

FORM NO.
BWS-10
03/92

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

For Office Use only
RECEIVED

MAY 12 1997

WATER RESOURCES
STATE ENGINEER
COLO.

FOR INSTRUCTIONS, SEE REVERSE SIDE

STATEMENT OF BENEFICIAL USE

WELL PERMIT NUMBER 21405-F

1. WELL OWNER

NAME(S) Silver State, Inc.
Mailing Address Box 628
City, St. Zip Alamosa, Colorado 81101
Phone ()

2. WELL LOCATION: COUNTY Alamosa OWNER'S WELL DESIGNATION _____
(Address) (City) (State) (Zip)
C 1/4 of the SW 1/4, Sec. 6 Twp. 39 ☒ N. or ☐ S., Range 11 ☒ E. or ☐ W. NM P.M.
Distances from Section Lines 1320 Ft. from ☐ N. or ☒ S. Line, 1320 Ft. from ☐ E. or ☒ W. Line.

3. The well is being used for the following purpose(s): Irrigation

4. Water from the well was first used beneficially
under this permit number, for the above described purposes on August 28 19 78.
(Do not report a date which is before the issued date of this permit)

5. The pumping rate claimed is 2000 gallons per minute. SEE BELOW

6. The average annual amount of water diverted is 400 acre feet.

7. The land area irrigated (watered) by water from this well is: 130 ☒ Acres or ☐ Square feet,
(Number)
described as: _____
(Legal Description)
or as _____ Subdivision Lot(s) _____ Block _____ Filing/Unit _____

8. Well drilled by: Pete Kane Lic. No: _____
Pump installed by: _____ Lic. No: _____

9. Meter Mfg. by _____ Serial No.: _____ Date installed: _____

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

10. Name/Title (Please type or print) Signature Date
Owner Gaines Shultz 3/26/97

FOR OFFICE USE ONLY

The expiration order dated September 15, 1997 is reversed and this statement is accepted, subject to a pumping rate of 415 gpm, pursuant to the Conclusions of Law and Order issued in case no. 99CW7.

Hal D. Simpson

State Engineer
Court Case No.

Div. 3

By Kevin Vanderhoof
Co. 02 WD 20 Basin

MD

Date
Use

CHECKS TRW415591 051297 60.00
DIV OF WATER RESOURCES

2-9-2000

THIS FORM MUST BE SUBMITTED
WITHIN 60 DAYS OF COMPLETION
OF THE WORK DESCRIBED HERE-
ON. TYPE OR PRINT IN BLACK
INK.

COLORADO DIVISION OF WATER RESOURCES

1313 Sherman Street - Room 818
Denver, Colorado 80203

WELL COMPLETION AND PUMP INSTALLATION REPORT

PERMIT NUMBER 21405 - F

RECEIVED

OCT 20 1978

WATER RESOURCES
STATE ENGINEER
COLD.

WELL OWNER Broken Heart Land Co. Center $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 6ADDRESS PO Box 628 Alamosa, Colorado T. 39 N. R. 11 E. NW P.M.DATE COMPLETED August 26, 1978

HOLE DIAMETER

30 in. from 0 to 50 ft.

_____ in. from _____ to _____ ft.

_____ in. from _____ to _____ ft.

DRILLING METHOD _____

CASING RECORD: Plain CasingSize 16 & kind Steel from 2 to 10 ft.

Size _____ & kind _____ from _____ to _____ ft.

Size _____ & kind _____ from _____ to _____ ft.

Perforated CasingSize 16 & kind Steel from 10 to 50 ft.Punched

Size _____ & kind _____ from _____ to _____ ft.

Size _____ & kind _____ from _____ to _____ ft.

GROUTING RECORD

Material _____

Intervals _____

Placement Method _____

GRAVEL PACK: Size $\frac{3}{4}$ - $\frac{3}{4}$ Interval 0 - 50

TEST DATA

Date Tested August 26, 1978Static Water Level Prior to Test 7 ft.Type of Test Pump TurbineLength of Test 24 hoursSustained Yield (Metered) 415Final Pumping Water Level 35'

WELL LOG

From	To	Type and Color of Material	Water Loc.
0	2	Top soil	
2	15	Sand	
15	16	Clay	
16	25	Sand	
25	30	Fine sand	
30	31	Ant hill gravel	
31	39	Grey clay	
39	48	Pea gravel	
48	50	Blue clay	
TOTAL DEPTH <u>50'</u>			

Use additional pages necessary to complete log.

PUMP INSTALLATION REPORT

Pump Make _____

Type _____

Powered by _____ HP _____

Pump Serial No. _____

Motor Serial No. _____

Date Installed _____

Pump Intake Depth _____

Remarks _____

WELL TEST DATA WITH PERMANENT PUMP

Date Tested _____

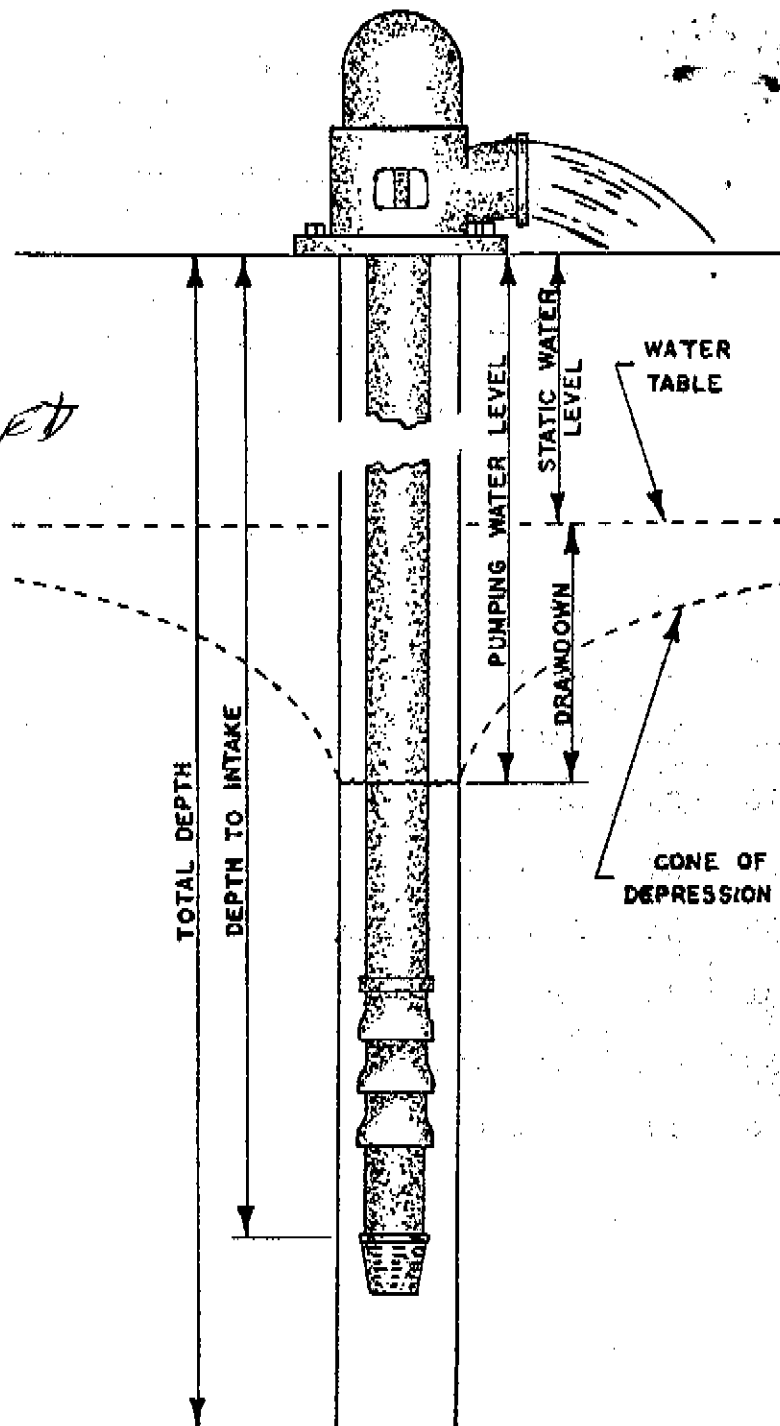
Static Water Level Prior to Test _____

Length of Test _____ Hours

Sustained yield (Metered) _____ GPM

Pumping Water Level _____

Remarks _____



CONTRACTORS STATEMENT

The undersigned, being duly sworn upon oath, deposes and says that he is the contractor of the well or pump installation described hereon; that he has read the statement made hereon; knows the content thereof, and that the same is true of his own knowledge.

Signature [Signature] License No. 977

State of Colorado, County of Denver SS

Subscribed and sworn to before me this 20th day of October, 19 78.

My Commission expires: April 3, 19 82.

Notary Public [Signature]

FORM TO BE MADE OUT IN QUADRUPLICATE. WHITE FORM must be an original copy on both sides and signed. WHITE AND GREEN copies must be filed with the State Engineer. PINK COPY is for the Owner and YELLOW COPY is for the Driller.

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

RECEIVED

JUN 24 '76

WATER RESOURCES
STATE ENGINEER
COLO.

PERMIT APPLICATION FORM

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

() A PERMIT TO USE GROUND WATER
() A PERMIT TO CONSTRUCT A WELL
FOR: () A PERMIT TO INSTALL A PUMP

() REPLACEMENT FOR NO. _____
() OTHER _____
WATER COURT CASE NO. _____

cm

(1) APPLICANT - mailing address

NAME Broken Heart Land Co.
STREET P.O. Box 628
CITY Alamosa, Colorado 81001
(State) (Zip)
TELEPHONE NO. 303-589-4651

(2) LOCATION OF PROPOSED WELL

County Alamosa
center 1/4 of the SW 1/4, Section 6
Twp. 39 N, Rng. 11 E, N.M. P.M.
(N.S) (E.W)

(3) WATER USE AND WELL DATA

Proposed maximum pumping rate (gpm) 2,000

Average annual amount of ground water to be appropriated (acre-feet): 480

Number of acres to be irrigated: 160

Proposed total depth (feet): 100

Aquifer ground water is to be obtained from:
unconfined

Owner's well designation _____

GROUND WATER TO BE USED FOR:

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

() OTHER (9) _____

DETAIL THE USE ON BACK IN (11)

(4) DRILLER

Name Licensed driller
Street _____
City _____ (State) (Zip)
Telephone No. _____ Lic. No. _____

FOR OFFICE USE ONLY: DO NOT WRITE IN THIS COLUMN

Receipt No. 71603^c

Basin _____ Dist. _____

CONDITIONS OF APPROVAL

This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of the permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.

- (1) AVERAGE ANNUAL APPROPRIATION FROM THIS WELL SHALL NOT EXCEED 400 ACRE-FEET FOR THE IRRIGATION OF THE SW 1/4, SEC. 6, T. 39N., R. 11E., NM P.M. TOTALIZING FLOW METER MUST BE INSTALLED ON THE WELL DISCHARGE OF THIS WELL WHEN THE WATER IS PUT TO BENEFICIAL USE. DIVERSION RECORDS SHALL BE SUBMITTED UPON REQUEST AND AS REQUIRED TO THE DIV. OF WATER RES.
- (2) DEPTH OF THIS WELL SHALL NOT EXCEED 60 FEET OR "BLUE CLAY" LAYER, WHICHEVER COMES FIRST: THE "BLUE CLAY" LAYER BEING THE SEPARATION BETWEEN THE UNCONFINED AQUIFER AND THE CONFINED AQUIFER.
- (3) APPLICATION FOR WATER RIGHT MUST BE SUBMITTED TO THE DIVISION 3 WATER COURT. 243

PERMIT EXPIRATION DATE EXTENDED ONE YEAR TO AUGUST 30, 1978. 243

EXPIRED

SEE _____

APPLICATION APPROVED 10/11/77

PERMIT NUMBER 021405-F

DATE ISSUED AUG 30 1976

EXPIRATION DATE AUG 30 1977

BY

I.D.

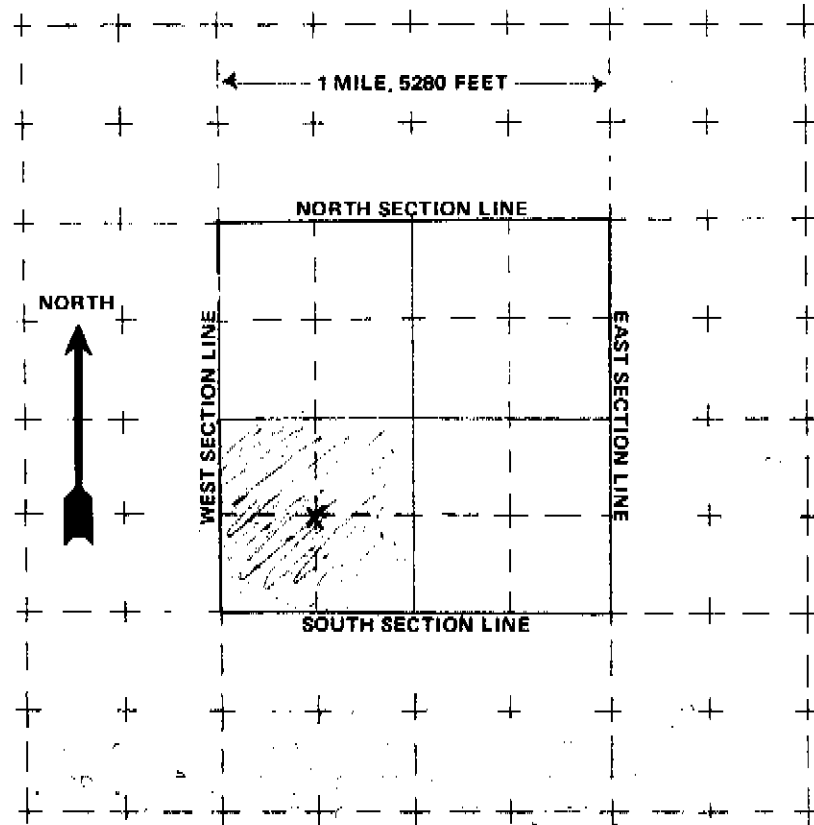
E. J. Snipes
(STATE ENGINEER)

B. E. O'Brien

3-20

COUNTY 02

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



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

WATER EQUIVALENTS TABLE (Rounded Figures)

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

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

1320 ft. from south sec. line
(north or south)
1320 ft. from west sec. line
(east or west)

LOT _____ BLOCK _____ FILING # _____

SUBDIVISION _____

(7) TRACT ON WHICH WELL WILL BE LOCATED Owner: Broken Heart Land Co.
purchase contract - Glayds McKinley
No. of acres 160 Will this be
the only well on this tract? no

(8) PROPOSED CASING PROGRAM

Plain Casing

16 in. from 0 ft. to 40 ft.

_____ in. from _____ ft. to _____ ft.

Perforated casing

16 in. from 40 ft. to 100 ft.

_____ in. from _____ ft. to _____ 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:

This is on a purchase contract from Mrs. Glayds McKinley.

Owner(s): Broken Heart Land Co.

No. of acres: 160

Legal description: SW $\frac{1}{4}$ of Section 6, Township 39 North, Range 11 East N.M.P.M.

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

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

Type or right

Used for (purpose)

Description of land on which used

Prairie Ditch

irrigation

pasture- feed

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

Broken Heart Land Co.

by/ Bonnie Jean Shultz

SIGNATURE OF APPLICANT(S)

Sec. treas.



DIVISION OF WATER RESOURCES

Department of Natural Resources
1313 Sherman Street - Room 818
Denver, Colorado 80203
Administration (303) 892-3581
Ground Water (303) 892-3587

September 16, 1977

Mrs. Gaines Shultz
Broken Heart Land Co.
P. O. Box 628
Alamosa, CO 81101

RE: Well Permit nos. 21403-F, 21404-F, and 21405-F

Dear Mrs. Shultz:

Your request for an extension of time to construct the subject wells and put the water to beneficial use has been received and reviewed.

You are hereby given notice that an extension of one (1) year to August 30, 1978 has been approved by the State Engineer, and copies of the amended permits are enclosed. Please be advised that additional extensions cannot be approved.

Once the permanent pumps are installed, permanent pump installation reports and permanent pump test data reports must be submitted to our office. In order to properly complete the above wells, Statements of Beneficial Use must be submitted prior to the permits' expiration. The necessary forms are available from Water Well Contractors, Pump Installation Contractors, or the Colorado Division of Water Resource offices.

If you have any questions on this matter, please feel free to contact Mr. Richard Bell of this office.

Very truly yours,

Fred M. Loo
Water Resources Engineer
Ground Water Section

FML/RAB:lkc

enclosures

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

BENEFICIAL USE FIELD INSPECTION

WELL PERMIT NO. 21405-F

RECEIVED

MAY 12 1997

WATER RESOURCES
STATE ENGINEER
COLO.

1) Provide details to the following questions as necessary in the space provided.

Has the water been put to beneficial use as claimed? No

Is the well located where claimed? Yes

Are the number and legal description of the acres irrigated accurate? No

Is a totalizing flow meter installed on the well? No

2) General Comments:

No power, no pump. No
evidence of any use

I field inspected the site of the well permitted under the referenced well permit number on 5/7/97
and the above is an accurate report of my findings.

[Signature]
Signature

5/8/97
Date

Well Commissioner
Title

Div III
Division/District

RECEIVED

MAY 12 1997

STATEMENT AND PETITION

WATER RESOURCES
STATE ENGINEER
COLORADO

On August 30, 1976, the Colorado State Engineer
issued permit No. 21405-F

I (We) failed to submit evidence of beneficial use showing the ground water from the well was put to beneficial use prior to the expiration date of the well permit due to the following reasons:

I believed that this was the driller's responsibility

I (We) hereby petition the State Engineer to find that the above reasons constitute excusable neglect, inadvertence or mistake and accept the evidence attached hereto in accordance with applicable Colorado Revised Statutes.

Further, I (we) say that I (we) have read the statements made herein and that the same are true of my (our) own knowledge.

Gaines Shults
Signature

3/26/97

Date

Signature

Date

Effective Date:

RE: C.R.S. 1973, 37-90-137(3) (c)

ORDER OF THE STATE ENGINEER

IN THE MATTER OF WELL PERMIT NO. 21405-F

LOCATION: CENTER, SW 1/4, SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST

APPLICANT: SILVER STATE INC.

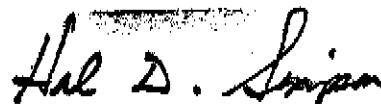
THE STATE ENGINEER FINDS:

The well permit was issued on August 30, 1976 and had an expiration date of August 30, 1978.

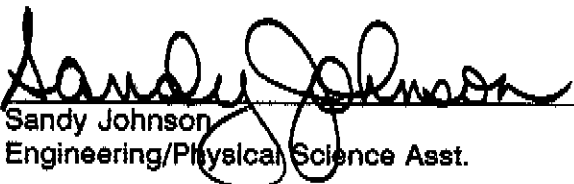
On May 12, 1997, the Water Commissioner for Division 3 submitted evidence that the well had not been constructed and/or put to beneficial use prior to the well permit expiration date. The evidence submitted is as follows: in the Beneficial Use Field Inspection Report the Water Commissioner states that "there are no pumps nor power, there is no evidence of any use."

The well permit is hereby expired and is of no further force or effect.

Dated this 15th day of September, 1997.



Hal D. Simpson
State Engineer

By: 
Sandy Johnson
Engineering/Physical Science Asst.

Prepared by: SJ

cc: Division 3
Applicant

/Form 0020.mrg

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

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



Roy Romer
Governor

James S. Lochhead
Executive Director

Hal D. Simpson
State Engineer

September 15, 1996

Silver State Inc.
Box 628
Alamosa CO 81101

RE: Permit Nos. 21403-F & 21405-F

Gentlemen:

Please be advised that the subject well permits expired on August 30, 1978. A review of the Field Inspection Report from Dennis Felmlee of the Division 3 office in Alamosa indicates that the pumps have not been installed and water from the wells have not been put to use prior to the expiration date of the permits. A condition of the permits is that the applicant apply the water from the wells to beneficial use prior to the expiration date of the permits; consequently, Permit Nos. 21403-F and 21405-F are expired and no longer have any force or effect. Copies of the Orders of the State Engineer expiring your permits are enclosed.

Since the wells have been constructed, it is necessary for you to maintain valid well permits. Failure to obtain new permits could result in issuance of orders to show cause why the wells should not be plugged and abandoned. Application forms are enclosed for your convenience. A \$60.00 non-refundable filing fee is required with each permit application. Completed application forms and a check for \$60.00 should be submitted to this office within twenty (20) days.

If you should have any questions concerning this matter, please contact Sandy Johnson at this office.

Sincerely,

Sandy Johnson
Sandy Johnson
Engineering/Physical Science Asst.

RAB/SMJ

enclosures

cc: Division 3

COPY

RECEIVED

DEC-09 1999

WATER RESOURCES
STATE ENGINEER
COLO.

11/26/99
Filed in the Combined Court
Alamosa County, Colorado

DEC - 3 1999

Carol S. Redding
Clerk of the Combined Court

WATER COURT, WATER DIVISION THREE, STATE OF COLORADO

Case No. 99 CW 7

CONCLUSIONS OF LAW AND ORDER

SILVER STATE, INC,

Plaintiff,

vs.

HAL SIMPSON, STATE ENGINEER FOR THE STATE OF COLORADO

Defendant.

THIS MATTER came before the Court on October 28, 1999, for oral argument on Plaintiff's Complaint for Judicial Review of Agency Action. The Plaintiff was present, with his attorney Erich Schwiesow of Lester, Sigmond, Rooney & Schwiesow. Defendant Hal Simpson was represented by Craig Cotton from the Division Engineer's Office, who was present, and by his attorney David Hayes of the Attorney General's Office, who attended by telephone. Intervenor Rio Grande Water Conservation District was represented by its attorneys David Robbins and Jennifer Hunt of Hill & Robbins, who attended by telephone. Having read the briefs and other matters contained in the Court file, having heard the arguments of counsel, and being otherwise fully advised, the Court concludes and orders as follows:

1. While appellate Courts always give deference to the facts as found by trier of fact, in this situation involving judicial review of agency action there is no reason why this Court should

give deference to the agency's interpretation of law. N. Colo. Med. Center v. Committee on Anticompetitive Conduct, 914 P.2d 902 (Colo. 1996); Three Bells Ranch v. Cache La Poudre, 758 P.2d 164, 172 (Colo. 1988). See also Chevron USA, Inc., v. Natural Resources Defense Council, 467 U.S. 837 (1984).

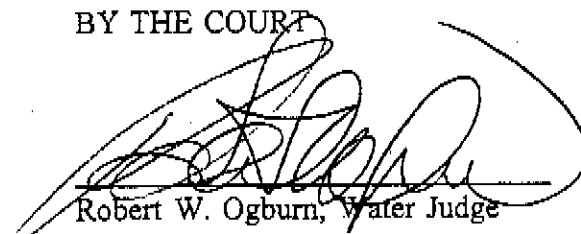
2. The facts as found by the Hearing Officer, which findings all parties agreed were correct in all material respects, clearly establish that the water produced by the subject wells was applied to beneficial use for the purposes for which the appropriation was made, which was irrigation of already existing and productive pasture, and that the water was so applied shortly before and also after the expiration date of the permits. The facts also show that no permanent pump has been installed in either well. Although the lack of permanent pump installation is noted in the case of Danielson v. Milne, 765 P.2d 572 (Colo. 1988), the Court concludes that the deliberate efforts undertaken by the Plaintiff to spread the water on irrigated pastures are significant enough to distinguish this case from the facts in Milne, where the claimed use under a permit for commercial use amounted to no more than spilling water produced in a pump test onto undeveloped ground not used for any purpose. The expiration order issued on September 15, 1997, was therefore in error, and the State Engineer will be directed to recognize that the well permits are not expired.

3. In the circumstances before the Court, including the situation in which the case is postured and the fact that the only evidence in the record as to the productive capacity of the two wells is the test report filed shortly after the wells were completed, it is appropriate for the Court to limit the flow rate allowed under the permits to that amount shown by the pump test, because

this reflects the actual amount of water put to beneficial use. Peterson v. Groundwater Commission, 579 P.2d 629 (Colo. 1978); see also Rominiecki v. McIntyre Livestock Corp., 633 P.2d 1064, 1067 (Colo. 1981). Accordingly, the State Engineer is directed to issue new or amended permits which shall reflect limitations on the rate of flow consistent with those amounts shown by the pump tests. For permit no. 21403-F, located in the center of the NW¼ of Section 6, T39N, R11E, that rate is 525 gallons per minute. For permit no. 21405-F, located in the center of the SW¼ of Section 6, T39N, R11E, that rate is 415 gallons per minute.

DONE AND SIGNED this 30th day of December, 1999.

BY THE COURT


Robert W. Ogburn, Water Judge

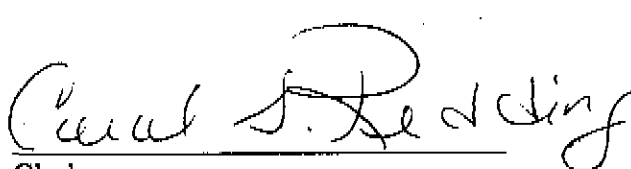
CERTIFICATE OF MAILING

I do hereby certify that on the 7th day of December, 1999, I hand delivered or placed in First Class U.S. Mail a true and correct copy of the above Ruling and Order properly addressed and postage prepaid to the following:

David S. Hayes, Esq.
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Erich Schwiesow, Esq.
Lester, Sigmond, Rooney & Schwiesow
PO Box 1270
Alamosa, CO 81101

David W. Robbins, Esq.
Jennifer H. Hunt, Esq.
HILL & ROBBINS
1441 18th Street, #100
Denver, CO 80202


Clerk

STEVEN E. VANDIVER
Division Engineer
Division 3, Division of Water Resources
P.O. Box 269
Alamosa, CO 81101

Harold (Harry) D. Simpson
State Engineer
Room 818, Centennial Building
1318 Sherman Street
Denver, CO 80203