

DISTRICT COURT, WATER DIVISION 1, COLORADO Court Address 901-9 th Street Greeley, CO 80632	► COURT USE ONLY ► Case Number 2001-CW-254
HUGH E. INGELS, COETA SUZANNE THRASHER, AND JAMES R. THRASHER, Applicants, IN DOUGLAS COUNTY. Attorneys for Applicants Robert E. Schween, P C Robert E. Schween, No. 12923 P O Box 26-2104 Littleton, Colorado 80163-2104 Telephone 303-471-5150 Facsimile: 303-470-3103	
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND DECREE OF THE WATER COURT	

THIS CLAIM was originally filed with the Water Division 1 Water Clerk on December 14, 2001, to adjudicate the Denver Basin aquifer ground water underlying Applicants' property. All matters contained in the application have been reviewed and approved. Therefore, the Ruling of the Referee and Decree of the Water Court shall be as follows

FINDINGS OF FACT

1 Name, Address, and Telephone Number of Applicants:

Hugh E Ingels, Coeta Suzanne Thrasher, and James R Thrasher
 11503 East Smith Road
 Elbert, Colorado 80106 [Telephone. 303-688-3630]

2 History of Case:

A The application sought to adjudicate the Applicants' rights in all underground water from nontributary and not-nontributary sources underlying their property in Douglas County, as described in the application and below. There was one entity other than Applicants herein with a recorded interest in the overlying land, and such party was timely served with notice of the application in this matter. Accordingly, Applicants have certified their compliance with § 37-92-302(2), C.R.S.

B No statement of opposition to this application has been filed The period for filing statements of opposition or motions to intervene in this matter has expired

3 **Subject Matter Jurisdiction:** Timely and adequate notice of the pendency of these proceedings has been given in the manner required by law. The Water 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

4. **Aquifers and Location of Ground Water:**

A This ruling and decree adjudicates Applicants' rights in the ground water recoverable from the not-nontributary Upper Dawson aquifer, and from the nontributary Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying land owned by Applicants in Douglas County, Colorado ("Applicants' Property"). Such property consists of 320 acres, more or less, and is shown on the General Location Map, **Exhibit A** and described as follows (Also see Property Legal Description **Exhibit B** hereto.)

A tract of land consisting of 320 acres, more or less, in the S ½ of Section 16,
Township 10 South, Range 65 West of the 6th P.M., Douglas County.

B. Applicants are the owners of the land described above and the ground water rights underlying the above-described land No part of such land lies within a designated ground water basin.

5 **Specific Wells Claimed and Well Permits:**

A. Well permits for wells to withdraw not-nontributary ground water from the Upper Dawson aquifer and from the nontributary Lower Dawson, Denver, Arapahoe, and the Laramie-Fox Hills aquifers will be sought as such wells are needed, and upon completion of the requirement to obtain a judicially approved plan for augmentation therefor, as applicable No such plan is granted herein.

B Additional well permits for wells to be completed in each aquifer may be sought in the future to be located anywhere on Applicants' property as described herein

6. **Average Annual Amounts of Withdrawal Available**

A The average annual amounts of not-nontributary and nontributary ground water available in acre-feet for withdrawal from each of the named underlying aquifers are as follows:

<u>Aquifer</u>	<u>Acres</u>	<u>Sat. Sand Thickness</u>	<u>Specific Yield</u>	<u>Average Ann Amt</u>
Upper Dawson	320	300 ft.	20%	188.0 AF (1)
Lower Dawson	320	165 ft	20%	105.6 AF
Denver	320	265 ft.	17%	144 2 AF
Arapahoe	320	310 ft.	17 %	168 6 AF
Laramie-Fox Hills	320	190 ft.	15 %	91 2 AF

Note (1) The State Engineer found that there was one domestic well, Well No 197857, completed into this aquifer on Applicants' land, and accordingly reduced the amount available for adjudication in the Upper Dawson aquifer by four (4) acre-feet per year. At such time as such well is abandoned, such 4.0 acre-feet per year from the Upper Dawson aquifer shall revert to the Applicants or their successors, and this ruling and decree may be amended accordingly administratively, without the necessity of giving notice thereof.

B. The above values and amounts listed for the Upper Dawson, Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers are consistent with the Determinations of Fact of the State Engineer, issued on March 18, 2002, in this case

7 Estimated Average Pumping Rates and Well Depths:

A Estimated average pumping rates and well depths by aquifer

<u>Aquifer</u>	<u>Rate of Withdrawal</u>	<u>Well Depth (Average)</u>
Upper Dawson	15 gpm	680 ft
Lower Dawson	55 gpm	890 ft.
Denver	100 gpm	1840 ft.
Arapahoe	350 gpm	2430 ft.
Laramie-Fox Hills	200 gpm	3070 ft

B. The above estimated average rates of withdrawal are not to be construed as maximum production rates, which are to be specified on the well permit. Well depths may vary substantially from those depths shown above based on surface topography at the well location and other factors

8. Final Average Annual Amounts of Withdrawal:

A. Final determinations of the applicable average saturated sand thicknesses and resulting average annual amounts available to Applicants from each aquifer will be made pursuant to the retained jurisdiction of this Court, as described in paragraph 19 hereinbelow. In the event this ruling and decree is not reopened for a further quantitative determination, the findings herein are final and controlling

B. The allowed annual amount of ground water which may be withdrawn from such aquifers through the wells initially constructed and any additional wells, pursuant to § 37-90-137(10), C R S , may exceed the average annual amount of withdrawal, as long as the total volume of water withdrawn through such wells and any additional wells therefor subsequent to the date of this decree does not exceed the product of the number of years since the date of the issuance of the well permits multiplied by the average annual amount of withdrawal, as specified above or as subsequently determined pursuant to the retained jurisdiction of the Court. See paragraph 19, below.

9 Limitations on Development of Ground Water:

A Nontributary Ground Water

(1) The ground water to be withdrawn from the Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers under this ruling and decree is "nontributary ground water" as defined in § 37-90-103(10 5), C R S., and in the Denver Basin Rules, 2 CCR 402-6, the withdrawal of which will not, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in §§ 37-82-101(2) and 37-92-102(1)(b), C.R.S., at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal.

(2) Applicants must relinquish two percent (2%) of such ground water withdrawn to the stream system, by means of leakage, spillage, or any other methods acceptable to the Applicants and the State Engineer. Otherwise all such ground water is fully consumable.

B Not-Nontributary Ground Water

(1) The ground water to be withdrawn from the Upper Dawson aquifer under this ruling and decree is "not-nontributary ground water" as defined in § 37-90-103(10 7), C.R.S., and in the Denver Basin Rules, 2 CCR 402-6, the withdrawal of which will, within 100 years, deplete the flow of a natural stream, including a natural stream as defined in §§ 37-82-101(2) and 37-92-102(1)(b), C R.S., at an annual rate greater than 1/10 of 1% of the annual rate of withdrawal.

(2) Therefore, Applicants must obtain a judicially approved augmentation plan for the replacement of injurious stream depletions prior to the withdrawal and use of such ground water. See § 37-90-137(9), C.R.S. However, in the event additional exempt (domestic) well(s) are requested in the future, Applicants or their successors may request the Court to vacate specific amounts of such Upper Dawson aquifer ground water from this adjudication so that such vacated amounts may be assigned to the requested exempt well(s).

C. The ground water rights adjudicated herein, whether nontributary or not-nontributary, may be withdrawn on the basis of an aquifer life of 100 years, assuming no substantial artificial recharge within 100 years.

10. Well Locations, Additional Wells, Well Fields, and Adjustment of Well Permits:

A Well Locations: Applicants propose to construct their wells into the nontributary aquifers as required by development over time. Wells into the Upper Dawson aquifer may be constructed only pursuant to an approved augmentation plan therefor, unless certain amounts of such ground water are vacated from this adjudication and assigned to approved exempt wells, as contemplated above. Wells may be constructed at any location on the overlying land area described herein, pursuant to well permits to be issued therefor.

B. Additional Wells: In addition to the initial wells to be permitted and constructed pursuant to this ruling and decree and subsequently approved plan for augmentation, as necessary, Applicants may construct additional and replacement wells in order to maintain levels of production, to meet water demands, or to recover the entire amount of ground water in the subject aquifers underlying the subject property, as described herein. As additional wells are planned or needed, applications shall be filed in accordance with § 37-90-137(10), C R S. In considering applications for permits for additional wells to withdraw the ground water adjudicated herein, the State Engineer shall be bound by both this ruling and decree and the subsequently entered augmentation plan, and shall issue said permits in accordance with provisions of § 37-90-137(10), C.R.S.

C Well Fields: The pumping rates for the wells may exceed the pumping rates specified herein in order to meet water supply requirements or to produce the full acre-foot allocation of water from each aquifer. Two or more wells constructed into the same aquifer shall be considered a well field. In producing water from such well field, Applicants may withdraw the entire amount that may be produced hereunder from the particular aquifer through any combination of wells within the well field for that particular aquifer, subject to the augmentation plan therefor.

D. Adjustment of Well Permits: In the event that the allowed average annual amounts decreed herein are adjusted pursuant to the retained jurisdiction of the Court, Applicants shall obtain new well permits prior to withdrawing such adjusted average annual amounts. New permits for any wells herein shall likewise reflect any such adjustment of the average annual amounts decreed herein.

11 Proposed Uses of Water:

A. The ground water adjudicated herein, including such ground water to be withdrawn only pursuant to a subsequently entered augmentation plan, may be used, reused, and successively used and after use, leased, sold, or otherwise disposed of for domestic, industrial, commercial, irrigation, stock watering, recreational, fish and wildlife, and any other beneficial purpose, to be used on or off the land described in paragraph 4 herein.

B. Such ground water may be produced for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of stream depletions resulting from the use of water from other sources, and for augmentation purposes. Use of the water rights decreed hereby for augmentation and exchange purposes may be made only pursuant to a subsequently decreed plan therefor.

12. Conditions: For each well constructed pursuant to this decree or a subsequently approved augmentation plan, Applicants shall comply with the following conditions:

A. A totalizing flow meter shall be installed on the well discharge prior to withdrawing any water from the well. Applicants shall keep accurate records of all withdrawals by the well, make any calculations necessary, and submit such records to the Water Division 1 Engineer upon request.

B. The entire length of the open bore hole shall be geophysically surveyed prior to casing and copies of the geophysical log submitted to the Division of Water Resources. Applicants may provide a geophysical log from an adjacent well or test hole, pursuant to Rule 9A of the Statewide Rules and acceptable to the State Engineer, which fully penetrates the aquifer, in satisfaction of the above requirement

C. The ground water production shall be limited to the specific aquifer for which the well was permitted. Plain, unperforated casing must be installed and properly grouted to prevent withdrawal from or intermingling of water from zones other than those for which the well was designed.

D. Each well shall be permanently identified by its permit number, this Water Court case number, and the name of the producing aquifer on the above-ground portion of the well casing or by a sign posted at a clearly visible location

CONCLUSIONS OF LAW

13. The Water Court has jurisdiction over this proceeding pursuant to § 37-90-137(6), C.R.S. This Court concludes as a matter of law that the application herein is one contemplated by law. Section 37-90-137(4), C.R.S. The application for a decree adjudicating Applicants' rights in all ground water from the named nontributary and not-nontributary aquifers beneath the property as described herein pursuant to § 37-90-137(4), C.R.S., should be granted, subject to the provisions of this decree

14. The nature and extent of the rights to both nontributary and not-nontributary ground water determined herein are defined by §§ 37-90-137(4) and (9), C.R.S. The withdrawal of the ground water decreed herein, including the not-nontributary ground water if such withdrawal is in conformance with the terms of a subsequently approved plan for augmentation therefor, will not result in material injury to vested water rights of others

15. The rights to nontributary and not-nontributary and ground water determined herein shall not be administered in accordance with priority of appropriation. Such rights are not conditional water rights as defined by § 37-92-103(6), C.R.S. The provisions of § 37-92-301(4), C.R.S., requiring findings of reasonable diligence are not applicable to the ground water rights determined herein. The determination of ground water rights herein need not include a date of initiation of the withdrawal project. See § 37-92-305(11), C.R.S.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

16. The Findings of Fact and Conclusions of Law stated above are incorporated into this Ruling and Decree of the Water Court.

17. Right to Withdraw Nontributary Ground Water

A. The Applicants may withdraw the nontributary ground water subject to this decree through wells to be permitted by the State Engineer's Office at any location on the overlying land, or through any duly authorized additional or replacement well thereto, and in the amounts and at the estimated average rates of flow specified therefor, subject to the limitations herein and the retained jurisdiction of this Court. Rights to use ground water from the wells described in § 37-90-134(4), C.R.S., pursuant to all such determinations shall be deemed to be vested property rights. See § 37-92-305(11), C.R.S.

B. Such ground water withdrawn pursuant to this decree may be used for all beneficial purposes listed hereinabove; PROVIDED, however, such water may not be used for augmentation and exchange purposes without a subsequent adjudication of a plan therefor.

18. Right to Withdraw Not-Nontributary Ground Water

A. Applicants, or any successor(s) in interest, may withdraw the not-nontributary ground water subject to this decree through wells to be permitted by the State Engineer's Office at any location on the overlying land, or through any duly authorized additional or replacement well(s) thereto, and in the amounts and at the estimated average rates of flow specified therefor, *subject to* (1) the limitations herein; (2) approval of an augmentation plan for replacement of stream depletions caused by pumping, the entry of which is a condition precedent to construction of wells and development of such ground water rights, except as noted hereinabove; and (3) the retained jurisdiction of this Court. Rights to use ground water from the wells described in § 37-90-134(4), C.R.S., pursuant to all such determinations shall be deemed to be vested property rights. See § 37-92-305(11), C.R.S.

B. Upon the approval of an augmentation plan and issuance of well permits, such not-nontributary ground water adjudicated herein may be used for all beneficial purposes listed hereinabove, PROVIDED, however, such water rights may not be used for augmentation and exchange purposes without a subsequent adjudication of a specific plan therefor.

19. Retained Jurisdiction:

A. The Court retains jurisdiction as necessary to adjust the average annual amounts of nontributary and not-nontributary ground water available under Applicants' property to conform to actual local aquifer characteristics as determined from adequate information obtained from wells, pursuant to § 37-92-305(11), C.R.S. Within 60 days after completion of any well, or any test hole(s), Applicants or any successor in interest to these water rights shall serve copies of such log(s) upon the State Engineer.

B. At such time as adequate data are available, any person including the State Engineer may invoke the Court's retained jurisdiction to make a Final Determination of Water Right. Within four months of notice that the retained jurisdiction for such purpose has been invoked, the State Engineer shall use the information available to him to make a final determination of water rights finding. The State Engineer shall submit such finding to the Water Court and to the Applicants.

CENTRA' FILES

Water Rights of Hugh E Ingels, Coeta Suzanne Thrasher, and James R Thrasher
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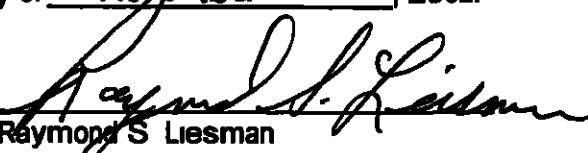
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WATER RESOURCES
STATE ENGINEER
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C. If no protest to such finding is made within 60 days, the Water Court shall incorporate the Final Determination of Water Rights into the decree. In the event of a protest, or in the event the State Engineer makes no determination within four months, such final determination shall be made by the Water Court after notice and hearing

D. In the interim, the Court retains jurisdiction in this matter pursuant to § 37-92-305(11), C.R.S

RULING ENTERED this 19 day of November, 2002.

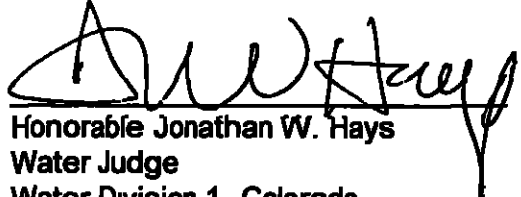

Raymond S. Liesman
Water Referee
Water Division 1, Colorado

THE COURT DOTH FIND THAT NO PROTEST TO THE RULING OF THE REFEREE HAS BEEN FILED.

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

BY THE COURT:

Date: DEC 11 2002


Honorable Jonathan W. Hays
Water Judge
Water Division 1, Colorado

APPROVED AS TO FORM AND CONTENT:

ROBERT E. SCHWEEN, P.C.

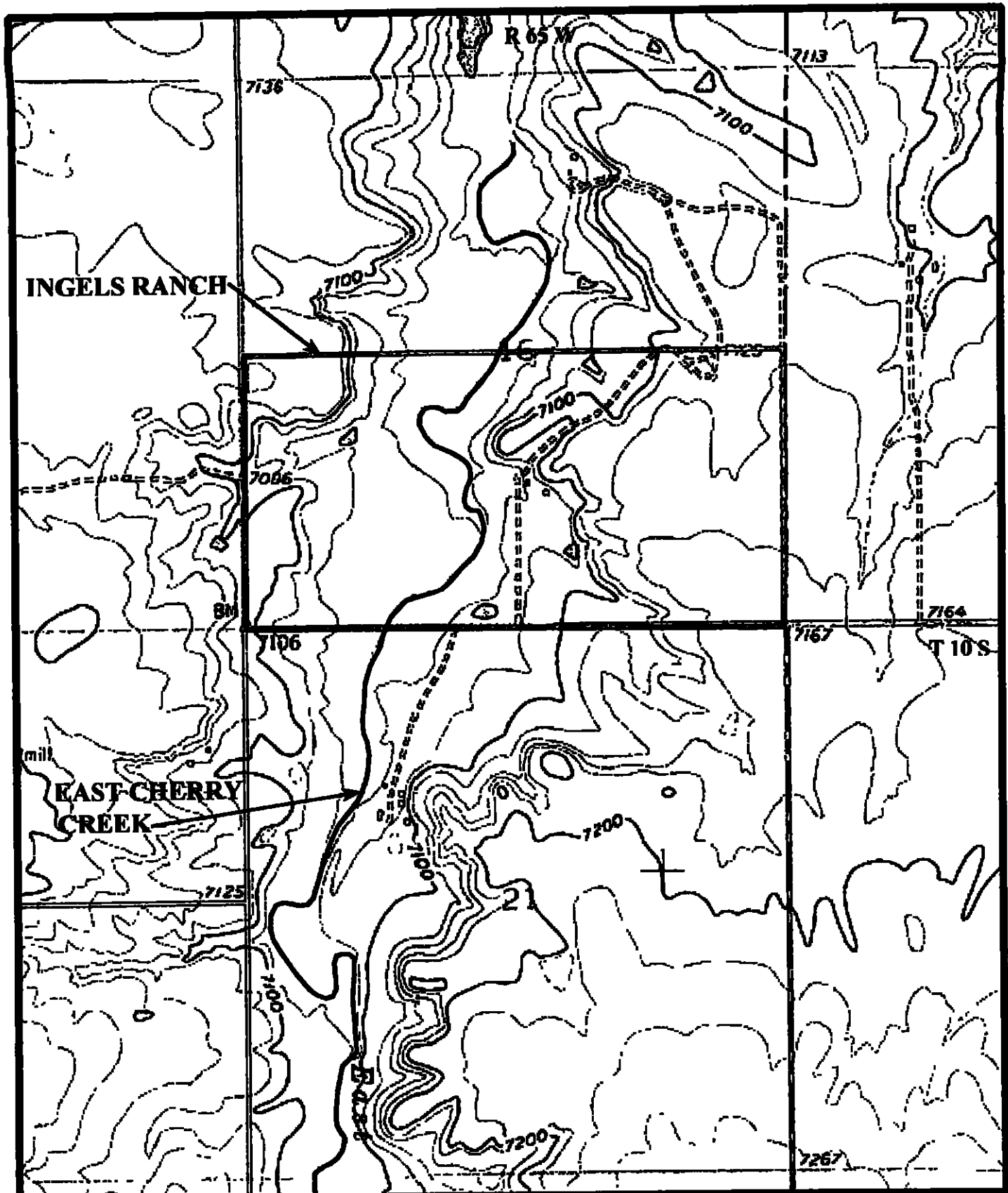
By


Robt. Schween, Esq

ATTORNEYS FOR APPLICANTS HUGH E INGELS,
COETA SUZANNE THRASHER, AND JAMES R THRASHER

TABLE OF EXHIBITS

Exhibit A	—	General Location Map.
Exhibit B	---	Property Legal Description.



004890M2

GENERAL LOCATION MAP INGELS RANCH



EXHIBIT A

SCALE: 1"=1320'

Applicants

Hugh E. Ingels, Coeta Suzanne Thrasher, and James R. Thrasher

Legal Description of Property

A parcel of land which comprises the S ½ of Section 16, Township 10 South, Range 65 West of the 6th P.M., in Douglas County. 320 acres, more or less.

EXHIBIT B