

DRG91PLC

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT (REVOCABLE PERMIT)

NAME OF AGENCY OR CONTRACTOR: DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CONTRACT NO. 30580,
PIPELINE CROSSING AT 23 ROAD, MAIN LINE, MILE POST 453

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1991

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

Contract No. 305803

**PIPE LINE CROSSING AGREEMENT
(PUBLIC ENTITY)**

THIS AGREEMENT, Made and entered into this 8th day of January, 1991, by and between THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware (hereinafter called "Railroad Company"), party of the first part, and CITY OF GRAND JUNCTION, a municipal corporation of the State of Colorado, 250 North Fifth Street, Grand Junction, Colorado 81501-2668, (hereinafter called "Licensee"), party of the second part,

WITNESSETH:

Section 1. The Railroad Company, for and in consideration of the covenants and agreements herein set out, to be by Licensee kept, observed and performed, hereby licenses and permits the Licensee, subject to the terms and conditions hereinafter stated, to construct and thereafter to maintain and operate the pipe line or pipe lines hereinafter described (hereinafter called "Pipe Line") upon or along or across the right of way and under the track or tracks of the Railroad Company as herein specified, to-wit:

Description:

An 15 inch diameter P.V.C. waste water pipeline crossing encased in 85 feet of 23 inch welded smooth steel casing pipe crossing beneath the right of way and main line trackage of the Railroad Company opposite Mile Post 453 + 2153 feet at Dunham, Mesa County, Colorado as shown on the attached map Dwg. No. G-539.

The foregoing License is subject and subordinate to the prior and continuing right and obligation of the Railroad Company to use and maintain its entire Railroad right of way in the performance of its public duty as a common carrier, and is also subject to the right and power of the Railroad Company to construct, maintain, repair, renew, use, operate, change, modify or relocate additional railroad tracks, telegraph, telephone, signal or other wire lines, pipe lines, and other facilities, structures or improvements upon, along or across any or all parts of said right of way and said Pipe Line, all or any of which may be freely done at any time or times by the Railroad Company, without liability to the Licensee or any other party for compensation or damages. In the event the Railroad Company elects to construct additional railroad tracks, structures or improvements upon its right of way and over and/or across said Pipe Line, the Licensee shall, upon notice of such election, extend and/or reconstruct said Pipe Line according to such plans and specifications as the Railroad Company may prescribe.

The foregoing License is also subject to all outstanding superior rights (including those in favor of telegraph and telephone companies, lessees of said right of way and others) and the right of the Railroad Company to renew and extend the same.

Section 2. The Licensee agrees to use the Pipe Line for the following purpose and for no other, to-wit:

Conveyance of water.

Section 3. The Licensee agrees to pay to the Railroad Company, in advance, the sum of \$500.00 as consideration for the License herein granted.

Section 4. The Pipe Line shall be constructed, operated, maintained, repaired, extended, renewed and/or reconstructed by the Licensee in strict conformity with specifications prescribed by the Chief Engineer of the Railroad Company and in such manner and according to such plans as said Chief Engineer may deem best for the safety and proper protection of the tracks, roadbed and premises of the Railroad Company.

The Licensee shall keep and maintain the soil over the Pipe Line thoroughly compacted and the grade even with the adjacent surface of the ground.

All work performed on said right of way in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line shall be done under the supervision and to the satisfaction of the Railroad Company.

Prior to the commencement of any work by the Licensee in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line where it passes underneath the roadbed and tracks of the Railroad Company, the Licensee shall submit to the Railroad Company plans setting out the method and manner of handling the work, and shall not proceed with the work until such plans shall have been approved by the Chief Engineer of the Railroad Company and then only under the supervision of said Chief Engineer, or his authorized representative. The Railroad Company shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its said track or tracks during the time of construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line, and in the event the Railroad Company provides such support, the Licensee shall pay to the Railroad Company, within 15 days after bills shall have been rendered therefor, all expense incurred by the Railroad Company in connection therewith, which said expense shall include all assignable costs.

Section 5. The Licensee shall notify the Railroad Company at least 48 hours in advance of the commencement of any work upon said right of way in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line except in cases of emergency when work is necessary to avert loss or damage to the property of the Railroad Company.

Section 6. The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal, and any and all modification, revision, extension, relocation, removal or reconstruction of the Pipe Line, including any and all expense which may be incurred by the Railroad Company in connection therewith for supervision or inspection, or otherwise.

Section 7. The Railroad Company, however, shall have the right, if it so elects, though it shall be under no obligation whatsoever to do so, to make necessary or proper repairs, or to reconstruct said Pipe Line, notwithstanding the obligation of the Licensee to maintain, repair and reconstruct, and, in the event the Railroad Company at any time elects to repair or reconstruct said Pipe Line, the Licensee shall, upon presentation of estimate, advance such sum of money as the Chief Engineer of the Railroad Company may deem necessary for such repair or reconstruction, or, upon bill being rendered for work already done, the Licensee shall reimburse the Railroad Company for the cost of such repair or reconstruction.

The optional right of the Railroad Company at any time to make repairs or to reconstruct said Pipe Line, shall in no manner or degree relieve the Licensee from the responsibility to the Railroad Company or other persons or corporations for the

failure of the Licensee to properly maintain or reconstruct said Pipe Line or any structure which the Licensee agrees hereunder to maintain and reconstruct.

Section 8. The Licensee shall, at its sole expense, make any and all modifications or changes in the Pipe Line, or move all or any part thereof to such new location as may be required by the Railroad Company at any time, in connection with the construction, maintenance, repair, renewal, use, operation, change, modification or relocation of railroad tracks, telegraph, telephone, signal or other pole and wire lines, pipe lines and other facilities, structures or improvements of the Railroad Company, upon said right of way.

All the terms, conditions, and stipulations of this Agreement, with reference to the construction, maintenance, repair and renewal of the Pipe Line on said right of way, in the location hereinbefore described, shall apply to the Pipe Line as modified, changed or relocated within the contemplation of this section.

Section 9. The Pipe Line shall be constructed and, at all times maintained, repaired, extended, reconstructed, renewed and operated, in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and premises of the Railroad Company, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 10. Licensee shall fully pay for all materials, joined or affixed to, and labor performed upon, said right of way in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against said right of way for any work done or materials furnished thereon, at the instance or request, or on behalf of the Licensee, and the Licensee shall indemnify and hold harmless the Railroad Company from and against any and all liens, claims, demands, costs and expenses of whatsoever nature, in any way connected with or growing out of such work done, labor performed, or materials furnished.

The Licensee shall promptly pay or discharge all taxes, rates, charges and assessments levied upon, in respect to, or on account of the Pipe Line so as to prevent the same becoming a charge or lien upon said right of way, or any other property of the Railroad Company, and so that the taxes, charges and assessments levied upon or in respect to said right of way and other property of the Railroad Company shall not be increased because of the location, construction or maintenance of the Pipe Line, or any improvement, appliance or fixture connected therewith, placed upon said right of way, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the right of way, or other property of the Railroad Company, then the Licensee shall pay to the Railroad Company an equitable proportion of such taxes, determined by the value of Licensee's property upon said right of way as compared to the entire value of said right of way.

Section 11. In the event the Licensee shall take down any fence of the Railroad Company or in any manner move or disturb any of the other property of the Railroad Company in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line, then and in that event the Licensee shall as soon as possible, and at its sole expense, restore such fence and/or such other property to the same condition as it was in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and save harmless the Railroad Company from and against any and all

liability, loss, damages, claims, including claims of negligence against Railroad Company, demands, costs and expenses of whatsoever nature, including claims of negligence of Railroad Company, and including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbing of any of the other property of the Railroad Company.

Section 12. The Licensee shall indemnify and hold harmless the Railroad Company from and against any and all liability, loss, damage, claims, including claims of negligence against Railroad Company, demands, cost and expenses of whatsoever nature, including claims of negligence of Railroad Company, and including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever (including employees and passengers of the Railroad Company) or damage to or loss of or destruction of property whatsoever (including damage to the roadbed, tracks, equipment, or other property of the Railroad Company or property in its care or custody) whether such injury, death, loss, destruction or damage grows out of or arises from the bursting of or leaks in the Pipe Line, or the explosion or ignition of gas or oil carried therein, or escaping therefrom, or in any other way whatsoever is due to, or arises because of, the existence of the Pipe Line or the operation, construction, maintenance, repair, extension, renewal, modification, reconstruction, revision, relocation or removal of the Pipe Line or any part thereof, or to the contents therein or therefrom. And the Licensee does hereby release the Railroad Company from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

Neither the right of supervision by the Railroad Company of the location, construction, maintenance, repair, extension, renewal, reconstruction or relocation of the Pipe Line, nor the exercise or failure to exercise said right, nor the approval or failure to disapprove by the Railroad Company of the location, construction, maintenance, repair, extension, renewal or reconstruction of said Pipe Line, nor the election of the Railroad Company to repair or reconstruct the whole or any part of said Pipe Line shall be deemed a waiver of the obligation of the Licensee contained in this section, or a release therefrom or from any other obligation of this Contract resting upon said Licensee that is hereinbefore or hereinafter expressed or implied.

Section 13. For purposes of the indemnity provisions in Sections 11 and 12 above, although not waiving the protections provided by the Governmental Immunity Act, C.R.S., Sec. 24-10-101 et. seq. (as amended), the Licensee hereby does waive the damage limitations of C.R.S., Sec. 24-10-113 (as amended) to the extent of the coverage provided by the insurance required in Section 14 below.

Section 14. For the further protection of the Railroad Company, the Licensee, before any work is begun, agrees to procure and maintain at Licensee's own expense, in a company acceptable to the Railroad Company, Comprehensive General Liability Insurance (including Automobile) in minimum limits of \$2,000,000 each person, \$2,000,000 each accident for bodily injury, and \$2,000,000 for property damage, which policy shall specifically insure the liability assumed by the Licensee under Sections 11 and 12 of this Agreement, as modified by the provisions of Section 13. Licensee shall furnish the Railroad Company Certificates of Insurance, in duplicate, evidencing such insurance to be in full force and effect and that the same will not be cancelled without at least fifteen (15) days' advance written notice by Insurance Company to the Railroad Company's Insurance Department, P.O. Box 5482, Denver, Colorado 80217. See Exhibit "A" attached hereto and made a part hereof.

Section 15. In the event the Railroad Company shall dispose of any of its property upon which the Pipe Line is located, as herein provided, the license or permit herein granted with respect to the portion of the Pipe Line located upon the property so disposed of, shall forthwith cease and determine.

Section 16. Disuse of the Pipe Line at any time, continuing for a period of one year, shall constitute an abandonment thereof, and in the event of such an abandonment the Railroad Company may, at its option, terminate this Agreement.

If the Licensee shall fail to keep and perform all or any of the covenants and agreements herein contained, to be by it kept and performed, or if the Licensee shall fail to make any of the payments which it is obligated to make hereunder, and such default shall continue for a period of thirty (30) days after written notice from the Railroad Company to the Licensee, specifying such default, then the Railroad Company may, at its option, forthwith terminate this Agreement.

Notwithstanding anything to the contrary herein contained, it is agreed that if at any time the maintenance and operation of said Pipe Line shall be inconsistent with the use by the Railroad Company of its right of way for railroad purposes, this License shall immediately cease, ipso facto.

Section 17. Within ninety (90) days after the termination of this Agreement howsoever, the Licensee shall, at its sole expense, remove the Pipe Line from those portions of said right of way not occupied by the roadbed and track or tracks of the Railroad Company and shall restore, to the satisfaction of the Railroad Company, said portions of said right of way to as good condition as they were in at the time of the construction of the Pipe Line, and if the Licensee fails so to do, the Railroad Company may do such work of removal and restoration at the expense of the Licensee. The Railroad Company may, at its option, upon such termination, at the expense of the Licensee, remove the portions of the Pipe Line located underneath the said roadbed and track or tracks and restore said roadbed to as good condition as it was in at the time of the construction of the Pipe Line, or it may permit the Licensee to do such work of removal or restoration under the supervision of the Railroad Company. In the event of the removal of the Pipe Line as in this section provided, the Railroad Company shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall in no manner prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee.

Nothing in this section contained shall obligate the Licensee to remove the Pipe Line because of the termination of this License under the provisions of Section 15 hereof, in cases where the Licensee shall have made arrangements for the continuation of the Pipe Line with the grantee or grantees of the Railroad Company.

Section 18. The waiver by the Railroad Company of the breach of any condition, covenant or agreement herein contained, to be kept, observed and performed by the Licensee, shall in no way impair the right of the Railroad Company to avail itself of any subsequent breach thereof.

Section 19. The Licensee shall not sublet, in whole or in part, the License herein granted, and shall not assign this Agreement without the written consent of the Railroad Company, and it is agreed that any transfer or assignment, or attempted transfer or assignment of this Agreement, or any of the rights hereby granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and, at the option of the Railroad Company, shall terminate this Agreement.

Section 20. This Agreement shall take effect as of the _____ day of _____, 19____, and shall continue in full force and effect until terminated as herein provided.

Section 21. Subject to the provisions of Section 19 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

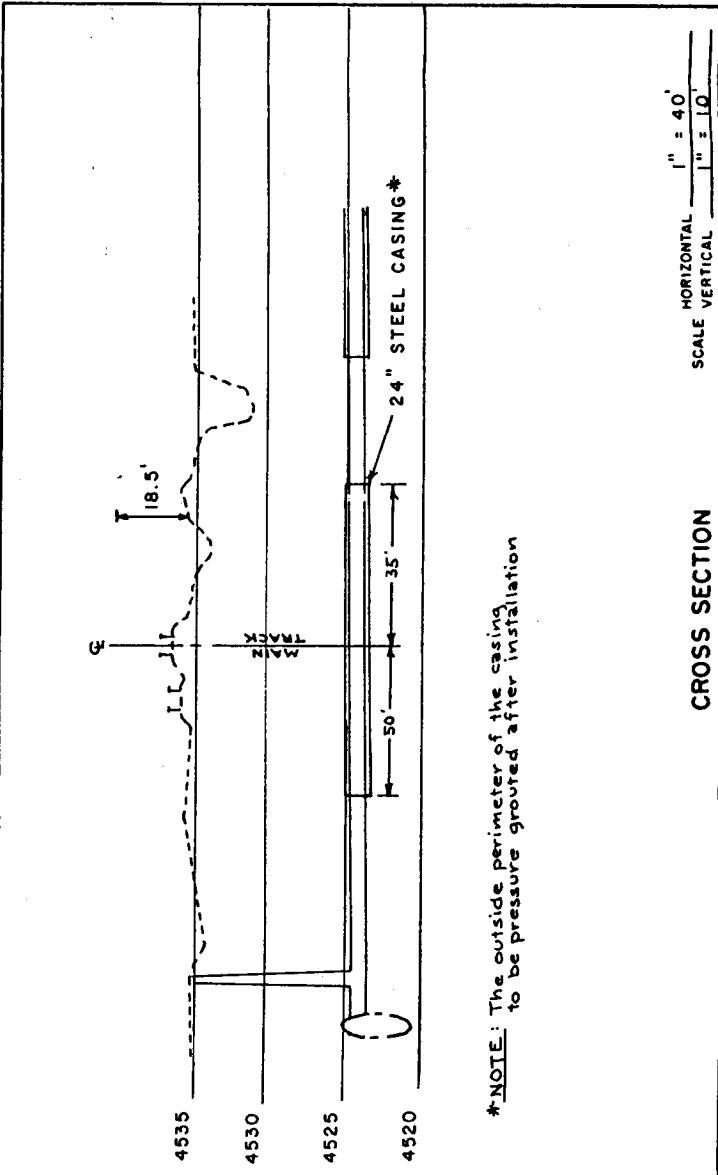
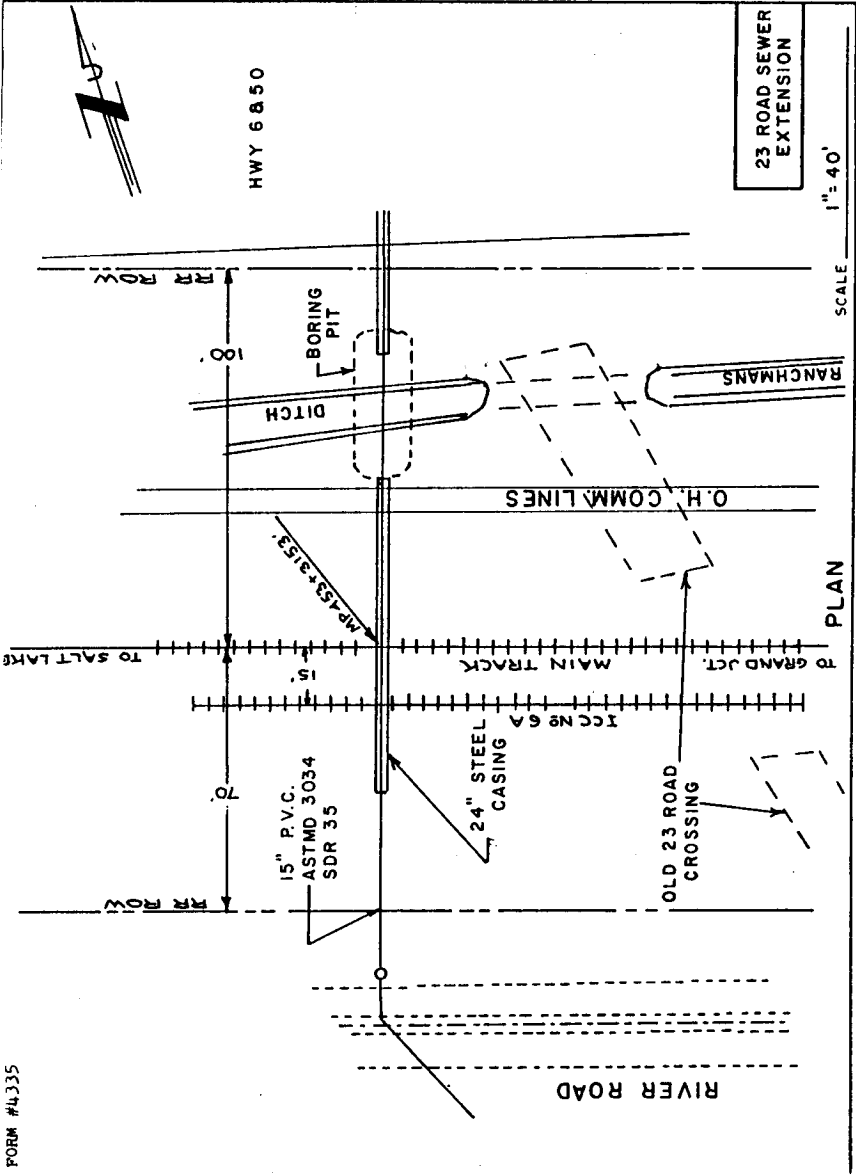
By A. L. Mariano
~~Chief Engineer~~ General Manager

ATTEST:

CITY OF GRAND JUNCTION

Theresa J. Martone
Deputy City Clerk

By William E. McHenry
Mayor



*NOTE: The outside perimeter of the casing to be pressure grouted after installation

PIPELINE CROSSING SPECIFICATIONS

CONTENTS TO BE HANDLED CARRIER PIPE CASING PIPE
 WASTEWATER
 LENGTH OF CASING 85' *
 INSIDE DIAMETER 14.426" 23.12"
 OUTSIDE DIAMETER (INCL. COATING) 15.3"
 OUTSIDE DIAMETER OF JOINT, CARRIER PIPE 18" (BELL)
 PIPE MATERIAL P.V.C. STEEL
 SPECIFICATION AND GRADE ASTM D 3034 SDR 35 YIELD ST. 35K
 WALL THICKNESS 0.437 IN. 0.438 IN.
 ACTUAL WORKING PRESSURE GRAVITY FLOW
 TYPE OF JOINT COMPRESSION WELDED
 COATING MATERIAL NONE NONE
 METHOD OF INSTALLATION JACK BORING & JACK
 VENTS: NUMBER N/A SIZE IN. DISTANCE OUT FROM CENTERLINE
 OF TRACK PROTECTION REQUIRED
 PROTECTION AT ENDS OF CASING. BOTH ENDS ONE END TYPE
 BURY: BASE OF RAILS TO TOP OF CASING 11 FT. 0 IN.
 BURY: NOT BENEATH TRACKS 10-11 FT. 0 IN.
 BURY: ROADWAY DITCHES 9-11 FT. 0 IN.
 TYPE, SIZE AND SPACING OF INSULATORS OR SUPPORTS 10' - REDWOOD SKIDS
 CATHODIC PROTECTION NONE

APPROXIMATE DATE WORK WILL BE DONE: NOV. 1, 1990 (48 HOURS NOTICE REQUIRED)

PLANS FOR PROPOSED INSTALLATION SHALL BE SUBMITTED TO DIVISION SUPERINTENDENT AND MUST MEET THE APPROVAL OF THE CHIEF ENGINEER BEFORE CONSTRUCTION IS BEGUN. PLANS SHALL BE DRAWN TO SCALE SHOWING RELATION OF PROPOSED PIPE LINE TO RAILWAY TRACKS, ANGLE OF CROSSING, MILEPOST LOCATION OR RAILWAY SURVEY STATION, RIGHT OF WAY LINES AND GENERAL LAYOUT OF TRACKS AND RAILWAY FACILITIES. PLANS SHOULD INCLUDE ALL APPURTENANT FEATURES OF THE PIPE LINE, SUCH AS VALVES, MANHOLES, VENTS, CASING, ETC., LOCATED ON RAILROAD PROPERTY.
 CROSS SECTION SKETCH SHOULD SHOW PIPE LINE AND APPURTENANT FEATURES AS RELATED TO THE TRACKS AND SURROUNDING GROUND.

THE EXECUTION OF THE WORK ON RAILROAD RIGHT OF WAY SHALL BE SUBJECT TO THE INSPECTION AND DIRECTION OF THE CHIEF ENGINEER OR HIS AUTHORIZED REPRESENTATIVE.

APPLICATION

IS HEREBY MADE FOR THE ABOVE DESCRIBED CROSSING ENCROACHMENT

INDIVIDUAL OR FIRM NAME CITY OF GRAND JUNCTION

ADDRESS 250 N. 5TH ST.

INCORPORATED IN STATE OF COLORADO

BY *Joseph S. Buehler* P.E.
 PROJECT SUPERVISOR (TITLE)

APPROVED

DENVER & RIO GRANDE WESTERN RAILROAD CO.
 DIVISION ENGINEER *W. S. ...* DATE 8-20-90
 SUPERINTENDENT *W. ...* DATE 9/15/90
 STRUCTURAL ENGINEER *Steven H. Kelly* DATE 12-20-90
 CHIEF DRAFTSMAN *J. P. Evans* DATE 10-17-90
 CHIEF ENGINEER *C. J. ...* DATE 1-4-91

LOCATION

AT OR NEAR DURHAM
 STATE OF COLORADO
 OVER AND UPON THE PROPERTY OF D & R.G.W.R.CO.

AT MILE POST 453 + 3.153 FEE

MAIN LINE BRANCH

SEC. 6 TWP. 11S RANGE 11W

COUNTY OF MESA

DATE 8/9/90

ASSIGNED

CONTRACT NO. _____ DATE _____
 PERMIT NO. _____ DATE _____

DWG. NO. G-539

CROSS SECTION
 HORIZONTAL SCALE 1" = 40'
 VERTICAL SCALE 1" = 10'