

**GEOHERMAL WATER TAP  
AND  
ECONOMIC DEVELOPMENT AGREEMENT**

This GEOHERMAL WATER TAP AND ECONOMIC DEVELOPMENT AGREEMENT , is executed by the Town of Pagosa Springs, P.O. Box 1859, Pagosa Springs, Colorado 81147-1859 and Gulfstream Worldwide Ltd., a Florida limited partnership; Northwestern Investments, Inc., a Florida corporation; Albuquerque Properties, Inc., a Florida corporation; and Pagosa Resort and Spa, Inc., a Florida corporation, 165 Hot Springs Boulevard, Pagosa Springs, Colorado 81147.

**RECITALS**

WHEREAS, the following terms used herein have the following meanings, unless otherwise specifically provided:

1. "81CW160 Stipulation" means the Stipulation and Decree in Case No. 81CW160, Water Division 7, attached hereto and incorporated herein as Exhibit E.
2. "97CW60 Stipulation" means the Stipulation for the Settlement of Case No. 97CW60, Water Division 7, attached hereto and incorporated herein as Exhibit C.
3. "Agreement" means this Geothermal Water Tap And Economic Development Agreement.
4. "Beegles Letter" means the letter of the Division Engineer, Water Division 7, Ken Beegles, to Scott Miller, dated July 28, 2000 attached hereto and incorporated herein as Exhibit D.
5. "Control Building" means the building that houses the well heads for the Two Wells and the controls, heat exchangers and related appurtenances for the GH System.
6. "Corporation" means jointly Gulfstream Worldwide Ltd., Albuquerque Properties, Inc., Northwestern Investments, Inc., and Pagosa Resort and Spa, Inc.
7. "Corporation Property" means the property described on Exhibits A-1, A-2 and A-3, attached hereto and incorporated herein.
8. "Corporation Uses" means the use of the Springs Resort Tap Water for heating, recreational and therapeutic uses on the Corporation Property,

including heating buildings, floors, sidewalks, laundry water, and water used in spas and pools. Corporation Uses do not include any use that is prohibited by, or for which a permit or approval is required but has not been obtained from, or which is not in compliance with terms or conditions of a permit or approval that has been issued by, any applicable State or federal agency.

9. "Davis Engineering Report" means a report by Davis Engineering dated November 11, 2008, regarding the capacity of the Pipeline, attached hereto and incorporated herein as Exhibit F.
10. "Effective Date" means the day this Agreement is executed by both the Corporation and the Town.
11. "Event of Default" means an event of default under this Agreement as set forth in Section 16.
12. "Expanded Pipeline" means the Pipeline as reconstructed or replaced to increase the capacity of the Pipeline.
13. "Facilities" means all facilities, improvements and appurtenances associated with the Two Wells, the GH System and the Control Building, and necessary to supply to the Springs Resort Tap Water, including but not limited to, pipes, flow rate meters, temperature/KBTU meters, pressure meters, heat exchangers, and valves. The term Facilities may include either or both the Town Facilities or the Springs Resort Facilities.
14. "Facilities Agreement" means a written agreement between the Corporation and the Town which provides the specifications, terms, and conditions, to the Town's standards, for constructing, operating, maintaining and owning additional pumping Facilities in addition to those in existence on the Effective Date to deliver the Springs Resort Tap Water to the Point of Delivery, the Expanded Pipeline, or additional Springs Resort Facilities located on Town property. The Town shall not unreasonably deny approval of the Corporation constructing, operating, maintaining, and owning such additional pumping Facilities, Expanded Pipeline, or additional Springs Resort Facilities and may waive the requirement of a Facilities Agreement associated with the same.
15. "GH System" means the geothermal heating system which is owned and operated by the Town, consisting of all Facilities, improvements and appurtenances, associated with providing raw Geothermal Water or geothermally heated non-potable fresh water for heating purposes.

16. “Geothermal Rules and Regulations” means all rules, regulations, policies and procedures adopted by the Town of general application to the GH System as may be currently in effect or subsequently adopted or amended.
17. “Geothermal Water” means raw geothermal water produced by the Two Wells.
18. “Geothermal Water Decrees” means the water rights decrees entered by the District Court, Water Division No. 7, for the Two Wells by which they were decreed conditionally on May 22, 1987, *nunc pro tunc* April 3, 1987, in Case No. 81CW160, and decreed absolute on June 29, 1988, in Case No. 87CW35, which decrees are attached hereto as Exhibits E and B and incorporated herein.
19. “Geothermal Water Tap” means a connection to the GH System and the right to receive heat from the Geothermal Water or to receive Geothermal Water for heating purposes as provided in this Agreement.
20. “Geothermal Water Rights Lease” means the lease between Pagosa Springs Resort Company and the Town, dated January 28, 1997, for 200 gpm of Geothermal Water provided in the winter season after being utilized by the Town in its GH System, with an option to lease such amount of Geothermal Water in the summer, which expires on February 1, 2012.
21. “gpm” means the flow rate of water expressed in gallons per minute.
22. “Pagosa Springs” means the Town, or any of its officers, agents, employees or members of the Town Council.
23. “Pedestrian Bridge” means the bridge that provides public access from the south side of the San Juan River adjacent to the Corporation Property to the Town’s river walk.
24. “Pipeline” means the existing pipeline from the Control Building to the Corporation Property, which crosses the San Juan River under the Pedestrian Bridge. The portion of the Pipeline from the Control Building to the Point of Delivery is part of the Town Facilities and the portion of the Pipeline from the Point of Delivery to the Corporation Property is a part of the Springs Resort Facilities.
25. “Point of Delivery” means a point just south of the Control Building on the north-west side of the San Juan River at the existing value box associated with the Pipeline, or such other point as may be mutually

agreed upon in writing by the Town and the Corporation for delivery of the Springs Resort Tap Water.

26. "Return Point" means the point at which the Springs Resort Tap Water is either released to the spas or swimming pool on the Corporation Property to then return to the San Juan River, or released to return directly to the San Juan River without use in the Corporation's spas or swimming pool.
27. "Springs Resort" means a hotel, numerous hot springs spas, a hot springs swimming pool, hotel facilities, and related hotel, spa and retail businesses located on the Corporation Property. The term "Springs Resort" also includes the Springs Resort Expansion, to the extent it occurs, after it has occurred.
28. "Springs Resort Expansion" means additional development that is currently anticipated to consist of approximately 300 hotel rooms, 193 timeshare/townhome/condominium units, and 61,000 square feet of commercial/restaurant/service space, as set forth in the Springs Resort Sketch Plan PUD.
29. "Springs Resort Facilities" means the Facilities which facilitate the delivery, use, measurement and discharge of the Springs Resort Tap Water for the Corporation Uses, which Facilities are owned by the Corporation and are located from the Point of Delivery to the Return Point, as they exist currently and in the future, and includes that portion of the Pipeline from the Point of Delivery to the Corporation Property.
30. "Springs Resort Sketch Plan PUD" means the planned unit development plan that received conditional sketch plan approval as provided for in the Town Municipal Code on June 3, 2008.
31. "Springs Resort Tap" means the Geothermal Water Tap provided by the Town to the Corporation under this Agreement for the Corporation Uses associated with the Springs Resort and the Springs Resort Expansion, and for the purpose of generating economic development benefits within the Town.
32. "Springs Resort Tap Water" means Geothermal Water to be delivered to the Springs Resort Tap.
33. "TABOR" means Article X, Section 20, of the Colorado Constitution.
34. "Town" means the Town of Pagosa Springs, a Colorado home rule municipality.

35. "Town Facilities" means the Facilities owned by the Town associated with the Two Wells, the GH System and the Control Building, and necessary to supply the Springs Resort Tap Water to the Point of Delivery, and includes that portion of the Pipeline up to the Point of Delivery.
36. "Two Wells" means geothermal wells PS-3 and PS-5, decreed as set forth in the Geothermal Water Decrees.
37. "Well Permits 26 and 27" means the amended well permits for the Two Wells, attached hereto and incorporated herein as Exhibit G.

WHEREAS, the Town was decreed in the Geothermal Water Decrees Geothermal Water rights for the Two Wells ; and

WHEREAS, the Town utilizes heat from Geothermal Water from the Two Wells to heat various improvements, including but not limited to buildings and sidewalks, through operation of the GH System; and

WHEREAS, property owners within the Town may contract for a Geothermal Water Tap from the Town for geothermal heating purposes; and

WHEREAS, the Corporation owns and operates the Springs Resort; and

WHEREAS, the Springs Resort currently directly generates annually

1. \$108,021 in lodging tax revenue;
2. \$112,223, in local sales tax revenue, fifty percent, \$56,112 of which accrues to the Town;
3. significant property tax revenue; and
4. 84 jobs for the Town.

WHEREAS, Town has conditionally approved the Springs Resort Sketch Plan PUD for the Springs Resort Expansion; and

WHEREAS, upon completion of a 29 unit hotel building and which is expected to open in June, 2009, the Springs Resort is currently expected to directly generate annually \$319,312 in lodging tax revenue for the Town; and

WHEREAS, with the ongoing Springs Resort Expansion the Springs Resort is projected to directly generate annually as of 2010

5. an additional \$211,291 in lodging tax revenue;
6. an additional \$148,440 in local sales tax revenue, fifty percent, or \$74,220 of which will accrue directly to the Town;

7. a significant property tax revenue increase; and
8. an additional 84 jobs within the Town.

WHEREAS, economic models indicate that expenditures for employment will circulate within the community at least five times, and the Springs Resort, by employing local residents and attracting guests who are not residents of the Town, benefits economically other businesses in the Town, including but not limited to other lodging accommodations, restaurants, and retail and service businesses, thereby indirectly increasing sales, lodging and property tax revenues to the Town; and

WHEREAS, the Springs Resort Expansion is expected to significantly increase the economic benefits provided to other businesses in the Town, and the sales, lodging and property tax revenues to the Town generated from these other businesses; and

WHEREAS, pursuant to the Geothermal Water Rights Lease, the Town currently leases Geothermal Water to the Springs Resort for geothermal heating purposes, including the heating the spas and a swimming pool; and

WHEREAS, the Corporation has a current and ongoing need and desire to contract for a Geothermal Water Tap from the Town to supply Geothermal Water for the Corporation Uses at the Springs Resort; and

WHEREAS, the Town currently has available capacity within the GH System to provide Geothermal Water to existing and additional GH System users, the proposed community greenhouse, and the Springs Resort as contemplated herein; and

WHEREAS, the future needs of the Springs Resort for geothermal water not provided for under this Agreement are expected to be satisfied from other geothermal water rights of the Corporation, including water rights that are not currently developed, but which are anticipated to be developed and used as the Springs Resort Expansion progresses; and

WHEREAS, the GH System configuration does not currently allow Geothermal Water used pursuant to the Geothermal Water Rights Lease or which will supply the Springs Resort Tap under this Agreement to be returned to the Control Building, or to be used in other portions of the GH System; and

WHEREAS, pursuant to Well Permits 26 and 27 the Town is obligated to use the Geothermal Water in a manner to seek to avoid waste and protect human health and the environment, and therefore, the Town, at this time desires that the Corporation, following its use of the Springs Resort Tap Water for Corporation Uses to supply heating needs not related to its spas and the swimming pool, to return the Geothermal Water to the San Juan River, pursuant to applicable state and federal regulations and standards, but to the extent the Geothermal Water retains sufficient heat, allow the Geothermal Water to return to the

San Juan River after flowing through and thereby heating the swimming pool and spas of the Springs Resort; and

WHEREAS, pursuant to the Geothermal Water Rights Lease, the Springs Resort has received from the Town Geothermal Water at a temperature of approximately 118 to 127 degrees Fahrenheit in the winter and 140 degrees Fahrenheit in the summer, but pursuant to this Agreement the Springs Resort Tap will generally receive Geothermal Water following its initial use, in both summer and winter, in the GH System or following other initial uses authorized by the Town; therefore, the temperature associated with Geothermal Water provided at the Springs Resort Tap may not be as high as that of water delivered under the Geothermal Water Rights Lease or other Geothermal Water Taps currently in the GH System; and

WHEREAS, utilizing the GH System to supply a portion of the geothermal heating needs of the Springs Resort will economically benefit the Town and other businesses within the Town; and

WHEREAS, in consideration of the cost associated with operating the GH System, the temperature of the Geothermal Water to be provided at the Springs Resort Tap as compared to the temperature provided to other existing Geothermal Water Taps in the GH System, other Town uses to be provided initial service, and the direct and indirect economic benefits to the Town and its residents and businesses from the Springs Resort, the Town Council finds and determines that providing the Springs Resort Tap to the Corporation pursuant to the terms of this Agreement is in the best interest of the health, safety and welfare of the residents, taxpayers and visitors of the Town of Pagosa Springs;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. INCORPORATION OF RECITALS. The recitals set forth above are agreed to and incorporated into this Agreement as if stated herein in full, and are not merely for purposes of recital.

2. ECONOMIC DEVELOPMENT.

In addition to the consideration provided below for the provision of the Springs Resort Tap by the Town to the Corporation, the Corporation agrees to use its best efforts, given economic conditions to continue to operate and maintain the Springs Resort, and to develop, operate and maintain the Springs Resort Expansion as set forth in the Springs Resort Sketch Plan PUD, and provide therefrom economic benefits to the Town and other businesses within the Town. The Corporation shall at all times use its best efforts to utilize its own geothermal water resources prior to utilizing the Springs Resort Tap Water. Should the Corporation permanently discontinue Corporation Uses of the Springs Resort Tap Water, it shall promptly relinquish its rights under this Agreement in

proportion to the decrease in the Corporation Uses for which the Springs Resort Tap Water is permanently no longer needed. Should the Corporation, despite its best efforts, fail to operate and maintain the Springs Resort, or fail to develop, operate and maintain the Springs Resort Expansion as set forth in the Springs Resort Sketch Plan PUD, the Town shall have no rights, remedies or recourse other than as provided in section 16 of this Agreement.

3. PROVISION OF SPRINGS RESORT TAP.

The Town hereby agrees to provide the Springs Resort Tap Water for Corporation Uses on Corporation Property in accordance with the following conditions:

(a) The Springs Resort Tap shall be appurtenant to the Corporation Property, and otherwise shall be non-transferrable.

(b) The Town shall make available to the Springs Resort Tap Water at a flow rate of 350 gpm. Such delivery shall be further subject to the following:

(i) If a flow rate greater than that provided in this Section 3. (b) is available and is desired by the Corporation, the Town may, in its sole discretion, deliver the Springs Resort Tap Water at a flow rate greater than otherwise required.

(ii) If a flow rate less than 350 gpm is requested by the Corporation, the Town shall deliver the Springs Resort Tap Water at the flow rate requested by the Corporation.

(iii) The flow rate of the Springs Resort Tap Water may be reduced by the Town because of circumstances beyond the reasonable control of the Town and as may otherwise be provided in this Agreement, for which the Town is not responsible.

(iv) The Springs Resort Tap Water at a flow rate of 350 gpm may be delivered, at the discretion of the Town, to the Springs Resort Tap after being used once through the GH System, or through such other systems as may be authorized by the Town.

(v) An additional 100 gpm of Springs Resort Tap Water shall be delivered to the Springs Resort Tap, at the request of the Corporation, if available, after being used in association with the Town's proposed community greenhouse.

(vi) The Springs Resort Tap Water may be delivered, at the discretion of the Town, directly to the Springs Resort Tap without an initial use through the proposed community greenhouse, the GH System, or another system.

(c) The Corporation acknowledges that:



(i) The availability of the Springs Resort Tap Water during the summer for Corporation Uses may depend upon a Water Court interpretation of the Geothermal Water Decrees. The Town believes, and the Corporation agrees, that the 97CW60 Stipulation, the Beegles Letter, the 81CW160 Stipulation, and Well Permits 26 and 27 allow the Town to provide water from the Two Wells in the summer for geothermal heating; and

(ii) The Corporation presently has the need and ability to utilize the Springs Resort Tap Water at a flow rate in excess of 350 gpm at the Springs Resort and the Springs Resort Expansion through the existing Springs Resort Facilities. In the event the Corporation elects in the future to regularly take deliver of the Springs Resort Tap Water at a flow rate less than 350 gpm, it shall notify the Town in writing one (1) month in advance, and in such event the Town may utilize, in any manner it deems appropriate, the amount of the Springs Resort Tap Water flow that is not being used by the Corporation until the Corporation has provided one (1) month prior written notice that the amount is again needed by the Corporation.

(iii) The Town may shut down the Town Facilities for periodic and emergency maintenance purposes, but any shut down must be kept to the minimum duration reasonable necessary to accomplish such maintenance. Except as required for emergency maintenance, the Town must provide to the Corporation notice two weeks prior to of any maintenance shut down.

4. SPRINGS RESORT TAP USE.

(a) Except as the terms of this Agreement may specifically provide otherwise, the Corporation's use of Geothermal Water from the Springs Resort Tap shall be subject to the Geothermal Rules and Regulations.

(b) The Corporation shall use the Geothermal Water provided at the Springs Resort Tap for the Corporation Uses, and for no other purpose. The Corporation shall not supply or permit the Geothermal Water from the Springs Resort Tap to be supplied for use on any premises other than the Corporation Property. No portion of the Springs Resort Tap Water shall be used in any manner that is prohibited by, or for which a permit or approval is required but has not been obtained from, or which is not in compliance with terms or conditions of a permit or approval that has been issued by, any applicable State or federal agency.

(c) The Corporation shall not physically consume, remove or deplete any of the Springs Resort Tap Water, except that after the Return Point, the Corporation may discharge the Springs Resort Tap Water through one or more of the Springs Resort spas or the swimming pool.

(d) The Corporation shall deliver the Springs Resort Tap Water after final use by the Corporation to the San Juan River, unless otherwise allowed or approved pursuant to subsection (e) of this Section 4, and only after providing written notice to the Town and evidence of such authority to deliver the Springs Resort Tap Water following final use to a location other than the San Juan River.

(e) Delivery or release of the Springs Resort Tap Water to the Return Point, the San Juan River, or any other location shall be in compliance with any and all applicable State or federal limitations, prohibitions, requirements, approvals or permits. All such permits or approvals shall be obtained at the Corporation's expense, and, at the discretion of the Town, applied for by either the Town or the Corporation, or both.

5. PAYMENT.

(a) In exchange for a fixed tap fee and in lieu of periodic user fees or charges for the Springs Resort Tap Water provided pursuant to this Agreement through December 31, 2009, upon execution of this Agreement the Corporation will pay the Town a one-time tap fee payment of \$13,651, plus \$8,300 to offset the Town's costs incurred in negotiating this Agreement and operating the GH System. The Town has received from the Corporation payments of \$6,000 for leased water in 2009 under the Geothermal Water Rights Lease. Such payment shall be credited against the amount due under this subsection.

(b) For the period from January 1, 2010 until December 31, 2018, if the Corporation determines to continue receiving the Springs Resort Tap Water, the Corporation may elect to pay the Town periodic payments (currently quarterly) at standardized market rates established by the Town, or pay a fixed tap fee of \$75,021 in lieu of periodic user fees or charges. Such election shall be exercised by giving the Town written notice no later than December 1, 2009, and, if the Corporation elects to pay a fixed tap fee, paying the Town \$75,021 prior to January 1, 2010. In the absence of written notice of election by the Corporation, the Corporation will be deemed to have elected periodic payments at market rates.

(c) For the period from January 1, 2019 until December 31, 2023, if the Corporation determines to continue receiving the Springs Resort Tap Water, the Corporation may elect to pay the Town periodic payments (currently quarterly) at standardized market rates established by the Town, or pay a fixed tap fee of \$41,679 in lieu of periodic user fees or charges. Such election shall be exercised by giving the Town written notice no later than December 1, 2009, and, if the Corporation elects to pay a fixed tap fee, paying the Town \$41,679 prior to January 1, 2010. In the absence of written notice of election by the Corporation, the Corporation will be deemed to have elected periodic payments at market rates.

(d) If the Corporation elects to pay the fixed tap fee in lieu of periodic user fees for service beginning January 1, 2020, the Town shall use \$100,000 of the payment to develop solar generated electricity to power the Control Building, and the heat exchangers and pumps located therein, which is anticipated to save the Town approximately \$2,500 annually in utility charges. The remaining \$16,700 can be used by the Town to offset its costs incurred in negotiating this Agreement and operating the GH System.

(e) Beginning January 1, 2024 and thereafter service fees and charges shall be based on standardized market rates established by the Town for taps supplied raw Geothermal Water by the Town.

(f) The Corporation shall maintain and furnish to the Town records of the use of the Springs Resort Tap Water, by purpose and amount, as may be reasonably required by the Town.

6. SERVICE TO THE TAP AND FACILITIES.

(a) The Springs Resort Tap Water shall be delivered at the Point of Delivery. The Corporation shall construct, own, operate and maintain the Springs Resort Facilities to standards specified by the Town. All Facilities previously constructed, owned or operated by the Corporation from the Control Building to the Point of Delivery shall be conveyed to the Town upon the execution of this Agreement, and thereafter shall be Town Facilities, owned, operated and maintained by the Town. Any Facilities constructed or installed by the Corporation that are conveyed to the Town shall be accompanied by a minimum two-year warranty. The Town shall construct and install on the Control Building side of the Point of Delivery all flow, pressure, and temperature meters it determines to be necessary for supplying the Springs Resort Tap or determining fees and charges, and thereafter such Facilities shall be Town Facilities.

(b) Because of the potential damage to or negative impacts on the operation of the GH System or other Geothermal Water use, the Corporation shall neither increase nor decrease the flow rate of the Springs Resort Tap Water delivered to the Point of Delivery without the express permission of the Town, which the Town may grant in the Town's sole discretion.

(c) The Corporation shall not make any alterations, additions or improvements to the Town Facilities without the express written consent of the Town, which the Town may grant in the Town's sole discretion.

(d) Temperature/KBTU, flow rate and pressure meters shall be installed and calibrated at the Corporation's expense at such locations as determined in the Town's reasonable discretion to be necessary to calculate temperature loses and gains and associated charges. If required by the Town, such meters shall be installed inside every

building utilizing service from the Springs Resort Tap, in a mutually agreed location that is accessible by the Town at all times. The Corporation shall also install isolation valves on both sides of meters to facilitate future replacement. The Corporation shall not remove, inspect and or tamper with the meters. The Corporation shall immediately notify the Town of any damage to a meter.

(e) The Corporation shall be responsible for obtaining all easements needed for Springs Resort Facilities from the Point of Delivery to the Corporation Property, and as may be otherwise required to serve the Corporation Property. The Town and the Corporation shall cooperate with each other to grant such easements over their respective properties as may be reasonably necessary to provide the Springs Resort Tap Water, and to deliver any of the Town's Geothermal Water for uses authorized by the Town, which easements do not unreasonably impair the use of the encumbered property. Easements within or along pedestrian trails, paths, sidewalks, roadways, or parking areas shall be deemed to not unreasonably impair the use of the property encumbered by such easements.

(f) The Corporation believes that the Pipeline has been determined to be sufficient to carry the Springs Resort Tap Water, as set forth in the Davis Engineering Report. The Town believes that additional pumping Facilities may be necessary to deliver the Springs Resort Tap Water from the Control Building to the Point of Delivery. In the event such additional pumping Facilities are needed, or the Corporation desires to construct an Expanded Pipeline or install additional Facilities on Town property, the Corporation shall enter into a Facilities Agreement, which requirement may be waived by the Town. The Facilities Agreement shall allow the Springs Resort Tap Water and any Geothermal Water of the Town to be carried in the Expanded Pipeline without additional cost to the Town for the construction, operation or maintenance of the Expanded Pipeline and other Springs Resort Facilities.

(g) The Corporation shall give immediate notice to the Town in the event of a known or suspected leak in any of the Springs Resort Facilities. The Corporation shall be responsible for the prompt repair of such leaks. In the event the Corporation fails to make a timely repair, the Town may deactivate the Springs Resort Tap and repair the leak at the Corporation's expense.

(h) Unless any excess capacity is already in use by the Town, the Corporation shall be allowed, at no additional charge, to convey through the Pipeline or the Expanded Pipeline, other water, not owned or supplied by the Town, for use at the Springs Resort.

#### 7. TEMPERATURE OF THE SPRINGS RESORT TAP WATER.

(a) The temperature of the Springs Resort Tap Water at the Point of Deliver is currently approximately 118°F to 127°F in the winter and 140° in the summer.

(b) The Town shall not be responsible for any lowering in the temperature of the Springs Resort Tap Water, except as specifically provided in this Section 7 of this Agreement.

(c) If the temperature of the Springs Resort Tap Water falls below 110°F at the Point of Delivery for the majority of a calendar year, the Town and the Corporation shall negotiate a mutually acceptable revision to the terms of this Agreement for that year or the Corporation may terminate this Agreement by sending written notice to the Town.

(d) So long as the temperature of the Springs Resort Tap Water is 118°F or less, except as may be required to satisfy obligations to provide service from the GH System existing prior to the Effective Date and as may be necessary to supply 100 gallons per minute of Geothermal Water to the Town's proposed community greenhouse project, the Town shall not decrease the temperature of the Springs Resort Tap Water through initial use in the GH System for new Geothermal water taps or other uses not existing as of the Effective Date.

8. CONDITIONS OF SPRINGS RESORT TAP SERVICE.

(a) The Springs Resort Tap provided pursuant to this Agreement affords the Corporation the right to use up to 350 gpm, and after use in the community greenhouse up to an additional 100 gpm, for the Corporation Uses consistent with the terms of this Agreement and the Geothermal Rules and Regulations. When not needed for the Corporation Uses, the Springs Resort Tap Water shall remain available for use in the GH System or as otherwise deemed appropriate by the Town as set forth in Section 3(c)(iii) of this Agreement.

(b) All Springs Resort Tap Water shall be and remain the property of the Town. Nothing in this Agreement shall constitute or be deemed a relinquishment of or create an encumbrance upon the title to any Geothermal Water, water right or successive use of Geothermal Water by the Town.

(c) The Corporation shall not sublease or resell any Springs Resort Tap Water without the express written permission of the Town, which the Town may grant in the Town's sole discretion.

9. PERMITS.

(a) The Corporation shall be responsible for any federal, state and other permits or approvals required for use, relinquishment or disposal of the Springs Resort Tap Water after its delivery to the Point of Delivery, unless returned to the GH System with the approval of the Town, which approval shall be in the sole discretion of the Town.

(b) The Corporation agrees that in utilizing Springs Resort Tap Water and relinquishing use of and discharging the Springs Resort Tap Water, it will comply fully with all applicable federal and State of Colorado laws, orders, and regulations concerning the pollution of streams, reservoirs, ground water, or water courses including but not limited to thermal pollution or the discharge into a surface stream of geothermal water or pollutants.

10. INDEMNIFICATION. The Corporation agrees to indemnify and hold the Town harmless from any and all claims, losses, liabilities, damages or costs, including reasonable attorneys' fees, which may be incurred by the Town, including those based on damages or injuries to other Geothermal Water customers of the Town, resulting from the Corporation's use of the Springs Resort Tap Water and operation of the Springs Resort Facilities, failure to perform the Corporation's obligations under this Agreement, or the failure to refrain from taking any action prohibited by this Agreement.

11. CORPORATION'S INSURANCE.

(a) The Corporation shall obtain and maintain during the term of this Agreement, at the Corporation's sole expense, the following insurance:

(i) Comprehensive General Liability Insurance of comprehensive broad form with a limit per occurrence of not less than \$1,000,000.00 for property damage and/or bodily injury arising from business operations, including (1) premises/operation; (2) owners' and contractors' protective liability insurance; (3) products/completed operations liability; (4) incidental malpractice; and (5) fellow employee coverage. The Corporation may carry such liability insurance under a blanket policy, providing such liability insurance has the Town's protective liability endorsement attached thereto.

(ii) Comprehensive All-Risk Insurance (fire and extended coverage insurance) for physical damage to the Two Wells and the Town Facilities for the full replacement cost thereof.

(b) The Corporation's Comprehensive All-Risk Insurance, and Liability Insurance policies, shall name the Town as an additional insured.

(c) The Corporation shall not do or permit to be done on or about the Two Wells or the Town Facilities any act which will invalidate any insurance relating to the Two Wells and the Town Facilities.

(d) The Corporation shall require that contractors or agents doing any construction, alterations, additions or improvements to the Town Facilities, while such work is being performed, have in place builders' risk insurance in an amount of the full replacement cost of the Town Facilities and the Two Wells, and comprehensive general

liability insurance of comprehensive broad-form coverage, covering premises/operations liability with a limit of liability for bodily injury and property damage of no less than \$750,000.00.

(e) All insurance provided hereunder shall be with financially responsible insurance companies authorized to do business in Colorado.

(f) Certificates of insurance shall provide that the insurer will give ten (10) days notice to the Town of any cancellation or material change in the policies of insurance.

(g) The Corporation will provide to the Town within thirty (30) days of the Effective Date, certificates of insurance evidencing the above required coverages. The Corporation shall annually provide to the Town evidence of the payment of premiums. Prior to any contractors performing work on the Facilities the Corporation shall provide to the Town verification of required contractor insurance coverages.

(h) The Corporation shall notify the Town thirty (30) days in advance of terminating, making major coverage changes or changing carriers for any insurance coverage required under this Agreement.

(i) The Corporation hereby authorizes its insurers during the term of this Agreement to provide to the Town confirmation of the Corporation's insurance coverage and copies of insurance policies.

## 12. WATER SHORTAGE.

(a) The payments provided for herein shall be reduced proportionately if the full 350 gpm should become unavailable to supply the Springs Resort Tap for any reason, including but not limited to an order of the Division or State Engineer or an order or decree of the Water Court, except if such reduction is beyond the reasonable control of the Town. For payments made in advance pursuant to Section 5. (a) of this Agreement, any refund by the Town to effect such reduction in payments shall be subject to annual appropriation by the Town. In addition, the Corporation shall have the right to terminate this Agreement by sending written notice to the Town, or seek to negotiate a neutrally acceptable revision to the terms of this Agreement.

(b) In the event there is a shortage of Geothermal Water to provide to the Springs Resort Tap caused by drought, inaccuracy in distribution, hostile diversion, prior or superior claims, order of the Division or State Engineer, order or decree of the Water Court, or other causes not resulting from Town gross negligence, no liability shall accrue against Pagosa Springs for damages arising therefrom. In no event shall the Town be liable for indirect damages.

(c) To the extent allowed by law, the Town shall not be liable for damages sustained by the Corporation, and persons acting by, through or under the Corporation, by reason of the inability of the Town to deliver the Springs Resort Tap Water occasioned by weather conditions, failure of or damage to Town Facilities, or other causes not resulting from the Town's gross negligence.

(d) The Town shall not be responsible for the control, carriage, handling, use, disposal, or distribution of the Springs Resort Tap Water beyond the Point of Delivery. The Corporation shall hold Pagosa Springs harmless on account of any damage or claim of damage of any nature whatsoever, including property damage, personal injury or death not resulting from the Town's gross negligence, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of Springs Resort Tap Water beyond the Point of Delivery.

(e) The Town is under no obligation to construct or furnish any new Town Facilities to maintain or increase the temperature, flow rate, volume or quality of the Springs Resort Tap Water.

13. ASSIGNMENT LIMITED.

(a) The Corporation and its permitted assigns may not assign its rights under this Agreement or any interest herein except to successor owners of the Corporation Property for the Corporation Uses without the express written permission of the Town, which the Town may grant in the Town's sole discretion, provided that the assignee agrees in writing to accept all of the Corporation's obligations hereunder. The Corporation shall notify the Town in writing sixty (60) days prior to any permitted assignment hereunder.

(b) The provisions of this Agreement shall bind the successors and assigns of the parties hereto.

(i) Notwithstanding the forgoing, the Town, in its sole discretion may assign this Agreement to an enterprise organized by the Town under TABOR for purposes of owning, operating or maintaining the GH System.

14. TERM OF AGREEMENT.

(a) The Agreement will commence on the Effective Date and shall continue so long as the Town operates the GH System or otherwise makes Geothermal Water or heat from the Geothermal Water from the Two Wells available to any users, and so long as the Corporation complies with the terms of this Agreement, unless otherwise terminated in accordance with the terms of the Agreement.

(b) Notwithstanding the foregoing, the Agreement shall not be interpreted to create a multiple-year financial obligation of the Town for purposes of



TABOR. Any obligations of the Town created hereunder that are determined to be subject to TABOR shall be subject to annual appropriations by the Town sufficient to carry out such obligations.

15. AMENDMENTS. This Agreement may be modified only by a writing approved by both parties.

16. DEFAULT AND TERMINATION OF CONTRACT.

(a) The occurrence of any of the following shall constitute an Event of Default.

(i) The failure of the Corporation to pay any amounts due under the Agreement when due and payable.

(ii) The failure of the Corporation to perform its other obligations, or refraining from prohibited actions, as set forth herein.

(b) The waiver by the Town of any breach of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition herein contained. No term or condition of this Agreement shall be deemed to have been waived by the Town unless express notice waiving such term or condition is in writing.

(c) Upon a non-monetary Event of Default hereunder, the Town shall give written notice of such default. The Corporation shall have five (5) days thereafter within which to commence diligently curing the default. If the Event of Default is not cured within thirty (30) days, cure cannot be reasonably completed within such time period, or if the Corporation has not continued to diligently pursue curing the default in the event the default can not reasonably be cured within thirty (30) days, this Agreement may be terminated at the option of the Town.

(d) Upon a monetary Event of Default, this Agreement may be terminated at the option of the Town.

17. NOTICES. All notices and communications under this Agreement shall be mailed or hand-delivered to the parties at the addresses shown below:

Town of Pagosa Springs  
c/o Mayor and Town Manager  
P.O. Box 1859  
Pagosa Springs, CO 81147-1859

Gulfstream Worldwide Ltd.  
Northwestern Investments, Inc.  
Albuquerque Properties, Inc.  
Pagosa Resort and Spa, Inc.  
PO Box 1799  
165 Hot Springs Boulevard  
Pagosa Springs, CO 81147

Mailed notices shall be sent prepaid, by U. S. Postal Service, Federal Express or United Parcel Service and shall be deemed to have been received on the third day after having been sent.

The designation of the address or the address may be changed by notice given in the same manner as provided in this Section for other notices.

18. TERMINATION OF LEASE AND PRIOR AGREEMENTS. The Corporation was previously assigned all interests in the Geothermal Water Rights Lease. Upon the Effective Date, and as a condition of this Agreement becoming effective, the Geothermal Water Rights Lease and any other leases or agreements regarding the provision of Geothermal Water by the Town to the Corporation or the Springs Resort shall terminate in full and be of no further force and effect.

19. APPLICABLE LAW.

(a) This Agreement shall be governed by the laws of the State of Colorado.

(b) Venue for any dispute arising as a result of this Agreement shall be the District Court, Archuleta County, Colorado.

(c) Should litigation be necessary to enforce any term or provision of this Agreement, all litigation expenses, witness fees and court costs, and attorney's fees shall be paid by the non-prevailing party.

20. SEVERABILITY. If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable under any applicable law, including but not limited to the Town's Home rule Charter, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement, and to this end, each term, section and provision of this Agreement shall be severable. Should any provision be determined invalid or unenforceable because the length of time provided in such provision is beyond that which is valid and enforceable, the time period shall be revised without further agreement of the parties to include the maximum time period that is valid and enforceable.

21. COMPLETE AGREEMENT. This Agreement represents the full agreement of the parties hereto with regard to the purchase of the Springs Resort Tap by the Corporation from the Town.

22. COUNTERPARTS AND FAXED SIGNATURES.

(a) This Agreement may be signed in counterparts, each to serve as an original document.

(b) In the execution of this Agreement, faxed signatures of the parties to this Agreement shall be considered original signatures, when original signatures are provided promptly thereafter.

TOWN OF PAGOSA SPRINGS

By: Ross Aragon  
Ross Aragon, Mayor



Attest:

April Hessman  
April Hessman, Town Clerk

GULFSTREAM WORLDWIDE LTD.  
NORTHWESTERN INVESTMENTS, INC.  
ALBUQUERQUE PROPERTIES, INC.  
PAGOSA RESORT AND SPA, INC.

By: [Signature]  
Title: Director

Attest:

[Signature]  
, Secretary

**EXHIBIT A -1**

**LEGAL DESCRIPTION**

**Lot Y-R, according to the plat Replat of Lot Y – Pagosa Springs Resort Company – Minor Subdivision, recorded October 26, 2004 as Reception No. 20409862, in the office of the Clerk and Recorder, Archuleta County, Colorado**

## EXHIBIT A-2

### LEGAL DESCRIPTION

A tract of land located in Section 13 and 24 of Township 35 North, Range 2 West, N.M.P.M., Town of Pagosa Springs, Colorado and within the Henry Footes Valentine Scrip of the Townsite of Pagosa Springs, being more particularly described as follows, to-wit:

Beginning at the mid point on the West line of the Henry Footes Valentine Scrip;  
Thence North 89° 57' 42" East, 882.40 feet along the East-West mid line of the Henry Footes Valentine Scrip to the Westerly right of way limits of Hot Springs Boulevard as described in that deed recorded under Reception No. 20212451, in the office of the Clerk and Recorder, Archuleta County, Colorado;  
Thence South 04° 44' 12" West, 40.81 feet along the Westerly right of way limits of Hot Springs Boulevard as described in that deed recorded under Reception No. 20212451, in the office of the Clerk and Recorder, Archuleta County, Colorado;  
Thence South 01° 21' 46" East, 587.82 feet along the Westerly right of way limits of Hot Springs Boulevard as described in that deed recorded under Reception No. 20212451, in the office of the Clerk and Recorder, Archuleta County, Colorado, to North line of Lot C, recorded under Reception No. 98000158, in the office of the Clerk and Recorder, Archuleta County, Colorado, and as shown on the "Wetlands - Open Space Minor Subdivision" recorded under Reception No. 99000708, in the office of the Clerk and Recorder, Archuleta County, Colorado;  
Thence West, 270.00 feet along the said North line of Lot C to the Northwest corner thereof;  
Thence North 33° 06' 28" West, 320.79 feet along the Northeasterly line of Lot B-1 of the "Wetlands - Open Space Minor Subdivision";  
Thence North 43° 17' 31" West, 93.21 feet along the said Northeasterly line of Lot B-1;  
Thence North 61° 52' 53" West, 99.55 feet along the said Northeasterly line of Lot B-1;  
Thence North 43° 28' 19" West, 84.94 feet along the said Northeasterly line of Lot B-1;  
Thence North 67° 23' 34" West, 192.68 feet along the said Northeasterly line of Lot B-1;  
Thence North 43° 52' 20" West, 121.33 feet along the said Northeasterly line of Lot B-1;  
Thence North 53° 01' 52" West, 35.44 feet along the said Northeasterly line of Lot B-1;  
Thence South 89° 44' 53" East, 52.66 feet to the Place of Beginning.

## EXHIBIT A-3

### LEGAL DESCRIPTION

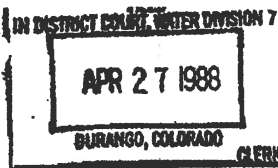
A tract of land located in Section 13 of Township 35 North, Range 2 West, N.M.P.M., Town of Pagosa Springs, Colorado and within the Henry Footes Valentine Scrip and Blocks 42 and 51 of the Townsite of Pagosa Springs, being more particularly described as follows, to-wit:

Beginning at the Southeast corner of Lot X of the "Pagosa Springs Resort Company -- Minor Subdivision" recorded under Reception No. 99006701, in the office of the Clerk and recorder, Archuleta County, Colorado;  
Thence South  $04^{\circ}44'12''$  West, 419.93 feet along the Westerly right of way limits of Hot Springs Boulevard as shown on the plat of "Pagosa Springs Commercial Park" recorded under Reception No. 100967 and as described in deed recorded under Reception No. 20212451, all in the office of the clerk and Recorder, Archuleta County, Colorado, to the East-West mid line of the Henry Footes Valentine Scrip;  
Thence South  $89^{\circ}57'42''$  West, 882.40 feet along the East-West mid line of the Henry Footes Valentine Scrip to the mid point on the West line of the Henry Footes Valentine Scrip;  
Thence North  $89^{\circ}44'53''$  West, 52.66 feet to the Northerly line of Lot B-1 of the "Wetlands -- Open Space Minor Subdivision" recorded under Reception No. 99000708, in the office of the Clerk and Recorder, Archuleta County, Colorado;  
Thence North  $89^{\circ}44'53''$  West, 27.21 feet along the North line of said Lot B-1 to the Southeast corner of the North 15 feet of Lot 4 of Block 51 of the Townsite of Pagosa Springs;  
Thence South  $89^{\circ}58'35''$  West, 149.90 feet along the South line of the said North 15 feet of Lot 4 of Block 51 and to the Southwest corner thereof;  
Thence North  $00^{\circ}05'32''$  West, 115.08 feet along the West line of Lots 4,3 and 2 of Block 51 to the Northwest corner of Lot 2 of Block 51;  
Thence North  $89^{\circ}58'23''$  East, 190.04 feet along the North line of Lot 2 of Block 51 and its Easterly projection to the center of Fifth Street of the Townsite of Pagosa Springs;  
Thence North  $00^{\circ}01'29''$  West, 85.02 feet along the said center of Fifth Street to its intersection with the Easterly projection of the Center of Piedra Street of the Townsite of Pagosa Springs;  
Thence South  $89^{\circ}59'01''$  West, 395.08 feet along the said center of Piedra Street to its intersection with the center of Sixth Street of the Townsite of Pagosa Springs;  
Thence North, 378.00 feet along the said center of Sixth Street to the center of the San Juan River;  
Thence North  $25^{\circ}09'00''$  East, 82.35 feet along the said center of the San Juan River to the West line of Block 42 of the Townsite of Pagosa Springs;  
Thence North, 82.73 feet along the said West line of Block 42 to the Northwest corner thereof;  
Thence North  $89^{\circ}59'49''$  East, 60.61 feet along the North line of said Block 42 to the said center of the San Juan River;

**Thence North 58°23'13" East, 66.71 feet along the said center of the San Juan River to the center of Durango Street of the Townsite of Pagosa Springs;**  
**Thence East, 243.22 feet along the said center of Durango Street and its Easterly projection to the said center of Fifth Street;**  
**Thence North, 92.62 feet along the said center of Fifth Street to the said center of the San Juan River;**  
**Thence North 73°30'00" East, 41.83 feet along the said center of the San Juan River;**  
**Thence North 72°45'00" East, 562.38 feet along the said center of the San Juan River;**  
**Thence South 30°06'02" East, 16.90 feet along the Westerly line of that Boundary Line Agreement recorded under Reception No. 1994001518, in the office of the clerk and Recorder, Archuleta County, Colorado, to the Northwest corner of Lot Y-R of the "Replat of Lot Y - Pagosa Springs Resort Company - Minor Subdivision" recorded under Reception No. 20409862, in the office of the Clerk and Recorder, Archuleta County, Colorado;**  
**Thence South 30°06'02" East, 218.29 feet along the Westerly line of said Lot Y-R;**  
**Thence South 24°02'05" East, 118.31 feet along the said Westerly line of Lot Y-R'**  
**Thence South 18°45'26" East, 80.04 feet along the said Westerly line of Lot Y-R;**  
**Thence South 01°14'04" West, 46.48 feet along the said Westerly line of Lot Y-R to the Northwest corner of said Lot X of the "Pagosa Springs Resort Company - Minor Subdivision";**  
**Thence South 189.00 feet along the West line of Said Lot X;**  
**Thence East 189.00 feet along the South line of said Lot X to the Place of Beginning.**

**EXHIBIT B  
GEOTHERMAL WATER DECREES**





DISTRICT COURT, WATER DIVISION NO. 7, STATE OF COLORADO

Case No. 87CW35

RULING OF REFEREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF  
TOWN OF PAGOSA SPRINGS IN ARCHULETA COUNTY, SAN JUAN RIVER  
WATERSHED.

1. Applicant: Town of Pagosa Springs  
P. O. Box 265  
Pagosa Springs, Colorado 81147  
(303) 264-5698

Application Filed: May 22, 1987

2. Name of Wells: PS-3 and PS-5

3. Legal Description of Location of Wells:

Well PS-3 is located 70' south and 15' west of the southwest corner of the Archuleta County Courthouse.

Well PS-5 is located 63' south and 100' east of the southwest corner of the Archuleta County Courthouse.

Both wells are located in SE/4 NE/4 SW/4 of Section 13, Township 35 North, Range 2 West, N.M.P.M.

4. Depth of Wells:

PS-3 is 300 feet deep; PS-5 is 274 feet deep

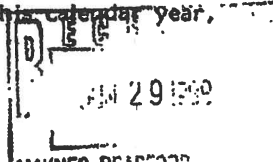
5. Type of Use: municipal use associated with geothermal heating

6. Amount of Water: one (1) cfs absolute, under the terms and conditions described herein.

7. Conditional Water Right:

- a. Date of original decree: April 3, 1987  
b. Case No. 81CW160  
c. Court: District Court, Water Division No. 7  
d. Priority of Water Right: April 28, 1980

8. The priority here awarded shall be junior to all priorities awarded in previous years. As between all rights adjudicated this calendar year,



priorities shall be determined by historical dates of appropriation and not affected by the date of entry of this ruling.

9. The law applicable to the Town's application for a water right is C.R.S., §34-70-101 et seq., now repealed, and the standards contained in C.R.S., §37-90-137.
10. The State of Colorado acknowledged in a stipulation with the Town of Pagosa Springs dated November 18, 1986, attached hereto and incorporated by reference into this decree, hereinafter "the Stipulation," that the operation of Well PS-5, pursuant to the testing program described in that Stipulation, at 450 g.p.m., demonstrated lack of material injury to the vested water rights of others and satisfied the requirements of C.R.S., §34-70-107(4), now repealed, and C.R.S., §37-90-137. Nothing in that Stipulation prejudices the right of the State Engineer or Division Engineer to administer this water right in accordance with State law.
11. The Town may operate Wells PS-3 and PS-5 either simultaneously or individually, but in no event shall the Town utilize its wells under this water right at more than a total of 450 g.p.m., except by agreement of the parties to the Stipulation.
12. In accordance with the Stipulation, the Town of Pagosa Springs agrees to plug and abandon the Pagosa Hot Water Well located:

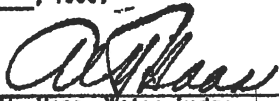
Whence the SE corner of Section 13, T35N, R2W, N.M.P.M. bears S 58° 15' E, 3,284.4 feet, in the SE/4 NE/4 SW/4 of Section 13, San Juan River Watershed;

but the Town reserves its water rights under the Pagosa Hot Water Well water right.

The Town, however, agrees that unless it files an application in Water Court for a further determination regarding the Pagosa Hot Water Well water right on or before April 3, 1989, the Pagosa Hot Water Well water right shall be deemed abandoned. The Stipulation is not intended to foreclose the State from litigating all issues relating to the Town's application for such further determination of the Pagosa Hot Water Well water right.
13. The Town agrees to install, operate and maintain a measuring device and continuous recorder acceptable to the Division Engineer at the outfall line for the Town's heat exchanger and shall keep records from such recorder and report such records to the Division Engineer as the Division Engineer may request.
14. The Town agrees to work to improve the efficiency of the Town's geothermal system.

15. The Town of Pagosa Springs shall operate its wells under this water right at a steady rate insofar as is possible, but shall also seek to avoid waste of the geothermal resource.
16. The Court shall retain jurisdiction of this water rights application to allow the Town of Pagosa Springs an opportunity to seek additional amounts of water under this application, up to the amounts set forth in the application in this case. The granting of such additional amounts of water under this application shall be dependent upon the results of testing, above the level of 450 g.p.m., showing that there is no material injury to other water rights owners. Such testing shall be conducted upon the agreement of the Town of Pagosa Springs and the State of Colorado.
17. The referee finds that this conditional water right has become a water right by reason of the completion of the appropriation.
18. It is the ruling of the referee that the statements in the application are true and that the above-described water right is declared final and absolute.

Dated this 27th day of April, 1988.

  
\_\_\_\_\_  
Al H. Haas, Water Judge  
Acting as Water Referee

No protest was filed in this matter.  
The foregoing ruling is confirmed  
and approved, and is made the  
Judgment and Decree of this court.

Dated: May 9 1988

  
\_\_\_\_\_  
Water Judge

**EXHIBIT C**  
**97CW60 STIPULATION**

DISTRICT COURT, WATER DIVISION NO. 7, COLORADO

Case No. 97CW60

STIPULATION FOR SETTLEMENT

CONCERNING THE APPLICATION OF WATER RIGHTS OF  
TOWN OF PAGOSA SPRINGS, IN ARCHULETA COUNTY

The Town of Pagosa Springs (the "Town"), through its attorney, Maynes, Bradford, Shipp & Sheftel, together with the Pagosa Springs Resort Company (the "Company"), through its attorney, James C. Anesi, filed an application in this matter on July 29, 1997. The State Engineer's Office (the "Engineers"), through the Colorado Attorney General's Office, filed a timely statement of opposition. In settlement of this matter, the parties agree as follows:

1. The Engineers shall not object to the Town producing water from Pagosa Springs Wells PS-3 and PS-5 year round pursuant to the decree in Case No. 81CW160.
2. In exchange, the Town shall immediately request the withdrawal of its application in the matter without prejudice. The Engineers consent to this withdrawal.
3. This Agreement shall in no way limit or otherwise affect the ability of the Engineers to raise any issues or assert any position in Case No. 89CW19, the Application of Town of Pagosa Springs, or any other application made by the Town of Pagosa Springs for a geothermal right; nor may the Town use this agreement as a precedent in Case No. 89CW19 or any other geothermal right application; and
4. The Town of Pagosa Springs agrees to be joined as a party by the Engineers in any case filed by a third party challenging the Engineers' administration of the decree in Case No. 81CW160 consistent with this agreement, or any declaratory action interpreting the decree in Case No. 81CW160.

MAYNES, BRADFORD, SHIPPS &  
SHEFTEL, LLP

By: Janice C. Sheftel  
Janice C. Sheftel, No. 15346  
Attorneys for Pagosa Springs  
P. O. Box 2717  
Durango, CO 81302  
(970) 247-1755

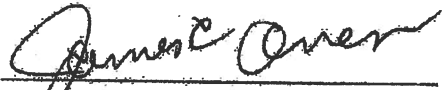
September 4, 1998  
Date

STATE OF COLORADO


By: Lee E. Miller  
Lee E. Miller, No. 26663  
First Assistant Attorney General  
Natural Resources Section  
1525 Sherman Street, 5th Floor  
Denver, CO 80203 (303) 866-5117

Sept 9, 1988  
Date

Case No. 97CW60  
STIPULATION FOR SETTLEMENT



James C. Anesi, No. 1364  
Attorney for Pagosa Springs Resort Company  
2023 Main Avenue  
Durango, CO 81301  
(970) 247-8720

  
Date

H:\sub\pag6\stip.wpd 9/4/98

**EXHIBIT D  
BEEGLES LETTER**

# STATE OF COLORADO

**WATER DIVISION 7  
DIVISION OF WATER RESOURCES**  
Office of the State Engineer  
Department of Natural Resources

701 Camino Del Rio, Suite 205  
Durango, CO 81301  
Phone: (970) 247-1845  
FAX: (970) 866-5417

<http://water.state.co.us/default.htm>



Bill Owens  
Governor  
Greg E. Vothler  
Executive Director  
Hal D. Simpson, P.E.  
State Engineer  
Kenneth A. Beegles  
Division Engineer

July 28, 2000

Scott Miller, Esq.  
Patrick & Stowell  
730 E. Durant Avenue  
Suite 200  
Aspen, CO 81611

Dear Mr. Miller:

Thank you for the information sent in your letter of July 13, 2000. We have reviewed that documentation as well as other information made available to us. The decree in 87CW35 made absolute a water right from 81CW160. The uses in those cases are stated as "municipal use associated with geothermal heating".

In a subsequent case for a year-round enlargement, 97CW60, the Town withdrew from the case after the State agreed that the water from 81CW160 in the amount of 450 gpm could be legally diverted for the above described use year-round. Therefore, it appears that we have acknowledged this enlargement as being legally available under the geothermal permit No. 27 issued February 19, 1967 and confirmed by 87CW35.

Our field inspection this week found that about 150 gpm was being delivered from the Town Wells to the Spring Inn. Of this about 120 gpm was taken to the Great Spring "glory hole". This is not believed to be a beneficial use of the geothermal water. Therefore we have asked Jay Harrington to cut that amount from his delivery. This was accomplished today, July 28, 2000. The remaining 30 gpm serving the four hot tubs is considered to be a legal use under the water court decree.

I hope this response addresses our concerns. Please call if you wish to discuss the matter further.

Sincerely,

Kenneth A. Beegles  
Division Engineer

Cc: Hal Simpson, State Engineer  
Val Valentine, Water Commissioner  
Jay Harrington, City Manager



**EXHIBIT E**  
**81CW160 STIPULATION**

DISTRICT COURT, WATER DIVISION NO. 7, STATE OF COLORADO

Case No. 81CW160

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JUDGMENT AND DECREE

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF  
TOWN OF PAGOSA SPRINGS IN ARCHULETA COUNTY, SAN JUAN RIVER  
WATERSHED.

---

1. Applicant: Town of Pagosa Springs  
P. O. Box 265  
Pagosa Springs, Colorado 81147  
(303) 264-5698

Application Filed: December 31, 1981

2. Name of Wells: PS-3 and PS-5
3. Legal Description of Location of Wells:

Well PS-3 is located 70' south and 15' west of the southwest corner of the Archuleta County Courthouse.

Well PS-5 is located 63' south and 100' east of the southwest corner of the Archuleta County Courthouse.

Both wells are located in SE/4 NE/4 SW/4 of Section 13, Township 35 North, Range 2 West, N.M.P.M.

4. Depth of Wells:

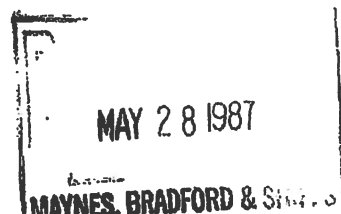
PS-3 is 300 feet deep; PS-5 is 274 feet deep

5. Type of Use: municipal use associated with geothermal heating

6. Amount of Water: one (1) cfs conditional, under the terms and conditions described herein, including the four (4) year requirement of due diligence

7. During the month of April, 1991, and every four years thereafter until the right is decreed final, the owner or user thereof, if he desires to maintain the same, shall file an application for quadrennial finding of reasonable diligence with the water clerk of this court.

8. Priority of Water Right: April 28, 1980



9. Decreed Date: April 3, 1987
10. The priority here awarded shall be junior to all priorities awarded in previous years. As between all rights adjudicated this calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of this ruling.
11. The law applicable to the Town's application for a water right is C.R.S., §34-70-101 et seq., now repealed, and the standards contained in C.R.S., §37-90-137.
12. The State of Colorado acknowledged in a stipulation with the Town of Pagosa Springs dated November 18, 1986, attached hereto and incorporated by reference into this decree, hereinafter "the Stipulation," that the operation of Well PS-5, pursuant to the testing program described in that Stipulation, at 450 g.p.m., demonstrated lack of material injury to the vested water rights of others and satisfied the requirements of C.R.S., §34-70-107(4), now repealed, and C.R.S., §37-90-137. Nothing in that Stipulation prejudices the right of the State Engineer or Division Engineer to administer this water right in accordance with State law.
13. The Town may operate Wells PS-3 and PS-5 either simultaneously or individually, but in no event shall the Town utilize its wells under this water right at more than a total of 450 g.p.m., except by agreement of the parties to the Stipulation.
14. In accordance with the Stipulation, the Town of Pagosa Springs agrees to plug and abandon the Pagosa Hot Water Well located:

Whence the SE corner of Section 13, T35N, R2W, N.M.P.M. bears S 58° 15' E, 3,284.4 feet, in the SE/4 NE/4 SW/4 of Section 13. San Juan River Watershed;

but the Town reserves its water rights under the Pagosa Hot Water Well water right.

The Town, however, agrees that unless it files an application in Water Court for a further determination regarding the Pagosa Hot Water Well water right within twenty-four (24) months from the granting of this water right, the Pagosa Hot Water Well water right shall be deemed abandoned. The Stipulation is not intended to foreclose the State from litigating all issues relating to the Town's application for such further determination of the Pagosa Hot Water Well water right.

15. The Town agrees to install, operate and maintain a measuring device and continuous recorder acceptable to the Division Engineer at the outfall line for the Town's heat exchanger and shall keep records from such recorder and report such records to the Division Engineer as the Division Engineer may request.

16. The Town agrees to work to improve the efficiency of the Town's geothermal system.
17. The Town of Pagosa Springs shall operate its wells under this water right at a steady rate insofar as is possible, but shall also seek to avoid waste of the geothermal resource.
18. The Court shall retain jurisdiction of this water rights application to allow the Town of Pagosa Springs an opportunity to seek additional amounts of water under this application, up to the amounts set forth in the application in this case. The granting of such additional amounts of water under this application shall be dependent upon the results of testing, above the level of 450 g.p.m., showing that there is no material injury to other water rights owners. Such testing shall be conducted upon the agreement of the Town of Pagosa Springs and the State of Colorado.

IT IS ORDERED that the above described water right is adjudicated and granted the indicated priority.

ATTORNEY GENERAL  
STATE OF COLORADO

MAYNES, BRADFORD & SHIPPS

By: Wendy C. Weiss  
Wendy C. Weiss, No. 7254  
First Assistant Attorney General  
Natural Resources Section  
1525 Sherman Street  
State Services Building  
Denver, CO 80203  
(303) 866-3611

By: Frank E. (Sam) Maynes  
Frank E. (Sam) Maynes, No. 1363  
Attorneys for Town of Pagosa Springs  
P. O. Box 2717  
Durango, Colorado 81302  
(303) 247-1755

Date: May 19, 1987

Date: May 22, 1987

DONE this 22nd day of May, 1987, nunc pro tunc April 3, 1987.

Al H. Haas  
Al H. Haas, Water Judge

DISTRICT COURT, WATER DIVISION NO. 7, STATE OF COLORADO

Case No. 81CW160

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STIPULATION

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IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF PAGOSA SPRINGS IN THE SAN JUAN RIVER AND ITS TRIBUTARIES

IN ARCHULETA COUNTY

---

COMES NOW the Town of Pagosa Springs ("Town"), Applicant in this matter, and the Objector listed below, and stipulate as follows:

Jeris A. Danielson, State Engineer  
Colorado Water Resources  
1313 Sherman Street  
Denver, Colorado 80203

R E C I T A L S :

A. The Town owns an adjudicated water right, Case No. W-1792-78, of 1.5 c.f.s. (675 g.p.m.) for municipal use, known as the "Pagosa Hot Water Well," located:

Whence the SE corner of Section 13, T35N, R2W, N.M.P.M. bears S 58° 15' E, 3,284.4 feet, in the SE/4 NE/4 SW/4 of Section 13. San Juan River Watershed.

with an historic date of 1903 and a priority date of 1978.

B. The Town of Pagosa Springs has applied for both a permit for production status for new Town Wells PS-3 and PS-5, and for a water right for these wells. The background of these two processes is described below:

1. Production Status Application

a. The Town applied to the Colorado Oil and Gas Conservation Commission for an exploratory geothermal well permit for Well PS-3 on May 13, 1980, and for Well PS-5, verbally on July 18, 1980, and formally on August 11, 1980, under the geothermal law then effect, C.R.S., §34-70-101 et seq.

b. Well PS-5 was drilled under an exploratory well permit issued by the Colorado Oil and Gas Conservation Commission on July 18, 1980. Well PS-5 is located in the SE/4 NE/4 SW/4 of Section 13, Township 35 North, Range 2 West, N.M.P.M. The well is 63' South and 100' East of the Southwest Corner of the Archuleta County Courthouse. The well was drilled to a depth of 274 feet.

c. Well PS-3 was drilled pursuant to an exploratory well permit issued by the Colorado Oil and Gas Conservation Commission on May 28, 1980. The well is located in the SE/4 NE/4 SW/4 of Section 13, Township 35 North, Range 2 West, N.M.P.M. The well is located 70' South and 15' West of the Southwest Corner of the Archuleta County Courthouse. The well was drilled to a depth of 300 feet.

d. The exploratory well permits issued by the Colorado Oil and Gas Conservation Commission for both Well PS-3 and Well PS-5 were stamped "not approved for production until approval obtained from the Division of Water Resources."

e. On October 1, 1981, Pagosa Springs applied to the Colorado Oil and Gas Conservation Commission to request production status for Wells PS-3 and PS-5.

f. On February 11, 1982, the State Engineer issued "Findings of the State Engineer" and denied production permits to Pagosa Springs for the two wells. This evaluation was made pursuant to C.R.S., §34-70-107(4), now repealed. As required under that law, the findings were based on the same type of determination that must be made to grant a permit under C.R.S., §37-90-137. The State Engineer in his Findings suggested to the Town "that the Town of Pagosa Springs prepare a proposed testing program which will allow the collection of the needed data, allow them to produce the needed heat, and clearly define operating policies and procedures which will provide controls to assure that existing decreed water rights would not be injured."

g. In response to the suggestion of the State Engineer, Pagosa Springs developed an informal testing program with the aid of Roseberry Plumbing of Durango, Colorado, during the 1982 heating season.

h. Prior to the 1983-84 heating season, the Town developed a formal test plan under the auspices of the engineering firm of Coury and Associates, Inc., Lakewood, Colorado. The plan was submitted to the State Engineer's Office on September 29, 1983, and approved by Bob Longenbaugh, Assistant State Engineer, Ground Water Section, in a meeting on that date.

i. In October, 1983, the Colorado Oil and Gas Conservation Commission, working with the Colorado Division of Water Resources, approved a nine month production permit for Pagosa Springs' geothermal well PS-5, conditioned upon the Town's testing program, under which the Town's heating system operated for the 1983-1984 heating season. The

data from these tests are summarized in Appendix 1, page 129, of the report entitled "Direct Utilization of Geothermal Energy for Pagosa Springs, Colorado, Final Report, June 1979 through June 1984." DOE/ET/27030-7, prepared by Coury and Associates, Inc., hereinafter referred to as "Final Report." This Final Report is available for public inspection at the offices of the Town Manager of Pagosa Springs, Colorado.

j. During the 1984-85 heating season, Pagosa Springs operated its geothermal system under a second interim production permit issued conditionally upon the Town's undertaking a second season of production testing. Data from the testing period July 1984 through February 1985 can be found in Appendix 3 of the Final Report.

k. The Final Report was made available to the Town of Pagosa Springs in August, 1985, by Coury & Associates, Inc.

l. The Final Report was made available to the State Engineer by the Town on August 27, 1985.

m. On September 24, 1985, Pagosa Springs reapplied for a production status permit for Well PS-5 for 450 g.p.m. and for Well PS-3 for 450 g.p.m. Well PS-3 was to be operated only as a backup for Well PS-5 under that production permit. The Town based its reapplication on the results of the Final Report which showed only de minimus injury to owners of other wells and vested water rights. The Final Report at Appendices 1 and 3 shows that while pressure in other wells drops slightly when Well PS-5 is turned on, no further effects were felt by these wells during the 1983-1984 and 1984-1985 heating seasons

#### B. Water Rights Application

a. Pagosa Springs filed an application for a geothermal water right in this Court on December 30, 1981, for 1.33 c.f.s. for Well PS-3 and 2.67 c.f.s. for Well PS-5. The application was opposed by the State of Colorado and several owners of wells and water rights in the Town.

b. Under C.R.S., §37-90.5-108(7), the Colorado Geothermal Resources Act, enacted on June 10, 1983, any application to appropriate a geothermal fluid pending on the date of enactment, "shall be processed and evaluated under existing law prior to such date."

c. Pagosa Springs, Inc. reached a stipulated agreement with the Town. On September 20, 1983, this Court entered an Order recognizing the withdrawal by Pagosa Springs, Inc. of its Statement of Opposition.

C. The results of one year of informal testing and two years of formal testing of the effects of Well PS-5 on other owners of wells and water rights show that no material injury has been experienced by the owners of the other wells and water rights.

D. Because "the development of geothermal resources is in the public interest because it enhances local economies and provides an alternative to conventional fuel sources," C.R.S., §37-90.5-102(a), it is stipulated as follows:

#### STIPULATION

1. The law applicable to the Town's application for a water right is C.R.S., §34-70-101 et seq., now repealed, and the standards contained in C.R.S., §37-90-137.

2. The State of Colorado acknowledges that the operation of Well PS-5, pursuant to the testing program described above, at 450 g.p.m., demonstrated lack of material injury to the vested water rights of others and satisfies the requirements of C.R.S., §34-70-107(4), now repealed, and C.R.S., §37-90-137. Nothing in this Stipulation shall prejudice the right of the State Engineer or Division Engineer to administer these water rights in accordance with State law.

3. The State of Colorado consents to the granting of a water rights decree to the Town of Pagosa Springs on terms no less restrictive than those included in this Stipulation.

4. The State of Colorado agrees that the Town of Pagosa Springs shall receive a conditional water right for a total of 1 c.f.s. (450 g.p.m.) for Wells PS-3 and PS-5.

5. The Town may operate Wells PS-3 and PS-5 either simultaneously or individually, but in no event shall the Town utilize its wells under this water right at more than a total of 450 g.p.m., except by agreement of the parties hereto.

6. The Town of Pagosa Springs agrees to plug and abandon the Pagosa Hot Water Well located:

Whence the SE corner of Section 13, T35N, R2W, N.M.P.M. bears S 58° 15' E, 3,284.4 feet, in the SE/4 NE/4 SW/4 of Section 13. San Juan River Watershed;

but the Town reserves its water rights under the Pagosa Hot Water Well water right.

The Town, however, agrees that unless it files an application in the Water Court for a further determination regarding the Pagosa Hot Water Well water right within twenty-four (24) months from the granting of this water right, the Pagosa Hot Water Well water right shall be deemed abandoned. This Stipulation is not intended to foreclose the State from litigating all issues relating to the Town's application for such further determination of the Pagosa Hot Water Well water right.



7. The Town agrees to install, operate and maintain a measuring device and continuous recorder acceptable to the Division Engineer at the outfall line for the Town's heat exchanger and shall keep records from such recorder and report such records to the Division Engineer as the Division Engineer may request.

8. The Town agrees to work to improve the efficiency of the Town's geothermal system.

9. The Town of Pagosa Springs shall operate its wells under this water right at a steady rate insofar as is possible, but shall also seek to avoid waste of the geothermal resource.

10. The Court shall retain jurisdiction of this water rights application to allow the Town of Pagosa Springs an opportunity to seek additional amounts of water under this application, up to the amounts set forth in the application in this case. The granting of such additional amounts of water under this application shall be dependent upon the results of testing, above the level of 450 g.p.m., showing that there is no material injury to other water rights owners. Such testing shall be conducted upon the agreement of the parties hereto.

11. Upon the execution of this Stipulation the State Engineer shall issue production permits for the operation of Wells PS-3 and PS-5 in accordance with the terms of this Stipulation.

12. All parties to this Stipulation agree that it is binding upon the successors and assigns of all parties hereto.

ATTORNEY GENERAL  
STATE OF COLORADO

MAYNES, BRADFORD & SHIPPS

By: Wendy C. Weiss; 7254  
Wendy C. Weiss  
First Assistant Attorney General  
Natural Resources Section  
1525 Sherman Street  
State Services Building  
Denver, Colorado 80203  
(303) 866-3611

By: Frank E. (Sam) Maynes  
Frank E. (Sam) Maynes, No. 1363  
Attorneys for Town of Pagosa Springs  
P. O. Box 2717  
Durango, Colorado 81302  
(303) 247-1755

Date: November 18, 1986

Date: Nov. 14, 1986

**EXHIBIT F**  
**DAVIS ENGINEERING REPORT**



DAVIS  
ENGINEERING  
SERVICE, INC.

November 11, 2008

Mr. Bill Whittington  
Springs Resort  
P.O. Box 1799  
Pagosa Springs, CO 81147

Re: Flow Capability of Infrastructure for TOPS Geothermal Water

Dear Bill:

The purpose of this correspondence is to forward the calculations, attached, showing the ability of the existing pipe infrastructure to handle delivery of 450 gallons per minute (gpm) of Town of Pagosa Springs (TOPS) geothermal water to the main hot spring. This analysis has been prepared in part on information provided by Matt Mees concerning pipe materials, sizes and the current static system pressures.

The first scenario reviewed was use of the existing and recently constructed piping to deliver 450 gpm from the diversion vault southerly of the TOPS geothermal building to the main hot spring (see sketch on calculations). In delivering water to the main hot spring, it was figured that all three of the recently installed insulated 4 inch HDPE pipes would be open and available for use. The conservative estimate of head loss was calculated at 19.11 pounds per square inch (psi), where Mr. Mees indicated that 23 psi was available in the vault vicinity. With the assumptions made, this would indicate that the piping could handle delivery of the 450 gpm provided the well produces at this rate and that infrastructure upstream of the diversion vault is also capable of this flow.

The second scenario studied was the addition of an 8 inch HDPE connection from the well (or well vicinity) to the existing 8 inch pipe. This connection would allow for greater static pressure availability, elimination of head loss through existing TOPS facilities, and shortening of the delivery length and resulting head loss to the hot spring. The conservative head loss estimated for this option was calculated at 17.42 psi, with 41 psi static pressure assumed available at the well. Again, this would indicate that the piping could handle delivery of the 450 gpm provided the well produces at this rate.

Modification of the pressures in the existing infrastructure (especially if the tie to the well occurs) may require review and modification of existing pipe thrusting, anchoring and joint restraint. Please call with any questions or comments.

Sincerely,

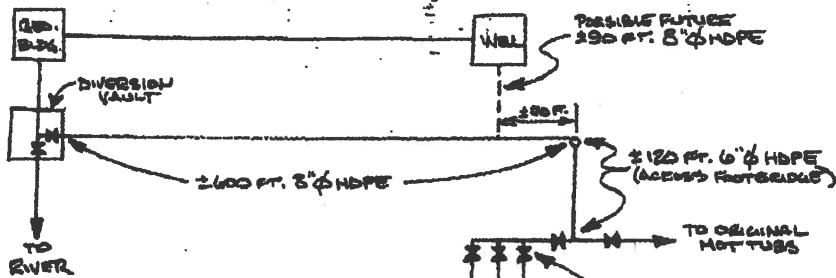
Michael M. Davis

attach.: Engineering Calculations

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188 S. 8<sup>th</sup> St. - P.O. Box 1208 - Pagosa Springs - CO - 81147 - Phone (970) 264-5055 - Fax (970) 264-9210

SPRINKLER TUBS - GEOTHERMAL WATER FROM T.O.P.S.



- FOR MATTER, ASSUMED:
- STATIC PRESSURE AT WELL IS 41 PSI
  - STATIC PRESSURE AT DIV. VAULT IS 23 PSI

FOR HDPE PIPE MANUFACTURER:  
 ECONOMY'S COEFFICIENT, C IS  
 150 + 155 FOR CONTINUOUS FLOW.

FOR ENGINEERING REFERENCE:  
 IT IS NOTED THAT C OF 100 IS  
 USED FOR PIPE IN SERVICE OR  
 WHERE BUILDUP IN PIPES  
 MIGHT BE EXPECTED.

USE HAZEN-WILLIAMS EQUATION TO DETERMINE HEAD LOSS  
 AT 450 GPM THROUGH EXISTING PIPING:

$$h_f = 10.44 (L) \frac{(GPM)^{1.85}}{(C)^{1.49} (d_{inches})^{4.75}}$$

$$h_c = 10.44 (450) \frac{(450)^{1.85}}{(100)^{1.49} (8)^{4.75}} + 10.44 (120) \frac{(450)^{1.85}}{(60)^{1.49} (6)^{4.75}} + 3(10.44) (340) \frac{(450)^{1.85}}{(100)^{1.49} (4)^{4.75}}$$

$$h_c = 4.08 + 3.31 + 20.53 = 33.93 \text{ ft.} \times \frac{2.31 \text{ lb}}{\text{ft}^3} \times \frac{1.48}{144 \text{ in}^2} = 14.70 \text{ PSI}$$

IF 20% ADDITIONAL HEAD LOSS IS ASSOCIATED WITH EQUATION INACCURACIES FOR  
 HOT WATER & 10% ADDITIONAL HEAD LOSS IS ASSOCIATED WITH MINOR LOSSES  
 (VALVES, FITTINGS, ETC.) THE CONSERVATIVE HEAD LOSS IS ESTIMATED AT:

$$14.70 (0.1) + 14.70 (0.2) + 14.70 = \underline{19.11 \text{ PSI}}$$

WITH 23 PSI AVAILABLE AT THE DIVERSION VAULT, THE EXISTING  
 INFRASTRUCTURE SHOULD BE CAPABLE OF DELIVERING 450 GPM  
 TO THE HOT SPRING - PROVIDED THE WELL PRODUCES AT THAT RATE  
 AND THE INFRASTRUCTURE UPSTREAM OF THE DIVERSION VAULT  
 CAN HANDLE THAT FLOW.

SPRINGS TUBS - GEOTHERMAL WATER FROM T.O.P.S. 2/10/13

IF NEW LINE IS CONSTRUCTED TO TIE BETWEEN WELL (VICINITY) AND EXISTING 8" HDPE, MORE PRESSURE IS AVAILABLE, CONCERNS ON INFRASTRUCTURE UPSTREAM OF THE DIVERSION VALVE ARE REMOVED, AND UPS HEAD LOSS IS EXPERIENCED DUE TO SHORTER PIPE LENGTH. AVAILABLE WATER IS STILL OBVIOUSLY LIMITED TO THE WELL PRODUCTION RATE.

CALCULATE HEAD LOSS THROUGH POSSIBLE PIPE ADDITIONS & RESULTING CONFIGURATION:

$$h_f = 10.44 (100) \frac{(450)^{1.85}}{(10)^{4.75}} + 3.31 + 26.53$$

$$h_f = 1.09 + 3.31 + 26.53 = 30.93 \text{ FT.} \times \frac{2.31 \text{ FT}}{\text{FT}} \times \frac{\text{FT}}{2.31 \text{ FT}} = 13.40 \text{ PSI}$$

$$\text{CONSERVATIVE } h_f \text{ EST.} = 13.40 (0.1) + 13.40 (0.2) + 13.40 = 17.42 \text{ PSI}$$

WITH THE 10-IN CONSTRUCTED NEAR THE WELL, AND ASSUMING THE 41 PSI STATIC PRESSURE, THERE SHOULD BE MORE THAN ADEQUATE PRESSURE AVAILABLE TO DELIVER THE 450 GPM, PROVIDED THE WELL PRODUCES AT THIS RATE. ALSO, EXISTING INFRASTRUCTURE MAY REQUIRE ADDITIONAL THREAT BLOCKS AND/OR RESTRAINED FITTINGS TO HANDLE HIGHER PRESSURES THAN THAT WHICH CURRENTLY EXISTS.

**EXHIBIT G**  
**WELL PERMITS 16 AND 27**



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

Bill Ritter, Jr.  
Governor

Harris D. Sherman  
Executive Director

Dick Wolfe, P.E.  
Director

February 24, 2009

Town of Pagosa Springs  
c/o Janice C. Sheftel  
Maynes, Bradford, Shipps & Sheftel, LLP  
P.O. Box 2717  
Durango, CO 81302-2717

Re: . Modification of Geothermal Well Permit Nos. 26-G (Receipt No. 0011744A)  
and 27-G (Receipt No. 0011744B), Town of Pagosa Springs

Dear Ms. Sheftel:

Thank you for your efforts in working with this office and our Division office in Durango, CO in coming up with modified language to some portions of the referenced permits to more closely conform to the language in the decree entered by the Division 7 Water Court in Case No. 81CW160 and the stipulation agreed to by the State Engineer in this same case. We feel that the modified language will clear up confusion that has resulted in the past concerning the operation of these wells.

Enclosed please find copies of the modified permits. If you have any questions regarding the modifications of these permits, please contact John Bilisoly at the above address or telephone number.

Sincerely,

Heidi Frey, P.E.  
Supervising Water Resources Engineer

HF/JWB  
Enclosures

Cc: Rege Leach, Division Engineer, Water Division 7 (via email)  
Scott Brinton, Assistant Division Engineer (via email)  
Peter Kasper, Water Commissioner, Water District 29 (via email)  
Permit Files for Well Permit Nos. 26-G & 27-G

H:/Geothermal Rules Rev/PagosaSprgsModificationOfPermits26GAnd27Gcoverltr.doc

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

PERMIT NO. 26

TO APPROPRIATE GEOTHERMAL FLUID

11744 A  
7-29-04

ISSUED TO: Town of Pagosa Springs  
ADDRESS: P.O. Box 265, Pagosa Springs, Colorado 81147  
LOCATION: Archuleta County  
Range: 2 West 1430 feet from south line  
Township: 35 North 2130 feet from west line  
Section: 13 NE1/4 of the SW1/4

Owner's Well Designation: Well PS-3

AUTHORIZATION: Approved pursuant to C.R.S. 30-90.5-107(2)(a) and the stipulation agreed to by the State Engineer in Case No. 81CW160, Division 7 Water Court

SOURCE: Approved for the diversion of ground water tributary to the San Juan River.

STRUCTURE: Approved for the use of an existing well constructed as a geothermal exploration well.

DIVERSION OF GEOTHERMAL FLUIDS: The rate of ground water diversions shall not exceed 450 gpm (1.00 cfs), unless approved otherwise pursuant to the decree in Case No. 81CW160 after a further testing program.

USES: ~~Extraction of energy from geothermal fluids for a municipal heating system.~~ Municipal use associated with geothermal heating.

This approval is subject to the limitations, monitoring requirements and conditions set forth in the attached Part A hereof.

ISSUED this 19<sup>th</sup> day of FEBRUARY, 1987.

  
Jeris A. Danielson  
State Engineer

Attachment

6163I



PART A.

CONDITIONS OF APPROVAL -

1. All diversions of geothermal fluids from this well will be administered in priority. This administration may involve the total or partial curtailment of diversions from the well unless the well is operated in accordance with an approved augmentation plan.
2. Annual diversions pursuant to this permit are limited to the amount reasonably necessary for ~~use in applicant's heating system~~ municipal use associated with geothermal heating.
3. The pumping rate of this well combined with the pumping rate of the Town's well PS5, Permit No. 27, shall not exceed 450 gpm, either simultaneously or individually unless approved ~~by this office~~ otherwise by this office after further testing pursuant to the decree in Case No. 81CW160.
4. All return flows from the use of this well must be discharged ~~to the San Juan River through a closed, non-consumptive system~~ in such a manner as to seek to avoid waste of the geothermal resource, and protect the environment and public health.
5. When the well is no longer operational or needed it must be plugged and abandoned according to Section 5 of the Rules and Regulations adopted by the Board of Examiners of Water Well Construction and Pump Installation Contractors.

MONITORING AND REPORTING -

6. The owner shall mark the well in a conspicuous place with appropriate well permit numbers, name of the aquifer, and court case numbers. He shall take necessary means and precautions to preserve these markings.
7. ~~The rate and volume of return flow to the San Juan River must be measured by a method acceptable to the Division Engineer.~~ (See modified condition below.)
8. ~~Water temperature must be measured at the well head and return flow discharge points so that the amount of geothermal energy recovered may be determined.~~ at all outfall lines from the well so that the amount of geothermal energy recovered may be determined.
9. The measurement records must be maintained by the well owner and submitted to the Division Engineer upon request or at mutually agreed on times.
7. The well owner or operator shall operate and maintain measuring devices and continuous recorders at the well head and the outfall line to the San Juan River and any other outfall lines from the well and shall keep records from such recording devices.

NOTE: The modifications on Pages 1 and 2 of this permit were made on February 24, 2009, to more closely conform to the language in the decree entered by the Division 7 Water Court in Case No. 81CW160 and the stipulation agreed to by the State Engineer in Case No. 81CW160.  
By: JWB 2/24/2009

PERMIT NO. 27

TO APPROPRIATE GEOTHERMAL FLUID

11744 B  
7-29-04

ISSUED TO: Town of Pagosa Springs

ADDRESS: P.O. Box 265, Pagosa Springs, Colorado 81147

LOCATION: Archuleta County  
Range: 2 West 1450 feet from south line  
Township: 35 North 2240 feet from west line  
Section: 13 NE1/4 of the SW1/4

Owner's Well Designation: Well PS-5

AUTHORIZATION: Approved pursuant to C.R.S. 30-90.5-107(2)(a) and the stipulation agreed to by the State Engineer in Case No. 81CW160, Division 7 Water Court

SOURCE: Approved for the diversion of ground water tributary to the San Juan River.

STRUCTURE: Approved for the use of an existing well constructed as a geothermal exploration well.

DIVERSION OF GEOTHERMAL FLUIDS: The rate of ground water diversions shall not exceed 450 gpm (1.00 cfs), unless approved otherwise pursuant to the decree in Case No. 81CW160 after a further testing program.

USES: ~~Extraction of energy from geothermal fluids for a municipal heating system.~~ Municipal use associated with geothermal heating.

This approval is subject to the limitations, monitoring requirements and conditions set forth in the attached Part A hereof.

ISSUED this 19<sup>th</sup> day of FEBRUARY, 1987.

  
Jeris A. Danielson  
State Engineer

Attachment

6163I

PART A.

CONDITIONS OF APPROVAL -

1. All diversions of geothermal fluids from this well will be administered in priority. This administration may involve the total or partial curtailment of diversions from the well unless the well is operated in accordance with an approved augmentation plan.
2. Annual diversions pursuant to this permit are limited to the amount reasonably necessary for use ~~in applicant's heating system~~, municipal use associated with geothermal heating.
3. The pumping rate of this well combined with the pumping rate of the Town's well PS3, Permit No. 26, shall not exceed 450 gpm, either simultaneously or individually unless approved ~~by this office~~, otherwise by this office after further testing pursuant to the decree in Case No. 81CW160.
4. All return flows from the use of this well must be discharged ~~to the San Juan River through a closed, non-consumptive system~~, in such a manner as to seek to avoid waste of the geothermal resource, and protect the environment and public health.
5. When the well is no longer operational or needed it must be plugged and abandoned according to Section 5 of the Rules and Regulations adopted by the Board of Examiners of Water Well Construction and Pump Installation Contractors.

MONITORING AND REPORTING -

6. The owner shall mark the well in a conspicuous place with appropriate well permit numbers, name of the aquifer, and court case numbers. He shall take necessary means and precautions to preserve these markings.
7. ~~The rate and volume of return flow to the San Juan River must be measured by a method acceptable to the Division Engineer. (See modified condition below.)~~
8. ~~Water temperature must be measured at the well head and return flow discharge points so that the amount of geothermal energy recovered may be determined.~~ at all outfall lines from the well so that the amount of geothermal energy recovered may be determined.
9. The measurement records must be maintained by the well owner and submitted to the Division Engineer upon request or at mutually agreed on times.
7. The well owner or operator shall operate and maintain measuring devices and continuous recorders at the well head and the outfall line to the San Juan River and any other outfall lines from the well and shall keep records from such recording devices.

NOTE: The modifications on Pages 1 and 2 of this permit were made on February 24, 2009, to more closely conform to the language in the decree entered by the Division 7 Water Court in Case No. 81CW160 and the stipulation agreed to by the State Engineer in Case No. 81CW160.  
By: JWB 2/24/2009



TOWN GEOTHERMAL PLANT DISCHARGE  
 2009-1 "T" IN 8" LINE WITH VALVES  
 UTM 13 S 321496E 4126182N  
 1106FT NORTH OF SOUTH LINE SEC. 13  
 1751FT EAST OF WEST LINE SEC. 13

REVISIONS	HOT WATER DISCHARGE LOCATION	
	WITHIN SECTION 13, T35N, R2W, NMPM TOWN OF PAGOSA SPRINGS, COLORADO	
SCALE	1" = 300'	SURVEYED BY DPS
DATE	9/17/09	DRAWN BY DPS
CLIENT	SPRINGS RESORT	FILED P05599
DAVIS ENGINEERING SERVICE, INC. P.O. BOX 1208 PAGOSA SPRINGS, COLORADO 81147 PHONE: (970) 264-5055 FAX: (970) 264-9210		