

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR A DETERMINATION OF A RIGHT TO AN
ALLOCATION OF GROUNDWATER IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED
GROUNDWATER BASIN

DETERMINATION NO.: 4729-BD

AQUIFER: Denver

APPLICANT: 2 Brothers Properties LLC

In compliance with section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, 2 Brothers Properties LLC (Applicant) submitted an application to the Colorado Ground Water Commission (Commission) for a determination of a right to an allocation of designated groundwater from the Denver Aquifer.

FINDINGS

1. The application was received by the Commission on September 5, 2024.
2. The Applicant requests a determination of right to an allocation of designated groundwater (Determination) in the Denver aquifer (Aquifer) underlying 38.77 acres, described as the NE 1/4 of the SW 1/4 of Section 8, Township 12 South, Range 63 West of the 6th P.M., in El Paso County (Overlying Land). According to a Nontributary Groundwater Landownership Statement dated September 16, 2024, attached hereto as Exhibit A, the Applicant owns the 38.77 acres of land, which are further described in said Ownership Statement, and claims control of the right to the groundwater in the Aquifer underlying the land.
3. The Overlying Land is located within the boundaries of the Upper Black Squirrel Creek Designated Groundwater Basin and Upper Black Squirrel Creek Ground Water Management District. The Commission has jurisdiction over the designated groundwater that is the subject of this Determination.
4. The Commission's Staff has evaluated the application relying on the claims to control of the groundwater in the Aquifer underlying the Overlying Land made by the Applicant.
5. The Applicant intends to apply the groundwater in the Aquifer underlying the Overlying Land to the following beneficial uses: residential use, including in-house, domestic, commercial, industrial, irrigation, fire protection, and replacement in support of such uses, either directly or after storage. The

Applicant's proposed place of use of the groundwater in the Aquifer underlying the Overlying Land is the above described 38.77 acres of Overlying Land.

6. Pursuant to section 37-90-107(7)(a), and in accordance with the Designated Basin Rules, the Commission shall allocate the groundwater in the Aquifer underlying the Overlying Land on the basis of the ownership of the Overlying Land.
7. The amount of water in storage in the Aquifer underlying the 38.77 acres of Overlying Land claimed by the Applicant is 1,450 acre-feet. This determination was based on the following as specified in the Designated Basin Rules.
 - a. The average specific yield of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 17 percent.
 - b. The average thickness of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 220 feet.
8. A review of the records in the Office of the State Engineer has disclosed that none of the groundwater in the Aquifer underlying the Overlying Land has been either previously determined to be allocated by the Commission, has been permitted for withdrawal by large capacity wells that have rights that were initiated prior to November 19, 1973 that are subject to section 37-90-107(7)(b), or has been permitted for withdrawal by existing small capacity wells withdrawing water under permits issued pursuant to section 37-90-105, C.R.S. The amount of designated groundwater in the Aquifer underlying the Overlying Land that is available for allocation in this Determination is 1,450 acre-feet.
9. Pursuant to section 37-90-107(7)(c)(III), an approved determination of a right to an allocation shall be considered a final determination of the amount of groundwater so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
10. Pursuant to section 37-90-107(7)(d), the Commission has authority to issue well permits pursuant to subsection 107(7) (i.e. permits for large capacity wells) for the withdrawal of designated groundwater from the Aquifer. Pursuant to section 37-90-107(7)(a) the Commission shall adopt the necessary rules to carry out the provisions of subsection (7). Pursuant to section 37-90-111(h), C.R.S., the Commission is empowered to adopt rules necessary to carry out the provisions of Article 90 of Title 37. In accordance with that authority, the Commission has adopted the Rules and Regulations for

the Management and Control of Designated Ground Water (2 CCR 410-1) (“Designated Basin Rules”, or “Rules”).

11. Large capacity well permits issued pursuant to section 37-90-107(7) are subject to the following provisions of statute and the Designated Basin Rules.
 - a. Pursuant to section 37-90-107(7)(a) well permits issued pursuant to subsection 107(7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The 1,450 acre-feet of water in the Aquifer underlying the Overlying Land available for allocation in this Determination, if permitted for withdrawal by large capacity wells on the basis of an aquifer life of one hundred years, would result in an allowed average annual amount of withdrawal of 14.5 acre-feet per year.
 - b. Any amounts of groundwater in the Aquifer allocated in this Determination that are permitted for withdrawal pursuant to section 37-90-105, by small capacity well permits issued after the issuance of this Determination reduce the amount of water, and the allowed average annual amount of withdrawal, that may be withdrawn by wells permitted pursuant to section 37-90-107(7).
 - c. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of groundwater from the Aquifer underlying the Overlying Land will, within one hundred years, deplete the flow of a natural steam or an alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the groundwater in the Aquifer underlying the Overlying Land is considered to be not-nontributary groundwater as defined in Rule 4.2.23 of the Designated Basin Rules. Also, the location of the land claimed by the Applicant is farther than one mile from the Aquifer contact with the alluvium. Pursuant to the Rules, at least four percent (4%) of the amount of the underlying water withdrawn annually must be returned to the alluvial aquifer in the vicinity of the permitted point or points of withdrawal, unless other locations are approved by the Commission. Pursuant to the Rules the Applicant may at any time be required to identify the proposed, or actual, location of the delivery of the replacement water and how the required four percent (4%) of water diverted will be, or is being, delivered into the alluvial aquifer.
12. Pursuant to section 37-90-105(1), the State Engineer has the authority to approve small capacity well permits. While water withdrawn from the Aquifer from beneath the Overlying Land by small capacity wells may consist of the groundwater allocated herein, the Commission recognizes that in approving small capacity permits the State Engineer is not bound by the terms and conditions of this Determination, and may approve small capacity permits

based on standards and with such conditions as the State Engineer considers appropriate.

13. The ability of wells permitted to withdraw the authorized amount of water from this nonrenewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
14. On September 24, 2024, in accordance with Rule 9.1 of the Designated Basin Rules, written recommendations concerning this application were requested from the Upper Black Squirrel Creek Ground Water Management District. Written recommendations from the District were received on October 29, 2024.
15. In accordance with sections 37-90-107(7)(c)(II) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on October 3, 2024 and October 10, 2024. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with section 37-90-107(7) and the Designated Basin Rules, the Commission hereby determines a right to an allocation of designated groundwater in the Denver Aquifer underlying 38.77 acres of land, described as the NE 1/4 of the SW 1/4 of Section 8, Township 12 South, Range 63 West of the 6th P.M., further described in Exhibit A, subject to the following conditions.

16. The amount (i.e. volume) of water in the Aquifer underlying the 38.77 acres of Overlying Land allocated herein is 1,450 acre-feet (Underlying Groundwater).
17. The amount (i.e. volume) of Underlying Groundwater allocated herein shall be considered final, except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes, if such information indicates that the initial estimate of the amount of Underlying Groundwater in the Aquifer was incorrect.
18. Approval of this Determination meets the requirements of section 37-90-107(7)(d)(II), that requires a determination of groundwater to be withdrawn by a well be made prior to the granting of a well permit pursuant to section 37-90-107(7).
19. Well permits issued pursuant to section 37-90-107(7), (i.e. large capacity wells) and this Determination are subject to the following conditions.
 - a. The total amount of Underlying Groundwater that may be withdrawn from the Aquifer by all large capacity wells permitted pursuant to this

Determination may not exceed a volume 1,450 acre-feet, less any amount of the Underlying Groundwater allocated herein permitted to be withdrawn by small capacity wells issued permits pursuant to section 37-90-105 after the issuance of this Determination. The amounts of water permitted to be withdrawn by such small capacity wells shall be considered to be one-hundred times the annual withdrawals permitted to be withdrawn by those wells.

- b. The allowed average annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water shall be equal to the volume of water permitted to be withdrawn by that well (or well field) divided by one-hundred years.
- c. The allowed maximum annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water may exceed the allowed average annual amount of withdrawal allowed by the well permit(s) as long as the total volume of water withdrawn by such well(s) does not exceed the product of the number of years since the date(s) of issuance of the well permit(s) times the allowed average annual amount of withdrawal allowed by the well permit(s).
- d. The Applicant may pump the allowed average annual amount of withdrawal and the allowed maximum annual amount of withdrawal from one or more wells of a well field in any combination, so long as the total combined withdrawal of the wells does not exceed the amounts described in this Order.
- e. At least four percent (4%) of the amount of Underlying Groundwater withdrawn annually must be returned to the alluvial aquifer in the vicinity of the permitted point or points of withdrawal, unless other locations are approved by the Commission. The Applicant may at any time be required to identify the proposed, or actual, location of the delivery of the replacement water and how the required four percent (4%) of water diverted will be, or is being, delivered into the alluvial aquifer.
- f. The use of the Underlying Groundwater shall be limited to the following beneficial uses: residential use, including in-house, domestic, commercial, industrial, irrigation, fire protection, and replacement in support of such uses, either directly or after storage. The place of use and place of storage of the Underlying Groundwater shall be limited to the above described 38.77 acres of Overlying Land. The Underlying Groundwater that is the subject of this Determination may be reused and successively used to extinction to the extent dominion and control over the water is maintained and its volume can be distinguished from the volume of any stream system into which it is introduced to the satisfaction of the Commission. The

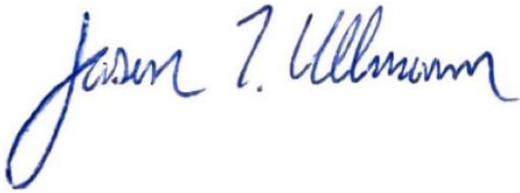
Underlying Groundwater is located within the Upper Black Squirrel Creek Ground Water Management District where local District rules apply which may further limit the withdrawal and use of the subject designated groundwater.

- g. The wells must be located on the above described 38.77 acres of Overlying Land.
 - h. No well shall be located within 600 feet of any existing large-capacity well in the same Aquifer unless a Waiver of Claim of Injury is obtained from the owner of the existing well or unless the Commission, after a hearing, finds that circumstances in a particular instance warrant that a well may be permitted without regard to this limitation.
 - i. The wells must be constructed to withdraw water from only the Denver Aquifer.
 - j. The entire depth of each well must be geophysically logged prior to installing the casing in the same manner as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - k. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and permanently maintained by the well owner and submitted to the Commission and the Upper Black Squirrel Creek Ground Water Management District upon request.
 - l. The well shall be marked in a conspicuous place with this determination number, the well permit number, and the name of the Aquifer. The well owner shall take necessary means and precautions to preserve these markings.
20. A copy of this Determination shall be recorded by the Applicant in the public records of the county in which the Overlying Land is located so that a title examination of the above described 38.77 acres of Overlying Land area, or any part thereof, shall reveal the existence of this Determination.
21. The right to an allocation of designated groundwater determined herein is a vested property right with specific ownership. Some or all of the water right may be transferred independent of the land under which the right originated. Any action taken that is intended to convey, transfer, and/or sell the subject water right shall explicitly identify this Determination number, the specific Aquifer, and the total amount (i.e. volume) of the right that is being conveyed.

Determination No. 4729-BD
Aquifer: Denver
Applicant: 2 Brothers Properties LLC

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Dated this 18th day of November, 2024.



Jason T. Ullmann, P.E.
Executive Director
Colorado Ground Water Commission



By: Joanna Williams, P.E.
Chief of Water Supply, Designated Basins

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Prepared by: wad

Form no. **DIVISION OF WATER RESOURCES**
GWS-1 **DEPARTMENT OF NATURAL RESOURCES**
(7/2023) **1313 Sherman St, Room 821, Denver, CO 80203**
(303) 866-3581, www.colorado.gov/water, dwrpermitsonline@state.co.us

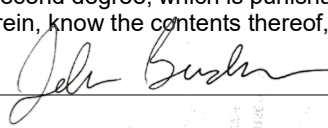
NONTRIBUTARY GROUNDWATER LANDOWNERSHIP STATEMENT

This form is to be submitted with applications for the following, when the applicant is the owner of the overlying land.

1) A well permit to withdraw groundwater from the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers, or other aquifer the applicant claims contains nontributary groundwater, outside of a Designated Groundwater Basin subject to section 37-90-137(4), C.R.S., except when the right to withdraw the groundwater has been determined by a valid decree; OR

2) A determination of water right in the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers, or a well permit to withdraw groundwater from those aquifers that are subject to Designated Basin Rule 5.4, within a Designated Groundwater Basin.

NOTE: Form submittal instructions can be found on our website Colorado.gov/water. See instructions on the reverse of this form.
Type or print in black or blue ink.

1. APPLICANT INFORMATION			
Name of Applicant			
Mailing Address		City	State Zip Code
Telephone Number (include area code)		Email	
2. AQUIFER			
3. CLAIM OF OWNERSHIP – I hereby claim that I am the owner of the following described property, as evidenced by the attached copy of a deed recorded in the county in which the property is located. Number of acres: _____ in the county of: _____ described as follows (type the legal description below or type "see attached" and attach a legal description). - I further claim that the right to withdraw the groundwater in the aquifer underlying the above described property has not been reserved by another, nor has consent been given to another for the right to its withdrawal.			
4. THE APPLICANT MUST PROVIDE – a Verification of Notice of Application (form no. GWS-43) (see instructions for exceptions).			
5. SIGNATURE – Sign or enter name(s) of applicant(s) or authorized agent. The making of false statements herein constitutes perjury in the second degree, which is punishable as a class 1 misdemeanor pursuant to C.R.S. 24-4-104(13)(a). I have read the statements herein, know the contents thereof, and state that they are true to my knowledge. Signature:  Date: _____ Print name and title: _____			

QUIT CLAIM DEED

THIS DEED made this 2 day of June, 2021, between
Adam Rhea and Baruch Rhea

of the said County of El Paso and State of [Colorado], Grantor
and 2 Brothers Properties LLC, a Colorado Limited Liability
Company

whose legal address is

1573 Paonia Street Colorado Springs, CO 80915
of the said County of El Paso and State of Colorado Grantee:

WITNESS, that the Grantor, for and in consideration of the sum of (\$10.00) Ten Dollars and No Cents, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, conveyed, and QUIT CLAIMED, and by these presents do remise, release, sell, convey and Quit Claim, unto the grantee, his heirs, successors and assigns, forever, all the right title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the El Paso and State of Colorado, described as follows:

The Northeast 1/4 of the Southwest 1/4 of Section 8, Township 12 South, Range 63 West of the 6th P.M., together with a right of way for ingress and egress and utility purposes over and across the South 10 feet of the North 330 feet of the West 1320 Feet of the Southwest 1/4 of Section 8, Township 12 South, Range 63 West of the 6th P.M., County of El Paso, State of Colorado
also known by street and number as: TBD Elliot View Drive, Peyton, CO 80831

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, his heirs and assigns forever. The singular number shall include the plural, the plural and the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

Adam Rhea
Adam Rhea

Baruch Rhea
Adam Rhea
Baruch

State of Colorado
County of El Paso

The foregoing instrument was acknowledged before me this 2nd day of June, 2021 by Adam Rhea and Baruch Rhea

Witness my hand and official seal.

Notary Public:

My commission expires:

