

**STATE OF COLORADO**  
**acting by and through the**  
**Department of Natural Resources,**  
**for the use and benefit of the Division of Parks and Wildlife and Wildlife**  
**Board**

**SEWER EASEMENT**  
**Walker State Wildlife Area**

with

**CITY OF GRAND JUNCTION**

**TABLE OF CONTENTS**

1. PARTIES.....	1
2. EFFECTIVE DATE .....	2
3. RECITALS.....	2
4. DEFINITIONS .....	2
5. TERM AND RECORDATION.....	3
6. GRANT OF EASEMENT .....	3
7. ABANDONMENT.....	3
8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS.....	4
9. VIOLATIONS-REMEDIES.....	4
10. NOTICES AND REPRESENTATIVES .....	5
11. LIMITATION OF STATE LIABILITY .....	6
12. GENERAL PROVISIONS .....	6
13. SIGNATURE PAGE.....	9
14. EXHIBIT A (Easement Legal Description) .....	xi
15. EXHIBIT B (Easement Area Map) .....	xii

**Summary: An easement for a term of 25 years for existing sanitary sewer pipelines, sewage lift station and access roadway in the Walker State Wildlife Area in Mesa County, Township 1 North, Range 2 West, Ute Prime Meridian, Section 36.**

**1. PARTIES**

This deed of an easement for sanitary sewer infrastructure (the "Easement") is granted by the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Board (the "State" or "CPW" or "Grantor"), located at 1313 Sherman Street, Denver, Colorado 80203, to the City of Grand Junction ("Grantee"), a municipal corporation organized under the laws of the State of Colorado, whose legal address is 250 N. 5th Street, Grand Junction, Colorado 81501. The Parties hereby agree to the provisions set forth in this Easement.

## 2. EFFECTIVE DATE

This Easement shall not be effective or enforceable until the Effective Date as defined in §4. The State shall not be liable to pay or reimburse Grantee for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## 3. RECITALS

### A. Authority, Appropriation, and Approval

Authority to enter into this Easement exists pursuant to CRS §33-10-107(1)(a & d); sufficient funds have been budgeted, appropriated and paid; and all prior reviews and approvals have been obtained.

### B. Consideration

The Parties agree that the mutual promises and covenants contained herein and other good and valuable consideration, including the contemporaneous conveyance to State by Grantee of a recreational easement pertaining to the Hallenbeck Reservoir #1 and the Juniata Reservoir, are sufficient and adequate to support the granting of this Easement.

### C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Easement Legal Description) and **Exhibit B** (Easement Area Map).

### D. Purpose

This Easement provides access that assists CPW in performing the directives of CRS §33-10-107(1)(a & d).

### E. References

All references in this Easement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

## 4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

### A. CRS

"CRS" means the Colorado Revised Statutes as amended.

### B. Easement

"Easement" means this Easement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Easement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

### C. Easement Area

"Easement Area" means that portion of the Property legally described in **Exhibit A** and generally depicted on **Exhibit B**. As further described in **Exhibit A**, the widths of the four easement areas vary between 20 feet and 60 feet. The sewer infrastructure (pipelines, lift station, and access road) exist as of the Effective Date of this Easement pursuant to a "Right-of-Way" granted by State to Grantee dated December 17, 1981 (the "1981 Right-of-Way").

### D. Effective Date

"Effective Date" is the date this Easement is approved and signed by the State and accepted by Grantee, whichever is later.

### E. Improvements

“Improvements” means those sewer infrastructure improvements installed pursuant to the 1981 Right-of-Way. Refer also to §6(B).

**F. Party or Parties**

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

**G. Property**

“Property” is the real property known as Walker State Wildlife Area in Section 36, Township 1 North, Range 2 West of the Ute P.M., located in Mesa County, Colorado legally described in **Exhibit A** and depicted in **Exhibit B**.

**5. TERM AND RECORDATION**

The Parties’ respective duties and obligations and the burdens on the Property under this Easement shall commence on the Effective Date and shall continue for a period of 25 years. The Parties shall record this Easement in the official records of Mesa County following the Effective Date.

**6. GRANT OF EASEMENT**

The State may be the owner of all or part of the Property: the State is not making any representations concerning its ownership of nor warrants its title to any of the Property or the Easement Area, and if this Easement encroaches on lands not owned or controlled by the State, Grantee is solely responsible for any such encroachment. Subject to the foregoing caveat, by this Easement the State hereby quitclaims, grants, conveys, and transfers to Grantee a perpetual easement over the Easement Area located on the Property that runs with the land, the nature and character and to the extent of which is hereinafter set forth.

**A. Easement Widths**

There are four contiguous easement areas, as described in **Exhibit A**, having widths (south to north) of 60 feet, 20 feet, 40 feet, and 20 feet.

**B. Use of Easement Area**

The Easement is granted on the condition that it be used only for the maintenance, replacement and repair of the sanitary sewer pipelines, sewer lift station, and access road installed pursuant to the 1981 Right-of-Way. Grantee shall have the right to enter upon the easement property to accomplish these purposes. Except in case of emergency, Grantee will give State 48 hours advance notice of entry. Notwithstanding §6(C), Grantee shall be solely liable and responsible for maintenance of the sewer infrastructure. Following maintenance, replacement or repair activity, Grantee will restore the premises to its previous condition as soon as is practical.

**C. The State’s Reserved Rights**

The State reserves all rights not specifically conveyed under this Easement, including, the right to use and occupy the Property burdened by this Easement for any purpose not inconsistent with, and which does not materially interfere with Grantee’s use and enjoyment of the rights herein granted. Specifically, but not by way of limitation, the State may use the Easement to access its adjacent real property for maintenance and construction activities; provided, however, that the State, at its sole cost and expense, shall promptly repair or replace any damage the State causes; and provided further, that, the State shall not install, construct, or place any permanent structure or any other item or fixture which may be detrimental to the use of the Easement Area.

**7. ABANDONMENT**

Except as set forth in §9, Grantee's failure to perform its obligations under the Easement for a period of one year after written demand to perform by the State shall constitute an abandonment of its interests under the Easement. The State, at its sole discretion, may terminate and extinguish the Easement in the event of abandonment after providing Grantee 60 days written notice.

## **8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS**

Grantee makes the following specific representations and warranties, each of which was relied on by the State in granting this Easement.

### **A. Hazardous Substances**

Grantee shall not introduce or allow introduction of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, on the Property or any of the State's adjacent real property. Grantee shall be solely responsible for all costs and expenses incurred if Grantee breaches this provision. Grantee shall make the foregoing representation in a separate writing deliverable to the State upon request by the State.

### **B. Legal Authority – Grantee Signatory**

Grantee possesses the legal authority to accept this Easement and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Easement, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to accept this Easement within 15 days of receiving such request.

### **C. Licenses, Permits, Etc.**

As of the Effective Date, Grantee shall have and at all times during the term hereof shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform its obligations under this Easement, without reimbursement by the State. Additionally, all employees, agents, and subcontractors of Grantee performing services under this Easement shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Easement shall constitute a violation of this Easement.

### **D. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Easement or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Director of CPW.

## **9. VIOLATIONS-REMEDIES**

### **A. Defined**

In addition to any specified in other sections of this Easement, Grantees' failure to perform any of its material obligations hereunder shall constitute a violation of this Easement.

### **B. Notice**

The State shall send Grantee in the manner provided in §10 a notice detailing alleged violations of this Easement. Upon receipt thereof, Grantee shall immediately send the State a response in the manner provided in §10 agreeing with the State or denying the alleged violation in whole or part and cease and desist from any use or activity that could increase or expand the alleged violation until it is finally resolved by agreement of the Parties or by decree of a court of competent jurisdiction.

### **C. Remedies**

#### **i. Agreement**

If Grantee agrees with or does not dispute the State's assertion regarding the alleged violation, Grantee shall, at its sole cost, restore the Property to its condition prior to the violation or to take such other action as may be reasonable or necessary to eliminate the violation and prevent its further occurrence and shall provide the State with details of its remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

#### **ii. Dispute-Meeting**

If Grantee disagrees with and disputes the State's assertion regarding the alleged violation in whole or part, Grantee shall provide the State with a written explanation stating the reasons why the State's allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than 60 days after the State's receipt of Grantee's response, to resolve issues. If the Parties reach agreement, they shall create a remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

#### **iii. Legal Proceedings**

The State may, in its sole discretion, exercise any or all remedies available at law or in equity, including those available at common law, concurrently or consecutively, to enforce its rights hereunder if any meeting pursuant to §9(C)(ii) fails to resolve any issues and to otherwise enforce its rights hereunder, including enforcing remedial plans created under §9(C)(i and ii). Courts are specifically authorized to issue both mandatory and negative injunctions, including one requiring restoration of the Property to its condition before a violation occurred. If the Parties agree that an abandonment under §7 has occurred, the Parties shall execute a written, notarized acknowledgment thereof in recordable form stating that the Easement has been terminated and extinguished. If the Parties do not so agree, the State may seek appropriate judicial relief to terminate and extinguish the Easement.

#### **iv. Costs**

Grantee shall be solely responsible for the costs of remedying any violations of this Easement caused by Grantee or its agents.

### **D. Public Safety**

Notwithstanding anything to the contrary herein, the State need not provide advance notice or a cure period and may immediately take action if it is necessary to preserve public safety or to prevent immediate public crisis.

## **10. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Colorado Division of Parks and Wildlife
6060 Broadway
Denver, CO 80216
With copy to:
Area 7 Wildlife Manager 711 Independent Avenue Grand Junction, CO 81505

**B. Grantee:**

City of Grand Junction
<b>Rich Englehart, City Manager</b>
250 N. 5th Street
Grand Junction, CO 81501
With copy to:
John Shaver, City Attorney 250 N. 5 <sup>th</sup> Street Grand Junction, CO 81501

**11. LIMITATION OF LIABILITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees or from the negligence of the City of Grand Junction, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**12. GENERAL PROVISIONS**

**A. Binding Arbitration Prohibited**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Easement or incorporated herein by reference shall be null and void.

**B. Binding Effect-Perpetual Application**

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns and shall continue as a servitude running in perpetuity with the Property

**C. Captions**

The captions and headings in this Easement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

**D. Construction of this Easement**

This Easement shall be liberally construed to further the purposes and intent set forth in §3(D). In the event of an ambiguity in this Easement the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

**E. Counterparts**

This Easement may be executed in multiple identical original counterparts constituting one agreement.

**F. Entire Understanding**

This Easement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

**G. Joint and Several Obligations**

If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

**H. Jurisdiction and Venue**

All suits or actions related to this Easement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situate.

**I. Modification**

**i. By the Parties**

Except as specifically provided in this Easement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies.

**ii. By Operation of Law**

This Easement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Easement on the effective date of such change, as if fully set forth herein.

**J. Order of Precedence**

The provisions of this Easement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Easement and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Easement, and
- ii. Exhibits.

**K. Severability**

Provided this Easement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Easement in accordance with its intent.

**L. Third Party Beneficiaries**

Enforcement of this Easement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Easement are incidental to the Easement, and do not create any rights for such third parties.

**M. Waiver**

Waiver of any breach or event of default under a term, provision, or requirement of this Easement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. Grantee hereby waives any defense of laches, estoppel, or prescription, including any defenses available under CRS §38-41-119. The failure of the State to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.



13. SIGNATURE PAGE

IN WITNESS WHEREOF, Grantor has executed this Deed of Easement effective as of the Effective Date.

**GRANTOR:** THE STATE OF COLORADO, acting by and through the DEPARTMENT OF NATURAL RESOURCES, for the use and benefit of the DIVISION OF PARKS AND WILDLIFE and the PARKS AND WILDLIFE BOARD,

By: Craig R. McLaughlin

STATE OF COLORADO )  
COUNTY OF Adams )ss.  
)

The foregoing instrument was acknowledged before me the 18<sup>th</sup> day of May 2012, by Craig R. McLaughlin (Acting), Assistant Director, Wildlife, Division of Parks and Wildlife. Natural Resources

Witness my hand and official seal.

Gwendolyn R. Jordan  
Notary Public

My Commission Expires: November 28, 2013



**GRANTEE:** ACCEPTED by the CITY OF GRAND JUNCTION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Handwritten Signature]*  
*[Handwritten Title: City Manager]*  
*[Handwritten Date: 7/28/12]*

#### 14. EXHIBIT A (Easement Legal Description)

A strip of land lying in the SW¼ of Section 36, Township 1 North, Range 2 West of the Ute Meridian, said easement more particularly described as follows:

A strip of land 20 feet wide, 10 feet to the right and 10 feet to the left of a centerline described as follows:

Beginning at a point on the South property line, whence the SW corner Section 36, Township 1 North, Range 2 West of the Ute Meridian, bears West a distance of 194.41 feet, thence N44°33'31"E a distance of 605.89 feet to a point of intersection of a joint permanent easement. Said easement to be occupied jointly by Grand Junction/Mesa County Tiara Radio Interceptor sewer and Ute Water also:

A strip of land 40 feet wide, 20 feet to the right and 20 feet to the left of a centerline described as follows:

Beginning at the point of intersection, thence N44°33'31"E, a distance of 100.33 feet, thence N51°11'47"E, a distance of 679.64 feet, thence N63°57'11"E a distance of 370.00 feet to a point of intersection centerline of the Tiara Rado Interceptor Sewer Easement and Ute Water Easement also:

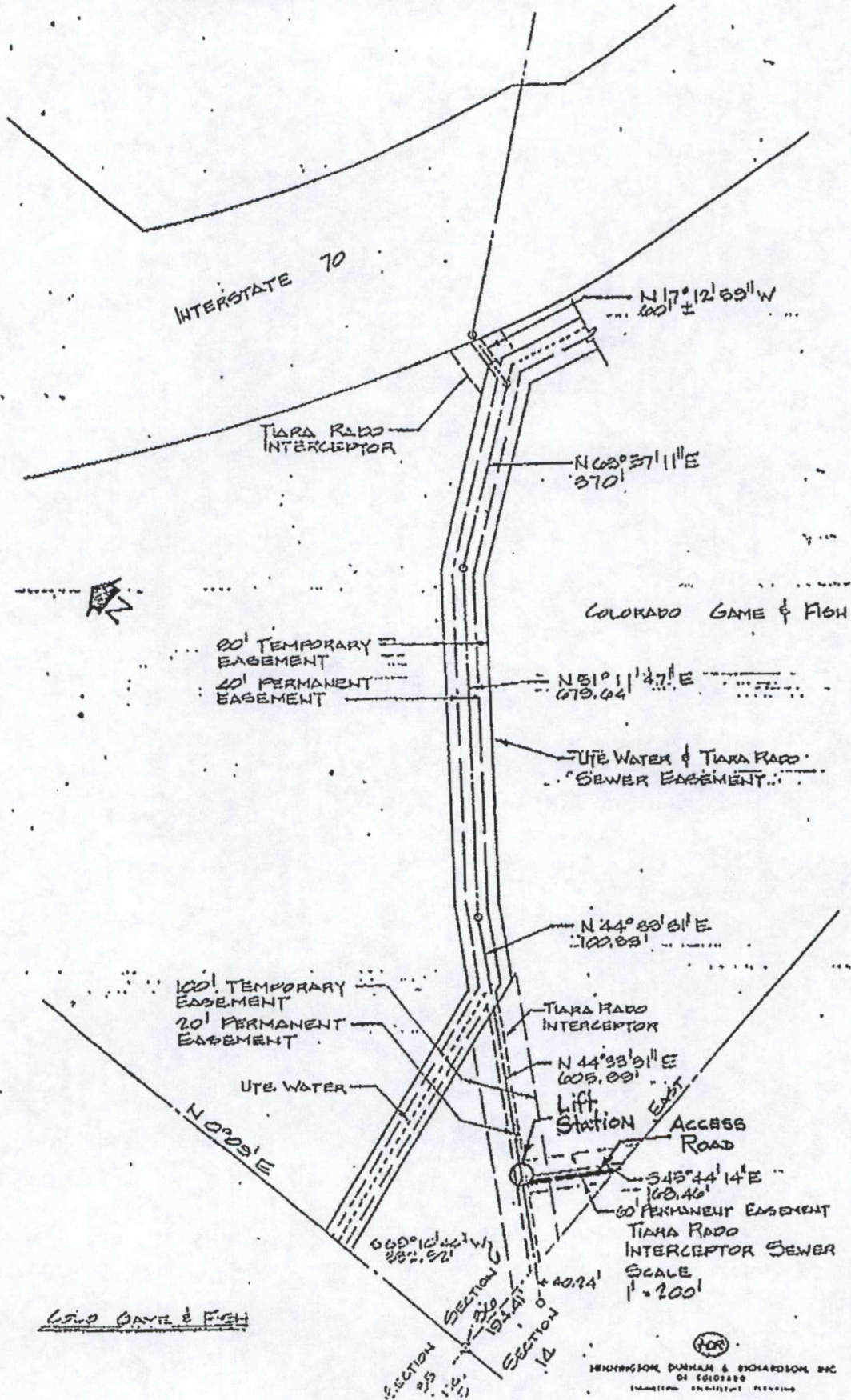
A strip of land 20 feet wide, 10 feet to the left and 10 feet to the right of a centerline described as follows:

Beginning at the point of intersection, thence N17°12'59"W, 60 feet more or less to a point on the south right-of-way line of Interstate 70 also:


A strip of land 60 feet wide, 30 feet to the right and 30 feet to the left of a centerline described as follows:

Beginning at a point from whence the SW corner Section 36, Township 1 North, Range 2 West of the Ute Meridian bears S69°10'40"W a distance of 332.52 feet, thence S45°44'14"E a distance of 168.46 feet to a point on the south line of section 36.

15. EXHIBIT B (Easement Area Map)



Color Game & Fish

  
 BENNINGTON, DURHAM & RICHARDSON, INC.  
 OF COLORADO  
 LAND SURVEYING ENGINEERS