

**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 The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.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:

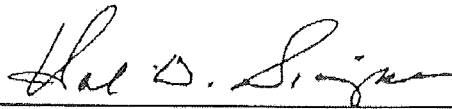
19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed 161 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product 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

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLORADO

BEFORE THE COLORADO GROUND WATER COMMISSION

CASE NO. 91-GW-01

NEGOTIATED SETTLEMENT AND ORDER *RDH*

IN 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 18, 1990, *in parts of the NE 1/4 and parts of the SE 1/4 RDH* 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.
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.

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Case No. 91-GW-01

WATER RESOURCES
STATE ENGINEER
COLORADO

- 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 Elvin 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

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Case No. 91-GW-01

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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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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-W-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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GROUND WATER COMMISSION
STATE OF COLORADO

WATER RESOURCES
STATE ENGINEER
COLO.

FINAL PERMIT NO. 27574-FP

UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN

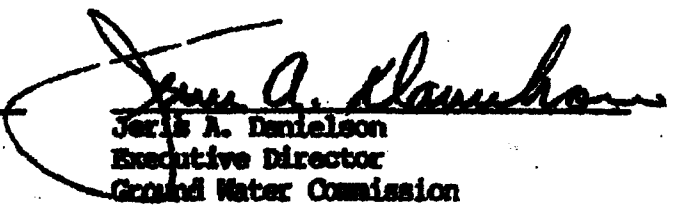
1. Priority Number: 70
2. Priority Date: December 1, 1954
3. Use: Irrigation, Domestic and Mechanical
4. Name of Claimant: Green Acres Sod-N-Turf
5. Location of well: SW 1/4 of the NE 1/4 of Section 36, Township 12 South, Range 63 West of the 6th Principal Meridian
6. Maximum annual volume of the appropriation: 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

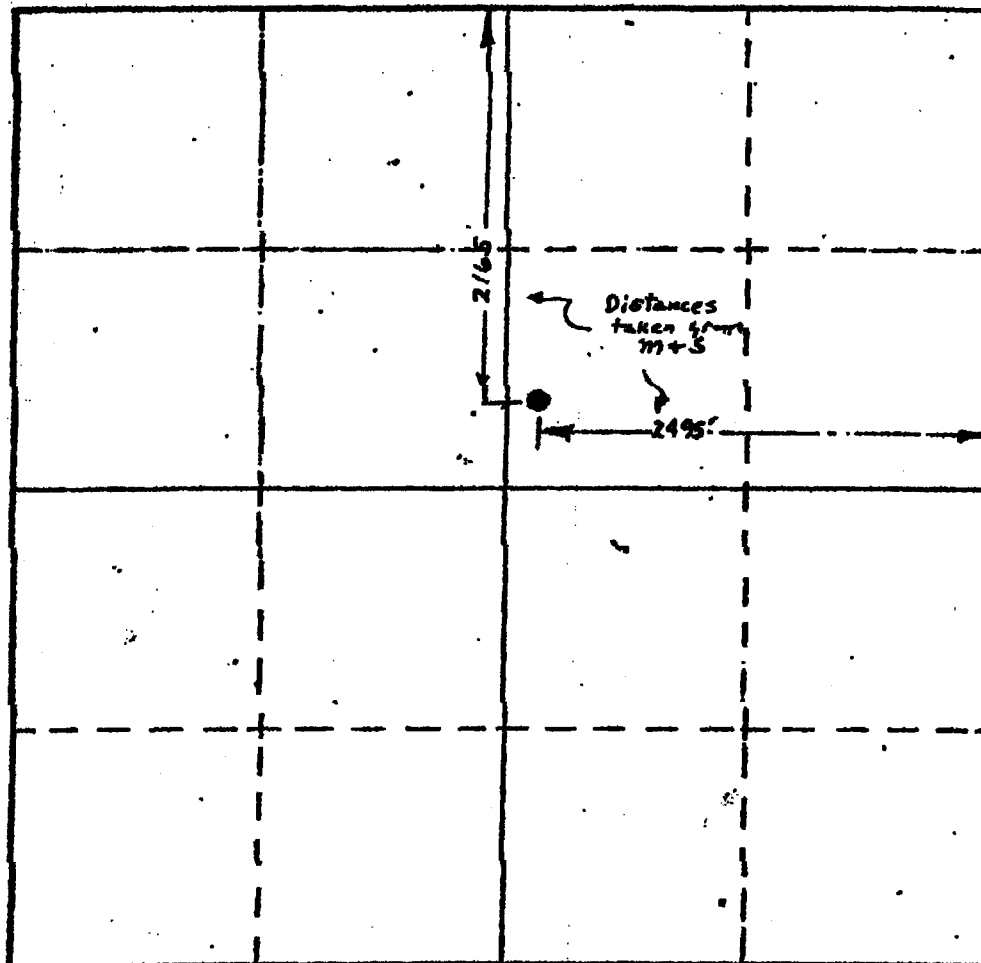
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FIELD INSPECTION REPORT

JUL 19 2007

WATER RESOURCES
STATE ENGINEER
6010

PERMIT NO. R-16253, LOCATION SW $\frac{1}{4}$, NE $\frac{1}{4}$, 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

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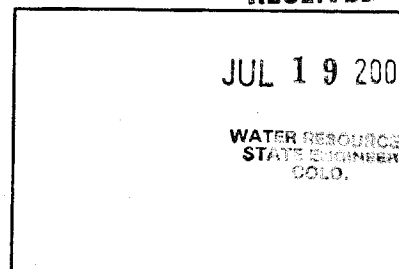
El Paso County, CO



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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WATER RESOURCES
STATE OF COLORADO
60912

Case International Company, a Colorado corporation

By: [Signature]
Its Vice President

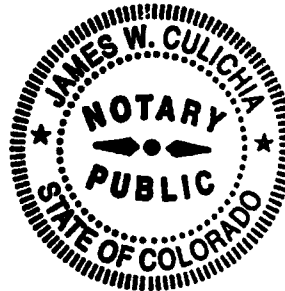
STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

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

[Signature]
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

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El Paso County, CO

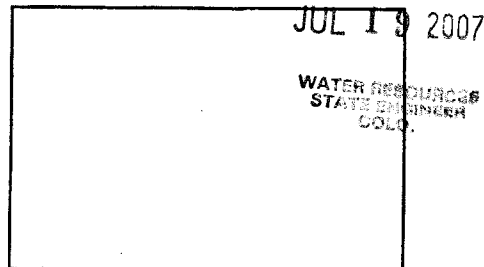


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WATER RIGHTS SPECIAL WARRANTY DEED

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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.

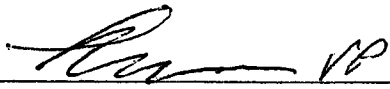
IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

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JUL 19 2007

WATER RESOURCES
STATE ENGINEER
COLO.

Case International Company, a Colorado corporation

By: 
Its Vice President

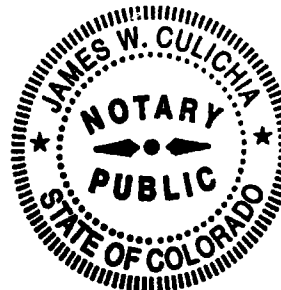
STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

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

ROBERT C. "BOB" BALINK

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El Paso County, CO

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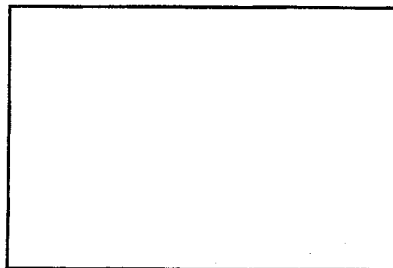
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WATER RESOURCES
STATE ENGINEER
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WATER RIGHTS SPECIAL WARRANTY DEED

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.

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Case International Company, a Colorado corporation

By: [Signature]
Its Vice-President

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

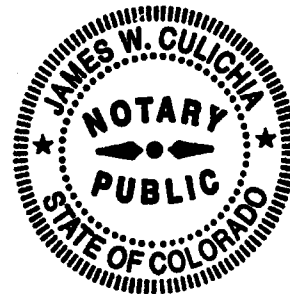
The foregoing instrument was acknowledged before me this 4th day of December, 2006, by
LINDSAY CASE AS VICE President of Case International Company, a Colorado
corporation.

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
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El Paso County, CO



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**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.

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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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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

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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

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WATER RESOURCES
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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

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WATER RESOURCES
STATE ENGINEER
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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.

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- 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

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WATER RESOURCES
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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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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.

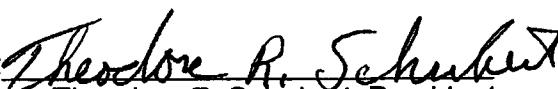
12. Recovery of Costs. In the event of a dispute regarding this Agreement, the prevailing party in such dispute shall be entitled to recover its costs and reasonable legal fees incurred to enforce this Agreement.

Wherefore, the parties have executed this Agreement to be effective as of the date set forth above.

CASE INTERNATIONAL COMPANY

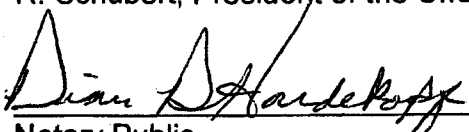
CHEROKEE METROPOLITAN
DISTRICT

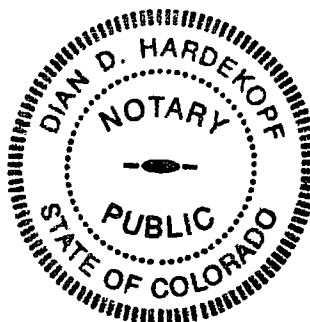
By: 
Lindsay J. Case, President
Vice-President

By: 
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.


Notary Public
6250 Palmer Park Blvd
Address C/S, CO 80915
2-26-07
My Commission Expires



ACKNOWLEDGMENT

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WATER RESOURCES
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This Agreement was executed before me this 4th day of December, 2006 by
Lindsay Case Vice President of the Case International Company.

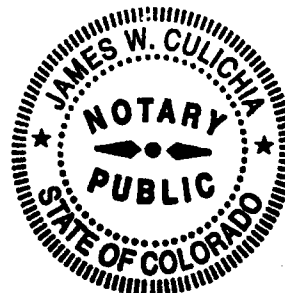

Notary Public

Address

319 N. Weber Colo Spgs Co 80903

6-27-16

My Commission Expires



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File No. CWCS000:

Exhibit "A"

JUL 19 2007

WATER RESOURCES
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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-a-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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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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WATER RESOURCES
STATE ENGINEER
BOLA

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 UBSCGWMD 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.

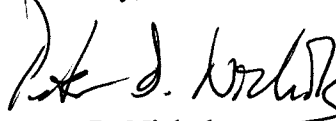
AUG 24 2007

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).

RECEIVED

FIELD INSPECTION REPORT

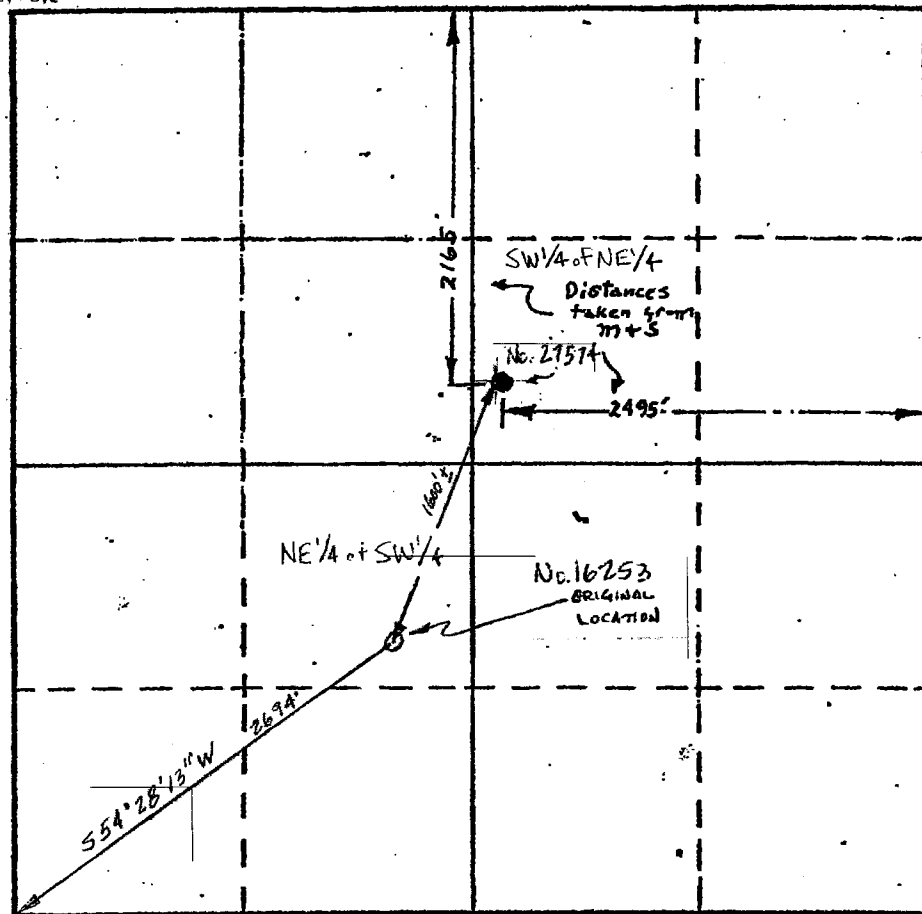
AUG 24 2007

PERMIT NO. R-16253, LOCATION SW 1/4, NE 1/4, SEC. 36, T. 1N, R. 63W

WATER RESOURCES
DIVISION
COLORADO

NW CORNER

NE CORNER



SW CORNER

SE CORNER

SCALE: 1" = 1000'

REMARKS

Blank lines for remarks.

9

FELT, MONSON & CULICHIA, LLC

Attorneys at Law

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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 (within 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