

BEFORE THE COLORADO GROUND WATER COMMISSION, STATE OF COLORADO

CASE NO. 09GW_____

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REQUEST FOR VARIANCE PURSUANT TO RULE 11 OF THE RULES AND REGULATIONS FOR THE MANAGEMENT AND CONTROL OF DESIGNATED GROUND WATER

IN THE MATTER OF WELL PERMIT NO. 20172-FP, LOCATED IN THE NORTHERN HIGH PLAINS DESIGNATED GROUND WATER BASIN, IN WASHINGTON COUNTY, COLORADO.

BIRDSALL YOUNG JR., PETITIONER

Birdsall Young Jr., "Petitioner," by and through his attorneys, Buchanan and Sperling, P.C., hereby files this Request for Variance pursuant to Rule 11 of the Rules and Regulations for the Management and Control of Designated Ground Water (the "Designated Basin Rules"), in the above-captioned matter, and states as follows:

1. In 1975, the Colorado Ground Water Commission (the "Commission") issued the conditional permit for Well Permit No. 20172-FP (the "Conditional Permit"), which permitted the irrigation of 400 acres. Prior to October 15, 1976 approximately 267 acres of the 400 permitted acres were timely irrigated by Petitioner with water withdrawn pursuant to the Conditional Permit. At that time Petitioner was entitled to a final permit permitting the irrigation of approximately 267 acres with water withdrawn pursuant to the Conditional Permit. Through mistake or inadvertence, the final permit issued for Well Permit No. 20172-FP in 1987 (the "Final Permit") only permitted the irrigation of 160 acres. The limitation of Well Permit No. 20172-FP to 160 irrigated acres in the Final Permit was not discovered until 2008. Petitioner files this Request for Variance contemporaneously with an Application for a Change of Water Right for Well Permit No. 20172-FP seeking Expanded Irrigated Acres (the "Change Application"), in order that he might legally continue to irrigate those same 267 acres with water withdrawn pursuant to Well Permit No. 20172-FP. A copy of the Change Application is attached as Exhibit A.

2. Rule 11.1.1 of the Designated Basin Rules provides that when the strict application of any provisions of these rules would cause unusual hardship, the Commission may grant a variance for a specific instance. Specifically Petitioner seeks a variance from:

- a. Rule 7.5.3 of the Designated Basin Rules which states "[t]he future average annual appropriation allowed from the well under this rule shall not exceed the average legal historic withdrawal of water from the well . . ."; and
- c. Rule 7.10.2 of the Designated Basin Rules which states "[n]o credit toward historic use shall be given for water used on acreage which exceeds the number of permitted

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Request for Variance Pursuant to Rule 11 of the Rules and Regulations for the Management and Control of Designated Groundwater

09GW _____
Page 2

acres”

3. The necessary background information is as follows:

a. Petitioner is the owner of Well Permit No. 20172-FP and irrigates 267 acres of land located in the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 15, Township 3 South, Range 50 West of the 6th P.M., Washington County, Colorado pursuant to Well Permit No. 20172-FP.

b. The Conditional Permit was originally issued to Carl Friend on October 15, 1975. The Conditional Permit specified that the well constructed pursuant to the Conditional Permit had an authorized maximum pumping rate of 1500 gallons per minute, an average annual appropriation of 400 acre-feet, and was to be used to irrigate 400 acres. A copy of the Conditional Permit is attached as Exhibit B.

c. In 1976, Carl Friend irrigated crops in the Northwest quarter (NW1/4) of Section 15 and the Southwest quarter (SW1/4) of Section 10, Township 3 South, Range 50 West of the 6th P.M., with water pumped pursuant to the Conditional Permit using a hydromatic water drive sprinkler. (Young Aff. ¶ 4, attached as Exhibit C).

d. Petitioner purchased Well Permit No. 20172-FP, the well operating pursuant to Well Permit No. 20172-FP, and the property currently irrigated by water pumped pursuant to Well Permit No. 20172-FP from Carl Friend on September 23, 1976. (Young Aff. ¶ 5).

e. In a letter dated September 29, 1976, Petitioner sought an extension of the time in which to irrigate the total acreage approved under the Conditional Permit and an amendment to the Conditional Permit changing the description of the acres to be irrigated, with the number of acres irrigated to remain approximately the same. The extension of time and amendment to the Conditional Permit were approved by a letter dated October 26, 1976 from the Commission. (Young Aff. ¶ 6). The Petitioner’s request for an extension is attached as Exhibit D, and the October 26, 1976 letter from the Commission is attached as Exhibit E.

f. In December 1976, Petitioner entered into a contract with the Y-W Electric Association, Inc. for the installation of electric power facilities for the well operating pursuant to Well Permit No. 20172-FP in the NW1/4 of Section 15, Township 3 South, Range 50 West of the 6th P.M. (Young Aff. ¶ 7). Petitioner then replaced the existing diesel pump on the well with an electric pump. (Young Aff. ¶ 7).

g. In the Spring of 1977, Petitioner purchased two center pivot Pringle sprinklers from Northeast Irrigation for use with Well Permit No. 20172-FP. One of the sprinklers was an 8 tower Pringle sprinkler and was installed by Northeast Irrigation for the irrigation of the Northwest quarter (NW1/4) of Section 15 and the Southwest quarter (SW1/4) of Section 10. The existing pipelines in

the area of the 8 tower Pringle sprinkler were sufficient to connect it to the well operating pursuant to the Conditional Permit. The other sprinkler was a larger 12 tower Pringle sprinkler, which was installed by Northeast Irrigation for irrigation of the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all located in Township 3 South, Range 50 West of the 6th P.M. (Young Aff. ¶ 8).

h. In January and February of 1977, Petitioner purchased pipe from Masters Backhoe and Trenching, and some of this pipe was used to connect the well operating pursuant to Well Permit No. 20172-FP to the sprinklers. (Young Aff. ¶ 9.) Trenching for the pipeline to the 12 tower Pringle sprinkler from the well operating pursuant the Conditional Permit was completed by Masters Backhoe and Trenching in March of 1977. (Young Aff. ¶ 9; *See also* Niebur Aff. ¶¶ 4-6, attached as Exhibit F).

i. Petitioner and Mr. Daniel Axsom installed pipeline from the well operating pursuant to the Conditional Permit to the 12 tower Pringle sprinkler irrigating the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all located in Township 3 South, Range 50 West of the 6th P.M. (Young Aff. ¶ 10; Axsom Aff. ¶ 4, attached as Exhibit G).

j. Pursuant to the Conditional Permit, Petitioner used both the 12 tower Pringle sprinkler irrigating the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10 and the 8 tower Pringle sprinkler irrigating the Northwest quarter (NW1/4) of Section 15 and the Southwest quarter (SW1/4) of Section 10 to irrigate crops on approximately 267 acres with water pumped pursuant to the Conditional Permit during the spring and summer of 1977. (Young Aff. ¶ 11; Axsom Aff. ¶ 5). Petitioner has used water pumped pursuant to Well Permit No. 20172-FP, along with the 8 tower and the 12 tower Pringle sprinklers described above, to irrigate the same 267 acres annually since 1977.

k. Petitioner filed a signed Statement of Beneficial Use of Ground Water (the "Statement of Beneficial Use") for Well Permit No. 20172-FP with the Colorado Division of Water Resources on July 18, 1977, attached as Exhibit H. The Statement of Beneficial Use states that water pumped pursuant to the Conditional Permit was applied to beneficial use with a claimed pumping rate of 1500 gallons per minute with 400 acre-feet of diversions used for irrigation purposes. The Statement of Beneficial Use states that the water pumped pursuant to the Conditional Permit was applied to beneficial use on 400 acres of land in the North Half (N1/2) of the Northwest Quarter (NW1/4) of Section 15, portions of the West Half (W1/2) of Section 10, and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all in Township 3 South, Range 50 West of the 6th P.M. As of the July 1977 Statement of Beneficial Use, the water right associated with Well Permit No. 20172-FP were fully applied to beneficial use and perfected by the Petitioner. *See Peterson v. Ground Water Comm'n*, 196 Colo. 508, 579 P.2d 629, 632 (1978).

l. The Commission's Notice of Proposed Issuance of Final Permits in the Northern High Plains Designated Ground Water Basin was published on June 13 and June 25, 1987 (the "1987

Notice”). The 1987 Notice stated that the amount of land irrigated pursuant to the Conditional Permit for Well Permit No. 20172-FP was only 160 acres. The 1987 Notice is attached as Exhibit I.

m. On July 30, 1987 the Commission issued Final Permit No. 20172-FP (the “Final Permit”), attached as Exhibit J. The Final Permit also states that the number of acres which may be irrigated under the Final Permit is limited to 160 acres. Petitioner failed to notice this limitation in either the 1987 Notice or the Final Permit and did not appeal the 1987 Notice or the Commission’s issuance of the Final Permit within the time permitted by sections 37-90-112 and 114, C.R.S.

n. In early February 2008, Petitioner received a letter dated January 31, 2008 from Water Commissioner Chris Grimes, attached as Exhibit K, informing him that the Colorado Division of Water Resources considered his operation pursuant to Well Permit No. 20172-FP during the 2007 growing season to have been in violation of the terms of the Final Permit. The letter threatened a cease and desist order with a fine of up to \$500 per day should the Petitioner continue to operate the well associated with Well Permit No. 20172-FP to irrigate the 267 acres he had irrigated annually with it since 1977.

o. Petitioner, in a letter dated March 5, 2008, sought to be added to the agenda for the Commission’s May 16, 2008 meeting so that he might request that the Commission amend the number of irrigated acres allowed by the Final Permit for Well Permit No. 20172-FP. In a Letter to Petitioner, dated May 5, 2008, attached as Exhibit L, Mr. Keith Vander Horst, the Designated Basins Team Leader, indicated to Petitioner that it was impossible for the Commission to amend the Final Permit because C.R.S. §§ 37-90-112 and 114, require that any objections to the Final Permit must occur within 30 days of publication of the Final Permit. However, Mr. Vander Horst went on to outlined a procedure in which Petitioner would submit a Change Application seeking expanded acres and a written Variance Request Pursuant to Rule 11 of the Designated Basin Rules that would permit Petitioner, should the variance request be granted, to continue irrigating the same acres he had irrigated since 1977 with water pumped pursuant to Well Permit No. 20172-FP.

4. The Colorado Ground Water Management Act, sections 37-90 101, *et seq*, C.R.S., (the “Act”), requires that the holder of a conditional permit for designated ground water place the water to beneficial use within a certain time period, and upon doing so acquires a valid water right. § 37-90-108, C.R.S.; *Peterson*, 579 P.2d at 632. Prior to the expiration of the conditional permit, the appropriator may perfect his water right to the full extent of his conditional permit, and the permit may be extended for good cause shown. § 37-90-108, C.R.S.; *Peterson*, 579 P.2d at 632; *see also Thompson v. Colorado Ground Water Comm’n*, 194 Colo. 489, 575 P.2d 372, 377-80 (1978) (discussing the process for perfection of water rights in a designated ground water basin).

5. “[I]f the statutory requirements necessary for the issuance of a final permit have been satisfied, the appropriator is entitled to a final permit to the extent of his beneficial use.” *Peterson*, 579 P.2d at 632. The amount of water applied to beneficial use defines the extent of the water right as well as the limit. *Thompson*, 575 P.2d at 378-79; *Green v. Chaffee Ditch Co.*, 150 Colo. 91, 371

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Request for Variance Pursuant to Rule 11 of the Rules and Regulations for the Management and Control of Designated Groundwater

Page 5

P.2d 775 (1962).

6. In the summer of 1977, pursuant to the Conditional Permit, Petitioner perfected his right to irrigate those 267 acres located in the North Half (N1/2) of the Northwest Quarter (NW1/4) of Section 15, portions of the West Half (W1/2) of Section 10, and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all in Township 3 South, Range 50 West of the 6th P.M. with water pumped pursuant to the Conditional Permit. At that point in time, under Colorado law, Petitioner was entitled to a final permit for Well Permit No. 20172-FP to the extent of his beneficial use authorized by the Conditional Permit. However, Petitioner failed to closely monitor the Commission's issuance of the Final Permit ten years later and thereby lost his opportunity to appeal the terms of the Final Permit, which imposed a severe reduction in the number of acres which may be irrigated under the Final Permit. Enforcement of the terms of the Final Permit would cause unusual hardship on Petitioner and would deprive Petitioner of the right to use water pumped pursuant to Well Permit No. 20172-FP in the manner and amount to which he perfected his right to designated ground water by actual beneficial use within the terms of the Conditional Permit.

7. Petitioner's Change Application seeks to change the number of acres that may be irrigated under the Final Permit from the 160 acre limitation presently in the Final Permit to the 267 acres that Petitioner has irrigated pursuant to Well Permit No. 20172-FP since 1977.

8. Rule 7.5.3 of the Designated Basin Rules states "[t]he future average annual appropriation allowed from the well under this rule shall not exceed the average legal historic withdrawal of water from the well . . ." and Rule 7.10.2 of the Designated Basin Rules states "[n]o credit toward historic use shall be given for water used on acreage which exceeds the number of permitted acres . . ." Accordingly, under Rules 7.5.3. and 7.10.2 of the Designated Basin Rules, the evaluation and approval of an Application for a Change Water Rights that seeks to expand irrigated acres requires the Staff for the Colorado Ground Water Commission (the "Staff") to evaluate the actual historic legal use on the permitted acres. Thus, without a variance from Rule 7 of the Designated Basin Rules, the Staff would base the allowed average annual amount of withdrawal for the changed Final Permit for Well Permit No. 20172-FP on the amount Petitioner used on 160 acres, not the 267 acres he has irrigated since the summer of 1977. This would result in a significant decrease in the allowed average annual amount of withdrawal under Well Permit No. 20172-FP from the annual amount of withdrawal that Petitioner perfected his rights to in 1977.

9. Rule 11.1.1 of the Designated Basin Rules states "When the strict application of any provisions of these rules would cause unusual hardship, the Commission may grant a variance for a specific instance provided a written request for the variance is made to the Commission and the Commission finds the request justifiable and in accordance with this rule." Rule 11 variances are applicable only to variance requests made under Rules 5 and 7 of the Designated Basin Rules. Rule 11.1.3 of the Designated Basin Rules.

10. Based on the unique circumstances of this situation, and the undue hardship that Petitioner will suffer if the provisions of Rule 7 of the Designated Basin Rules are strictly applied to

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Petitioner's Change Application, Petitioner respectfully requests that the Commission grant this Request of Variance Pursuant to Rule 11 of the Designated Basin Rules from the provisions of Rules 7.5 and 7.10, as follows:

- a. That the provisions of Rule 7.5.3 of the Designated Basin Rules not be applied to Petitioner's Change Application so that the allowed average annual amount of withdrawal may exceed the average legal historic withdrawal under the Final Permit for Well Permit No. 20172-FP. See Rule 7.5.3 of the Designated Basin Rules. The Staff will compute the future allowed average annual amount of withdrawal for Well Permit No. 20172-FP based on Petitioner's withdrawal of water for use on the 267 acres he has been irrigating since 1977 rather than the 160 acre limitation in the Final Permit.
- b. That the provisions of Rule 7.10.2 of the Designated Basin Rules not be applied to Petitioner's Change Application so that Petitioner may receive credit toward the average annual historic withdrawal pursuant to Well Permit No. 20172-FP for water used on acreage which exceeded the 160 acres limitation placed in the Final Permit. This will permit the Staff's determination of historic withdrawals pursuant to Well Permit 20172-FP to give petitioner credit for water withdrawn pursuant to Well Permit No. 20172-FP and used on the 267 acres located in North Half (N1/2) of the Northwest Quarter (NW1/4) of Section 15, portions of the West Half (W1/2) of Section 10, and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all in Township 3 South, Range 50 West of the 6th P.M.

Respectfully submitted this 3rd day of April, 2009.

BUCHANAN AND SPERLING, P.C.

By: John Justus
 Timothy R. Buchanan, #12185
 John P. Justus, #40560
 7703 Ralston Road
 Arvada, Colorado 80002
 Telephone: (303) 431-9141
Attorneys for Birdsall Young Jr.

Exhibit A of Variance Request

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DBB-005 (6/2006)

COLORADO GROUND WATER COMMISSION
Room 818 Centennial Building, 1313 Sherman Street
Denver, CO 80203

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Application must be complete where applicable. WATER RESOURCES ENGINEER
or print in BLACK INK. No overstrikes or erasures unless initialed.

Part I - Basic Information and Well Data

APPLICATION FOR A CHANGE OF WATER RIGHT FOR PERMIT NO. 20172 - FP ;

(Check one)

Expanded Irrigated Acres (fill out application completely)

Change of Use (omit nos. 5 and 7 in Part I)

List uses: _____

Relocation (omit no. 5 in Part I). Relocation means to redrill an existing well at a location in excess of 300 feet and less than 1/2 mile from the original permitted well location.

Indicate the proposed well location: _____ 1/4 _____ 1/4 of Section _____, Township _____, Range _____ West, 6th P.M., _____ feet from the N/S Section line, _____ feet from the E/W Section line.

Additional information for commingling application (omit no. 5 in Part I).

Include a \$100.00 filing fee for each permit involved. Make the check payable to the State Engineer's office. If the well operates under two permits, indicate both permit numbers. If multiple wells are involved, complete a separate form for each well.

1. Is this well within a Ground Water Management District? Yes _____ No X
Which District? _____ Ground Water Management District.

2. Name of designated ground water basin: Northern High Plains Designated Ground Water Basin

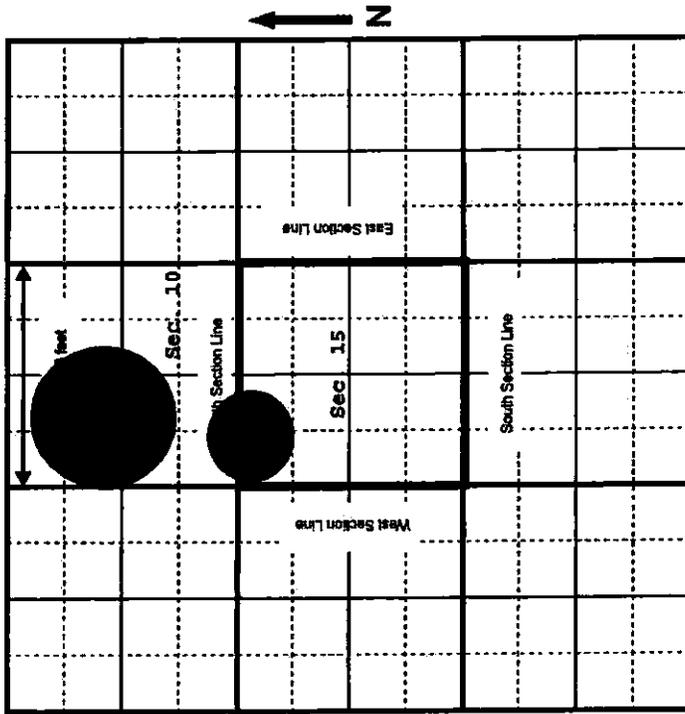
3. Application is hereby made for the above indicated change of water right for the existing well indicated above located in Washington County in the NE 1/4 NW 1/4 of Section 15, Township 3 South, Range 50 West, 6th Principal Meridian.

4. Name Birdsall Young Jr. Permitted No. of Acres 160
Address 39660 County Road 20 Permitted Acre-Foot 400
City Akron Actual Well Location:
State Colorado Zip Code 80720 305 ft. from North section line
Telephone: (970) 246 - 3695 1330 ft. from West section line

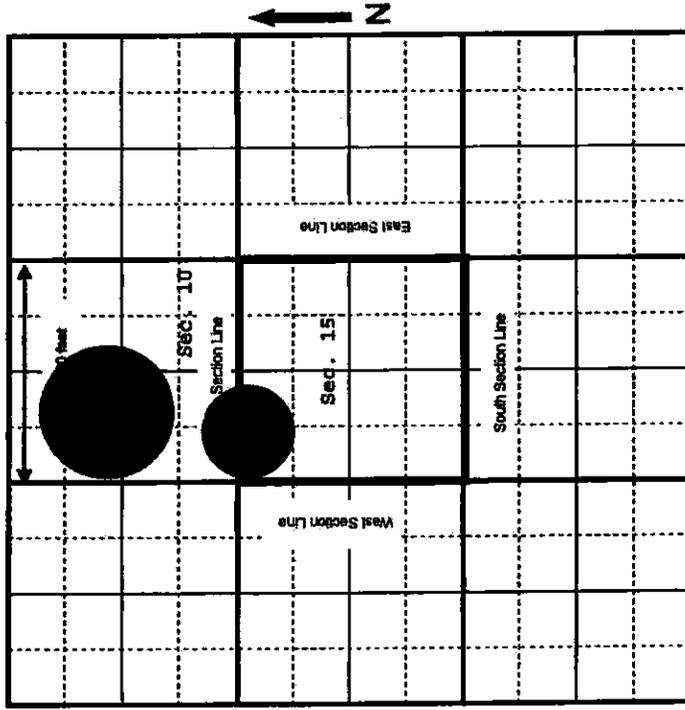
5. As current owner(s) of the well described above, I (we) request an increase in the permitted number of acres which can be irrigated to a total of 267 acres, described as follows:
North half (N 1/2) of the Northwest quarter (NW 1/4) of Section 15 and the West half (W 1/2) and portions of the West half (W 1/2) of the East half (E 1/2) of Section 10, Township 3 South, Range 50 West of the 6th P.M., Washington County, Colorado.

FOR OFFICE USE ONLY
Div. _____ Co. _____ WD _____ Basin _____ MD _____ Use _____ Receipt No. _____

6. DIAGRAM OF PRESENTLY IRRIGATED ACRES AND WELL LOCATION



7. DIAGRAM OF PROPOSED IRRIGATED ACRES AND WELL LOCATION



Please locate the well in the middle section of each diagram. If a larger area is needed, you may submit sketches on a separate sheets

The scale of each diagram is 1 inch = 4000 feet. Each small square represents 40 acres

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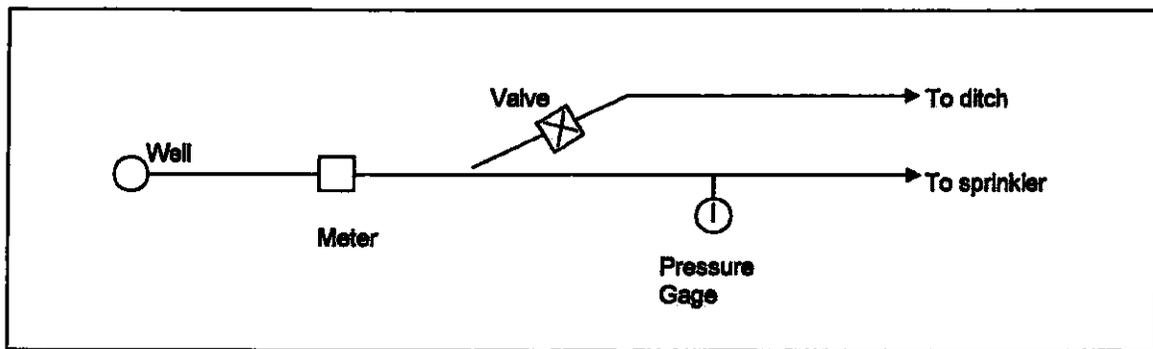
APR 07 2009

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Part I (cont'd.)

8. Provide a simple diagram of your irrigation system. Show total system from pump to discharge, other pumps in the same well, and electrical system including other devices on the same meter. Show where test meter and pressure gauge were placed and how system was modified to perform test. Show measurements. In addition to sketch, an attached Polaroid picture is recommended. Include a brief explanation of your operating procedure.

Example of an Irrigation system diagram:



See Attached Exhibit A, Page 4



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Part II - Pump Test, Power and Crop Data

(FILL OUT PART II COMPLETELY. AN INCOMPLETE APPLICATION WILL BE RETURNED)

It is the applicant's responsibility to provide sufficient information for the staff to determine the extent of historic withdrawals.

**TABLE A - POWER CONSUMPTION COEFFICIENT RATING FOR ELECTRIC PUMPS
(FOR ALL OTHER PUMPS CONTACT OFFICE)**

This test is to determine the overall efficiency of the well (power consumption coefficient). All values, including pressure and input horsepower, must be measured on site. Note that well tests are performed several ways to obtain a variety of information. Providing a copy of this form to whomever does the test may help insure that the correct procedure is followed.

The test should be conducted late in the irrigation season, during August thru October, when the ground water table is typically lower. Additional tests may be submitted at the applicant's option. This test must be conducted with the system under full operating conditions. If the well drives a sprinkler, the sprinkler must be connected and operating. Such a test must be conducted by a certified well tester as determined by the State of Colorado. A list of certified well testers is available on line at www.water.state.co.us. The requirement for the test may be waived where other supportive data on yield, water level, sprinkler operating pressures, and efficiency justify.

See Attached Exhibit A, Pages 1-3

WELL LOCATION AND INFORMATION:

Structure ID number: _____ Well Permit No.: _____

Information below required only when the well does not have a Structure ID tag or the above information is incomplete.

_____ 1/4, _____ 1/4, Section _____, Township _____, Range _____, West, _____ PM

ELECTRICAL SUPPLIER:

Power Company Name: _____ Account No.: _____

Power Company Meter No.: _____ Manufacturer's Serial No.: _____

Is the electric meter owned and read by the electric company? Yes No

Are other devices served by the electric meter (compound system)? Yes No

If yes, describe _____

If yes, were all devices operating during test? Yes No

Electric meter reading at time of test (include all rotating digits including leading zeros): _____
(kWh)

Multiplier: _____ Number of Rotating Digits: _____

Potential Transformer Factor (PT): None 2.5:1(2.5) 2.4:1(2.4) Other (specify) _____

Current Transformer Factor (CT): None 200:5(40) 400:5(80) 800:5(160) Other (specify) _____

Kh factor: _____ Pkh = Kh x PT x CT = _____

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TABLE A - POWER CONSUMPTION COEFFICIENT RATING (CONTINUED)

PUMP INFORMATION:

Pump type (turbine, centrifugal, submersible, etc.): _____ Motor Horsepower: _____

Discharge pipe diameter (outside diameter): _____ inches

Describe all possible discharges from the well: _____

TEST DATA:

Date of Test: _____ Time of Test: _____

How long has the pump been running prior to test? _____ hours

Static water level below centerline of discharge (required only if pump is not running upon arrival): _____ feet

Pumping level below centerline of discharge (must show that drawdown has not changed more than 10% in last hour*)

Time	Pumping level in ft.	Time	Pumping level in ft.

Discharge pressure at well head (must show pressure has not changed more than 10% in last hour*, not required on low pressure system, i.e., open discharge, gated pipe, etc.)

Time	Pressure in P.S.I.	Time	Pressure in P.S.I.

Time	Total Dynamic Head in ft.	Time	Total Dynamic Head in ft.

COMMENTS on above pumping/pressure tests: _____

* The PCC test must be conducted only after the system has stabilized; both drawdown (pumping level minus static water level) and operating pressure have not changed more than 10% in the last hour. For alluvial and other shallow wells which are running for at least 2 hours prior to arrival, stabilization may be demonstrated by a determination that the change in pumping level does not exceed 1 foot per hour. This must be measured over at least one 15 minute interval.

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APR 07 2009

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TABLE A - POWER CONSUMPTION COEFFICIENT RATING (CONTINUED)

DETERMINATION OF STABILIZED PUMPING RATE:

Test Meter
Manufacturer: _____ Serial No.: _____ Date of Last
Calibration: _____

Calculations, notes, times, etc., used to determine Q (in G.P.M.): _____

Q = _____ G.P.M.

DETERMINATION OF POWER DEMAND: (MINIMUM OF THREE TESTS)

Disk Revolutions: _____ Seconds _____ Rate (Rev/Sec) _____

Average Rate: _____

Power demand, P = Average Rate x 3.6 x Pkh = _____ K.W.

CALCULATION OF POWER CONSUMPTION COEFFICIENT:

PGC = $\frac{5433 \times P}{Q}$ = _____ K.W.H./A.F.

Methods of calculating power consumption coefficient are specified in U.S.G.S. Water Resources Investigation Report (89-4107)

TESTER VERIFICATION: I, _____, state that I am currently a person approved by the State Engineer to conduct well tests. I have conducted a power consumption coefficient rating of the above described well. Based on the information contained on this form, I represent this test as being an accurate method of determining water use from the well. I understand that falsifying a power consumption coefficient rating can subject me to a fine of up to \$500.00.

SIGNATURE OF TESTER: _____ DATE: _____

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APR 07 2009

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TABLE C – HISTORIC CROP PRACTICE

Data in this table is supplemental to the prior two tables. The table should be completed as well as available data allows. The amount of detail and length of record required depends upon the information contained in the previous tables. FSA crop acreage reports (Form OMB No. 0560) and accompanying aerial photos must be provided for all years available.

List all crops grown each year since the well was originally put to use, the acres of each crop and the method of irrigation (flood or sprinkler). If a full history of cropping cannot be provided due to change in ownership or missing records, the ten most recent years of records should be furnished. Each year's data must contain complete information on crops, acres in each crop, and irrigation method. Use additional sheets if necessary. Where the record is dependent upon the testimony of neighbors or former owners or operators, affidavits must be attached. For sprinkler irrigation, please indicate operating pressure of the sprinkler system.

(CROPS D,E & F FOLLOWING PAGE)

Year	Crop A			Crop B			Crop C		
	Crop	Acres	Irrig. Method	Crop	Acres	Irrig. Method	Crop	Acres	Irrig. Method
2008	Corn-gr	267	sprinkler						
2007	Corn-gr	267	sprinkler						
2006	Corn-gr	267	sprinkler						
2005	Corn-gr	263.8	sprinkler						
2004	Corn-gr	263.8	sprinkler						
2003	Corn-gr	263.8	sprinkler						
2002	Corn-gr	240	sprinkler	Corn-Silage	23.8	sprinkler			
2001	Corn-gr	263.8	sprinkler						
2000	Corn-gr	263.8	sprinkler						
1999	Corn-gr	263.8	sprinkler						
1998	Corn-gr	263.8	sprinkler						
1997	Corn-gr	261.3	sprinkler						
1996	Corn-gr	261.3	sprinkler						
1995	Corn-gr	260.8	sprinkler						
1994	Corn-gr	177.8	sprinkler	W.Wheat	83.9	sprinkler			

APR 07 2009

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I recognized that the aquifer is overappropriated at this location and that in order to allow or consider this change of water right for the well(s) with Permit No(s). 20172 - FP without material injury to the rights of other appropriators, the future withdrawals from the well(s) must be limited to prevent an increase over the historic depletions to the aquifer. I am willing to comply with the following conditions to provide for the proper administration of the requested change, if approved.

1. The terms of the Commission's change of water right approval shall be considered as covenants running with the land as described, modifiable in the future only by the Colorado Ground Water Commission or its successors in conformity with Title 37, Article 90 of the Colorado Revised Statutes, also known as the Colorado Ground Water Management Act, as it exists on the date such modification is made. A certified copy of this approval shall be recorded in the public records of the county clerk of the applicable county. Any modifications shall likewise be recorded.
2. Applicant agrees to pay all reasonable costs associated with the administration of the change of water right. The applicant also agrees to enter into a contract with the Commission, local Ground Water Management District ("District"), or a person or entity acceptable to the Commission for this purpose. The change of water right shall not be implemented until the applicant or subsequent well owner have signed a contract with the Commission, District, or a person or entity acceptable to the Commission. Contracts with entities other than the Commission or District must be Commission approved.
3. The contracted services required under this administration shall include site inspections covering the peak water use period during the calendar year. Each inspection will include the readings of water-measuring devices and a description of use of water from the subject well(s). Any perceived violation of the permit conditions shall also be reported. A copy of the contractor's inspection report shall be available to the applicant upon request.
4. The Applicant (or the contracted entity) shall be required to report to the Commission and District all readings of the measuring device(s) and total amount(s) pumped by February 15 of each year for the prior calendar year. The Applicant is also required to report the number of kilowatt-hours of electricity, thousand cubic feet of gas, or other fuel used for the prior calendar year.
5. All meter installation information and readings must be reported on forms **DBB-003 Administrative Reporting-Meter Information** and **DBB-004 Administrative Reporting-Meter Readings**, respectively, and or any other Commission approved forms. All water volumes must be converted to an acre-foot amount. Incomplete forms shall not be acceptable for fulfillment of reporting requirements.
6. Prior to implementation of the approval of the change of water right, the applicant or subsequent owner shall acquire water-measuring devices satisfactory to the Commission and District, which shall be installed according to the manufacturer's recommendations under the supervision and to the satisfaction of the Commission and the District. These measuring devices shall be inspected annually and promptly repaired or recalibrated as needed whenever it comes to the applicant's attention that they are not in good working condition or whenever so notified by authorized representatives of the Commission or District. All of these obligations shall be fulfilled at applicant's sole expense. No repairs or replacement of parts of said measuring devices shall be made by applicant without prior notification to the Commission and District. All parts replaced shall be retained by applicant and given to Commission or District Representatives who may inspect the measuring devices after their repair or replacement. Any pump shall be turned off by applicant while the measuring device for that well is not working properly or is being repaired or replaced, and shall not be turned on again until approved by the Commission or District.
7. The requirements outlined in Commission Policy Memorandum 95-3, concerning the use of flow meters and power meters, must be met.
8. Applicant is required to observe the water-measuring device(s) and shall be responsible to turn off the

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pump(s) once the withdrawal limit(s) for that year is reached.

9. The applicant hereby authorizes Y-W Electric Association, Inc. (name of electric or natural gas company or fuel supplier) to release to authorized Commission or District personnel all power use data within its records regarding this well(s).
10. The applicant agrees to allow access to all lands at all reasonable times to representatives of the Commission or District for inspection and other necessary visits to administer this application. The measuring devices must be accessible for examination and reading by the authorized persons.
11. Where applicable, the applicant agrees to make any and all records regarding irrigation from this well(s) at the respective F.S.A. offices available to Commission and District personnel at all reasonable times, and authorizes the release of all such records to Commission and District personnel.
12. Where applicable, the applicant agrees to provide yield records for crops irrigated by this well upon request or accept the appropriate county average yields.
13. Field certification of the water-measuring devices by a certified well tester as determined by the State of Colorado is required every four (4) years as stated in Commission Policy Memorandum 95-3. The well owner shall promptly submit the results of these field certifications to the Commission. Results must be submitted to the Commission on attached form DBB-019(A) Power Consumption Coefficient Rating for Electrical Pumps where electrical pumps are used and on attached form DBB-019(B) Pump and Motor Efficiency Tests must be where non-electrical pumps are used. At least three (3) days prior notice of the date of this test must be given to Commission and District, so that Commission or District personnel might be present during the test.
14. The applicant agrees to pay all court costs and reasonable attorney fees incurred by the Commission and/or District in any court or administrative action which results in a determination that applicant have violated any provision of this Applicant's Statement or any conditions of the change of water right approval. If in violation of a Commission or State Engineer Order, the violator may be required to pay a sum not to exceed five hundred dollars (\$500) for each day such violation continues. Furthermore, if such ground water violation results in the violation of compliance with an Interstate compact, the violator shall be liable for all direct, actual, and necessary expenses incurred by the State of Colorado in performing any action, including the purchase of water or payment of damages necessary for the State of Colorado to remedy the violation of such compact.
15. Any person who, when complying with the conditions of this Applicant's Statement, fails to submit data, falsifies or makes a fictitious report of the amount of designated ground water pumped from a well, makes a false or fictitious report of a power coefficient for a well, or falsifies any power coefficient test shall forfeit and pay a sum not to exceed five hundred dollars (\$500) for each violation.
16. Also, any person who willfully interferes with or damages a power meter, totalizing flow meter, or other devices used to measure designated ground water diversions or who tampers with or falsifies any record made or being made by any such power meter, totalizing flow meter, or other devices shall forfeit and pay a sum not to exceed five hundred dollars (\$500) for each violation.
17. The applicant may be required to agree to additional terms and conditions that are deemed appropriate to prevent material injury to the vested water rights of other appropriators before the approval can be granted or implemented.

Signed and dated this 31st day of March, 2009.

Birkhall Young, Jr.
Signature of Applicant

Exhibit A to Change Application

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FORM 3.2 NOTICE OF POWER CONSUMPTION COEFFICIENT RATING OR RE-RATING

To be Filed In Compliance with Rule 3.2 of the RULES GOVERNING THE MEASUREMENT OF GROUND WATER DIVERSIONS LOCATED IN THE REPUBLICAN RIVER BASIN WITHIN WATER DIVISION No. 1.

To: Division Engineer, Water Division No. 1
1313 Sherman Street, Suite 818
Denver, CO 80203

Telephone: (303) 866-3581
FAX: (303) 866-3589

TEST DATE: Feb 28, 2009 TESTER'S NAME: Lucas Pennington

TYPE OF METER BEING VERIFIED:

..... Power Company Electric Meter

CONTACT INFORMATION:

OWNER	USER (IF NOT SAME AS OWNER)
Name: <u>Birdsall Young Jr.</u>	
Address: <u>39660 County Rd 20</u>	
City, State, Zip: <u>Akron, CO 80720</u>	
Phone: <u>970-246-3685</u>	
E-Mail: _____	

LOCATION AND INFORMATION OF WELL:

Well Permit No: 20172 F Structure ID No.: 80561
(if known)
1/4, NW 1/4, Section 15, Township 3 S, Range 50 W, 6 PM

GPS COORDINATES OF WELL(OPTIONAL): (FORMAT: UTM, DATUM:
NAD 83) N 39°48'.36" W 102°58'2.70"

Power Supply and Use:

Power Company Name: <u>YW Electric</u>	Electric Meter Manufacturer: <u>ABB</u>
Power Company Service No.: <u>57-15-51</u>	Manufacturer's Serial No.: <u>01000970</u>
Power Company Meter Reading on Date of Test: _____	Include all rotating dials Include leading zeros <u>02622</u>
	Number of Rotating Digits: <u>5</u>
Kh factor: <u>1.8</u>	Meter Multiplier: <u>100</u>
	Pkh = Kh x Multiplier = <u>180.0000</u>

USE (POWER COMPANY METER):

Does the same Power Company Meter serve other devices, including other Wells/Pumps?

Yes No If yes, describe: _____

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FORM 3.2 NOTICE OF POWER CONSUMPTION COEFFICIENT RATING OR RE-RATING

DISCHARGE METHODS: MARK ALL THAT APPLY

Open Discharge / Low Pressure Pipeline: ... Sprinkler: Drip Tape: Pressurized System (including humidification uses):

Other: _____

Describe all discharges AND Provide Detailed Sketch on last page or as Attachment: _____

End Gun On or Off Off Sprinkler Operating Normal Speed... % Speed of Sprinkler Running 33

Position of Sprinkler (Of clock position 12:00 is due north) 12:00 If Sprinkler Off Why? _____

PUMP INFORMATION:

Pump type: (turbine, centrifugal, submersible): Turbine Motor Horsepower: 200 hp

AT TEST SITE:	Pipe I.D.: <u>10.510</u>	Pipe O.D.: <u>10.750</u>	Wall Thickness: <u>0.120</u>
---------------	--------------------------	--------------------------	------------------------------

DETERMINATION OF STABILIZED OPERATING CONDITION:

This Test must be conducted **only after the system has stabilized**; both drawdown (pumping level minus static water level) and operating pressure must not have changed more than 10% in the hour previous to conducting the Test. Measurements must be documented for at least **four 15-minute intervals**.

For wells that are running for at least 2 hours prior to the Tester's arrival, stabilization may be demonstrated by a determination that the change in pumping level does not exceed 1 foot per hour, by measurements made over at least one 15-minute interval. **Example: tester arrives at 11:00AM and obtains pumping level. At 11:15 and 11:30 a second and third pumping level is obtained. If the change in pumping level does not exceed 6 inches over that 30 minute period, the well is ready to test.**

Date of Test: Feb 28, 2009 Time of Test: 14:00:00 How long has the pump been running? 1.0 hours

Static water level below centerline of discharge (Required ONLY when pump is not running upon arrival): _____ feet

Pumping level below centerline of discharge (must show that drawdown has not changed more than 10% in last hour):

Time	Pumping level in ft./Discharge Rate	Time	Pumping level in ft./Discharge Rate

Discharge pressure at well head (must show pressure has not changed more than 10% in last hour):

Time	Pressure in P.S.I.	Time	Pressure in P.S.I.
<u>14:00:00</u>	<u>62.0</u>	<u>14:45:00</u>	<u>62.0</u>
<u>14:15:00</u>	<u>62.0</u>		
<u>14:30:00</u>	<u>62.0</u>		

COMMENTS on above pumping/pressure tests: Need rig to get water level.

TEST METER INFORMATION: Test Meter Manufacturer: Fuji

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FORM 3.2 NOTICE OF POWER CONSUMPTION COEFFICIENT RATING OR RE-RATING

Test Meter Serial No.: Q8A936370

Date of last Calibration Jan 22, 2009

CERTIFICATION OF POWER CONSUMPTION COEFFICIENT:

Calculations, notes, times, etc., used to determine Discharge, Q, in GPM: _____

10 minute test produced 13350 total gallons.

13350 / 10 = 1335.0 gpm

Show Q to nearest 0.0 GPM Q = 1335.0 GPM

DETERMINATION OF POWER DEMAND: (MINIMUM OF THREE TESTS)

Disk Revolutions	Seconds	Rate (Rev/Sec)	Disk Revolutions	Seconds	Rate (Rev/Sec)
			5.0	25.9200	0.1929
			5.0	25.9600	0.1926
			5.0	25.9400	0.1928

Average Rate: 0.1928

Power demand, P = Average Rate x 3.6 x Pkh = 124.9037 KW to nearest 0.0000

CALCULATION OF POWER CONSUMPTION COEFFICIENT:

PCC = $\frac{5433 \times P}{Q}$ = 508.3158 KWH/AF PCC must be shown to the nearest 0.0000

Methods of calculating power consumption coefficient are specified in U.S.G.S. Water Resources Investigation Report (89-4107)

TESTER VERIFICATION: I, Lucas Pennington, state that I am currently a person approved by the STATE ENGINEER to conduct well tests pursuant to the RULES GOVERNING THE MEASUREMENT OF GROUND WATER DIVERSIONS IN THE REPUBLICAN RIVER BASIN. I have conducted a POWER CONSUMPTION COEFFICIENT RATING of the above-described WELL/PUMP. Based on the information contained on this form, I represent this test as being an accurate method of determining water use from the WELL/PUMP and as being in compliance with the RULES. I understand that falsifying a POWER CONSUMPTION COEFFICIENT RATING can subject me to a fine of up to \$500.00.

SIGNATURE OF TESTER: Lucas Pennington

DATE: 2-28-09

WELL OWNER/USER CERTIFICATION AND CONSENT TO RELEASE OF POWER DATA: The above information is true to the best of my knowledge. I understand that falsifying a POWER CONSUMPTION COEFFICIENT RATING can subject me to a fine of up to \$500.00. A VARIANCE from the Measurement Rules has been issued that allows the use of this alternative means of measurement of ground water usage and I acknowledge that I must abide by the terms of that variance. I also agree to the release of information pertaining to my use of electrical energy to pump ground water, including CURRENT TRANSFORMER FACTOR, Voltage/POTENTIAL TRANSFORMER FACTOR and ELECTRIC METER READINGS, to the COLORADO DIVISION OF WATER RESOURCES by my electric supplier for the purposes of determining or verifying water use from the WELL/PUMP.

SIGNATURE: Birchell Young, Jr.

DATE: 3-18-09

CHECK ONE: WELL OWNER

Well User

CHECK ONE: THE WELL OWNER/USER GRANTS / REFUSES the well tester permission to test the pumping level.

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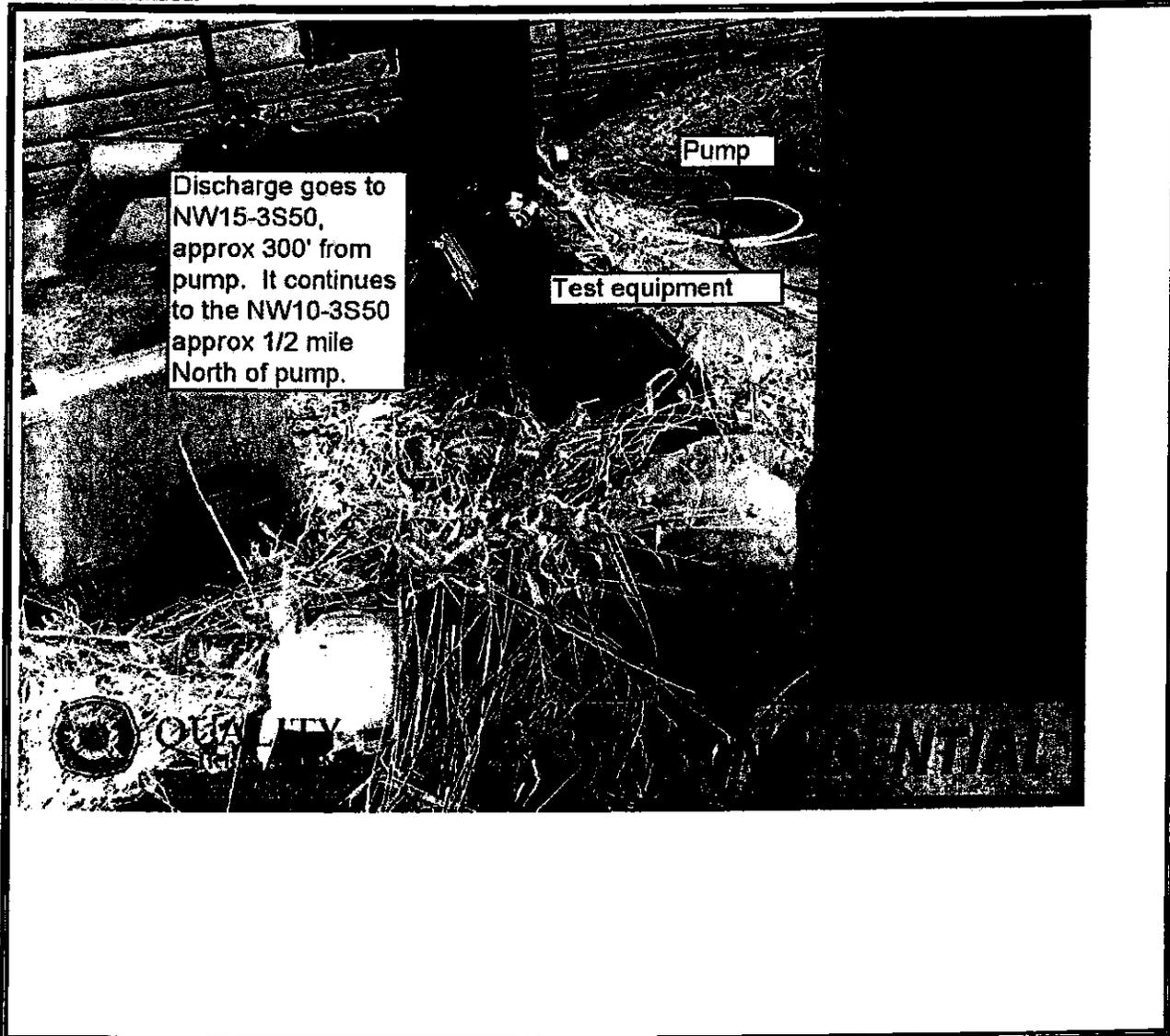
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FORM 3.2 NOTICE OF POWER CONSUMPTION COEFFICIENT RATING OR RE-RATING

DETAILED SKETCH:

Show total system from pump to discharge, other pumps in the same well, and electrical system including other devices on the same meter. Show where test meter and pressure gauge were placed and how system was modified to perform test. Show measurements. In addition to sketch, an attached digital photo is recommended.



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COLORADO DIVISION OF WATER RESOURCES
300 Columbine Bldg., 1845 Sherman St., Denver, Colorado 80203

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PERMIT APPLICATION FORM

AUG 21 1975

AUG 07 '75

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

- () A PERMIT TO USE GROUND WATER
- FOR: A PERMIT TO CONSTRUCT A WELL
- A PERMIT TO INSTALL A PUMP
- () REPLACEMENT FOR NO. _____
- () OTHER _____

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(1) APPLICANT - mailing address

NAME Carl Friend
 STREET _____
 CITY Alton, Colo. 80720
(State) (Zip)
 TELEPHONE NO. 357-4388

FOR OFFICE USE ONLY: DO NOT WRITE IN THIS COLUMN

Receipt No. 63307^{30th}
 Basin 1 Dist. NONE

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.

THE ISSUANCE OF THIS PERMIT IS CONDITIONAL ON MEASUREMENT OF ANNUAL GROUND WATER WITHDRAWAL BY A METHOD AND PROCEDURE SATISFACTORY TO THE GROUND WATER COMMISSION UNDER EXISTING POLICY.

THIS WELL MUST BE DRILLED WITHIN 300 FEET OF THE LOCATION SPECIFIED ON THIS PERMIT AND MUST BE AT LEAST 1/2 MILE FROM ANY APPROVED PERMIT, SENIOR APPLICATION OR EXISTING WELL FOR COMMERCIAL, INDUSTRIAL, MUNICIPAL, OR IRRIGATION USE FROM THE SAME AQUIFER OR AQUIFERS.

BENEFICIAL USE EXPIRATION DATE EXTENDED UNTIL OCTOBER 15, 1977.

(2) LOCATION OF PROPOSED WELL

County Washington
NE 1/4 of the NW 1/4, Section 15
 Twp. 3 S, Rng. 50 W, 6 P.M.

(3) WATER USE AND WELL DATA

Proposed maximum pumping rate (gpm) 1500
 Average annual amount of ground water to be appropriated (acre-feet): 400
 Number of acres to be irrigated: 400
 Proposed total depth (feet): 230
 Aquifer ground water is to be obtained from: Ogallala
 Owner's well designation _____

GROUND WATER TO BE USED FOR:

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

(4) DRILLER

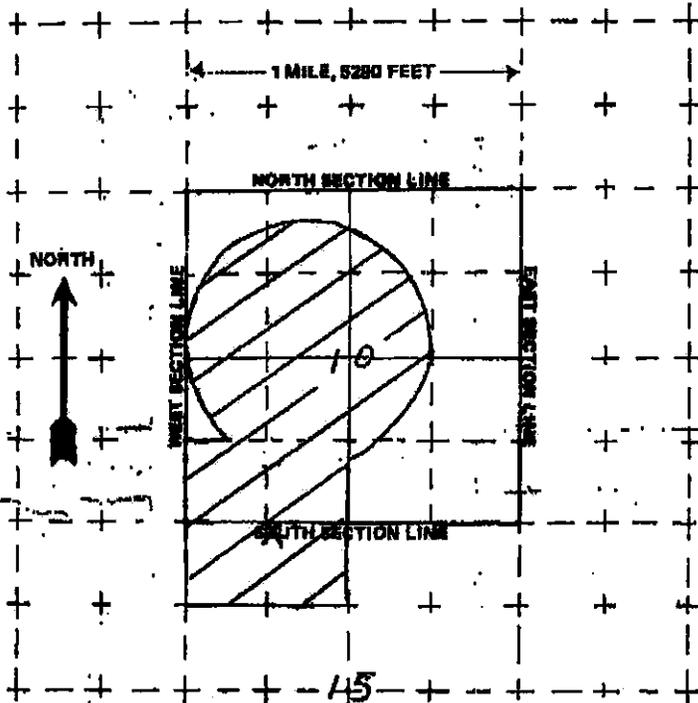
Name Klassen Drilling
 Street _____
 City Jeos Colo. 80822
(State) (Zip)
 Telephone No. 358-4285 Lic. No. 533

APPLICATION APPROVED

PERMIT NUMBER 020172-F
 DATE ISSUED OCT 15 1975
 EXPIRATION DATE OCT 15 1976
Bruce E. DeBune
 DEPUTY (STATE ENGINEER)
 BY Leonard A. Marcar
 I.D. 1-105 COUNTY 61

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(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) . . . 448 gallons per minute (gpm)
 A family of 5 will require approximately 1 acre-foot of water per year.
 1 acre-foot . . . 43,860 cubic feet . . . 326,900 gallons.
 1,000 gpm pumped continuously for one day produces 4.42 acre-feet.

(6) THE WELL MUST BE LOCATED BY DISTANCES FROM SECTION LINES.

30 ft. from North sec. line
(North or south)

1330 ft. from WEST sec. line
(east or west)

LOT _____ BLOCK _____ FILING # _____

SUBDIVISION _____

(7) TRACT ON WHICH WELL WILL BE LOCATED Owner: Carl Friend

No. of acres 400 Will this be the only well on this tract? yes

(8) PROPOSED CASING PROGRAM

Plain Casing
16 in. from 0 ft. to 190 ft.

Perforated casing
16 in. from 190 ft. to 230 ft.

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

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

Owner(s): Carl Friend No. of acres: 400

Legal description: N 1/2 & NW 1/4 of Sec. 15 & E 1/2 of Sec. 10 T3S R. 50W

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

Irrigation of Crops

Portions of the W 1/2 and portions of the W 1/2 of the E 1/2 of Sec. 10

(12) OTHER WATER RIGHTS used on this land, including wells.

Type or right	Used for (purpose)	Description of land on which used
<u>None</u>		

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

Carl Friend
 SIGNATURE OF APPLICANT(S)

Exhibit C of Variance Request

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AFFIDAVIT OF BIRDSALL YOUNG, JR.

WATER RESOURCES
STATE ENGINEER
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I, Birdsall Young, Jr., do hereby state and affirm the following:

1. I am over the age of eighteen (18) years.
2. I reside at 39660 County Road 20, Akron, Colorado 80720.
3. Well Permit No. 20172-F was issued in October 1975. In November of 1975, the well associated with Well Permit No. 20172-F ("Well") was drilled and equipped with a diesel pump by Carl Friend.
4. In 1976, Carl Friend pumped the Well and irrigated crops in the Northwest quarter (NW1/4) of Section 15 and the Southwest quarter (SW1/4) of Section 10 with water from the Well using a hydromatic water drive sprinkler.
5. On September 23, 1976, I purchased both the property currently irrigated by the Well and the Well from Carl Friend.
6. On September 29, 1976, I wrote the Colorado Division of Water Resources seeking an extension of time to put the balance of the appropriation associated with Well Permit No. 20172-F to beneficial use on the property. I also requested that the description of irrigated acres be changed to reflect the area that I intended to put under irrigation in 1977. The letter, dated September 29, 1976 is attached as Exhibit A. The Ground Water Commission's letter granting the extension time to apply water withdrawn pursuant to Well Permit No. 20172 to beneficial use is attached as Exhibit B.
7. In December of 1976, I entered into a contract with the Y-W Electric Association, Inc. for the installation of electric power facilities for the Well in the NW1/4 of Section 15, Township 3 South, Range 50 West. The Agreement for Electric Service is attached as Exhibit C. The check to Y-W Electric Association for payment of installation of the electric line to the Well is attached as Exhibit D. I then replaced the diesel pump on the Well with an electric pump.
8. In the Spring of 1977, I purchased two center pivot Pringle Sprinklers from Northeast Irrigation for use with the Well. One of the sprinklers was an 8 tower Pringle sprinkler and was installed by Northeast Irrigation for the irrigation of the Northwest quarter (NW1/4) of Section 15 and the Southwest quarter (SW1/4) of Section 10. The existing pipelines in the area of the 8 tower Pringle sprinkler were sufficient to connect it to the Well. The other sprinkler was a larger 12 tower Pringle sprinkler, which was installed by Northeast Irrigation for irrigation of the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all located in Township 3 South, Range 50 West of the 6th P.M. The bill from Northeast Irrigation for the two sprinklers is attached as Exhibit E.

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9. In January and February of 1977, I purchased pipe from Masters Backhoe and Trenching, and some of this pipe was used to connect the Well to the sprinklers. The checks to Masters Backhoe and Trenching paying for pipe are attached as Exhibit F. Trenching for the pipeline to the 12 tower Pringle sprinkler from the Well was completed by Masters Backhoe and Trenching in March of 1977. The check to Masters Backhoe and Trenching paying for the trenching work is attached as Exhibit G.
10. In the Spring of 1977, Mr. Daniel Axsom also purchased a Pringle sprinkler from Northeast Irrigation. Mr. Axsom and I traded labor by helping each other install the pipeline to the Pringle sprinklers on our respective properties. On my property Mr. Axsom and I installed pipeline from the Well to the 12 tower center pivot irrigating the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all located in Township 3 South, Range 50 West of the 6th P.M.
11. Both the 12 tower sprinkler irrigating the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10 and the 8 tower sprinkler irrigating the Northwest quarter (NW1/4) of Section 15 and the Southwest quarter (SW1/4) of Section 10 irrigated crops with water from the Well during the spring and summer of 1977.
12. Further, Affiant sayeth naught.

Respectfully submitted this 6th of March, 2009.

By: Birdsall Young, Jr.
Birdsall Young, Jr.

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WATER RESOURCES
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COLO

STATE OF COLORADO)
COUNTY OF WASHINGTON) ss.

Subscribed, sworn to and acknowledged before me by Birdsall Young, Jr., the Affiant,
this 6th day of March, 2009.

My commission expires: _____

Witness my hand and official seal.



Dale E. Schnee
Notary Public

My Commission Expires
FEBRUARY 26, 2013
My Commission expires: 02-26-13

Exhibit A

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SEP 29 1976

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Akron, Colorado
September 29, 1976

Colorado Division of Water Resources
Denver, Colorado

Dear Sirs:

In reference to Permit No. 020172-F, the well has been constructed and a portion has been put to beneficial use as indicated on forms being presented at this time. I would like to have an extension of time to put the balance to beneficial use. Also am asking to make a change in location of the land to be irrigated as indicated on the reverse side. The acres will remain approximately the same and is on the same Section as the permit was granted for.

Thank you for your consideration on this matter.

Burdell Young Jr owner
Yours truly, *by contract*

*am asking extension as owner at the time of permit
issuance was planning sale of land and wish to let
new owner further develop. Burdell Young Jr*

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Exhibit B

RICHARD D. LARA
Governor



C. J. KLIPPER
State Engineer

WATER RESOURCES
STATE ENGINEER
COLO

DIVISION OF WATER RESOURCES

Department of Natural Resources
1313 Sherman Street - Room 802
Denver, Colorado 80203
Administration (303) 862-3581
Ground Water (303) 862-3587

October 26, 1976

Mr. Birdsell Young, Jr.
Akron,
Colorado 80720

RE: Irrigation well permit #20172-F
located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$
of Sec. 15, T.3S., R.50W.

Dear Sir:

We are in receipt of your request to extend the time in which to irrigate the total acreage approved on the referenced permit and also your request to amend the description of the acreage not yet irrigated.

By authority of the Colorado Ground Water Commission, the staff has extended the beneficial use expiration date of permit #20172-F until October 15, 1977.

Please be advised that the remaining acres must be irrigated and that a Statement of Beneficial Use must be filed for the remaining acreage with the Colorado Division of Water Resources on or before October 15, 1977.

By authority of the Colorado Ground Water Commission, the staff has also changed the description of the acreage to be irrigated with permit #20172-F to 400 acres described as the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 15 and portions of the West $\frac{1}{2}$ and portions of the West $\frac{1}{2}$ of the East $\frac{1}{2}$ of Sections 10, Township 3 South, Range 50 West.

Enclosed are copies of permit number 20172-F showing the extended beneficial use expiration date and the amended description of the acreage.

Very truly yours,

Demayne R. Schroeder
Water Resources Engineer
Ground Water Section

DRS:1kc
Enclosures
cc: Carl Friend

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Exhibit C

AGREEMENT FOR ELECTRIC SERVICE

Type of Operation Irrigation Rate .30

AGREEMENT made December 29, 1976, between Y-W Electric Association, Inc. (hereinafter called the "Seller") and Birdsall Young, Jr. (hereinafter called the "Consumer"), an individual

(corporation, partnership or individual)

Name and Address of Owner Birdsall Young, Jr. Henry Route Akron, Colorado 80720

Name and Address of Tenant _____

Service will be made available on or before _____, 19____

Size of largest motor 200 horsepower

Mail bills and notices to _____

40	40
40	40

1/4
of Section

Legal Description: NW 1/4 of Section 15 Township 3S Range 50 W

The Seller shall sell and deliver to the Consumer, and the Consumer shall purchase all of the electric power and energy which the Consumer may need at the above location up to N/A kilowatts, upon the following terms:

1. Service Characteristics
 - a. Service hereunder shall be alternating current, three phase, wire, sixty cycles, 480 volts.
 - b. The Consumer shall not use the electric power furnished hereunder as an auxiliary supplement to any other source of power and shall not sell electric power and energy purchased hereunder.
2. Payment
 - a. The Consumer shall pay the Seller for service hereunder at the rates and upon the terms and conditions set forth in Rate Schedule 30 as filed with the Public Utilities Commission of the State of Colorado. Notwithstanding any provision of the Schedule and irrespective of Consumer's requirements for or use of electric power and energy, the demand for billing purposes hereunder shall not be less than N/A kilowatts for any billing period. In any event the Consumer shall pay to the Seller not less than \$ _____ per _____ for service or for having service available hereunder during the term hereof.
 - b. The initial billing period shall start when Consumer begins using electric power and energy, or 30 days after the Seller notifies the Consumer in writing that service is available hereunder, whichever shall occur first.
 - c. Bills for service hereunder shall be paid at the office of the Seller in AKRON, STATE OF COLORADO. Such payments shall be due in accordance with the Rates, Rules and Regulations on file with the Public Utilities Commission. If the Consumer shall fail to make any such payment, and when delinquent, the Seller may discontinue service to the Consumer provided, however, that such discontinuance of service shall not relieve the Consumer of any of its obligations under this Agreement.
 - d. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric service at wholesale is modified, the Seller may make a corresponding modification in the rate for service hereunder.
3. Membership

The Consumer shall become a member of the Seller, shall pay the membership fee and be bound by such rules and regulations as may from time to time be adopted by the Seller.
4. Continuity of Service

The Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail or be interrupted, or become defective through act of God, governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, required maintenance work, inability to secure right-of-way, or any other cause beyond the reasonable control of Seller, the Seller shall not be liable therefor or for damages caused thereby.
5. Right of Access

Duly authorized representatives of the Seller shall be permitted to enter the Consumer's premises at all reasonable times in order to carry out the provisions hereof.
6. Term

This agreement shall become effective on the date first above written and shall remain in effect until five years following the start of the initial billing period and thereafter until terminated by either party giving to the other one month's notice in writing.
7. Succession and Approval
 - a. This Agreement shall be binding upon and inured to the benefit of the successors, legal representatives and assigns of the respective parties hereto.
 - b. If the maximum amount of power to be delivered hereunder is greater than 1,000 kw, this contract shall not be effective unless approved in writing by the Administrator of the Rural Electrification Administration.

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

Y-W ELECTRIC ASSOCIATION, INC.
Seller

By [Signature]
Manager

Birdsall Young, Jr.
Consumer

By [Signature]
Title of Officer

ATTEST:

D. O. 77-199

Secretary

oc. No. 52-51

1/29/16

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Exhibit D

APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO

5538

DARLENE M. BRIDGES, JR.
HENRY ACQUIN
AKRON, OHIO 44312

PAY TO THE ORDER OF W. W. ELECTRIC ASSOCIATION, INC. 3-16-1977 1021
4759 92
4759 92 DOLLARS

THE  National Bank
 OF COLORADO
 1500 University Blvd Denver, CO

Russell Young, Jr.

NORTHEAST IRRIGATION, INC.

Flagler, Colorado 80815 —or— Wray, Colorado 80738
 Phone 765-4798 Phone 332-5641

Date 4-18-27

B. Upson
 Otil, Colo

Exhibit E

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WATER RESOURCES
 STATE ENGINEER
 COLO

	2 Pingle Spindles	BT	\$ 2279 84
		BT	33503 84
	Down Pay		55983 68
	Pipe Fittings		6500 00
	ROA		50383 68
	Lightening Arrestor		1215 00
	Bal on acc't.		51598 68
			\$ 50000 00
			1398 68
			263 00
			\$ 1801 68
1-18-27	Bal ob 2,000		
	18465 63		
	170 00		
	<u>18295 63</u>		
	check		
	\$ 66,295.63		

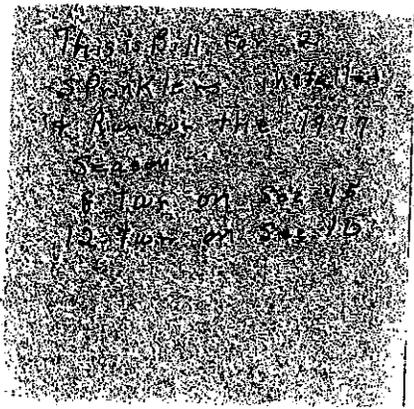


Exhibit F

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APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO

Henry South
AKRON, COLORADO

1977 82-283
1021

PAY TO THE ORDER OF *Master Charles Jr. & Family*

Five hundred fifty thousand

550,000

Charles Young

DARLENS OR BRISBELL YOUNG, JR.
HENRY SOUTH
AKRON, COLORADO

5497

1977 82-283
1021

PAY TO THE ORDER OF *Charles Young*

PAID

6272

6272 DOLLARS

Charles Young

82-283

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APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO

Exhibit G

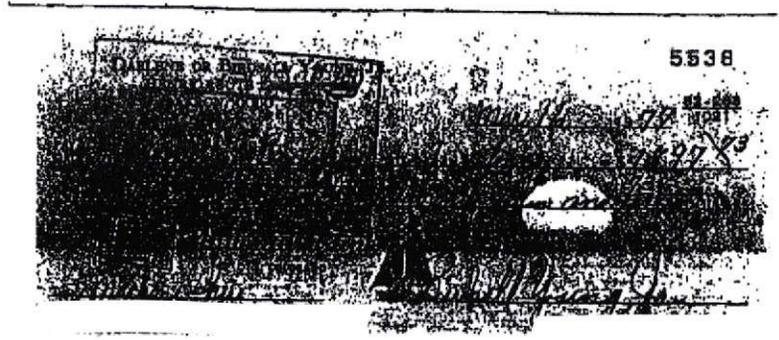


Exhibit D of Variance Request

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SEP 29 1976

WATER RESOURCES
STATE ENGINEER
COLO.

RECEIVED

Akron, Colorado
September 29, 1976 APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO.

Colorado Division of Water Resources
Denver, Colorado

Dear Sirs:

In reference to Permit No. 020172-F, the well has been constructed and a portion has been put to beneficial use as indicated on forms being presented at this time. I would like to have an extension of time to put the balance to beneficial use. Also am asking to make a change in location of the land to be irrigated as indicated on the reverse side. The acres will remain approximately the same and is on the same Section as the permit was granted for.

Thank you for your consideration on this matter.

Burdell Young Jr. owner
Yours truly, *by contract*

am asking extension as owner at the time of permit issuance was planning sale of land and wish to let new owner further develop
Burdell Young Jr.

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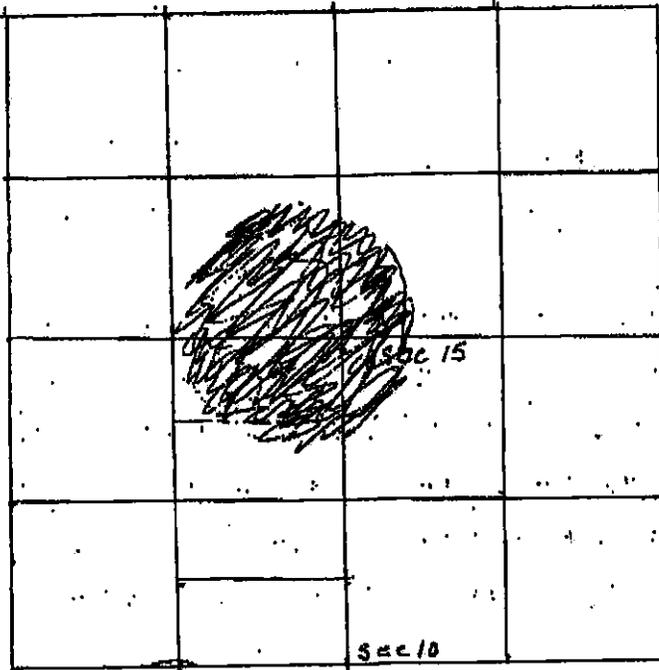
STATE ENGINEER
WATER RESOURCES
DIVISION

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WATER RESOURCES
STATE ENGINEER
COLO

T. 30 S. Rang 50 W.



APR 07 2009

RICHARD D. LAMM
GovernorWATER RESOURCES
STATE ENGINEER
State Engineer

DIVISION OF WATER RESOURCES

Department of Natural Resources
1313 Shorman Street - Room 802
Denver, Colorado 80203
Administration (303) 892-3581
Ground Water (303) 892-3587

October 26, 1976

Mr. Birdsell Young, Jr.
Akron,
Colorado 80720RE: Irrigation well permit #20172-F
located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$
of Sec. 15, T.3S., R.50W.

Dear Sir:

We are in receipt of your request to extend the time in which to irrigate the total acreage approved on the referenced permit and also your request to amend the description of the acreage not yet irrigated.

By authority of the Colorado Ground Water Commission, the staff has extended the beneficial use expiration date of permit #20172-F until October 15, 1977.

Please be advised that the remaining acres must be irrigated and that a Statement of Beneficial Use must be filed for the remaining acreage with the Colorado Division of Water Resources on or before October 15, 1977.

By authority of the Colorado Ground Water Commission, the staff has also changed the description of the acreage to be irrigated with permit #20172-F to 400 acres described as the North 1/2 of the Northwest 1/4 of Section 15 and portions of the West 1/2 and portions of the West 1/2 of the East 1/2 of Sections 10, Township 3 South, Range 50 West.

Enclosed are copies of permit number 20172-F showing the extended beneficial use expiration date and the amended description of the acreage.

Very truly yours,

Dewayne P. Schroeder
Water Resources Engineer
Ground Water SectionDRS:1kc
Enclosures
cc: Carl Friend

Exhibit F of Variance Request

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AFFIDAVIT OF ANTHONY NIEBUR

APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO.

I, Anthony Niebur, do hereby state and affirm the following:

1. I am over the age of eighteen (18) years.
2. I reside at 41193 County Road 11, Anton, Colorado 80801.
3. In 1977, I was an employee of Masters Backhoe and Trenching. I am now the manager of that company.
4. In the Spring of 1977, Masters Backhoe and Trenching did work for Birdsall Young, Jr.. As an employee of Masters Backhoe and Trenching, I dug the trenches for a water supply pipeline to a large center pivot sprinkler located in West Half (W1/2) of Section 10. The well that was supposed to supply water to the sprinkler was located to the South of the new sprinkler in the NE 1/4 of the NW1/4 of Section 15.
5. In the Spring of 1977, Masters Backhoe and Trenching, in addition to doing the trenching for Mr. Young's new sprinkler, did several jobs on other farms in the vicinity of Mr. Young's property. I remember the work on both Mr. Young's property and the other farms because the weather was very cold and wintery while we were digging the trenches.
6. I have reviewed the ledger for Masters Backhoe and Trenching for the years of 1976 and 1977. The ledger indicates payments were received from Birdsall Young, Jr. in the early part of 1977.
7. Further, Affiant sayeth naught.

Respectfully submitted this 28 of February, 2009.

By: Anthony Niebur
Anthony Niebur

Elva Masters

ELVA MASTERS
NOTARY PUBLIC
STATE OF COLORADO

MY COMMISSION EXPIRES APRIL 09, 2010

RECEIVED

APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO

STATE OF COLORADO)
COUNTY OF Washington) ss.

Subscribed, sworn to and acknowledged before me by Anthony Niebur, the Affiant, this
28 day of February, 2009.

ELVA MASTERS
NOTARY PUBLIC
STATE OF COLORADO

My commission expires: _____

MY COMMISSION EXPIRES APRIL 09, 2010

Witness my hand and official seal.

Elva Masters
Notary Public

ELVA MASTERS
NOTARY PUBLIC
STATE OF COLORADO

My Commission expires: _____

MY COMMISSION EXPIRES APRIL 09, 2010

Exhibit G of Variance Request

RECEIVED

APR 07 2009

WATER RESOURCES
STATE ENGINEER
COLO

AFFIDAVIT OF DANIEL AXSOM

I, Daniel Axsom, do hereby state and affirm the following:

1. I am over the age of eighteen (18) years.
2. I reside at 40050 County Road 20, Akron, Colorado 80720.
3. In 1977, I purchased a Pringle sprinkler from a Mr. Gary Hasz at Northeast Irrigation in Wray, Colorado for irrigation of my farm. Mr. Birdsall Young also purchased two Pringle sprinklers to irrigate his property that year.
4. In the Spring of 1977, Mr. Young and I traded labor. I helped Mr. Young install pipe to a 12 tower Pringle sprinkler irrigating the West Half (W1/2) and portions of the West Half (W1/2) of the East Half (E1/2) of Section 10, all located in Township 3 South, Range 50 West of the 6th P.M. The well servicing the sprinkler was located in the NW1/4 of Section 15.
5. The 12 tower Pringle sprinkler that I helped Mr. Young install pipeline to irrigated crops during 1977.
6. Further, Affiant sayeth naught.

Respectfully submitted this 17 of March, 2009.

By: Daniel Axsom
Daniel Axsom

Exhibit H of Variance Request

OWNER'S COPY RECEIVED

APR 07 2009

THIS FORM MUST BE SUBMITTED PRIOR TO THE EXPIRATION OF THE PERMIT. TYPE OR PRINT IN BLACK INK. COPY OF ACCEPTED STATEMENT MAILED ON REQUEST.

COLORADO DIVISION OF WATER RESOURCES

300 Columbine Bldg., 1845 Sherman St. Denver, Colorado 80203

WATER RESOURCES STATE ENGINEER RECEIVED

STATE OF COLORADO

AFFIDAVIT

COUNTY OF Washington } SS.

JUL 18 77 WATER RESOURCES STATE ENGINEER COLO.

X STATEMENT OF BENEFICIAL USE OF GROUND WATER AMENDMENT OF EXISTING RECORD

PERMIT NUMBER 020172-F

LOCATION OF WELL

THE AFFIANT(S) Birdsell Young, Jr. whose mailing address is Henry Route City Akron, Colorado 80720

County Washington N.E. 1/4 of the N.W. 1/4 Section 15 Twp. 3 Rng. 60 W 62h P.M.

being duly sworn upon oath, deposes and says that he (they) is (are) the owner(s) of the well described hereon; the well is located as described above, at distances of 305 feet from the North section line and 1330 feet from the East section line; water from this well was first applied to a beneficial use for the purpose(s) described herein on the day of April 7, 1975; the maximum sustained pumping rate of the well is 1500 gallons per minute; the pumping rate claimed hereby is 1500 gallons per minute; the total depth of the well is 212 feet; the average annual amount of water to be diverted is 400 acre-feet; for which claim is hereby made for Irrigation purpose(s); the legal description of the land on which the water from this well is used is N 1/4 of N 1/4 Sec 15 and portions of N 1/4 and portions of W 1/4 of E 1/4 Sec 10 T36 R50W which totals

0.30 acres and which is illustrated on the map on the reverse side of this form; that this well was completed in compliance with the permit approved therefor; this statement of beneficial use of ground water is filed in compliance with law; he (they) has (have) read the statements made hereon; knows the content thereof; and that the same are true of his (their) knowledge.

Signature(s) Birdsell Young Jr. Subscribed and sworn to before me on this 14th day of July, 1977 My Commission expires: 4-30-80 (REAL) Dab W. Baker NOTARY PUBLIC

FOR OFFICE USE ONLY Court Case No. Prior. Mo. Day Yr. Div. City. Sec. T. R. Well Use Dist. Basin Man. Dis.

ACCEPTED FOR FILING BY THE STATE ENGINEER OF COLORADO PURSUANT TO THE FOLLOWING CONDITIONS:

DATE STATE ENGINEER BY

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Well drilled by Jessen Milling Lic. No. 533

Pump installed by Jessen Milling Lic. No. 533

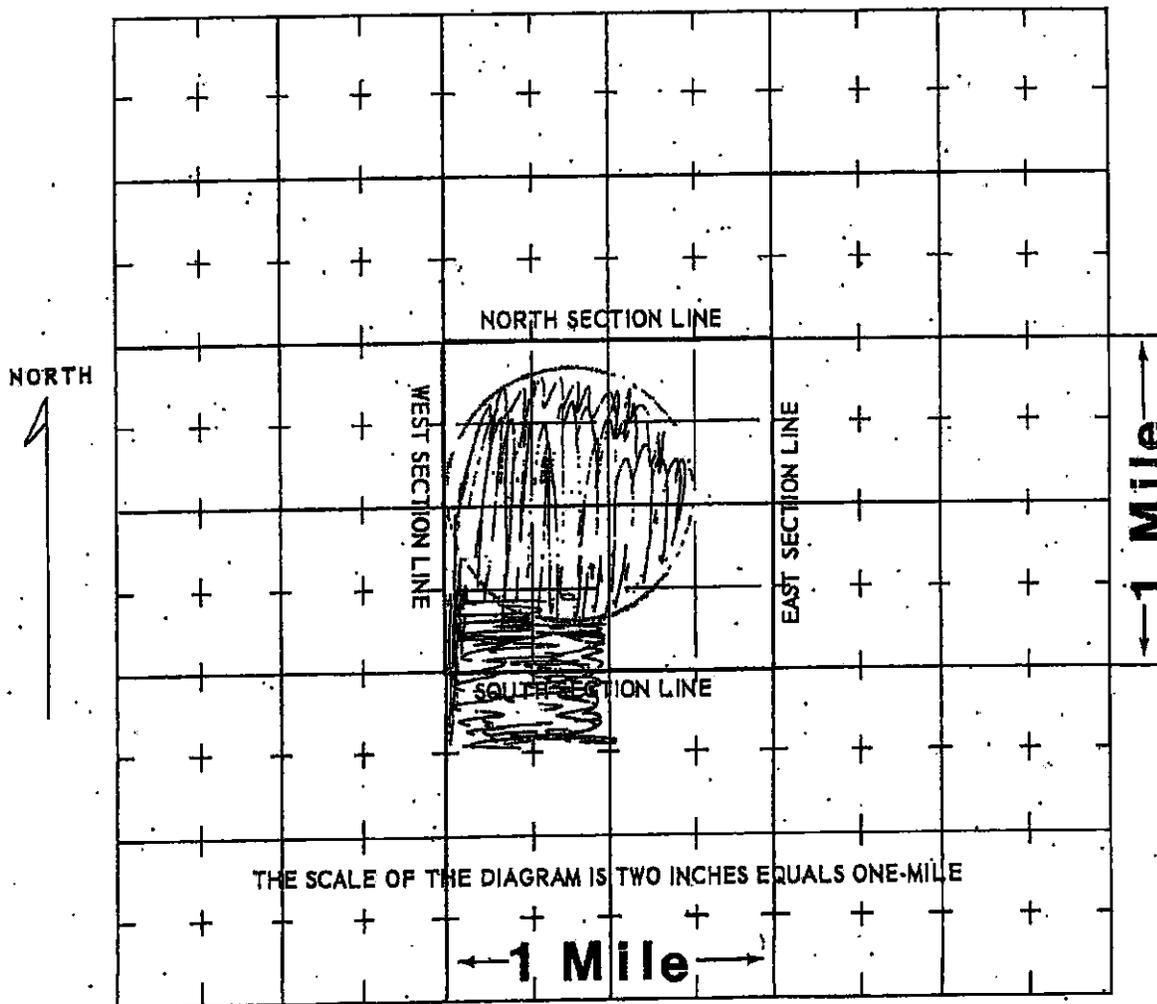
Meter Serial No. _____ Flow Meter Date installed _____

Owner of land on which water is being used Birdsall Young, Jr.

WATER RESOURCES
STATE ENGINEER
COLORADO

THE LOCATION OF THE WELL MUST BE SHOWN AND THE AREA ON WHICH THE WATER IS USED MUST BE SHADED OR CROSS-HATCHED ON THE DIAGRAM BELOW.

This diagram represents nine (9) sections. Use the CENTER SQUARE (one section) to indicate the location of the well, if possible.



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).
- 1 acre-foot . . . 43,560 cubic feet . . . 325,900 gallons.
- 1,000 gpm pumped continuously for one day produces 4.42 acre-feet.
- 100 gpm pumped continuously for one year produces 160 acre-feet.

Exhibit J of Variance Request

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APR 07 2008

GROUND WATER COMMISSION
STATE OF COLORADO

WATER RESOURCES
STATE ENGINEER
COLO

FINAL PERMIT NO. 20172FP

NORTHERN HIGH PLAINS DESIGNATED GROUND WATER BASIN

Priority date: August 21, 1975

Use: Irrigation

Name of Claimant: BIRDSALL YOUNG, JR.

Location of well: NE 1/4 of the NW 1/4 of Section 15, Township. 3 S,
Range 50 W. of the 6th Principal Meridian

Maximum annual volume of the appropriation: 400 acre-feet

Maximum pumping rate: 1500 gallons per minute

Number of acres which may be irrigated: 160 acres

Description of acres irrigated:
the NE 1/4 of the NW 1/4 of Sec. 15 and the NW 1/4 and part of the NW 1/4 of the NE 1/4
of sec. 10, T3S, R50W.

Done this 30th day of July, 1987



Jeris A. Danielson
Executive Director,
Colorado Ground Water Commission

APR 07 2009



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

WATER RESOURCES
STATE ENGINEER
COLO

January 31, 2008

Birdsall Young
39660 CR 20
Akron, CO 80720

Bill Ritter, Jr.
Governor

Harris D. Sherman
Executive Director

Dick Wolfe, P.E.
Director

Re: Well Permit Nos. 20172-FP

Dear Mr. Young,

As you may be aware, our office is currently involved in an effort to ensure that all large capacity wells within the Northern High Plains Republican River Drainage Basin are being used in compliance with the conditions established on their Final Permits. It has come to our attention that during the 2007 growing season you may have operated the well with Permit No. 20172-FP in violation of its final permit, irrigating more acres than are currently allowed by your final permit.

Please be advised that the well with Permit No. 20172-FP is currently permitted to irrigate 160 acres described lands in the North half of Section 15, and the West half and Part of the East half of Section 10, all in Township 3 South, Range 50 West of the 6th P.M.

The State of Colorado is required to take any and all actions necessary to meet our obligations pursuant to the Republican River Compact. This effort requires us to ensure that all large capacity wells within the Northern High Plains Republican River Drainage Basin are being used within the confines of their final permits. At this time, our office believes that the well with Permit No. 20172-FP was operated in violation of its final permit during the 2007 irrigation year. However, after reviewing the permit file, there is some confusion surrounding the irrigated allocation currently stated on the Final Permit, and it may be possible for you to amend your water right/Final Permit.

On October 15, 1975 Carl Friend applied for a well permit to construct a well to irrigate 400 acres described as lands in Sections 10 and 15, T3S, R50W. On this application, Mr. Friend also requested an annual allocation of 400 acre-feet. On July 28, 1997 we received a statement of beneficial use from you -- you being the new owner at that time -- claiming that the well with Permit No. 20172-FP was being used for the irrigation of 400 acres described as N1/2 of the NW1/4 of Sec. 15, and portions of the W1/2 and portions of the W1/2 of the E1/2 of Section 10, T3S, R50W of the 6th P.M. In June of 1987, your water right was published in the Akron News with an irrigated acre allocation stated as 160 acres. Our office is not sure why the irrigated amount was reduced from 400 acres to 160 acres (there are no notes in the permit file). In July of 1987 our office sent you a Final Permit which restricted the well with Permit No. 20172-FP to the irrigation of 160 acres to be irrigated with 400 acre-feet of water. At that time,

Office of the State Engineer

1313 Sherman Street, Suite 818 • Denver, CO 80203 • Phone: 303-866-3581 • Fax: 303-866-3589

www.water.state.co.us

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you had thirty days to object to the final permit. Our office never received an objection to the Final Permit or its allocations, therefore Final Permit No. 20172-FP became final. I have enclosed a copy of this final permit for your records.

WATER RESOURCES
STATE ENGINEER
COLO

At this time, you have a couple of options:

-You can reduce your acreage irrigated by the well with Final Permit 20172-FP to the permitted 160 acres.

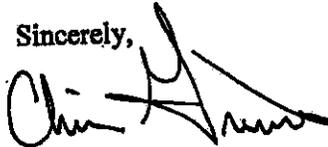
OR

-You can petition the Ground Water Commission to amend your Final Permit, in which case you would argue your position before the Commission this May at our next Ground Water Commission meeting. Please be advised that you would need to provide evidence proving that you were irrigating more than 160 acres before October 15, 1977 (that is the date that you were required to show evidence of beneficial use for this well). Some example of the types of evidence the Ground Water Commission and Staff may find acceptable: Aerial photos from 1977 or before, FSA crop records, power records, or county tax records on irrigated acres – you should have been taxed on the number of acres you were irrigating, and the county should have record of this. If you are unable to prove that you were irrigating more than 160 acres before October 15, 1977, it will not be worth your while to go before the Commission, and you will be required to abide by your current Final Permit allocations.

Plases respond to this letter within twenty days, February 20, 2008, so that we might discuss this matter further. If we do not hear from you, and the violation continues when you begin irrigation in the Spring, a cease and desist order will be issued and you will be subject to fines in the amount of up to five hundred dollars for each day you violate the cease and desist orders.

If you should have any additional questions please contact me at this office, or Dave Keeler at 970-630-2844.

Sincerely,



Chris Grimes
Water Commissioner/Des. Basins

Cc: Dave Keeler, Water Commissioner
Central Yuma GWMD

APR 07 2009



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

WATER RESOURCES
STATE ENGINEER
COLO

May 5, 2008

Bill Ritter, Jr.
GovernorHarris D. Sherman
Executive DirectorDick Wolfe, P.E.
DirectorMr. Birdsall Young Jr.
39660 Co Rd 20
Akron, CO 80720

RE: Change of Permitted Acres on Well Permit No. 20172-FP

Dear Mr. Young:

I have received your letter of March 5, 2008 requesting to be added to the agenda of the May 16, 2008 Ground Water Commission Meeting for purposes of amending the number of irrigated acres allowed by Final Permit No. 20172-FP. Per your request you were put on the agenda that was mailed out earlier this week (copy attached). After further review of the permit file and statutes with the Attorney General's office this week, it appears that the governing statutes do not allow the Ground Water Commission to amend your final permit at the May Ground Water Commission meeting to allow irrigation of the 278 acres you claim you have always irrigated. I will outline a procedure below that may allow you to obtain the relief you seek.

Before discussing that procedure, I will explain why the Staff of the Ground Water Commission ("Staff") and the Attorney General's Office does not believe that the Commission may simply amend the final permit at the May 16 meeting. The applicable statutes, C.R.S. §§ 37-90-112 and 114 (copies enclosed), requires that any objection to a final permit must occur within 30 days of publication of the final permit. Final Permit no. 20172-FP was published in 1987. Thus, objections to it had to be filed at that time. Because you did not file such an objection, the Commission no longer has the ability to amend or alter the final permit as you request, regardless of the arguments and evidence you may present. Therefore, there is no statutory basis for a hearing before the Commission on May 16. I realize that this is different than what we have previously told you, as in our January 31, 2008 letter, but we have now had the benefit of input from the Attorney General's office. I apologize for any inconvenience.

Assuming that you want to continue to seek to change the permit to allow for the irrigation of the 278 acres, we suggest that you take the following steps. First, you should apply for an increase in Permitted Acreage under Rule 7.5 of the Commission's Rules and Regulations for the Management and Control of Designated Ground Water ("Rules") (attached and available on the Commission's website at <http://water.state.co.us/cgwc/>). Second, in order to use the same amount of water that you have allegedly used historically, you will need to apply for a variance under Rule 11 of the Rules at the same time as you apply to change the water right. Under Rules 7.5.3 and 7.10, evaluation and approval of any change application requires that the Staff evaluate the actual historic legal use of the permit on the permitted acres. Thus, in this case, the Staff would base the amount of water under the changed permit on the amount you have historically used on 160 acres, not on the 278 acres that claim to have irrigated and desire to irrigate in the future. This would result in a decrease in the amount of water you would be allowed to pump under the permit. The variance to these rules, if granted

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Mr. Birdsall Young
May 5, 2008

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WATER RESOURCES
STATE ENGINEER

by the Commission, would allow the Staff to evaluate the amount of water historically used on the entire 278 acres and thus allow it to issue a permit that would allow you to continue to pump the same amount of water on the 278 acres.

Both the change application and the variance request would be published, after which the Commission would hear the variance request at a future meeting. Most likely, the basis for your argument for the variance would be similar to the case you had planned to present at the May meeting. If the Commission granted the variance request, the Staff would proceed to evaluate the change application under the applicable rules, except that it would evaluate historical use on the 278 acres, rather than the 160 acres.

As you are already on the agenda for the May meeting, Staff will explain the situation and its position to the Commission at the meeting. However, you may also come to the meeting and address the Commission yourself regarding this matter, including any disagreements that you may have with the Staff's position as outlined in this letter. Please contact Chris Grimes by May 14 to let him know whether or not you wish to present a case or any statement to the Commission at the May meeting, or if you have further questions. Due to the complexity of the statutes and regulations involved and the fact that you would be undertaking both an application process and a request for a variance, you may want to consider obtaining the help of an attorney to assist you.

Sincerely,



Keith Vander Horst
Designated Basins Team Leader

cc: Dave Keeler, Water Commissioner
Devin Odell, Assistant AG
Pat Kowaleski, Assistant AG

20172FPChangeProcedure.doc