

DISTRICT COURT, WATER DIVISION 1, COLORADO
Consolidated Case Nos. 82 CW 488 and 84 CW 030

FILED IN
DISTRICT COURT
WATER DIV. 1
WELL CO. COLO.
APR 29 1987

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF GVR PARTNERSHIP, a Colorado limited partnership; GVR PARTNERSHIP II, a Colorado limited partnership; ALPERT CORPORATION, a Colorado corporation; HARVEY ALPERT; LELAND ALPERT; THEODORE ALPERT; TOWER FARMS, a general partnership; BORG-WARNER EQUITIES CORPORATION, a Delaware corporation; ERNEST S. MADISON, individually and as Trustee; MPP ASSOCIATES, a Colorado general partnership; ABE PERLMUTTER INVESTMENT COMPANY, a Colorado corporation; LESTER GOLD and HARRY COHEN

IN THE NONTRIBUTARY ARAPAHOE AND LARAMIE-FOX HILLS AQUIFERS
IN ADAMS COUNTY AND THE CITY AND COUNTY OF DENVER

THIS MATTER, having come on for trial on October 20, 1986 upon the application of GVR Partnership, GVR Partnership II, Alpert Corporation, Harvey Alpert, Leland Alpert, Theodore Alpert, Tower Farms, Borg-Warner Equities Corporation, Ernest S. Madison, individually and as Trustee, MPP Associates, Abe Perlmutter Investment Company, Lester Gold and Harry Cohen, (hereinafter "Applicants"), and the Water Judge having considered the pleadings, the files herein, and the evidence presented before him, hereby enters the following Findings of Fact, Conclusions of Law, Judgment and Decree in accordance with C.R.S. §37-92-304(5):

FINDINGS OF FACT

1. The original application in Case No. 82 CW 488 was filed with the Water Clerk, Water Division 1, on December 30, 1982, by Tower Farms, GVR Partnership, GVR Partnership II, Ernest S. Madison, individually and as Trustee, and Borg-Warner Equities Corporation. A withdrawal and entry of appearance whereby Saunders, Snyder, Ross and Dickson withdrew and Stephen T. Williamson and Judy S. Givens entered the case as counsel for the applicants was filed on May 31, 1984. An amended application was filed on July 23, 1984. A second amended application was filed on December 31, 1984. A third amended application was filed on August 30, 1985. A fourth amended application was filed on December 31, 1985.

2. The original application in Case No. 84 CW 030 was filed with the Water Clerk, Water Division 1, on February 3, 1984 by Green Valley Ranch Partnership, Abe Perlmutter, Bernard Bernstein, Albert Rudofsky, Jordan Perlmutter, Samuel Primack, William J. Morrison, Perl-Mack Enterprises Co., Harvey Alpert, Leland Alpert, Theodore Alpert, Tower Farms, Borg-Warner Equities Corporation, GVR Partnership and Ernest S. Madison, individually and as Trustee. An order withdrawing the structures designated as A-1, A-2, A-3, A-4, LFH-1, LFH-2, LFH-3, and LFH-4 was entered on June 29, 1984. An order adding GVR Partnership II, Harry Cohen, Lester Gold, Abe Perlmutter Investment Co., MPP Associates, and Alpert Corp. as applicants and withdrawing Green Valley Ranch Partnership, Abe Perlmutter, Bernard Bernstein, Albert Rudofsky, Jordan Perlmutter, Samuel Primack, William J. Morrison and Perl-Mack Enterprises as applicants was entered on October 1, 1984. An amended application was filed on November 30, 1984. A second amended application was filed on July 31, 1985. A third amended application was filed on August 30, 1985.

3. These applications were referred to the Water Referee pursuant to C.R.S. §37-92-301(2) but were rereferred to the Water Judge upon motion of the City and County of Denver approved by order of the court dated November 1, 1985. A motion to consolidate Case Nos. 82 CW 488 and 84 CW 030 was filed with the court by the State of Colorado on July 3, 1986. Applicants and objector City of Aurora filed consents to the State's motion. Since there has been no objection to the consolidation, Case Nos. 82 CW 488 and 84 CW 030 are hereby consolidated and shall be treated as one case herein and in administration by the Division of Water Resources.

4. The applicants are GVR Partnership, a Colorado limited partnership, GVR Partnership II, a Colorado limited partnership, Alpert Corporation, a Colorado corporation, Harvey Alpert, Leland Alpert, Theodore Alpert, Tower Farms, a general partnership, Borg-Warner Equities Corporation, a Delaware corporation, Ernest S. Madison, individually and as Trustee, MPP Associates, a Colorado general partnership, Abe Perlmutter Investment Company, a Colorado corporation, Lester Gold and Harry Cohen, c/o Colorado Development Consulting Services, Inc., The Ranch Office Commons, 2006 West 120th Avenue, Denver, CO 80234.

5. Timely statements of opposition were filed by the City of Thornton, the City and County of Denver, acting by and through its Board of Water Commissioners, San Marino Savings and Loan Association, the City of Aurora, the City of Englewood, Box Elder Farms, Inc. and Monaghan Farms, Inc. On March 14, 1986, the City of Englewood withdrew its Statement of Opposition. The State Engineer and the Division Engineer filed a motion to intervene in Case No. 84 CW 030 which was granted on March 27, 1986. On May 6, 1986, San Marino Savings and Loan Association withdrew its Statement of Opposition.

6. Timely and adequate notice of the pendency of these proceedings ~~in rem~~ has been given in the manner required by law. The court has jurisdiction over the subject matter of these proceedings and over all who have standing to appear as parties, whether they have appeared or not.

7. The time for filing additional statements of opposition has expired and no other person has entered his appearance herein.

8. The land and water rights involved herein are not included within the boundaries of any designated ground water basin.

9. Applicants seek a decree for a total of nineteen proposed wells. Wells A-7, A-8, A-9, A-11 and AW-1 are to be completed in the nontributary Arapahoe aquifer and Wells LFH-7, LFH-9, LFH-10, LFHW-1 and LFHW-2 are to be completed in the nontributary Laramie-Fox Hills aquifer underlying land in all or parts of Sections 18, 19, 29 and 30 in Township 3 South, Range 65 West of the 6th P.M., and Sections 13, 15, 22 and 24, Township 3 South, Range 66 West of the 6th P.M., Adams County, Colorado, and totalling 2749.28 acres, as more fully described in Exhibit A, attached hereto and incorporated herein by this reference.

Additionally, Wells A-1, A-2, A-3, A-4 and A-6 are to be completed in the nontributary Arapahoe aquifer and Wells LFH-1, LFH-2, LFH-3 and LFH-4 are to be completed in the nontributary Laramie-Fox Hills aquifer underlying land in all or parts of Section 11, Township 3 South, Range 66 West of the 6th P.M., Adams County, Colorado, and Sections 14, 15, 22 and 23, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, Colorado totalling approximately 2996.7 acres, as more fully described in Exhibit B, attached hereto and incorporated herein by this reference. The applicants have withdrawn their claims for four Denver aquifer water rights appropriating groundwater underlying this land because Rule 5 of the Denver Basin Rules, 2 C.C.R. 402-6, indicates that water in the Denver aquifer underlying this land is not nontributary.

These acreage figures are based on accurate surveys and are the actual acreage owned by applicants or once owned by applicants for which they hold valid consents to appropriate the groundwater. Acreage figures previously submitted to the Office of the State Engineer, Division of Water Resources, were estimates only.

Under Rule 4(A)(9) of the Denver Basin Rules, 2 CCR 402-6, as promulgated by the Division of Water Resources, the Arapahoe formation underlying applicants' land is defined as two distinct aquifers; the Upper Arapahoe aquifer and the Lower Arapahoe aquifer. Rule 10 of the Denver Basin Rules requires separate wells for each aquifer. Applicants have thus proposed separate

wells to withdraw water from the Upper Arapahoe aquifer and Lower Arapahoe aquifer, with each pair of wells to be located within fifty feet of the location of the proposed Arapahoe aquifer well the pair is intended to replace and which was described in the applications in this matter, as amended. A map indicating the boundaries of said land, and the locations of the wells described in paragraph 10 hereof, is attached hereto as Exhibit C and incorporated herein by this reference. Said land is now owned by applicants or was formerly owned by applicants for which applicants have consents to appropriate.

10. The subject water rights are described as follows:

- A. UA-1: (Permit No. _____) To be located in the NE 1/4 of the NW 1/4 of Section 14, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,230 feet from the West Section line and 125 feet from the North Section line.

Source: Nontributary Upper Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 75 acre feet per year.

- B. LA-1: (Permit No. _____) To be located in the NE 1/4 of the NW 1/4 of Section 14, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,230 feet from the West Section line and 175 feet from the North Section line.

Source: Nontributary Lower Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 95.2 acre feet per year.

- C. UA-2: (Permit No. _____) To be located in the SW 1/4 of the SE 1/4 of Section 14, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,325 feet from the East Section line and 680 feet from the South Section line.

Source: Nontributary Upper Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 75 acre feet per year.

- D. LA-2: (Permit No. _____) To be located in the SW 1/4 of the SE 1/4 of Section 14, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,375 feet from the East Section line and 680 feet from the South Section line.

Source: Nontributary Lower Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 95.2 acre feet per year.

- E. UA-3: (Permit No. _____) To be located in the NE 1/4 of the SW 1/4 of Section 23, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,245 feet from the South Section line and 2,660 feet from the East Section line.

Source: Nontributary Upper Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 75 acre feet per year.

F. LA-3: (Permit No. _____) To be located in the NE 1/4 of the SW 1/4 of Section 23, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,285 feet from the South Section line and 2,660 feet from the East Section line.

Source: Nontributary Lower Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 95.2 acre feet per year.

G. UA-4: (Permit No. _____) To be located in the NW 1/4 of the NE 1/4 of Section 22, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 410 feet from the North Section line and 2,200 feet from the East Section line.

Source: Nontributary Upper Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 75 acre feet per year.

H. LA-4: (Permit No. _____) To be located in the NW 1/4 of the NE 1/4 of Section 22, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 410 feet from the North Section line and 2,250 feet from the East Section line.

Source: Nontributary Lower Arapahoe aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 350 gallons per minute, limited to not more than 95.2 acre feet per year.

I. UA-6: (Permit No. _____) To be located in the SE 1/4 of the NE 1/4 of Section 15, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, at a point approximately 2,370 feet from the north section line and 925 feet from the east section line.

Source: Nontributary Upper Arapahoe aquifer underlying the land described in Exhibit B.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 75 acre feet per year.

J. IA-6: (Permit No. _____) To be located in the SE 1/4 of the NE 1/4 of Section 15, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, at a point approximately 2,370 feet from the north section line and 875 feet from the east section line.

Source: Nontributary Lower Arapahoe aquifer underlying the land described in Exhibit B.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 95.2 acre feet per year.

K. UA-7: (Permit No. _____) To be located in the SW 1/4 of the NE 1/4 of Section 19, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 1,995 feet from the north section line and 1,400 feet from the east section line.

Source: Nontributary Upper Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 52 acre feet per year.

- I. LA-7: (Permit No. _____) To be located in the SW 1/4 of the NE 1/4 of Section 19, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,045 feet from the north section line and 1,400 feet from the east section line.
- Source: Nontributary Lower Arapahoe aquifer underlying the land described in Exhibit A.
- Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.
- Amount Claimed: 200 gallons per minute, limited to not more than 66.3 acre feet per year.
- M. UA-8: (Permit No. _____) To be located in the SW 1/4 of the SE 1/4 of Section 19, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 95 feet from the south section line and 1,400 feet from the east section line.
- Source: Nontributary Upper Arapahoe aquifer underlying the land described in Exhibit A.
- Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.
- Amount Claimed: 200 gallons per minute, limited to not more than 52 acre feet per year.
- N. LA-8: (Permit No. _____) To be located in the SW 1/4 of the SE 1/4 of Section 19, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 145 feet from the south section line and 1,400 feet from the east section line.
- Source: Nontributary Lower Arapahoe aquifer underlying the land described in Exhibit A.
- Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.
- Amount Claimed: 200 gallons per minute, limited to not more than 66.3 acre feet per year.

O. UA-9: (Permit No. _____) To be located in the SW 1/4 of the NE 1/4 of Section 29, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,605 feet from the north section line and 2,600 feet from the east section line.

Source: Nontributary Upper Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 52 acre feet per year.

P. 1A-9: (Permit No. _____) To be located in the SW 1/4 of the NE 1/4 of Section 29, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,555 feet from the north section line and 2,600 feet from the east section line.

Source: Nontributary Lower Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 66.3 acre feet per year.

Q. UA-11: (Permit No. _____) To be located in the NE 1/4 of the SW 1/4 of Section 24, Township 3 South, Range 66 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,320 feet from the south section line and 1,425 feet from the west section line.

Source: Nontributary Upper Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 83 acre feet per year.

R. LA-11: (Permit No. _____) To be located in the NE 1/4 of the SW 1/4 of Section 24, Township 3 South, Range 66 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,320 feet from the south section line and 1,375 feet from the west section line.

Source: Nontributary Lower Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 106 acre feet per year.

S. UAW-1: (Permit No. _____) To be located in the SW 1/4 of the SW 1/4 of Section 18, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 875 feet from the south section line and 1,000 feet from the west section line.

Source: Nontributary Upper Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Upper Arapahoe aquifer, estimated to be approximately 900 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 87 acre feet per year.

T. LAW-1: (Permit No. _____) To be located in the SW 1/4 of the SW 1/4 of Section 18, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 925 feet from the south section line and 1,000 feet from the west section line.

Source: Nontributary Lower Arapahoe aquifer underlying the land described in Exhibit A.

Depth: To full penetration of the Lower Arapahoe aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 200 gallons per minute, limited to not more than 111 acre feet per year.

U. LFH-1: (Permit No. _____) To be located in the NE 1/4 of the NW 1/4 of Section 14, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,280 feet from the West Section line and 150 feet from the North Section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,250 feet.

Amount Claimed: 250 gallons per minute, limited to not more than 169.75 acre feet per year.

V. LFH-2: (Permit No. _____) To be located in the SW 1/4 of the SE 1/4 of Section 14, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,350 feet from the East Section line and 630 feet from the South Section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 250 gallons per minute, limited to not more than 169.75 acre feet per year.

W. LFH-3: (Permit No. _____) To be located in the NE 1/4 of the SW 1/4 of Section 23, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 2,260 feet from the South Section line and 2,650 feet from the East Section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 250 gallons per minute, limited to not more than 169.75 acre feet per year.

X. LFH-4: (Permit No. _____) To be located in the NW 1/4 of the NE 1/4 of Section 22, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, at a point approximately 420 feet from the North Section line and 2,225 feet from the East Section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying applicants' land as described in Exhibit B.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 250 gallons per minute, limited to not more than 169.75 acre feet per year.

Y. LFH-7: (Permit No. _____) To be located in the SW 1/4 of the NE 1/4 of Section 19, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,000 feet from the north section line and 1,420 feet from the east section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying land described in Exhibit A.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 150 gallons per minute, limited to not more than 141.5 acre feet per year.

Z. LFH-9: (Permit No. _____) To be located in the SW 1/4 of the NE 1/4 of Section 29, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,600 feet from the north section line and 2,580 feet from the east section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying land described in Exhibit A.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 150 gallons per minute, limited to not more than 141.5 acre feet per year.

A.A. LFH-10: (Permit No. _____) To be located in the SE 1/4 of the NW 1/4 of Section 13, Township 3 South, Range 66 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,580 feet from the north section line and 1,400 feet from the west section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying land described in Exhibit A.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 150 gallons per minute, limited to not more than 145 acre feet per year.

B.B. LFHW-1: (Permit No. _____) To be located in the SE 1/4 of the NW 1/4 of Section 18, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 2,300 feet from the north section line and 1,450 feet from the west section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying land described in Exhibit A.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 150 gallons per minute, limited to not more than 78.5 acre feet per year.

C.C. LFHW-2: (Permit No. _____) To be located in the SW 1/4 of the NW 1/4 of Section 19, Township 3 South, Range 65 West of the 6th P.M., Adams County, Colorado, at a point approximately 1,400 feet from the north section line and 850 feet from the west section line.

Source: Nontributary Laramie-Fox Hills aquifer underlying land described in Exhibit A.

Depth: To full penetration of the Laramie-Fox Hills aquifer, estimated to be approximately 1,800 feet.

Amount Claimed: 150 gallons per minute, limited to not more than 78.5 acre feet per year.

11. Applicants request a decree designating all of the wells which are to withdraw water from a given aquifer as original points of diversion and also as alternate points of diversion for each other and permitting the withdrawal of up to the full cumulative amount of water which may be lawfully withdrawn from all of said wells from any one or more of said wells. Applicants request approval of the right to withdraw all of the water which may be lawfully withdrawn from Wells UA-1, LA-1, UA-2, LA-2, UA-3, LA-3, UA-4, LA-4, UA-6, LA-6, UA-7, LA-7, UA-8, LA-8 UA-9, LA-9, UA-11, LA-11, UAW-1 and LAW-1 from any one or more of said wells if the Denver Basin Rules are so modified in the future that applicants are not required to withdraw water in the Upper Arapahoe aquifer and the Lower Arapahoe aquifer through separate wells. If said rules are amended and if they are more beneficial to applicants, the State Engineer shall consider and issue well permit applications under the Denver Basin Rules as modified. The court finds that no material injury will result to any owner of or person entitled to use water under a vested water right or decreed conditional water right by the granting of this request and it is hereby approved.

12. The evidence indicates that utilizing the criteria established by C.R.S. § 37-90-137(4), nontributary ground water is available for withdrawal and have been appropriated by applicants as follows:

TABLE I
Nontributary Appropriations

<u>Aquifer</u>	<u>Ex. A</u> <u>Property</u> <u>2749.28 Acres</u>	<u>Ex. B</u> <u>Property</u> <u>2996.7 Acres</u>	<u>Total</u>
Upper Arapahoe	326 AF/YR	375 AF/YR	701 AF/YR
Lower Arapahoe	415.9	476	891.9
Laramie-Fox Hills	<u>585</u>	<u>679</u>	<u>1264</u>
Subtotal	1326.9	1530	2856.9

13. The amount of water which may be withdrawn annually from the wells described herein was determined using the following parameters:

TABLE II
Nontributary Parameters

<u>Aquifer</u>	<u>Specific Yield</u>	<u>Sand Thickness</u>
Upper Arapahoe	17%	73 feet
Lower Arapahoe	17%	94 feet
Laramie-Fox Hills	15%	151 feet

These values are based upon the best data currently available and the court finds that they are reasonable and should be utilized for purposes of this decree.

14. Applicants have requested the court determine that applicants have the right to withdraw all of the unappropriated nontributary water lying below their land and the right to adjust their annual appropriations, as found in paragraphs 10 and 12, based upon revisions of the saturated sand thickness and/or specific yield values used to calculate those annual appropriations, upon notice to all parties and approval by the court, without amending their application or republishing, to the extent of the publication which has been made. The court finds that there has been full and adequate notice of this claim and that no owner of or person entitled to use water under a vested water right or a decreed conditional water right will be injured by the granting of this request, and it is hereby approved.

15. Applicants may withdraw more than the amounts stated in paragraphs 10 so long as the total volume of water withdrawn from the well or wells within an aquifer, and described herein, does not exceed the product of the number of years since the date of this decree times the annual rate of one percent (1%) of the total amount of unappropriated water recoverable from that aquifer, as that amount may be modified pursuant to paragraph 34 hereof. Rule 8.A., Statewide Nontributary Ground Water Rules, 2 CCR 402-7. If the Denver Basin Rules' bifurcation of the Arapahoe aquifer is modified in the future so that it does not apply to all or a portion of the Arapahoe aquifer underlying applicants' land, the Arapahoe aquifer shall be treated as a single aquifer for purposes of this paragraph 15.

16. Production and use of water at the rates and in the quantities stated in paragraph 10, or in such adjusted quantities as may be determined in a proceeding held pursuant to paragraph 34 hereof, will not result in material injury to the vested water rights or decreed conditional water rights of others. The court therefore finds that the issuance of permits for the amounts stated in paragraph 10 is justified.

17. Applicants originally filed permit applications for wells A-1 through A-4 and LFH-1 through LFH-4 with the Division of Water Resources on October 5, 1982 and for wells A-6 through A-11 and LFH-7 through LFH-10 with the Division of Water Resources on December 29, 1983. Those applications were returned to the applicants for additional information. Amended applications for A-6 through A-11 and LFH-7 through LFH-10 were filed with the Division of Water Resources on February 8, 1985. Amended applications for A-1, A-2, A-3, LFH-1, LFH-2 and LFH-3 were filed on February 13, 1985, and amended applications for A-4 and LFH-4 were filed on May 30, 1985 with the Division of Water Resources.

Applicants originally filed permit applications for the AW-1, LFHW-1 and LFHW-2 wells on July 14, 1984. All of these applications were also returned to the applicants for additional information. Amended applications for AW-1, LFHW-1 and LFHW-2 were then filed with the Division of Water Resources on February 8, 1985. No action has yet been taken on any of the foregoing permit applications.

18. The subject wells will be used as sources of supply in a unified water system to serve the applicants' present and future service area, presently consisting of all the land described in Exhibit D, attached hereto and incorporated herein by this reference. While some of the wells are to be located within the City and County of Denver, none of the water to be withdrawn from the wells decreed herein will be used within the City and County of Denver for domestic or municipal purposes. Subject to the foregoing limitation, the water rights decreed herein may be used for all municipal purposes, including domestic, agricultural, industrial, commercial, irrigation, stock watering, recreation, fish and wildlife, and fire protection. Water may be produced for immediate application to beneficial use, for storage and subsequent application to beneficial use, for exchange purposes, for replacement of depletions resulting from the use of water from other sources, for relinquishment to the stream pursuant to C.R.S. §37-90-137(9)(b) and for all other decreed augmentation purposes. The rights approved and decreed herein include the right of reuse, successive use and disposition by sale, exchange or otherwise, to extinction, of all such water, subject to the provisions of paragraph 31 below, in accordance with C.R.S. § 37-82-106(2).

19. The applicants have proven that the proposed withdrawals of ground water from the wells described herein will not, within 100 years, deplete the flow of any natural stream at an annual rate greater than one-tenth of one percent of the annual rates of withdrawal from each aquifer. The court therefore finds that the water claimed by the applicants is nontributary.

20. Applicants may need to construct additional wells, as defined in the Statewide Nontributary Ground Water Rules, to maintain production levels in each aquifer and to recover the entire amount of water decreed herein. In considering applications for permits for additional wells to withdraw the subject ground water, the State Engineer shall be bound by this decree and shall issue said permits in accordance with the provisions of C.R.S. §37-90-137(10). Applicants shall not be required to submit any additional proof or evidence of matters finally determined herein when making application for wells to withdraw the water rights confirmed herein.

CONCLUSIONS OF LAW

21. The court concludes that the consolidated application herein is one contemplated by law and that this court has exclusive jurisdiction over this proceeding pursuant to C.R.S. §§ 37-92-203 and 37-90-137(6).

22. The consolidated application was filed with the water court pursuant to C.R.S. § 37-92-302(1)(a). Timely statements of opposition were filed as indicated above. The time for filing additional statements of opposition has expired according to law. C.R.S. § 37-92-302(1)(c).

23. The water court has jurisdiction over the subject matter of this consolidated application and over all persons affected hereby, whether they have appeared or not. C.R.S. § 37-92-203(1), as amended.

24. Utilizing the criteria contained in C.R.S. § 37-90-137(4), the court finds that the issuance of well permits by the Division of Water Resources for the appropriations described in paragraph 10 herein is justified. Applicants are entitled to a decree confirming said appropriations, subject to the decretal paragraphs below.

25. The court concludes that the rights to nontributary ground water determined herein are not conditional water rights as defined by C.R.S. §37-92-103(6) and that the provisions of C.R.S. § 37-92-301(4) requiring quadrennial findings of reasonable diligence are not applicable to the nontributary ground water rights determined herein. C.R.S. §37-92-305(11).

26. The applicants are entitled as a matter of law to use, reuse, successively use and dispose of all nontributary ground water decreed herein, subject to the provisions of paragraph 31. This includes the right to the use of said water or return flows from said water to replace out-of-priority depletions under a plan for augmentation approved in compliance with applicable law.

27. The court shall retain jurisdiction over this matter to make adjustments to the amount of water available for withdrawal annually to conform to actual local aquifer characteristics determined pursuant to paragraph 34 herein.

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

28. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set out in full.

29. The consolidated application in this matter is approved subject to the limitations described herein.

30. Applicants' appropriations for their wells, as described above, are hereby confirmed. Water may be used for the purposes and in the manner set forth in paragraph 18.

31. Subject to the provisions of paragraph 34, below, applicants shall relinquish the right to consume, by means of original use, reuse, or successive use, two percent (2%) of the amount of nontributary ground water withdrawn annually without regard to dominion or control of that ground water.

32. With respect to any well permits to be issued by the State Engineer's Office pursuant to this decree, the following provisions shall apply:

- A. The State Engineer shall consider the rights granted herein as valid and shall consider the water sought by applicants as appropriated until this court orders that such rights are abandoned. The State Engineer is directed to forthwith issue any and all permits for the wells decreed herein in accordance with the terms of this decree.
- B. The issuance and extension of such permits shall be pursuant to C.R.S. §37-90-137(3)(a)(II) and C.R.S. §37-90-137(4).
- C. Applicants need not submit proof, apart from the terms of this decree, of matters which have been finally determined herein.
- D. In the event any of the annual appropriations decreed herein are modified in a proceeding held pursuant to paragraph 34 hereof, existing permits for wells completed into the affected aquifers shall be amended to reflect the modified annual appropriations. New permits shall likewise reflect any such modifications to the annual appropriations approved herein.

33. In constructing and maintaining the wells decreed herein, the applicants shall encase each well with an impervious lining and seal at all levels, except the level of the aquifer from which it is to produce water, to prevent withdrawal of tributary or nontributary ground water from other aquifers. A totalizing flow meter shall be installed on each well when it is put to beneficial use. Diversion records shall be maintained by the applicants and submitted to the Colorado Division of Water Resources upon request. After construction, applicants shall

attach an identification tag to each well specifying the name of the well, the permit number, and the aquifer from which water is withdrawn. Applicants shall comply with such other requirements for casing and equipping the well as the State Engineer may reasonably require.

34. The court shall retain jurisdiction of this matter to provide for the adjustment of the amounts of water available for withdrawal annually to conform to actual local aquifer characteristics. The following procedure shall apply:

- A. Applicants shall obtain a geophysical log, and may also obtain site specific data concerning specific yield, of each of the subject wells or the applicable aquifer from another well or test hole located within 1,320 feet of the decreed location of the subject well. Applicants shall submit such geophysical log(s) to the State Engineer in accordance with the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
- B. Within six months after completion of a well or at such earlier time as applicants may elect, if the required information for finally determining saturated sand thickness is available, applicants shall file a petition with the court invoking the court's retained jurisdiction under the above caption and case number and requesting a final determination of the amount of water available to that well. At this time only the petition and none of the other documents described in subparagraph (C) below shall be filed with the court.
- C. Applicants shall serve the petition by certified mail, return receipt requested, upon each of the parties who have appeared herein, including parties who have approved the form and substance of this decree and have not participated in the hearing of this matter, and the Division Engineer. Service shall be upon the respective successors in interest of the parties hereto if such successors in interest have been identified and an address provided in writing to the applicants and to the court. Along with the petition applicants shall serve a copy of the geophysical log, copies of any porosity log, specific yield test report or any other site specific geophysical data obtained and also a copy of the well completion report, if the well was completed.

- D. The State Engineer shall have four (4) months from the time the petition and geophysical information is filed with him to recommend to this court the final amount of water available to the subject well. If at the end of the four month period, the State Engineer has not filed such a recommendation, applicants shall within thirty (30) days file with the court its own request based on the geophysical information as interpreted by applicants' consultants. Service of such request shall be as described in subparagraph (C), above.
- E. In the case where the State Engineer files a timely recommendation pursuant to this procedure, the applicants and any other party who has appeared herein may file a written objection to said recommendation. In the case where the State Engineer does not file a timely recommendation and the applicants file a written request pursuant to this procedure, any party who has appeared herein and/or the Division Engineer for Water Division No. 1 may file a written objection to applicants' request. In either case, such objections shall set forth facts as to why the recommendation should not be followed or the applicants' request should not be granted, as the case may be, and shall be filed with the court by the last day of the second month following the month in which the recommendation or request is filed.
- F. If objections to the State Engineer's recommendation or to the applicants' request, as the case may be, are filed, the matter shall be set for hearing before the court. If no such objections are filed, the court shall enter a final determination of the appropriation available to said structure, adopting the quantity stated in the State Engineer's recommendation or the applicants' request, as the case may be.

The court retains jurisdiction of this matter for the foregoing purpose.

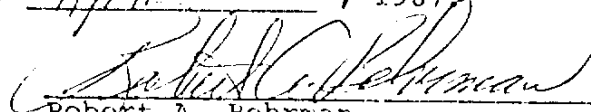
35. The nature and extent of the rights determined herein are defined by C.R.S. § 37-90-137(4). No findings of reasonable diligence are required to maintain the water rights determined herein. C.R.S. § 37-92-305(11). Pursuant to C.R.S. § 37-90-137(6), this proceeding is for the determination of the right to water for future uses.

36. Any well decreed herein which is drilled within 200 feet of the location decreed herein shall be deemed to have been drilled at the decreed well location and shall not require separate approval by this court of a change in point of diversion.

37. Determinations made herein are specific to the subject property and shall not affect determinations made in other matters.

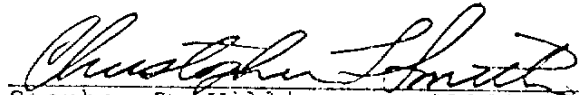
38. Applicants shall comply with any rules and regulations lawfully promulgated by the State Engineer pursuant to C.R.S. §37-90-137(9).

Dated this 29th day of April, 1987



Robert A. Behrman
Water Judge
Water Division No. 1

APPROVED AS TO FORM AND SUBSTANCE:



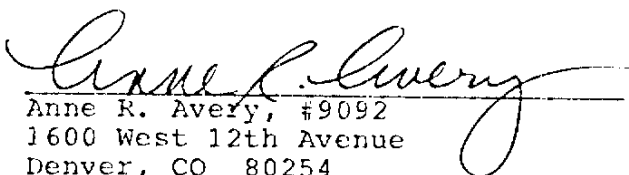
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Louisville, CO 80027

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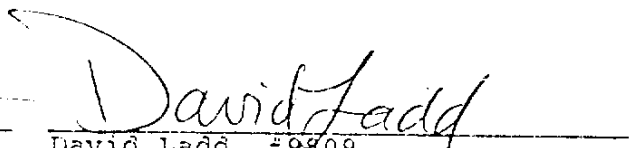
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VAN SCHACK HOLDINGS, LTD.,
H.C. VAN SCHACK, III,
L.C. FULINWIDER, JR. and
L.C. FULINWIDER, III
as successors-in-interest to
BOX ELDER FARMS, INC.

Hickey-McVey Parcel

Legal Description:

The West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$),
the Southeast Quarter ($SE\frac{1}{4}$) of the Southwest Quarter
($SW\frac{1}{4}$) and the East Half ($E\frac{1}{2}$) of Section Nineteen (19),
all of Section Twenty-nine (29), and the North Half ($N\frac{1}{2}$)
of the North Half ($N\frac{1}{2}$) of Section Thirty (30), all in
Township 3 South, Range 65 West of the 6th P.M.

County of Adams
State of Colorado

Cohen/Gold/MPP/Perlmutter Parcel

Legal Description:

The Northwest Quarter (NW $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$)
of Section Twenty-four (24) and the West Half (W $\frac{1}{2}$) of
Section Thirteen (13), all in Township 3 South, Range
66 West of the 6th P.M.

County of Adams
State of Colorado

Windler Property

Legal Description:

The West One Half ($W\frac{1}{2}$) of Section Eighteen (18) and the Northwest Quarter ($NW\frac{1}{4}$) of Section Nineteen (19) both in Township 3 South, Range 65 West of the 6th P.M., and the Southeast Quarter ($SE\frac{1}{4}$) except the Southwest Quarter ($SW\frac{1}{4}$) of the Southeast Quarter ($SE\frac{1}{4}$) of Section Thirteen (13), and the East One Half ($E\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) and the North One Half ($N\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section 24, Township 3 South, Range 66 West of the 6th P.M.

County of Adams
State of Colorado

Green Valley Ranch

Alpert Corporation Parcel

Legal Description:

All of Sections 14, 23, and the East 1/2 and the Southwest 1/4 of Section 15, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado,
EXCEPT:

That part of the Southwest 1/4 of Section 15, Township 3 South, Range 66 West, described as follows:

Beginning at the Southwest corner of said Section 15; thence Northerly along the West boundary line of said Section 15, 350 feet to a point; thence Easterly and parallel with the South boundary line of said Section 15, 450 feet to a point; thence Southerly and parallel with the West boundary line of said Section 15, 350 feet to a point on the South boundary line of said Section 15, thence Westerly along the South boundary line of said Section 15, 450 feet, more or less, to the point of beginning, containing 3.6 acres,

All of Section 11, Township 3 South, Range 66 West of the 6th P.M., County of Adams, State of Colorado,
EXCEPT that part of the South 1/2 of Section 11, described as follows:

Commencing at a point thirty (30) feet North of the South-East corner of Section 11, thence West and parallel with the South line of said Section 11, a distance of 5280 feet, more or less, to the West boundary line of said Section, thence North on the West line of said Section, 75 feet, thence East and parallel with the South line of said Section, 5280 feet, more or less, to the East line of said Section, thence South on said East line 75 feet to the point of beginning, containing 9.1 acres,

Green Valley Ranch

(Alpert Corporation/Tower Farms Parcel)

Legal Description:

All of Section 22, Township 3 South, Range 66 West of the 6th P.M., City and County of Denver, State of Colorado, EXCEPT the following parcel:

Commencing at a point 30 feet East of the Southwest corner of Section 22, Township 3 South, Range 66 West of the 6th P.M.;

thence North and parallel with the West boundary line of said Section 22, a distance of 867 feet to a point;

thence East and parallel with the South boundary line of said Section 22, a distance of 2,113.5 feet;

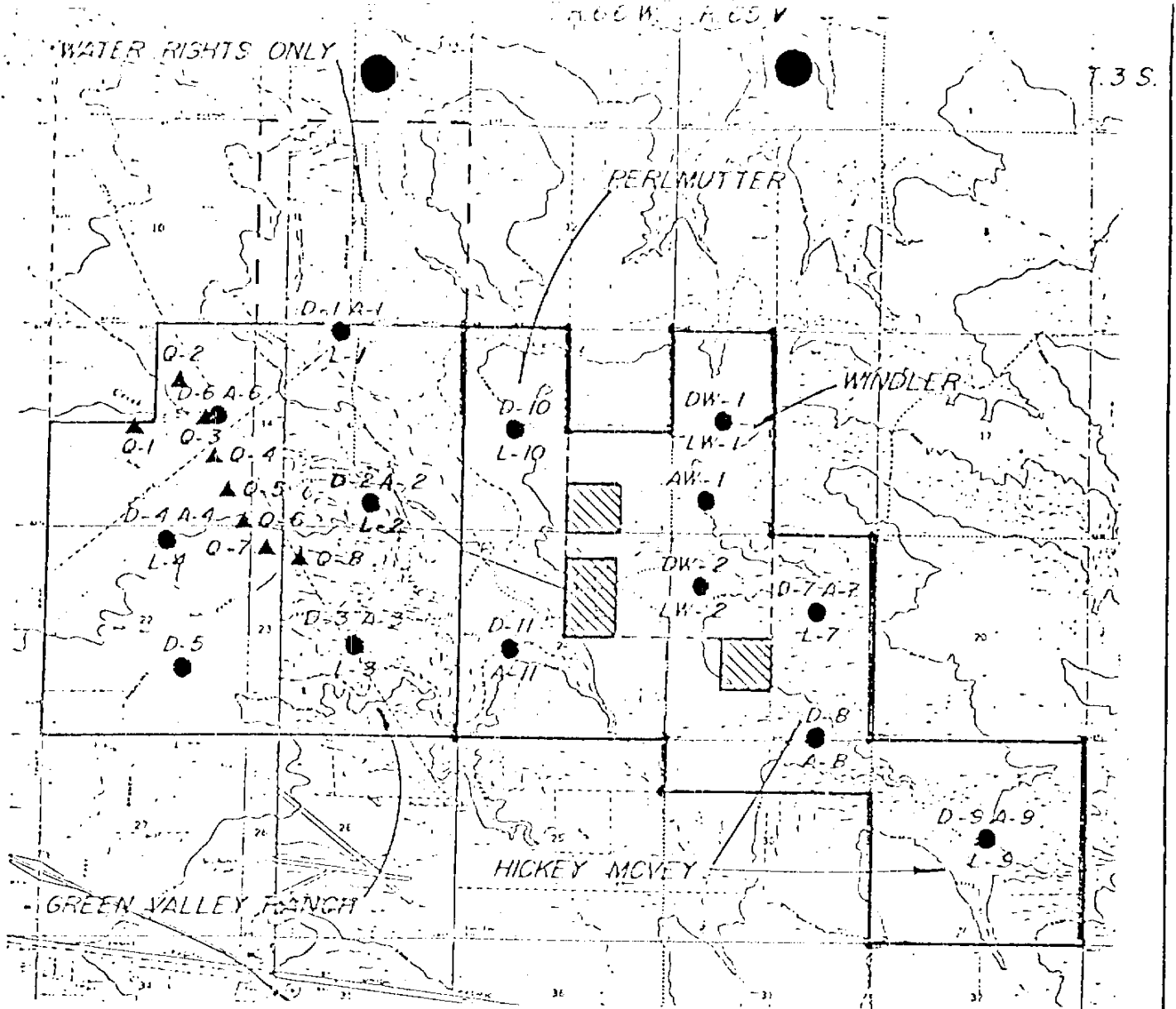
thence South and parallel with the West boundary line of said Section 22, a distance of 867 feet;

thence West along the South boundary line of said Section 22, a distance of 2,113.5 feet to the point of beginning, containing 42 acres,

AND EXCEPT existing County roads

WATER RIGHTS ONLY

T.3 S.



LEGEND

- NON-TRIBUTARY WELL SITES
- ▲ TRIBUTARY WELL SITE
- Q ALLUVIAL
- D DENVER
- A ARAPAHOE
- L LARAMIE FOX HILLS



SCALE 1" = 4000'

Exhibit C
Case No. 82CW488 & 84CW030

LOCATION MAP

GREEN VALLEY RANCH

W.C. WELLS & CO. INC.
consulting ground water geologists

Hickey-McVey Parcel

Legal Description:

The West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$),
the Southeast Quarter ($SE\frac{1}{4}$) of the Southwest Quarter
($SW\frac{1}{4}$) and the East Half ($E\frac{1}{2}$) of Section Nineteen (19),
all of Section Twenty-nine (29), and the North Half ($N\frac{1}{2}$)
of the North Half ($N\frac{1}{2}$) of Section Thirty (30), all in
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County of Adams
State of Colorado

Cohen/Gold/MPP/Perlmutter Parcel

Legal Description:

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of Section Twenty-four (24) and the West Half (W $\frac{1}{2}$) of
Section Thirteen (13), all in Township 3 South, Range
66 West of the 6th P.M.

County of Adams
State of Colorado

Windler Property

Legal Description:

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County of Adams
State of Colorado