



STATE OF
COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

Baurer and Wattenberg - Re: Wattenberg Permit Questions

mcsfh157@aol.com <mcsfh157@aol.com>

Wed, May 11, 2022 at 3:21 PM

Reply-To: mcsfh157@aol.com

To: "jared.ebert@state.co.us" <jared.ebert@state.co.us>

Cc: "peter.hays@state.co.us" <peter.hays@state.co.us>

Hello Jared,

Regarding your last email, . . . I have been chewing on the subject of AI's "omission" act for some time. If I had a seller who signed a listing agreement representing that he/she/they were the sole owner of a property, (and unlike the DRMS, our state approved contract does NOT have anything emphasizing that the *"statements ... are being made under penalty of perjury and that false statements made herein are punishable as a Class 1 misdemeanor"* - like your permit application does - no less right above the signature), and then after the fact the seller admitted they had a spouse, family member, partner, etc. who also had ownership rights, . . . the gravity or illegality of that initial act would NOT go away or be excused merely because they now wanted to, OR were required to, add them to make things correct/right/legal.

In our contracts there is endless small print and LOTS of blanks - so there could be (in all fairness) a blank that could get missed and therefore the information is accidentally omitted. However, in the DRMS application, it is not that AI omitted the ownership (Exhibit O) page, (pretty much BLANK/empty page where the only requirement is to state the owners), they didn't omit that at all - AI just stated that they (and Westminster) were the only owners - not a minor detail or insignificant thing - and not something that could be deemed a misunderstood question.

When I originally heard about all this I tried to find rationale or an excuse, thinking that perhaps Chance Allen was either clueless or extremely careless. AI's deed to their land is (to put it nicely) a bit subpar (meaning generally deeds are written more concisely to specify what all is being transferred and to also reflect what the title is subject to - (so I thought perhaps Chance didn't know that there was shared ownership rights). However, when I was finally able to reach Carl Eiberger, I was VERY SPECIFIC in my questions to him about all of this -- the deeds, the history, timing of actual knowledge (both with AI and Blue Earth), etc., and there was definitely NO lack of knowledge from Chance/AI and Blue Earth about the ownership. Furthermore, it would really be reaching to attempt to define this as carelessness.

Whatever Carl Eiberger's stance is on AI's mining, . . . should that affect or matter in how an operator, making a false statement under penalty of perjury, is treated - or their behavior is excused? The City of Aurora (per Rich Vidmar) didn't take issue with AI's mining out of bounds - but that didn't seem to matter in how this standard/rule was treated/handled by the DRMS.

In case the DRMS does not have them, I am attaching the deeds and easements/agreements that I have come across that show the joint ownership (of a number of things) between AI and Carl Eiberger - including water and minerals.

In regards to my comments before on the Stillwater Ski Lake and roads, etc., (Baurer Permit), according to the Code of Colorado Regulations there appears to be an actual definition of structure:

"Structure; Significant, Valuable and Permanent Man-made " means a non-portable improvement to real property which has defined, current and recognizable value of an economic nature; generally including but not limited to: buildings, houses, barns, fences, above or below ground utilities, irrigation ditches, maintained or public roads, bridges, railroad tracks, cemeteries, communication antennas, pipelines, water wells, water storage structures, discharge and conveyance structures, etc. 115(4)(d)"

Maybe I missed it but the lake wasn't even a listed structure by AI in the Baurer application (maybe I missed it?) - not to mention there is a 50% shared ownership of the structure (on AI's land) and no structure agreement on it. Is there a rule that waives this if the applicant has partial ownership? And if so, is there a percentage of ownership they need to have to have that requirement waived? And what about the ditches not being listed? (I think there was three?)

Also, any progress/update/findings on my last "complaint" (sorry that word makes me laugh) re: AI's mining activities outside of the Wattenberg Permit (on the south side)?

Thank you so much for your time in all of this!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

303.919.1703 Cell

-----Original Message-----

From: Ebert - DNR, Jared <jared.ebert@state.co.us>

To: SHERIE GOULD <mcsfh157@aol.com>

Cc: peter.hays@state.co.us <peter.hays@state.co.us>

Sent: Wed, Apr 20, 2022 3:27 pm

Subject: Re: Baurer and Wattenberg - Re: Wattenberg Permit Questions

Hi Sherie,

We cited AI with a problem in our inspection report regarding your first complaint pertaining to their markers. They surveyed the area in question and remarked the boundary. That is the standard enforcement action we take when it comes to markers, we typically do not hold a hearing on this issue unless the operator refuses to survey and re-mark the boundary. The information you provide regarding the ownership is interesting to say the least. At the time of our review we found the documentation they submitted to comply with our right of entry requirements, if Mr. Eiberger did not believe AI had legal right to enter I would have assumed that he would have objected to the application. Daniel Cunningham with DRMS cited the omission of Mr. Eiberger as an owner in his initial review of the application and AI revised their submittal accordingly.

Roads upgraded or improved for the mining operation need to be within the approved permit and affected land area, otherwise we do not have any specific regulations that govern access/entrance roads. If the roads are part of the mining operation, we ask them to define for us if the road will remain after reclamation or if the road area will be reclaimed. We have no jurisdiction over who is entitled to travel or use roads. Roads within the mining area move and shift frequently to accommodate mining and we allow for that.

Thanks,

Jared

On Tue, Apr 19, 2022 at 10:45 AM <mcsfh157@aol.com> wrote:

Hi Jared,

My question about the violation that AI was charged with (re: the activity on Aurora's land - December letter) was relative to the requirement of "Signs and Markers" - meaning an operator could comply (have the required markers) but intentionally spill over to adjacent or out of boundary land, or, . . . perhaps they might operate WITHOUT the required markers and therefore be unable to discern if they were in or out of boundaries. It is my understanding that there were no markers and that it was Aurora's survey that provided markers and illuminated the problem - so I was just wondering why the lack of markers wasn't part of that violation. I apologize as perhaps they were in the violation and I missed it?

Regarding the records (I was able to review) on the ownership of what is termed as "Stillwater Ranch" (180 acres in total that encompasses both AI and Eiberger land), there is joint ownership of a variety of things. While the Baurers (previous owners of AI land) did convey their particular ownership/interest to AI, you cannot convey more than you rightfully own - and per the recorded documents that I could find, there was a specific "Stipulation and Cross-conveyance" that gave each party only 50% ownership rights in all minerals (even defining minerals to ADDITIONALLY include dirt, topsoil, structural fill) and 50% ownership in the water, the water rights, wells, etc. - across the entire 180 acres - and these documents do not differentiate between surface and subsurface ownership. Additionally, there is another agreement "Joint Ownership and Easement Agreement" that further addresses joint ownership and the intent to operate both parcels (AI's and Eiberger's) as one unit (Stillwater Ranch) - shared operation, expenses/income, access, etc. (even references roads, fences, plantings), and highlights the specific feature of the Ranch (the water-ski lake) and the intent of it for the use and enjoyment of owners and guest. Perhaps there have been some new agreements, or agreements not recorded, but I have looked and aside from some gas and oil rights being sold, have not found any.

When AI filed the Baurer permit, they specifically left Eiberger off as having any mineral ownership (little alone 50%) and additionally he was not included in any "notice" that was required to be sent out. I had reached out to Daniel(?) at the DRMS (the individual handling Baurer at the time) and discussed my concerns with him (on a couple of occasions) (last time he said he couldn't comment relative to what I recalled him saying was pending litigation) and I never did get a clear understanding as to how the DRMS was viewing what all had transpired. Additionally, when I looked Stillwater Lake up at the DWR, it is listed as a structure - but AI (even if they are claiming it as 100% theirs) didn't even list it as one while they did list roads, fences, gates, culverts, wells, etc.

Regarding my last question on access, I didn't know if there was any set rules at the DRMS that governed access/entrance roads (to a mining operation) AND who all is entitled to travel on them/use them, or how much these are allowed to move/shift. The original Wattenberg mining map (south border) indicated a fence that appeared to separate the roads and ditches, (at least one ditch is listed at the DWR). The north road appeared to provide access to Aurora's property to the east as well as access to some gas and oil interests and utilities/gas line - or any other easement holder. The south road appeared to be a private entrance to the Stillwater Ranch (where it appears they've moved mining traffic to) and there looks to be a home back there. I was aware that AI mined through what was intended to be Westminster's access road (this was supposed to be one of the things they are working through) and looking at all of it from a real estate perspective (i.e. situations I've encountered relative to problems with underwriting and insurers because of access issues), and I just wondered if there was any rules or requirements from the DRMS side that would affect who or how someone could access these roads or that area - or for that matter function on or over a pressurized gas line? I am sure in an emergency an ambulance, fire/police would use whatever route was available, but wondered how legal, open, or available that would be. Hope that helps explain?

Thank you for your time in all this!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc
303.919.1703 Cell

-----Original Message-----

From: Ebert - DNR, Jared <jared.ebert@state.co.us>
To: SHERIE GOULD <mcsfh157@aol.com>
Cc: peter.hays@state.co.us <peter.hays@state.co.us>
Sent: Mon, Apr 18, 2022 9:05 am
Subject: Re: Wattenberg Permit Questions

Hi Sherie,

My understanding is Peter has been in verbal communication with AI regarding your recent complaint and has been working on coordinating an inspection after the survey was completed. He did cite the boundary markers as a problem in the inspection report for the violation and AI surveyed the area in question and replaced the markers, however that survey focused in on the area of concern I believe. My understanding is after your most recent complaint, we contacted AI and we wanted to ensure the boundaries were accurately marked for the area in question.

Regarding the Baurer Pit and the Still Water Ski Lake, there are provisions in place to protect the hydrologic balance and mining is offset from the lake. Also, AI is the surface owner of the lake area within 200 feet of the affected land and the lake is labeled on the Exhibit C Map. We do not require an operator to get a structure agreement with themselves. Eiberger's interests in the lake pertain to the water rights I believe, which AI is obligated to protect. There is a water level monitoring plan in place.

You raise a serious accusation. I was aware of a disagreement or dispute between Mr. Eiberger and AI, though I do not recall the details, but we were presented with documentation of AI's legal right to enter. Mr. Eiberger was fully aware of the application and I know he had multiple conversations with DRMS staff but in the end he did not object to the application or otherwise present evidence that AI did not have the right to conduct mining on the property that I am aware of.

I am not sure I understand your last question, could you clarify?

Jared

On Fri, Apr 15, 2022 at 12:15 PM <mcsfh157@aol.com> wrote:

Hi Jared,

I truly understand how busy everyone is. Given Peter's immediate response to AI I had just figured that there would have been communication on the subject (or something) that would have occurred and been posted by now.

So goofy question, . . . since an operator is required to have clearly visible markers for their boundaries, and because AI did not, the out of bounds activity occurred on Aurora's land (and it was Aurora's survey that clearly illuminated the problem and provided for AI what they should have provided themselves), then why wasn't that rule/requirement also part of the violation that AI was charged with?

Regarding the Baurer Pit, when I compared the permit mining maps, I noted that the Stillwater Ski Lake was not even listed as a structure within 200' (though it is listed at the state level) - nor does it reflect the 50% ownership of Carl Eiberger in that lake (among other things). How come that was accepted or allowed?

Back in 2020 when the Baurer Pit was initially applied for, there was some very interesting hearsay going around about the application and about AI trying to circumvent a land owner/mineral owner (and not accidentally), and that they had committed perjury in their application. Not believing it, I did a lot of digging and made a lot of phone calls and it turns out that the land owner referred to was Carl Eiberger and that there was no way that Blue Earth or AI were unaware of the ownership or rights in multiple facets (not just mineral) of that property (easements/rights, deeds, and other history/paperwork - old and recent history confirm it) and there is no way those entities could be so sloppy as to miss such a significant detail (in multiple ways). I know real estate is a different ball game, but that kind of thing would never be tolerated or excused in our industry.

On a different note, in your investigation, will it be determined what legal entry AI, Aurora, Westminster, Xcel energy, Stillwater Ranch, fire/safety, other easement holders, etc. will have use of for access or entry?

Thank you! I appreciate your time!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

303.919.1703 Cell

-----Original Message-----

From: Ebert - DNR, Jared <jared.ebert@state.co.us>

To: SHERIE GOULD <mcsfh157@aol.com>

Cc: peter.hays@state.co.us <peter.hays@state.co.us>

Sent: Fri, Apr 15, 2022 6:35 am

Subject: Re: Wattenberg Permit Questions

Good morning Sherie,

As long as the conveyor does not increase the acreage of the affected land and does not have a significant impact on the approved mining or reclamation plan, an amendment would not be required.

My staff, including Peter, have been very busy and I would ask for your patience as we manage the many projects we have going including your complaint. We make every effort to address concerns as timely as possible. Since your complaint, we have reviewed the mining plan maps and recent aerial imagery, and it seems some land may have been affected outside of the Wattenberg Lakes boundary slightly. We have asked that the property be surveyed which I was told was completed this week so that a more accurate idea of the amount of land possibly affected outside the permit boundary can be determined. Now that the survey is complete, Peter will inspect the site next week. The land possibly affected is owned by Aggregate Industries. AI has submitted the Financial and Performance Warranty for the adjacent Baurer Pit (M-2020-058) and we expect to be issuing that permit today or early next week. In which case the land possibly affected would be within that permit area. The investigation is ongoing.

Thank you for reaching out, should you have any more questions please feel free to contact Peter or myself.

Jared

On Thu, Apr 14, 2022 at 4:07 PM <mcsfh157@aol.com> wrote:

Hello Peter,

Regarding the Wattenberg permit, could you clarify if any amendment to the permit would be required if AI chose to run two conveyors in the permit area - either on the ground or across the Platte River?

Also, it has been four weeks and I hadn't seen any findings or inspection posted on my query (complaint?) about the southern boundary spillover and what was ultimately discovered. Any determination or update there?

Thank you!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

303.919.1703 Cell

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Jared Ebert

Senior Environmental Protection Specialist

***I am working remotely, please feel free to call my cell at (720) 413-6466**

 image.png

P 303.866.3567 ext. 8120 | F 303.832.8106 |

Physical: [1313 Sherman Street, Room 215, Denver, CO 80203](#)

Mailing: DRMS Room 215, [1001 E 62nd Ave, Denver, CO 80216](#)

jared.ebert@state.co.us | <https://drms.colorado.gov/>

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Jared Ebert

Senior Environmental Protection Specialist

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COLORADO
Division of Reclamation,
Mining and Safety

Department of Natural Resources

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jared.ebert@state.co.us | <https://drms.colorado.gov/>

3 attachments



2533914-1 Cross Stipulation Baurer Eiberger.pdf
341K



EasementStillwater3432612-1.pdf
323K



Decree for the Stillwater Lake Structure.pdf
1383K

**QUITCLAIM DEED
(CORRECTION DEED)**

THIS DEED, Made this fourteenth (14th) day of December, 1996, between Peter L. Baurer and Cynthia S. Baurer as Joint Tenants as owners of an undivided one-half interest in the property described herein, of the County of Weld and State of Colorado, grantors, and Carl F. Eiberger whose legal address is 303 South Broadway, B-200, Denver, Colorado 80209 of the City and County of Denver and State of Colorado, grantee,

WITNESSETH, That the grantors, for and in consideration of the sum of (Correction Deed) the receipt and sufficiency of which is hereby acknowledged, have remised, released, sold and QUITCLAIMED, and by these presents do remise, release, sell and QUITCLAIM unto the grantee, his heirs, successors and assigns, forever, all the right, title, interest, claim and demand which the grantors have in and to the real property, together with improvements, if any, situate, lying and being in the County of Weld and State of Colorado, described as follows:

See Exhibit A - Legal Description, attached hereto and by this reference made a part hereof.

EXCEPTING THEREFROM and reserving to Grantors, their heirs, successors and assigns, all interest in water, water rights, wells, well rights, oil, gas, and any other minerals, owned by Grantors in, on, and under the lands herein conveyed, together with the right of ingress and egress at all times to develop the same as set forth in the Stipulation and Cross Conveyance between the parties, attached hereto and by this reference made a part hereof.

This Quitclaim Deed (Correction Deed) supplants and replaces, in its entirety, as if never made, that certain Quitclaim Deed dated May 13, 1996 and recorded June 3, 1996 in Book 1549, Reception No. 2494335.

also known by street and number as: 754 Weld County Road 23 1/4, Brighton, Colorado 80601
assessor's schedule or parcel number:

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the grantors, either in law or equity, to the only proper use, benefit and behoof of the grantee, his heirs and assigns forever.

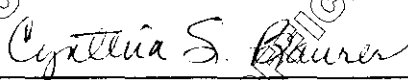
IN WITNESS WHEREOF, The grantors have executed this deed on the date set forth above.


Peter L. Baurer

GRANTOR


Carl F. Eiberger

GRANTEE


Cynthia S. Baurer

GRANTOR

STATE OF COLORADO

County of Adams

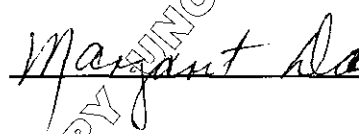
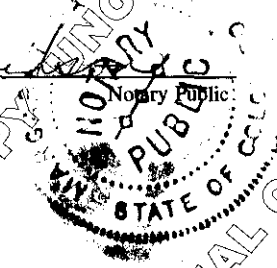
ss.

The foregoing Quitclaim Deed (Correction Deed) was acknowledged before me this 14th day of Feb. 19 97, by Peter L. Baurer, Cynthia S. Baurer, and Carl F. Eiberger.

My commission expires

March 21, 1998

Witness my hand and official seal

**EXHIBIT A
LEGAL DESCRIPTION**

A tract of land consisting of a portion of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 31, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado, and a portion of the Northeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 67 West of the 6th P.M., Weld County, Colorado, more particularly described as follows:

Beginning at the Northwest corner of Section 31, Township 1 North, Range 66 West of the 6th P.M.;
thence along the North line of the Northwest $\frac{1}{4}$ of said Section 31 South $89^{\circ}55'20''$ East a distance of 1390.29 feet to the Northeast corner of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the said Section 31;
thence along the East line of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 31 South $00^{\circ}48'35''$ West a distance of 950.00 feet to the TRUE POINT OF BEGINNING;
thence parallel with the North line of the Northwest $\frac{1}{4}$ of said Section 31 North $89^{\circ}55'20''$ West a distance of 1000.00 feet;
thence parallel with the West line of the Northwest $\frac{1}{4}$ of said Section 31 South $00^{\circ}13'27''$ West a distance of 681.12 feet;
thence parallel with the South line of the Northeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 67 West of the 6th P.M., Weld County, Colorado, North $89^{\circ}38'45''$ West a distance of 2189.57 feet;
thence South $00^{\circ}29'44''$ West a distance of 1005.79 feet to the South line of the Northeast $\frac{1}{4}$ of said Section 36;
thence along said South line of the Northeast $\frac{1}{4}$ of said Section 36 South $89^{\circ}38'45''$ East a distance of 1813.74 feet to the Southeast corner of the Northeast $\frac{1}{4}$ of said Section 36;
thence along the South line of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of aforesaid Section 31 South $89^{\circ}45'07''$ East a distance of 1363.31 feet to the Southeast corner of the said Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 31;
thence along the East line of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of said Section 31 North $00^{\circ}48'35''$ East a distance of 1689.26 feet to the TRUE POINT OF BEGINNING.
Containing 89.017 acres, more or less.
County of Weld, State of Colorado.

Including a 30.00 foot wide access easement for ingress and egress beginning at the Northeast corner of the West 25.92 acres of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado;
thence along the Northerly line of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36 South $89^{\circ}38'44''$ East a distance of 488.05 feet to the northeast corner of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36;
thence along the East line of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36 South $00^{\circ}14'30''$ West a distance of 312.23 feet to the Northerly line of the afore described parcel;
thence along said Northerly line North $89^{\circ}38'45''$ West a distance of 30.00 feet;
thence parallel with the Easterly line of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36 North $00^{\circ}14'30''$ East a distance of 282.23 feet;
thence parallel with the Northerly line of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36 North $89^{\circ}38'44''$ West a distance of 458.18 feet to the Easterly line of the aforesaid West 25.92 acres of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36;
thence along said Easterly line North $00^{\circ}29'44''$ East a distance of 30.00 feet to the point of beginning.
County of Weld, State of Colorado.

TOGETHER WITH a 30 foot wide right-of-way over and upon the North 30 feet of the West 25.92 acres of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.

This is Exhibit A, an attachment to that Quitclaim Deed (Correction Deed) from Peter L. and Cynthia S. Baurer to Carl F. Eiberger.

STIPULATION AND CROSS CONVEYANCE

THIS STIPULATION AND CROSS CONVEYANCE is made and entered into this fourteenth (14th) day of December, 1996, by and between PETER L. BAURER and CYNTHIA S. BAURER, as joint tenants, 754 Weld County Road 23 1/4, Brighton, Colorado 80601 (the "Baurers") and CARL F. EIBERGER, 303 South Broadway, B-200, Denver, Colorado, 80209 ("Eiberger"), who are the parties to this agreement.

1. Background. The parties collectively owned real property, including all interest in water, water rights, wells, well rights, oil, gas, and any other minerals, in Weld County, Colorado, described in Exhibit A-1 - Legal Description, attached hereto and by this reference made a part hereof. The Baurers owned an undivided one-half interest as joint tenants and Eiberger owned an undivided one-half interest in the surface property and the water, water rights, wells, well rights, oil, gas, and any other minerals in, on, or under said property. The parties then transferred ownership of the surface rights so that the Baurers own essentially the north surface half of the property and Eiberger owns essentially the south surface half of the property. When the conveyances were made to each of the parties to reflect the above conveyance of surface rights, it was the intent that all interest in water, water rights, wells, well rights, oil, gas, and any other minerals in, on, or under all of said property would be owned in an undivided one-half interest by the Baurers and the other undivided one-half interest would be owned by Eiberger. Record title does not accurately reflect the intended ownership interests of the parties in water, water rights, wells, well rights, oil, gas, and any other minerals. And by this instrument, the parties desire to stipulate their interest in water, water rights, wells, well rights, oil, gas, and any other minerals in, on, or under said property and to cross-convey, to any extent necessary, any interest in water, water rights, wells, well rights, oil, gas, and any other minerals necessary to result in the ownership of the parties being in accordance with such stipulation, with each party owning an undivided one-half interest in water, water rights, wells, well rights, oil, gas, and any other minerals. The attached legal description is for the entire property as received by the Baurers and Eiberger from their grantor, the prior owner, Wilma Moore.

2. Stipulation as to Interest in Water, Well, and Mineral Rights. The parties hereby stipulate and agree that all interest in water, water rights, wells, well rights, oil, gas, and any other minerals in, on, under, and including those that may be produced from the entire property described in Exhibit A-1 attached shall be owned as follows.


Peter L. Baurer and Cynthia S. Baurer, as joint tenants of an undivided one-half (1/2)-interest; and
Carl F. Eiberger, an undivided one-half (1/2)-interest.

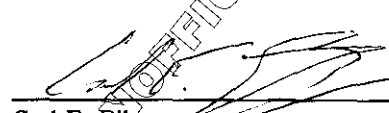
It is understood and agreed between the parties hereto that wherever a reference is made herein to minerals, such reference includes, but is not limited to, oil, gas, gravel, sand, dirt, topsoil, structural fill, and any other substance which is and could be construed as a mineral.


3. Cross-Conveyance. In consideration of the greater certainty to result herefrom and to effectuate the Stipulation above set forth, each party does hereby transfer, convey and quitclaim to the other party any interest in water, water rights, wells, well rights, oil, gas, and any other minerals necessary to result in the interests of the parties in the lands described in Exhibit A-1 being as set forth above.

4. This is a Stipulation and Cross-Conveyance to correct the original Quitclaim Deeds between the Baurers and Eiberger as set forth in these Correction Deeds.

IN WITNESS WHEREOF, this Stipulation and Cross-Conveyance is executed as of the date first set forth above, but shall be effective for all purposes as of December 14, 1995. This Stipulation and Cross-Conveyance may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same document. This Stipulation and Cross-Conveyance shall not be effective unless and until executed by all parties hereto.


Peter L. Baurer


Carl F. Eiberger


Cynthia S. Baurer

"Eiberger"

The "Baurers"

STATE OF COLORADO

County of

} ss.

The foregoing Stipulation and Cross-Conveyance was acknowledged before me this 18th day of Feb, 1997, by Peter L. Baurer, Cynthia S. Baurer, and Carl F. Eiberger.

My commission expires

Witness my hand and official seal

March 21, 1998

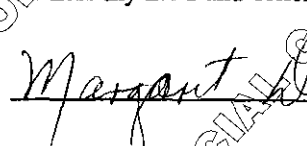
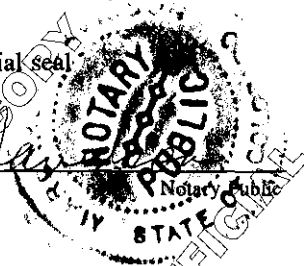



EXHIBIT A-1
LEGAL DESCRIPTION

A tract of land consisting of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 31, Township 1 North, Range 66 West of the 6th P.M., Weld County, Colorado, and a portion of the Northeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 67 West of the 6th P.M., Weld County, Colorado, more particularly described as follows:

Beginning at the Northwest corner of Section 36, Township 1 North, Range 67 West of the 6th P.M., said point being the TRUE POINT OF BEGINNING and proceeding thus along the North line of Section 31, Township 1 North, Range 66 West of the 6th P.M. on an assumed bearing of South 89°55'20" East, of which all other bearings described herein are relative thereto, a distance of 1372.20 feet;

thence South 00°51'39" East, along the East line of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of said Section 31, 2650.51 feet;

thence North 89°22'20" West, along the South line of the Northwest $\frac{1}{4}$ of said Section 31, 1412.10 feet to the East Quarter Corner of Section 36, Township 1 North, Range 67 West of the 6th P.M.;

thence South 88°37'40" West, along the South line of the Northeast $\frac{1}{4}$ of said Section 36, 1813.63 feet;

thence North 00°16'20" East, 1343.05 feet;

thence North 89°25'20" East, along the North line of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 36, 484.65 feet to the center of the Northeast $\frac{1}{4}$ of said Section 36;

thence North 00°07'20" East, along the West line of the East $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of said Section 36, 1336.35 feet to a point on the North line of said Section 36;

thence South 89°49'00" East, along the North line of said Section 36, 1319.25 feet to the TRUE POINT OF BEGINNING;

County of Weld, State of Colorado.

TOGETHER WITH a 30 foot wide right-of-way over and upon the North 30 feet of the West 25.92 acres of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 67 West of the 6th P.M.;

County of Weld, State of Colorado.

AND including all mineral rights owned by the grantor and including any and all interest in water, water rights, wells, well rights, oil, gas, and any other minerals in, on, and under the property.

County of Weld, State of Colorado.

This is Exhibit A-1, an attachment and legal description of property as stated in that Stipulation and Cross-Conveyance between Peter L. and Cynthia S. Baurer and Carl F. Eiberger.

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO 901 9 th Avenue Greeley, Colorado 80631 (970) 351-7300 <hr/> CONCERNING THE APPLICATION FOR WATER RIGHTS OF PETER L. BAURER, CYNTHIA S. BAURER AND CARL F. EIBERGER <hr/> IN WELD COUNTY <hr/>	<div style="text-align: center; padding-top: 100px;">COURT USE ONLY</div> <hr/> Case Number: 05CW158 (97CW383)
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND DECREE OF THE COURT	

This matter has come before the Court upon the application of Peter L. Baurer, Cynthia S. Baurer, and Carl F. Eiberger ("applicants") to make absolute or, in the alternative, for a finding of diligence on the conditional water rights associated with the Stillwater Ski Lake. The application was referred to the water court referee pursuant to C.R.S. § 37-92-203(7). Having made such investigations as are necessary to determine whether or not the statements in the application are true, and being fully advised with respect to the subject matter of the application, the Referee enters the following findings of fact, conclusions of law, ruling and decree:

FINDINGS OF FACT

1. The application was filed with the Water Clerk for Water Division No. 1 on June 30, 2005. The application was filed in a timely manner within the diligence period set forth in the decree in Case No. 97CW383 and the April 15, 2005 order extending the deadline for filing an application for reasonable diligence and/or an application to make the water rights absolute.

2. The name, address, and telephone number(s) (residence and business) of applicant(s):

Peter L. Baurer and Cynthia S. Baurer
754 WCR 23 3/4
Brighton, Colorado 80601
303.637.7771.

Carl F. Eiberger
303 South Broadway, Suite B-200
Denver, Colorado 80209
303.880.4001

3. Timely and adequate notice of the application was given in the manner required by law. None of the land or water rights involved in the application are located in a designated groundwater basin. The Court has jurisdiction over the subject matter of this proceeding and over all persons who have standing to appear as parties, whether they have appeared or not.
4. A statement of opposition was timely filed by the City of Aurora. The time for filing statements of opposition has expired. No person or entity has sought to intervene.
5. The Division Engineer filed a summary of consultation dated October 27, 2005. The Court has duly considered the summary of consultation pursuant to C.R.S. § 37-92-302(4).
6. The name of the structure that is the subject of the application is Stillwater Ski Lake with Well Permit No. 047367-F.
7. The water rights for the Stillwater Ski Lake are described as follows:
- A. Original Decree: The Stillwater Ski Lake water rights were decreed on February 2, 1999 in Case No. 97CW383, District Court, Water Division No. 1. An April 15, 2005 Order Concerning Notice Of Expiration extended the deadline for filing an application for reasonable diligence and/or an application to make the water rights absolute until June 30, 2005.
 - B. Decreed Legal Description: In the West One-half of the Northwest Quarter of Section 31, Township 1 North, Range 66 West, 6th P.M., Weld County, Colorado, at a point approximately 2140 feet south and 700 feet east of the Northwest corner of said section 31.
 - C. Source: tributary alluvium of the South Platte River.

- D. Appropriation Date: October 11, 1996.
 - E. Amount: 25.0 acre-feet, CONDITIONAL.
 - F. Use: Evaporation, recreation, water loss in product during mining and fire protection.
 - G. Remarks: The decree in Case No. 97CW383 also approved an augmentation plan for the Stillwater Ski Lake. The decreed augmentation source is nontributary ground water from the Laramie-Fox Hills aquifer available pursuant to Well Permit No. 049717-F issued on April 21, 1998 with an annual appropriation of 34 acre-feet at a rate of 25 gpm. Pursuant to the decreed augmentation plan, water is pumped from the permitted Laramie-Fox Hills well and discharged directly into the South Platte River system to augment evaporative losses associated with Stillwater Ski Lake. The estimated annual evaporative losses are 21.48 acre-feet, and the estimated maximum annual amount of augmentation water is 22.0 acre-feet.
8. The referee finds that the following has been done toward completion or for completion of the Stillwater Ski Lake appropriation and toward application of water to a beneficial use as conditionally decreed. Stillwater Ski Lake was excavated pursuant to the above-described gravel well permit number 047367-F. Water from the tributary alluvium of the South Platte River has filled Stillwater Ski Lake on a regular basis throughout the year since at least July 1998. In connection with the decreed augmentation plan, Well Permit No. 049717-F was issued on April 21, 1998. It authorized construction of a well into the Laramie-Fox Hills aquifer, and withdrawal of ground water from the Laramie-Fox Hills aquifer, with an annual appropriation of 34 acre-feet at a pumping rate of 25 gpm. That Laramie-Fox Hills well has been drilled. Water pumped from the well has been discharged into the South Platte River stream system since July of 1998 to replace evaporation losses associated with Stillwater Ski Lake. The amount of replacement water so provided is approximately 21.48 acre-feet per year. Applicant has submitted annual reports concerning such pumping to the water commissioner. All work necessary to develop the facilities that are used to exercise the Stillwater Ski Lake water rights and augmentation plan has been performed. Applicant engages in routine operation and maintenance of such facilities. Water in the lake is used for the purposes of raising fish and recreation. The water was first used for such purposes on July 12, 1998 and has been used on a regular basis for such purposes from approximately March through October of every since then. The foregoing findings are based on the affidavit of Peter L. Baurer attached to the application.
9. The referee finds that the following statements are true with respect to the claim to make absolute the Stillwater Ski Lake water rights:

- A. Water applied to beneficial use: Water in the lake is used for the purposes of raising fish and recreation. The water was first used for such purposes on July 12, 1998 and has been used on a regular basis for such purposes from approximately March through October of every year since then. Replacement of evaporative losses associated with Stillwater Ski Lake has been made pursuant to the terms and conditions of the decreed augmentation plan in Case No. 97CW383 since July 1998. There have been periods of free river during the diligence period from February 3, 1999 through February 28, 2005, including periods of free river in each March-through-October portion of the diligence period. Based on the fact that evaporative losses occur constantly and on the fact that there have been free river periods at the time of such losses, use of the water right for the decreed purpose of "evaporation" can be made absolute. Based on the fact that water in the lake has been used for the purpose of raising fish and recreation on a regular basis from approximately March through October of every year during the diligence period, and on the fact that there has been at least one free river period in each March-through October season within the diligence period, use of the water right for the decreed purpose of "recreation" can be made absolute. Based on the foregoing, the Court finds that the water rights associated with the Stillwater Ski Lake should be made fully absolute.
- B. Description of place of use where water is or was applied to beneficial use: Water is applied to beneficial use on and in Stillwater Ski Lake described herein.
10. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure, is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool: This application does not involve any new diversion or storage structure or any modification to any existing diversion or storage structure. The name and address of the owners of the land upon which the existing structures are located is the same as stated for applicant herein.
11. Co-applicant, Peter L. Baurer, submitted an affidavit that was attached to the application in this matter. The affidavit supports the factual findings in the preceding paragraphs concerning diligence activities and the claim to make absolute.

CONCLUSIONS OF LAW

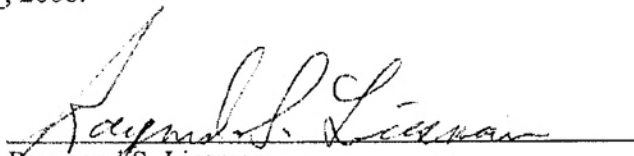
12. The application in this case is one contemplated by law and was filed in accordance with C.R.S. § 37-92-302(1)(a). The Court has exclusive jurisdiction over the subject matter of this proceeding pursuant to C.R.S. § 37-92-203.

13. Timely and adequate notice of the application was given in the manner required by law and this Court has jurisdiction over all persons or entities affected hereby, whether they have appeared or not.
14. Applicant has exercised reasonable diligence toward the completion of the appropriation associated with the Stillwater Ski Lake conditional water rights, and the application for finding of reasonable diligence should be granted. C.R.S. § 37-92-301(4). The Stillwater Ski Lake water rights should be continued in full force and effect.
15. The conditional water rights associated with the Stillwater Ski Lake should be made fully absolute. No further findings of diligence should be required with respect to the Stillwater Ski Lake water rights.

RULING OF THE REFEREE AND DECREE OF THE COURT

16. The foregoing findings of fact and conclusions of law are incorporated by reference and modified as necessary to constitute the ruling of the referee and the decree of the Court.
17. The application for finding of reasonable diligence with respect to the Stillwater Ski Lake water rights decreed in Case No. 97CW383 is granted, and the Stillwater Ski Lake water rights are continued in full force and effect.
18. The application to make absolute the Stillwater Ski Lake water rights is granted. The Stillwater Ski Lake water rights are hereby made fully absolute in the amount of 25 acre-feet. The Stillwater Ski Lake water rights are now fully absolute. No further findings of diligence shall be required with respect to the Stillwater Ski Lake water rights.

Dated this 23rd day of October, 2006.


Raymond S. Liesman
Water Referee
Water Division No. 1

THE COURT DOTH FIND: 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.

FILED Document
FILED IN THE DISTRICT COURT 19th JD
FILED IN THE DISTRICT COURT 19th JD
Filing ID: 12924871
Review Clerk: Connie S Koppes

DATED: NOV 15 2006

BY THE COURT:



Roger A. Klein
Water Judge
Water Division No. 1
State of Colorado

612

3432612 11/03/2006 04:50P Weld County, CO
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STILLWATER RANCH
754 Weld County Road 23 3/4
Brighton, CO 80601

**JOINT OWNERSHIP
and
EASEMENT AGREEMENT**

Cynthia S. Baurer and Peter L. Baurer (jointly) and Carl F. Eiberger each own one unit (approximately 90 acres each) of a tract of land at 754 County Rd. 23 3/4 in Weld County, Colorado; approximately 180 acres in total, described in Exhibit A. This agreement spells out their intention that the two parcels shall be operated together as one.

This agreement defines the entire 180 acres (legally described in Exhibit A) as STILLWATER RANCH, and sets out certain rights and obligations of each of the owners.

WHEREAS, Each of the owners owns one of the two units, including all interest in water, water rights, wells, well rights, oil, gas, and other minerals: and

WHEREAS, It is in the best interests and to the mutual advantage of each party to operate the two parcels together as one unit.

NOW THEREFORE:

1- It is the intention of the owners in operating STILLWATER RANCH as one unit, to share equally in all expenses connected with the development and operation of the ranch. This includes expenses for equipment purchase and maintenance, fuel and other supplies, provision of water, gas, and telephone utilities, fencing, planting, and building and maintaining roads and driveways. Expenses of a personal and individual nature including residences, outbuildings, gardens and plantings appurtenant to those individual residences are not covered by this agreement, and are the responsibility of the individual parties.

2- It is the intention of the owners in operating STILLWATER RANCH as one unit to share equally in all income derived from the ranch. This includes any revenue from rights of way or from sale of water, gas, oil gravel or other minerals as well as from crops raised on the ranch.

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3- Each owner grants the other a general easement across the property as a whole, except for the area within 100 feet of any residences or outbuildings which are the personal property of any owner.

4- One of the principal features of STILLWATER RANCH is the development of a water ski lake for the use and enjoyment of the owners. Rights to the use of the lake are exclusively limited to the owners and their guests unless this agreement is modified by mutual consent. Privacy on STILLWATER RANCH is an important consideration, and guests of either owner shall have access to the lake and the ranch by invitation only. Consideration shall be given to notification of the other owner when guests are expected, whenever possible.

5- Continuity of ownership:

a) In the event Carl Eiberger wishes to divest himself of his share of STILLWATER RANCH Cindy and Peter Baurer shall have the right to purchase his 1/2 interest in STILLWATER RANCH at fair market value. Fair market value shall be one-half the appraised value of the entire ranch excluding personal residences and improvements. Cindy and Peter Baurer shall declare their interest in purchasing Carl Eiberger's share within 60 days after being notified in writing that Carl Eiberger wishes to divest himself of his share of STILLWATER RANCH.

b) In the event Cindy and Peter Baurer wish to divest themselves of their share of STILLWATER RANCH Carl Eiberger shall have the right to purchase their 1/2 interest in STILLWATER RANCH at fair market value. Fair market value shall be one-half the appraised value of the entire ranch, plus the value of personal residences and improvements. Carl Eiberger shall declare his interest in purchasing Cindy and Peter Baurer's share within 60 days after being notified in writing that Cindy and Peter Baurer wish to divest themselves of their share of STILLWATER RANCH.

c) In the event of the death of Cindy and Peter Baurer their interest in STILLWATER RANCH shall pass to their children, Jonathan and Jennifer who shall be bound by all the terms of this agreement.

d) In the event of the death of Cindy and Peter Baurer and their children, Jonathan and Jennifer Baurer their interest in STILLWATER RANCH shall pass to William and Kay Shafer who shall be bound by all the terms of this agreement.

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e) In the event of the death of Carl Eiberger his interest in STILLWATER RANCH shall pass to James Lee Eiberger, Carl Eiberger's brother, who shall be bound by all the terms of this agreement.

f) In the event that either Carl Eiberger or Cindy and Peter Baurer divest themselves of their share of STILLWATER RANCH to a third party or parties all the terms of this agreement shall constitute a binding covenant governing the use of STILLWATER RANCH unless dissolved by all parties.

Cynthia Baurer
Cynthia Baurer

Carl Eiberger
Carl Eiberger

Peter Baurer
Peter Baurer

STATE OF COLORADO
CITY AND COUNTY OF DENVER

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE
ME THIS 17th DAY OF Sept 1998 BY *Cynthia Baurer, Carl Eiberger & Peter Baurer*
WITNESS MY HAND OFFICIAL SEAL

[Signature]
NOTARY PUBLIC

My Commission Expires Dec. 21, 1998

EXHIBIT A - LEGAL DESCRIPTION

A tract of land consisting of the W 1/2 of the NW 1/4 of Section 31, Township 1 North, Range 66 West of the 6th P.M., WELD COUNTY COLORADO, and a portion of the NE 1/4 of Section 36, Township 1 North, Range 67 West of the 6th P.M., WELD COUNTY, COLORADO, more particularly described as follows:

Beginning at the Northeast corner of Section 36, Township 1 North, Range 67 West of the 6th P.M., said point being the TRUE POINT OF BEGINNING and proceeding thus along the North line of Section 31, Township 1 North, Range 66 West of the 6th P.M. on an assumed bearing of South 89°55'20" East, of which all other bearings described herein are relative thereto, a distance of 1372.20 feet;

thence South 00°51'39" East, along the East line of the W 1/2 of the NW 1/4 of said Section 31, 2650.51 feet;

thence North 89°22'20" West along the South line of the NW 1/4 of said Section 31, 1412.10 feet to the East Quarter Corner of Section 36, Township 1 North Range 67 West of the 6th P.M.;

thence South 88°37'40" West along the South line of the NE 1/4 of said Section 36, 1813.63 feet;

thence North 00°16'20" East, 1343.05 feet;

thence North 89°25'20" East along the North line of the SW 1/4 of the NE 1/4 of said Section 36, 484.65 feet to the center of the NE 1/4 of said Section 36;

thence North 00°07'20" East along the West line of the E 1/2 of the NE 1/4 of said Section 36, 1336.35 feet to a point on the North line of said Section 36;

thence South 89°49'00" East along the North line of said Section 36, 1319.25 feet to the TRUE POINT OF THE BEGINNING.

together with a 30 foot wide right of way over and upon the North 30 feet of the West 25.92 acres of the SW 1/4 of the NE 1/4 of Section 36, Township 1 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.

AND including all mineral rights owned by the grantor

AND including all water and well rights to the property owned by the grantor.



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AFFIDAVIT OF CARL F. EIBERGER, III


COMES NOW, Carl F. Eiberger, III, being first duly sworn upon oath, and states the following:

1. I am the same person variously referred to as "Carl F. Eiberger" and "Carl Eiberger" in the Joint Ownership and Easement Agreement which was executed on September 17, 1998 between me and Cynthia S. Baurer (also referred to as Cynthia Baurer and Cindy Baurer in that document) and Peter L. Baurer (also referred to as Peter Baurer in that document).

2. The marginalia on pages 1 and 2 of that Joint Ownership and Easement Agreement (with the exception of the initials and pagination in the lower right hand corner of those pages) was made by me, and is not part of the Joint Ownership and Easement Agreement.

3. The legal description attached as Exhibit A to the Joint Ownership and Easement Agreement is the legal description which was attached to and made a part of the Warranty Deed accepted by me, Cynthia S. Baurer and Peter L. Baurer when the property described on such Exhibit A and referenced in the Joint Ownership and Easement Agreement as Stillwater Ranch was purchased from Wilma V. Moore.

Dated this 2nd day of November, 2006.



Carl F. Eiberger, III

STATE OF COLORADO
CITY AND COUNTY OF DENVER

The foregoing instrument was acknowledged before me this 2nd day of November, 2006, by Carl F. Eiberger, III.

Witness my hand and official seal.

My commission expires: 11/21/09



Notary Public