

AGREEMENT FOR TRANSFER OF A SEGMENT OF DRAIN E

Contract No. 08-DM-40-03230

THIS AGREEMENT (Agreement) is made this 25th day of June, 2008, between the United States of America, the Grand Valley Water Users Association, and the City of Grand Junction.

The United States acts in pursuance of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 472), acting by and through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as the "United States", represented by the officer executing this Agreement.

The Grand Valley Water Users Association, hereinafter referred to as the "Association", is a Colorado nonprofit corporation.

The City of Grand Junction, hereinafter referred to as the "City", is a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City's home rule charter, and acts through its City Manager.

RECITALS:

A. The United States represents that it owns Drain E and its associated easements, right-of-ways and interests in land (collectively "Drain E"), as part of the Grand Valley Project. The United States has not maintained or operated Drain E as an urban storm water drain (36 Stat. 835); however, it has been used by adjacent landowners as such over the years, without authorization from the United States.

B. The City is an urban service provider. One of the services provided by the City, in portions of the City, for its citizens, is storm water drainage.

C. The Association operates and maintains Drain E under the provisions of a contract with the United States, Contract No. ILR-644 dated January 27, 1945, and other contracts supplementary or amendatory thereto (collectively, the United States-Association Contract). For purposes of historical records and in order to establish maintenance standards, the United States-Association Contract is attached as **Exhibit A** and incorporated herein by reference.

D. Drain E is described by the United States as a United States right-of-way and facility of the Grand Valley Project, State of Colorado. The Drain E facility is a series of drainage ditches constructed on rights-of-ways reserved for the United States through the Association's Subscriptions for Stock ("Stock Subscriptions"). The Association operates and maintains the Grand Valley Project on behalf of the United States. Through the Stock Subscriptions (specifically, Article XV, Section 2 thereof), landowners obtained the use of Grand Valley Project water while granting to the United States rights-of-way necessary for the construction, operation and maintenance of the Grand Valley Project and its associated facilities. The Stock Subscriptions are recorded in the records of Mesa County, Colorado.

E. The original purpose of Drain E was to collect irrigation return flows of agricultural water from laterals associated with the Grand Valley Project, which consist of seepage, surface drainage and unused waters, from the lands served by the Grand Valley Project ("Irrigation Drainage"). The United States has concluded that Drain E currently carries a large volume of unauthorized storm water discharges from streets, undeveloped areas and residential and light commercial subdivisions within the City limits. The balance of Drain E's volume is from Irrigation Drainage.

F. Local governments, as part of the land use and development review processes, require that developers plan for storm water drainage. Historically, developers have constructed storm water discharges into Drain E without authorization from the United States. The United States has determined that it is not authorized to operate and maintain Drain E for non-agricultural use.

G. In order to accommodate the storm water drainage needs of the community and recognizing that residential, commercial and other development will continue to expand into the area historically served by Drain E, the City has indicated its willingness to, pursuant to the terms of this written Agreement, accept future ownership, maintenance and operational control of a segment of Drain E, as specifically described in the 26 Road and G 1/2 Road Storm Drain Exhibit Map, attached hereto as **Exhibit B** and incorporated herein by reference. The segment of Drain E that is the subject of this Agreement is identified on Exhibit B as the "Current Alignment Of This Segment of Drain E," and it extends from "STA 11+69" on the east to the point at which the segment discharges to Leach Creek on the west. This segment of Drain E shall be referred to in this Agreement as the "Drain E Segment."

H. The United States has determined that ownership of the Drain E Segment is no longer necessary and that the capacity for Irrigation Drainage may be preserved by transferring ownership to the City while reserving a right to continue to discharge Irrigation Drainage into the Drain E Segment.

NOW, THEREFORE, the parties agree as follows:

1. With respect to the United States, the parties agree as follows:

A. The United States shall execute and deliver a quit claim deed to the City for all of its right, title, and interest in the Drain E Segment, as described in this Agreement, except as may otherwise be stated herein. The parties further agree that the Association shall also execute a quit claim deed to the City for any right, title, and interest it may have in the Drain E Segment, except as may otherwise be stated herein. The quit claim deeds shall be in the form attached hereto as **Exhibits C and D**, and shall be collectively referred to herein as the "Quit Claim Deeds."

B. The United States has conducted a Hazardous Waste Survey for the Drain E Segment. The survey, dated April 9, 2008, is attached as **Exhibit E** and incorporated herein by reference.

C. The United States declares, states and affirms that it and its employees and agents are aware of no other data or information showing that the Drain E Segment contains any materials or substances in quantities regulated or prohibited by any federal or State of Colorado law, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSA) or oils, gasoline or other hydrocarbons and/or petrochemicals. Effective on the date of delivery of the Quit Claim Deeds to the City, the United States shall not be liable to the City for damages of any kind arising out of any act, omission, or occurrence relating to the Drain E Segment, except for damages caused by acts of negligence committed by the United States or by its employees, agents or contractors prior to the date of delivery of the Quit Claim Deeds ("U.S. Pre-Delivery Damages"). Nothing herein shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act, 28 U.S.C. 2671, et. seq.

2. With respect to the City, the parties agree as follows:

A. Effective on the date of delivery of the Quit Claim Deeds to it, the City agrees to accept liability for and relating to any and all loss or damage of every description or kind whatsoever from the City's construction, operation and maintenance of the Drain E Segment after the date of delivery.

B. On and after the date of delivery of the Quit Claim Deeds to it, the City agrees to accept existing amounts and patterns of Irrigation Drainage water into the Drain E Segment, until such time that there is no Irrigation Drainage to discharge. The point of discharge of the Irrigation Drainage into the Drain E Segment will occur at the point identified on Exhibit B as

the “Point of Irrigation Discharge” (STA 11+69). The maximum amount of the Irrigation Drainage is estimated to be 51 c.f.s.; provided, however, that the parties acknowledge that such amount is an estimate and the amount of actual Irrigation Drainage may exceed such estimated amount in the future. The City may modify the alignment of the Drain E Segment, as shown on Exhibit B, provided that the new alignment shall be designed and constructed in a manner that will accept the Irrigation Drainage discharged to the Drain E Segment by the Association.

C. The City agrees that the Drain E Segment is quitclaimed by the United States and the Association pursuant to the Quit Claim Deeds and acquired by the City on an “AS-IS, WHERE-IS” basis with no representations, warranties or covenants of any kind (other than what is stated in Paragraph 1.C., above, and in Paragraph 3.C., below), express or implied, either oral or written, made by the United States or the Association, or any agent or representative of such parties, including without limitation: (i) the physical or structural condition of the Drain E Segment; (ii) the compliance of the Drain E Segment with any laws, ordinances, or regulations of any federal, state, local or other governmental entity; (iii) title to the Drain E Segment; and (iv) the suitability or fitness of the Drain E Segment for any purpose, including without limitation use as a storm water facility, all of which representations, warranties and covenants the United States and the Association hereby expressly disclaim.

D. The City agrees to assume all costs incident to the operation and maintenance of the Drain E Segment, subsequent to the date the Quit Claim Deeds are delivered to the City.

3. With respect to the Association, the parties agree as follows:

A. Effective on the date of delivery of the Quit Claim Deeds to the City, the Association shall have no further obligation, under the United States-Association Contract or otherwise, to operate or maintain the Drain E Segment. The Association agrees that it will, on an as-needed basis and for a period of two (2) years after the effective date of this Agreement, consult with the City, at no cost to the City, regarding the operation and maintenance of the Drain E Segment. The Association further agrees to provide the City with copies of any and all maps, plats, drawings and/or other documents in its possession related to the operation and maintenance of the Drain E Segment.

B. After the Quit Claim Deeds are delivered to the City, the Association shall be entitled to continue to discharge Irrigation Drainage of agricultural water into the Drain E Segment in connection with the operation of the Grand Valley Project, pursuant to the provisions of Paragraph 2.B., above. Such Irrigation Drainage may continue for as long as the Association operates the Grand Valley Project. The parties acknowledge that the Irrigation Drainage discharge amount set forth in Paragraph 2.B. is an estimated amount, and that the actual amount discharged may vary from such estimated amount. The City shall not impose any charges, fees or other costs against the Association for Irrigation Drainage discharges into the Drain E Segment.

C. Effective on the date of delivery of the Quit Claim Deeds to the City, the Association shall not be liable to the City for damages of any kind arising out of any act, omission or occurrence relating to the Drain E Segment, except for damages caused by acts of negligence committed by the Association or its employees or agents prior to the date of delivery of the Quit Claim Deeds (“Association Pre-Delivery Damages”). The Association shall indemnify the City and hold the City harmless from any Association Pre-Delivery Damages. Nothing herein shall be deemed to be a waiver, extension, or modification of any statutes of limitation or other defenses relating to any alleged acts of negligence by the Association.

4. With respect to this Agreement, all parties agree:
- A. The execution and delivery of the Quit Claim Deeds and the other obligations of the parties under this Agreement shall be done and performed as soon as reasonably possible. The parties shall schedule a mutually agreeable date for delivery of the Quit Claim Deeds, and the executed Quit Claim Deeds shall be delivered to the City on such date.
 - B. This Agreement shall be binding on the successors and assigns of the parties hereto, and all persons claiming through the parties.
 - C. Each party warrants and represents to the other that such party has taken all actions necessary to make this Agreement a valid obligation binding upon the party, and that all requirements of any applicable law, regulation, order, Charter, ordinance or statute have been met. By signing below, each party warrants that it is authorized to sign on behalf of the party that he/she represents.
 - D. This Agreement constitutes the complete and entire agreement of the parties.
 - E. This Agreement is for the benefit of the parties; any direct or indirect benefit to a third party shall be deemed incidental.
 - F. Failure of any party to enforce any provision of this Agreement shall not act as a waiver to prevent enforcement of the same provisions at some later time.
 - G. This Agreement was produced as a result of negotiations between the parties and shall not be construed against any party as the drafter of this Agreement.
 - H. This Agreement shall be effective on the last date that it is executed by any of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

UNITED STATES OF AMERICA

GRAND VALLEY WATER USERS ASSOCIATION

By: *Larry Walkoviak*
 Larry Walkoviak, Regional Director
 Upper Colorado Region
 Bureau of Reclamation
 Department of the Interior

By: *D. Kim Albertson*
 D. Kim Albertson, President

CITY OF GRAND JUNCTION

ATTEST:

By: *Laurie M. Kadrich*
 Laurie M. Kadrich, City Manager

Debra M. Kemp
~~Stephanie Tuin, City Clerk~~
 Debra M. Kemp, Deputy City Clerk

- Exhibit A: United States-Association Contract
- Exhibit B: 26 Road and G 1/2 Road Storm Drain Exhibit Map
- Exhibit C: Quit Claim Deed - United States
- Exhibit D: Quit Claim Deed - Association
- Exhibit E: Hazardous Waste Survey



APPROVED

[Signature]
 Regional Solicitor's Office

EXHIBIT A

Grand Valley Project

440
232. -
Jan 27, 1945

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

GRAND VALLEY PROJECT, COLORADO

AMENDATORY CONTRACT BETWEEN THE UNITED STATES AND THE GRAND VALLEY
WATER USERS' ASSOCIATION

Synched IIR-644
See Also
Supplemental Contract
Dated 4/27/84

I N D E X

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A complete copy of Contract No. IIR-644 can be obtain from the Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Dr., Suite 106, Grand Junction, CO 81506.

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

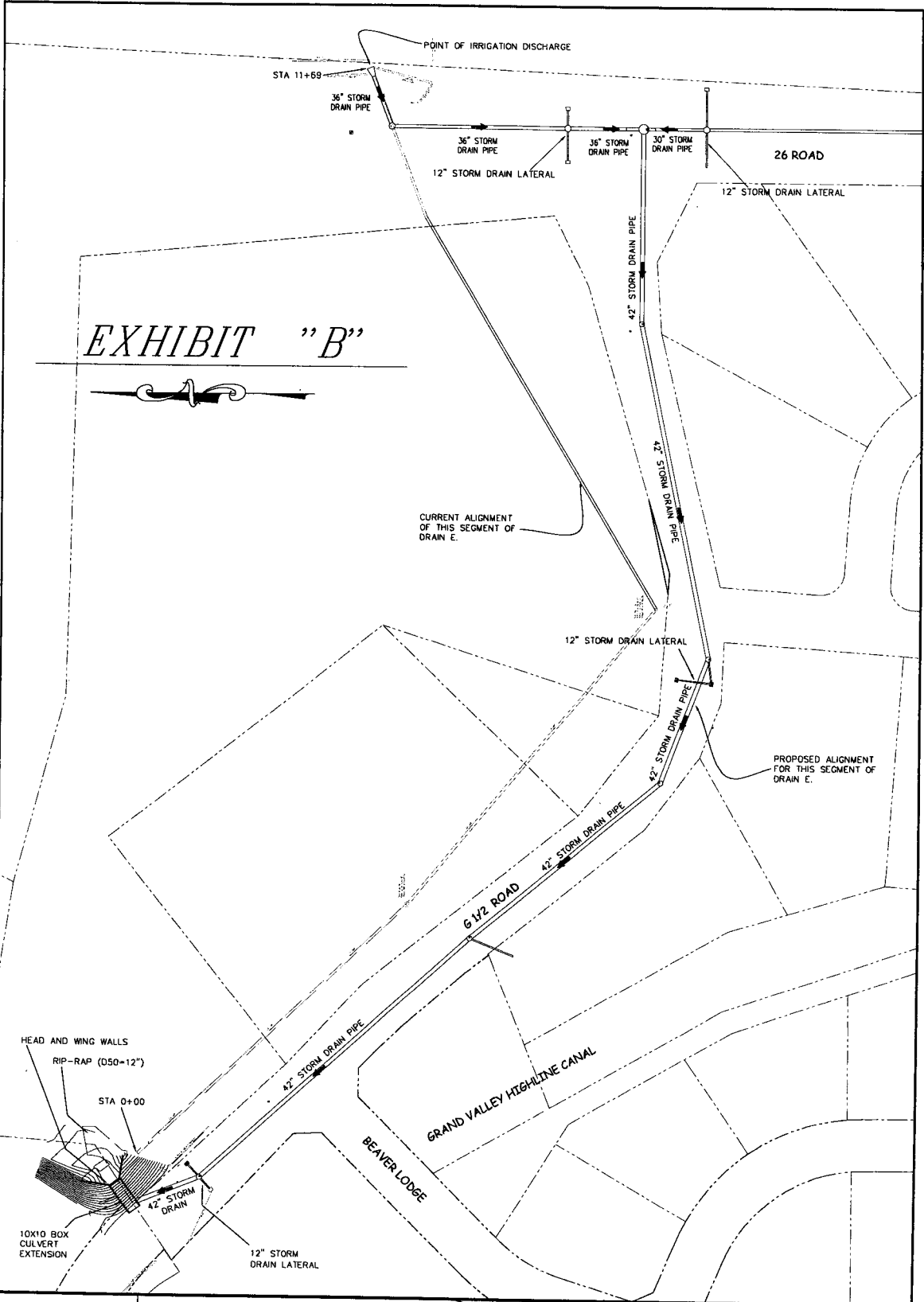


EXHIBIT "B"

DRAWN BY: JCS
 DATE: 2008
 NOT TO SCALE
 APPR. BY: LC
 PROPOSED-G.5RD.DWG

PUBLIC WORKS & UTILITIES
 ENGINEERING DIVISION
 26 ROAD AND G 1/2 ROAD
 STORM DRAIN EXHIBIT MAP



Exhibit C

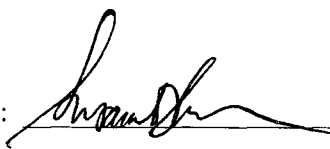
QUIT CLAIM DEED

The UNITED STATES OF AMERICA, acting pursuant to the provisions of the Act of June 17, 1902 (32 State. 388), and Acts and regulations amendatory thereof or supplementary thereto, which Acts are commonly known and referred to as Reclamation Laws, particularly, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), GRANTOR, for One Dollar (\$1.00) and other good and valuable consideration, hereby quitclaims and conveys to the CITY OF GRAND JUNCTION, GRANTEE, a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City of Grand Junction's home rule charter, with its principal offices located at 250 North 5th Street, Grand Junction, Colorado 81501, all of its right, title, and interest in and to the following described interests in real property located in Mesa County, Colorado:


Any and all easements, rights-of-way and other interests in land for a segment of the water drainage system known as Drain E, a facility of the Grand Valley Project, a federal reclamation project, as shown on the 26 Road and G1/2 Road Storm Drain Exhibit B Map which is attached hereto and made a part hereof. This segment of the Drain E drainage system is located in Section 34, Township 1 North, Range 1 West, Ute P.M. This segment of the Drain E drainage system is identified on the attached Exhibit B Map as the "Current Alignment Of This Segment Of Drain E," and it extends from "STA 11+69" on the east to the point at which the segment discharges to Leach Creek on the west. This segment of the Drain E drainage system was constructed on interests in land reserved for the United States through the Grand Valley Water Users Association's Subscriptions for Stock (Article XV, Section 2). The easements, rights-of-way and other interests in land for this segment of the Drain E drainage system encompass approximately 6.1 acres.

RESERVING TO THE GRANTOR, as provided in Paragraphs 2.B. and 3.B. of the Agreement for Transfer of a Segment of Drain E, Contract No. 08-LM-40-03230, dated June 25, 2008, between the City of Grand Junction, the Grand Valley Water Users Association, and the United States of America ("Transfer Agreement"), the right to continue to discharge Irrigation Drainage (as defined in the Transfer Agreement) into Drain E. This deed is intended to fulfill the terms of the Transfer Agreement.

WITNESS the hand of the Grantor, this 25th day of June, 2008.

Approved: 
Office of the Regional Solicitor

UNITED STATES OF AMERICA

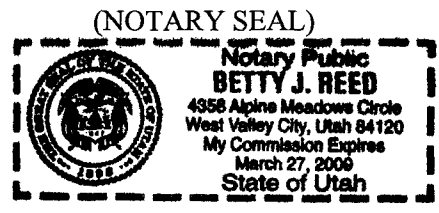
By: 
Larry Walkoviak,
Regional Director
Upper Colorado Region
Bureau of Reclamation
Department of the Interior

ACKNOWLEDGMENT

State of Utah }
 } ss.
County of Salt Lake }

On the 25th day of June, 2008, personally appeared before me Harry Wolkovsk, known to me to be the Regional Director of the Bureau of Reclamation, Upper Colorado Region, United States Department of the Interior, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of the United States of America.

Betty J. Reed
Notary Public in and for
the State of Utah
Residing at West Valley Utah
My commission expires: March 27, 2009



Revised 4/14/08

EXHIBIT D

QUIT CLAIM DEED

The GRAND VALLEY WATER USERS ASSOCIATION (Association), a Colorado nonprofit corporation, GRANTOR, for One Dollar (\$1.00) and other good and valuable consideration, hereby sells and quitclaims to the CITY OF GRAND JUNCTION, GRANTEE, a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City of Grand Junction's home rule charter, with its principal offices located at 250 North 5th Street, Grand Junction, Colorado 81501, all of its right, title and interest in and to the following described interests in real property located in Mesa County, Colorado:

Any and all easements, rights-of-way and other interests in land for a segment of the water drainage system known as Drain E, a facility of the Grand Valley Project, a federal reclamation project, as shown on the 26 Road and G1/2 Road Storm Drain Exhibit B Map which is attached hereto and made a part hereof. This segment of the Drain E drainage system is located in Section 34, Township 1 North, Range 1 West, Ute P.M. This segment of the Drain E drainage system is identified on the attached Exhibit B Map as the "Current Alignment Of This Segment Of Drain E," and it extends from "STA 11+69" on the east to the point at which the segment discharges to Leach Creek on the west. This segment of the Drain E drainage system was constructed on interests in land reserved for the United States through the Grand Valley Water Users Association's Subscriptions for Stock (Article XV, Section 2). The easements, rights-of-way and other interests in land for this segment of the Drain E drainage system encompass approximately 1.1 acres.

RESERVING TO THE GRANTOR, as provided in Paragraphs 2.B. and 3.B. of the Agreement for Transfer of a Segment of Drain E, Contract No. 08-LM-40-03230, dated June 25, 2008, between the City of Grand Junction, the Grand Valley Water Users Association, and the United States of America ("Transfer Agreement"), the right to continue to discharge Irrigation Drainage (as defined in the Transfer Agreement) into this segment of Drain E. This deed is intended to fulfill the terms of the Transfer Agreement.

WITNESS the hand of the Grantor, this 2nd day of June, 2008.

GRAND VALLEY WATER USERS
ASSOCIATION

By: D. Kim Albertson
President

ATTEST:

Daniel E. Cook
Secretary

ACKNOWLEDGMENT

State of Colorado }
 } ss.
County of Mesa }

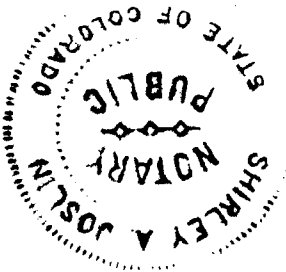
The foregoing Quit Claim Deed was acknowledged before me this 2 day of June, 2008,
by D. Kim Albertson, as President and _____
Daniel E. Crowl as Secretary of Grand Valley Water Users Association, Grantor.

My commission expires: 7/31/2010

Witness my hand and official seal.

Shirley A. Joslin
Notary Public

SEAL



**LOW-INTENSITY
RURAL, RESIDENTIAL, CROP / AGRICULTURAL, ETC.
REAL PROPERTY QUESTIONNAIRE CHECKLIST
LEVEL I SURVEY**

EXHIBIT E

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or unknown are circled. Indicate whether a Level II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

BACKGROUND INFORMATION

REGION Upper Colorado PROJECT Grand Valley Project

FEATURE Drain E LOCATION Mesa County, near 26 Road & G1/2 Road (see map)

PARCEL NO.

DATE OF SURVEY April 9, 2008 TELE. NO.

OWNERS Reclamation

QUESTIONS	OWNER / OCCUPANT			OBSERVED DURING VISUAL INSPECTION		
1. Currently or in the past has the property, or any adjoining property, been used for industrial purposes such as: a gasoline station, motor repair facility, junkyard, landfill, or recycling facility?	Yes	No	Unk	Yes	<u>No</u>	Unk
2. Are there currently or to the best of your knowledge has there been any damaged or discarded vehicle batteries, pesticides, paints, or other chemicals (disregard petroleum Products) in individual containers of greater than 25 gallons in volume, or 100 gallons in the aggregate, been stored or used at the facility or on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk
3. Are there currently or to the best of your knowledge has there been any chemical materials stored or used at the facility or on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk
4. Has fill material been brought onto the property that originated at a hazardous material or contaminated site?	Yes	No	Unk	Yes	No	<u>Unk</u>
5. Are there currently or to the best of your knowledge has there been any pits, ponds, or lagoons located on the property associated with waste treatment or disposal?	Yes	No	Unk	Yes	<u>No</u>	Unk
6. Are there currently or has there ever been any significantly stained soil on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk
7. Are there currently or has there ever been any leaking storage tanks located above or below the surface?	Yes	No	Unk	Yes	<u>No</u>	Unk
8. If the property is served by a private well or non-public water system, have contaminants been identified in the well or system that exceed guidelines applicable to the water system?	Yes	No	Unk	Yes	<u>No</u>	Unk
9. To the best of your knowledge have any unidentified waste Materials, hazardous substances, petroleum products, tires, automotive or industrial batteries, industrial power transformers been dumped, buried, or burned on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk
10. To the best of your knowledge has any of the property been used for a spray operation base, air strip, or equipment storage area?	Yes	No	Unk	Yes	<u>No</u>	Unk
11. Are there currently or to the best of your knowledge has there been any structures containing asbestos located on the property? Has any asbestos been buried on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk
12. Is there evidence of chemical contamination e.g., vegetation different from the surrounding vegetation for no apparent reason, bare ground, sterile water bodies, etc. located on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk

13. Are there transformer (s), capacitor (s), or hydraulic equipment located on the property? Yes No Unk Yes No Unk

PUBLIC RECORDS / HISTORICAL SOURCES INQUIRY

1. Are there any lands which fall within the three classifications and distances indicated below that are of record with any Federal Government agency? Yes No Unk

National Priorities List	within 1.0 mile	(1.6 km)	Yes	<u>No</u>	Unk
CERCLIS List	within 0.5 mile	(0.8 km)	Yes	<u>No</u>	Unk
RCRA TSD Facility	within 1.0 mile	(1.6 km)	Yes	<u>No</u>	Unk

2. Are there any lands similar to lands which fall within the four classifications and distances indicated below that are of record with any State Government agency? Yes No Unk

National Priorities List	within 1.0 mile	(1.6 km)	Yes	<u>No</u>	Unk
CERCLIS List	within 0.5 mile	(0.8 km)	Yes	<u>No</u>	Unk
RCRA TSD Facility	within 1.0 mile	(1.6 km)	Yes	<u>No</u>	Unk
Solid Waste / Landfill	within 0.5 mile	(0.8 km)	Yes	<u>No</u>	Unk

Unk = Unknown

CERTIFICATION (check one)

I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination.

On the basis of the information collected to complete this form, it is reasonable to conclude that there is a potential for contaminants, or the effects of contaminants present on the subject property. A "Level II Survey" will be performed.

Examiner

To the best of my knowledge the above statements are true and correct.

Signed SKM'Call Print Name Stephen K McCall

Date 4/9/08 Title Edu. Spe.

Approved by [Signature] Print Name Ed Warner

Date 4-9-08 Title Resources Division Manager

COMMENTS TO QUESTIONS and MISCELLANEOUS COMMENTS

Drain in this area has been placed in pipe. Land use is a plant nursery and roadway. No visible signs of potential hazardous waste.

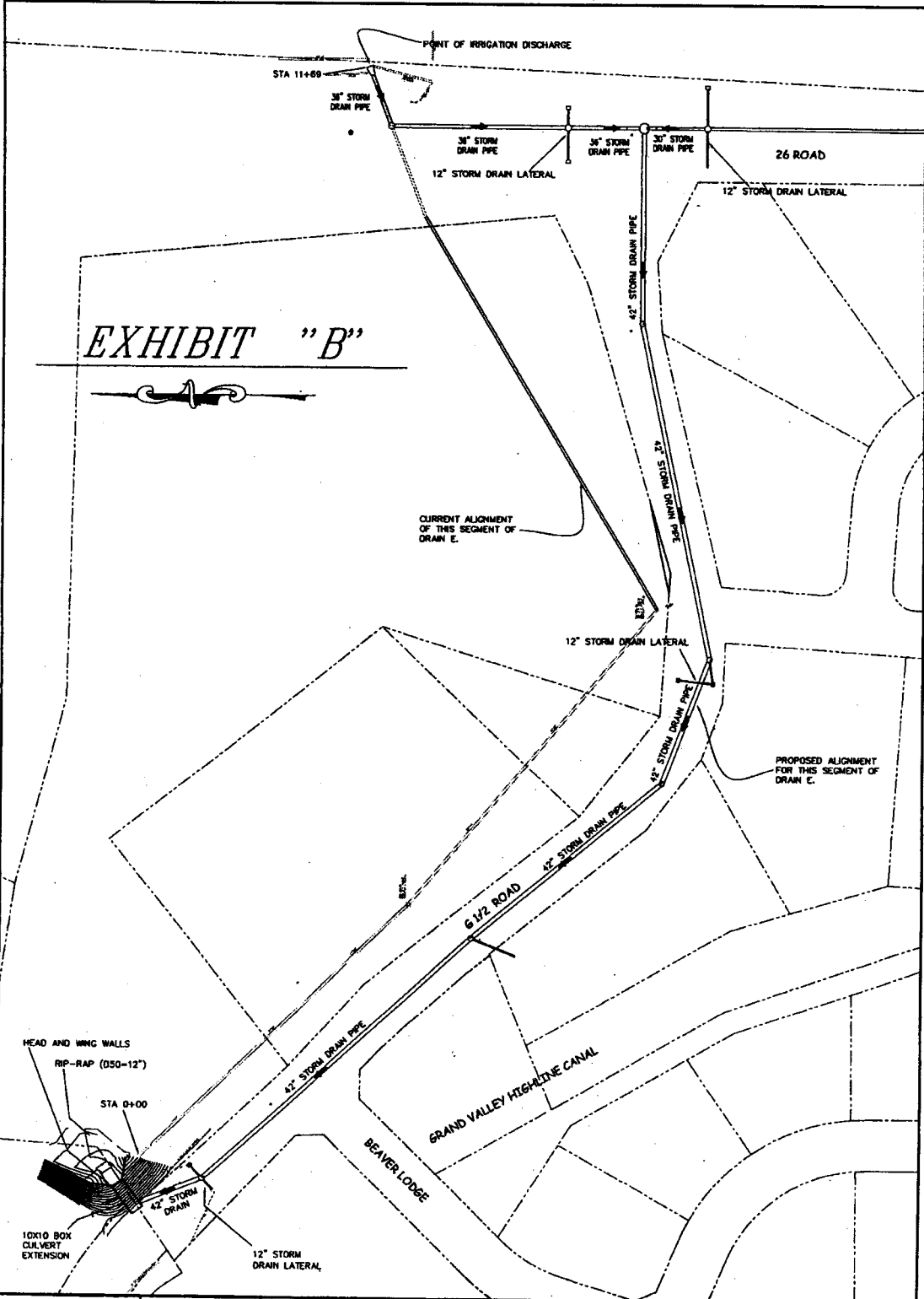


EXHIBIT "B"

DRAWN BY: JCS
 DATE: 2008
 NOT TO SCALE
 APPR. BY: LC
 PROPOSED-C.5RD.DWG

**PUBLIC WORKS & UTILITIES
 ENGINEERING DIVISION**
 26 ROAD AND C 1/2 ROAD
 STORM DRAIN EXHIBIT MAP

