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April 26, 2017

VIA E-MAIL AND U.S. MAIL

Colorado Department of Natural Resources
Division of Reclamation Mining & Safety
Attn: Peter Hays
1313 Sherman Street
Denver, CO 80203

Re: Inspection Report for Miller Pit (Permit No. M-82-112)

Dear Mr. Hays:

Holland & Hart represents MidFirst Trust, as Personal Representative of the Estate of Rick L. Hunt ("Estate"). The Personal Representative is the permittee under Reclamation Permit No. M-82-112, for a sand and gravel operation in Elbert County known as the "Miller Pit". Schmidt Construction ("Schmidt") is the current operator/lessee of the Miller Pit, and we are assisting Schmidt with responding to the Minerals Program Inspection Report ("Inspection Report") dated February 1, 2017, prepared by the Colorado Division of Mining Reclamation and Safety ("Division").

In our capacity as counsel for the Personal Representative, we have reviewed the Inspection Report and responses provided by Schmidt. This letter responds to the Division's concern regarding the "Hydrologic Balance" inspection topic. That concern is stated in the Inspection Report as follows:

PROBLEM: The Division has no evidence that the operator has a valid well permit, substitute water supply plan, or approved water augmentation plan for the exposed ground water at the site. This is a problem related to C.R.S. 34-32.5-116(4)(h) and Construction Materials Rule 3.1.6(1)(a) governing injury to existing water rights.

The Inspection Report goes on to request corrective actions, as follows:

CORRECTIVE ACTIONS: The operator shall demonstrate that the operation is in compliance with the Office of the State Engineer (SEO), show evidence that the operator is taking measures to bring the site into compliance with the SEO, or backfill the ponds to at least two feet above the groundwater surface by the corrective action date specified.



As described in further detail below, the Miller Pit appears to be in compliance with all requirements for well permitting and augmentation under Colorado statutes. Generally, a gravel pit that was excavated after December 31, 1980, and which exposes groundwater, must have a well permit issued by the State Engineer's Office and, where applicable, be covered by either a judicially-approved plan for augmentation or a substitute water supply plan approved by the State Engineer. *See, e.g.,* C.R.S. § 37-90-137(11)(a).

In this case, a well permit for the Miller Pit operation was issued to Robert Miller in 1989 as Permit No. 35808-F. A copy of the well permit is attached as Attachment A. Additionally, the Miller Pit is a covered structure under the plan for augmentation decreed on January 29, 1998 in the Application for Water Rights of Rick Hunt, Case No. 92CW106, Water Division 1 (the "Augmentation Plan Decree"). A copy of the Augmentation Plan Decree is attached hereto as Attachment B.

The Miller Pit is described in the Augmentation Plan Decree as "an open sand and gravel mining pit according to the terms and conditions of the Mined Land Reclamation Permit Numbered M-82-112." *See* Attachment B, paragraph B.1 at page 4. The Decree further provides that the Miller Pit "will be a portable excavation within the 80 acres described herein at no time will more than once acre of ground water be exposed." *See id.* It is our understanding that significantly less than one acre of ground water is currently exposed at the Miller Pit. Accordingly, the Augmentation Plan Decree appears to cover the current scope of operations at the Miller Pit.

An augmentation plan requires a legally-available source of replacement water, or "augmentation water." The augmentation water supplies identified in the Augmentation Plan Decree for the Miller Pit include wastewater effluent supplied by the Town of Elizabeth (the "Town"). *See id.*, at paragraph B.2. This augmentation water was originally provided under a 15-year water lease agreement with the Town executed in 2004. An updated Lease Agreement between Mr. Hunt and the Town was subsequently entered in 2010. A copy of that Lease Agreement is attached as Attachment C. The Lease Agreement provides for the lease of up to twenty acre-feet of augmentation water annually, and automatically extends for additional one-year terms unless terminated by either party. Records provided by the Town further indicate that the Lease Agreement is currently in effect and that lease payments have been received through 2016, and invoiced for payment in 2017.

Production and water accounting data for the Miller Pit, prepared on behalf of Schmidt, indicates that water losses through product washing and evaporation totaled 1.914 acre-feet in 2016, which is well within the amount provided for under the Lease Agreement with the Town. The accounting is attached as Attachment D.



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Based on the information above, the Miller Pit appears to be operating in compliance with all requirements under Colorado law regarding well permitting and augmentation. Please feel free to contact me should you have any questions or concerns.

Sincerely,

William H. Caile
Of Counsel

Enclosures

cc: Margot Edwards, Esq.
Mark Heifner

9776079_2

WRJ-5 Rev. 76

COLORADO DIVISION OF WATER RESOURCES
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203

RECEIVED**AUG 10 1989****PERMIT APPLICATION FORM**

Application must be complete where applicable. Type or print in **BLACK INK**. No overstrikes or erasures unless initialed.

RECEIVED**AUG 09 1989**

WATER RESOURCES
STATE ENGINEER
0010

- (x) A PERMIT TO USE GROUND WATER
() A PERMIT TO CONSTRUCT A WELL
OR: (x) A PERMIT TO INSTALL A PUMP

() REPLACEMENT FOR NO. _____

() OTHER _____

WATER COURT CASE NO. _____

08-02-87 1:27 P
GVLANS 70.00
PITUID 00060
032472 60.00
MNXDOR 00013
S/T 130.00
TTL 130.00

WATER RESOURCES
STATE ENGINEER
0010

(1) APPLICANT - mailing addressNAME Robert D. MillerSTREET 4032 County Road 166CITY Elizabeth CO 80107
(state) (zip)TELEPHONE NO. (303) 646 4831**(2) LOCATION OF PROPOSED WELL**County ElbertWest SW 1/4 of the NE 1/4 1/4, Section 28Twp. 6 S., Rng. 64 W., 6th P.M.
(N, S) (E, W)**(3) WATER USE AND WELL DATA**Proposed maximum pumping rate (gpm) 600Average annual amount of ground water to be appropriated (acre-feet): 4.3Number of acres to be irrigated: NAProposed total depth (feet): 12

Aquifer ground water is to be obtained from:

Running Creek Alluvial AquiferOwner's well designation M-82-112**GROUND WATER TO BE USED FOR:**

- () HOUSEHOLD USE ONLY - no irrigation (0)
() DOMESTIC (1) () INDUSTRIAL (5)
() LIVESTOCK (2) () IRRIGATION (6)
(x) COMMERCIAL (4) () MUNICIPAL (8)
() OTHER (9)

DETAIL THE USE ON BACK IN (11)

(4) DRILLERName NA

Street _____

City _____
(State) (Zip)

Telephone No. _____ Lic. No. _____

FOR OFFICE USE ONLY: DO NOT WRITE IN THIS COLUMN

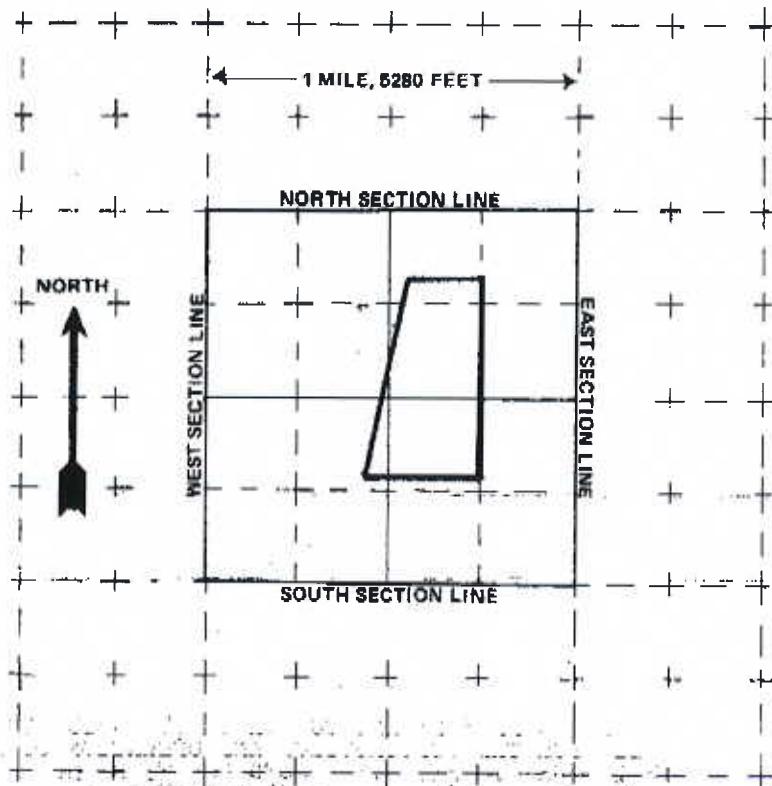
Receipt No. 303493 CHG / 0.00Basin Q-1 Dist 3493**CONDITIONS OF APPROVAL**

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.

- 1) APPROVED PURSUANT TO C.R.S. 37-90-137(2) AND (11) FOR THE CONSTRUCTION AND OPERATION OF A WELL (GRAVEL PIT) IN ACCORDANCE WITH THE TEMPORARY SUBSTITUTE WATER SUPPLY PLAN FOR THE MILLER-BERENDS PIT M-82-112 APPROVED BY THE STATE ENGINEER ON OCTOBER 2, 1989. THE WELL (POND) SHALL NOT BE OPERATED UNLESS IT IS INCLUDED IN A SUBSTITUTE WATER SUPPLY PLAN APPROVED BY THE STATE ENGINEER OR A PLAN FOR AUGMENTATION APPROVED BY THE WATER COURT. THE WATER SUPPLY PLAN FOR THE MILLER-BERENDS PIT IS CURRENTLY VALID THROUGH OCTOBER 31, 1990 AND IF IT IS NOT EXTENDED OR IF A COURT DECREE IS NOT ENTERED FOR A PLAN FOR AUGMENTATION, THIS WELL PERMIT IS NULL AND VOID AND ALL USE OF THE WELL MUST CEASE IMMEDIATELY.
- 2) THE TOTAL SURFACE AREA OF THE PROPOSED GROUND WATER POND MUST NOT EXCEED ONE ACRE.
- 3) THE BOUNDARIES OF THE GRAVEL POND SHALL BE MORE THAN 600 FEET FROM ANY EXISTING WELL.
- 4) THE OWNER SHALL MARK THE WELL (POND) IN A CONSPICUOUS PLACE WITH APPROPRIATE WELL PERMIT NUMBERS, NAME OF THE AQUIFER, AND COURT CASE NUMBERS, AND SHALL TAKE NECESSARY MEANS AND PRECAUTIONS TO PRESERVE THESE MARKINGS.
- 5) DURING GRAVEL MINING OPERATIONS THE USE OF GROUND WATER IS LIMITED TO THE MOISTURE CARRIED OFF IN THE GRAVEL. UPON COMPLETION OF MINING THE USE OF GROUND WATER IS LIMITED TO EVAPORATION LOSSES FROM THE POND. NO OTHER USE OF WATER IS ALLOWED. Km 10/11/89

APPLICATION APPROVEDPERMIT NUMBER 1DATE ISSUED OCT 12 1989EXPIRATION DATE OCT 12 1990BY Bruce E. DeZure
(STATE ENGINEER)I.D. 1-01 COUNTY 20

(5) **THE LOCATION OF THE PROPOSED WELL** and the area on which the water will be used must be indicated on the diagram below. Use the CENTER SECTION (1 section, 640 acres) for the well location.



The scale of the diagram is 2 inches = 1 mile
Each small square represents 40 acres.

WATER EQUIVALENTS TABLE (Rounded Figures)

An acre-foot covers 1 acre of land 1 foot deep
1 cubic foot per second (cfs) . . . 449 gallons per minute (gpm)
A family of 5 will require approximately 1 acre-foot of water per year.
1 acre-foot . . . 43,560 cubic feet . . . 325,900 gallons
1,000 gpm pumped continuously for one day produces 4.42 acre-feet.

(6) **THE WELL MUST BE LOCATED BELOW** by distances from section lines.

1,000 ft. from North sec. line
(north or south)
1,465 ft. from South Sec. Line
1,306 ft. from East sec. line
(east or west)
2,430 ft. from West Sec. Line
LOT _____ BLOCK _____ FILING # _____

SUBDIVISION _____

(7) **TRACT ON WHICH WELL WILL BE LOCATED** Owner: Sun Country Ventures

No. of acres 80.0 Will this be the only well on this tract? Yes

(8) **PROPOSED CASING PROGRAM**

Plain Casing NONE

_____ in. from _____ ft. to _____ ft.

_____ in. from _____ ft. to _____ ft.

Perforated casing NONE

_____ in. from _____ ft. to _____ ft.

_____ in. from _____ ft. to _____ ft.

(9) **FOR REPLACEMENT WELLS** give distance and direction from old well and plans for plugging it:

NA

(10) **LAND ON WHICH GROUND WATER WILL BE USED:**

Owner(s): Sun Country Ventures, A Colorado Partnership

No. of acres: 80

Legal description: See attached Exhibit A

(11) **DETAILED DESCRIPTION** of the use of ground water: Household use and domestic wells must indicate type of disposal system to be used.

Evaporation from sand and gravel mine and processing up to 100,000

tons per year; see attached Exhibit B, Report of Miller Pit W-82-112,

Blatchley Associates, Inc., July 1989.

(12) **OTHER WATER RIGHTS** used on this land, including wells. Give Registration and Water Court Case Numbers.

Type or right

Used for (purpose)

Description of land on which used

81CW122 and 81CW123

Municipal Water Supply

Town of Elizabeth

(13) **THE APPLICANT(S) STATE(S) THAT THE INFORMATION SET FORTH HEREON IS TRUE TO THE BEST OF HIS KNOWLEDGE.**

Robert D Miller
SIGNATURE OF APPLICANT(S) Robert D. Miller

EXHIBIT A

LEGAL DESCRIPTION

A tract of land in the West 3/4 of Section 28, Township 6 South, Range 64 West of the 6th Principal Meridian, Elbert County, Colorado, more particularly described as follows:

Commencing at the Northeast corner of the Northwest quarter of the Northeast quarter of said Section 28 and considering the East line of the West 3/4 of said Section 28 to bear S 0 degrees 13'46"E with all bearings herein contained relative thereto; Thence S 0 degrees 13'46"E along the East line a distance of 1000.00 feet to the point of beginning; Thence S 89 degrees 46'14"W a distance of 1000.00 feet; Thence S 10 degrees 39'22"W a distance of 2805.47 feet; Thence N 89 degrees 46'14"E a distance of 1529.80 feet to the East line of the aforesaid West 3/4 of Section 28; Thence N 0 degrees 13'46"W a distance of 2754.99 feet to the point of beginning; Containing 80.000 acres, more or less.

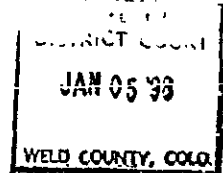
TOGETHER WITH A 60.00 FOOT WIDE NON-EXCLUSIVE INGRESS AND EGRESS EASEMENT DESCRIBED AS FOLLOWS:

Commencing at the Northeast corner of the Northwest 1/4 of the Northeast 1/4 of Section 28, Township 6 South, Range 64 West of the 6th Principal Meridian, Elbert County, Colorado, and considering the East line of the West 3/4 of Section 28 to bear S 0 degrees 13'46"E with all bearings herein contained relative thereto; Thence S 0 degrees 13'46"E along the East line a distance of 1000.00 feet; Thence S 89 Degrees 46'14"W a distance of 1000.00 feet; Thence S 10 degrees 39'22"W a distance of 859.35 feet to a point on the centerline of the aforesaid easement and the point of beginning; Thence N 88 degrees 11'54"W along said centerline a distance of 623.56 feet to a point of curve; Thence along the arc of a curve to the left and along said centerline a distance of 211.28 feet to the point of tangent, said curve has a radius of 2000.00 feet and a central angle of 6 degrees 03'10"; Thence S 85 degrees 44'56"W along said centerline a distance of 576.94 feet to a point of curve; Thence along the arc of a curve to the right and along said centerline a distance of 393.29 feet to a point of tangent, said curve has a radius of 900 feet and a central angle of 25 degrees 02'15"; Thence N 69 degrees 12'49" along said centerline a distance of 244.14 feet to a point of curve; Thence along an arc of a curve to the right and along said centerline a distance of 322.26 feet to a point of tangent, said curve has a radius of 1500.00 feet and a central angle of 12 degrees 18'34"; Thence N 56 degrees 54'15"W along said centerline a distance of 383.10 feet to a point of curve; Thence along the arc of a curve to the left and along said centerline a distance of 111.77 feet, said curve has a radius of 192.00 feet and a central angle of 33 degrees 21'13", to a point on the East Right of way line of the County Road, and to the point of terminus.

CENTRAL FILES

DISTRICT COURT, WATER DIVISION NUMBER 1, COLORADO

Case No. 92-CW-106



FINDINGS AND RULING OF THE REFEREE AND DECREE OF THE WATER COURT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

RICK HUNT

IN ELBERT COUNTY, COLORADO

THIS MATTER, coming before the Court on the Amended Application of Rick Hunt for Underground Water Rights and Application for Approval of Plan for Augmentation, the Court, having considered the pleadings, the files and record herein, the comments of the Division Engineer and the interested parties, and being fully advised, hereby makes the following findings of fact and conclusions of law and decree:

FINDINGS OF FACT

THIS APPLICATION was filed on September 30, 1992. All notices required by law have been given of the Application and this Court has jurisdiction over the subject matter of the Application and over all persons affected thereby whether or not they have appeared.

Two Statements of Opposition in this matter have been timely filed. The statements filed are on behalf of (i) Central Colorado Water Conservancy District and Groundwater Management Subdistrict of the Central Colorado Water Conservancy District, and (ii) Hal D. Simpson and Alan D. Perryman, State Engineer and Division Engineer, respectively, State of Colorado. No other objections have been filed and the time for filing objections has now expired. This Judgment and Decree has been approved by the Applicants and by the Objectors.

All matters contained in the Application were reviewed, and testimony was taken where such testimony was necessary and such corrections made as are indicated by the evidence.

Applicant conducts a gravel mining operation known as the Running Creek Sand and Gravel Mine a/k/a the "Miller Pit" pursuant to Mined Land Reclamation Permit Numbered M-82-112,

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Revision TR-01. Water for the mine has been permitted by the State Engineer under a substitute water supply plan for Well Permit No. 35808-F. The site of the Miller Pit is in an 80 acre parcel in the NE 1/4 Section 28, Township 6 South, Range 64 West, 6th P.M., Elbert County, Colorado.

Applicant also engages in agricultural use of land in the SW 1/4 of Section 28, Township 6 South, Range 64 West of the 6th P.M., in Elbert County, Colorado.

The source of the replacement water to be used by the Applicant is obtained by Applicant pursuant to a fifteen year contract with the Town of Elizabeth, Colorado, to purchase the wastewater effluent from the town treatment facility (hereinafter referred to as the "allowable augmentation water"). The source of the water which passes through the Town of Elizabeth wastewater treatment facility is presently from two decreed nontributary wells, the first being an Arapahoe formation nontributary well known as "The Town of Elizabeth Bishop Well A", Well Permit No. 16210-F decreed in Water Division #1, Case No. 81CW122 for an appropriation of 150 acre-feet per year. The second well is a Lower Dawson formation nontributary well known as "The Town of Elizabeth Well DA-15617-F" decreed in Division #1, Case No. 81CW123 for an annual appropriation of 50 acre-feet.

The Court takes notice of the fact that the Town of Elizabeth has drilled a third nontributary well (Well Permit No. 44451-F, Case No. 94CW210) to the Arapahoe Formation which will provide an additional source of nontributary water which Applicant will be required to purchase pursuant to "Exhibit A" attached to the Application.

The Court finds that the Miller Pit has been operated since October 12, 1989 pursuant to a substitute water supply plan put in place with the Office of the State Engineer using the purchased effluent from the Town of Elizabeth. As part of the requirement of the substitute water supply plan, Applicant has installed devices to measure the discharge of effluent from the wastewater treatment plant. As a result of the measurement, Applicant(s) have determined that the present annual yield is 84 acre feet per year. For the purposes of this Decree, the Court finds that 84 acre feet per year minimum of nontributary water is available in the initial year from the Town of Elizabeth wastewater treatment facility for the purpose of augmentation of the gravel mining and agricultural uses.

It is noted by the Applicant and the Court that Elbert County, Colorado, is one of the fastest growing counties along

the Colorado Front Range. The rapid increase in population has created an increased need for processed aggregate at an economical price to meet the demands of construction. Applicant has requested the allocation of water for augmentation of the Miller Pit operations be decreed to be 15 acre-feet per year.

The Court also takes notice of the fact that the population of the Town of Elizabeth, Colorado was approximately 750 persons at the time of the filing of this Application. At the time of the Decree, the population of the Town of Elizabeth has grown to exceed 1,000 persons. The Court includes this information in the findings and conclusions to illustrate that the effluent discharge from the wastewater treatment plant of the Town of Elizabeth is increasing with the increase in population and the addition of a third nontributary well.

The Application presented in this matter seeks a decree and approval of the following claims and, as set forth below, the information recited in such claims are made part of these findings of fact:

A. Claim No. 1: Underground Water Rights-Irrigation

1. **Name of Structure** - Hunt Well No. 1. Application for a well permit for Hunt Well No. 1 will be submitted to the Colorado Division of Water Resources in keeping with the provisions of House Bill 96-1044.

2. **Legal Description** - Approximately 1560 feet from the South Section Line and 1560 feet from the West Section Line, NE 1/4 SW 1/4 Section 28, Township 6 South, Range 64 West, Elbert County, Colorado.

3. **Source of Water** - Alluvium of Running Creek.

4. **Date of Initiation of Appropriation** - June 13, 1989 by an agreement with the Town of Elizabeth, Colorado.

5. **Amount Claimed** - 400 g.p.m. conditional; average annual withdrawal of approximately 163 acre feet when the Town of Elizabeth water supply is fully developed within the contractual period of the Agreement with the Town of Elizabeth.

6. **Use of the Water** - Irrigation of 60 acres, stock watering, fish and wildlife, fire protection, all in the NE 1/4 and SW 1/4, Section 28, Township 6 South, Range 64 West of 6th P.M., Elbert County, Colorado, as shown on the map

attached hereto as "Exhibit B".

7. **Name and address of owner of land on which Hunt Well No. 1 will be located is:**

Rick Lee Hunt
43160 County Road 17-21
Elizabeth, CO 80107

B. Claim No. 2: Part I Augmentation for the Miller Pit

1. **Name of Structure - Miller Pit:** The structure to be augmented for the Miller Pit operation will be an open sand and gravel mining pit according to the terms and conditions of the Mined Land Reclamation Permit Numbered M-82-112, Revision TR-01. For the sake of convenience, the structure will simply be called "Miller Pit". Miller Pit will be a portable excavation within the 80 acres described herein and at no time will more than one acre of ground water be exposed. At the completion of mining, no groundwater will be exposed and all areas will be backfilled. At current mining rates, it is anticipated that mining operations will be completed within the next five years.

2. **Name/Description of Water Rights Used for Augmentation -** The source of the water to be used by the Applicant is obtained by Applicant pursuant to a fifteen year contract with the Town of Elizabeth, Colorado, to purchase all the effluent from the Town wastewater treatment facility. The present source of the water which passes through the Town of Elizabeth wastewater treatment facility is from two decreed nontributary wells, the first being an Arapahoe formation nontributary well known as "The Town of Elizabeth Bishop Well-A" decreed in Water Division #1 Case No. 81CW122 and the second well is a Lower Dawson formation nontributary well known as "The Town of Elizabeth Well DA-15617-F" decreed in Division #1 Case No. 81CW123. Applicants will also be required to purchase, in the future, water which passes through the Elizabeth wastewater treatment facility which is generated by the new well constructed by the Town, Well Permit No. 44454-F, Case No. 94CW210. Additional new wells will be added in the future by the Town of Elizabeth and shall be included in the source of water to be used by Applicants for replacement pursuant to the plan decreed herein.

3. **Miller Pit Water Use and Depletions -** The Court finds that Applicant seeks replacement of out-of-priority

depletions resulting from the operation of the Miller Pit. The water requirement of the Miller Pit operation is expected to not exceed 15 acre-feet per year based on the following criteria:

a. Pursuant to the Mined Land Reclamation Permit and the limitations expressed in the Application herein, no more than one acre of pond shall be opened (one acre of exposed ground water) at any time for mining operations, for wash water and settling pond for wash water. Net annual evaporation from exposed ground water is estimated to be 2.33 acre feet per year (presumed ice-free), distributed as follows:

January - 0.07 Acre-feet
February - 0.08 Acre feet
March - 0.10 Acre-feet
April - 0.16 Acre-feet
May - 0.21 Acre-feet
June - 0.31 Acre-feet
July - 0.37 Acre-feet
August - 0.35 Acre-feet
September - 0.28 Acre-feet
October - 0.19 Acre-feet
November - 0.13 Acre-feet
December - 0.08 Acre-feet

There will be no evaporation during periods when the pond is iced over.

b. Annual production of aggregate is planned to be 100,000 tons which will result in retention of 3.86 acre-feet annually or 5% of aggregate mined and sold.

c. Dust control is intended to consume 0.3 acre-feet per year.

d. Stream and transportation losses are expected to be 2.8%.

C. Claim No. 2 Part II: Augmentation of Agricultural Irrigation:

1. **Name of Structure** - The well will be called Hunt Well No. 1.

2. **Name/Description of Water Rights Used for Augmentation:** See Paragraph B.2., Supra, which is incorporated here by reference.

3. **Water Use and Depletions** - All water withdrawn will be used for irrigation, stock watering, fish and wildlife and fire protection.

4. Irrigation will be by a sprinkler system. For the purpose of this plan, it is assumed that the irrigated crop will be alfalfa, whose rate of consumptive use or irrigation water is the highest potential crop to be grown. It has been determined that the average annual consumptive use of irrigation water for alfalfa is 1.90 acre-feet per year and the average efficiency rate of application is 70 percent for which 30 percent of the water applied returns to the Running Creek alluvial aquifer.

CONCLUSIONS OF LAW

This Application was filed on September 30, 1992. All notices required by law have been given of the Application and this Court has jurisdiction over the subject matter of the Application and over all persons affected thereby whether or not they have appeared.

Two Statements of Opposition in this matter have been timely filed. The statements filed are on behalf of (i) Central Colorado Water Conservancy District and Groundwater Management Subdistrict of the Central Colorado Water Conservancy District, and (ii) Hal D. Simpson and Alan D. Berryman, State Engineer and Division Engineer, respectively, State of Colorado. No other objections have been filed and the time for filing objections has now expired.

The Application for Underground Water Rights and for Approval of a Plan for Augmentation is one contemplated and authorized by law. If operated and administered in accordance with this Decree, the Plan for Augmentation will permit the use of the structures described in the Application without adversely affecting any other vested water rights.

The State Engineer may lawfully be required to administer this Plan for Augmentation decreed herein, in the manner set forth in this Decree.

As result of the operation of the Plan for Augmentation described herein, sufficient water is available for replacement,

and no material injury to the vested water rights of others will occur from the use of water decreed herein.

DECREE

THE RULING OF THE WATER REFEREE WITH REGARD TO THE RESPECTIVE PARTS OF THE APPLICATION IS AS FOLLOWS:

CLAIM NO. 1: UNDERGROUND IRRIGATION WATER RIGHTS

1. The names and addresses of the Applicants:

Rick Hunt
43160 County Road 17-21
Elizabeth, CO 80107

2. Name of the Structure:

The Well will be called Hunt Well No. 1.

3. Legal Description of the Structure:

Hunt Well No. 1 will be located in the NE 1/4 SW 1/4 of Section 28, Township 6 South, Range 64 West of the 6th P.M. approximately 1560 feet from the South Section Line and 1560 feet from the West Section Line of Section 28, Elbert County, Colorado.

4. Source of Water:

The water will be drawn from the alluvium of Running Creek.

5. Date of Initiation of Appropriation:

June 13, 1989 by an agreement with the Town of Elizabeth, Colorado.

6. Pumping Rate and Amount Decreed:

400 g.p.m. Conditional is the pumping rate. Average annual withdrawal ultimately will be 163 acre feet conditional when the Elizabeth, Colorado water supply is fully developed.

7. Use of the Water:

All water withdrawn will be used for irrigation of 60

acres, stock watering, fish, wildlife, fire protection in the NE 1/4 and SW 1/4, Section 28, Township 6 South, Range 64 West of the 6th P.M., Elbert County, Colorado, as shown on the map attached hereto as "Exhibit B".

8. Depth of Well:

Hunt Well No. 1 will be 60 feet in depth.

9. Name and Address of Landowner Where Well Located:

Rick Lee Hunt
43160 County Road 17-21
Elizabeth, CO 80107.

10. Construction of Wells:

For the well decreed herein, and any additional or replacement wells, applicants shall comply with the following conditions:

a. The permit number and name of the aquifer shall be permanently displayed on or near the well at a location easily accessible to water officials.

b. Unless otherwise authorized by the Division Engineer, Applicant shall install a totalizing flow meter. The meter shall be installed according to manufacturer's recommendations and shall be inspected at least annually, and promptly repaired or recalibrated as needed. If Applicant's meter becomes inoperable, it shall be repaired as soon as possible so that measurements can continue. Permission to operate the well without an operational meter must be obtained from the Division Engineer.

c. Applicant shall keep monthly records of the amount of water pumped and power consumed by the well pump and perform the calculations necessary to determine whether Applicant is in compliance with this Decree. Applicant shall supply both the Division Engineer and the Water Commissioner with those records at least on an annual basis or upon request by the Division Engineer.

11. When the Applicant is ready to construct any of the

wells described herein, the State Engineer shall consider the rights granted herein as valid. If Applicant fails to construct the well for which the permit was issued within the period of time authorized by statute, including legally authorized extensions of any such time period, then, when Applicant is ready to drill the well, applicant shall file a second application for such well and the State Engineer shall issue a permit with restrictions no more burdensome than are found in this Decree, pursuant, as well to C.R.S. 37-90-137(2).

CLAIM NO. 2 PART I: PLAN FOR AUGMENTATION FOR THE MILLER PIT

12. Name of the Applicant:

Rick Lee Hunt
43160 County Road 17-21
Elizabeth, CO 80107

13. Name of Structure to be Augmented:

The structure to be augmented for the Miller Pit operation under Well Permit No. 35808-F, issued October 12, 1989, will be an open gravel mining pit according to the terms and conditions of the Mined Land Reclamation Permit Numbered M-82-112, Revision TR-01. Miller Pit will be a portable excavation within the 80 acres described herein and at no time will more than one acre of ground water be exposed. At current mining rates, it is anticipated that mining operations will be completed within the next five years.

14. Name/Description of Water Rights Used for Augmentation:

The source of the water to be used by the Applicant is described in Paragraph B.2. herein.

15. Purpose of Augmentation:

Replacement of out-of-priority depletions resulting from the operation of the Miller Pit.

16. Miller Pit Water Requirement/Depletions:

The water replacement requirement of the Miller Pit operation is expected to not exceed 15 acre-feet per year based on the following criteria:

a. Pursuant to the Mined Land Reclamation Permit and the Limitations expressed in the Application herein, no more than one acre of pond shall be opened (one acre of exposed ground water) at any time for mining operations, wash water and settling pond for wash water. Net annual evaporation from exposed ground water is estimated to be 2.33 feet per year (presumed ice-free), distributed as follows:

January - 0.07 acre-feet
February - 0.08 acre-feet
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August - 0.35 acre-feet
September - 0.28 acre-feet
October - 0.19 acre-feet
November - 0.13 acre-feet
December - 0.08 acre-feet

b. Maximum annual production of mined sand and gravel is planned to be 100,000 tons which will result in retention of 3.86 acre-feet annually or 5% of sand and gravel mined and sold.

c. Dust control is intended to consume 0.3 acre-feet per year.

d. Stream and transportation losses are expected to be 2.8% of Wastewater discharged by the Elizabeth wastewater treatment plant to the point of replacement.

e. The amount of water decreed by the Court for replacement as result of operations of the Miller Pit shall be 15 acre-feet per year. At such time as the Miller Pit operations shall cease, the 15 acre-feet decreed for its operation can be used for the purposes described in this Decree for Hunt Well No. 1.

17. Augmentation Water Sources:

The source of the water to be used by the Applicant is obtained by Applicant pursuant to a fifteen year contract

with the Town of Elizabeth, Colorado, to purchase the wastewater effluent from the town treatment facility. The source of the water which passes through the Town of Elizabeth wastewater treatment facility is from two decreed nontributary wells, the first being an Arapahoe formation nontributary well known as "The Town of Elizabeth Bishop Well - A" Permit No. 16210-F, decreed in Water Division #1 Case No. 81-CW-122 and the second well is a Lower Dawson formation nontributary well known as "The Town of Elizabeth Well DA-15617-F" decreed in Division #1 Case No. 81CW123. upon completion of the development of the third well in Case No. 94-CW-210 (Permit No. 44454-F) and any additional wells by the Town of Elizabeth, the water passing through the Town of Elizabeth wastewater treatment facility which is generated by these wells shall also be sources of replacement water pursuant to this Decree.

18. Operation of the Plan:

See "Plan for Joint Administration of Augmentation for the Miller Pit and for Hunt Irrigation" below.

19. Names and Addresses of Owners of Structures:

The Town of Elizabeth wastewater treatment facility is located on land owned by the Town of Elizabeth, Colorado. Address is P.O. Box 159, Elizabeth, CO 80107. The Miller Pit is on land owned by Rick Lee Hunt, 43160 County Road 17-21, Elizabeth, CO 80107.

20. Right to Successive Use:

Any right to reuse or successive use of water approved herein shall be in accordance with law. Reuse and successive use can only occur after a subsequent application and decree of the Court.

CLAIM NO. 2 PART II: PLAN FOR AUGMENTATION FOR AGRICULTURAL IRRIGATION

21. Name of the Applicant:

Rick Hunt, 43160 County Road 17-21, Elizabeth, CO 80107

22. Structure to be Augmented.

The well to be constructed in the NE 1/4 SW 1/4 of Section 28, Township 6 South, Range 64 West of the 6th P.M.

will be located approximately 1560 feet from the North Section Line and 1560 feet from the West Section Line of Section 28 and will draw water from the alluvium of Running Creek.

23. Name/Description of Water Rights Used for Augmentation:

See Paragraph B.2., above which is incorporated by reference.

24. Purpose of Augmentation:

Replacement of our of priority depletions resulting from withdrawal of water from the alluvium of Running Creek.

25. Hunt Well #1 Well Requirement.

All wastewater from the Town of Elizabeth purchased pursuant to "Exhibit A" to the Application not otherwise used for the Miller Pit operation, is to be used to replace out-of-priority depletions for irrigation, stock watering, fish and wildlife and fire protection use in the NE1/4 and SW 1/4 Section 28, Township 6 South, Range 64 West of the 6th P.M., Elbert County, Colorado. The average annual withdrawal will not exceed the limitations placed on this Well pursuant to the **Plan for Joint Administration for the Miller Pit and for Hunt Irrigation** set out below. When not operating under the well priority, pumping will be limited to 1.43-times the "allowable augmentation water" per year adjusted for stream transportation charges and the sand and gravel mine augmentation as outlined in Paragraph 33.

26. Operation of the Plan:

See "Plan for Joint Administration of Augmentation for the Miller Pit and for Hunt Irrigation" below.

27. Names and Addresses of Owners of Structures:

The Town of Elizabeth wastewater treatment facility and the Lower Dawson and Arapahoe formation wells which are the source of the water for augmentation are all located on land owned by the Town of Elizabeth, Colorado. Hunt Well No. 1 Well is located on land owned by Rick Lee Hunt, 43160 County Road 17-21, Elizabeth, CO 80107.

PLAN FOR JOINT ADMINISTRATION OF AUGMENTATION FOR
MILLER PIT AND FOR HUNT IRRIGATION

28. Applicant will maintain an accounting of the monthly metered discharge of the Town of Elizabeth's wastewater effluent to Running Creek. Presently there is a calibrated meter in place to measure the effluent discharge.

29. With regard to the Miller Pit mining operation, Applicant will keep a monthly accounting of the volume of depletions that result from its sand and gravel mining operations including evaporation, reclamation and dust control. Total monthly depletions for the measured area of open water at the Miller Pit (not to exceed one acre) and retainage of water in aggregate product removed from the premises (water to equal no more than 5% by volume of material transported off-site) shall be calculated according to the form of report required by the Division Engineer. According to the terms of the Mined Land Reclamation Permit Numbered M-82-112, the Applicant must backfill any pond or other structure that intercepts groundwater, upon completion of mining operations.

30. The irrigation of the Hunt property will be by a well constructed in the alluvium of Running Creek. According to House Bill 96-1044, Applicant will be seeking a well permit from the Division of Water Resources. The Well to be constructed shall be fitted with a totalizing meter. The effluent water supply available for augmentation will increase in the future due to the growth of the service hookups provided by the Town of Elizabeth. To the extent that increased water for augmentation is available Applicant may increase the acreage irrigated within the NE 1/4 and SW 1/4 of Section 28 Township 6 South Range 64 West. However, any increase above the total of 60 acres specified in Paragraph A.6. and 7. herein shall only be accomplished after publication and approval of the Court in a subsequent case.

31. Administration for the Plan For Augmentation shall include stream transportation charges as follows:

- a. Hunt Well No. 1: 2.80 percent
- b. Miller Pit: 2.80 percent

32. For the purpose of administration of the Plan, the maximum allocation of augmentation water for the Miller Pit, including stream transportation charges, is 15 acre-feet.

33. Augmentation water available for irrigation shall be the balance of the allowable augmentation water for irrigation after deducting the Miller Pit allocation and stream transportation charges. Beginning the first full year of metering the Town of Elizabeth's wastewater effluent, the allowable augmentation water for irrigation in the following irrigation season shall be determined from the previous year's annual wastewater effluent from the Town of Elizabeth.

34. Allowable pumpage from the Hunt Well No. 1 for irrigation shall be determined by multiplying the "allowable augmentation water" by 1.43.

35. Monthly records of the totalizing meter readings for the Town of Elizabeth's wastewater effluent and Hunt Well No. 1 shall be recorded and provided to the Division Engineer for Water Division No. 1 or the designated representative on an annual basis or upon request by the Division Engineer in a form approved by the Division Engineer.

36. Applicant acknowledges that there is only sufficient water as defined in paragraph B.2 and quantified in paragraph 6 to provide replacements for the depletions associated with the mining operation and irrigation of 60 acres. Therefore, if the amounts of nontributary groundwater decreed herein are in an insufficient quantity to replace depletions for the total operation proposed under this plan for augmentation, Applicant will obtain water from another source, line the pond or fill in the pond with onsite backfill materials. If Applicant adds sources of replacement water, Applicant must file an application with the Water Court seeking approval of an additional source or sources for replacement of depletions. The Court retains jurisdiction pursuant to paragraph 38 to assure the continued replacement of depletions. Further, the Court retains jurisdiction for five years after mining operations have ceased to ensure that the pond is either lined, filled in or that the water designated as the replacement source in this decree is adequate, or an alternative water supply of augmentation is secured to replace evaporative depletions if necessary.

37. Applicant agrees that the requirements of this decree shall run with the land and be recorded in the real estate records of Elbert County, Colorado.

38. Pursuant to the provisions contained in Section 7-37-304(6), 15 C.R.S.(1990), the Plan for Augmentation decreed herein shall be subject to the reconsideration of this Court, for the purpose of evaluating injury to vested water rights. The continuing jurisdiction of the Court shall be available until Applicants or their successors shall obtain a permanent source of augmentation water. During the period of continuing jurisdiction, any person may petition the Court to invoke its retained jurisdiction. Any such request shall state with particularity the factual basis for requesting that the Court evaluate injury to vested water rights associated with the operation of this decree, together with proposed decretal language to effect the petition. Unless otherwise stated herein, the party lodging such a petition shall have the burden of going forward to establish the prima facie facts alleged in the petition. If the Court finds those facts to be established, the Applicant shall thereupon have the burden of proof to show: (a) that any modification sought by the Applicant will avoid injury to other appropriators, or, (b) that any modification sought by an opposer is not required to avoid injury to other appropriators, or (c) that any term or condition proposed by Applicant in response to Opposer's petition does avoid injury to other appropriators. Such petition shall be filed with the Court under the above styled caption and case number and shall be served by certified mail, return receipt requested, on all parties who have appeared herein, or on their counsel of record.

39. Applicant shall not at any time pump more water than the available replacement source in quantity. Should, however, any groundwater be pumped in a water year in excess of the previous years' Town of Elizabeth's waste water effluent, it shall be offset by foregoing the pumping of that volume the following year.

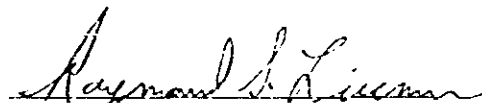
40. Pursuant to C.R.S. 37-92-305(8) the State Engineer shall curtail all diversions, the depletions for which are not replaced according to the "Plan for Joint Administration of Augmentation for Miller Pit and for Hunt Irrigation", so as to prevent injury to vested water rights.

92CW106
HUNT

41. It is also ordered that the conditional right herein awarded is hereby continued in full force and effect until January 2004. If Applicant desires to maintain such conditional decree, an application for a finding of reasonable diligence shall be filed on or before January 2004 or a showing made on or before such date that the conditional water right has become an absolute water right by reason of the completion of the appropriation.

42. The Application for the above water rights were filed in the Water Court in the year 1992 and the water rights granted herein shall be administered as having been filed in that year; and shall be junior to all priorities having been filed in previous years. As between all rights filed in the same calendar year, priority shall be determined by historical dates of appropriation and not affected by the date of entry of decree.


Dated: January 5, 1998


RAYMOND S. LIESMAN
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: January 27, 1998


JONATHAN W. HAYS
Water Judge
Water Division No. 1
State of Colorado

Dated: _____

Raymond S. Liesman
Water Referee
Water Division No. 1
State of Colorado

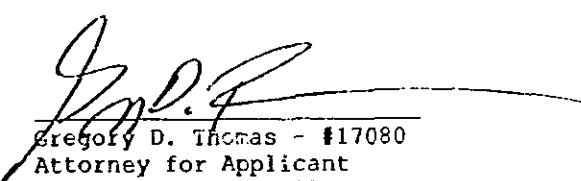
THE COURT FINDS: Protests filed in this matter have been resolved as evidenced by the signatures of undersigned counsel as to the approval as to form and content of the within Decree.

IT IS THE ORDER OF THE COURT THAT THE FOREGOING RULING OF THE HONORABLE RAYMOND S. LIESMAN IS CONFIRMED AND APPROVED, AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.


Dated: _____

Jonathan W. Hays
Water Judge
Water Division No. 1
State of Colorado

APPROVED AS TO FORM AND CONTENT BY THE UNDERSIGNED:


Gregory D. Thomas - #17080
Attorney for Applicant
43160 County Road 17-21
Elizabeth, CO 80107
(303) 841-3970

LIND, LAWRENCE & OTTENHOFF


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Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

JENNIFER L. GIMBAL
Deputy Attorney General

LEE E. MILLER
First Assistant Attorney General



Alexandra L. Davis - #24531
Assistant Attorney General
Natural Resources Section
Attorney for the State and Division Engineers
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
(303) 866-5117

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into this 22nd day of June 2010, by and between Rick L. Hunt (hereinafter "Lessee"), and the Town of Elizabeth, a Colorado Municipal Corporation.

WHEREAS, the Town of Elizabeth operates the Gold Creek Wastewater Treatment Plant in the County of Elbert, State of Colorado, which process effluent and discharge water as a product of such treatment, discharging to Gold Creek, a portion of which water the Town of Elizabeth desires to lease to Lessee according to the terms and conditions stated herein, and,

WHEREAS, Lessee desires to lease from the Town of Elizabeth for a period of one (1) year, with annual renewals as provided below, water discharged from the Elizabeth waste water treatment plant.

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

The Town of Elizabeth leases to Lessee twenty (20) acre-feet annually of nontributary effluent attributable to the water right more particularly described in "Exhibit A", attached hereto and incorporated by this reference, for a period of one (1) calendar year starting on the 1st day of January, 2010, and terminating on the 31st day of December, 2010, subject to annual renewals as provided below.

The lease price payable by Lessee to the Town of Elizabeth shall be \$125 for each metered acre-foot of water discharged from the Town of Elizabeth's waste water treatment plant for Lessee's use under this lease agreement. The \$125 price shall be adjusted each January 1st by the percentage change in the Consumer Price Index for the Boulder-Denver Metropolitan Area for the preceding calendar year.

Lessee shall be billed annually for water delivered under this lease and payments shall be made by Lessee to the Town of Elizabeth within 15 days of the date of statement. Any payment not made by the due date shall bear interest at the rate of 1.5% per month until paid.

Lessee shall use the water delivered to Lessee under this agreement for lawful purposes only under the laws of the State of Colorado. The uses contemplated by Lessee are for augmentation and substitute supply.

Lessee shall obtain and pay for any decrees or orders of Court or permits or approvals required for Lessee to apply the water leased hereunder to use under any plan of augmentation or plan for substitute water supply. Lessee shall also pay the cost of providing any new meter which may be required be placed to measure the leased water outflowing from the Elizabeth waste water treatment plant.

The leased water from the Town of Elizabeth's waste water treatment plant is accepted by Lessee without warranty by the Town of Elizabeth that the quality of said water is fit for any intended purpose whatsoever. The Town of Elizabeth makes no warranty, either expressed or

implied, that the quality of the water discharged from its waste water treatment plant is fit for any intended purpose whatsoever.

Any party to this lease agreement shall have the right to terminate this agreement upon 60 days notice in writing given by the terminating party and received by the other party. This lease agreement shall be deemed void by the parties in the event either the State Engineer or the Water Court for Water Division No. 1 shall not allow the lease of the water for the purposes stated herein.

Provided no termination notice has occurred under paragraph 7, above, this lease agreement shall be extended for an additional calendar year beginning on January 1 of 2011, and on January 1 of each succeeding year. If prior to ninety (90) days before the end of any calendar year either party has given written notice of its intent not to renew the lease for the succeeding calendar year, then this lease agreement shall terminate on the following January 1st.

Notices, statements, and other writings provided by one party to another party under this lease agreement shall be deemed received when sent by United States mail, postage prepaid, or facsimile, to the following:

If to Lessor to:

Town of Elizabeth
Town Administrator
P.O. Box 159
Elizabeth, Colorado 80107
Facsimile Number: 303-646-9434

With a copy to:

Corey Hoffmann, Esq.
Town Attorney
Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 Sixteenth Street, Suite 200
Denver, Colorado 80202
Facsimile Number: 303-825-1269

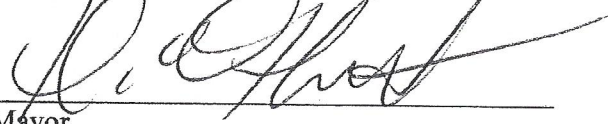
If to Lessee to:

Rick L. Hunt
43160 County Road 17-21
Elizabeth, Colorado 80107
Facsimile Number: 303-646-9233

The Town of Elizabeth warrants, covenants and agrees that it has a good and sufficient title in and to the water which is the subject matter of this agreement.

This lease agreement is made in Elbert County, State of Colorado on the date set out above and shall be construed under the laws of the State of Colorado. Venue for any action regarding this lease shall be in the District Court for Elbert County.

THE TOWN OF ELIZABETH, COLORADO



Mayor

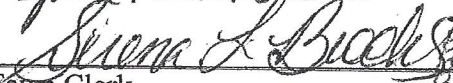


Lessee, Rick L. Hunt

ATTEST:

The foregoing lease agreement was approved by the Board of Trustees for the Town of Elizabeth, Colorado, during a regular meeting of the Board held on

June 22, 2010.



Town Clerk



EXHIBIT A

Non-tributary groundwater in the Arapahoe Formation decreed by the District Court in and for Water Division No. 1 on February 7, 1985 in Case No. 81CW122, and withdrawn by means of the Town of Elizabeth Bishop Well A, originally permitted under Permit No. 16210-F, and in the Lower Dawson Formation decreed by the District Court in and for the Water Division No. 1 on February 5, 1985 in Case No 81CW123, and withdrawn by means of the Town of Elizabeth Well DA-15617-F, originally permitted under Permit No., 15617-F, and now operating under replacement well Permit No. 15617-FR.

Production and Water Accounting for Miller Pit - 2016

month	wash prod 1 (TONS)	wash prod 2 (TONS)	unwashed (TONS)
Jan	72.10	259.23	0.00
Feb	440.34	832.47	0.00
Mar	310.80	677.77	0.00
Apr	241.61	463.82	826.83
May	999.11	1,111.13	0.00
June	252.57	3,553.16	0.00
July	123.15	4,149.20	0.00
Aug	340.84	3,367.97	137.87
Sept	81.57	3,163.01	25.63
Oct	82.49	1,497.10	29.73
Nov	310.35	1,608.75	0.00
Dec	0.00	104.83	0.00
TOTALS	3,254.93	20,788.44	1,020.06

Total Washed Product 24,043.37
 Total Unwashed Product 1,020.06
 Total Product 25,063.43 tons
 % Washed Product 95.93%

Evaporative Losses of Water

month	evap/acre*
Jan	0.07
Feb	0.08
Mar	0.1
Apr	0.16
May	0.21
June	0.31
July	0.37
Aug	0.35
Sept	0.28
Oct	0.19
Nov	0.13
Dec	0.08
TOTAL	2.33 acre feet for one acre of pond surface

Exposed 0.48 acres according to 2017 annual report
1.1184 acre feet in evaporative losses

* data from 1992 approved SWSP

Water Consumption in Washed Product

24,043.37 total washed product (tons)
 4.5% moisture content of washed product
 1,081.95 tons of water lost in product
 2,163,903.30 pounds of water
 259,296.05 gallons of water (1 gal = 8.3453 lbs.)
0.796 acre feet of water (1 ac ft = 32.168 ft³)

Total water losses - 2016

Lost in product 0.796 acre feet
 Lost in evapor 1.118 acre feet
total 1.914 acre feet