6. Wavier of Action for Partition.

Each Member, Substitute Member, Assignee, or any other party with an interest in the LLC irrevocably waives any right that it may have to maintain any action for partition with respect to the property of the LLC during the term of its existence.

10.7 Severability.

If any provision of this agreement is determined by a court or arbitrator to be invalid, unenforceable or otherwise ineffective, that provision shall be severed from the rest of this Agreement, and the remaining provisions shall remain in effect and fully enforceable.

10.8. Application of Colorado Law.

This Operating Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Colorado, and specifically the Act.

10.9. Execution of Operating Agreement.

This Agreement may be executed in one or more counter parts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, we have hereunto set our hand and seals on the date set forth beside each name, to be effective upon the later of this date or upon acceptance of the Articles of Organization by the Colorado Secretary of State.

This Operating Agreement is executed this 4th day of December, 2006.

CHEROKEE METROPOLITAN DISTRICT

By: Theodore R. Schubert
Theodore R. Schubert, President

**POWERS & GALLEY WATER
LLC**

By: _____
Jeff Oberg, Manager

CHEROKEE WATER, LLC

By: Kevin I. Petersen
Kevin I. Petersen, Manager

**SAND CREEK INVESTMENTS
NORTH LLC**

By: _____
Danny Mientka, Manager

MARKSHEFFEL BUSINESS CENTER, LLC

By: _____
Grant Langdon, Manager

**MORLEY COMPANIES FAMILY
DEVELOPMENT LLLP**

By: _____
Manager

CHEROKEE METROPOLITAN DISTRICT

By: _____
Theodore R. Schubert, President

**POWERS & GALLEY WATER
LLC**

By: _____
Jeff Oberg, Manager

CHEROKEE WATER, LLC

By: _____
Kevin I. Petersen, Manager

**SAND CREEK INVESTMENTS
NORTH LLC**

By: _____
Danny Mientka, Manager

MARKSHEFFEL BUSINESS CENTER, LLC

By: _____
Grant Langdon, Manager

**MORLEY COMPANIES FAMILY
DEVELOPMENT LLLP**

By: _____
Manager

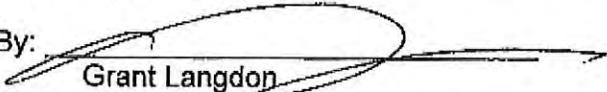
Ratification of Execution of Cherokee Water, LLC., Operating Agreement

Marksheffel Business Center, LLC., a Colorado Limited Liability Company, by KB Cheyenne Developments, LLC., a Nevada limited liability company, its Managing Agent, ratifies the execution of the Operating Agreement of Cherokee Water, LLC., a Colorado Limited Liability Company by Marksheffel Business Center, LLC., dated December 4, 2006.

Marksheffel Business Center, LLC
a Colorado Limited Liability Company

By: KB Cheyenne Developments, LLC., a Nevada Limited Liability Company,
Its Managing Agent.

By:


Grant Langdon
Its: Managing Agent

CHEROKEE METROPOLITAN DISTRICT

By: _____
Theodore R. Schubert, President

CHEROKEE WATER, LLC

By: _____
Kevin I. Petersen, Manager

MARKSHEFFEL BUSINESS CENTER, LLC

By: _____
Grant Langdon, Manager

**POWERS & GALLEY WATER
LLC**

By: _____
Jeff Oberg, Manager

**SAND CREEK INVESTMENTS
NORTH LLC**

By: _____
Danny Mientka, Manager

**MORLEY COMPANIES FAMILY
DEVELOPMENT LLLP**

By: _____
Manager

Exhibit A - Legal Description of Water Rights

Two-hundred and twenty one (221) acre feet of water established pursuant to the following: (1) Negotiated Settlement and Order from the Colorado Ground Water Commission dated December 4, 1991, Case No. 91-GW-01 (the "Order") attached hereto and incorporated by reference; (2) Well permit no. 27574-FP; and (3) Well permit no. 16253-FP (collectively the "Water Rights"); and the right to individually exercise any right(s) granted in the order; and the unconditional right to use the existing well(s) located in the Southwest Quarter of the Northeast Quarter of Section 36 Township 12 South Range West of the 6th p.m., El Paso County, Colorado to extract the water arising from the water rights.

Exhibit B - Morley Companies Family Development, LLLP Serviced Property

ENGINEERING AND SURVEYING, INC.

Claremont 8A Boundary Description

That portion of the Southwest Quarter of Section 4, Township 14 South, Range 65 West of the 6th P.M., El Paso County, Colorado described as follows: Beginning at the Southwest boundary corner of Claremont Ranch Filing No. 6 as recorded under Reception No. 204202802 of the Records of El Paso County, Colorado, said point lying on the Southerly line of Colorado Tech Drive as platted in said Filing No. 6 and at the Westerly terminus of the 723.50 foot course on said boundary; the following three (3) courses are on the boundary line of said Filing No. 6;

1. S 89°52'15" E, 723.50 feet;
2. S 00°08'03" W, 173.08 feet;
3. S 29°41'49" E, 452.97 feet to the Northwesterly line of the parcel of land described in the warranty deed recorded under Reception No. 202007663 of the said records;

thence along the Northwesterly lines of said parcel the following three (3) courses:

1. S 60°18'11" W, 666.72 feet;
2. on the arc of a curve to the left, having a central angle of 27°51'28", a radius of 408.00 feet, an arc distance of 198.37 feet to a point of reverse curve;
3. on the arc of a curve to the right, having a central angle of 54°05'51", a radius of 292.00 feet, an arc distance of 275.70 feet; thence N 00°07'45" E on a line 30.00 feet Easterly from and parallel with the West line of the Southwest Quarter of said Section 4, a distance of 1168.82 feet to the point of beginning, containing a calculated area of 732,800 square feet, or 16.823 acres, more or less.

The same to be known as: Claremont Ranch Filing No. 8A, El Paso County, Colorado.

Description prepared by:
Engineering and Surveying, Inc.
20 Boulder Crescent, 2nd Floor
Colorado Springs, CO 80903

February 18, 2005



Exhibit C - Sand Creek Investments North LLC, Serviced Property

(ALL DIMENSIONS ARE AS FIELD MEASURED)

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF CONSTITUTION AVENUE AS DESCRIBED IN "CONSTITUTION AVENUE / PETERSON ROAD, RIGHT-OF-WAY", RECORDED IN PLAT BOOK V-3 AT PAGE 169 OF THE RECORDS OF SAID EL PASO COUNTY, WITH THE WESTERLY LINE OF LOT 11, AKER'S ACRES SUBDIVISION NO. 1, AS RECORDED IN PLAT BOOK H-2 AT PAGE 48 OF SAID RECORDS, SAID POINT BEING $50^{\circ}16'40''$ W, 241.45 FEET FROM THE NORTHWEST CORNER OF SAID LOT 11;

THENCE $N 89^{\circ}54'50''$ W, 940.43 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD; (THE FOLLOWING TWO (2) COURSES ARE ALONG SAID EASTERLY RIGHT OF WAY LINE)

1.) THENCE $N 09^{\circ}45'59''$ E, 837.77 FEET;

2.) THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF $14^{\circ}45'33''$, A RADIUS OF 1810.08 FEET, FOR AN ARC DISTANCE OF 466.27 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED;

3.) THENCE CONTINUE ALONG SAID ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF $32^{\circ}51'34''$, A RADIUS OF 1810.08 FEET, FOR AN ARC DISTANCE OF 1038.09 FEET TO THE NORTHWESTERLY CORNER OF LOT 17 OF SAID AKER'S ACRES SUBDIVISION NO. 1; (THE FOLLOWING TWO (2) COURSES ARE ALONG THE NORTHERLY LINE OF SAID LOT 17.)

1.) THENCE CONTINUE ALONG SAID ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF $122^{\circ}08''$, A RADIUS OF 1810.08 FEET, FOR AN ARC DISTANCE OF 994.42 FEET;

2.) THENCE $N 69^{\circ}55'46''$ E, 686.74 FEET;

THENCE $S 24^{\circ}17'36''$ E, 475.44 FEET;

THENCE $S 06^{\circ}35'24''$ E, 51.75 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH SAID CURVE HAVING A CHORD BEARING AND DISTANCE OF $N 82^{\circ}53'04''$ E, 176.98 FEET, A CENTRAL ANGLE OF $6^{\circ}56'57''$, A RADIUS OF 1460.08 FEET, FOR AN ARC DISTANCE OF 177.09 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF MARKSHEFFEL DRIVE AS SHOWN ON SAID AKER'S ACRES SUBDIVISION NO. 1, SAID MARKSHEFFEL DRIVE CURRENTLY KNOWN AS ELECTRONIC DRIVE;

THENCE $S 89^{\circ}38'27''$ E, 310.04 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO ITS INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF AKER'S DRIVE OF SAID AKER'S ACRES SUBDIVISION NO. 1;

THENCE $S 00^{\circ}21'33''$ W, 60.00 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE TO ITS INTERSECTION WITH THE SOUTHERLY RIGHT OF WAY LINE OF SAID ELECTRONIC DRIVE;

THENCE $N 59^{\circ}38'27''$ W, 300.00 FEET ALONG SAID SOUTHERLY RIGHT OF WAY LINE;

THENCE $S 00^{\circ}21'33''$ W, 643.94 FEET;

THENCE $S 89^{\circ}39'18''$ E, 300.00 FEET TO SAID WESTERLY RIGHT OF WAY LINE OF AKER'S DRIVE;

THENCE $S 00^{\circ}21'33''$ W, 60.00 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE;

THENCE $N 59^{\circ}39'18''$ W, 300.00 FEET;

THENCE $S 00^{\circ}21'33''$ W, 718.71 FEET;

THENCE $N 59^{\circ}39'18''$ W, 302.32 FEET;

THENCE $N 00^{\circ}20'42''$ E, 337.50 FEET

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF $51^{\circ}51'16''$, A RADIUS OF 640.00 FEET, FOR AN ARC DISTANCE OF 355.82 FEET;

THENCE $S 61^{\circ}10'39''$ W, 352.79 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF $52^{\circ}57'33''$, A RADIUS OF 370.00 FEET, FOR AN ARC DISTANCE OF 342.00 FEET;

Exhibit D - Powers & Galley Water LLC, Serviced Property

PARCEL A:

That portion of Section 7, Township 14 South, Range 65 West of the 6th P.M., El Paso County, Colorado, described in Book 5046, Page 748; and all of Powers and Galley Plaza Filing No. 1 as recorded in Plat Book A-5 at Page 30 of the records of said county, all being more particularly described as follows:

Beginning at the Southwest corner of the Northwest quarter of said Section 7; thence North 00 degrees 27 minutes 46 seconds East, 1407.69 feet along the West line of said Northwest quarter; thence North 89 degrees 59 minutes 53 seconds East, 1435.46 feet along the Southerly boundary line of the tract of land described in Book 3845 at Page 126 of said records, and along the Southerly boundary line of O.K. Subdivision as described in Plat Book G-3 at Page 42 of said records to the Southeasterly corner of said O.K. Subdivision, a point on the Westerly boundary line of Cimarron Industrial No. 2 as described in Plat Book Y-2 at Page 22 of said records; thence South 00 degrees 29 minutes 25 seconds West, 1375.25 feet along said Westerly boundary line of Cimarron Industrial No. 2, and along the Westerly boundary line of Cimarron Industrial No. 1 as described in Plat Book N-2 at Page 6 to the Southwest corner thereof, a point on the Northerly line of the tract of land described in Book 2230 at Page 932 of said records; thence North 89 degrees 42 minutes 00 seconds West, 444.88 feet along said Northerly line and along the Northerly line of the tract of land described in Book 2388 at Page 982 of said records to the Northwest corner thereof; thence South 00 degrees 18 minutes 00 seconds West, 40.00 feet along the Westerly line of said tract to the Southwest corner thereof, a point on the South line of said Northwest quarter of Section 7; thence North 89 degrees 42 minutes 00 seconds West, 990.00 feet along said South line of the Northwest quarter to the point of beginning.

Except the Southerly 40 feet of the Westerly 990 feet thereof as conveyed to El Paso County by Deed recorded January 15, 1965 in Book 2053 at Page 135 and by Deed recorded February 9, 1971 in Book 2388 at Page 981 and Page 982.

And except any portion hereof taken or used as Powers Boulevard including, but no limited to that certain tract conveyed to the City of Colorado Springs by Deed recorded October 27, 1987 in Book 5437 at Page 983.

And except that portion of Section 7, Township 14 South, Range 65 West of the 6th P.M., El Paso County, Colorado, and that portion of Powers

and Galley Plaza No. 1 as recorded in Plat Book A-4 at Page 30 of the records of said county all being more particularly described as follows:

Beginning at the Southeast corner of the additional right of way parcel as recorded in said Powers and Galley Plaza Filing No. 1 the following six (6) courses are along the Southerly, Westerly and Northerly lines of the additional right of way for Galley Road as recorded in said Powers and Galley Plaza Filing No. 1: (1) Thence North 89 degrees 42 minutes 00 seconds West, 960.06 feet; (2) thence North 00 degrees 27 minutes 47 seconds East, 170.42 feet; (3) thence along the arc of a curve concave to the Northeast, said curve having a chord bearing of South 44 degrees 37 minutes 07 seconds East, a central angle of 90 degrees 09 minutes 47 seconds and a radius of 150.00 feet for an arc distance of 236.05 feet; (4) thence South 89 degrees 42 minutes 00 seconds East, 29.52 feet; (5) thence South 85 degrees 53 minutes 09 seconds East, 150.33 feet; (6) thence South 89 degrees 42 minutes 00 seconds East, 330.00 feet to the Southwest corner of Lot 1, said Powers and Galley Plaza Filing No. 1 (the following two (2) courses are along the Westerly and Northerly lines of said Lot 1): (1) Thence North 00 degrees 27 minutes 47 seconds East, 200.00 feet; (2) thence South 89 degrees 42 minutes 00 seconds East, 300.09 feet to the Northwest corner of the tract of land described in Book 5168 at Page 1257 of said records (the following three (3) courses are along the Northerly, Easterly and Southerly boundary lines of said tract); (1) thence South 89 degrees 42 minutes 00 seconds East, 68.61 feet; (2) thence South 00 degrees 27 minutes 47 seconds West, 200.00 feet; (3) thence North 89 degrees 42 minutes 00 seconds West, 68.61 feet to a point on the Easterly boundary line of said Powers and Galley Plaza Filing No. 1; thence South 00 degrees 27 minutes 47 seconds West, 10.00 feet along said Easterly boundary line to the point of beginning.

And except that portion conveyed to UMB Properties, Inc., a Missouri Corporation by Deed recorded December 13, 1991 in Book 5913 at Page 737.

And except any portion lying within Powers Pointe Filing No. 5 recorded June 24, 2005 at Reception No. 205094827.

Exhibit E - Marksheffel Business Center, LLC Serviced Property

PARCEL A:

A TRACT OF LAND LOCATED IN THE EAST ONE HALF OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., IN EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 5; THENCE (ASSUMING A BEARING OF S 89 DEGREES 54 MINUTES 28 SECONDS E FOR THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 5) S 00 DEGREES 32 MINUTES 28 SECONDS W, ALONG THE NORTH-SOUTH CENTER LINE OF SAID SECTION 5, A DISTANCE OF 1213.99 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED HEREBY THENCE S 89 DEGREES 52 MINUTES 15 SECONDS E, A DISTANCE OF 2614.71 FEET TO THE WEST RIGHT OF WAY LINE OF EXISTING 60 FOOT WIDE MARKSHEFFEL ROAD; THENCE S 00 DEGREES 32 MINUTES 45 SECONDS W, ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 414.93 FEET; THENCE N 89 DEGREES 55 MINUTES 53 SECONDS W, A DISTANCE OF 462.02 FEET; THENCE S 00 DEGREES 32 MINUTES 45 SECONDS W, A DISTANCE OF 680.00 FEET TO A POINT ON THE NORTH LINE OF THAT TRACT CONVEYED TO DANIEL P. HAMBLETON AND SHIRLEY A. HAMBLETON BY WARRANTY DEED RECORDED JUNE 8, 1965 IN BOOK 2077 AT PAGE 332 OF SAID COUNTY RECORDS; THENCE N 89 DEGREES 55 MINUTES 53 SECONDS W, ALONG THE NORTH LINE OF SAID HAMBLETON TRACT, A DISTANCE OF 169.14 FEET TO THE NORTHWEST CORNER OF SAID TRACT; THENCE S 00 DEGREES 32 MINUTES 41 SECONDS W, ALONG THE WEST LINE OF SAID HAMBLETON TRACT, A DISTANCE OF 327.17 FEET TO THE SOUTHWEST CORNER OF SAID TRACT, WHICH IS A POINT ON THE NORTH LINE OF THAT TRACT CONVEYED TO DON W. SMITH BY WARRANTY DEED RECORDED OCTOBER 16, 1964 IN BOOK 2039 AT PAGE 868 OF SAID COUNTY RECORDS; THENCE ALONG THE NORTHERLY, WESTERLY AND SOUTHERLY BOUNDARIES OF SAID SMITH TRACT FOR THE FOLLOWING THREE (3) COURSES: (1) N 89 DEGREES 56 MINUTES 05 SECONDS W, A DISTANCE OF 658.85 FEET; (2) S 00 DEGREES 31 MINUTES 41 SECONDS W, A DISTANCE OF 800.00 FEET; (3) S 89 DEGREES 56 MINUTES 05 SECONDS E, A DISTANCE OF 1290.00 FEET TO THE WEST RIGHT OF WAY LINE OF EXISTING 60 FOOT WIDE MARKSHEFFEL ROAD; THENCE S 00 DEGREES 31 MINUTES 41 SECONDS W, ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 441.90 FEET TO THE NORTH LINE OF A TRACT CONVEYED TO LILY MAE ORCUTT, ET AL, BY EXECUTORS DEED RECORDED MARCH 20, 1972 IN BOOK 2475 AT PAGE 550 OF SAID COUNTY RECORDS; THENCE N 89 DEGREES 56 MINUTES 05 SECONDS W, ALONG THE NORTH LINE OF SAID ORCUTT TRACT, A DISTANCE OF 2614.90 FEET TO THE NORTHWEST CORNER OF SAID TRACT, WHICH IS A POINT ON THE NORTH-SOUTH CENTER LINE OF SAID SECTION 5; THENCE N 00 DEGREES 32 MINUTES 28 SECONDS E, ALONG SAID NORTH-SOUTH CENTER LINE, A DISTANCE OF 2646.89 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., IN EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN WARRANTY DEED TO DON W. SMITH RECORDED OCTOBER 16, 1964 IN BOOK 2039 AT PAGE 868 OF THE RECORDS OF SAID COUNTY; THENCE N 89 DEGREES 56 MINUTES 05 SECONDS W, (ALL BEARINGS USED IN THIS DESCRIPTION ARE RELATIVE TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 5, WHICH WAS ASSUMED TO BE N 00 DEGREES 31 MINUTES 41 SECONDS E) ON THE SOUTHERLY LINE OF SAID PARCEL AND ITS WESTERLY PROLONGATION, 1971.54 FEET; THENCE S 00 DEGREES 31 MINUTES 41 SECONDS W ON A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, 441.91 FEET TO A POINT ON THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN EXECUTORS DEED TO LILY MAE ORCUTT, ET AL, RECORDED MARCH 20, 1972 IN BOOK 2475 AT PAGE 550 OF THE RECORDS OF SAID COUNTY; THENCE S 89 DEGREES 56 MINUTES 05 SECONDS E ALONG SAID NORTH LINE, 1971.54 FEET TO A POINT ON A LINE BEING 30.00 FEET WESTERLY OF AND PARALLEL WITH SAID EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 5; THENCE N 00 DEGREES 31 MINUTES 41 SECONDS E ON SAID PARALLEL LINE, 441.91 FEET TO THE POINT OF BEGINNING.

AND EXCEPTING ALL OF MARKSHEFFEL BUSINESS CENTER FILING NO. 1, EL PASO COUNTY, COLORADO.

AND EXCEPTING ALL OF WILSHIRE SUBDIVISION FILING NO. 1, EL PASO COUNTY, COLORADO.

PARCEL B:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE EAST LINE OF SAID SOUTHEAST QUARTER TO BEAR N00°31'41"E: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 5; THENCE N 89° 56' 05"W. ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 30 FEET TO THE WEST LINE OF THE COUNTY ROAD AS ESTABLISHED IN BOOK A AT PAGE 78 OF THE RECORDS OF EL PASO COUNTY, COLORADO, AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING N 89° 56' 05" W. ALONG SAID NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 5, A DISTANCE OF 1,290.00 FEET; THENCE S 00°31'41"W., A DISTANCE OF 800 FEET; THENCE S89°56'05"E., A DISTANCE OF 1,290.00 FEET TO THE WEST LINE OF SAID COUNTY ROAD WHICH POINT IS 30 FEET WEST OF THE EASTERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 5; THENCE N00°31'41"E., ALONG THE SAID WEST LINE OF THE COUNTY ROAD AND PARALLEL TO THE EASTERLY LINE OF SAID SOUTHEAST QUARTER OF SECTION 5, A DISTANCE OF 800 FEET TO THE POINT OF BEGINNING, EXCEPT THE WEST 40 FEET THEREOF AND EXCEPT THOSE PORTIONS CONVEYED TO COUNTY OF EL PASO, COLORADO IN WARRANTY DEEDS RECORDED JANUARY 24, 1986 IN BOOK 5118 AT PAGE 952 AND MARCH 17, 1988 IN BOOK 5485 AT PAGE 625.

PARCEL C:

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED UPON THE WESTERLY LINE OF THE EAST HALF OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO AS BEARING N00°32'28"E FROM A 3 1/2" ALUMINUM CAP PLS# 22103 AT THE SOUTH AND A 3 1/2" ALUMINUM CAP, PLS# 30829 ON THE NORTH.

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 5; THENCE N00°32'28"E, ALONG THE WESTERLY LINE OF THE EAST HALF OF SAID SECTION 5, A DISTANCE OF 1374.42 FEET; THENCE S89°56'53"E, DEPARTING SAID WESTERLY LINE OF THE EAST HALF OF SECTION 5, A DISTANCE OF 1533.43 FEET; THENCE S45°19'12"W A DISTANCE OF 32.45 FEET; THENCE S41°59'15"W A DISTANCE OF 37.32 FEET; THENCE S38°36'00"W A DISTANCE OF 37.82 FEET; THENCE S35°09'42"W A DISTANCE OF 38.39 FEET; THENCE S31°40'44"W A DISTANCE OF 39.03 FEET; THENCE S28°09'40"W A DISTANCE OF 39.76 FEET; THENCE S24°37'11"W A DISTANCE OF 40.58 FEET; THENCE S21°02'55"W A DISTANCE OF 41.87 FEET; THENCE S17°33'59"W A DISTANCE OF 45.04 FEET; THENCE S14°31'33"W A DISTANCE OF 50.41 FEET; THENCE S12°07'24"W A DISTANCE OF 57.87 FEET; THENCE S10°22'06"W A DISTANCE OF 67.31 FEET; THENCE S09°10'03"W A DISTANCE OF 78.64 FEET; THENCE S08°23'47"W A DISTANCE OF 91.84 FEET; THENCE S07°58'23"W A DISTANCE OF 94.42 FEET; THENCE S13°39'11"W, NON-TANGENT WITH THE FOLLOWING DESCRIBED CURVE, A DISTANCE OF 341.70 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, NON-TANGENT WITH THE FOLLOWING DESCRIBED LINE, HAVING A CENTRAL ANGLE OF 23°42'43", A RADIUS OF 482.95 FEET, A CHORD BEARING S13°23'33"W A DISTANCE OF 198.45 FEET AND AN ARC LENGTH OF 199.87 FEET; THENCE S00°47'32"W A DISTANCE OF 117.63 FEET TO A POINT ON THE SOUTHERLY LINE OF THE EAST HALF OF SAID SECTION 5; THENCE N89°54'03"W, ALONG SAID SOUTHERLY LINE OF THE EAST HALF OF SECTION 5, A DISTANCE OF 1163.73 FEET TO THE POINT OF BEGINNING.

P&S Agreement Marksheffel Business Center, LLC- Combined

Final Audit Report

2021-05-09

Created:	2021-05-07
By:	Jason Kvols (jasonkvols@mayberrycoloradosprings.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA5AFbDzE0gUerXrmMoE-IDx4U8QuxxknV

"P&S Agreement Marksheffel Business Center, LLC- Combined" History

-  Document created by Jason Kvols (jasonkvols@mayberrycoloradosprings.com)
2021-05-07 - 11:34:24 PM GMT- IP address: 174.51.18.147
-  Document emailed to Grant Langdon (gl@glangdon.com) for signature
2021-05-07 - 11:36:31 PM GMT
-  Email viewed by Grant Langdon (gl@glangdon.com)
2021-05-09 - 0:26:57 AM GMT- IP address: 75.70.93.72
-  Document e-signed by Grant Langdon (gl@glangdon.com)
Signature Date: 2021-05-09 - 0:29:27 AM GMT - Time Source: server- IP address: 75.70.93.72
-  Document emailed to R. Randy Goodson (randy@foleydevelopment.net) for signature
2021-05-09 - 0:29:30 AM GMT
-  Email viewed by R. Randy Goodson (randy@foleydevelopment.net)
2021-05-09 - 1:59:28 AM GMT- IP address: 174.195.207.85
-  Document e-signed by R. Randy Goodson (randy@foleydevelopment.net)
Signature Date: 2021-05-09 - 2:00:11 AM GMT - Time Source: server- IP address: 174.195.207.85
-  Agreement completed.
2021-05-09 - 2:00:11 AM GMT



PURCHASE AND SALES AGREEMENT

This PURCHASE AND SALES AGREEMENT (“Agreement”) is dated May 6, 2021 (the “Effective Date”) and entered into by and among **Ellicott Utilities Company, LLC**, a Colorado limited liability company, as “Buyer”, and **P.B. Patel and Savitaben P. Patel**, together, the “Seller”, as the sole owners of 100% of the partnership interests (the “Partnership Interests”) in **PB & Sons, a Colorado General Partnership** (the “Partnership”).

RECITALS

WHEREAS Legal title to the Tipton Well water rights are held in title by Cherokee Water, LLC as set forth in the Cherokee Water, LLC Operating Agreement with beneficial ownership of 54.03 acre feet of the Tipton water rights held by the Partnership through its membership in Cherokee Water, LLC.

WHEREAS Powers and Galley Water, LLC entered into an operating agreement as a member of Cherokee Water, LLC on December 4, 2006 for the commitment of 54.03 acre-feet of water from the Tipton Well (the “Tipton Water Rights”) of which REA Development Corporation (“REA”) and Butler, Patel, & Peets LLC (“BPP”) were initial members of Powers and Galley, LLC;

WHEREAS on December 3, 2008 REA and BPP entered into a purchase agreement for BPP to purchase all of REA’s interest in Powers and Galley Water, LLC. As of the date of that closing on December 3, 2008 BPP became the sole member and owner of Powers and Galley Water, LLC;

WHEREAS on August 18, 2015 BPP assigned all of its membership interest in the Cherokee Water, LLC to the Partnership. This assignment failed to comply with the procedures set forth in the Cherokee Water, LLC operating agreement for the assignment to be accepted and recognized by Cherokee Water, LLC as set forth in Section 6.2 of the Operating Agreement;

WHEREAS, on November 15, 2020, the general manager of Cherokee Metropolitan District, and general manager of Cherokee Water, LLC, being one in the same, duly acknowledged and recognized the previous transfers of the interest in Cherokee Water, LLC, from Powers and Galley Water LLC to Butler Peetz and Patel, LLC and Butler, Peetz and Patel, LLC to P.B. & Sons Partnership, including the assignment of the Powers and Galley Water, LLC’s membership interest in Cherokee Water, LLC to Butler, Peetz and Patel, LLC to the Partnership, notwithstanding any alleged violation of the assignment provisions set forth in the Cherokee Water, LLC operating agreement.

WHEREAS, Buyer now desires, through the purchase of the Partnership, to step into the shoes of the Partnership as the Cherokee Water, LLC member and beneficial owner of 54.03 acre feet of the Tipton Well water, subject to the Water Service Agreement dated December, 4 2006 between Cherokee Metropolitan District and Powers and Galley Water, LLC and the Cherokee Water Operating Agreement.



NOW, THEREFORE, Buyer and Seller, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. **Agreement.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey, and Buyer agrees to purchase one-hundred percent (100%), and not less, of the Partnership Interests.

(a) *Further Assurances.* Buyer and Seller hereby agree to diligently work towards the completion of the sale of the Partnership Interests, including taking such actions and executing such agreements, contracts, notices, filings, and/or instruments as may be required or reasonably necessary to complete and effectuate said sale including, but not limited to: (i) an Assignment and Assumption conveying the Partnership Interests (the "Assignment") in a form substantially similar to the Assignment attached hereto as Exhibit A; (ii) a quit claim deed duly conveying that certain parcel of real property owned by the Partnership (the "Stetson Hills Property") to an entity yet-to-be-formed by Seller with an effective date prior to the Effective Date of this Agreement and the aforementioned Assignment, and (iii) any and all other ancillary documents to accomplish the transaction contemplated herein (collectively, the "Transaction"), all which must be, as to form and substance, satisfactory and acceptable to Buyer.

(b) *Upon execution.* Upon execution of this agreement and receipt of consideration the seller will take actions as directed by the buyer.

(c) *Time of Essence.* Time is of the essence for this Agreement.

2. **Purchase Price.** The purchase price for the purchase of the Partnership Interests shall be [REDACTED] ("Purchase Price"). Buyer will pay [REDACTED] refundable deposit to enter into this Agreement. If the Agreement is terminated at any time for any such reasons as maybe set forth in this agreement, this consideration will be refundable to Buyer. Upon payment of the Purchase Price by Buyer to Seller, Seller shall deliver or cause to be delivered to Buyer the Assignment.

3. **Due Diligence Review.** Buyer shall have 90 days from the Effective Date to conduct a due diligence review of the Transaction (the "Due Diligence Period"), which review shall include, but not be limited to: (i) verification of compliance with all Cherokee Metropolitan District documents pertaining to the Agreement and/or Transaction; (ii) verification that the Partnership is the rightful owner of the membership interests in Cherokee Water, LLC and thus indirectly the beneficial owner of the Tipton Water Rights as evidenced by the partnership membership interest in Cherokee Water, LLC, free and clear of all liens and encumbrances; (iii) approval of the members of Cherokee Water, LLC as to Buyer's purchase of the Partnership Interests; (iv) adequate assurances and indemnification of Buyer for of any and all liabilities that are not disclosed and accepted by Buyer; (v) confirmation and acceptance of the conditions and restrictions set forth in the Water Service Agreement dated December 4, 2006 between Cherokee Metropolitan District and Powers and Galley Water, LLC, as applicable to the Partnership, and the Cherokee Water Operating Agreement as applicable to the Partnership. and (vi) confirmation that



any environmental liabilities associated with the Powers Property either do not exist or will not be assumed by Buyer in any way whatsoever as a result of consummation of the Transaction. Buyer shall be permitted to terminate this Agreement, in its sole and absolute discretion, at any time during the Due Diligence Period. In the event of such a termination, the \$5,000.00 deposit set forth in Section 2 above shall be refunded. Seller confirms that it has or will provide to Buyer for its review and use, the Cherokee Water, LLC Operating Agreement and all amendments thereto; and the Powers and Galley – Cherokee Metro District Water Service agreement dated December 4, 2006 and all applicable amendments thereto within five (5) business days of the execution of this agreement.

4. **Conditions to Closing.** Closing of the Transaction shall be subject to:

(a) **Financing.** Buyer shall have obtained lending approval, and proof thereof, on or before the Closing Date (as defined in Section 5 below) for the transaction and other financing in an amount and upon terms satisfactory to the Buyer, in the Buyer's sole and absolute discretion.

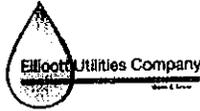
(b) **Third-Party Consent.** Receipt of all required regulatory, governmental, and third-party consents or approvals necessary to consummate the Transaction.

(c) **Cherokee Metropolitan District Approval.** Buyer obtaining written verification signed by Cherokee Metropolitan District evidencing its approval and ratification of the previous transfers of the Tipton Water Rights listed above and confirming the Partnership as the beneficial owner of the Tipton Water Rights, through its membership in Cherokee Water, LLC.

(d) **Cherokee Water, LLC Approval.** Buyer obtaining written approval signed by all members of Cherokee Water, LLC confirming, ratifying and consenting to Buyer's purchase of the Partnership Interests and the successful change of real property location the Tipton Water Rights shall be appurtenant to, which location Buyer shall specify after the Effective Date but prior to the Closing Date, as voted on by the members of Cherokee Water, LLC pursuant to its Operating Agreement and Cherokee Metro District pursuant to the Water Service Agreement dated December, 4 2006.

(e) **Other Documents.** Buyer obtaining any and all other documents requested by Buyer from Seller that are necessary or reasonably required to consummate the Transaction, including, but not limited to, the Assignment.

5. **Closing; Termination.** The closing of the Transaction (the "Closing") will occur no more than 30 days after expiration of the Due Diligence Period (whether such period expires on its own terms or if Buyer earlier waives any remaining balance of the Due Diligence Period), provided that Closing shall occur only after Buyer has determined that all Conditions to Closing set forth in Section 4 above have been satisfied (the "Closing Date"). Notwithstanding the foregoing, the Closing Date shall occur no later than October 1, 2021, subject to extension only by mutual agreement of both parties.



6. **Indemnification from Third-Parties.** The Buyer and Seller represent and warrant to the other that neither the matters set forth in this Agreement, nor the consummation of the Transaction contemplated herein, will breach or interfere with any contractual or other obligations to any third-party. Buyer and Seller hereby unconditionally agree to indemnify and hold harmless the other and their respective officers, directors, employees and agents from and against all liability, claim, injury, damage, cost, or expense of any kind, including reasonable attorney's fees, directly or indirectly related to, associated with, or arising out of any breach of any representation and warranties contained within this Agreement.

7. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer as follows:

(a) Seller is the true and lawful 100% owner of the Partnership Interest being sold to Buyer, and the issuance of the Partnership Interest will be duly authorized by all necessary acts on the part of the Partnership. Further, the Partnership Interest is not subject to any mortgages, encumbrances, pledges, or other encumbrances affecting title and ownership of the Partnership Interest. Seller further covenants not to pledge, encumber or otherwise use the Partnership Interest as security for any debt from the date hereof through the Closing Date.

(b) There is no action, suit, or legal proceedings or other proceedings pending or threatened (or, to the best knowledge of Seller, any basis therefor) against Seller which may adversely affect the transactions contemplated by this Agreement, affecting the Partnership, or affecting any portion of the Tipton Water Rights or any portion of the Powers Property, in any court or before any arbitrator of any kind or before any governmental body which may adversely affect the transactions contemplated by this Agreement.

(c) The financial statements of operations and of assets and liabilities that have been or will be delivered to Buyer are in accordance with the books and records of the Partnership are true, correct, and complete; fairly represent the financial condition of the Partnership as of the dates of such financial statements and the results of the Partnership's operations for the periods then ended; and were prepared on a basis consistent with prior accounting periods.

(d) The execution and delivery of this Agreement by Seller and the consummation of the contemplated Transaction is not subject to the issuance of a novation by any applicable governmental authority, nor the approval or consent of any third-party, except as otherwise set forth herein.

8. **IRREVOCABILITY.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT IS IRREVOCABLE BY SELLER AND SELLER SHALL HAVE AN OBLIGATION TO CONVEY THE PARTNERSHIP INTERESTS OF THE PARTNERSHIP, AND BENEFICIAL OWNER OF THE TIPTON WATER RIGHTS, TO BUYER IN STRICT ACCORDANCE WITH THIS AGREEMENT, SUBJECT TO THE CHEROKEE WATER, LLC OPERATING AGREEMENT AND THE CHEROKEE METROPOLITAN DISTRICT AND POWER AND GALLEY WATER



SERVICE AGREEMENT AND SUBJECT TO BUYER'S UNILATERAL RIGHT TO TERMINATE THIS AGREEMENT AS SET FORTH HEREIN.

9. **Non-Disclosure.** Except as required by law or as the Buyer and Seller agree in connection with ongoing due diligence pursuant to this Agreement will be kept strictly confidential, and neither Buyer, nor Seller nor their affiliates, shall disclose Buyer's interest in the proposed transaction, or any of the terms and conditions thereof.

10. **Governing Law.** This Agreement shall be interpreted and enforced by the law of the State of Colorado.

11. **Survival of Representations, Warranties and Agreements.** All of the representations, warranties, covenants, promises and agreements of the parties contained in this Agreement shall survive the execution, acknowledgement, sealing and delivery of this Agreement.

12. **No Brokers.** Each party hereby represents and warrants to the other party that neither it nor its representatives have made any arrangements for the payment of any finders' fees, brokerage fees, agents' commissions, or like payments in connection with the Agreement. Each party shall indemnify and hold harmless the other party from any claim that is asserted by any person or entity for a finder's or broker's fee or like payment with respect to this Agreement arising from any act, representation or promise of the indemnifying party or its representative.

13. **Amendments; Waivers.** No provision of this Agreement may be amended, waived, or otherwise modified without the prior written consent of all of the parties. The waiver by any party hereto of a breach of any provision or condition contained in this Agreement shall not operate as a waiver of any subsequent breach or of any other conditions hereof.

14. **Attorney Fees.** In the event of any dispute arising out of this Agreement, the court or arbitrator shall award to the prevailing party all reasonable costs and expenses, including without limitation, attorneys' fees.

15. **Incorporation.** The Recitals set forth above and any and all exhibits to this Agreement are expressly incorporated into this Agreement as if fully set forth herein.

SIGNATURE PAGE TO FOLLOW



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“BUYER”

“SELLER”

**Ellicott Utilities Company, LLC,
a Colorado limited liability company**

By: R. Randy Goodson
R. Randy Goodson (May 11, 2021 15:47 PDT)
Randy Goodson, President

PB Patel 5-12-2021
PB Patel

Savitaben P. Patel 5-12-2021
Savitaben P. Patel

“PARTNERSHIP”

**PB & Sons,
a Colorado General Partnership**

By: P. B. Patel
Name: PB Patel
Title: Mgr.
5-12-2021

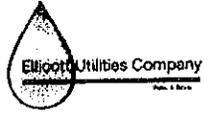


EXHIBIT A
FORM OF ASSIGNMENT

[SEE ATTACHED]

ASSIGNMENT AND ASSUMPTION OF PARTNERSHIP INTERESTS
(PB & Sons Partnership
EIN: 59-3073655)

THIS ASSIGNMENT AND ASSUMPTION OF PARTNERSHIP INTERESTS ("Assignment") is entered into and is to be made effective as of 5/12/2021, 2021 ("Effective Date"), by and among P.B. Patel and Savitaben P. Patel (together, the "Assignors"), and Ellicott Utilities Company, LLC, a Colorado limited liability company ("Assignee").

RECITALS

A. Assignors are the sole partners of PB & Sons, a Colorado General Partnership (the "Partnership") and hold 100% and not less of the partnership interests in and to the Partnership (collectively, the "Partnership Interests"). The Partnership was formed pursuant to that certain Partnership Agreement dated and executed on June 27, 1991 attached as exhibit "1".

B. The Partnership Agreement was amended subsequent to formation on August 3, 2017 that resulted in removing Hitesh P Patel and Sandhya H Patel as members, attached as exhibit "2".

C. The Partnership Agreement was subsequently amended on July 17, 2019 that resulted in removing Rajesh P Patel as a member attached as exhibit "3".

D. Assignors desire to transfer, assign and convey to Assignee, and Assignee desires to acquire, all of Assignors' right, title and interest in the Partnership Interests, subject to and in accordance with the terms and provisions of this Assignment.

E. This Assignment is being entered in furtherance of that certain Purchase and Sales Agreement, dated as of May 6, 2021 (the "Purchase Agreement"), by and between PB & Sons Partnership, and Assignee to effectuate the transfer, assignment and conveyance by Assignor to Assignee of all of the Assignors' Partnership Interests in the Partnership.

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor hereby distributes, transfers, assigns and conveys to Assignee all of Assignors' Partnership Interests in the Partnership, together with all of Assignors' right, title and interest in and to the Partnership and its assets, including but not limited to, 54.03 AF interest in the Tipton Well Water Rights as defined in the Cherokee Water, LLC Operating Agreement, but specifically excluding the Stetson Hills Property as such real property is defined in the Purchase Agreement (collectively, the "Partnership Assets"), subject to the terms and conditions of this Assignment.

2. Acknowledgment and Acceptance of Assignment. Effective as of the Effective Date, Assignee hereby accepts Assignors' assignment of the Partnership Interests from Assignor and agrees to assume all of Assignors' rights and obligations with respect to the Partnership Interests to the extent accruing from and after the Effective Date.

3. Withdrawal as Partner; Resignation as Officer/Agent. Effective as of the Effective Date, Assignors hereby withdraw as partners of the Partnership and hereby resign as any and all officers, agents, and/or any other form of representative of the Partnership. By execution of this Assignment, Assignor acknowledges and agrees that it no longer has any right, title or interest in, to or under its former Partnership Interests in the Partnership and/or in or to the Partnership Assets. Simultaneously with the withdrawal of these Assignors as the sole partners of the Partnership pursuant to this Section 3, Assignee is admitted to the Company as the sole partners and all references to the "Partners" in the organizational documents for the Partnership shall mean and refer to Assignee.

4. Representations, Warranties and Disclaimer.

(a) Assignors. As of the Effective Date, Assignors represents and warrants to Assignee the following:

(i) Authority. Assignors have the full right, authority and power to enter into this Agreement, to consummate the transaction contemplated herein and to perform its obligations hereunder and under those documents and instruments to be executed by it, and each of the individuals executing this Agreement on behalf of each Assignor is authorized to do so, and this Assignment constitutes a valid and legally binding obligation of Assignor enforceable against Assignor in accordance with its terms.

(ii) Sole Partners. Assignors are the sole owners of the Partnership Interest as designated herein. Assignors have not alienated, encumbered, transferred, leased, assigned or otherwise conveyed the Partnership Interest or any portion thereof, nor entered into any agreement to do so, except for the Purchase Agreement.

(iii) No Litigation. To the best of Assignors' knowledge, Assignors' have not received written notice of any complaint, litigation, investigation or proceeding that is pending or threatened against Assignors', the Partnership Interest or the Partnership.

(iv) Partnership Documents. To the best of Assignors' knowledge, Assignors' have provided Assignee with all material documentation and information in Assignors' possession relating to the Partnership and its operations preceding the Effective Date of this Assignment. Assignors' further agrees to reasonably cooperate with Assignee to provide such further information relating to the Partnership as may be reasonably requested by Assignee, to the extent in Assignors' actual possession or reasonable control.

(v) No Third-Party Rights. To the best of Assignors' knowledge, without duty of inquiry or investigation, and except as previously disclosed in any materials or other information provided to Assignee, there are no leases, occupancy agreements, licenses, or other agreements that grant third-parties any possessory or usage rights to all or any of the part of any Partnership property.

(vi) Bankruptcy. To Assignors' knowledge, there are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy, or any other debtor relief actions pending against the Partnership in any current judicial or administrative proceeding.

(vii) No Violations. To the best of Assignors' knowledge, Assignor's have not received written notice of any current violations of any laws, statutes, ordinances, regulations or other requirements of any governmental agency in connection with or related to the Partnership.

(viii) Conveyance and Condition of Stetson Hills Property. Assignors have caused the Partnership to convey the Stetson Hills Property to a yet-to-be-formed entity owned or otherwise controlled by Assignors prior to the Effective Date of this Assignment. To the best of Assignors' knowledge, Assignors represent and warrant to Assignee that: (i) the Stetson Hills Property is not contaminated with any hazardous substance; (ii) Assignors nor the Partnership have not caused, will not cause, and there never has occurred, the release of any hazardous substance on the Powers Property; (iii) the Stetson Hills Property is not subject to any federal, state or local "superfund" lien, proceeding, claim, liability or action or the threat of likelihood thereof for the cleanup, removal, or remediation of any such hazardous substance in the Stetson Hills Property; (iv) there are no underground storage tanks on the Stetson Hills Property; (v) the Stetson Hills Property is not in violation of any Environmental Laws; and (vi) by acquiring the Partnership Interests, Assignee will not incur or be subjected to any "superfund" liability for the cleanup, removal or remediation of any hazardous substance from the Stetson Hills Property or any liability, cost or expense for the removal of underground storage tanks on the Stetson Hills Property. The terms "hazardous substance", "release" and "removal" as used herein shall have the same meaning and definitions as set forth in paragraphs 14, 22 and 23 respectively of Title 42 USC, §9601 and in the Colorado Statutes. PROVIDED, HOWEVER, that the term "hazardous substance" as used herein also shall include hazardous waste as defined in paragraph 5 of 42 USC, §6903, and "petroleum" as defined in paragraph 6 of 42 USC §6991, and as further defined in Colorado Statutes. The term "superfund" as used herein means the comprehensive environmental response compensation and liability act as Amended in Title 42 USC §6901, et seq. as amended in any similar state, or local statute or ordinance applicable to the Powers Property, including without limitation the applicable Colorado Statutes and all rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto. The term "underground storage tank" as used herein shall have the same meaning and definition as set forth in paragraph (1) of 42 USC, §6991.

(b) By Assignee. Assignee represents and warrants to Sellers as follows:

(i) Formation. Assignee is a duly formed and validly existing limited liability company in good standing under the laws of Colorado.

(ii) Authorization. Assignee has the full right, authority and power to enter into this Agreement, to consummate the transaction contemplated herein and perform its obligations hereunder. Each individual executing this Assignment on behalf of the Assignee is authorized to do so and this Assignment constitutes a valid and legally binding obligation of Assignee enforceable against Assignee in accordance with its terms. Assignee has taken all

necessary action to authorize the transaction contemplated by this Assignment and Assignee's execution and delivery of this Assignment and all documents required herein, and its performance hereunder. Assignee's execution and delivery of this Assignment, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any term or provision of any agreement to which Assignee is a party or by which Assignee is bound.

(iii) No Litigation. To the best of Assignee's knowledge, there is no complaint, litigation, investigation or proceeding pending or, to Assignee's actual knowledge, contemplated or threatened against Assignee which would prevent Assignee from performing its obligations under this Assignment or any other instrument or document related hereto.

(c) Survival. The representations, warranties and covenants of Assignor and Assignee above shall survive this Assignment following the Effective Date.

(d) Assignors' Knowledge. For purposes hereof, any reference to "Assignors' knowledge" or any derivatives thereof as used in this Assignment means the current actual knowledge of PB Patel and Savitaben P. Patel, without any duty of inquiry or investigation, and shall not be deemed to include any implied, imputed or constructive knowledge of Assignor or any other person or entity.

5. Indemnity. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any obligations or liabilities with respect to the Partnership and/or the Partnership Interest which may occur after the date of this Assignment. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any obligations or liabilities with respect to the Partnership and/or the Partnership Interest which have occurred prior to the date of this Assignment.

6. Successors and Assigns. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

7. - Further Assurances. Assignor shall execute and deliver to Assignee, upon demand, such further documents, instruments and conveyances, and shall take such further actions as Assignee may from time to time reasonably request, to vest fully in Assignee, the right, title and interest herein intended to be assigned.

8. Continuation of the Partnership. The parties acknowledge and agree that the assignment of the Partnership Interests and/or Partnership Interests by Assignor to Assignee shall in no way cause the dissolution of the Partnership, nor shall such assignment and transfer be deemed or construed to terminate the Partnership.

9. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute an original, but all of which together, shall constitute one and the same agreement. digital signatures, including digital counterparts, shall be recognized and deemed as

an original signature to this Assignment.

10. Binding Effect. This Assignment shall be binding upon and inure to the benefit of Assignor's and Assignee, and their respective successors and assigns.

11. Attorneys' Fees. If a suit, action or other proceeding of any nature whatsoever is instituted in connection with this Assignment, or to interpret or enforce any rights or remedies hereunder, the prevailing party shall be entitled to recover its attorneys' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith.

12. Governing Law. This Assignment shall be governed by, and interpreted in accordance with, the laws of the State of Colorado, all rights and remedies being governed by such laws.

[Signature Pages to Follow]

This Assignment has been executed as of the day first written above and shall be made effective as of the Effective Date.

"ASSIGNORS"

PB Patel 5/12/21
PB Patel

Savitaben P. Patel 5/12/21
Savitaben P. Patel

ASSIGNEE:

**Ellicott Utilities Company, LLC
A Colorado Limited Liability Company**

R. Randy Goodson
By: R. Randy Goodson (May 11, 2021 15:47 PDT)
Randy Goodson, President

Exhibit "1"

PARTNERSHIP AGREEMENT

P.B. PATEL and SAVITABEN P. PATEL, husband and wife, HITESH P. PATEL and SANDHYA H. PATEL, husband and wife and RAJESH P. PATEL, hereinafter referred to as the "Partners", agree as follows:

PARTNERSHIP - PURPOSE

1. The Partnership shall have the specific power and authority to enter into contracts and to purchase, acquire, hold, encumber, sell and/or lease all types of real estate, stocks, bonds and/or other tangible and/or intangible property. Title to such property shall be taken in the name of P. B. & Sons.

TERMS OF PARTNERSHIP

2. The name of the Partnership shall be: P. B. & Sons.

TERMS OF PARTNERSHIP

3. Said Partnership shall commence as of April 26, 1993 and continue until dissolved by mutual agreement of the parties or terminated as herein provided.

PLACE OF BUSINESS

4. The principal place of business of the Partnership shall be at 4308 Meadowview Court, Colorado Springs, CO 80918.

CAPITAL

5. (a) It is understood and agreed that all Partners shall contribute capital on a basis equal to the same proportion, that they participate in the net profits and net losses of the Partnership as provided in Number 6 hereof. It is further agreed the original contribution shall consist of the capital stock in Butler, Patel & Peetz, a Limited Liability Corporation.

(b) It is recognized and agreed among the Partners that additional contributions to the capital of the Partnership may be necessary to carry out the purposes of the Partnership, and that any such additional contributions shall be made by the Partners in the same proportions that they participate in the net profits and net losses of the Partnership as provided in Number 6 hereof.

PROFITS AND LOSSES

6. After the payment of all valid expenses and payments on the capital account of the Partners any net profits or losses that may accrue to the Partnership shall be distributed to or borne by the Partners in the following proportions which represent each Partner's interest in the Partnership:

P.B. PATEL and SAVITABEN P. PATEL	50%
HITESH P. PATEL and SANDHYA H. PATEL	25%
RAJESH P. PATEL	25%

These distributions shall be made at least once a year.

MANAGEMENT AND CONTROL

10. P.B. PATEL and SAVITABEN P. PATEL, husband and wife, shall be the managing partners and shall devote their time and attention to the business of the Partnership to promote the best interests of the said firm. They shall be paid a salary as the partners may hereafter agree between them.

LIMITATIONS ON POWERS OF PARTNERS

11. No partner shall, without the consent of the others, compromise or release debts except upon full payment thereof or engage in any unusual transaction on the partnership account or use the firm's name, credit or property for other than Partnership purposes or sign or endorse negotiable paper or become surety for third persons or engage in any speculation or knowingly do any act by which the interest of said Partnership shall be imperiled or prejudiced.

DISSOLUTION

12. Upon the final dissolution of the said firm by lapse of time or otherwise the said business shall be wound up, the debts paid and the surplus divided between the partners in accordance with their respective interest therein.

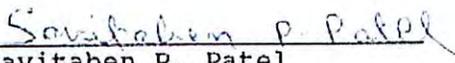
CHOICE OF LAW

13. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

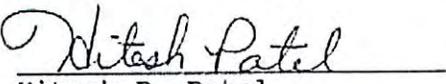
IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals this as of the 26th day of April 1993.



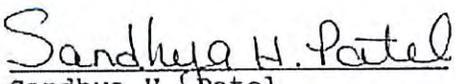
P.B. Patel



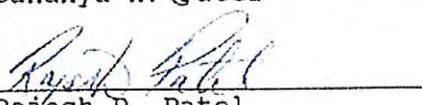
Savitaben P. Patel



Hitesh P. Patel



Sandhya H. Patel



Rajesh P. Patel

Exhibit "2"

AMENDMENT TO THE
PARTNERSHIP AGREEMENT OF
P B & SONS PARTNERSHIP

Pursuant to the provisions of the original Partnership Agreement of P B & Sons Partnership dated April/26/93, the undersigned partners adopt the following Amendment to its Partnership Agreement:

First: Transfers of Interest, It is hereby acknowledged that partners Hitesh P Patel, Sandhya H Patel have transferred their respective partnership interests in PB & Sons Partnership to Rajesh P Patel, PB Patel, and Savitaben P Patel. And the resulting ownership is PB Patel 26%, Savitaben P Patel 26% and Rajesh P Patel 48%.

Second: Profits and Losses shall be distributed to or borne as follows: PB Patel 26%, Savitaben P Patel 26% and Rajesh P Patel 48%.

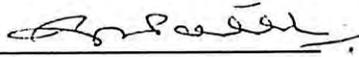
Dated this 3rd day of August, 2017.



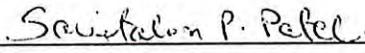
Hitesh P Patel



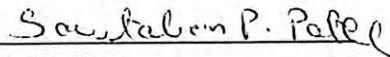
Sandhya H Patel



PB Patel



Savitaben P Patel



Rajesh P Patel
P.O.A. for Rajesh Patel

State of Colorado)
County of El Paso)

Subscribed and sworn to before me this 3rd day of August, 2017.



Notary Public
6625 Delmonico Dr
Colorado Springs, CO 80919
my commission expires 7-16-20




SHP
S.P.P.
8/3/17

Exhibit "3"

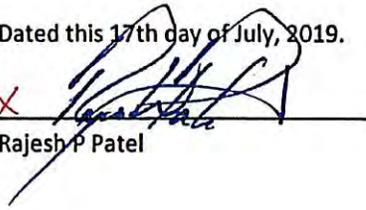
AMENDMENT TO THE
PARTNERSHIP AGREEMENT OF
P B & SONS PARTNERSHIP

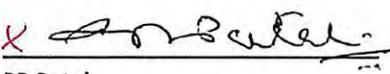
Pursuant to the provisions of the original Partnership Agreement of P B & Sons Partnership dated April/26/93, the undersigned partners adopt the following Amendment to its Partnership Agreement:

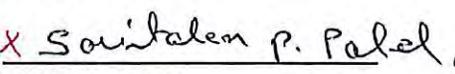
First: Transfers of Interest, It is hereby acknowledged that partners Rajesh P Patel has transferred his partnership interests in PB & Sons Partnership to PB Patel, and Savitaben P Patel. And the resulting ownership is PB Patel 50% and Savitaben P Patel 50%.

Second: Profits and Losses shall be distributed to or borne as follows: PB Patel 50% and Savitaben P Patel 50%.

Dated this 17th day of July, 2019.

X 
Rajesh P Patel

X 
PB Patel

X 
Savitaben P Patel

12
18

COLORADO DIVISION OF WATER RESOURCES
DEPARTMENT OF NATURAL RESOURCES
 1313 SHERMAN ST, RM 818, DENVER, CO 80203
 phone - info: (303) 866-3587 main: (303) 866-3581 fax: (303) 866-3589
 http://www.water.state.co.us

Office Use Only Form GWS-45 (06/2006)

GENERAL PURPOSE
Water Well Permit Application
 Review instructions on reverse side prior to completing form.
 The form must be completed in black or blue ink or typed.

030
155
12

1. Applicant Information

Name of applicant
Cherokee Metropolitan District
 Attn: Mr. Kip Petersen
 Mailing address
6250 Palmer Park Blvd.
 City State Zip code
Colorado Springs CO 80915
 Telephone # E-mail (Optional)
(719) 579-5080

6. Use Of Well (check applicable boxes)

Attach a detailed description of uses applied for.
 Industrial Other (describe): Augmentation
 Municipal
 Irrigation
 Commercial

2. Type Of Application (check applicable boxes)

Construct new well Use existing well
 Replace existing well Change or increase use
 Change source (aquifer) Reapplication (expired permit)
 Other:

7. Well Data (proposed)

Maximum pumping rate 898	gpm	Annual amount to be withdrawn 225	acre-feet
Total depth 170	feet	Aquifer Black Squirrel Alluvium	

3. Refer To (if applicable)

Well permit # 27574-FP	Water Court case #
Designated Basin Determination # 91-GW-01	Well name or #

8. Land On Which Ground Water Will Be Used

Legal Description (may be provided as an attachment): **See Attached**

(If used for crop irrigation, attach a scaled map that shows irrigated area.)

A. # Acres B. Owner

C. List any other wells or water rights used on this land:

4. Location Of Proposed Well

County
EI Paso SW 1/4 of the NE 1/4

Section 36	Township 12	N or S <input type="checkbox"/> N <input checked="" type="checkbox"/> S	Range 63	E or W <input type="checkbox"/> E <input checked="" type="checkbox"/> W	Principal Meridian 6
----------------------	-----------------------	--	--------------------	--	--------------------------------

Distance of well from section lines (section lines are typically not property lines)
2165 Ft. from N S **2495** Ft. from E W

For replacement wells only - distance and direction from old well to new well
45 feet **SE** direction

Well location address (Include City, State, Zip) Check if well address is same as in item 1.
Well lies on open rangeland, no physical address assigned

Optional: GPS well location information in UTM format You must check GPS unit for required settings as follows:

Format must be UTM <input type="checkbox"/> Zone 12 or <input type="checkbox"/> Zone 13	Easting _____
Units must be Meters	Northing _____
Datum must be NAD83	
Unit must be set to true north	
Was GPS unit checked for above? <input type="checkbox"/> YES <input type="checkbox"/> NO	Remember to set Datum to NAD83

9. Proposed Well Driller License #(optional):

10. Signature Of Applicant(s) Or Authorized Agent

The making of false statements herein constitutes perjury in the second degree, which is punishable as a class 1 misdemeanor pursuant to C.R.S. 24-4-104 (13)(a). I have read the statements herein, know the contents thereof and state that they are true to my knowledge.

Sign here (Must be original signature) Date
Kevin I. Petersen **7.16.07**

Print name & title
KEVIN I. PETERSEN

5. Parcel On Which Well Will Be Located
 (PLEASE ATTACH A CURRENT DEED FOR THE SUBJECT PARCEL)

A. Legal Description (may be provided as an attachment):
See Attached

B. # of acres in parcel C. Owner
Cherokee Metro District

D. Will this be the only well on this parcel? YES NO (if no - list other wells)

E. State Parcel ID# (optional):

Office Use Only

USGS map name	DWR map no.	Surface elev.
---------------	-------------	---------------

7/24/07 TO DIST.

Receipt area only

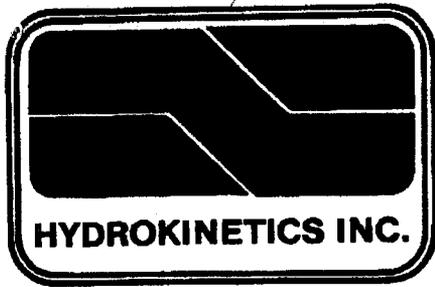
Trans Number: 3619107
 7/19/2007 2:47:31 PM
 Debbie Gonzales (20)
 Total Trans Amt: \$100.00
CHECK

Check Number: 018160
 Check Amount: \$100.00

WE
 WR
 CWCB
 TOPO
 MYLAR
 S85

AU 9-4-07

DIV 8 WD 10 BA 4 MD 12



12975 W. 24th Pl.
Golden, (Applewood) Colorado, 80401
(303) 237-8865
Fax 237-8869

JUL 13 2007

July 13, 2007

Colorado Division of Water Resources
1313 Sherman St, Rm. 818
Denver, Colorado 80203

RE: Permit Application

Gentlemen:

Attached is a General Purpose Water Well Permit Application requesting a replacement well permit for a well located in the Upper Black Squirrel Designated Basin. The well is owned by the Cherokee Metropolitan District. The existing well produces water based on the consolidation of two prior permits, final permit no. R-16253-FP and final permit no. 27574-FP. The consolidation of these permits was accomplished in Ground Water Commission case No. 91-GW-01 which fully describes the terms and conditions under which the well shall operate. Case No. 91-GW-01 allows the well with the combined appropriations to pump up to 898 GPM with an exportable yield of 225 ac.ft./yr.

The Cherokee Metropolitan District secured a monitor well permit (No. 273194) at this site and the well is nearing completion. The monitor well was designed so it could be used as a production well if the sand section at the new site was similar to that at the existing site. Based on the drilling data, the sand section at the new site is essentially identical to that at the old site. The monitor well was consequently designed with a production interval identical to that in the existing well. Screens lie between 90 and 170 feet in both wells. This interval is in conformance with the terms and conditions of the monitor well permit. The new well is located 45 feet southeast of the existing well. Although this monitor well has been drilled, it has not yet been tested. As it is not complete, there has not been a completion report filed. However, one will be filed by the contractor upon its completion within the next week or so.

The Cherokee Metropolitan District has an immediate need for this water and would now like to convert this monitor well to a production well as quickly as possible. The District is

ready to pump this well into their raw water collection system immediately upon receiving a production well permit.

RECEIVED
JUL 13 2007
WATER DIVISION
SOUTH BEND, IN

As there is some urgency in getting this processed, please feel free to contact myself or Mr. Patrick O'Brien at our offices if you have any questions and we will respond promptly. To facilitate the review, we have attached a copy of Case No. 91-GW-01 to the permit application. We appreciate your help.

Respectfully Submitted:

Scott G. Mefford
C.P.G 5021

#5, Legal Description of Parcel on which well is located

File No. CWCS000:

Exhibit "A"

A tract of land located in a portion of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado, described as follows:

Commencing at the Northeast corner of said Section 36; thence South 00°50'05" West, coincident with the East line of said Section 36, a distance of 1,734.63 feet to the Point of Beginning of a tract of land described herein; thence continue Southerly along side line, a distance of 2,183.82 feet; thence North 89°30'45" West coincident with the South line of the Northeast 1/4 of the Southeast 1/4 of said Section 36, a distance of 1,307.44 feet; thence North 00°50'44" East coincident with the West line of said Northeast 1/4 of the Southeast 1/4, a distance of 1,051.76 feet; thence North 89°15'25" West, a distance of 1,307.20 feet; thence North 00°51'25" East coincident with the North-South centerline of said Section 36, a distance of 917.98 feet; thence North 89°02'32" West, a distance of 77.31 feet; thence North 00°59'53" East, a distance of 214.72 feet; thence South 89°21'40" East, a distance of 2,691.21 feet to the Point of Beginning.

A tract of land located in a portion of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado, described as follows:

Beginning at the Northeast corner of said Section 36, said point being the Point of Beginning of a tract of land described herein; thence South 00°50'05" West coincident with the East line of said Section 36, a distance of 1,734.63 feet; thence North 89°21'40" West, a distance of 2,691.21 feet; thence North 00°59'53" East, a distance of 1,761.00 feet; thence South 88°47'59" East coincident with the North line of said Section 36, a distance of 2,689.82 feet to the Point of Beginning.

Except a tract of land located in a portion of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado, described as follows:

Beginning at the Northeast Corner of said Section 36; said point being the Point of Beginning of a tract of land described herein; thence S00° 50' 05"W coincident with the East line of said Section 36, a distance of 800.04 feet; thence S84° 19' 37"W, a distance of 300.60 feet; thence N15° 24' 42" W, a distance of 872.41 feet; thence S88° 47' 59"E coincident with the North line of said Section 36, a distance of 342.75 feet to the Point of Beginning.

Parcel B:

Well Easement:

Commencing at center 1/4 corner of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado; thence North 00°51'25" East coincident with the North-South centerline of said Section 36, a distance of 350.36 feet; thence East, a distance of 20.74 feet to the Point of Beginning; thence North, a distance of 200.00 feet; thence East, a distance of 200.00 feet; thence South coincident with the South line of Green Acres Sod-n-Turf Phase Two, a distance of 36.77 feet; thence North 66°47'50" East, a distance of 342.19 feet; thence North 23°31'45" West, a distance of 240.14 feet; thence South 89°21'40" East, a distance of 32.88 feet; thence South 23°31'45" East, a distance of 256.85 feet; thence South 66°47'50" West, a distance of 385.22 feet; thence South, a distance of 130.59 feet; thence West, a distance of 200.00 feet to the Point of Beginning.

PLACE OF USE FOR TIPTON WELL

Cherokee Metropolitan District will use water diverted from the Tipton within Cherokee Metropolitan District generally located in all or partially in Sections 4, 5, 6, 7, 8, 17, and 18, Township 14 South, Range 65 West, Sections 20,28,29,31, 33, Township 13 South, Range 65 West, El Paso County, Colorado, and mapped in the attached Exhibits A, C and D. Additionally, in accordance with its service commitment obligations, Cherokee can use the Tipton Well water at the any of the following locations outside of Cherokee Metropolitan District boundaries:

1. Woodmen Hills Metropolitan District (Exhibit E)
2. Schriever Air Force Base (Exhibit F)

RECEIVED

JUL 18 2007

WATER DIVISION
SOUTH PLATTSBURGH
COLO.

EXHIBIT "A"

That property conveyed in Warranty Deed from
KARL R. ROSS, TRUSTEE under provisions of a Trust Agree-
ment dated April 17, 1967, to Raymond Powers

Parcel A:

That part of the West one-half ($W\frac{1}{2}$) of Section 16, Township 14 South, Range 65 West of the Sixth Principal Meridian, County of El Paso, State of Colorado, lying South of Colorado State Highway No. 94, being more particularly described as follows:

Commencing at the Northwest corner of said Section 16, thence Southerly on the Westerly line of said Section 16, a distance of 337.98 feet to a point on the Southerly right-of-way line of State Highway No. 94, as recorded in Book 840 at Page 408 of the records of El Paso County, State of Colorado, thence angle left $70^{\circ}40'49''$ along the said Southerly right-of-way, a distance of 31.79 feet to the point of beginning; said point being on the Easterly right-of-way line of County Road No. 423, thence continue along said Southerly right-of-way line as hereinafter described; continue along the aforementioned course, a distance of 247.28 feet to a point of curve to the left, thence along said curve having a radius of 2,915.00 feet, a central angle of $14^{\circ}48'00''$, an arc length of 752.97 feet to a point of tangent, thence along said tangent a distance of 288.00 feet to a point of curve of a curve to the left, thence along said curve having a radius of 1,960.00 feet, a central angle of $25^{\circ}56'00''$, an arc length of 887.14 feet to a point of tangent, thence along said tangent, a distance of 548.22 feet to a point on the Easterly line of the West one-half ($W\frac{1}{2}$) of Section 16, thence departing from said Southerly right-of-way line, angle right $111^{\circ}27'29''$ along said Easterly line, a distance of 1,885.18 feet, thence angle right $90^{\circ}00'00''$ a distance of 2,634.11 feet to a point on the Easterly right-of-way line of the aforementioned County Road No. 423, that is 30.00 feet Easterly of, as measured at right angles to, the West line of said Section 16, thence angle right $89^{\circ}57'20''$ along said Easterly right-of-way line, parallel to said West line of Section 16, a distance of 1,813.37 feet, more or less, to the point of beginning.

Parcel B:

That part of the West one-half ($W\frac{1}{2}$) of Section 16, Township 14 South, Range 65 West of the Sixth Principal Meridian, County of El Paso, State of Colorado, lying South of Colorado State Highway No. 94, being more particularly described as follows: Commencing at the Northwest corner of said Section 16, thence Southerly on the Westerly line of said Section 16, a distance of 336.98 feet to a point on the Southerly right-of-way line of State Highway No. 94, as recorded in Book 840 at Page 408 of the records of El Paso County, State of Colorado, thence angle left $70^{\circ}40'49''$ along the said Southerly right-of-way, a distance of 31.79 feet to a point, said point being on the Easterly right-of-way line of County Road No. 423, thence angle right $70^{\circ}40'49''$ Southerly parallel with and 30 feet Easterly of, as measured at right angles to said Westerly line of Section 16 and on the Easterly R. O. W. line of said County Road No. 423, a distance of 1813.37 feet to the point of beginning of the tract to be described, thence continue Southerly on the last mentioned course, a distance of 1,654.09 feet to a point, thence angle left $89^{\circ}57'20''$ Easterly, a distance of 2,632.83 feet to a point, thence angle left $90^{\circ}00'00''$ Northerly a distance of 1,654.09 feet to a point, thence angle left $90^{\circ}00'00''$ Westerly, a distance of 2,634.11 feet, more or less, to the point of beginning, El Paso County, Colorado.

COPY

263
DEC 18 1972
94324
HARRIET BEALS
943247
WARRANTY DEED

COPY BOOK 2547 PAGE 364

THIS DEED, Made this 30th day of November, 1972, between THE COLORADO SPRINGS LAND HOLDING COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Colorado of the first part, and RAYMOND POWERS, of the County of El Paso and State of Colorado, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable considerations, to the said party of the first part in hand paid by the said party of the second part, the receipt where of is hereby confessed and acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs, and assigns forever, all of the following described lots or parcels of land, situate, lying and being in the County of El Paso and State of Colorado, to-wit:

PARCEL C

DEC 18 1972
FEE \$ 10.00
110 00

That part of the West one-half (W 1/2) of Section 16, and that part of the West one-half (W 1/2) of Section 21, all in Township 14, South, Range 65 West of the 6th P. M., County of El Paso, State of Colorado, described as follows: Commencing at the Northwest corner of said Section 16; thence South 00° 04' 29" East (a true bearing to which all other bearings are relative) along the West line of said Section 16, a distance of 337.98 feet to a point on the Southerly right of way line of State Highway No. 94, as recorded in Book 840 at Page 408 of the records of El Paso County; thence South 70° 45' 18" East along said Southerly right of way line, a distance of 31.79 feet to a point on the East right of way line of County Road No. 423; thence South 00° 04' 29" East parallel with and 30 feet Easterly of, said West line of Section 16 and on the East right of way line of said County Road No. 423, a distance of 3467.46 feet to the point of beginning of the tract to be described; thence North 89° 58' 11" East, a distance of 2632.39 feet to intersect the East line of said West one-half (W 1/2) of Section 16; thence South 00° 01' 49" East along the East line of said West one-half (W 1/2) of Section 16, a distance of 1465.56 feet to the South one-quarter (S 1/4) corner of said Section 16; thence South 00° 11' 25" East along the East line of the West one-half (W.1/2) of said Section 21, a distance of 192.43 feet; thence South 89° 58' 11" West, a distance of 2492.11 feet to intersect the Northeasterly right of way line of a 60 foot wide County Road as described in Book 752 at Page 365 under Reception No. 435331 of the records of El Paso County; thence North 34° 58' 00" West along the Northeasterly right of way line of said County Road, a distance of 232.41 feet to intersect the Section line common to said Section 16 and 21; thence continuing North 34° 58' 00" West, a distance of 11.52 feet to intersect a line 30 feet Easterly of and parallel with the West line of said Section 16; thence North 00° 04' 29" West on said parallel line, a distance of 1458.02 feet to the point of beginning,

and,

A portion of the North West one quarter (NW 1/4) of Section 21, Township 14 South, Range 65 West of the 6th P. M., in El Paso County, Colorado, described as follows: Commencing at the Northwest corner of said Section 21; thence South 00° 16' 33" East along the West line of said Section 21, a distance of 52.71 feet to intersect the Southwesterly right of way line of a 60 foot wide County Road as described in Book 752 at Page 365 under Reception No. 435331 of the records of El Paso County; thence South 34° 58' 00" East along said right of way line, a distance of 168.08 feet; thence South 89° 58' 11" West, a distance of 95.66 feet to intersect the West line of said Section 21; thence North 00° 16' 33" West along the West line of said Section 21, a distance of 137.79 feet to the point of beginning.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion or reversions, remainders, rents, issues

COPY

Do you have this
Certificate

COPI

CERTIFICATE:

THIS IS TO CERTIFY THAT at a Regular Meeting of the Board of Directors of Cherokee Water District, held on December 2, 1976, the following Resolution was, upon motion duly made and seconded, unanimously adopted, to-wit:

"WHEREAS the following land owner appeared before the Board of Directors of Cherokee Water District with a petition for inclusion of land hereinafter described, said land owner being:

RAYMOND POWERS
(Reference Number: C.W.D.-1976-02), and

"WHEREAS said petition was ordered to be published as required by law and was so published, and

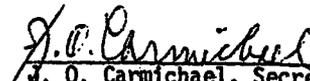
"WHEREAS no one appeared to protest the inclusion of said land, and

"WHEREAS the inclusion of said land will not be detrimental to the District,

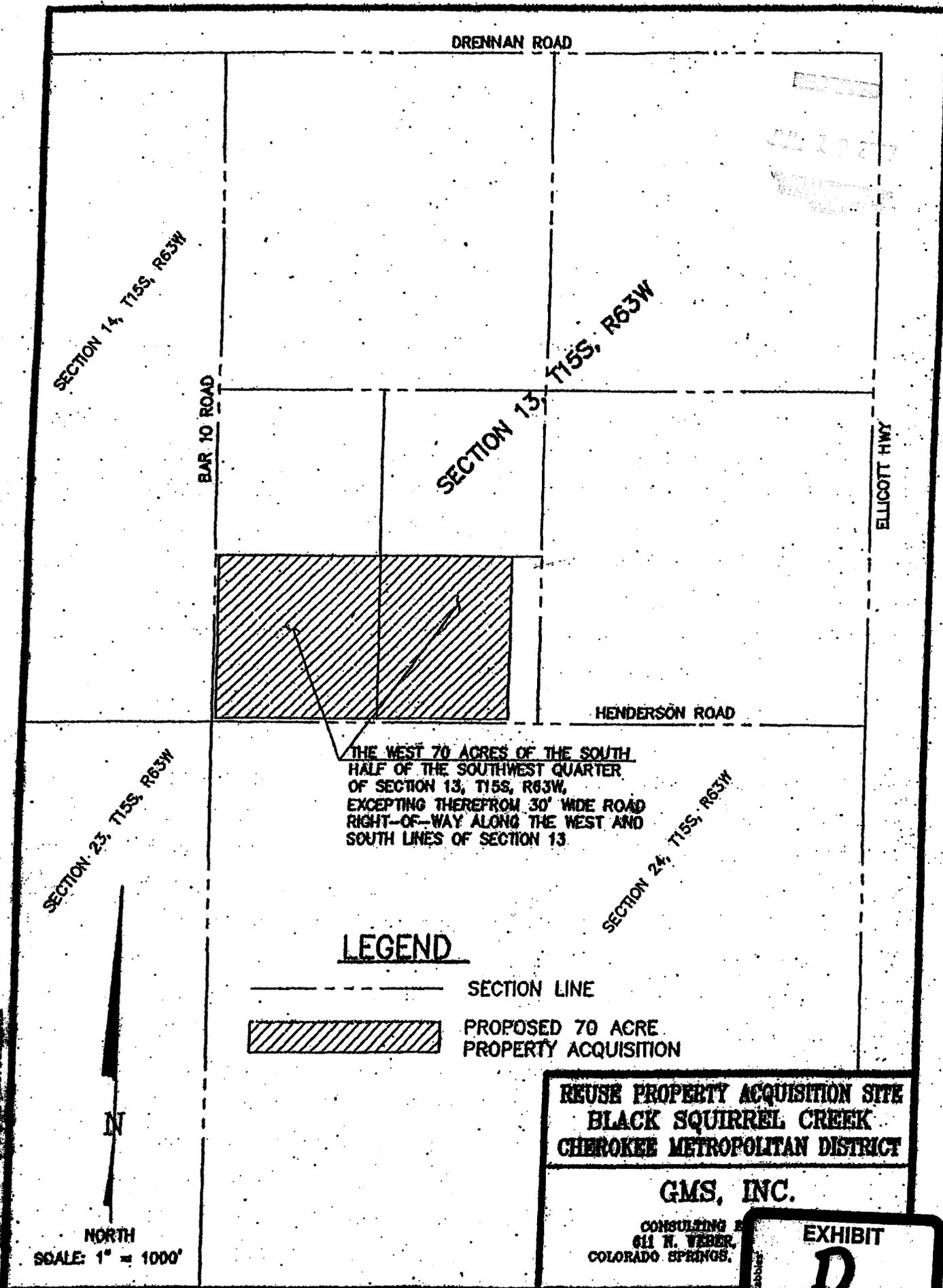
"NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of Cherokee Water District that the following described real estate be included in said District, to-wit:

(see attached copy of "ORDER FOR INCLUSION"
Ref: portions of Page 2 of 5 beginning with and including all of Parcel A, continuing on all of Page 3 of 5 with Parcel A, all of Parcel B, and Parcel C continuing on Page 4 of 5 and concluding on same Page 4 of 5)

and shall be subject to all rights and liabilities of the land included in said District."


J. O. Carmichael, Secretary

Dated: December 2, 1976



DRENNAN ROAD

SECTION 14, T15S, R63W

SECTION 13, T15S, R63W

SECTION 13, T15S, R63W

BAR 10 ROAD

ELLCOTT HWY

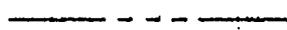
HENDERSON ROAD

SECTION 23, T15S, R63W

SECTION 24, T15S, R63W

THE WEST 70 ACRES OF THE SOUTH
 HALF OF THE SOUTHWEST QUARTER
 OF SECTION 13, T15S, R63W,
 EXCEPTING THEREFROM 30' WIDE ROAD
 RIGHT-OF-WAY ALONG THE WEST AND
 SOUTH LINES OF SECTION 13.

LEGEND



SECTION LINE



PROPOSED 70 ACRE
 PROPERTY ACQUISITION



NORTH
 SCALE: 1" = 1000'

**REUSE PROPERTY ACQUISITION SITE
 BLACK SQUIRREL CREEK
 CHEROKEE METROPOLITAN DISTRICT**

GMS, INC.

CONSULTING ENGINEER
 611 N. WEBER,
 COLORADO SPRINGS.

EXHIBIT

D

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JUL 10 2017

WATER SERVICE CONTRACT

This Contract is made and entered into effective this 10th day of November 1998 by and between Cherokee Metropolitan District ("Cherokee") and Falcon Properties and Investments, LLP a Colorado limited liability partnership ("Purchaser").

RECITALS

- A. Cherokee is a quasi-municipal corporation and political subdivision of the state of Colorado with its principal office in El Paso County, Colorado.
- B. Purchaser is the owner of certain real property known as Woodmen Hills which real property is in the Woodmen Hills Metropolitan District.
- C. Purchaser's property is subject to the El Paso County 300 year water policy.
- D. Cherokee develops its water supply from the alluvium of the Upper Black Squirrel Creek Designated Ground Water Basin, which water is considered to be "renewable water" pursuant to the El Paso County 300 year water policy and thus is exempt from the policy. Cherokee obtains its water from a series of municipal wells #1-13 and anticipates adding up to 5 additional wells.
- E. Purchaser desires to purchase water from Cherokee who desires to sell the same all on the terms and conditions as contained herein.

NOW THEREFORE, based on the mutual promises and considerations contained herein, the parties agree as follows:

- 1. CONTRACT FOR DELIVERY OF WATER. Cherokee hereby sells to Purchaser the right to receive 350 Acre Feet ("AF") of untreated water delivered on an annual basis.
- 2. PURCHASE PRICE. Purchaser shall pay to Cherokee the sum of \$3,000 per AF or a total of \$1,050,000.00 payable as follows:
 - a. the sum of \$50,000.00 at the time of the execution of this Contract;
 - b. the sum of \$1,000,000.00 at the time of closing.
- 3. DELIVERY. At the time of closing, Cherokee will agree to deliver 350 AF of water annually to Purchaser.
- 4. AVAILABILITY. Cherokee will make the water available to Purchaser at a mutually agreed upon location from the main water line located in the right of way for State Highway 24. It will be the responsibility of Purchaser, at Purchaser's sole cost and



expense, to design and build a delivery system at that point and to provide for all future treatment and/or chlorination. Any pumping costs or the costs of booster facilities shall be paid by Purchaser.

5. CONTINGENCIES. This Contract is contingent upon the following:

a. the successful resolution of the challenge to the Sweetwater rights of Cherokee by the Upper Black Squirrel Creek Designated Ground Water Management District; and,

b. the satisfaction by Purchaser that El Paso County would treat this 350 AF of water as "renewable" and not subject to the County 300 year water policy so that the Denver Basin water within Woodmen Hills Metropolitan District would be calculated on a 100 year supply.

6. CLOSING. Closing shall occur as soon as practicable after the resolution of the above contingencies.

7. OPTION. Purchaser shall have the option to purchase up to 650 AF of additional water to be delivered on an annual basis on the following terms and conditions:

a. this option is conditioned upon Cherokee developing sufficient water through the Sweetwater conditional decrees in order to satisfy the option which determination shall be in the sole discretion of Cherokee;

b. Purchaser has the right to acquire an additional 200 AF in the calendar year following the closing, 200 AF in the second calendar year following closing, and 250 AF in the third calendar year following closing;

c. the purchase price shall be \$3,000.00 per AF to be paid in cash (\$600,000.00 in year one, \$600,000.00 in year two, and \$750,000.00 in year three);

d. should Purchaser fail to exercise its option in either year one or year two, this shall not operate to prevent Purchaser from exercising in the following year or years; however, the amount not exercised shall be forever waived and shall not carry over to the subsequent year;

e. the option shall be exercised by Purchaser giving written notice of its intent to Cherokee and once given, closing shall occur within thirty days and closing must occur in the same year as the notice of exercise;

8. RIGHT OF FIRST REFUSAL. Other than a sale to the Woodmen Hills Metropolitan District and service to its current or future included residents and properties, the water subject to this Contract shall

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JUL 19 2007

not be sold to any other third parties without the same being first offered for sale to Cherokee on the same terms and conditions as that proposed by said third party. Upon receipt of a written offer of sale, the same shall be supplied to Cherokee and Cherokee shall have thirty (30) days to accept or reject said offer. If rejected, the sale to said third party may proceed. It is the intention of the parties that this right granted to Cherokee shall also be binding upon Woodmen Hills Metropolitan District.

9. PERPETUAL AGREEMENT. Insofar as this Contract affects water and water rights, it is the intention of the parties hereto that this Contract and obligation to deliver water be perpetual in nature according to the Colorado Supreme Court's decision in Cherokee Water District v. City of Colorado Springs.

10. MISCELLANEOUS.

a. This Contract shall be interpreted by and governed by the laws of the State of Colorado.

b. In the eventuality of any dispute over this Contract, the same shall be settled by binding and mandatory arbitration before one, mutually agreed to arbitrator. Should the parties be unable to agree on the arbitrator, the same shall be appointed by a District Court Judge, El Paso County, Colorado.

c. It is agreed and understood that the firm of Susemihl, McDermott, Miller & Cowan has represented Cherokee in this matter.

d. In the eventuality of any dispute over this Contract, the prevailing party shall be entitled to an award of all attorney fees and costs.

Entered the year and day first above written.

CHEROKEE METROPOLITAN DISTRICT

Paul A. Millstone
BY: ICS President

ATTEST:

Demi Capri

RECORDED

JUL 19 2007

WATERBURY COUNTY
REGISTERED DEEDS

PURCHASER:

FALCON PROPERTIES AND
INVESTMENTS, LLP

BY: Tracy E. DeFrey

ADDENDUM

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This Addendum is to that certain Water Service Contract between the parties dated November 10, 1998.

FEB 19 2007
WATER UTILITIES
DISTRICT

In addition to the contractual purchase price, the Purchaser agrees to pay the sum of \$170.00 per Acre Foot per year as its share of the pumping costs for each Acre Foot of water delivered to the Purchaser at the location of the Cherokee upper tank located on Marksheffel Road, El Paso County, Colorado. This cost shall increase annually commencing with 1998 based on the increase thereafter in the consumer price index (CPI) for Denver-Boulder.

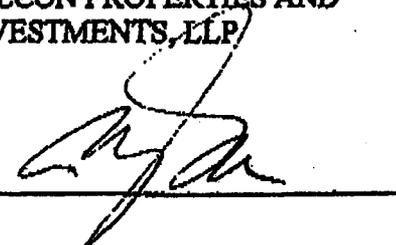
All other terms and conditions of the Water Service Contract shall remain in full force and effect.

Dated this 24 day of February 1999.

CHEROKEE METROPOLITAN DISTRICT

BY: 

PURCHASER:
FALCON PROPERTIES AND
INVESTMENTS, LLP

BY: 

SECOND ADDENDUM

This Second Addendum is to that certain Water Service Contract between the parties dated November 10, 1998.

RECORDED
JUL 19 2007
WATER SERVICE CONTRACT

The undersigned purchaser agrees to pay to Woodmen Hills Realty, Inc. a commission of ten percent (10%) of the cost of water purchased from Cherokee Metropolitan District which sum shall be paid at the time of initial closing and at the time of any subsequent closings that occur as a result of the options being exercised.

Dated this 31st day of March 1999.

CHEROKEE METROPOLITAN DISTRICT

BY: [Signature]
General Manager

**PURCHASER:
FALCON PROPERTIES AND
INVESTMENTS, LLP**

BY: [Signature]
Managing Member/Partner

THIRD ADDENDUM

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This Third Addendum is to that certain Water Service Contract between the parties dated November 10, 1998.

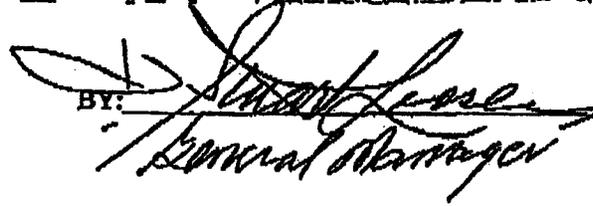
JUL 18 2007

WATER PROPERTIES
FALCON INVESTMENTS
LLP

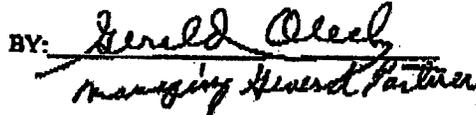
The parties agree and understand that Cherokee will retain all right, title, and interest in and to all water delivered pursuant to the Water Service Contract including the right of use and reuse to extinction with the right to use all return flows and wastewater return flows for augmentation and all other lawful purposes.

Dated this 31st day of March 1999.

CHEROKEE METROPOLITAN DISTRICT

BY: 
General Manager

**PURCHASER:
FALCON PROPERTIES AND
INVESTMENTS, LLP**

BY: 
Managing General Partner

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JUL 29 2007

FOURTH ADDENDUM

This Fourth Addendum is to that certain Water Service Contract between the parties dated November 10, 1998.

WATER PURCHASER
STATE OF GEORGIA

The parties acknowledge that Purchaser has satisfied its obligations in closing on the purchase of the first 350 Acre Feet of water.

Based upon the Cherokee drilling program to date, the parties agree to extend the option period so that Purchaser shall have the right (based upon availability of water) to acquire an additional 200 AF of water in 2001, 200 AF of water in 2002, and 200 AF of water in 2003.

Dated this 10 day of August 1999.

CHEROKEE METROPOLITAN DISTRICT

BY: _____

**PURCHASER:
FALCON PROPERTIES AND
INVESTMENTS, LLP**

BY: *[Signature]*

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JUL 18 2007

WATER RESOURCES
STATE ENGINEER
CALIF.

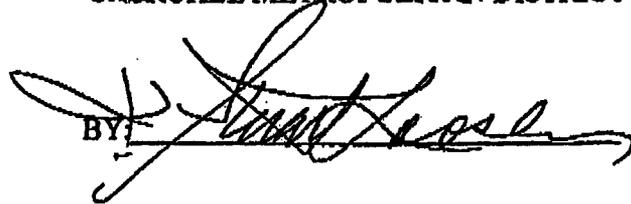
FIFTH ADDENDUM

This Fifth Addendum is to that certain Water Service Contract between the parties dated November 10, 1998.

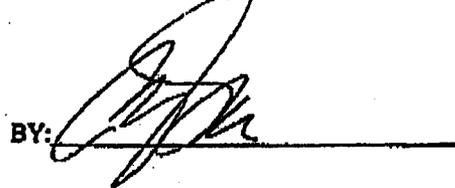
The parties agree that the water will be made available from the Cherokee tank located on Marksheffel Road instead of the main transmission line on Highway 24.

Dated this 24th day of May 2000.

CHEROKEE METROPOLITAN DISTRICT

BY: 

**PURCHASER:
FALCON PROPERTIES AND
INVESTMENTS, LLP**

BY: 

FAFB - 58203940

7/1/93

6557

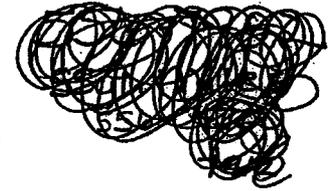
Marta - Supv

DACA45-83-C-0092

FAX # 580

6551

CONTACT -



DEPARTMENT OF THE ARMY
NEGOTIATED UTILITY SERVICE CONTRACT

PREMISES TO BE SERVED:

Consolidated Space Operations
Center (CSOC)
El Paso County, Colorado

CONTRACTOR:

Cherokee Water and Sanitation District
P. O. Box 9908
Colorado Springs, CO 80932

ISSUED BY:

District Engineer, Corps of Engineers
U.S. Army Engineer District, Omaha
6014 U.S. Post Office and Courthouse
215 North 17th Street
Omaha, NE 68102

PREMISES ARE:

Government-Owned

ESTIMATED ANNUAL SERVICE COST:

\$273,380.00*

ESTIMATED CONNECTION CHARGE:

\$315,436.00

29,749.00 NOT REFUNDABLE
(285,687.00)

BILLS FOR CONNECTION CHARGE SHALL BE RENDERED TO AND PAYMENT WILL BE MADE BY:

Finance & Accounting Branch
USAED Omaha
P.O. Box 547 DTS
Omaha, NE 68101

Funds	Available Reviewed
For L. W. Maschino F&AO	
311A V83	
P. J. COUGHLIN Accountant	

BILLS FOR SERVICE SHALL BE RENDERED TO:

1014th Contracting Squadron
IGCBA Bldg 1470
Peterson AFB, Colorado 80914

BILLS FOR SERVICE SHALL BE PAID BY:

Accounting and Finance
Building 1470
Peterson AFB, CO 80914

APPROPRIATION CHARGEABLE:

CONNECTION CHARGE: 5723300 277-6518 P321 525066 BAAN-AYA KA2865286582004

*APPROPRIATIONS CITED HEREON ARE FOR THE CONNECTION CHARGE ONLY AND ARE NOT AUTHORIZED FOR WATER SERVICE EXPENDITURES. APPROPRIATIONS CHARGEABLE FOR WATER SERVICE SHALL BE CITED BY PETERSON AFB, CO PRIOR TO UTILIZATION OF THE WATER SERVICE.

THIS CONTRACT IS NEGOTIATED PURSUANT TO 10 U.S.C. 2304(a)(10).

0193 TECH Sgt. Sangio in Finance & Airman Legg pay
Bills sent from FALCON



JUL 18 2007

THIS CONTRACT is entered into as of 1983 April 22 by and between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this contract, and Cherokee Water and Sanitation District, hereinafter called the Contractor.

I. SCOPE.

Subject to the terms and conditions hereinafter set forth, the Contractor shall furnish and the Government shall purchase and receive, the Water Service (hereinafter called service) requested by the Government from the Contractor at the premises to be served hereunder (hereinafter called the service location), in accordance with the General and Technical Provisions and the Water Service Specifications, attached hereto and made a part hereof.

II. TERM.

This contract shall continue in effect until terminated at the option of the Government by the giving of written notice of not less than one year in advance of the effective date of termination, subject to the conditions in paragraphs 6 and 7 of the General Provisions.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

Cherokee Water and Sanitation District
(Name of Contractor)

UNITED STATES OF AMERICA

By 
(Signature)

(Signature of Contracting Officer and Date)

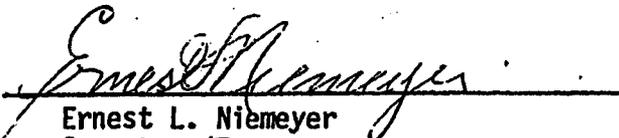
Ray H. Christensen

(Typed Name)

(Typed Name of Contracting Officer)

President of the Board of Directors
(Title)

ATTEST:


Ernest L. Niemeyer
Secretary/Treasurer

WATER SERVICE SPECIFICATIONS

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JUL 19 2007

WATER SERVICE
DIVISION
CITY OF DENVER

1. Specific Premises to be Served. Consolidated Space Operations Center and Satellite Communications Support Facility near Colorado Springs, Colorado.

2. Estimated Water Demand Quantities.

- a. Estimated maximum demand to be continuously available at point of connection: 500 GPM
- b. Estimated daily maximum demand: .48 MGD
- c. Estimated annual consumption: 130-175 MGY

(The Government is in no way obligated to use, nor is it restricted, to the above estimates.

3. Point of Delivery. The point of delivery shall be at N356,720; E2,275,250 which is the Northwest corner of Section 26, Range 64W, Township 14S.

4. Description of Water Service. The Contractor shall have 500 gallons per minute of water continuously available at the point of delivery at a pressure of not less than 10 psi.

5. Quality of Water. The Contractor shall supply water meeting the requirements stated in the US Environmental Protection Agency (USEPA) National Interim Primary Drinking Water Regulations and the USEPA National Secondary Drinking Water Regulations and such revisions thereof as may be made from time to time. Total hardness (As CaCo₃) shall be less than 200 milligrams per liter (mg/l). The minimum chlorine residual at the delivery point shall be p.5 mg/l free available chlorine or 2.0 mg/l combined chlorine.

6. Water is to be measured by one 4" meter installed at the connection point.

7. Size of Line. The Contractor shall install a 10 inch transmission line from point of origin to the Chlorination Station; sized down at the Chlorination Station to accommodate a four inch meter. The connection point will be approximately 5 feet beyond the distribution side of the Chlorination Station.

TECHNICAL AND GENERAL PROVISIONS FOR UTILITY SERVICE

RECEIVED

JUL 19 2007

WATER RESOURCES
DIVISION

I. TECHNICAL PROVISIONS

1. MEASUREMENT OF SERVICE.

(a) All service furnished by the Contractor shall be measured by metering equipment of standard manufacture, furnished, installed, maintained, calibrated, and read by the Contractor at his expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event that any meter fails to register or registers incorrectly, the quantity of service delivered through it during that period shall be determined and an equitable adjustment based thereon shall be made in the Government's bills (for this purpose any meter which registers not more than two (2) percent slow or fast shall be deemed correct). Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(b) The Contractor shall read all meters at periodic intervals of approximately thirty (30) days. All billings based on meter readings of less than twenty-seven (27) days or more than thirty-two (32) days shall be prorated accordingly.

2. METER TEST.

(a) The Contractor, at his expense, shall periodically inspect and test the meters installed by him, at intervals of no longer than one (1) year. At the written request of the Contracting Officer, the Contractor, in the presence of Government representatives, shall make additional tests of any or all meters. The cost of such additional tests shall be borne by the Government if the percentage of error is found to be not more than two (2) percent slow or fast. No meter shall be placed in service which on test registers in excess of one hundred (100) percent under normal operating conditions.

II. GENERAL PROVISIONS

1. PAYMENT

(a) The Contractor shall be paid by the designated Disbursing Officer for service furnished hereunder at the rates specified; provided, that the Government shall be liable for the minimum monthly charge specified in this contract commencing on the date the Government assumes Beneficial occupancy of the CSOC facility and continuing until this contract is terminated, except that the minimum monthly charge shall be equitably prorated for the billing period in which commencement and termination of this contract shall become effective.

(b) Payments hereunder shall be contingent upon the availability of appropriations therefor, and shall not be made in advance of the service rendered.

(c) All bids for service shall be paid without penalty or interest, and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor.

(d) Invoices for service rendered hereunder shall contain statements of the meter readings at the beginning of the billing period, meter constants, consumption during the billing period, and such other pertinent data as shall be required by the Government.

(e) The Contractor hereby declares that rates are not in excess of the lowest rates now available to any existing or prospective customer under like conditions of service, and agrees that during the life of this contract, the Government shall continue to be billed at the lowest available rate for similar conditions of service.

2. RATES AND CHARGES.

(a) For all service furnished under this contract to the service location, the Government shall pay the Contractor at the following rate:

Each 100 cubic feet - \$ 1.19
Minimum Monthly Charge - \$363.40

(b) For purposes of charges under this paragraph 2, any demands due to faulty operation of, or to excessive or fluctuating pressure on the Contractor's system shall not be included as part of the Government's demand.

3. CONNECTION CHARGE.

(a) In consideration of the furnishing and installation by the Contractor of the new facilities described in Exhibit "A" attached hereto and made a part hereof, the Government shall pay the Contractor a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum equivalent to the actual cost of construction including contingencies (monthly partial payments are authorized). For the purpose of obligating funds the total connection cost is estimated at \$315,436.00. The total estimated cost is also established as the ceiling which the Contractor cannot exceed without prior approval from the Contracting Officer.

(b) Ownership, Operation, and Maintenance of New Facilities. Notwithstanding the payment by the Government of a connection charge, the facilities to be supplied by the Contractor under this contract shall remain the property of the Contractor, and at all times during the life of this contract or any renewals thereof, shall be operated and maintained by the Contractor at his expense.

(c) Credits. *EFFECTIVE UPON THE DATE THE GOVT ASSUMES BENEFICIAL OCCUPANCY OF THE CSOC FACILITY,*

(1) The Contractor shall credit the Government on each monthly bill for service furnished under this contract to the delivery point(s) covered by this

JUL 19 2007

WHICHEVER COMES FIRST,

connection charge, 20 percent of the amount of the bill as rendered for a period of five (5) years or until the accumulated credits equal the amount of the connection charge, provided that the Contractor may at any time credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, prior to any termination of this contract but subsequent to completion of the facilities provided for in this clause, serves any customer other than the Government (whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor, unless otherwise agreed to by the parties in writing at that time, shall promptly accelerate the credits provided for under subparagraph (1) above, up to 100 percent of each of the Government's monthly bills until there is refunded that part of the unrefunded connection charge as the portion of the facilities utilized in service that customer bears to the complete facilities described in Exhibit "A".

(3) In the event the Contractor terminates this contract or defaults in performance prior to full credit of any connection charge paid by the Government or prior to the 5 year credit period the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of date of the termination or default.

(d) Termination Prior to Completion of Facilities. The Government reserves the right to terminate this contract at any time prior to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to those facilities.

(e) Termination Subsequent to Completion of Facilities. In the event the Government terminates this contract subsequent to completion of the facilities for which the Government is to pay a connection charge, but prior to the crediting in full by the Contractor of any connection charge in accordance with terms of this contract, the Contractor shall remove such facilities at his expense within 3 months after the effective date of the termination by the Government; provided that the Government shall have the option of purchasing the facilities or any part thereof at the agreed salvage value and the Contractor shall leave in place any facilities which the Government elects to purchase at the agreed salvage value.

4. CHANGE OF RATES.

At the request of either party to this contract with reasonable cause, the rates set forth herein shall be renegotiated and the new rates shall become effective as mutually agreed-provided that any rates so negotiated shall not be in excess of rates to any other customer of the Contractor under similar conditions of service.

No increase shall be requested in the contract rate unless the Contractor has placed into effect a general rate increase to all of his customers under similar conditions of service. If the Contractor has placed into effect a general rate decrease, a corresponding decrease in the contract rate shall be made.

5. CHANGE IN VOLUME OR CHARACTER OF SERVICE.

The Contracting Officer shall give reasonable notice to the Contractor respecting any material changes anticipated in the volume or characteristics of the utility service required at each location.

6. CONTINUITY OF SERVICE AND CONSUMPTION.

The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the Service location, but shall not be liable to the Government for damages, breach of contract, or otherwise, for failure, suspension, diminution, or other variations of service occasioned by any cause beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, or failure or breakdown of transmission or other facilities.

7. CONTRACTOR'S FACILITIES.

(a) The Contractor, at his expense, shall furnish, install, operate, and maintain all facilities required to furnish services hereunder to, and to measure the service at the point of delivery specified in the Utility Service Specifications. Title to all of these facilities shall remain with the Contractor, and he shall be responsible for all loss of, or damage to, those facilities except those arising out of the fault or negligence of the Government, its agents, or its employees. All taxes and other charges in connection therewith, together with all liability arising out of the negligence of the Contractor in the construction, operation, or maintenance of these facilities shall be assumed by the Contractor.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge but subject to the limitations specified in this contract, a revocable permit to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor with respect to these facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered to be necessary for the national security.

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DIVISION

(c) The facilities shall be removed and Government premises restored to their original condition, ordinary wear and tear excepted, by the Contractor at his expense within a reasonable time after the Government shall revoke the permit herein granted and, in any event, within a reasonable time after termination of this contract, provided that in the event of termination due to fault of the Contractor, these facilities may be retained in place at the option of the Government until service comparable to that provided for hereunder is obtained elsewhere.

8. CONFLICTS.

To the extent of any inconsistency between the provisions of this contract, and the provisions of any schedule, rider, or exhibit incorporated in this contract by reference or otherwise, the provisions of this contract shall control.

9. DEFINITIONS (1979 MAR). (The following clause is applicable if the procurement instrument identification number is prefixed by the letters "DACA"). As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Head of the Agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Head of the Agency or the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government and any other officer or civilian employee who is a properly designated Contracting Officer, and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontract" includes, but is not limited to, purchase orders, changes, and/or modifications thereto. (DAR 7-103.1).

10. ASSIGNMENT OF CLAIMS (1962 FEB).

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due, or to become due to the Contractor, from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act as amended, be subject to reduction or set-off.

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(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret", "Secret", or "Confidential" be furnished to any assignee of any claim arising under this contract, or to any other person not entitled to receive the same; however, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer (ASPR 7-103.8).

11. DISPUTES (1980 JUN).

(a) This contract is subject to the Contract Disputes Act of 1978 (P.L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c) (i) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract; however, a written demand by the Contractor seeking the payment of money in excess of \$50,000 is not a claim until certified in accordance with (d) below.

(ii) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act; however, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

(iii) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For Contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor certified claims in excess of \$50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

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(g) Interest on the amount found due on a Contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due if such date is later, until the date of payment.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. (DAR 7-103.12(a)).

(i) The above provisions shall not apply to disputes which are subject to the jurisdiction of a Federal, State, or other appropriate regulatory body. The above provisions shall also be subject to the requirements of the law with respect to the rendering of utility services and the collection of regulated rates. (1968 SEP).

12. OFFICIALS NOT TO BENEFIT (1949 JUL).

No member of, or delegate to, Congress or resident commissioner shall be admitted to any share or part of this contract nor to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. (ASPR 7-103.19).

13. COVENANT AGAINST CONTINGENT FEES (1958 JAN).

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee. (ASPR 7-103.20).

14. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1975 JUN).

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

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WATER RESOURCES
STATISTICS

(c) The Contractor agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$10,000.00 (ii) subcontracts or purchase orders for public utility service at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above for records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of. (ASPR 7-104.15).

15. GRATUITIES (1952 MAR).

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found,

after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall not be less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. (ASPR 7-104.16).

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16. BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT).

(a) This clause implements the Buy American Act (41 U.S.C. Section 101, a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end-products over foreign end-products, except for certain foreign end-products which meet the requirements for classification as qualifying country end-products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end-products.

(ii) "Qualifying country component" means (a) an item mined, produced, or manufactured in a participating country, or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (b) any item listed in a defense cooperation country agreement.

(iii) "End-products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end-products are the items to be delivered to the Government as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery.

(iv) "Domestic end-product" means (a) an unmanufactured end-product which has been mined or produced in the United States, or (b) an end-product which has been manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end-product and US duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end-product in which it is incorporated is manufactured in the United States in sufficient and reasonably available commercial quantities, and of a satisfactory quality, or (b) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-104.4).

(v) "Foreign end-product" means an end-product other than a domestic end-product.

(vi) "Qualifying country end-product" means (a) a participating country end-product; (b) an FMS/Offset arrangement country end-product when the applicable Determination and Findings have been made waiving the Buy American Act restrictions; or (c) a defense cooperation country agreement listed item.

(vii) "Participating country end-product" means (a) an unmanufactured end-product mined or produced in a participating country, or (b) an end-product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end-product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end-product, see the procedure at 6-1310.3(b)(1).

b. The Contractor agrees that there will be delivered under this contract only domestic end-products unless, in its offer, it specified delivery of foreign end-products in the clause entitled "Buy American Act and Balance of Payments Program

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Certificate." An offer certifying that a qualifying country end-product will be supplied requires the Contractor to supply a qualifying country end-product, or at the Contractor's option, a domestic end-product. An offer based on supplying a nonqualifying country end-product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

- (c) Offers will be evaluated in accordance with the policies and procedures of Section VI. (DAR 7-104.3).

17. CONVICT LABOR (1975 OCT).

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973. (DAR 7-104.17).

18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (1971 NOV).

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) is subject to the following provisions, and to all other applicable provisions and exceptions of such Act and the Regulations of the Secretary of Labor thereunder.

(a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day, or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for Unpaid Wages and Liquidated Damages. The Contracting Officer may withhold from the Government Prime Contractor from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. (DAR 7-103.16(a)).

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WATER RESOURCES
DIVISION

19. EQUAL OPPORTUNITY (1978 SEP).

(If, during any twelve (12) month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded Federal Contracts and/or subcontracts which have an aggregate value in excess of \$10,000, the Contractor shall comply with (1) through (7) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.) During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and any selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended

by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. (DAR 7-103.18(a)).

20. APPROVAL OF CONTRACT (1949 JUL).

This contract shall be subject to the written approval of the Army Power Procurement Officer, or his duly authorized representative, and shall not be binding until approved. (ASPR 7-105.2).

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JUL 19 2007

WATER RESOURCES
STATE DEPARTMENT
2007

Client: Cherokee Water & Sanitation District

Date: April 12, 1983

Project: CSOC Water Line

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ITEM NO.	DESCRIPTION	NO. OF UNITS	UNIT PRICE	TOTAL COST
1. VALVE VAULT ASSEMBLY				
	30" motorized valve, flanged	2 EA	8,532.00	17,064.00
	Temporary manual gear box	1 EA	1,356.00	1,356.00
	30" Flg x MJ adaptor	2 EA	980.00	1,960.00
	30"x30"x10" tee	1 EA	2,500.00	2,500.00
	30" coupling	1 EA	480.00	480.00
	10" Flg x MJ adaptor	1 EA	130.00	130.00
	10" motorized valve, MJ	1 EA	2,675.00	2,675.00
	Thrust block	1 EA	1,000.00	1,000.00
	Installation of fittings	1 LS	3,000.00	3,000.00
	Valve vault	1 LS	10,000.00	10,000.00
	Radio transmitter pole	1 EA	500.00	500.00
	Power drop for controls/valve motors	1 LS	2,000.00	2,000.00
	Cadweld-corrosion conductor	1 LS	250.00	250.00
	Electrical connections	1 LS	500.00	500.00
	SUBTOTAL VAULT			\$ 43,415.00
2. PIPELINE				
	10" C900 Dr-18 PVC (4:1 safety factor)	10,800 LF	6.00	64,800.00
	10" gate valves with risers	7 EA	800.00	5,600.00
	Air-vac valve and manhole	1 LS	1,500.00	1,500.00
	Installation	10,800 LF	4.00	43,200.00
	SUBTOTAL PIPELINE			\$115,100.00
3. CHLORINATION AND METER BUILDING				
	Flow proportioned chlorination system	1 LS	6,500.00	6,500.00
	4" compound meter with pulse generator	1 LS	4,000.00	4,000.00
	Misc. valves, fittings, gauges	1 LS	3,000.00	3,000.00
	Building and accessories	1 LS	12,000.00	12,000.00
	Power - electrical	1 LS	1,500.00	1,500.00
	Chlorination equipment installation	1 LS	5,000.00	5,000.00
	SUBTOTAL CHLORINATION AND METER BUILDING			\$ 32,000.00
4. CONTROL SYSTEM				
	Four (4) intrac boxes and materials (1)	1 LS	24,800.00	24,800.00
	Installation including tank sensors	1 LS	9,400.00	9,400.00
	SUBTOTAL CONTROL SYSTEM			\$ 34,200.00
	SUBTOTAL - CSOC WATER SYSTEM			\$224,715.00
	CONSTRUCTION CONTINGENCIES			\$ 22,472.00
	ENGINEERING DESIGN AND INSPECTION			\$ 24,000.00
	REPROGRAM CONTROL SYSTEM			\$ 5,000.00
	ADMINISTRATION			\$ 14,500.00
	READY TO SERVE CHARGE (BASED ON 4" METER SIZE)			\$ 24,749.00
	TOTAL CSOC WATER SYSTEM CONNECTION CHARGE			\$315,436.00

(1) One complete intrac box is being added to act as a spare for both the District and CSOC. CSOC'S share is \$1,900.00 (25%).

JUL 19 2007

BEFORE THE COLORADO GROUND WATER COMMISSION

CASE NO. 91-GW-01

WATER RESOURCES
STATE ENGINEER
COLORADONEGOTIATED SETTLEMENT AND ORDERIN THE MATTER OF AN APPLICATION BY DALE TIPTON TO CHANGE THE ACREAGE IRRIGATED AND THE USE OF THE WELL WITH PERMIT NOS. 27574-FP AND R-16253-FP

The undersigned parties hereby set forth their negotiated settlement of their dispute and agree as follows:

FINDINGS OF FACT

1. On September 24, 1984, the Colorado Ground Water Commission issued Final Permit No. R-16253-FP located in the SW1/4 of the NE1/4 of Section 36, Township 12 South, Range 63 West of the 6th Principal Meridian to irrigate 100 acres described as part of the NE1/4 of Section 36, Township 12 South, Range 63 West. Permit No. R-16253-FP allows a maximum annual volume of appropriation of 175 acre-feet and a maximum pumping rate of 449 gallons per minute.
2. On September 24, 1984, the Colorado Ground Water Commission issued Final Permit No. 27574-FP, located in the SW1/4 of the NE1/4 of Section 36, Township 12 South, Range 63 West of the 6th Principal Meridian to irrigate 100 acres described as part of the NE1/4 of Section 36, Township 12 South, Range 63 West. Permit No. 27574-FP allows a maximum annual volume of appropriation of 175 acre-feet and a maximum pumping rate of 449 gallons per minute. The acreage permitted under Permit No. 27574-FP is the same acreage as permitted under Permit No. R-16253-FP. Permit No. 27574-FP is in addition to the appropriation and pumping rate for the well with Permit No. R-16253-FP.
3. The well in question is located in the Upper Black Squirrel Creek Designated Ground Water Basin and in the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission has jurisdiction.
4. The application, received July 16, 1990, *in parts of the NE 1/4 and parts of the SE 1/4* seeks to change the acreage irrigated to reflect the historic irrigation of 100 acres in the ~~NE 1/4~~ of Section 36, Township 12 South, Range 63 West, and to change the use of the well from irrigation to irrigation, municipal, commercial and industrial uses and export outside the basin. *DN*
5. The number of acres proposed to be irrigated by this well does not exceed the number of acres permitted for irrigation by Final Permit Nos. R-16253-FP and 27574-FP.
6. The application was published in the Colorado Springs' Gazette Telegraph on January 17 and 24, 1991.
7. a. An objection to the application was received from the Upper Black Squirrel Creek Ground Water Management District on January 22, 1991.

- b. An objection to the application was received from Francis Guthrie on February 22, 1991. This objection has since been withdrawn as per letter received by the Commission on September 6, 1991.
- c. An objection to the application was received from Evin Henderson on February 25, 1991. This objection has since been withdrawn as per letter received by the Commission on September 6, 1991.
8. In support of this application, the applicant has submitted information on historic crops and acreages irrigated, well power usage, and well efficiency. The Commission has reviewed this and other information available in the office of the Division of Water Resources and determined that for the crops indicated the consumptive use averaged 272 acre-feet per year.
9. This historic amount of ground water will not result in increased depletion of the aquifer if pumping is limited as stated below:
- a. The proposed use of ground water for municipal, commercial, and industrial uses in the basin must be limited to an average of 321 acre-feet per year and the annual consumptive use of water from these uses shall not exceed an average of 272 acre-feet per year and any water withdrawn for these uses and claimed to be not consumptively used must be returned to the alluvial aquifer near the point of withdrawal to prevent injury to vested water rights.
- b. The proposed export of water outside the Basin must be limited to an average of 272 acre-feet in order to prevent injury to vested water rights. The Upper Black Squirrel Creek Ground Water Management District and the applicant have negotiated a limit of 225 acre-feet for export outside the Basin.
11. In accordance with 37-90-111(1)(g), C.R.S., the Colorado Ground Water Commission finds that the proposed changes of Permit Nos. R-16253-FP and 27574-FP will not cause material injury to the vested rights of other appropriators if the well is operated under conditions as stated in the Order below.

ORDER

Applicant Dale Tipton accepts the foregoing and waives and relinquishes any rights to further hearing or appeal and agrees to the following terms and conditions for the approval of the application to change the description of acreage irrigated and the use of the well with Permit Nos. R-16253-FP and 27574-FP.

1. For irrigation, the use of the well shall be limited to irrigation of 100 acres in the E1/2 of Section 36, Township 12 South, Range 63 West, 6th Principal Meridian.
2. The maximum annual volume of appropriation for irrigation from this well under these two permits is limited to a total of 350 acre-feet.
3. This well may continue to be used for irrigation purposes in accordance with the final permits issued for said well until such time as the well is first used for municipal, commercial and/or industrial use or export outside the Basin. At such time that the well is used for

RECEIVED

Case No. 91-GW-01

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WATER RESOURCES
STATE ENGINEER
COLORADO

municipal, commercial, and/or industrial use or export outside the Basin, there shall be no further irrigation by this well of the land authorized for irrigation and the annual withdrawal allowable shall be as set forth below:

- a. When the well is used for municipal, commercial and/or industrial uses inside the Basin, the annual withdrawal is limited to 272 acre-feet unless it is shown that water withdrawn for these uses and not consumptively used is returned to the alluvium near the point of withdrawal. In this case the annual consumptive use would be limited to 272 acre-feet and the Commission may allow an annual withdrawal up to a limit of 321 acre-feet. Written approval must be received from the Commission before the allowed annual withdrawal of 272 acre-feet can be exceeded.
 - b. When the well is used for any export outside the Basin, the annual withdrawal is limited to 225 acre-feet per year.
4. The maximum pumping rate of this well shall not exceed the total of the maximum pumping rates for each permit, i.e. 898 gallons per minute.
 5. A totalizing flow meter shall be installed on this well before the well is first used for municipal, commercial and/or industrial use or export outside the Basin. The owner shall submit to the District and the Commission the serial numbers, units of measure, and initial reading of the flow meter within sixty (60) days after the flow meter is installed. The owner shall also maintain the flow meter in good working order and collect annual diversion records which shall be submitted to the Commission and District in January of each year for the prior year's pumping. (Continued to page 4)

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JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

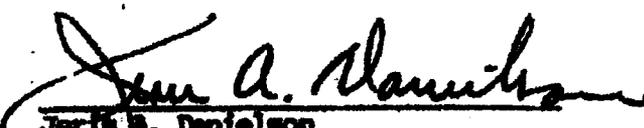
GROUND WATER COMMISSION
STATE OF COLORADO

FINAL PERMIT NO. R-16253-FP

UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN

1. Priority Number: 52
2. Priority Date: November 23, 1954
3. Use: Irrigation, Domestic and Mechanical
4. Name of Claimant: Green Acres Sod-N-Turf
5. Location of well: SW 1/4 of the NE 1/4 of Section 36, Township 12 South, Range 63 West of the 6th Principal Meridian
6. Maximum annual volume of the appropriation: 175 acre-feet
7. Maximum pumping rate: 449 gallons per minute
8. Maximum number of acres which may be irrigated: 100 acres
9. Description of acres irrigated: NE 1/4 of Section 36, Township 12 South, Range 63 West
10. Aquifer: Alluvium
11. Footnotes:
 - A) The priority list for the Upper Black Squirrel Creek Ground Water Basin states that the permit number for this priority and priority number 70 was R-16253. Priority number 70 was assigned Final Permit Number 27574-FP.
 - B) This well also has priority number 70 (27574-FP).
 - C) This well was decreed with priority A-43 in Case No. B-42135 in the District Court for the County of Pueblo.

Sept 24, 1984
Date


Jeris A. Danielson
Executive Director
Ground Water Commission

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WATER RESOURCES
STATE ENGINEER
COLO.

GROUND WATER COMMISSION
STATE OF COLORADO

FINAL PERMIT NO. 27574-FP

UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN

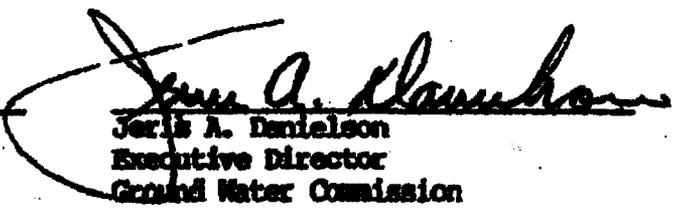
1. Priority Number: 70
2. Priority Date: December 1, 1954
3. Use: Irrigation, Domestic and Mechanical
4. Name of Claimant: Green Acres Sod-N-Turf
5. Location of well: SW 1/4 of the NE 1/4 of Section 36, Township 12 South, Range 63 West of the 6th Principal Meridian
6. Maximum annual volume of the appropriation: 175 acre-feet
7. Maximum pumping rate: 449 gallons per minute
8. Maximum number of acres which may be irrigated: 100 acres
9. Description of acres irrigated: NE 1/4 of Section 36, Township 12 South, Range 63 West
10. Aquifer: Alluvium
11. Footnotes:

A) The priority list for the Upper Black Squirrel Creek Ground Water Basin states that the permit number for this priority and priority number 52 was R-16253. Final Permit number R-16253-FP was assigned to priority number 52. This priority was assigned the Final Permit Number shown above.

B) This well also has priority number 52 (R-16253-FP).

C) This well was decreed with priority A-43 in Case No. B-42135 in the District Court for the County of Pueblo.

Sept 24, 1984
Date

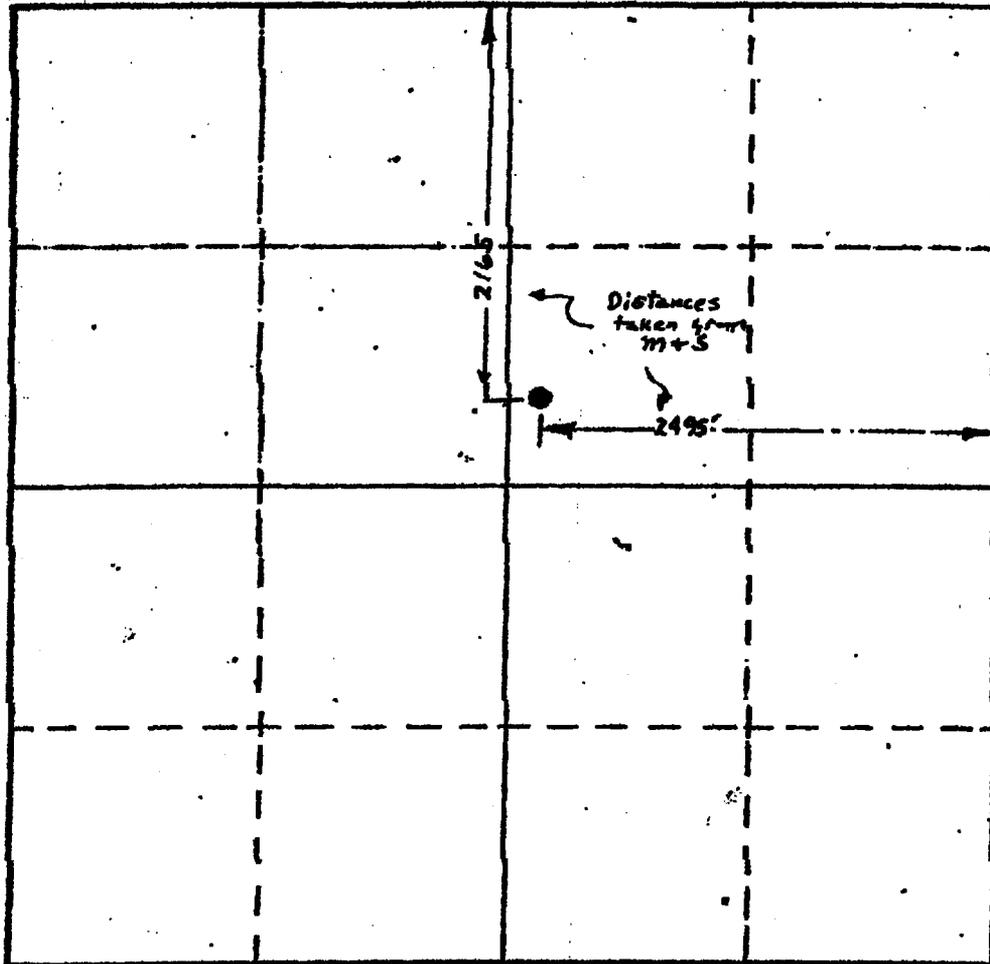

Jeris A. Danielson
Executive Director
Ground Water Commission

FIELD INSPECTION REPORT

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
6010

PERMIT NO. R-16253, LOCATION SW 1/4, NE 1/4, SEC. 36, T. 12 S, R. 63 W



SCALE: 1"=1000'

REMARKS

Please return to:

Felt, Monson & Culichia, LLC
319 North Weber
Colorado Springs, CO 80903

ROBERT C. "BOB" BALK
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Rec \$11.00 1 of 2

El Paso County, CO

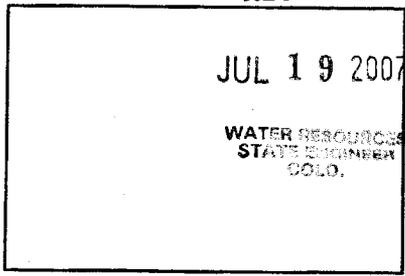


207020265

WATER RIGHTS SPECIAL WARRANTY DEED

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THIS DEED, dated February 6, 2007 between Case International Company, a Colorado corporation (Grantor), of the County of El Paso, State of Colorado, and Cherokee Water, LLC., a Colorado limited liability company, 6250 Palmer Park Boulevard, Colorado Springs, CO 80915 (Grantee):



WITNESS, that the Grantor, for and in consideration of the sum of ten DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell convey and confirm unto the Grantee, its heirs and assigns forever, the water and water rights in the County of El Paso and State of Colorado:

37.482 acre feet out of two-hundred and twenty five (225) acre feet of water established pursuant to the following: (1) Negotiated Settlement and Order from the Colorado Ground Water Commission dated December 4, 1991, Case No. 91-GW-01 (the "Order") attached hereto and incorporated by reference; (2) Well Permit No. 27574-FP; and (3) Well Permit No. 16253-FP (collectively the "Water Rights"); and the right to individually exercise any right(s) granted in the Order; and the unconditional right to use the existing well(s) located in the Southwest Quarter of the Northeast Quarter of Section 36, Township 12 South Range 63 West of the 6th p.m., El Paso County, Colorado to extract the water arising from the Water Rights.

TOGETHER, with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, its heirs and assigns forever. The Grantor, for itself, its heirs, personal representatives, successors and assigns do covenant and agree that they shall and will **WARRANT AND FOREVER DEFEND** the above bargained premises in the quiet and peaceable possession of the Grantee, its heirs and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

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JUL 19 2007

WATER RESOURCES
STATE ENGINEERS
GROUP

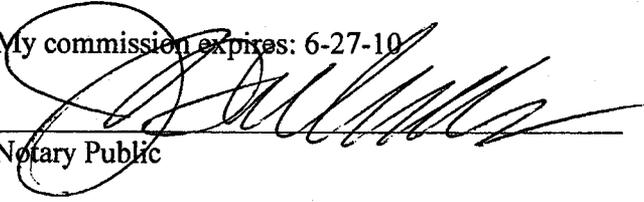
Case International Company, a Colorado corporation

By: 
Its Vice President

STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 6th day of February, 2007, by Lindsay J. Case, as Vice President of Case International Company, a Colorado corporation.
Witness my hand and official seal.

My commission expires: 6-27-10


Notary Public

Address: 319 North Weber Street
 Colorado Springs, CO 80903



Please return to:

Felt, Monson & Culichia, LLC
319 North Weber
Colorado Springs, CO 80903

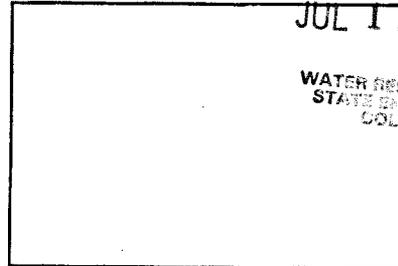
ROBERT C. "BOB" BALINK El Paso County, CO
01/31/2007 09:51:22 AM
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Rec \$11.00 1 of 2 207013819



WATER RIGHTS SPECIAL WARRANTY DEED

RECEIVED

THIS DEED, dated January 26, 2007 between Case International Company, a Colorado corporation (Grantor), of the County of El Paso, State of Colorado, and Cherokee Water, LLC., a Colorado limited liability company, 6250 Palmer Park Boulevard, Colorado Springs, CO 80915 (Grantee):



WITNESS, that the Grantor, for and in consideration of the sum of ten DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell convey and confirm unto the Grantee, its heirs and assigns forever, the water and water rights in the County of El Paso and State of Colorado:

111.195 acre feet out of two-hundred and twenty five (225) acre feet of water established pursuant to the following: (1) Negotiated Settlement and Order from the Colorado Ground Water Commission dated December 4, 1991, Case No. 91-GW-01 (the "Order") attached hereto and incorporated by reference; (2) Well Permit No. 27574-FP; and (3) Well Permit No. 16253-FP (collectively the "Water Rights"); and the right to individually exercise any right(s) granted in the Order; and the unconditional right to use the existing well(s) located in the Southwest Quarter of the Northeast Quarter of Section 36, Township 12 South Range 63 West of the 6th p.m., El Paso County, Colorado to extract the water arising from the Water Rights.

TOGETHER, with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, its heirs and assigns forever. The Grantor, for itself, its heirs, personal representatives, successors and assigns do covenant and agree that they shall and will **WARRANT AND FOREVER DEFEND** the above bargained premises in the quiet and peaceable possession of the Grantee, its heirs and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor.

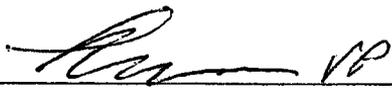
IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

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JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

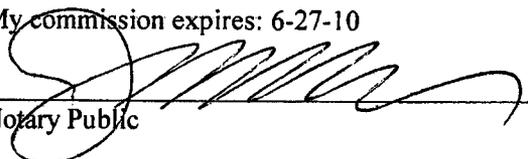
Case International Company, a Colorado corporation

By: 
Its Vice President

STATE OF COLORADO)
)ss.
COUNTY OF EI PASO)

The foregoing instrument was acknowledged before me this 26th day of January, 2007, by Lindsay J. Case, as Vice President of Case International Company, a Colorado corporation.
Witness my hand and official seal.

My commission expires: 6-27-10


Notary Public

Address: 319 North Weber Street
 Colorado Springs, CO 80903



Return to:

Felt, Monson & Culichia
319 N Weber St
Colorado Springs CO 80903

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12/15/2006 09:51:08 AM
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Rec \$11.00 1 of 2

El Paso County, CO

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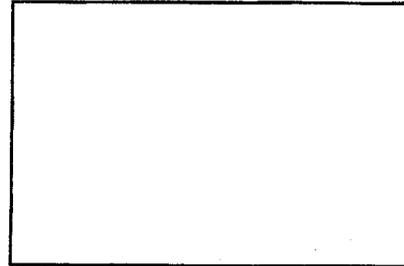
1 9 2007

206182331

WATER RESOURCES
STATE ENGINEER
COLORADO

WATER RIGHTS SPECIAL WARRANTY DEED

THIS DEED, dated December 4, 2006 between Case International Company, a Colorado corporation (Grantor), of the County of El Paso, State of Colorado, and Cherokee Water, LLC., a Colorado limited liability company, 6250 Palmer Park Boulevard, Colorado Springs, CO 80915 (Grantee):



WITNESS, that the Grantor, for and in consideration of the sum of ten DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell convey and confirm unto the Grantee, its heirs and assigns forever, the water and water rights in the County of El Paso and State of Colorado:

72.323 acre feet out of two-hundred and twenty five (225) acre feet of water established pursuant to the following: (1) Negotiated Settlement and Order from the Colorado Ground Water Commission dated December 4, 1991, Case No. 91-GW-01 (the "Order") attached hereto and incorporated by reference; (2) Well Permit No. 27574-FP; and (3) Well Permit No. 16253-FP (collectively the "Water Rights"); and the right to individually exercise any right(s) granted in the Order; and the unconditional right to use the existing well(s) located in the Southwest Quarter of the Northeast Quarter of Section 36, Township 12 South Range 63 West of the 6th p.m., El Paso County, Colorado to extract the water arising from the Water Rights.

TOGETHER, with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, its heirs and assigns forever. The Grantor, for itself, its heirs, personal representatives, successors and assigns do covenant and agree that they shall and will **WARRANT AND FOREVER DEFEND** the above bargained premises in the quiet and peaceable possession of the Grantee, its heirs and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

Handwritten signature
200

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JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

Case International Company, a Colorado corporation

By: [Signature]
Its Vice-President

STATE OF COLORADO)
)ss.
COUNTY OF EI PASO)

The foregoing instrument was acknowledged before me this 4th day of December, 2006, by LINDSAY CASE AS VICE President of Case International Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 6-27-10

[Signature]
Notary Public

319 N. Weber St Colo Spgs CO 80903
Address:



Return to:
Felt, Monson & Culichia
319 N. Weber St
Colorado Springs CO 80903

ROBERT C. "BOB" BALINK El Paso County, CO
12/15/2006 09:51:08 AM
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JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

**WATER RIGHTS PURCHASE AGREEMENT
BETWEEN
CHEROKEE METROPOLITAN DISTRICT
AND
CASE INTERNATIONAL COMPANY**

This agreement is effective December 4th, 2006, between **Cherokee Metropolitan District**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6250 Palmer Park Blvd., Colorado Springs, Colorado 80915 ("**Cherokee**"); and, the Case International Company, a Colorado corporation located at 102 East Pikes Peak Avenue, Suite 200, Colorado Springs, Colorado 80903 ("**Case**").

WHEREAS, Case is the owner of the real property described in the attached Exhibit A (the "Case Property") and is the owner of the water rights described in the attached Exhibit B (the "Water Rights").

WHEREAS, Cherokee is a metropolitan district that provides municipal water supplies to customers within and without Cherokee's service area.

WHEREAS, Case desires to sell 221 acre feet from the 225 acre feet adjudicated to the Water Rights to Cherokee and Cherokee desires to purchase said 221 acre feet from the Water Rights from Case, subject to and in accordance with the terms and conditions of this Agreement.

WHEREAS, Case is reserving 4.0 acre feet from the Water Rights to provide to Cherokee in the future to service a commercial development property owned by Case within Cherokee's present service area. The parties intend that Case will convey the 4.0 acre feet to Cherokee in the future as a condition precedent to Cherokee's providing water and sewer service to such development.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, Case and Cherokee agree as follows:

1. Case agrees to sell 221 acre feet from the Water Rights to Cherokee for the purchase price of \$2,873,000.00. Title to the Water Rights shall be conveyed to Cherokee's designee, Cherokee Water, LLC (or to any other designee of Cherokee) by Special Warranty Deed, free and clear of all liens and encumbrances, with such conveyance to be in consideration for and subject to the commitment of Cherokee as provided in Paragraph 5 below.

2. There shall be two closings as follows: The initial closing shall be on December 4, 2006 at which time Case shall convey 72.323 acre feet and receive payment of \$940,200.00. The second closing shall be on or before January 31, 2007, at which time Case shall convey the remaining 148.676 acre feet and receive the balance of the

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purchase price of \$1,932,800.00. Upon the conclusion of the second closing, Case will have conveyed to Cherokee 221 acre feet for the full \$2,873,000.00 purchase price.

WATER RESOURCES
STATE ENGINEER
COLO.

3. Conditions precedent. Cherokee's obligations hereunder to close on the purchase of the Water Rights shall be expressly conditional upon Cherokee's resolution to its satisfaction of the following conditions precedent:

- a. Title Opinion. On or before the 1st day of December, 2006, Case shall provide an attorney's title opinion in favor of Cherokee opining that Case has good and marketable title to the Water Rights and has the authority convey such Water Rights to Cherokee free and clear of all liens and encumbrances.
- b. Cherokee's due diligence regarding physical and legal supply. Cherokee shall have until Friday, December 1, 2006 at 5:00 p.m., to complete such due diligence as it deems appropriate regarding the Water Rights, including but not limited to, issues related to the physical supply of water, the availability of the Water Rights for export outside of the Upper Black Squirrel Creek Designated Ground Water Basin (UBS Basin), water quality and any related issues.

If Cherokee elects to proceed with the initial closing, the conditions set forth above shall be deemed satisfied.

4. Easements and covenants. Case is the owner of the parcel of real property described in Exhibit A (the "Case Property"). The well is located within the Case Property in the SW 1/4 of the NE 1/4 of Section 36, Township 12 South, Range 63 West, 6th P.M., El Paso County, Colorado. Subsequent to the initial closing, Case shall grant to Cherokee perpetual easements and covenants over the Case Property for the following purposes:

- a. an ingress and egress access easement to the well via the existing roads within the Case Property and along and including the current electric power line serving the pumping equipment at the well head;
- b. a 50' wide pipeline easement from the 100' x 100' well easement described in ¶4.c below running east to the Ellicott Highway right of way and parallel to the existing electric power line easement. Cherokee may also use the pipeline easement for access to the well;
- c. a 100' x 100' easement around the well(s) for the well structures, pumps, a pumphouse to be constructed by Cherokee, and related equipment and infrastructure. Cherokee may redrill and relocate the well, pumphouse and related structures within the easement;
- d. reasonable access to the Case Property to document the dry-up of the property, the cessation of use of the well by other than Cherokee, the cessation of

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WATER RESOURCES
STATE ENGINEER
COLO.

irrigation, and to carry out any terms and conditions that may be imposed upon Cherokee related to use of the Water Rights.

Surveyed metes and bounds legal descriptions of the easements shall be provided by Cherokee. The easements shall be in a form mutually agreed upon between the parties, shall include the terms set forth below, and shall be recorded in the real property records of El Paso County and shall be perpetual and shall run with the title of the property described in Exhibit A. The easements will also provide that the owner of the burdened property shall not place any structures or improvements on or within Cherokee's easements that would impede Cherokee's use and enjoyment of the easement for its intended purposes as set forth in Paragraph 4. a., including but not limited to a provision precluding paving any surface area within the easement located within 15' on each side of the centerline of the pipeline or the construction of any other improvement that would increase Cherokee's burden of operation and maintenance within the easement. In the event that any paving or other improvement is placed within any portion of the easement which becomes damaged or which Cherokee requires be removed as part of its operations within the easement area, then Cherokee shall not be responsible for any such damages or for the costs of repair and/or restoration. In addition to the permanent easements described above, Case will grant to Cherokee a temporary construction easement around the permanent well easement location and a 100' wide temporary construction easement lying 50' on each side of the centerline of the pipeline easement. Cherokee agrees that it shall restore and revegetate with native pasture grasses any areas disturbed by its construction activities outside of the easement areas. Cherokee anticipates that construction will commence and be complete in the spring of 2007. In addition to the above easements, and for no additional consideration, Case agrees that it shall grant to Cherokee an easement from the quarter section located immediately to the south of the Case Property to allow Cherokee to connect a pipeline from the Gregg Wells to the pipeline on the Case Property in the event that Cherokee acquires title to the Gregg Wells.

In addition to the easements as described above, Case will provide Cherokee post-closing with a covenant agreement containing the following terms:

- (A). Cessation of use of the water by Seller. From and after December 31, 2006, Case and its assignees and lessees, shall cease to use the Water Rights for irrigation purposes and they shall provide to Cherokee, if requested, adequate assurances that the use of the well has been discontinued and irrigation of the historically irrigated area of the property has ceased.
- (B). Re-irrigation. Case agrees for itself and its successors, that in the event it seeks to re-irrigate the historically irrigated lands within the Case Property, that it may do so only if such re-irrigation does not impair Cherokee's right and ability to divert the full amount of the Water Rights. In the event Case

JUL 19 2007

WATER RESOURCES
STATE ENGINEER

seeks to re-irrigate the Case Property, it shall only do so after notice to Cherokee of its intent to re-irrigate and only after full compliance of all requirements imposed by law, the State of Colorado and the Upper Black Squirrel Creek Ground Water Management District. Notwithstanding the foregoing, Cherokee acknowledges that the Water Rights being transferred by Case to Cherokee do not include any ground water rights under the Case Property within the Denver Basin Aquifers, including the Denver, Laramie-Fox Hills and Arapahoe aquifers, and water rights within those aquifers are being retained by Case and may be utilized by Case in the future, including in conjunction with the Case Property.

- (C). Non-impairment of the Water Rights. Case agrees for itself and its successors that it shall take no actions on the surface or subsurface of the Case Property that would impair or impede the quality and/or quantity of the Water Rights or Cherokee's ability to obtain the full use of and yield from the Water Rights. This restriction shall not preclude Case from utilizing properly designed and engineered septic systems in support of future residential development of the Case Property. Case or its successors shall provide Cherokee with reasonable advance notice of all land use and development applications for the Case Property that may include individual sewage disposal systems or other proposed land use that might impact the water quality of the alluvial aquifer underlying the Case Property, and nothing in this Agreement shall preclude Cherokee from participating in such proceedings and/or from taking such actions as it deems reasonably necessary to ensure compliance with the above provisions.

The above covenants shall be set forth in a single Easement/Covenant agreement containing both the covenants and the easements. The covenants and the easements shall be in a form mutually agreed upon between the parties and shall be perpetual and shall run with the title of the Case Property and be binding upon and inure to the benefit of Cherokee and the successors and assigns of the Case Property.

5. Water Service Commitment. In consideration of the transfer of the Water Rights by Case to Cherokee, and subject to the terms and conditions of this Agreement, and subject to the express conditions precedent stated in Paragraphs 6 and 7 below, Cherokee agrees to provide water service to any property designated by Case as "Benefitted Property" (as defined and subject to the restrictions set forth below) in accordance with the following terms and conditions. The water service commitment shall be for up to 300 acre feet of water annually to the Case Property. Cherokee agrees to permanently allocate 300 acre-feet of water from the water produced by Cherokee's Aquifer Recharge Project exclusively for the Case Property and to defend that allocation and designation in favor of the Case Property; the parties recognize, however, that the allocation is conditional at this point as the Aquifer Recharge Project is not complete. In consideration for this allocation, and when that water service is available for the Case

JUL 19 2007

WATER RESOURCES
STATE OF OKLAHOMA

Property and requested by Case, Case and/or its successor owner of the Case Property, shall be obligated to pay all customary water tap fees, water development charges, and all other usual and customary fees and charges of Cherokee at an "in-basin" rate as a condition to receiving water service. Cherokee's commitment to provide the 300 acre feet of water and comparable sanitary sewer service, to any property designated by Case (the "Benefitted Property") is subject to the satisfaction of the following conditions precedent as well as the conditions precedent stated in Paragraph 6 below:

- a. The Benefitted Property must be located entirely within the UBS Basin unless otherwise agreed to by Cherokee;
- b. Case, at Case's expense, shall construct any water and sewer lines required to connect to Cherokee's system; and
- c. Case, at Case's expenses, shall construct such sewer lines as are needed to connect the Benefitted Property to the new Wastewater Recovery Plant being constructed by Cherokee, as referenced in Paragraph 6 below.

Case must identify no later than 3 years after Cherokee's new Waste & Recovery plant comes on line any properties which are to be deemed potentially Benefitted Property for which the 300 acre feet of water can be used.

To the extent that Case constructs any sewer or water lines to make the connections required hereunder, the construction of those lines shall be in accordance with the reasonable rules and guidelines established by Cherokee. Case, at its expense, which obligation may be assigned to and assumed by a Metropolitan District, shall maintain those lines it constructs and be deemed the owner of such lines. Cherokee will cooperate with Case in the design and construction of those lines and allow Case to share any existing easements owned by Cherokee where such shared use is authorized by the easement terms and where feasible from an engineering standpoint. Case shall have the right to connect to and withdraw its water as provided for in this agreement from the Cherokee's main transmission line along Highway 94.

6. Conditions Precedent to Water Service Commitment. Cherokee's water service commitment to the Benefitted Property as set forth in Paragraph 5 above shall be expressly conditional upon the following actions being completed to Cherokee's reasonable satisfaction:
 - a. Cherokee's permanent water service commitment for the Benefitted Property is contingent upon Cherokee or any successors or assigns accomplishing the following within 5 years of the date of this Agreement: (1) it completes construction of its Wastewater Aquifer Recharge Project and such Project is operational; (2) it completes the adjudication of its Replacement Plan so that wastewater return flows are available for

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
2007

recharge of Cherokee's alluvial water supply; and (3) it obtains all permits necessary to operate the Project, including all federal, state and local permits (collectively referred to as the "Water Development Efforts"). Cherokee covenants and agrees to use its best efforts to successfully complete the Water Development Efforts as soon as possible. In the event that Cherokee does not complete all of the above contingencies within said 5-year deadline, then Cherokee's water service commitment to the Benefitted Property will terminate; provided, however, that this five year deadline will be extended for a reasonable period if Cherokee is in the process of completing the above conditions. Any termination of the service commitment to the Case Property as provided herein will have no recessionary effect upon Cherokee's purchase or ownership of the Water Rights, but such termination shall release the Case Property from any obligations to connect to Cherokee's systems, and any tap fees and development charges previously paid for by Case, if any, shall be promptly refunded by Cherokee to Case.

- b. Cherokee's entry into a Water Service Agreement with Case whereby the Benefitted Property will be provided water service by Cherokee (See ¶ 7 below for water and sewer service provisions).

Cherokee shall at all times keep Case advised of the progress in satisfying the conditions set forth above.

7. **Water and Sewer Service Agreement.** As a condition precedent to service, and once Case requests service from Cherokee, Case and/or the then owner of the Benefitted Property shall be required to enter into a Water and Sewer Service and Agreement with Cherokee, which shall require, among other things, the following:
 - a. **Mandatory connection,** at the sole cost of the Benefitted Property, to Cherokee's water and sewer service infrastructure and all infrastructure work required to provide water and/or sewer service to the Benefitted Property, including but not limited to facilities at the point of connection to Cherokee's system, and all mains, hydrants, storage tanks, lift stations, transmission lines, secondary water treatment, pretreatment of wastewater to make such wastewater suitable for Cherokee's acceptance, service lines and any other infrastructure deemed reasonably necessary by Cherokee (the "Infrastructure"). All Infrastructure shall be engineered, constructed, operated and maintained as determined by Cherokee to be reasonably necessary for Cherokee to provide the services.
 - b. All infrastructure work required shall conform to Cherokees rules and regulations and standards for connection.

JUL 19 2007

WATER RESOURCES
STATE ENGINEER

- c. Granting to Cherokee such easements as are reasonably requested and required by Cherokee at the point of connection or to Cherokee's system.
 - d. Payment of all standard and customary fees and charges, including but not limited to, water and sewer tap fees, and Water Development Charges.
 - e. Case shall create a single entity (i.e., a special district or property owners association, the "Responsible Entity") for the Benefitted Property, or the portion of the Benefitted Property serviced by Cherokee. Any service provided by Cherokee to the Benefitted Property shall be a bulk provider of water and/or sewer service to Case and not as a direct provider to residents and property owners within the Benefitted Property. Rather the direct service to individual customers and water users shall be by the Responsible Entity. Any water supplied by Cherokee to the Responsible Entity shall be potable at a single point of delivery by Cherokee and thereafter, the quantity and quality of the water shall be the sole responsibility and obligation of the Responsible Entity. Though Cherokee will provide a bulk supply of water for the Benefitted Property at the point of delivery, Cherokee shall be paid by the Responsible Entity each month, not at a bulk rate, but rather at Cherokee's in-District rate then in effect for each comparable user (i.e., a single family residence in the Benefitted Property will pay the same monthly water service charge for an in-District single family residence). The Responsible Entity shall perform all billing and metering services.
8. Representations and Warranties.
- A. Case warrants and represents: (1) that it owns the Water Rights described in Exhibit B and the real property described in Exhibit A; (2) the Water Rights and the real property are free and clear of all liens and encumbrances, leases, or any other rights or obligations to third parties which would impair Cherokee's ability to make full use of the Water Rights upon closing; (3) that it has full power and authority to convey title to the Water Rights to Cherokee and to convey and grant the required easements and covenants as specified herein.
 - B. Cherokee warrants and represents that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
9. Use of the remaining 4.0 acre feet. Case is retaining title to 4.0 acre feet of the Water Rights in anticipation of a future water and sanitary sewer service request from Cherokee for a planned commercial development within Claremont Business Park that is located within Cherokee's service area. At such time as Case requests water and sewer service from Cherokee, Case will convey the 4.0 acre feet to Cherokee in the manner requested by Cherokee. Cherokee will be under no obligation to supply more

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

than the 4.0 acre feet to Case's commercial property. At such time as Case obtains service and conveys the 4.0 acre feet to Cherokee, Cherokee's Water Development Charge will be waived with respect to water taps issued for the Case commercial parcel from the 4.0 acre feet of Case's retained water.

During the interim period between the date of this contract and Case's service request to Cherokee, Cherokee shall have the sole right to use the 4.0 acre feet without payment of additional compensation to Case. Case acknowledges that Cherokee owns the well and all well related structures necessary for pumping and delivery of the Water Rights, including the 4.0 acre feet retained by Case. Case shall have no right now or in the future to use Cherokee's well or related structures nor shall Case have the right to use the 4.0 acre feet except as part of a requested service by Cherokee. Cherokee's provision of water service shall be subject to the service request complying with all of Cherokee's rules, policies and regulations and the parties entering into a water and sewer service agreement for the commercial property and proposed development. Should Case in the future determine that water and wastewater service is not needed from Cherokee for Case's commercial property, then Case may give Cherokee notice of the decision not to request that service, in which event Case will convey the remaining 4.0 acre feet of the Water Right to Cherokee, and Cherokee, within three months from the date of the notice from Case, will pay Case for those 4.0 acre feet of water at the \$13,000 per acre foot rate paid to Case for the 221 acre feet.

10. Further Assurances. The parties agree to execute such other and further documents as may be reasonably requested to further implement the intent of this Agreement.

11. Notices. All statements, notices or communications which either party may desire or be required to give to the other shall be in writing and will be deemed to have been given if delivered in one of the following means:

- a. By personal delivery to the parties;
- b. By any means of telecommunications, including telecopier; or
- c. By registered or certified mail, mailed to a party at the address set forth below.

Notice shall be deemed to have been received, if personally delivered, on the date of delivery; if telecommunicated, when answer back or other confirmation of receipt is received; and if sent by registered or certified mail, three days from the date of mailing. Delivery by Federal Express or other recognized courier shall be deemed personal delivery. Any party may change its address for notice purposes by notice to the other parties. The initial addresses of the parties for notice purposes are as follows:

If to Case: Case International Company
 102 East Pikes Peak Avenue, Suite 200
 Colorado Springs, CO 80903

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COLO.

With a copy to: Mulliken Weiner Karsh Berg & Jolivet, P.C.
102 South Tejon, Suite 900
Colorado Springs, CO 80903
Attn: Steven K. Mulliken, Esq.

If to Cherokee: Cherokee Metropolitan District
6250 Palmer Park Boulevard
Colorado Springs, CO 80915
Attn: Manager

With a copy to: Felt, Monson & Culichia, LLC
319 N. Weber Street
Colorado Springs, CO 80903
Attn: James Felt, Esq. and James W. Culichia, Esq.

12. Recovery of Costs. In the event of a dispute regarding this Agreement, the prevailing party in such dispute shall be entitled to recover its costs and reasonable legal fees incurred to enforce this Agreement.

Wherefore, the parties have executed this Agreement to be effective as of the date set forth above.

CASE INTERNATIONAL COMPANY

CHEROKEE METROPOLITAN DISTRICT

By: [Signature]
Lindsay J. Case, President
Vice-President

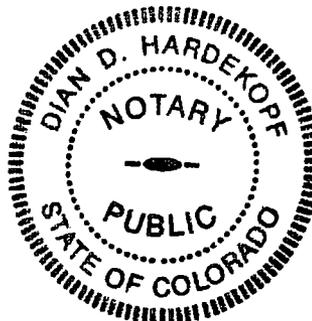
By: [Signature]
Theodore R. Schubert, President

ACKNOWLEDGMENT

This Agreement was executed before me this 4th day of December, 2006 by Theodore R. Schubert, President of the Cherokee Metropolitan District.

[Signature]
Notary Public
6250 Palmer Park Blvd
Address CS, CO 80915

2-26-07
My Commission Expires



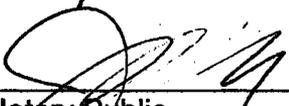
ACKNOWLEDGMENT

RECEIVED

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

This Agreement was executed before me this 4th day of December, 2006 by
Lindsay Case Vice President of the Case International Company.



Notary Public
319 N. Weber Colo Spgs Co 80903
Address

6-27-16

My Commission Expires



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File No. CWCS000:

Exhibit "A"

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

A tract of land located in a portion of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado, described as follows:

Commencing at the Northeast corner of said Section 36; thence South $00^{\circ}50'05''$ West, coincident with the East line of said Section 36, a distance of 1,734.63 feet to the Point of Beginning of a tract of land described herein; thence continue Southerly along side line, a distance of 2,183.82 feet; thence North $89^{\circ}30'45''$ West coincident with the South line of the Northeast 1/4 of the Southeast 1/4 of said Section 36, a distance of 1,307.44 feet; thence North $00^{\circ}50'44''$ East coincident with the West line of said Northeast 1/4 of the Southeast 1/4, a distance of 1,051.76 feet; thence North $89^{\circ}15'25''$ West, a distance of 1,307.20 feet; thence North $00^{\circ}51'25''$ East coincident with the North-South centerline of said Section 36, a distance of 917.98 feet; thence North $89^{\circ}02'32''$ West, a distance of 77.31 feet; thence North $00^{\circ}59'53''$ East, a distance of 214.72 feet; thence South $89^{\circ}21'40''$ East, a distance of 2,691.21 feet to the Point of Beginning.

A tract of land located in a portion of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado, described as follows:

Beginning at the Northeast corner of said Section 36, said point being the Point of Beginning of a tract of land described herein; thence South $00^{\circ}50'05''$ West coincident with the East line of said Section 36, a distance of 1,734.63 feet; thence North $89^{\circ}21'40''$ West, a distance of 2,691.21 feet; thence North $00^{\circ}59'53''$ East, a distance of 1,761.00 feet; thence South $88^{\circ}47'59''$ East coincident with the North line of said Section 36, a distance of 2,689.82 feet to the Point of Beginning.

Except a tract of land located in a portion of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado, described as follows:

Beginning at the Northeast Corner of said Section 36; said point being the Point of Beginning of a tract of land described herein; thence $S00^{\circ}50'05''W$ coincident with the East line of said Section 36, a distance of 800.04 feet; thence $S84^{\circ}19'37''W$, a distance of 300.60 feet; thence $N15^{\circ}24'42''W$, a distance of 872.41 feet; thence $S88^{\circ}47'59''E$ coincident with the North line of said Section 36, a distance of 542.75 feet to the Point of Beginning.

Parcel B:

Well Easement:

Commencing at center 1/4 corner of Section 36, Township 12 South, Range 63 West of the 6th P.M., El Paso County, State of Colorado; thence North $00^{\circ}51'25''$ East coincident with the North-South centerline of said Section 36, a distance of 350.36 feet; thence East, a distance of 20.74 feet to the Point of Beginning; thence North, a distance of 200.00 feet; thence East, a distance of 200.00 feet; thence South coincident with the South line of Green Acres Sod-n-Turf Phase Two, a distance of 36.77 feet; thence North $66^{\circ}47'50''$ East, a distance of 342.19 feet; thence North $23^{\circ}31'45''$ West, a distance of 240.14 feet; thence South $89^{\circ}21'40''$ East, a distance of 32.88 feet; thence South $23^{\circ}31'45''$ East, a distance of 256.85 feet; thence South $66^{\circ}47'50''$ West, a distance of 385.22 feet; thence South, a distance of 130.59 feet; thence West, a distance of 200.00 feet to the Point of Beginning.

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Exhibit B - Legal Description of Water Rights

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COLORADO

All of Case's right, title and interest in two-hundred twenty one (221) acre feet of water established pursuant to the following: (1) Negotiated Settlement and Order from the Colorado Ground Water Commission dated December 4, 1991, Case No. 91-GW-01 (the "Order") Attached hereto and incorporated hereto; and (2) Well permit no. 27574-FP; and (3) Well permit no. 16253-FP (collectively the "Water Rights"); and the right to individually exercise any right(s) granted in the Order; and the unconditional right to use the existing well located in the Southwest Quarter of the Northeast Quarter of Section 36, Township 12 South Range West of the 6th p.m. to extract the water arising from the Water Rights.

*Trout, Raley, Montañño,
Witwer & Freeman, P.C.*

Attorneys at Law
1120 Lincoln Street • Suite 1600
Denver, Colorado 80203-2141
(303) 861-1963 • Fax (303) 832-4465
www.troutlaw.com
pnichols@troutlaw.com
Direct: 303-339-5825

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AUG 24 2007

WATER RESOURCES
STATE ENGINEER
REG.

August 24, 2007

Ground Water Commission
Division of Water Resources
Department of Natural Resources
1313 Sherman Street
Denver, Colorado 80203

Re: Water Well Permit Application to Replace Existing Well 27574-FP (Tipton)

Dear Commission and staff:

These comments are submitted on behalf of the Upper Black Squirrel Creek Ground Water Management District ("UBSCGWMD").

Cherokee Metropolitan District ("Cherokee") has requested approval to replace an existing well, permit # 27574-FP. The UBSCGWMD believes the Commission must deny the permit, as explained below.

Under Commission rules, "[a] replacement well shall be constructed within the following distance of the originally permitted well site except where a Management District's Rules and Regulations specify a lesser distance, in which case, the lesser distance shall apply. . ." Ground Water Commission, Rules and Regulations for the Management and Control of Designated Ground Water, 2 CCR 410-1, at Rule 6.2 (Feb. 1, 2005) (emphasis added).

Under UBSCGWMD rules, "[a] replacement well or substitute well which is located no more than 50 feet from the original well, will be recommended by the Board for Commission approval . . . Applications for any other proposed replacement well will be recommended for approval by the Commission only upon a finding by the Board that the replacement well will not materially injure the rights of other appropriators within the Basin." UBSCGWMD, Rules and Regulations and Statement of Policy, at Rule 4 (Dec. 5, 2006) (emphasis added).

Cherokee's proposed location for the replacement well is approximately 1,600 feet from the original well location, Permit No. 16253 (Dec. 29, 1961), as shown on the enclosed plot prepared by John Himmelreich, Professional Geologist. The Board of the UBSCWMD has not found that "the replacement well will not materially injure the rights of other appropriators within the Basin." Thus, the Commission must deny the replacement well permit application pursuant to its own rules incorporating the rules of the UBSCGWMD, cited above.

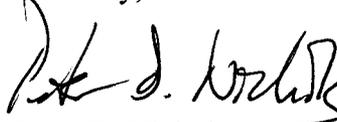
AUG 24 2007

In addition, UBSCGWMD notes that while the Commission's rules measure the distance of the proposed replacement well from the "originally permitted well site," the UBSCGWMD measures the distance from the "original well." *See* Commission Rule 6.2, UBSCGWMD Rule 4. Commission rules define the "originally permitted well site" as "the site specified on the original well permit or a relocated site as approved by the Commission." *See* Commission Rule 6.4. UBSCGWMD rules, however, apply with regard to the "original well" location and not to a "relocated site." *See* UBSCGWMD, Rule 4. Thus, despite the fact that the application is to replace a replacement well previously approved by the Commission, the application for this replacement well is does not meet the requirements of the Commission's rules, which incorporate the more restrictive requirements of the UBSCGWMD's rules.

Furthermore, Cherokee has not requested a change of rights to designated ground water pursuant to Commission Rule 7, which is the procedure for a proposed replacement well located more than the specified distances from the original well. *See* Commission, Rule 7.1.2 A. Moreover, Cherokee's application cannot be considered a request for a change of rights to designated ground water since notice of the change has not been published, as required by C.R.S. § 37-90-111(g) (2006) ["publication shall not be required for replacement wells that are relocated no further than the maximum distance allowed by district rules and regulations without prior board approval."].

For the above reasons, UBSCGWMD believes the Commission must deny the subject well permit application.

Sincerely,



Peter D. Nichols

for

Trout, Raley, Montañó,
Witwer & Freeman, P.C.

Cc: UBSCGWMD
John Himmelreich
Sandy Johnson, DWR

Encl: Field Inspection Report (plot of well location).

FELT, MONSON & CULICHIA, LLC

Attorneys at Law

319 North Weber Street, Colorado Springs, CO 80903

James G. Felt
Steven T. Monson
James W. Culichia
Christopher D. Cummins
David M. Shohet

Email: jwc@fmcwater.com
Telephone: 719-471-1212
Fax: 719-471-1234

August 30, 2007

Keith Vander Horst, P.E.
Designated Basins Team Leader
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203

Re: Cherokee Metropolitan District
Replacement Well Permit for Tipton Well - Permits Nos. 16253-FP and
27574-FP

Dear Keith:

Following up on our phone conversation yesterday, I am responding to questions that have been raised regarding Cherokee's application for the Tipton Well replacement permit.

During our discussion, you advised me that the June 30, 1970 relocation well permit application stated that the well location was to be 2200 feet from the north section line and 2200 feet from the east section line in the SW 1/4 of the NE 1/4 of Section 36. The well was then constructed 2165 feet from the north section line and 2495 from the east section line in the SW 1/4 of the NE 1/4 of Section 36. As you advised, because the well was constructed within 300' of the applied for location, the well was properly constructed in its present location. The well has existed at that location since 1971.

Cherokee's replacement well location is less than 50' south and east of the 1971 constructed location. The question you raised during our phone conversation was whether the replacement permit needed to locate the well to be within 50' of the 2200' north/2200' east point, or 50' from the 2165' north/2495' east point where the well was constructed in 1971.

pursuant to the relocation permit approved the State.¹

Commission Rule 6.4 states that "The originally permitted well site shall be the site as specified on the original well permit or a relocated site as approved by the Commission pursuant to Section 37-90-111(1)(g), C.R.S. Where sectional coordinate distances are not available from any document in permit file, the original site may be established by field location of the original well."

Cherokee believes that the only reasonable interpretation of the Commission Rules is that the replacement well location must be measured from the 1971 as constructed location which was approved by the State. This is so for at least the following reasons:

1. The as-constructed 2165' north/2495' east location of the well is within 300' of the applied for location, thus this is the legal location of the well and it is the "originally permitted well site" in accordance with Rule 6.4.
2. The replacement location is within 50' of the actual location of the well and is within 300' of the applied for 1971 relocation site.
3. The actual location of the well is legal at its present location so the actual location is the same as the "permitted location". Thus, the 50' measurement to the new, replacement location must start at the actual location of the well, not the 2200' east and 2200' north location.
4. Commission Rule 6.4 incorporates §37-90-111(1)(g), which is the statute for changes of use, place of use and relocation of wells within a designated basin. In 1991, in Case No. 91-GW-01, the Commission approved the change of the Tipton Well from irrigation to municipal uses and authorized 225 acre feet per year of export outside the UBS Basin. The UBS District was a party to those Commission proceedings. The actual, physical well structure which was the subject of that §111(1)(g) historic use quantification and change proceeding was the well located at the 2165' north/2495' east point, not the 2200' east/ 2200' north location. Thus, the determination that the proper location of the Tipton Well at the 2165' north/2495' east location is *res judicata* and is binding on the State and the UBS District. It makes no sense to read the rule in a manner which would require the replacement well to

¹ The replacement well location is located generally south and east of the existing well thus it is almost exactly at the point 2200' from the north section line. Since the new location also moved slightly east, it is within the 300' zone approved in the 1971 relocation permit.

be located 50' from a location where no well has ever existed, rather than 50' from the actual location that was adjudicated for export by the Commission and consented to by the UBS District.

5. The UBS District well permit records for the Tipton Well show the location to be the 2165' north/2495' east location, not the 2200' north/2200' east location. While the UBS records do not constitute the actual well permit, it shows that the UBS District is attempting revisionist history when it comes to the correct location of the Tipton Well.

Cherokee believes that its siting of its replacement well within 50' of the permitted actual location of the Tipton well, which is still within 300' of the originally applied for location, is proper and the well permit should be promptly approved.

Please advise if you have any additional concerns or questions.

Very Truly Yours,

James W. Culichia

James W. Culichia

cc: Cherokee Metropolitan District
Scott G. Mefford

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589

<http://www.water.state.co.us>



September 4, 2007

Bill Ritter, Jr.
Governor

Harris D. Sherman
Executive Director

(Vacant)
State Engineer

Mr. Kip Peterson
Cherokee Metropolitan District
6250 Palmer Park Blvd.
Colorado Springs, CO 80915

RE: Replacement of Well Permit nos. 16253-RFP & 27574-FP ("Tipton Well")
Receipt no. 3619107

Dear Mr. Peterson:

The above referenced well permit application is being returned for additional information or changes required for our evaluation and approval. Please provide the original application when resubmitting.

The distances from section lines given in block 4 of the application, 2,165 feet from the north section line and 2,495 feet from the east section line, are the same as given on a number of documents in the permit file for the relocation well constructed in February of 1971 under permit no. RF-874, indicating that is the claimed actual location of the existing well. However, block 4 of the application also states the proposed replacement well will be located 45 feet southeast of the old (meaning currently existing) well. This information is contradictory. The distances from section lines given in block 4 should be the actual location of where the new well will be constructed. Please correct the application so that block 4 gives the actual exact location of the proposed replacement well.

Be advised that the permitted location of the well is 2,200 feet from the north section line and 2,200 feet from the east section line, which is the location that was applied for, evaluated and approved when relocation permit no. RF874 was issued on June 3, 1970 (a copy of permit no. RF874 is attached). Construction of that well 2,165 feet from the north section line and 2,495 feet from the east section line would place it 297 feet from the permitted location, which was acceptable at that time pursuant to the October 27, 1969 policy of the Ground Water Commission, in effect at the time, that allowed a 300 foot deviation from the permitted location.

Pursuant to Commission Rule 6.4, the originally permitted well site is the site as specified on the original well permit or a relocated site as approved by the Commission pursuant to Section 37-90-111(1)(g) C.R.S. Because 37-90-111(1)(g) did not exist in 1970 and the statute controlling relocation (replacement) of wells at the time, 148-18-10(d), was met, the 1970 permitted location of the well meets the conditions of Rule 6.4 of being the current originally permitted well site.

Cherokee now has a decree in case no. 98CW80 that contains a restriction, in paragraph 10.e, that prohibits Cherokee from seeking in any proceeding to change the point of diversion of all wells used or owned by Cherokee in the Upper Black Squirrel Creek Designated

Basin to any other location, except that Cherokee may seek approval for a replacement well, pursuant to the Rules of the Colorado Ground Water Commission, no more than 50 feet from the original well. The location of the original well, as referred to in paragraph 10.e, is the Commission's originally permitted well site, as described above.

Jim Culichia's letter of August 30, 2007 claims that the order of the Commission in case no. 91-GW-01 is *res judicata* and binding in establishing the location of the well as the current actual location. That order dealt with changing the use of the well, and is not relevant in establishing the permitted location of the well.

As required by C.R.S. 37-90-111(3) and Commission Rule 9, we provided a copy of the application to the Upper Black Squirrel Creek MD, and on August 24, 2007 Peter D. Nichols provided written recommendations on its behalf (copy attached). Upper Black Squirrel Creek MD recommends denial of the application, asserting the Commission is obligated to view the originally permitted well site as referred to in Commission Rules 6.2 and 6.4 as the location of the original 1954 well, because that is how it interprets reference to "the original well" in its Rule 4, thus requiring any replacement well be located within 50 feet of the location of that original 1954 well. As described above, Commission Staff believes the current originally permitted well site under its rules is the site identified on permit RF874, not the site of the 1954 well, and does not anticipate following the Upper Black Squirrel Creek MD's recommendation.

Scott Mefford's July 13, 2007 cover letter to the application states that the proposed replacement well is being constructed under monitoring well permit no. 273194. If the well constructed under monitoring well permit no. 273194 is within 45 feet of the claimed actual location of the existing well (with in 45 feet of 2,165 feet from the north section line and 2,495 feet from the east section line), it would not be within 50 feet of the permitted location, and we can not issue a replacement permit to that structure. It appears we could approve the application for a location within 50 feet of the site identified on permit RF874 (i.e. within 50 feet of 2,200 feet from the north section line and 2,200 feet from the east section line) if it is amended to such a location.

If you have any questions please contact me.

Sincerely,



Keith Vander Horst, P.E.
Designated Basins Team Leader

Attachments: Permit RF874
Peter D. Nichols letter

cc: Jim Culichia
Peter D. Nichols

KVH: Cherokee-au.doc

Cherokee - Tipton Wm Replacement

9-7-07

- Jim Lalich, Kip Peterson
- Wolfe, Rein, KVH

- Use 7.3.6. to relocate the permitted location to 2200' F or 2200' F.E.L.
The "location of the original work" restriction in 98CW80 9.10.e
would change to that location, as that location becomes
The commission's permitted location.

- Alternately) Apply for a change under 7.3, and apply for a
variance to 7.3.1 (of the 10-year requirement) to use 7.10,
instead use 916W01.

B.7. BENTON WELL NO. 2 CHANGE OF WATER RIGHT APPLICATION (113 AF)

*Application for Change of Type of Use and/or Change in Place of Use within a Designated
Groundwater Basin*

BBA Water Consultants "Historical Consumptive Use Analysis for Well 17075-FP-R"



**HISTORICAL CONSUMPTIVE USE ANALYSIS
FOR WELL 17075-FP-R**

Prepared for

Ellicott Utilities Company, LLC

March 24, 2021

2103.00

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LIST OF ACRONYMS AND ABBREVIATIONS

AF	acre-feet
af/yr	acre-feet per year
CDSS	Colorado's Decision Support Systems
DWR	Colorado Division of Water Resources
FSA	Farm Service Agency
gpm	gallons per minute
NAIP	National Agriculture Imagery Program
NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
USDA	United States Department of Agriculture

HISTORICAL CONSUMPTIVE USE ANALYSIS FOR WELL 17075-FP-R

SECTION 1 – INTRODUCTION

This report provides technical information in support of Ellicott Utilities Company, LLC’s (“EUC”) application to the Colorado Ground Water Commission (“Commission”) for a Change of Water Rights for an alluvial water supply well filed together with this report. Well 17075-FP-R (the “Well”) is located in the Upper Black Squirrel Creek Designated Basin (“UBS Basin”) near Ellicott, Colorado. The application seeks a change in place and type of use of the ground water right associated with the Well.

1.1 Background and Farm Description

The area historically irrigated by the Well comprises approximately 280 acres located south of Ellicott, Colorado entirely within the west half of Section 14, Township 15 South, Range 63 West, as shown in Figure 1. The Well is located within the UBS Basin and is subject to the state rules governing the management and control of designated basin groundwater, as well as the rules specific to the UBS Basin¹. Well permit information for the Well is summarized in Table 1.

The Well is located on land owned by Dean Goss. Based on documents provided to us by EUC, Ellicott Springs Resources, LLC acquired the Well in 1999 and EUC acquired the Well in early 2013. It appears that the land irrigated by the Well was primarily farmed by Rodney Preisser and Mr. Goss until at least 2013. Well pumping data and crop history records were poorly maintained throughout the study period, as discussed in Section 3.

EUC is filing an application to the Commission to quantify the historical consumptive use (“HCU”) for the Well and for approval of a change in the type and place of use. Changed uses include municipal, irrigation (including irrigation at the historical place of use), commercial, industrial, domestic, stock watering, recreation, fish and wildlife purposes, residential, fire protection, replacement and augmentation, either through direct use or following storage (the

¹ *Upper Black Squirrel Creek Ground Water Management District Rules and Regulations and Statement of Policy As Amended through February 3, 2009.*

“Changed Uses”). The new place of use will be within Mayberry Colorado Springs Metropolitan District.

We completed an HCU analysis to determine the amount of water attributable to the Well that will be available for the Change Uses. This report summarizes the methodology and results of that analysis.

EUC is filing an application to the Commission to quantify the historical consumptive use (“HCU”) for the Well and for approval of a change in the type and place of use. The changed uses will be for municipal, irrigation (including irrigation at the historical place of use), commercial, industrial, domestic, stock watering, recreation, fish and wildlife purposes, residential, fire protection, replacement and augmentation, either through direct use or following storage purposes within Mayberry Colorado Springs Metropolitan District (the “Changed Uses”).

We completed an HCU analysis to determine the amount of water attributable to the Well that will be available for the Changed Uses. This report summarizes the methodology and results of that analysis.

SECTION 2 – GENERAL OVERVIEW OF METHODOLOGY FOR THE HCU ANALYSIS

To complete the HCU analysis for the Well, the historical operation of the Well and irrigation operations were investigated, including historical use, irrigated areas, crops grown and corresponding irrigation requirements, historical pumping, soil characteristics, and on-farm irrigation efficiencies. The elements above are described in further detail in Section 3.

2.1 Modified Blaney-Criddle Method

The HCU for the Well was quantified by conducting a site-specific water budget analysis based on the modified Blaney-Criddle method in Colorado State University’s Integrated Decision Support Consumptive Use (“IDSCU”) modeling software (version 3.3.162). Potential crop consumptive use (“PCU”) equals the maximum amount of water that may be consumed by a crop given a full water supply. The modified Blaney-Criddle method calculates PCU using monthly temperature data and empirically developed crop coefficients established in USDA Technical Release No. 21.

The crop irrigation requirement (“CIR”) is the amount of irrigation water that a crop will consume after accounting for effective precipitation. CIR is calculated in IDSCU using monthly precipitation data from a nearby climate station as described in Section 2.3. A water budget analysis was completed using historical pumping records and CIR to determine the amount of HCU attributable to the Well that was historically consumed by crops.

2.2 Study Period

According to the Rules and Regulations for the Management and Control of Designated Ground Water (the “Commission Rules”), consumptive use should be determined for at least the ten most recent years of irrigation. A study period of 2006 – 2020 (the “Study Period”) was chosen based on availability of pumping and crop data and years for which the Well owner submitted Requests to Register in a Water Conservation Program (“Conservation Program Requests”), as shown in Table 2. EUC submitted Conservation Program Requests to the DWR in 2012 – 2014 and 2017 - 2018 to exclude those years from any future consumptive use analysis. The stamped waivers are attached to this report as Appendix A.

2.3 Climate Data

As described in Section 2.1, use of the modified Blaney-Criddle methodology and calculation of HCU requires monthly inputs of air temperature and precipitation. The NOAA Ellicott station (USC00052668) (“Ellicott Station”) is the closest climate station that measured all necessary parameters over the study period. Where data for the Ellicott Station were not available, we used data from the Colorado Springs Municipal Airport climate station (USC00093037). Data for all climate parameters are publicly available through the DWR website.

SECTION 3 – HISTORICAL USE OF WELL 17075-FP-R

3.1 Final Well Permit No. 17075-FP-R

The Well is located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14, Township 15 South, Range 63 West and diverts ground water from the alluvial aquifer of UBS Basin as shown in Figure 1. The Well was permitted for a maximum pumping rate of 1,300 gpm, with an annual pumping limit of 850 AF. Well No. 11197-FP irrigates the E $\frac{1}{2}$ of Section 14, Township 15 South, Range 63 West which

is immediately adjacent to the area historically irrigated by the Well. Based on our review of the well permit files for both wells, the Well is not commingled with Well No. 11197-FP.

3.2 Description of Historical Farming Practices

Based on review of aerial imagery, the area historically irrigated by the Well has been irrigated by two center-pivot sprinklers throughout the Study Period. As shown in Figures 2 - 8, approximately 122 acres were irrigated by the center-pivot sprinkler in the NW ¼ of Section 14 and approximately 124 acres were irrigated by the center-pivot sprinkler in the SW ¼ of Section 14. We understand that both center-pivots are supplied by the Well. We understand that the former irrigator and Mr. Goss have not provided information regarding the sprinkler configuration.

3.3 HCU Analysis

The following section summarizes the HCU analysis inputs and results for the Well.

3.3.1 Irrigated Area and Crop History

We were unable to access FSA reports or conduct an interview with Mr. Goss regarding the area historically irrigated by the Well. We also reviewed historical aerial imagery from 2006 - 2016 to confirm the irrigated areas used in our HCU analysis and to confirm that no irrigation occurred in years in which the operator submitted Conservation Program Requests. We acquired NAIP and Google Earth images for 2006, 2009, 2011, and 2015. We used Landsat images in 2008, 2010, and 2016 due to lack of NAIP and Google Earth images in those years. Areas of green vegetation appear red in the false-color Landsat 5 images. As shown in Table 2, the average historical irrigated area equals 148.2 acres. Historical irrigated areas are shown in Figures 2 – 8.

Crop history was determined from CDSS records and historical records provided by EUC where available. We reviewed a change of use application submitted to the DWR in 2006 by Rodney Preisser. This application was ultimately withdrawn but included crop history information through 2006. The application states that 140 acres of oats and 140 acres of “mill/peas” were irrigated in 2006. The 280 acres of crops reported for 2006 appears overstated because the maximum area of the center-pivots is approximately 250 acres. Therefore, we have reduced the 2006 crop extents to the areas measured from aerial imagery, as shown in Figure 2. An excerpt of the 2006 change of

use application is included as Appendix B. Where CDSS data and historical records were not available, we assumed that pasture grass was irrigated.

3.3.2 Well Pumping

We used meter data and prorated annual pumping totals to estimate historical well pumping. We understand that the Well is equipped with a totalizing flow meter, but monthly pumping data were available for only a limited portion of the Study Period. We obtained meter data for the Well for 2008 – 2011 from EUC which are included as Appendix C. Meter readings were distributed daily and summed monthly when meter readings were recorded in the middle of a month. We also obtained annual pumping data for 2006 that was included in a collection of documents provided by UBS Ground Water Management District in response to a 2011 Colorado Open Records Act request made Ellicott Springs Resources, LLC and obtained by EUC. These data were distributed monthly based on the pumping volume distribution from 2008 to 2011 and are included as Appendix D.

No meter data were available for 2015 or 2016, as discussed in Section 3.3. The Well is operated using a diesel pump rather than a connection to an electrical provider and therefore electrical records cannot be used to estimate historical pumping volume for the periods without meter data. Based on available data, pumping from the Well averaged 110.46 AF, as shown in Table 3 including zeros for years in which no pumping data were available.

3.3.3 Ditch Loss and Farm Deliveries

The Well is located on the southern portion of the historically irrigated area shown in Figure 1. We understand that water is piped from the Well to the center-pivot sprinklers located in the center of each field. Based on this assumption, we assumed no transit loss from the Well to the two center-pivots.

3.3.4 Modeling of Historical Use of The Well

The following subsections describe inputs used to model the historical farming practices, including the crops grown, irrigated areas, irrigation practices, maximum farm efficiency, available water capacity of the soils, and potential consumptive use of the crops.

3.3.4.1 *Irrigation Methods and Farm Efficiency*

Maximum farm irrigation efficiency represents the maximum percentage of the sprinkler delivery that is available to meet the crop demands, either directly or after delivery to the soil moisture reservoir. Based on review of aerial imagery, the farm was irrigated by two center-pivot sprinklers for the duration of the study period. The Well is located on the southern center-pivot and we assumed no transit loss from the Well to the sprinklers. The maximum sprinkler efficiency was estimated to be 80% for this analysis, a commonly accepted value for sprinkler irrigation.

3.3.4.2 *Soils Data*

The available water capacity (“AWC”) of the soils underlying the historically irrigated area were determined using the NRCS soil survey data obtained from the NRCS Web Soil Survey. Using a soil profile depth of approximately 5 feet, a representative AWC for each soil type was weighted based on the AWC reported for each component within the soil profile. A composite AWC value was then determined by using an area-weighted average from the individual AWC values for each soil type and the percent of the irrigated area represented by each soil type. We calculated a composite AWC of 1.13 in/ft for the historically irrigated area.

3.3.5 PCU and Crop Irrigation Requirement

PCU was calculated using the modified Blaney-Criddle method implemented in IDSCU modeling software, as described in Section 2. The crop irrigation requirement (“CIR”) is the amount of water that can be consumed by a crop given a full irrigation water supply after accounting for effective precipitation. The total CIR for the crops grown on the lands historically irrigated by the Well was calculated for the Study Period using the IDSCU model and is equal to monthly PCU less effective precipitation. Effective precipitation was calculated in IDSCU using the Soil Conservation Service method. A summary of the average monthly CIR for the area historically irrigated by the Well is provided in Table 4. The CIR for the crops grown on the historically irrigated area averaged 257.32 af/yr. Based on comparison of average annual pumping and net CIR, it appears that the historically irrigated area was water short in most years if the Well was the only irrigation sourced utilized. We are unaware of any other water sources used to irrigate the historically irrigated area.

3.3.6 On-Farm Depletion of Water Supply

The on-farm depletion of water supply is equal to HCU and represents the amount of water delivered to the historically irrigated lands that was consumed by crops. The on-farm depletion occurs by both direct consumption by the crop of irrigation water and consumption of water in the soil moisture reservoir that was filled by the irrigation supply. For 2006 and 2008 – 2011, the on-farm depletion is equal to the amount of well pumping (either stored or applied) used to meet CIR in each month.

Because no pumping data are available for 2015 and 2016, on-farm depletion of irrigation supply is estimated by dividing CIR by the maximum irrigation efficiency of 80%, as described in the Commission Rules. This method resulted in consumptive use totals which exceeded any other year in the study period as shown in Table 5a. To estimate historical consumption of irrigation more accurately, we limited monthly consumptive use in 2015 and 2016 to the lesser of estimated consumptive use in 2015 and 2016 in Table 5a and average monthly consumptive use in 2008 – 2011.

On-farm depletion of water supplies from the Well averaged 113.00 af/yr as shown in Table 5b. This amount is claimed as the HCU credit.

SECTION 4 – OPINION OF HCU

It is our expert opinion that the average HCU of the water supplied by the Well is 113.00 af/yr. To the extent that irrigation water is no longer provided by the Well, this quantity of water can be changed to a new use, including uses off the farm and outside of the UBS Basin, without causing injury to other water rights and well users under the terms and conditions provided below.

SECTION 5 – TERMS AND CONDITIONS

It is our opinion that the following terms and conditions are adequate to prevent injury to other water users and to prevent expansion of use of the water rights associated with the Well.

1. Pumping amounts from the Well and any water delivered off the property shall be measured using certified totalizing flow meters in accordance with State requirements.

2. Before the Well is put to a changed use, continued irrigation use shall be limited to an annual pumping volume of 850 acre-feet per year in accordance with the existing well permit.
3. Pumping of the Well for the Changed Uses will be limited to 113.00 af/yr plus allowable withdrawals resulting from banking.

SECTION 6 – DOCUMENTS RELIED UPON

State of Colorado Ground Water Commission. Rules and Regulations for the Management and Control of Designated Ground Water. As amended January 14, 2020.

Upper Black Squirrel Ground Water Management District Rules and Regulations and Statement of Policy. As amended February 3, 2009.

Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Soil Survey Geographic (SSURGO) Database. Available online at <https://sdmdataaccess.sc.egov.usda.gov>.

USDA Soil Conservation Service. Colorado Irrigation Guide. Revised December 1988.

August 2020 BBA field visit.

Integrated Decision Support Consumptive Use (IDSCU) Model (v3.3.162) [Software]. Fort Collins, CO: Colorado State University. November 2019.

Irrigation Water Requirements, Technical Release No. 21, U.S. Department of Agriculture, Soil Conservation Service: April 1967, Revised September 1970.

Monthly climate data from the NOAA Ellicott and Colorado Springs Municipal Airport climate stations.

Division of Water Resources permit file for Well Permit Nos. 17075-FP and 17075-FP-R, including Conservation Program Requests in the well permit file.

Aerial photos of the lands historically irrigated by the Well for the following years: 2006, 2009, 2011, and 2015.

Landsat images of the lands historically irrigated by the Well for the following years: 2008, 2010, and 2016.



FIGURES



Figure 1
General Location Map
Ellicott Utilities
Company, LLC

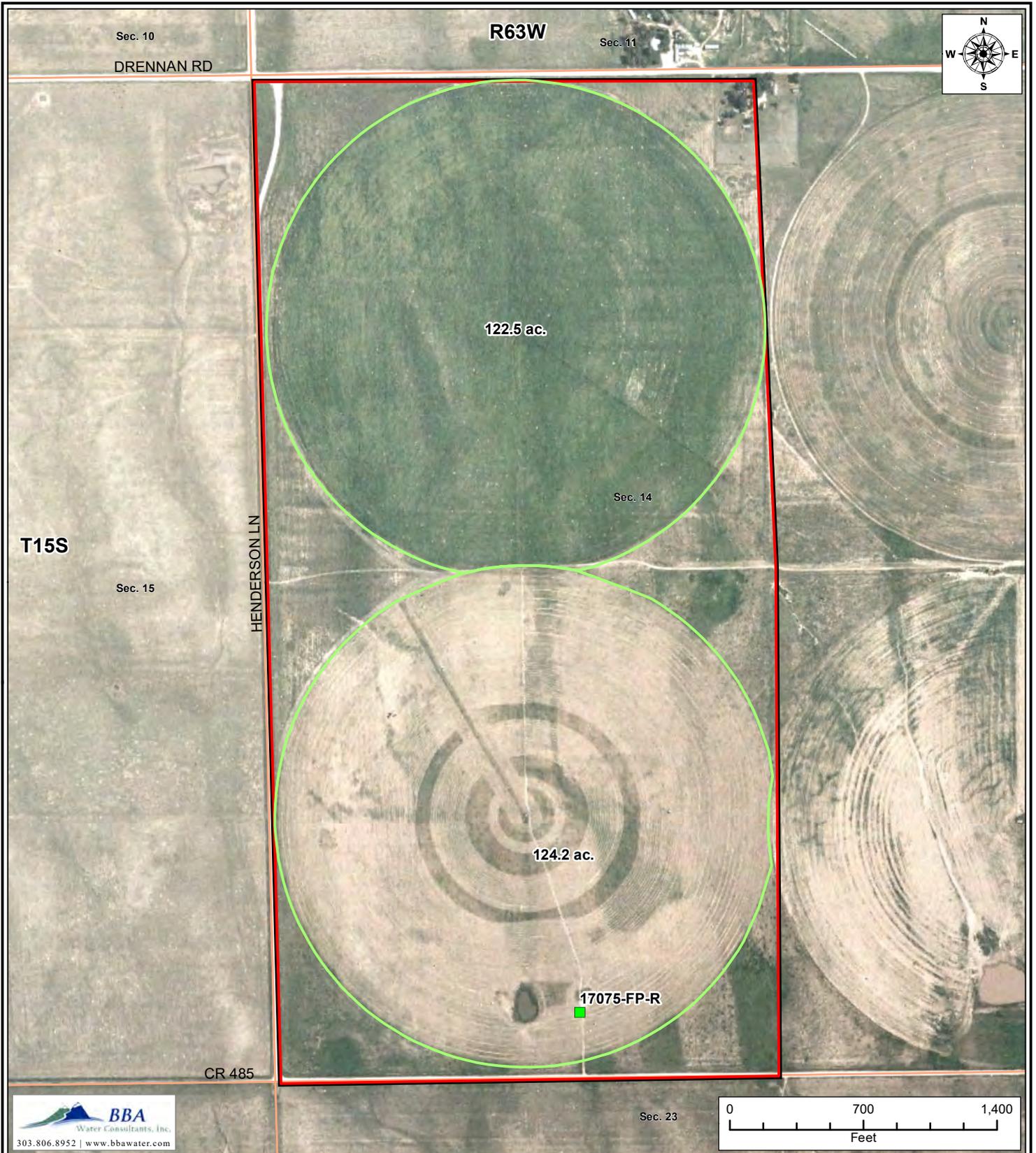
Date: 2/25/2021 | Job No. 2103.00

Legend

- Well Location
- Farm Boundary - Approx.

Aerial Photo Date: 7/24/2009 NAIP USDA
 Data Source: CDSS, CDWR, CDOT, BLM, USGS





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Figure 2
2006 Irrigated Area
Ellicott Utilities
Company, LLC

Date: 2/25/2021 | Job No. 2103.00

- Legend**
- Well Location
 - Irrigated Area
 - Farm Boundary - Approx.

Aerial Photo Date: 7/31/2006 NAIP-USDA
Data Source: CDSS, CDWR, CDOT, BLM, USGS



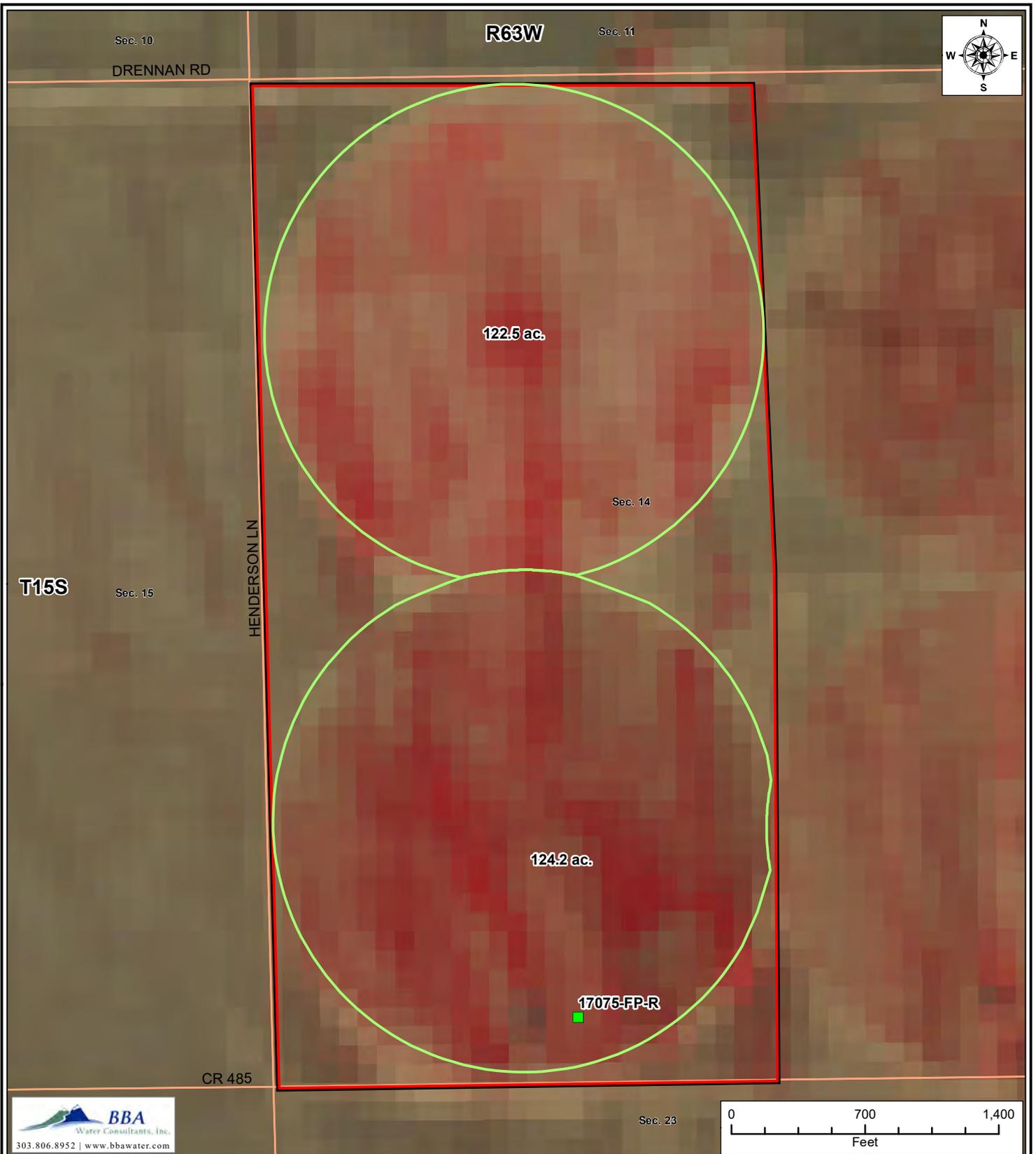


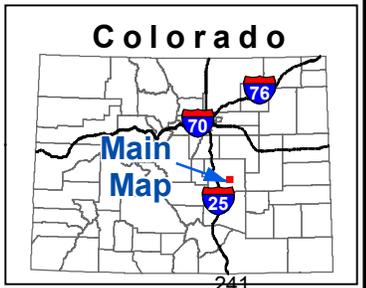
Figure 3
2008 Irrigated Area
Ellicott Utilities
Company, LLC

Date: 2/25/2021 | Job No. 2103.00

Legend

- Well Location
- Irrigated Area - Approx.
- Farm Boundary - Approx.

Aerial Photo Date: 7/10/2008 Landsat 5 Color Infrared
 Data Source: CDSS, CDWR, CDOT, BLM, USGS





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Figure 4
2009 Irrigated Area
Ellicott Utilities
Company, LLC

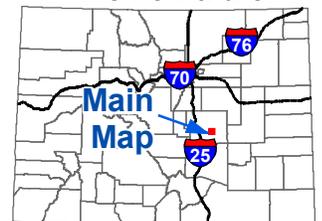
Date: 2/25/2021 | Job No. 2103.00

Legend

- Well Location
- Irrigated Area - Approx.
- Farm Boundary - Approx.

Aerial Photo Date: 7/24/2009 NAIP-USDA
Data Source: CDSS, CDWR, CDOT, BLM, USGS

Colorado



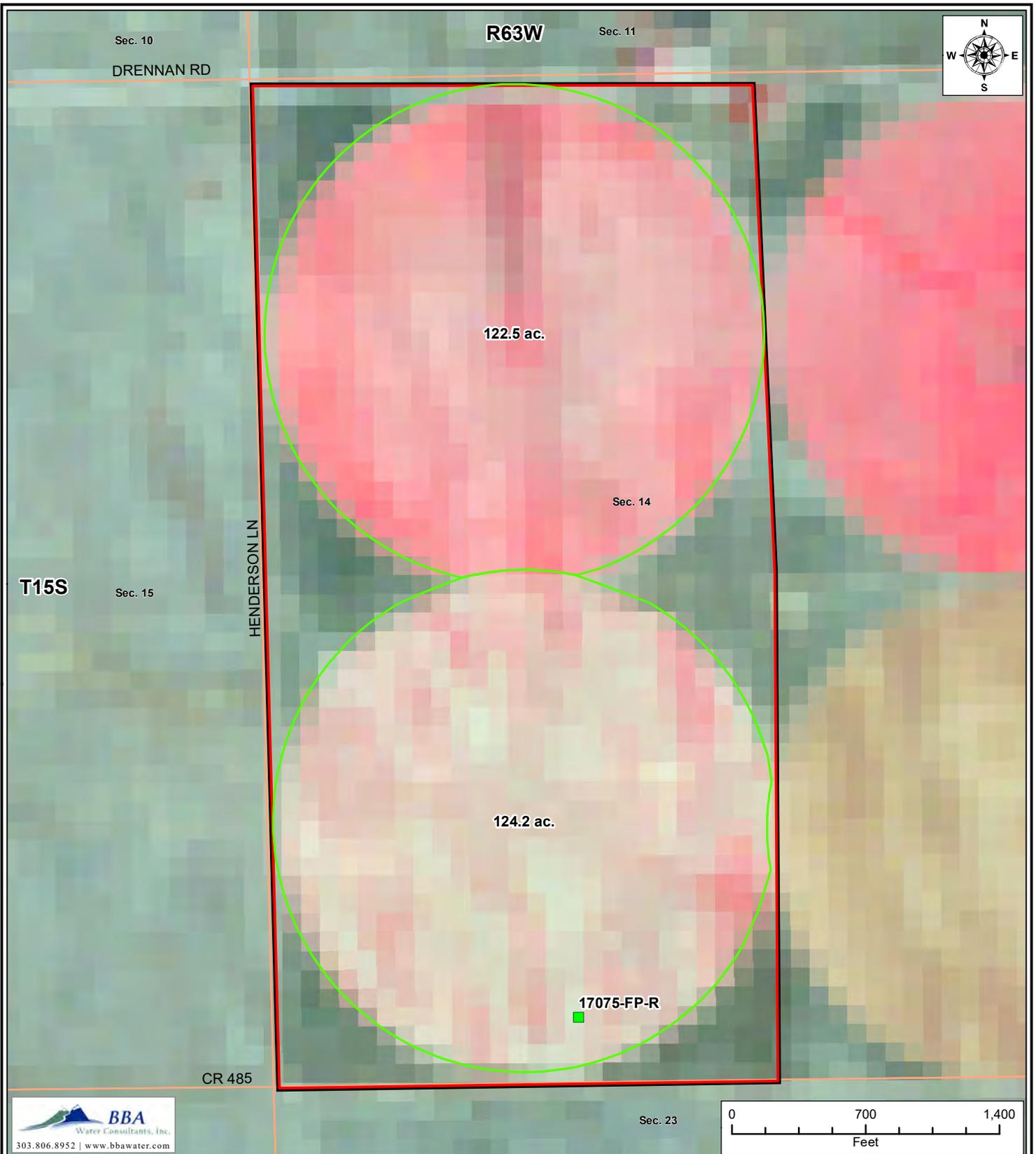


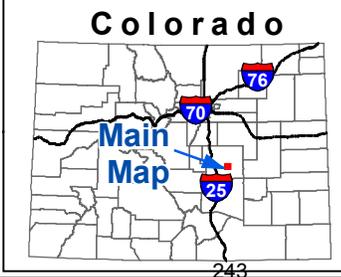
Figure 5
2010 Irrigated Area
Ellicott Utilities
Company, LLC

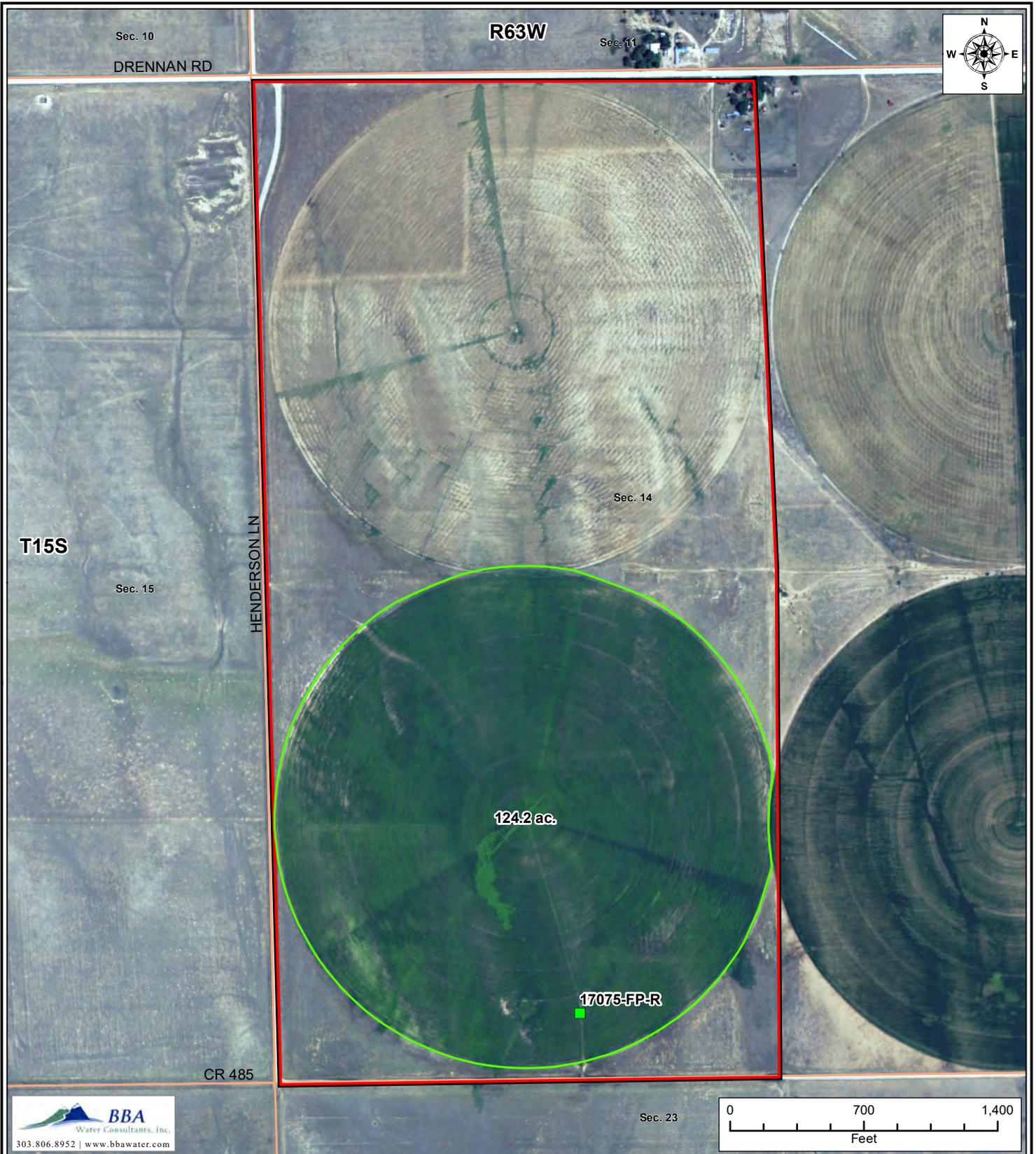
Date: 2/25/2021 | Job No. 2103.00

Legend

- Well Location
- Irrigated Area - Approx.
- Farm Boundary - Approx.

Aerial Photo Date: 10/20/2010 Landsat 5 Color Infrared
 Data Source: CDSS, CDWR, CDOT, BLM, USGS





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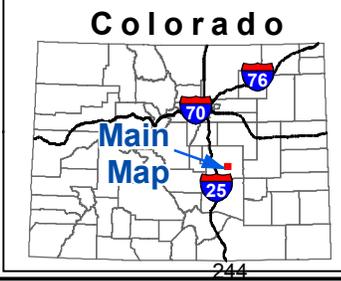
Figure 6
2011 Irrigated Area
Ellicott Utilities
Company, LLC

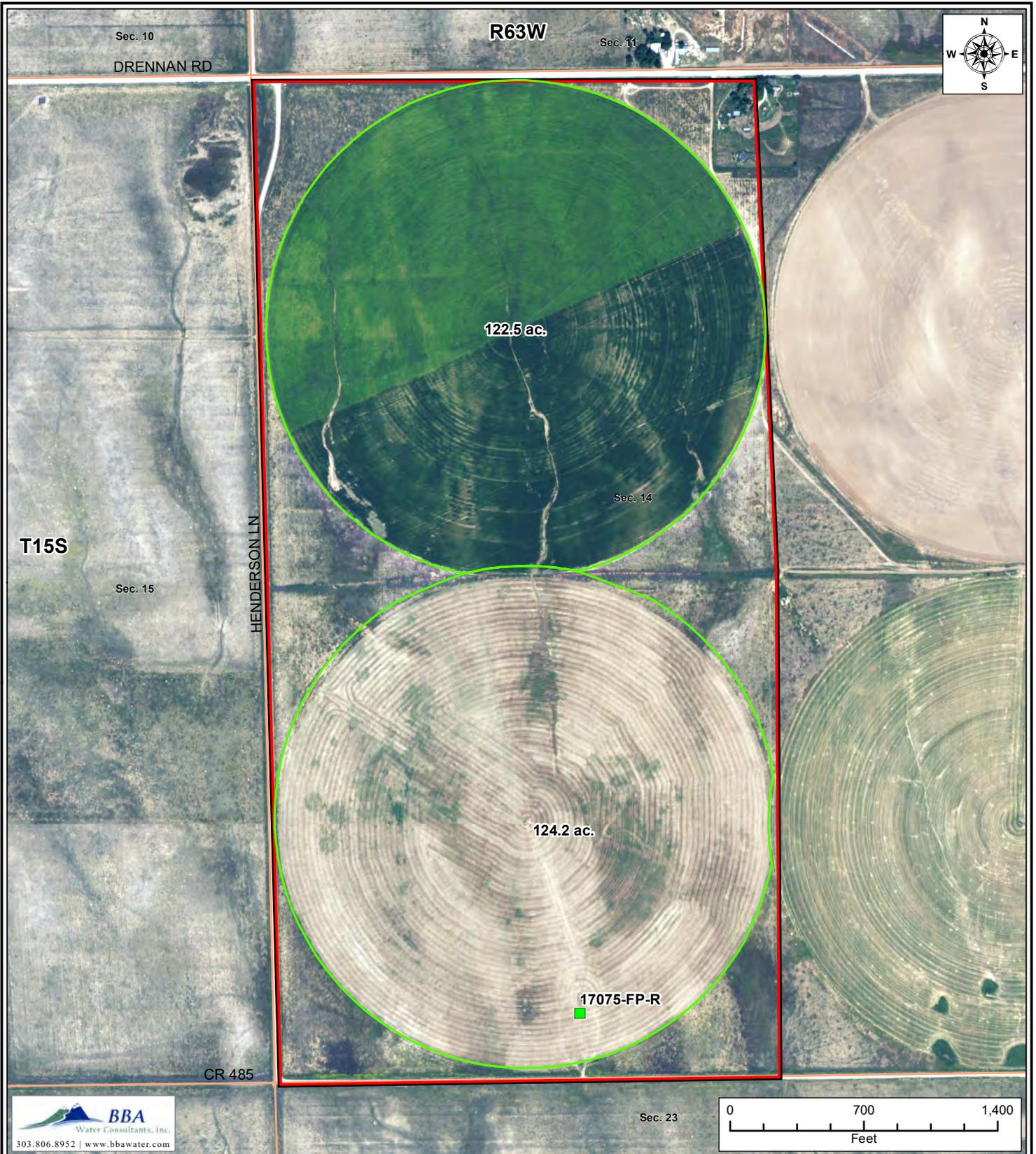
Date: 3/2/2021 | Job No. 2103.00

Legend

- Well Location
- Irrigated Area - Approx.
- Farm Boundary - Approx.

Aerial Photo Date: 7/28/2011 NAIP USDA
Data Source: CDSS, CDWR, CDOT, BLM, USGS





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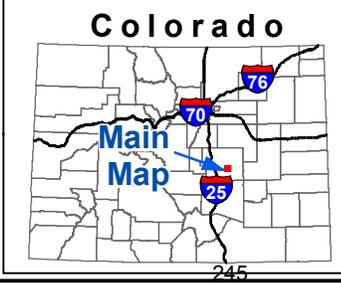
Figure 7 2015 Irrigated Area Ellicott Utilities Company, LLC

Date: 3/2/2021 | Job No. 2103.00

Legend

- Well Location
- Irrigated Area - Approx.
- Farm Boundary - Approx.

Aerial Photo Date: 08/29/2015 NAIP-USDA
Data Source: CDSS, CDWR, CDOT, BLM, USGS



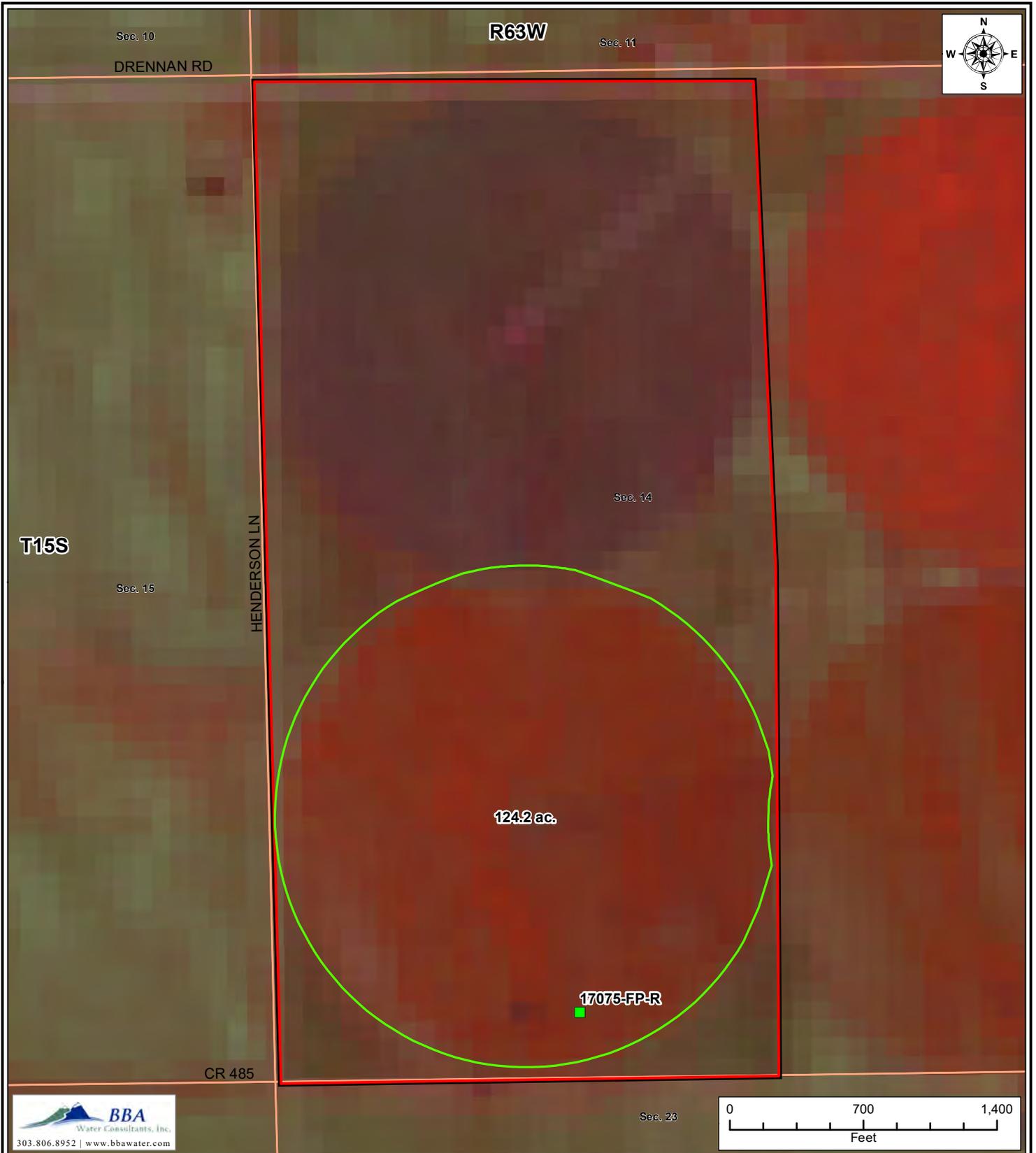


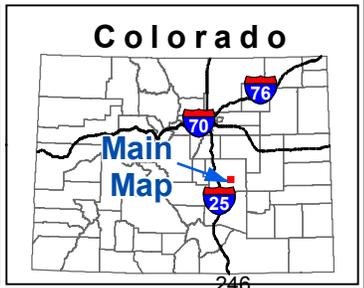
Figure 8
2016 Irrigated Area
Ellicott Utilities
Company, LLC

Date: 3/2/2021 | Job No. 2017.00

Legend

- Well Location
- Irrigated Area - Approx.
- Farm Boundary - Approx.

Satellite Image Date: 9/7/2016 Landsat 5
 Data Source: CDSS, CDWR, CDOT, BLM, USGS





TABLES

Table 1
Ellicott Utilities Company, LLC
Well 17075-FP-R Water Rights

Final Permit No.	Priority Date	Case No.	Annual Pumping Limit (af/yr)	Maximum Pumping Rate (gpm)	Permitted Irrigated Acres	Total Depth (ft)
17075-FP-R	-	-	850	1,300	280	210

Table 2
Ellicott Utilities Company, LLC
Well No. 17075-FP-R Historical Irrigated Acreage
All values in acres

Year	Winter Wheat	Corn	Pasture Grass	Total
2006	-	-	246.7	246.7
2007	-	-	-	0
2008	-	-	246.7	246.7
2009	-	-	246.7	246.7
2010	122.5	-	124.2	246.7
2011	-	-	124.2	124.2
2012	Submitted Request to Register in Water Conservation Program			-
2013	Submitted Request to Register in Water Conservation Program			-
2014	Submitted Request to Register in Water Conservation Program			-
2015	124.2	122.5	-	246.7
2016	-	-	124.2	124.2
2017	Submitted Request to Register in Water Conservation Program			-
2018	Submitted Request to Register in Water Conservation Program			-
2019	-	-	-	0
2020	-	-	-	0
Average	-	-	-	148.2

Notes:

1. Data for 2006 based on 2006 change of use application submitted by Ellicott Springs Resources LLC. Application stated that oats and "mill/peas" were grown in 2006. Oats and mill/peas have been modeled as pasture grass due to lack of crop coefficients for oats and mill/peas.
2. Data for 2008 - 2009 and 2011 based on review of aerial imagery and assumed to be pasture grass.
3. Data for 2010 based on CDSS records.
4. Data for 2015 based on CDSS records.
5. Data for 2016 based on review of aerial imagery and assumed to be pasture grass.
5. Requests to Register in Water Conservation Program provided by Ellicott Utilities Company, LLC and accessed via CDSS.

Table 3
Ellicott Utilities Company, LLC
Well No. 17075-FP-R Monthly Pumping Volume

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2006	0	0	4.64	4.85	24.60	33.53	38.29	13.21	13.79	12.03	0.54	0	145.48
2007	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2008	0	0	0	0	54.94	62.57	84.16	29.21	47.16	0.44	0	0	278.48
2009	0	0	0	0	59.62	57.69	53.39	33.08	19.77	11.07	3.59	0	238.22
2010	0	0	13.38	7.34	9.80	24.00	24.80	24.80	24.00	67.77	0	0	195.87
2011	0	0	17.24	24.63	37.78	76.81	90.04	0	0	0	0	0	246.50
2012					Submitted Request to Register in Water Conservation Program								-
2013					Submitted Request to Register in Water Conservation Program								-
2014					Submitted Request to Register in Water Conservation Program								-
2015	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2016	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2017					Submitted Request to Register in Water Conservation Program								-
2018					Submitted Request to Register in Water Conservation Program								-
2019	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2020	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Average	0.00	0.00	3.53	3.68	18.67	25.46	29.07	10.03	10.47	9.13	0.41	0.00	110.46
Minimum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Maximum	0.00	0.00	17.24	24.63	59.62	76.81	90.04	33.08	47.16	67.77	3.59	0.00	278.48

Notes:

1. Pumping data for 2006 based on annual data in 2011 CORA records request from Upper Black Squirrel Ground Water Management District distributed monthly based on data from 2008 to 2011.
2. Data for 2008 - 2011 based on records provided by Ellicott Utilities Company, LLC.
3. Requests to Register in Water Conservation Program provided by Ellicott Utilities Company, LLC and accessed via CDSS.

Table 4
Ellicott Utilities Company, LLC
Net Crop Irrigation Requirement

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2006	0	0	0	53.94	77.10	120.21	75.78	64.84	42.78	13.75	0	0	448.40
2007	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2008	0	0	0	22.80	71.68	108.81	153.54	55.60	12.38	41.64	3.15	0	469.60
2009	0	0	0	16.28	48.58	65.29	72.15	85.60	76.69	21.93	0	0	386.52
2010	0	0	0	39.70	81.86	127.60	57.74	32.96	44.36	19.66	0	0	403.88
2011	0	0	0	15.80	30.75	57.41	56.40	49.65	29.49	11.31	0	0	250.81
2012					Submitted Request to Register in Water Conservation Program								-
2013					Submitted Request to Register in Water Conservation Program								-
2014					Submitted Request to Register in Water Conservation Program								-
2015	0.00	0.00	3.46	37.35	34.30	84.88	74.80	39.11	0.00	0.00	0.00	0.00	273.90
2016	0.00	5.71	19.94	25.18	38.77	58.81	68.91	45.83	46.20	27.05	3.67	0.00	340.07
2017					Submitted Request to Register in Water Conservation Program								-
2018					Submitted Request to Register in Water Conservation Program								-
2019	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2020	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Average	0.00	0.57	2.34	21.11	38.30	62.30	55.93	37.36	25.19	13.53	0.68	0.00	257.32
Minimum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Maximum	0.00	5.71	19.94	53.94	81.86	127.60	153.54	85.60	76.69	41.64	3.67	0.00	469.60

Notes:

1. Net crop irrigation requirement (CIR) determined in IDSCU using the Blaney-Criddle formula modified per the Soil Conservation Service's Technical Release No. 21 (TR-21). Net CIR is equal to potential crop use minus effective precipitation. Average air temperature and precipitation data from the NOAA Ellicott climate station (USC00052668) and the NOAA Colorado Springs Municipal Airport climate station (USC00093037) for the period 2006 - 2016 were used in the formula. TR-21 crop coefficients and effective precipitation were used and PCU was adjusted for elevation.

Table 5a
Ellicott Utilities Company, LLC
On-Farm Depletion of Irrigation Supplies Prior to 2015 and 2016 Adjustment

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2006	0.00	0.00	3.71	3.88	19.68	26.82	30.63	10.57	11.03	9.62	0.43	0.00	116.37
2007	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2008	0.00	0.00	0.00	0.00	43.95	50.06	67.33	23.37	35.61	0.35	0.00	0.00	220.67
2009	0.00	0.00	0.00	0.00	47.70	46.15	42.71	26.46	15.82	8.86	2.87	0.00	190.57
2010	0.00	0.00	0.00	5.87	7.84	19.20	19.84	19.84	19.20	31.36	0.00	0.00	123.15
2011	0.00	0.00	0.00	15.80	30.22	57.94	56.40	0.00	0.00	0.00	0.00	0.00	160.36
2012					Submitted Request to Register in Water Conservation Program								-
2013					Submitted Request to Register in Water Conservation Program								-
2014					Submitted Request to Register in Water Conservation Program								-
2015	0.00	0.00	4.33	46.69	42.88	106.10	93.50	48.89	0.00	0.00	0.00	0.00	342.38
2016	0.00	7.14	24.93	31.48	48.46	73.51	86.14	57.29	57.75	33.81	4.59	0.00	425.09
2017					Submitted Request to Register in Water Conservation Program								-
2018					Submitted Request to Register in Water Conservation Program								-
2019	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2020	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Average	0.00	0.71	3.30	10.37	24.07	37.98	39.65	18.64	13.94	8.40	0.79	0.00	157.86
Minimum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Maximum	0.00	7.14	24.93	46.69	48.46	106.10	93.50	57.29	57.75	33.81	4.59	0.00	425.09

Notes:

1. On-farm depletion of irrigation supplies determined using IDSCU. Sprinkler irrigation efficiency assumed to be equal to 80%. On-farm depletion is equal to amount of well pumping used to meet CIR in 2006 and 2008 - 2011.
2. On-farm depletion of irrigation supplies for 2015 and 2016 equal to CIR divided by sprinkler irrigation efficiency of 80% as described in *Rules and Regulations for Management and Control of Designated Ground Water*.

Table 5b
Ellicott Utilities Company, LLC
On-Farm Depletion of Irrigation Supplies After 2015 and 2016 Adjustment

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2006	0.00	0.00	3.71	3.88	19.68	26.82	30.63	10.57	11.03	9.62	0.43	0.00	116.37
2007	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2008	0.00	0.00	0.00	0.00	43.95	50.06	67.33	23.37	35.61	0.35	0.00	0.00	220.67
2009	0.00	0.00	0.00	0.00	47.70	46.15	42.71	26.46	15.82	8.86	2.87	0.00	190.57
2010	0.00	0.00	0.00	5.87	7.84	19.20	19.84	19.84	19.20	31.36	0.00	0.00	123.15
2011	0.00	0.00	0.00	15.80	30.22	57.94	56.40	0.00	0.00	0.00	0.00	0.00	160.36
2012					Submitted Request to Register in Water Conservation Program								-
2013					Submitted Request to Register in Water Conservation Program								-
2014					Submitted Request to Register in Water Conservation Program								-
2015	0.00	0.00	0.00	5.42	32.43	43.34	46.57	17.42	0.00	0.00	0.00	0.00	145.17
2016	0.00	0.00	0.00	5.42	32.43	43.34	46.57	17.42	17.66	10.14	0.72	0.00	173.69
2017					Submitted Request to Register in Water Conservation Program								-
2018					Submitted Request to Register in Water Conservation Program								-
2019	0	0	0	0	0	0	0	0	0	0	0	0	0.00
2020	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Average	0.00	0.00	0.37	3.64	21.42	28.68	31.01	11.51	9.93	6.03	0.40	0.00	113.00
Minimum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Maximum	0.00	0.00	3.71	15.80	47.70	57.94	67.33	26.46	35.61	31.36	2.87	0.00	220.67

Notes:

1. On-farm depletion of irrigation supplies determined using IDSCU. Sprinkler irrigation efficiency assumed to be equal to 80%. On-farm depletion is equal to amount of well pumping used to meet CIR in 2006 and 2008 - 2011.
2. Monthly on-farm depletion of irrigation supplies for 2015 and 2016 equal to the minimum of on-farm depletion estimated in Table 5a and average monthly on-farm depletion from 2008 - 2011.



APPENDIX A

APR 26 2012

WATER RESOURCE
STATE ENGINEER
COLO.

DBB-015 (6/11)

REQUEST TO
REGISTER IN WATER CONSERVATION PROGRAM
COLORADO GROUND WATER COMMISSION
Room 821 Centennial Building, 1313 Sherman Street
Denver, CO 80203

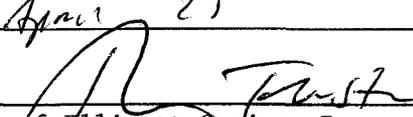
This form must be complete where applicable. Type or print in **BLACK INK**. No overstrikes or erasures unless initialed.

NOTE: This form can only be used for large capacity wells located within a Designated Ground Water Basin. Do not use this form for more than one well.

Joseph G. Rosania, Chapter 7 Trustee for Estate of Ellicott Springs Resources, LLC I, / _____, affirm that I am the present owner of the well with Permit No. 1Z075-FP located in the SE 1/4 of the SW 1/4 of Section 14, Township 15 North/South, Range 63 West of the 6th P.M.

I have read the Designated Basin Rule 7.10.4(b) given here and understand the contents thereof. I plan no/low withdrawal of water from the above referenced well during the current calendar year. As owner of this well, I request that water withdrawal during this calendar year be excluded from any future estimate of average annual historic use for this well. I understand that I can not withdraw this request and that this request is valid only for the current calendar year.

Signed and dated this April 25, 2012.

Signature of Well Owner 

Well Owners Name Estate of Ellicott Springs Resources, LLC
By Joseph G. Rosania, Chapter 7 Trustee*
Please Print

No. & Street 90 S. Cascade Ave #950

City, State & Zip Colorado Springs, CO 80903

Telephone No. 719-442-2376 *Connolly, Rosania & Lofstedt PC
950 Spruce St., Ste 1C
Louisville, CO 80027
303-661-9292

Designated Basin Rule 7.10.4(b) reads as follows:

7.10.4(b) Water diversion during the calendar year 1997 and during any successive calendar year may be excluded in computing average annual historic use provided at least ten years of water use information is available to compute historic use and provided a written request to exclude water use for any given calendar year is received by the Commission by May 1 of that calendar year. This written request must be on a form prescribed by the Commission. To avoid having applicants pick and choose water use years during this period to maximize the estimate of average annual historic use, a request to exclude water use for any year once submitted can not be withdrawn.

RECEIVED

This form must be complete where applicable. Type or print in **BLACK INK**. No overstrikes or erasures unless initialed.

APR 26 2013

WATER RESOURCES STATE ENGINEER COLO

DBB-015 (6/11)

REQUEST TO REGISTER IN WATER CONSERVATION PROGRAM COLORADO GROUND WATER COMMISSION Room 821 Centennial Building, 1313 Sherman Street Denver, CO 80203

NOTE: This form can only be used for large capacity wells located within a Designated Ground Water Basin. Do not use this form for more than one well.

I, Ellicott Springs Utilities Company, LLC, affirm that I am the present owner of the well with Permit No. 17075-FP located in the SE 1/4 of the SW 1/4 of Section 14, Township 15 North South, Range 63 West of the 6th P.M.

I have read the Designated Basin Rule 7.10.4(b) given here and understand the contents thereof. I plan no/low withdrawal of water from the above referenced well during the current calendar year. As owner of this well, I request that water withdrawal during this calendar year be excluded from any future estimate of average annual historic use for this well. I understand that I can not withdraw this request and that this request is valid only for the current calendar year.

Signed and dated this April 26th, 2013.

Signature of Well Owner [Handwritten Signature]

Well Owners Name Simon Malk, Ellicott Springs Utilities Company Manager
Please Print

No. & Street 12275 El Camino Real, Suite 110

City, State & Zip San Diego, CA 92130

Telephone No. 858-546-0700

Designated Basin Rule 7.10.4(b) reads as follows:

7.10.4(b) Water diversion during the calendar year 1997 and during any successive calendar year may be excluded in computing average annual historic use provided at least ten years of water use information is available to compute historic use and provided a written request to exclude water use for any given calendar year is received by the Commission by May 1 of that calendar year. This written request must be on a form prescribed by the Commission. To avoid having applicants pick and choose water use years during this period to maximize the estimate of average annual historic use, a request to exclude water use for any year once submitted can not be withdrawn.

17075-PP-R

0533224

RECEIVED

APR 29 2014

WATER RESOURCES
STATE ENGINEER
COLO

This form must be complete where applicable. Type or print in **BLACK INK**. No overstrikes or erasures unless initialed.

DBB-015 (6/11)

REQUEST TO
REGISTER IN WATER CONSERVATION PROGRAM
COLORADO GROUND WATER COMMISSION
Room 821 Centennial Building, 1313 Sherman Street
Denver, CO 80203

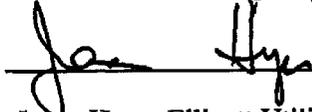
NOTE: This form can only be used for large capacity wells located within a Designated Ground Water Basin. Do not use this form for more than one well.

I, Ellicott Utilities Company, LLC, affirm that I am the present owner of the well with Permit No. 17075-PP-R located in the SE 1/4 of the SW 1/4 of Section 14, Township 15 North, South Range 63 West of the 6th P.M.

I have read the Designated Basin Rule 7.10.4(b) given here and understand the contents thereof. I plan no/low withdrawal of water from the above referenced well during the current calendar year. As owner of this well, I request that water withdrawal during this calendar year be excluded from any future estimate of average annual historic use for this well. I understand that I can not withdraw this request and that this request is valid only for the current calendar year.

Signed and dated this 24th of April, 2014.

Signature of Well Owner



Well Owners Name

Jason Hope, Ellicott Utilities Company Manager
Please Print

No. & Street

12275 El Camino Real, Suite 110

City, State & Zip

San Diego, CA 92130

Telephone No.

858-345-3645

Designated Basin Rule 7.10.4(b) reads as follows:

7.10.4(b) Water diversion during the calendar year 1997 and during any successive calendar year may be excluded in computing average annual historic use provided at least ten years of water use information is available to compute historic use and provided a written request to exclude water use for any given calendar year is received by the Commission by May 1 of that calendar year. This written request must be on a form prescribed by the Commission. To avoid having applicants pick and choose water use years during this period to maximize the estimate of average annual historic use, a request to exclude water use for any year once submitted can not be withdrawn.

RECEIVED

APR 27 2017

DBB-015 (6/11)

REQUEST TO REGISTER IN WATER CONSERVATION PROGRAM
 WATER RESOURCES STATE ENGINEER COLO
 COLORADO GROUND WATER COMMISSION
 Room 821 Centennial Building, 1313 Sherman Street
 Denver, CO 80203

This form must be complete where applicable. Type or print in BLACK INK. No overstrikes or erasures unless initiated.

NOTE: This form can only be used for large capacity wells located within a Designated Ground Water Basin. Do not use this form for more than one well.

I, ELLICOTT UTILITIES COMPANY, LLC, affirm that I am the present owner of the well with Permit No. 17075-FP-R located in the SE 1/4 of the SU1 1/4 of Section 14, Township 15 North South, Range 63 West of the 6th P.M.

I have read the Designated Basin Rule 7.10.4(b) given here and understand the contents thereof. I plan no/low withdrawal of water from the above referenced well during the current calendar year. As owner of this well, I request that water withdrawal during this calendar year be excluded from any future estimate of average annual historic use for this well. I understand that I can not withdraw this request and that this request is valid only for the current calendar year.

Signed and dated this 27th DAY OF APRIL, 2017.

Signature of Well Owner *Nathan S. Birchall, OFFICER & MANAGER*

Well Owners Name ELLICOTT UTILITIES COMPANY, LLC - NATHAN S. BIRCHALL, OFFICER OF MGR
Please Print

No. & Street 11452 EL CAMINO REAL, STE 120

City, State & Zip SAN DIEGO, CA 92130

Telephone No. 858-523-1799

Designated Basin Rule 7.10.4(b) reads as follows:

7.10.4(b) Water diversion during the calendar year 1997 and during any successive calendar year may be excluded in computing average annual historic use provided at least ten years of water use information is available to compute historic use and provided a written request to exclude water use for any given calendar year is received by the Commission by May 1 of that calendar year. This written request must be on a form prescribed by the Commission. To avoid having applicants pick and choose water use years during this period to maximize the estimate of average annual historic use, a request to exclude water use for any year once submitted can not be withdrawn.

DBB-015 (6/11)

REQUEST TO REGISTER IN WATER CONSERVATION PROGRAM COLORADO GROUND WATER COMMISSION Room 821 Centennial Building, 1313 Sherman Street Denver, CO 80203

This form must be complete where applicable. Type or print in BLACK INK. No overstrikes or erasures unless initialed.

NOTE: This form can only be used for large capacity wells located within a Designated Ground Water Basin. Do not use this form for more than one well.

I, ELLICOTT UTILITIES COMPANY, LLC, affirm that I am the present owner of the well with Permit No. 17075-FP-R located in the SE 1/4 of the SW 1/4 of Section 14, Township 15 North/South, Range 63 West of the 6th P.M.

I have read the Designated Basin Rule 7.10.4(b) given here and understand the contents thereof. I plan no/low withdrawal of water from the above referenced well during the current calendar year. As owner of this well, I request that water withdrawal during this calendar year be excluded from any future estimate of average annual historic use for this well. I understand that I can not withdraw this request and that this request is valid only for the current calendar year.

Text

Signed and dated this 24 APRIL, 2018

Signature of Well Owner [Handwritten Signature] OFFICER OF MANAGER

Well Owners Name ELLICOTT UTILITIES COMPANY, R. RANDY GOODSON OFFICER OR MANAGER

Please Print

No. & Street 32823 TEMECULA PARKWAY

City, State & Zip TEMECULA, CA 92592

Telephone No. 951-491-6002

RECEIVED

APR 30 2018

Designated Basin Rule 7.10.4(b) reads as follows:

WATER RESOURCES STATE ENGINEER COLO

7.10.4(b) Water diversion during the calendar year 1997 and during any successive calendar year may be excluded in computing average annual historic use provided at least ten years of water use information is available to compute historic use and provided a written request to exclude water use for any given calendar year is received by the Commission by May 1 of that calendar year. This written request must be on a form prescribed by the Commission. To avoid having applicants pick and choose water use years during this period to maximize the estimate of average annual historic use, a request to exclude water use for any year once submitted can not be withdrawn.



APPENDIX B

ELLICOTT SPRINGS RESOURCES

Benton Well Supply
Ellicott, Colorado

10:35 AM
5/30/12

Q:\Aglad\Fair Market Valuation\2012\ETC\ESR Valuation\[ESR Valuation (Benton Water) V12.xlsx]Benton Well Water

<u>Year</u>	<u>Well No. 11197-FP</u> <u>Acre Feet Total</u>	<u>Well No. 17075-FP</u> <u>Acre Feet Total</u>	<u>Acre Feet Total</u>	<u>Acre Feet 10-</u> <u>year Average</u>	<u>Acre Feet 10-</u> <u>year Avg.</u> <u>Discounted</u> <u>50.00%</u>	<u>Municipal Use</u> <u>Per Acre Feet</u> <u>0.65</u>	<u>Municipal Use</u> <u>Per Dwelling</u> <u>Units</u> <u>2.70</u>	<u>Cost Herman</u> <u>Lien</u> <u>\$352,820</u>	<u>Cost Pipeline</u> <u>Per Dwelling</u> <u>Unit</u> <u>\$2,020,000</u>	<u>Total Cost Per</u> <u>Dwelling Unit</u> <u>\$2,372,820</u>	<u>Total Cost Per</u> <u>Acre Foot</u> <u>2.70</u>
2003	112.47	0.00	112.47								
2004	425.16	0.00	425.16								
2005	436.11	138.41	574.52								
2006	182.58	145.48	328.05								
2007	0.00	0.00	0.00								
2008	381.87	278.48	660.35								
2009	237.13	238.20	475.33								
2010	217.97	226.57	444.54								
2011	278.99	247.75	526.74								
2012	560.00	387.00	947.00	394.13	197.06	128.09	345.85	\$1,020	\$5,841	\$6,861	\$18,524
2013	560.00	387.00	947.00	486.85	243.43	158.23	427.22	\$826	\$4,728	\$5,554	\$14,996
2014	560.00	387.00	947.00	544.84	272.42	177.07	478.09	\$738	\$4,225	\$4,963	\$13,400
2015	560.00	387.00	947.00	586.22	293.11	190.52	514.41	\$686	\$3,927	\$4,613	\$12,454
2016	560.00	387.00	947.00	655.00	327.50	212.87	574.76	\$614	\$3,515	\$4,128	\$11,147
2017	560.00	387.00	947.00	760.22	380.11	247.07	667.09	\$529	\$3,028	\$3,557	\$9,604
Average	375.48	239.79	615.28	571.21	244.88	185.64	501.24	\$735	\$4,211	\$4,946	\$13,354



ELLICOTT TOWN CENTER
BENTON WELLS

Date	Well No. 11197-FP			Well No. 17075-FP			Source
	Meter (100x)	Acre-Feet-Pumped	ACP YTD	Meter (100x)	Acre-Feet-Pumped	ACP YTD	
5/1/08	792,726			309,412			
6/8/08	56,008	80.80	80.80	534,648	69.12	69.12	Goss
7/11/08	331,128	84.43	165.23	771,189	72.59	141.71	Goss
8/3/08	588,551	79.00	244.23	995,887	68.96	210.67	Goss
9/12/08	848,589	79.80	324.03	215,427	67.37	278.04	Goss
11/2/08	37,075	57.84	381.87	216,884	0.44	278.48	Goss
1/1/09	37,075			216,884			Goss
7/23/09	485,197	137.53	137.53	743,276	161.53	161.53	Goss
7/29/09	520,704			766,177			Chambers
8/31/09	670,410			880,932			Chambers
9/3/09	681,148	60.13	197.66	889,395	44.84	206.37	Goss
9/30/09	764,741			945,359			Chambers
10/14/09	789,006	33.10	230.76	965,592	23.38	229.75	Goss
10/28/09	800,178			979,370			Chambers
11/17/09	809,775	6.37	237.13	993,142	8.45	238.20	Goss
11/20/09	809,776			993,142			Chambers
1/1/10	809,775			993,142			Goss
4/1/10	861,079			36,728			Chambers
5/27/10	964,978			82,158			Chambers
10/1/10	504,643			410,560			Chambers
10/12/10	570,016	217.97	217.97	631,385	226.57	226.57	Goss
4/30/11	634,385	19.75	19.75	767,814	41.87	41.87	
6/11/11	708,023	22.59	42.34	934,602	51.28	93.15	
7/5/11	843,384	41.54	83.88	195,583	39.95	133.10	
7/30/11	980,220	41.99	125.87	434,621	73.36	206.46	



APPENDIX D

**APPLICATION FOR CHANGE OF TYPE OF USE AND/OR CHANGE IN PLACE OF USE
 WITHIN A DESIGNATED GROUNDWATER BASIN**

This application is to be used to apply to change the type of use and/or place of use of a well permit issued by the Ground Water Commission. This is an application for a change of water right pursuant to Section 37-90-111(1)(g), C.R.S, subject to Designated Basin Rule 7.7, except for a change of description of irrigated acres which is subject to Designated Basin Rule 7.4. This form must be completed, signed, dated and submitted to the Commission with a non-refundable \$100 filing fee. Accepted payment options and form submittal instructions can be found on our website Colorado.gov/water. Review the instructions at the end of this form. Type or print in black or blue ink.

1. WELL PERMIT NUMBER:			
17075-FP-R			
2. APPLICANT INFORMATION			
Name of Applicant Elliott Utilities Company, LLC			
Mailing Address P.O. Box 231961		City Encinitas	State CA
Zip code 92023			
Telephone Number (include area code) 858-692-6262		Email Randy@FoleyDevelopment.net	
3. <input checked="" type="checkbox"/> APPLICATION FOR A CHANGE OF TYPE OF USE - Describe the proposed new use(s).			
See Attachment A			
4. <input checked="" type="checkbox"/> APPLICATION FOR A CHANGE IN PLACE OF USE - Describe the proposed new place of use.			
See Attachment A			
5. <input checked="" type="checkbox"/> I HEREBY CLAIM I AM THE OWNER OF THIS WATER RIGHT. I understand that this request will be published in the local newspaper(s) as may be required by law and I agree that I will pay the actual publication cost to the Commission when the same is billed to me.			
6. SIGNATURE – Sign or enter name(s) of applicant(s) or authorized agent. The making of false statements herein constitutes perjury in the second degree, which is punishable as a class 1 misdemeanor pursuant to C.R.S. 24-4-104(13)(a). I have read the statements herein, know the contents thereof, and state that they are true to my knowledge.			
Signature: 		Date: 26 Mar 21	
Print name and title (if applicant is not an individual):		R. Randy Goodson, President	
FOR OFFICE USE ONLY			
DIV _____ WD _____ BASIN _____ MD _____ CO _____			

APPLICATION FOR CHANGE OF TYPE OF USE AND/OR PLACE OF USE

Part II – Flow Meter Data, Power Data, Pump Test, and Crop Data*(FILL OUT PART II COMPLETELY. INCOMPLETE APPLICATIONS WILL BE RETURNED)*

It is the applicant's responsibility to provide sufficient information to determine the extent of historical withdrawals and depletions to the aquifer pursuant to Designated Basin Rule No. 7.10.

PERMIT NO. 17075-FP-R

Table A – FLOW METER RECORDS

Complete this table for at least the ten most recent consecutive years. The meter must be a field verified/certified totalizing flow meter. Use additional sheets if necessary.

<u>Year</u>	<u>Acre-feet</u>	<u>This well had no flow meter this year</u>
<u>2006</u>	<u>145.48</u>	<input type="checkbox"/>
<u>2007</u>	<u>0</u>	<input type="checkbox"/>
<u>2008</u>	<u>278.48</u>	<input type="checkbox"/>
<u>2009</u>	<u>238.22</u>	<input type="checkbox"/>
<u>2010</u>	<u>195.87</u>	<input type="checkbox"/>
<u>2011</u>	<u>246.50</u>	<input type="checkbox"/>
<u>2012</u>	<u>Conservation Program</u>	<input type="checkbox"/>
<u>2013</u>	<u>Conservation Program</u>	<input type="checkbox"/>
<u>2014</u>	<u>Conservation Program</u>	<input type="checkbox"/>
<u>2015</u>	<u>0</u>	<input type="checkbox"/>
<u>2016</u>	<u>0</u>	<input type="checkbox"/>
<u>2017</u>	<u>Conservation Program</u>	<input type="checkbox"/>
<u>2018</u>	<u>Conservation Program</u>	<input type="checkbox"/>
<u>2019</u>	<u>0</u>	<input type="checkbox"/>
<u>2020</u>	<u>0</u>	<input type="checkbox"/>

APPLICATION FOR CHANGE OF TYPE OF USE AND/OR PLACE OF USE

PART II (CONTINUED)

PERMIT NO. 17075-FP-P

TABLE B – WELL PUMP TEST FOR POWER CONSUMPTION COEFFICIENT RATING

This test is used to determine the power consumption coefficient of the well and so determine the historical withdrawals from the well using the power consumption data.

The test must be conducted and reported on Form 3.2 (Form 3.1/3.2 Well Measurement Verification Form, and instruction for that form, are available on line at dwr.colorado.gov), unless an acceptable test conducted prior to the creation of that form was conducted and reported on a form acceptable to the Commission that contain the data required for the analysis.

The test should be conducted in the later part of the irrigation season, during August through October, when the ground water table is typically lower, or a reduction factor may be applied to the amounts of water estimated to have been pumped. Additional tests may be submitted at the applicant's option. The test must be conducted with the system under full operating conditions. If the well supplies a sprinkler, the sprinkler must be connected and operating. Such a test must be conducted by a certified well tester as determined by the State of Colorado. A list of certified well testers is available online at dwr.colorado.gov. The requirement for the test may be waived where other supportive data on yield, water level, sprinkler operating pressures, and efficiency justify.

IMPORTANT: The test as described in Form 3.2 allows for the option of either measuring the pumping level below the centerline of the discharge or measuring the discharge rate for purposes of determining that the well system has stabilized. For purposes of this application, in order to assist in determining the effect of changes in water level in the aquifer on historical diversions:

- 1) The pumping level in the well below the centerline of the discharge during the test must be measured and reported, and
- 2) The operating pressure of the pumping system during the test must be determined and reported.

NOTE: FOR PUMPS POWERED BY SOURCES OTHER THAN ELECTRICITY - A test sufficient to compute a power consumption coefficient must be performed on the well by a certified well tester as determined by the State of Colorado. The test shall identify the type of fuel used and a determination of the rate of fuel use instead of a determination of the rate of electrical power demand.

APPLICATION FOR CHANGE OF TYPE OF USE AND/OR PLACE OF USE

PART II (CONTINUED)

PERMIT NO. 17075-FP-R

TABLE C – HISTORICAL CROP PRACTICE

Complete this table for at least the ten most recent consecutive years.

List all crops grown each year, the acres of each crop and the method of irrigation [for example: flood or furrow application; mid-elevation sprinkler (spray heads midway between pivot mainline and ground surface); low elevation drop nozzle sprinkler (spray heads 12 to 18 inches above ground surface); Low Energy Precision Application (bubble applicators 12 to 18 inches above ground surface or drag socks or hoses on the ground)]. Use additional sheets if necessary. Where the record is dependent upon the testimony of neighbors or former owners or operators, affidavits must be attached.

IMPORTANT: Farm Service Agency (FSA) crop acreage reports (Form No. 578) and accompanying aerial photos must be provided for all years available to support the amounts given below.

Year	Crop A			Crop B			Crop C		
	Crop	Acres	Irrig. Method	Crop	Acres	Irrig. Method	Crop	Acres	Irrig. Method
2006	Pasture Grass	246.7	Sprinkler						
2007		n/a							
2008	Pasture Grass	246.7	Sprinkler						
2009	Pasture Grass	246.7	Sprinkler						
2010	Wheat	122.5	Sprinkler	Pasture Grass	124.2	Sprinkler			
2011	Pasture Grass	124.2	Sprinkler						
2012		n/a							
2013		n/a							
2014		n/a							
2015	Wheat	124.2	Sprinkler	Corn	122.5	Sprinkler			
2016	Pasture Grass	124.2	Sprinkler						
2017									
2018									
2019									
2020									

(USE THE FOLLOWING PAGE IF MORE THAN 3 CROPS WERE IRRIGATED)

I recognize that the aquifer is overappropriated at this location, and/or that the change of water right requested requires future use to be limited to permitted historical use, and/or that the change of water right may result in limitation of the use of the right(s), and that in order to allow this change of water right for the well with Permit No. 17075-FP-R without material injury to the rights of other appropriators, the future withdrawals from the well may be limited to prevent an increase over the historical depletions to the aquifer and/or to prevent material injury to the vested rights of others. I am willing to comply with the following conditions to provide for the proper administration of the requested change, if approved.

1. The terms of the Ground Water Commission's ("Commission") change of water right approval shall be considered as controlling the use of the well on the land described in the approval, modifiable in the future only by the Commission. A certified copy of the approval shall be recorded in the public records of the county clerk on the land described in the approval. Any modifications shall likewise be recorded.
2. Prior to implementation of the requested change of water right, the applicant agrees to install, maintain, and operate a totalizing flow meter or other Commission approved measuring device in accordance with Commission Policy Memorandum 95-3, or if within the Republican River Basin in accordance with the "Rules and Regulations Governing the Measurement of Ground Water Diversions Located in the Republican River Basin Within Water Division No. 1." Such installation, maintenance, and operation includes:
 - a. Installation, maintenance, and operation according to the manufacturer's specifications.
 - b. Field certification or verification to be in accurate operating condition when installed and at intervals specified in the relevant Policy or Rule (currently every 4 years for flow meter, or every 2 or 4 years for other devices) by a certified well tester as determined by the State of Colorado.
 - c. Certification or verification of all meters and devices must be reported on forms acceptable to the Commission. Forms currently approved for reporting totalizing flow meter installation are **Form 3.1/3.2 Well Measurement Verification Form**. A totalizing flow meter may be required if the well is part of a Complex or Compound system, if the pump is not powered by electricity, or if the well produces from a confined aquifer.
 - d. Reporting of diversions as required by the administrative conditions stated herein and as may be required in the approval of the change of water right.
3. Prior to implementation of the change of water right, the applicant agrees to enter into a contract with the local Ground Water Management District ("District"), the Commission, or a person or entity acceptable to the Commission for purposes of administration of the change of water right. The contracted services required under this administration shall include:
 - a. Site inspections covering the peak water use period during the calendar year, and for irrigation wells readings prior to and after the irrigation season per form **DBB-004**. Each inspection will include the readings of water and power measuring devices and a description of use of water from the subject well(s). Any perceived violation of the permit conditions shall also be reported.
 - b. The applicant (or the contracted entity) shall report to the Commission and District all readings of the measuring device(s), whether water pumped, kilowatt-hours of electricity, thousand cubic feet of gas, or quantity of other fuel used, by February 15 of each year for the prior calendar year, or by December 1 of the current calendar year if within the Republican River Basin.
 - c. All meter readings must be reported on forms acceptable to the Commission. Forms currently approved for reporting meter readings are **DBB-004 Administrative Reporting-Meter Readings** (note that the **6.1 Annual Water Use Reporting Form** is also to be submitted if within the Republican River Basin).
4. No water shall be withdrawn from any well that is not in compliance with the applicable measurement

Policy or Rule, except to field certify or verify the accuracy of a totalizing flow meter or certify a Power Consumption Coefficient (PCC) rating.

- 5. The Applicant is required to observe the meter and monitor diversions from the wells, and shall be responsible to turn off the pump(s) once the withdrawal limit(s) for that year is(are) reached.
- 6. The applicant hereby authorizes Ma (name of electric or natural gas company or fuel supplier) to release to authorized Commission or District personnel all power use data within its records regarding this well(s), upon request.
- 7. The applicant hereby agrees to allow access to lands and wells described in the approval at reasonable times to authorized representatives of the Commission or District for inspection and other necessary visits to administer this application. The measuring devices must be accessible for examination and reading by the authorized persons.
- 8. The applicant hereby authorizes the Farm Service Agency to release to authorized Commission or District personnel all its records regarding lands irrigated from this well(s), upon request.
- 9. The applicant hereby agrees to such additional terms and conditions that are deemed appropriate to prevent an increase over the historical depletions to the aquifer and/or to prevent material injury to the vested rights of others as may be contained in the approval of the change of water right.
- 10. The applicant acknowledges that pursuant to §37-90-111.5(5) and (6), C.R.S., the applicant is subject to sums currently not to exceed five hundred dollars (\$500) for each violation or each day such violation occurs, court costs, and reasonable attorney fees incurred by the Commission and/or District in any court or administrative action, for the following:
 - a. Violation of any provision of this Applicant's Statement or any conditions of the change of water right approval.
 - b. Failure to submit data, falsifying or making a fictitious report of the amount of designated ground water pumped from a well, making a false or fictitious report of a power coefficient for a well, or falsifying any power coefficient test.
 - c. Willfully interfering with or damaging a totalizing flow meter, power meter, or other devices used to measure designated ground water diversions or tampering with or falsifying any record made or being made by any such totalizing flow meter, power meter, or other devices.
 - d. Furthermore, if such ground water violation results in the violation of compliance with an interstate compact, the violator is subject to liability for all direct, actual, and necessary expenses incurred by the State of Colorado in performing any action, including the purchase of water or payment of damages necessary for the State of Colorado to remedy the violation of such compact.

Name of Applicant: (Please Print) ELLICOTT UTILITIES COMPANY, LLC

Signature: R. Randy Goodson

Print name and title: R. Randy Goodson, President

Date: 26 MAR 21

Attachment A

Application for a Change of Water Right

Permit No. 17075-FP-R

List of Proposed New Uses: Municipal, irrigation (including irrigation at the historical place of use), commercial, industrial, domestic, stock watering, recreation, fish and wildlife purposes, residential, fire protection, replacement and augmentation, either through direct use or following storage.

New Place of Use: Service area of Mayberry Colorado Springs Metropolitan District and historically irrigated lands to the extent used under the existing well permit.