

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR DETERMINATION OF WATER RIGHT TO
ALLOW THE WITHDRAWAL OF GROUND WATER IN THE UPPER BLACK SQUIRREL
CREEK DESIGNATED GROUND WATER BASIN

APPLICANT: RMBG, LLC #2, AND PIKES PEAK RANGE RIDERS FOUNDATION

AQUIFER: DAWSON

DETERMINATION NO.: **573-BD**

In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, RMBG, LLC #2, and Pikes Peak Range Riders Foundation (hereinafter "applicant") submitted an application for determination of water right to allow the withdrawal of designated ground water from the Dawson Aquifer.

FINDINGS

1. The application was received in a complete form by the Colorado Ground Water Commission on May 8, 2003.
 - a. The applicant requests a determination of rights to designated ground water in the Dawson Aquifer (hereinafter "aquifer") underlying 69.72 acres consisting of two noncontiguous areas generally described as:

North Tract - a 60.17 acre land area located in a part of the SW1/4 north of Latigo Boulevard and in a part of the W1/2 of the SE1/4, of Section 8;

South Tract - a 9.55 acre land area located in a part of the SE1/4 of the SW1/4 and in the SW1/4 of the SE1/4, of Section 8;

all in Township 12 South, Range 64 West of the 6th Principal Meridian, in El Paso County.
 - b. According to a signed statement dated March 10, 2003, the applicant claims control of the inchoate right to allocation of the ground water in the aquifer under the above described overlying land areas based on recorded deeds transferring such control by the previous owners of the overlying land to Venture Ranch, Inc., on August 31, 1984; the subsequent transfer of control of the subject ground water to The Trails, Ltd.; and later transfer of control of all of the subject ground water to the applicant. This statement, a legal description and map of the overlying land area, and the applicant's documentation supporting the claim, are attached hereto as Exhibit A.
2. The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.
3. The above described land area overlying the ground water claimed by the applicant is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission (hereinafter "Commission") has jurisdiction.

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2. The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.
3. The above described land area overlying the ground water claimed by the applicant is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission (hereinafter "Commission") has jurisdiction.

4. The applicant intends to apply the allocated ground water to the following beneficial uses: commercial, irrigation, domestic, livestock and replacement water. The applicant's proposed place of use of the allocated ground water is the above-described 69.72 acre overlying land area. A central supply system may be used to deliver the water for the above uses on the described land area.
5. The two land areas, designated the North Tract and the South Tract, claimed by the applicant and described in Exhibit A are noncontiguous. A quantification of the amount of ground water in storage in the aquifer and a maximum annual allocation will be determined specifically for the aquifer underlying each of these areas. A map of these areas is attached hereto as Exhibit B.
6. The quantity of water in the aquifer underlying each of the above land areas is as follows:

North Tract = 2647 acre-feet; South Tract = 420 acre-feet;

This determination was based on the following as specified in the Designated Basin Rules:

- a. The average specific yield of the saturated permeable material of the aquifer underlying each of the land areas under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 20 percent.
 - b. The average thickness of the saturated permeable material of the aquifer underlying the land areas under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 220 feet.
7. At this time, there is no substantial artificial recharge that would affect the aquifer within a one hundred year period.
 8. Pursuant to Section 37-90-107(7), C.R.S., and in accordance with the Designated Basin Rules, the Commission shall allocate ground water in the aquifer based on ownership of the overlying land and an aquifer life of one hundred years. Therefore, the maximum average annual amount of ground water in the aquifer that may be allocated for withdrawal pursuant to the data in the paragraphs above for each overlying land area claimed by the applicant is as follows: the North Tract = 26.5 acre-feet; the South Tract = 4.2 acre-feet.
 9. The ability of wells permitted to withdraw the authorized amount of water from this non-renewable 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.
 10. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the aquifer underlying the 69.72 acres of land claimed by the applicant will, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the ground water is considered to be not-nontributary ground water. Withdrawal of water from the aquifer underlying the claimed land area would impact

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5. The two land areas, designated the North Tract and the South Tract, claimed by the applicant and described in Exhibit A are noncontiguous. A quantification of the amount of ground water in storage in the aquifer and a maximum annual allocation will be determined specifically for the aquifer underlying each of these areas. A map of these areas is attached hereto as Exhibit B.
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the alluvial aquifer of Black Squirrel Creek or its tributaries, which has been determined to be over-appropriated. Commission approval of a replacement plan - pursuant to Section 37-90-107.5, C.R.S., and Rule 5.6 of the Designated Basin Rules - providing for the actual depletion of the alluvial aquifer and adequate to prevent any material injury to existing water rights, would be required prior to approval of well permits for wells to be located on this land area to withdraw the allocated ground water from the aquifer.

11. A review of the records in the Office of the State Engineer has disclosed a small-capacity well located on the applicant's claimed overlying land, permit number 84139. The applicant claims ownership of this well and has provided a written request to the Commission to cancel this well permit upon approval of this determination. For this reason, the annual withdrawal for this well was not considered in determining the allowed quantity of ground water in the aquifer to be allocated. Except for this well, review of the records in the Office of the State Engineer has disclosed that none of the water in the aquifer underlying the land claimed by the applicant has been previously allocated or permitted for withdrawal.
12. Pursuant to Section 37-90-107(7)(c)(III), C.R.S., an approved determination of water right shall be considered a final determination of the amount of ground water 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.
13. In accordance with Section 37-90-107(7), C.R.S., upon Commission approval of a determination of water right, well permits for wells to withdraw the authorized amount of water from the aquifer shall be available upon application, subject to the conditions of this determination and the Designated Basin Rules and subject to approval by the Commission.
14. On May 8, 2003, in accordance with Rule 9.1 of the Designated Basin Rules, a letter was sent to the Upper Black Squirrel Creek Ground Water Management District requesting written recommendations concerning this application. No written recommendations from this district were received.
15. The Commission Staff has evaluated the application relying on the claims to control of the ground water in the aquifer made by the applicant.
16. In accordance with Sections 37-90-107(7) and 37-90-112, C.R.S., the application was published in The Gazette newspaper on May 15 and 22, 2003.
17. a. On June 3, 2003, an objection to the application was received from the Upper Black Squirrel Creek Ground Water Management District ("objector"), and assigned Case No. 03-GW-11. No other objection to the proposed determination of water right was received within the time limit set by statute.

b. On April 14, 2004, prior to an administrative hearing in this case, the objector withdrew its objection.

c. By Order of the Commission Hearing Officer dated April 23, 2004, Case No. 03-GW-11 was dismissed.

18. In order to prevent unreasonable impairment to the existing water rights of others within the Upper Black Squirrel Creek Designated Ground Water Basin it is necessary to impose conditions on the determination of water right and proposed allocation of ground water. Under these conditions as stated in the following Order, no unreasonable impairment of existing water rights will occur from approval of this determination of water right or from the issuance of well permits for wells to withdraw the authorized amount of allocated ground water from the aquifer.

ORDER

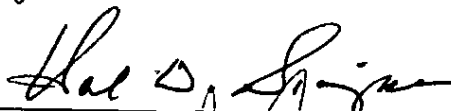
In accordance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for determination of rights to designated ground water in the Dawson Aquifer underlying 69.72 acres, consisting of two noncontiguous areas generally described as: the North Tract - a 60.17 acre land area located in a part of the SW1/4 north of Latigo Boulevard and in a part of the W1/2 of the SE1/4, of Section 8; and the South Tract - a 9.55 acre land area located in a part of the SE1/4 of the SW1/4 and in the SW1/4 of the SE1/4, of Section 8; all in Township 12 South, Range 64 West of the 6th Principal Meridian, is approved subject to the following conditions:

19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed the following amounts: North Tract = 26.5 acre-feet; South Tract = 4.2 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product of the number of years since the date of approval of this determination times the allowed average annual amount of withdrawal
20. To conform to actual aquifer characteristics, the Commission may adjust the allocated average annual amount of ground water to be withdrawn from the aquifer based on analysis of geophysical logs or other site-specific data if such analysis indicates that the initial estimate of the volume of water in the aquifer was incorrect.
21. Commission approval of a replacement plan, providing for actual depletion of affected alluvial aquifers and adequate to prevent any material injury to existing water rights in such alluvial aquifers is required prior to approval of well permits for wells to be located on the overlying land area to withdraw ground water from the aquifer.
22. The use of ground water from this allocation shall be limited to the following beneficial uses: commercial, irrigation, domestic, livestock and replacement water. The place of use shall be limited to the above-described 69.72 acre land area.
23. The applicant, or subsequent persons controlling this water right, shall record in the public records of the county - in which the claimed overlying land is located - notice of transfer of any portion of this water right to another within sixty days after the transfer, so that a title examination of the above described 69.72 acre land area, or any part thereof, shall reveal the changes affecting this water right. Such notice shall consist of a signed and dated deed which indicates the determination number, the aquifer, a description of the above described land area, the annual amount of ground water (acre-feet) transferred, name of the recipient, and the date of transfer.

24. Subject to the above conditions, well permits for wells to withdraw the authorized annual amount of water from the aquifer shall be available upon application subject to approval by the Commission and the following conditions:
- a. The wells shall be located on the above described 69.72 acre overlying land area. Wells located within the 60.17 acres of the North Tract shall only withdraw the allowed average annual amount of water determined for that area (26.5 acre-feet); wells located within the 9.55 acres of the South Tract shall only withdraw the allowed average annual amount of water determined for that area (4.2 acre-feet); unless the following condition may be satisfied:
 - i. In accordance with Rule 5.3.7.2. of the Designated Basin Rules, a permitted and constructed well may be located within one of the above described noncontiguous land areas at a point where the total combined allowed average annual amounts of water determined for that area and the other described noncontiguous area may be withdrawn by that well – and thereafter through any other well(s) permitted to withdraw those allocations and located on either of those two areas – if a cylinder of appropriation, calculated for the combined annual amounts for those two areas and centered at that well location, overlaps a portion of the described noncontiguous area. The radius of such a cylinder is subject to paragraph 20 of this Order and the actual amount of saturated permeable material of the aquifer at the well location. Any request for combined withdrawal from noncontiguous areas must be identified in the well permit application.
 - b. The wells must be constructed to withdraw water from only the Dawson Aquifer. Upon application for a well permit to construct such a well, the estimated top and base of the aquifer at the proposed well location will be determined by the Commission and indicated on the approved well permit. Plain non-perforated casing must be installed, grouted and sealed to prevent diversion of ground water from other aquifers and the movement of ground water between aquifers.
 - c. The entire depth of each well must be geophysically logged prior to installing the casing as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - d. Each well shall be constructed within 200 feet of the location specified on the approved well permit, and, except for wells permitted in accordance with this determination, must be more than 600 feet from any existing large-capacity well completed in the same aquifer.
 - e. The wells may withdraw the allowed average annual amount of water from the aquifer together in any combination, subject to paragraph 24.a of this Order. The total combined annual withdrawal of the wells shall not exceed the allowed average annual amount described in this Order.
 - f. 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 maintained by the well owner and submitted to the Commission or the Upper Black Squirrel Creek Ground Water Management District upon their request.

- g. The well owner shall mark the well in a conspicuous place with the permit number and the name of the aquifer. The well owner shall take necessary means and precautions to preserve these markings.
25. A copy of this Findings and Order shall be recorded by the applicant in the public records of the county – in which the claimed overlying land is located - so that a title examination of the above described 69.72 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 25th day of August, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By:



Suzanne M. Sellers, P.E.
Designated Basins Chief

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR REPLACEMENT PLAN TO ALLOW THE WITHDRAWAL OF GROUND WATER FROM THE DAWSON AQUIFER IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN.

APPLICANT: RMBG, LLC #2

REPLACEMENT PLAN – DETERMINATION OF WATER RIGHT NO: **573-BD**

In compliance with Section 37-90-107.5, CRS, and the Designated Basin Rules, 2 CCR 410-1, RMBG, LLC #2, LLC (referred to hereinafter as "applicant") submitted an application for a replacement plan to allow the withdrawal of ground water from the Dawson Aquifer in accordance with Determination of Water Right No. 573-BD.

FINDINGS

1. Pursuant to Section 37-90-107(7), CRS, in the Findings and Order dated August 25, 2004, the Ground Water Commission (hereinafter "Commission") approved a Determination of Water Right, No. 573-BD, for the Dawson aquifer. This determination of water right allows the allocation of ground water from the Dawson Aquifer (hereinafter "aquifer"), underlying a total of 69.72 acres consisting of two noncontiguous areas designated and generally described as the **North Tract** – a 60.17 acre land area located in a part of the SW¼ north of Latigo Boulevard and in a part of the W½ of the SE¼ Section 8; and the **South Tract** – a 9.55 acre land area located in a part of the SE¼ of the SW¼ and in the SW¼ of the SE¼ of Section 8, all in Township 12 South, Range 64 West of the 6th Principal Meridian, in El Paso County.
2. The allowed average annual amount of ground water to be withdrawn from the aquifer, in accordance with the conditions of the above determination of water right, shall not exceed 26.5 acre-feet for the North Tract, and 4.2 acre-feet for the South Tract.
3.
 - a. In accordance with Rule 5.3.6 of the Designated Basin Rules, the replacement water requirement status for the ground water in the aquifer underlying the above described 69.72-acre land area was determined to be not-nontributary. Withdrawal of ground water from the aquifer underlying the above land area would impact the Upper Black Squirrel Creek Designated Ground Water Basin Alluvial Aquifer, described in Designated Basins Rules 5.2.6.1 (hereinafter referred to as the "Upper Black Squirrel Creek Alluvial Aquifer"), and the Kiowa-Bijou alluvial aquifer, which have been determined by the Commission to be over-appropriated.
 - b. Commission approval of a replacement plan, providing for replacement of actual depletions to the alluvial aquifers and adequate to prevent any material injury to existing water rights, is required prior to approval of well permits for wells to be located on the above described land area to withdraw the allowed allocation of ground water from the aquifer, in accordance with the conditions of the subject determination of water right.
4. In accordance with Rule 5.3.6.2(C) of the Designated Basin Rules, the amount of replacement water shall provide for the depletion of alluvial water for the first 100 years due to all previous pumping - and if pumping continues beyond 100 years, shall replace actual impact until pumping ceases.

5. The above-described 69.72-acre land area is located within the boundaries of the Upper Black Squirrel creek Designated Ground Water Basin. The Commission has jurisdiction.
6. The subject application for replacement plan was received complete by the Commission on April 6, 2007.
7.
 - a. In accordance with Rule 5.6.1 of the Designated Basin Rules, the replacement plan must be adequate to prevent any material injury to water rights of other appropriators.
 - b. As proposed by the applicant, the replacement plan would allow for use of an annual amount of up to 2.3 acre-feet of water for individual wells serving a 5-lot subdivision for a period of 300-years. The five-lot subdivision would utilize the South Tract and small portion of the North Tract. The use of each well would be limited to an annual withdrawal of 0.46 acre-feet of ground water for in-house use (0.30 acre-feet), the irrigation of up to 1,600 square feet of lawn garden area, and the watering of up to four large domestic animals.
 - c. The applicant calculated actual depletions to the Upper Black Squirrel Creek and Kiowa-Bijou Alluvial Aquifers for the proposed withdrawals with a ground water flow model (AUG 3) using the Colorado State Engineer's (SEO) Dawson aquifer DA02 data file, the output of which is attached hereto as Exhibit A. The maximum combined depletions to both aquifers caused by the pumping of 2.3 acre-feet per year for 300 years will be 1.85% of pumping in the 300th year, which is equal to 0.04 acre-feet per year (or 0.008 acre-feet per year per well).
 - d. Replacement of depletions are to be made to the Upper Black Squirrel Creek Alluvial Aquifer. The applicant plans to aggregate replacement water to the drainage of Black Squirrel Creek via the alluvium of Black Squirrel Creek and the alluvium of a near-by un-named tributary channel.
 - e. The source of replacement water would be return flows from in-house use of ground water, to be withdrawn from five wells permitted in accordance with the conditions of the subject determination and proposed replacement plan.
 - i. The applicant estimates that each lot using the Dawson aquifer as a water source will contribute 90% of water used in-house, equaling 0.27 acre-feet per year per well, or 1.35 acre-feet per year for all five wells, which will exceed total calculated depletions.
 - ii. A totalizing flow meter will be installed on each well and kept in good working order for the purpose of measuring withdrawals and calculating replacements made.
 - iii. A homeowner's association will be established to administer the replacement plan.
 - iv. The approved replacement plan will be recorded in the real property records of El Paso County.
 - f. Operation of the replacement plan involves constructing the septic systems in compliance with State and County health department standards and, as a result, shall not cause unreasonable impairment of water quality of the receiving aquifer.
8. Records in this office indicate that the applicant controls the water right to be used as a source of replacement water, Determination No. 573-BD.

9. In accordance with Sections 37-90-107.5 and 37-90-112, CRS, the application was published in The Ranchland News newspaper on April 12 and 19, 2007.
10. No objections to the application were received within the time limit set by statute.
11. The Commission Staff has evaluated the application pursuant to Section 37-90-107.5, CRS, and the requirements of Rule 5.3.6.2(C) and Rule 5.6 of the Designated Basin Rules.
12. a. In accordance with Rule 5.6.2 of the Designated Basin Rules, the applicant shall have the burden of proving the adequacy of the plan in all respects.

b. The Commission Staff shall propose any additional terms and conditions or limitations, which are necessary to prevent material injury and to ensure that the plan is administrable and enforceable. Any such terms and conditions or limitations are incorporated into the following Order of the Commission.
13. Upon Commission approval of this replacement plan, well permits for wells to withdraw the authorized amount of water from the aquifer shall be available upon application, subject to the terms and conditions of the replacement plan and the conditions for well permit issuance in Determination of Water Right No. 573-BD, and subject to approval by the Commission.
14. Based on data and information supplied by the applicant, the subject replacement plan, if operated under the conditions of the following Order, will prevent material injury from occurring to the existing appropriators within the Upper Black Squirrel Creek Designated Ground Water Basin, or any other designated basin as a result of withdrawing ground water from the Dawson aquifer allocation pursuant to Determination of Water Right no. 573-BD.

ORDER

In accordance with Section 37-90-107.5, CRS, and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for replacement plan, to allow the withdrawal of ground water from the Dawson Aquifer underlying a total of 69.72 acres consisting of two noncontiguous areas designated and generally described as the **North Tract** – a 60.17 acre land area located in a part of the SW¼ north of Latigo Boulevard and in a part of the W½ of the SE¼ Section 8; and the **South Tract** – a 9.55 acre land area located in a part of the SE¼ of the SW¼ and in the SW¼ of the SE¼ of Section 8, all in Township 12 South, Range 64 West of the 6th Principal Meridian, in El Paso County, in accordance with Determination of Water Right No. 573-BD, is approved subject to the following conditions:


15. Well permits for up to five individual on-lot wells shall be available upon application subject to approval by the Commission and the conditions for well permit issuance in the Commission's Findings and Order of August 25, 2004, for Determination of Water Right No. 573-BD, and subject to the following terms and conditions of this replacement plan.

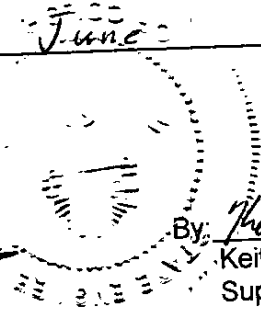
17. A totalizing flow meter shall be installed on each well. The well owners shall maintain the meters in good working order. Permanent records of annual withdrawal of ground water shall be maintained by each well owner and provided to the Commission upon request.
18. The allowed annual amount of ground water to be withdrawn from the aquifer by each permitted well shall not exceed 0.46 acre-feet, an annual combined total amount of 2.3 acre-feet.
19. The allowed use of ground water for each well under this plan is in-house, up to 1,600 square feet of lawn and garden irrigation, and watering of up to four large domestic animals. Place of use for each well shall be limited to the lot on which the well is located.
20. To assure adequate return flows, at least one well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by any well.
21. A table showing total net annual depletions to the affected alluvial aquifer, as a percentage of pumping and in acre-feet per year, in ten-year increments, is attached hereto on Page 2 of Exhibit A. Depletions are based on a continuous annual withdrawal from the aquifer of 2.3 acre-feet. Replacement of depletions must be provided based on the acre-feet amounts shown in that table. Replacement requirements may be computed on a pro-rated basis between each ten-year value, or for simplicity may be equal to the amount shown in next succeeding ten-year increment.
22. Pumping under this plan is limited to a period of 300 years. The year of first use of this replacement plan shall be the calendar year of construction of a well permitted pursuant to this plan or permitting of an existing well pursuant to the plan.
23. Return flows from all use of ground water shall occur through individual on lot non-evaporative septic systems constructed to State and county health department standards.
24. The replacement plan shall provide for the required annual amount of replacement water for the first 100 years, and if pumping continues beyond 100 years for as long as pumping continues. So long as at least one well continues to pump and supply an occupied dwelling, the plan's required replacement obligation, shown on page 2 of Exhibit A, will be met. Should all wells cease pumping for residential use within the first 100 years, at least one well must either maintain pumping for replacement purposes, or an amended or alternate replacement plan must be applied for that will make the required replacement deliveries.
25. The applicant, or their successor (assumed herein to be a property owners association) must maintain permanent records containing the following items:
 - a. A listing of all well permits issued and wells constructed pursuant to this plan
 - b. The annual and cumulative amounts of water diverted by each individual well and by all wells in total.
 - c. Whether each individual well is serving an occupied dwelling.
 - d. Whether each individual well is serving irrigated landscaping, and amount of land being irrigated.
 - e. Whether each individual well is serving domestic animals, and the number of head served.
 - f. The return flows occurring from in-house use of each well, assuming a 90% return flow rate for in-house use.


26. The applicant shall form a property owners association to assure operation of the replacement plan. Each lot owner in the above-described future subdivision shall be a member of the association. This association shall be responsible for the operation of the plan, and shall prepare all notices and reports required by the plan and provide these to the Commission with any other information related to the operation of the replacement plan that may be requested by the Commission.
27. The applicant or their successor shall assure that replacement water is provided to the alluvium as is required under this plan. The amount of replacement water shall be calculated and reported on the accounting form acceptable to the Commission. The replacement water must equal or exceed the depletions to the alluvium on a yearly basis and must prevent any material injury to the water rights of other appropriators. No credit shall be claimed by the applicant for an oversupply of replacement water provided to the alluvium during previous years.
28. The applicant or their successor shall record and maintain permanent records of all totalizing flow meter readings, power meter readings and data concerning all other operations associated with the replacement plan which are necessary to allow replacement to occur on a yearly basis and to submit this information to the Commission on an annual basis for the calendar year just concluded by **February 15th** of the following year.
29. To insure appropriate control of the subject water right and source of replacement water by the lot owners in the future subdivision, and allow for each lot owner to obtain a well permit, the applicant shall either tie a share of the water right and annual allocation amount to each lot, if well permits will be applied for in the name of the applicant or property owners association, or transfer a share of the water right and annual allocation amount to each lot owner, if well permits will be applied for by each lot owner. Such transfers shall be by recorded deed, in accordance with the conditions of paragraph 23 of the Commission's Order for Determination No. 573-BD.
30. Any covenants adopted for the future subdivision should contain a description of the replacement plan and how the plan is to be administered, including the required limitations on water use for each lot.
31. A copy of this Findings and Order shall be recorded by the applicant in the real property records of El Paso County, so that a title examination of the above described 69.72 acre property, or any part thereof, shall reveal to all future purchasers the existence of this replacement plan. The terms and conditions of this replacement plan shall be considered to be a covenant on and running with the subject property.
32. In the event the permitted wells are not operated in accordance with the conditions of this replacement plan, they shall be subject to administration, including orders to cease diverting ground water.
33. The Commission retains jurisdiction to modify or revoke approval of this replacement plan, if monitoring or operating experience reveals that the plan results in any material injury to water rights of other appropriators or in unreasonable impairment to water quality.

Applicant: RMBG, LLC #2
Dawson Aquifer
Replacement Plan - Determination No. 573-BD

Dated this 27th day of June, 2007.


Dick Wolfe, P.E. for the
Executive Director
Colorado Ground Water Commission



By: 
Keith Vander Horst, P.E.
Supervisor, Designated Basins

Prepared by: ebt
FIND-RP13-2007

EXHIBIT A PAGE 1 OF 2
REPLACEMENT PLAN FOR 573 -DB

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APR 06 2007

WATER RESOURCES
STATE ENGINEER
COLO

Table I
Latigo Trails Five-Lots Development
Dawson Aquifer Alluvial Depletion Factors
(as % of pumping)

YRS	Kiowa Creek	Black Squirrel Creek	Total
10	0.00	0.00	0.00
20	0.00	0.00	0.00
30	0.00	0.00	0.00
40	0.01	0.00	0.01
50	0.01	0.00	0.01
60	0.02	0.00	0.02
70	0.03	0.01	0.04
80	0.05	0.01	0.06
90	0.07	0.01	0.08
100	0.10	0.02	0.12
110	0.13	0.03	0.16
120	0.16	0.03	0.19
130	0.20	0.04	0.24
140	0.25	0.06	0.31
150	0.29	0.07	0.36
160	0.34	0.09	0.43
170	0.40	0.11	0.51
180	0.46	0.13	0.59
190	0.52	0.15	0.67
200	0.58	0.17	0.75
210	0.65	0.20	0.85
220	0.72	0.23	0.95
230	0.79	0.26	1.05
240	0.86	0.29	1.15
250	0.94	0.32	1.26
260	1.01	0.36	1.37
270	1.09	0.39	1.48
280	1.17	0.43	1.60
290	1.25	0.47	1.72
300	1.34	0.51	1.85

EXHIBIT A PAGE 2 OF 2
 REPLACEMENT PLAN FOR 573 -DB

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 APR 06 2007

Accounting Form
 Latigo Trails 5-Lot Development
 Case 05-GW-

WATER RESOURCES
 STATE ENGINEER
 COLO

		From	To	
Accounting Period		2305	2305	Example
	Net Depletion From Last Year [3]	+	0	af
	Dawson Aquifer Alluvial Depletion from Table 1 rounded up to nearest 10 years since pumping began	+	0.04	af
1	Total Depletion	=	0.04	af
	Total No. of Homes This Year	+	5	
		*	0.27	af
2	Return Flows In Black Squirrel Creek	=	1.35	af
Net Alluvial Depletion				
3	Accretion (Depletion) [If < 0 enter 0]	(1)-(2)	0	af

Table 1
 Alluvial Depletions

Yrs	Depletion Factor (as %)	Homes	Yrs	Rate	0.46	Yrs	Depletion Factor (as %)	Depletion (af/yr)
		Depletion (af/yr)						
10	0.00	0.00	110	0.16	0.00	210	0.85	0.02
20	0.00	0.00	120	0.19	0.00	220	0.95	0.02
30	0.00	0.00	130	0.24	0.01	230	1.05	0.02
40	0.01	0.00	140	0.31	0.01	240	1.15	0.03
50	0.01	0.00	150	0.36	0.01	250	1.26	0.03
60	0.02	0.00	160	0.43	0.01	260	1.37	0.03
70	0.04	0.00	170	0.51	0.01	270	1.48	0.03
80	0.06	0.00	180	0.59	0.01	280	1.60	0.04
90	0.08	0.00	190	0.67	0.02	290	1.72	0.04
100	0.12	0.00	200	0.75	0.02	300	1.85	0.04

**REPLACEMENT PLAN - EVALUATION
SECTION 37-90-107.5**

APPLICANT: RMBG #2, LLC		RECEIPT NO.: 494786 B	DETERMINATION NO.: 573-BD
AQUIFER: DAWSON	BASIN: Upper Black Squirrel Creek	GWMD: Upper Black Squirrel Creek	COUNTY: EL PASO
AFFECTED ALLUVIAL AQUIFER(S):	Upper Black Squirrel Creek	Kiowa-Bijou	Upper Big Sandy

SUMMARY

Plan covers the use of water on two noncontiguous portions (9.6 and 6 acres) of two noncontiguous parcels that make the land area for 573-BD (total of 69.7 acres) The areas will be subdivided for 5 single-family homes. Each of the five lots will have an individual on-lot well that will withdraw ground water from Dawson aquifer allocation (573-BD) requiring replacements for actual depletions.

Source of replacement water is return flows from use of Dawson Aquifer allocation pursuant to 573-BD

- Method of replacement: return flows from in-house use of ground water shall be through individual on lot non-evaporative wastewater disposal systems constructed to State and county health department standards.
- Replacement will be a percentage of the amount pumped from individual on lot wells (90% of in-house use (0.3 AF/yr). By this calculation, approximate total return flows are 1.35 AF/yr, which will exceed calculated depletions. The return flows should accrue to the alluvium of a fork of the Upper Black Squirrel (Closest point of legal alluvium approximately 8.6 miles down stream).
- Pumping measurements to be made by totalizing flow meters on on-lot wells.

MODEL RUN PARAMETERS (AUG3):

Model: DA02	Intervals: 4 (900 years total)	Pumping Int.: 100/200	Pumping amounts: 2.3 AF/yr
Location: 8-12S-64	No. of wells: 1	No-pumping Int.: 300/300	
<u>Year of first impact:</u> Total -- Year 21 = 0.00002 AF UBSC -- Year 41 = 0.0002 AF K-B -- Year 21 = 0.00002 AF BSC -- Year 156 = 0.00002 AF	<u>Impact at Year 100:</u> Total -- 0.002 AF UBSC -- 0.0003 AF K-B -- 0.002 AF BSC -- 0.0 AF	<u>Impact at Year 200:</u> Total -- 0.02 AF UBSC -- 0.004 AF K-B -- 0.01 AF BSC -- 0.00004 AF	<u>Impact at year 300:</u> Total -- 0.04 AF UBSC -- 0.01 AF K-B -- 0.03 AF BSC -- 0.0002 AF

PROXIMITY TO ALLUVIUM: Closest point of legal alluvium approximately 8.6 miles down stream. Property overlies Upper Black Squirrel Creek drainage

INJURY ANALYSIS (Potentially affected proximate alluvial water rights): Time – yes, amount – yes, place -yes

Injury prevention: Replacement water exceeds calculated depletions satisfying "Amount" component of injury prevention; place of infiltration of return flows occurs directly to UBS creek channel 8.6 miles up-gradient, as the creek flows, of the legal alluvial aquifer. Depletions are below threshold amounts for all three basins in which depletions occur and can be aggregated to UBSC Basin, "Place" component of injury analysis assumed satisfied. Return flows are made immediately upon pumping, but also, because depletions are below threshold amounts the "Time" component of injury prevention is assumed satisfied.

ADDITIONAL REQUIREMENTS:

- 1) For administrative purposes, the amount of annual calculated depletions to the alluvial aquifer will be based on an assumed total annual withdrawal from the Dawson aquifer of 2.3 acre-feet.
- 2) Amount of annual depletions and required amount of replacement water will be fixed and indicated in the attached table, which are our calculations vs. Exhibit A, which is the applicant's calculations. This table – created by the Commission staff – shows depletions similar to the Depletion/Replacement table provided by the applicant. The table indicates depletions in five-year increments. required amount of replacement water will be the amount indicated for that increment year and the preceding four years.

- 3) Each lot shall be limited to 0.46 acre-feet per year, sufficient for 0.3 acre-feet for household use, the irrigation of up to 1,600 square feet of lawn garden area and the watering of 4 horses.
- 4) The applicant shall form a home owners association to assure operation of the replacement plan. Each lot owner in the above-described future subdivision shall be a member of the association. This association shall be responsible for providing any information related to the operation of the replacement plan that may be requested by the Commission.
- 5) All wells shall have a totalizing flow meter that is kept in good working repair.
- 6) Applicant shall legally tie water right to parcel for as long as the replacement plan is operational.

Evaluated by EBT, Ground Water Commission Staff – 4/5/07
reviewed by: SKR

Chuck Broerman
11/15/2019 03:51:22 PM
Doc \$0.00 15
Rec \$83.00 Pages

El Paso County, CO



219144395

QUITCLAIM DEED, ASSIGNMENT AND ASSUMPTION

RMBG, LLC #2 ("Grantor"), whose address is 53409 W Rm
1710 Jet Stream Dr, C/S CO 80921, for the consideration of \$ 10.00, in
hand paid, hereby sells and quitclaims to Gilbert Perry Mose, Jr. & Jeanette Marie Mose
("Grantees"), whose street address is 12752 Mt. Oxford Pl., Peyton, CO 80831
the following real property in El Paso County, Colorado, to wit:

276 acre-feet total of water, limited to an annual appropriation of .92 acre-feet per
year and 0.46 acre-feet per year per well for no more than two wells, from the
Dawson aquifer underlying or appurtenant to that parcel of property described in
that Warranty Deed recorded on February 27, 2019 at reception number
219020481 in the real property records of El Paso County, as determined in and
subject to the terms and conditions of that Determination of Water Right No. 573-
BD issued by the Colorado Ground Water Commission on August 25, 2004 as
such may be amended including without limitation any adjustments to the
average annual allocations or appropriations,

subject to the limitations, terms, conditions, and obligations of the replacement plan
approved by the Colorado Ground Water Commission Findings and Order dated June
27, 2007, entitled "Replacement Plan – Determination of Water Right No. 573-BD"
("Replacement Plan").

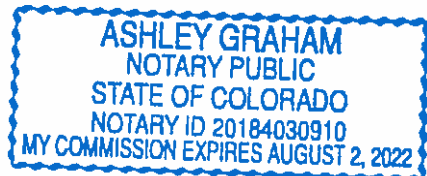
Grantor hereby assigns, transfers, and sets over to Grantees all of Grantor's
right, title, and interest in, under, and to the Replacement Plan only as it relates to the
property being conveyed herein. Grantees hereby accept the foregoing assignment and
hereby agree to perform all of the terms, conditions, duties, and obligations of Grantor
related to the use of the property being conveyed herein under the Replacement Plan
arising or accruing on or after February 27, 2019, and for the due performance of all
such terms and conditions pursuant to the Replacement Plan.

Signed this 5th day of 11, 2019.

Grantor:
RMBG, LLC #2

By: Wm R Mose

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)



The foregoing instrument was acknowledged before me this 6 day of Nov, 2019, by William L Miller as Manager of RMBG, LLC #2.

Witness my hand and official seal.

My commission expires: 08-02-2022.

Ashley Graham
Notary Public

Grantee:

Grantee:



STATE OF COLORADO

)

) ss.

COUNTY OF El Paso

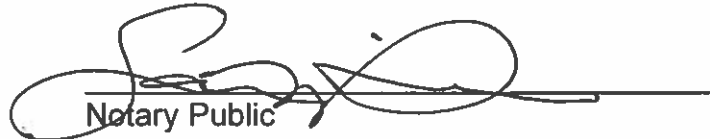
)

The foregoing instrument was acknowledged before me this 09 day of November 2019, by Gilbert Perry Mose, Jr. and Jeanette Marie Mose.

Witness my hand and official seal.

My commission expires: August 23, 2022

Sarah D Wilson
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184033943
MY COMMISSION EXPIRES August 23, 2022


Notary Public

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR DETERMINATION OF WATER RIGHT TO
ALLOW THE WITHDRAWAL OF GROUND WATER IN THE UPPER BLACK SQUIRREL
CREEK DESIGNATED GROUND WATER BASIN

APPLICANT: RMBG, LLC #2, AND PIKES PEAK RANGE RIDERS FOUNDATION

AQUIFER: DAWSON

DETERMINATION NO.: 573-BD

In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, RMBG, LLC #2, and Pikes Peak Range Riders Foundation (hereinafter "applicant") submitted an application for determination of water right to allow the withdrawal of designated ground water from the Dawson Aquifer.

FINDINGS

1. The application was received in a complete form by the Colorado Ground Water Commission on May 8, 2003.
 - a. The applicant requests a determination of rights to designated ground water in the Dawson Aquifer (hereinafter "aquifer") underlying 69.72 acres consisting of two noncontiguous areas generally described as:

North Tract - a 60.17 acre land area located in a part of the SW1/4 north of Latigo Boulevard and in a part of the W1/2 of the SE1/4, of Section 8;

South Tract - a 9.55 acre land area located in a part of the SE1/4 of the SW1/4 and in the SW1/4 of the SE1/4, of Section 8;

all in Township 12 South, Range 64 West of the 6th Principal Meridian, in El Paso County.
 - b. According to a signed statement dated March 10, 2003, the applicant claims control of the inchoate right to allocation of the ground water in the aquifer under the above described overlying land areas based on recorded deeds transferring such control by the previous owners of the overlying land to Venture Ranch, Inc., on August 31, 1984; the subsequent transfer of control of the subject ground water to The Trails, Ltd.; and later transfer of control of all of the subject ground water to the applicant. This statement, a legal description and map of the overlying land area, and the applicant's documentation supporting the claim, are attached hereto as Exhibit A.
2. The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.
3. The above described land area overlying the ground water claimed by the applicant is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission (hereinafter "Commission") has jurisdiction.

4. The applicant intends to apply the allocated ground water to the following beneficial uses: commercial, irrigation, domestic, livestock and replacement water. The applicant's proposed place of use of the allocated ground water is the above-described 69.72 acre overlying land area. A central supply system may be used to deliver the water for the above uses on the described land area.
5. The two land areas, designated the North Tract and the South Tract, claimed by the applicant and described in Exhibit A are noncontiguous. A quantification of the amount of ground water in storage in the aquifer and a maximum annual allocation will be determined specifically for the aquifer underlying each of these areas. A map of these areas is attached hereto as Exhibit B.
6. The quantity of water in the aquifer underlying each of the above land areas is as follows:

North Tract = 2647 acre-feet; South Tract = 420 acre-feet;

This determination was based on the following as specified in the Designated Basin Rules:

- a. The average specific yield of the saturated permeable material of the aquifer underlying each of the land areas under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 20 percent.
 - b. The average thickness of the saturated permeable material of the aquifer underlying the land areas under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 220 feet.
7. At this time, there is no substantial artificial recharge that would affect the aquifer within a one hundred year period.
 8. Pursuant to Section 37-90-107(7), C.R.S., and in accordance with the Designated Basin Rules, the Commission shall allocate ground water in the aquifer based on ownership of the overlying land and an aquifer life of one hundred years. Therefore, the maximum average annual amount of ground water in the aquifer that may be allocated for withdrawal pursuant to the data in the paragraphs above for each overlying land area claimed by the applicant is as follows: the North Tract = 26.5 acre-feet; the South Tract = 4.2 acre-feet.
 9. The ability of wells permitted to withdraw the authorized amount of water from this non-renewable 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.
 10. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the aquifer underlying the 69.72 acres of land claimed by the applicant will, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the ground water is considered to be not-nontributary ground water. Withdrawal of water from the aquifer underlying the claimed land area would impact

the alluvial aquifer of Black Squirrel Creek or its tributaries, which has been determined to be over-appropriated. Commission approval of a replacement plan - pursuant to Section 37-90-107.5, C.R.S., and Rule 5.6 of the Designated Basin Rules - providing for the actual depletion of the alluvial aquifer and adequate to prevent any material injury to existing water rights, would be required prior to approval of well permits for wells to be located on this land area to withdraw the allocated ground water from the aquifer.

11. A review of the records in the Office of the State Engineer has disclosed a small-capacity well located on the applicant's claimed overlying land, permit number 84139. The applicant claims ownership of this well and has provided a written request to the Commission to cancel this well permit upon approval of this determination. For this reason, the annual withdrawal for this well was not considered in determining the allowed quantity of ground water in the aquifer to be allocated. Except for this well, review of the records in the Office of the State Engineer has disclosed that none of the water in the aquifer underlying the land claimed by the applicant has been previously allocated or permitted for withdrawal.
12. Pursuant to Section 37-90-107(7)(c)(III), C.R.S., an approved determination of water right shall be considered a final determination of the amount of ground water 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.
13. In accordance with Section 37-90-107(7), C.R.S., upon Commission approval of a determination of water right, well permits for wells to withdraw the authorized amount of water from the aquifer shall be available upon application, subject to the conditions of this determination and the Designated Basin Rules and subject to approval by the Commission.
14. On May 8, 2003, in accordance with Rule 9.1 of the Designated Basin Rules, a letter was sent to the Upper Black Squirrel Creek Ground Water Management District requesting written recommendations concerning this application. No written recommendations from this district were received.
15. The Commission Staff has evaluated the application relying on the claims to control of the ground water in the aquifer made by the applicant.
16. In accordance with Sections 37-90-107(7) and 37-90-112, C.R.S., the application was published in The Gazette newspaper on May 15 and 22, 2003.
17. a. On June 3, 2003, an objection to the application was received from the Upper Black Squirrel Creek Ground Water Management District ("objector"), and assigned Case No. 03-GW-11. No other objection to the proposed determination of water right was received within the time limit set by statute.

b. On April 14, 2004, prior to an administrative hearing in this case, the objector withdrew its objection.

c. By Order of the Commission Hearing Officer dated April 23, 2004, Case No. 03-GW-11 was dismissed.

18. In order to prevent unreasonable impairment to the existing water rights of others within the Upper Black Squirrel Creek Designated Ground Water Basin it is necessary to impose conditions on the determination of water right and proposed allocation of ground water. Under these conditions as stated in the following Order, no unreasonable impairment of existing water rights will occur from approval of this determination of water right or from the issuance of well permits for wells to withdraw the authorized amount of allocated ground water from the aquifer.

ORDER

In accordance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for determination of rights to designated ground water in the Dawson Aquifer underlying 69.72 acres, consisting of two noncontiguous areas generally described as: the North Tract - a 60.17 acre land area located in a part of the SW1/4 north of Latigo Boulevard and in a part of the W1/2 of the SE1/4, of Section 8; and the South Tract - a 9.55 acre land area located in a part of the SE1/4 of the SW1/4 and in the SW1/4 of the SE1/4, of Section 8; all in Township 12 South, Range 64 West of the 6th Principal Meridian, is approved subject to the following conditions:

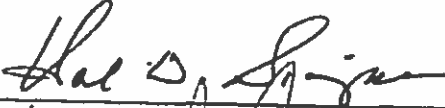
19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed the following amounts: North Tract = 26.5 acre-feet; South Tract = 4.2 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product of the number of years since the date of approval of this determination times the allowed average annual amount of withdrawal
20. To conform to actual aquifer characteristics, the Commission may adjust the allocated average annual amount of ground water to be withdrawn from the aquifer based on analysis of geophysical logs or other site-specific data if such analysis indicates that the initial estimate of the volume of water in the aquifer was incorrect.
21. Commission approval of a replacement plan, providing for actual depletion of affected alluvial aquifers and adequate to prevent any material injury to existing water rights in such alluvial aquifers is required prior to approval of well permits for wells to be located on the overlying land area to withdraw ground water from the aquifer.
22. The use of ground water from this allocation shall be limited to the following beneficial uses: commercial, irrigation, domestic, livestock and replacement water. The place of use shall be limited to the above-described 69.72 acre land area.
23. The applicant, or subsequent persons controlling this water right, shall record in the public records of the county - in which the claimed overlying land is located - notice of transfer of any portion of this water right to another within sixty days after the transfer, so that a title examination of the above described 69.72 acre land area, or any part thereof, shall reveal the changes affecting this water right. Such notice shall consist of a signed and dated deed which indicates the determination number, the aquifer, a description of the above described land area, the annual amount of ground water (acre-feet) transferred, name of the recipient, and the date of transfer.

24. Subject to the above conditions, well permits for wells to withdraw the authorized annual amount of water from the aquifer shall be available upon application subject to approval by the Commission and the following conditions:
- a. The wells shall be located on the above described 69.72 acre overlying land area. Wells located within the 60.17 acres of the North Tract shall only withdraw the allowed average annual amount of water determined for that area (26.5 acre-feet); wells located within the 9.55 acres of the South Tract shall only withdraw the allowed average annual amount of water determined for that area (4.2 acre-feet); unless the following condition may be satisfied:
 - i. In accordance with Rule 5.3.7.2. of the Designated Basin Rules, a permitted and constructed well may be located within one of the above described noncontiguous land areas at a point where the total combined allowed average annual amounts of water determined for that area and the other described noncontiguous area may be withdrawn by that well – and thereafter through any other well(s) permitted to withdraw those allocations and located on either of those two areas – if a cylinder of appropriation, calculated for the combined annual amounts for those two areas and centered at that well location, overlaps a portion of the described noncontiguous area. The radius of such a cylinder is subject to paragraph 20 of this Order and the actual amount of saturated permeable material of the aquifer at the well location. Any request for combined withdrawal from noncontiguous areas must be identified in the well permit application.
 - b. The wells must be constructed to withdraw water from only the Dawson Aquifer. Upon application for a well permit to construct such a well, the estimated top and base of the aquifer at the proposed well location will be determined by the Commission and indicated on the approved well permit. Plain non-perforated casing must be installed, grouted and sealed to prevent diversion of ground water from other aquifers and the movement of ground water between aquifers.
 - c. The entire depth of each well must be geophysically logged prior to installing the casing as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - d. Each well shall be constructed within 200 feet of the location specified on the approved well permit, and, except for wells permitted in accordance with this determination, must be more than 600 feet from any existing large-capacity well completed in the same aquifer.
 - e. The wells may withdraw the allowed average annual amount of water from the aquifer together in any combination, subject to paragraph 24.a of this Order. The total combined annual withdrawal of the wells shall not exceed the allowed average annual amount described in this Order.
 - f. 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 maintained by the well owner and submitted to the Commission or the Upper Black Squirrel Creek Ground Water Management District upon their request.

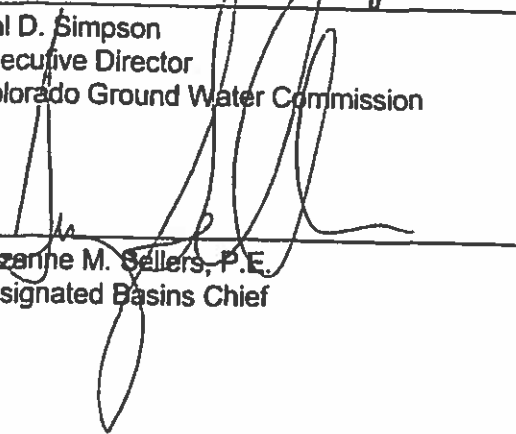
g. The well owner shall mark the well in a conspicuous place with the permit number and the name of the aquifer. The well owner shall take necessary means and precautions to preserve these markings.

25. A copy of this Findings and Order shall be recorded by the applicant in the public records of the county - in which the claimed overlying land is located - so that a title examination of the above described 69.72 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 25th day of August, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission


By: _____
Suzanne M. Sellers, P.E.
Designated Basins Chief

Prepared by: RAC
FIND-492

COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER

IN THE MATTER OF AN APPLICATION FOR REPLACEMENT PLAN TO ALLOW THE WITHDRAWAL OF GROUND WATER FROM THE DAWSON AQUIFER IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN.

APPLICANT: RMBG, LLC #2

REPLACEMENT PLAN - DETERMINATION OF WATER RIGHT NO. 573-BD

In compliance with Section 37-90-107.5, CRS, and the Designated Basin Rules, 2 CCR 410-1, RMBG, LLC #2, LLC (referred to hereinafter as "applicant") submitted an application for a replacement plan to allow the withdrawal of ground water from the Dawson Aquifer in accordance with Determination of Water Right No. 573-BD.

FINDINGS

1. Pursuant to Section 37-90-107(7), CRS, in the Findings and Order dated August 25, 2004, the Ground Water Commission (hereinafter "Commission") approved a Determination of Water Right, No. 573-BD, for the Dawson aquifer. This determination of water right allows the allocation of ground water from the Dawson Aquifer (hereinafter "aquifer"), underlying a total of 69.72 acres consisting of two noncontiguous areas designated and generally described as the **North Tract** - a 60.17 acre land area located in a part of the SW $\frac{1}{4}$ north of Latigo Boulevard and in a part of the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ Section 8; and the **South Tract** - a 9.55 acre land area located in a part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 8, all in Township 12 South, Range 64 West of the 6th Principal Meridian, in El Paso County.
2. The allowed average annual amount of ground water to be withdrawn from the aquifer, in accordance with the conditions of the above determination of water right, shall not exceed 26.5 acre-feet for the North Tract, and 4.2 acre-feet for the South Tract.
3.
 - a. In accordance with Rule 5.3.6 of the Designated Basin Rules, the replacement water requirement status for the ground water in the aquifer underlying the above described 69.72-acre land area was determined to be not-nontributary. Withdrawal of ground water from the aquifer underlying the above land area would impact the Upper Black Squirrel Creek Designated Ground Water Basin Alluvial Aquifer, described in Designated Basins Rules 5.2.6.1 (hereinafter referred to as the "Upper Black Squirrel Creek Alluvial Aquifer"), and the Kiowa-Bijou alluvial aquifer, which have been determined by the Commission to be over-appropriated.
 - b. Commission approval of a replacement plan, providing for replacement of actual depletions to the alluvial aquifers and adequate to prevent any material injury to existing water rights, is required prior to approval of well permits for wells to be located on the above described land area to withdraw the allowed allocation of ground water from the aquifer, in accordance with the conditions of the subject determination of water right.
4. In accordance with Rule 5.3.6.2(C) of the Designated Basin Rules, the amount of replacement water shall provide for the depletion of alluvial water for the first 100 years due to all previous pumping - and if pumping continues beyond 100 years, shall replace actual impact until pumping ceases.

5. The above-described 69.72-acre land area is located within the boundaries of the Upper Black Squirrel creek Designated Ground Water Basin. The Commission has jurisdiction.
6. The subject application for replacement plan was received complete by the Commission on April 6, 2007.
7.
 - a. In accordance with Rule 5.6.1 of the Designated Basin Rules, the replacement plan must be adequate to prevent any material injury to water rights of other appropriators.
 - b. As proposed by the applicant, the replacement plan would allow for use of an annual amount of up to 2.3 acre-feet of water for individual wells serving a 5-lot subdivision for a period of 300-years. The five-lot subdivision would utilize the South Tract and small portion of the North Tract. The use of each well would be limited to an annual withdrawal of 0.46 acre-feet of ground water for in-house use (0.30 acre-feet), the irrigation of up to 1,600 square feet of lawn garden area, and the watering of up to four large domestic animals.
 - c. The applicant calculated actual depletions to the Upper Black Squirrel Creek and Kiowa-Bijou Alluvial Aquifers for the proposed withdrawals with a ground water flow model (AUG 3) using the Colorado State Engineer's (SEO) Dawson aquifer DA02 data file, the output of which is attached hereto as Exhibit A. The maximum combined depletions to both aquifers caused by the pumping of 2.3 acre-feet per year for 300 years will be 1.85% of pumping in the 300th year, which is equal to 0.04 acre-feet per year (or 0.008 acre-feet per year per well).
 - d. Replacement of depletions are to be made to the Upper Black Squirrel Creek Alluvial Aquifer. The applicant plans to aggregate replacement water to the drainage of Black Squirrel Creek via the alluvium of Black Squirrel Creek and the alluvium of a near-by un-named tributary channel.
 - e. The source of replacement water would be return flows from in-house use of ground water, to be withdrawn from five wells permitted in accordance with the conditions of the subject determination and proposed replacement plan.
 - i. The applicant estimates that each lot using the Dawson aquifer as a water source will contribute 90% of water used in-house, equaling 0.27 acre-feet per year per well, or 1.35 acre-feet per year for all five wells, which will exceed total calculated depletions.
 - ii. A totalizing flow meter will be installed on each well and kept in good working order for the purpose of measuring withdrawals and calculating replacements made.
 - iii. A homeowner's association will be established to administer the replacement plan.
 - iv. The approved replacement plan will be recorded in the real property records of El Paso County.
 - f. Operation of the replacement plan involves constructing the septic systems in compliance with State and County health department standards and, as a result, shall not cause unreasonable impairment of water quality of the receiving aquifer.
8. Records in this office indicate that the applicant controls the water right to be used as a source of replacement water, Determination No. 573-BD.

9. In accordance with Sections 37-90-107.5 and 37-90-112, CRS, the application was published in The Ranchland News newspaper on April 12 and 19, 2007.
10. No objections to the application were received within the time limit set by statute.
11. The Commission Staff has evaluated the application pursuant to Section 37-90-107.5, CRS, and the requirements of Rule 5.3.6.2(C) and Rule 5.6 of the Designated Basin Rules.
12. a. In accordance with Rule 5.6.2 of the Designated Basin Rules, the applicant shall have the burden of proving the adequacy of the plan in all respects.

b. The Commission Staff shall propose any additional terms and conditions or limitations, which are necessary to prevent material injury and to ensure that the plan is administrable and enforceable. Any such terms and conditions or limitations are incorporated into the following Order of the Commission.
13. Upon Commission approval of this replacement plan, well permits for wells to withdraw the authorized amount of water from the aquifer shall be available upon application, subject to the terms and conditions of the replacement plan and the conditions for well permit issuance in Determination of Water Right No. 573-BD, and subject to approval by the Commission.
14. Based on data and information supplied by the applicant, the subject replacement plan, if operated under the conditions of the following Order, will prevent material injury from occurring to the existing appropriators within the Upper Black Squirrel Creek Designated Ground Water Basin, or any other designated basin as a result of withdrawing ground water from the Dawson aquifer allocation pursuant to Determination of Water Right no. 573-BD.

ORDER

In accordance with Section 37-90-107.5, CRS, and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for replacement plan, to allow the withdrawal of ground water from the Dawson Aquifer underlying a total of 69.72 acres consisting of two noncontiguous areas designated and generally described as the **North Tract** – a 60.17 acre land area located in a part of the SW¼ north of Latigo Boulevard and in a part of the W½ of the SE¼ Section 8; and the **South Tract** – a 9.55 acre land area located in a part of the SE¼ of the SW¼ and in the SW¼ of the SE¼ of Section 8, all in Township 12 South, Range 64 West of the 6th Principal Meridian, in El Paso County, in accordance with Determination of Water Right No. 573-BD, is approved subject to the following conditions:


15. Well permits for up to five individual on-lot wells shall be available upon application subject to approval by the Commission and the conditions for well permit issuance in the Commission's Findings and Order of August 25, 2004, for Determination of Water Right No. 573-BD, and subject to the following terms and conditions of this replacement plan.

17. A totalizing flow meter shall be installed on each well. The well owners shall maintain the meters in good working order. Permanent records of annual withdrawal of ground water shall be maintained by each well owner and provided to the Commission upon request.
18. The allowed annual amount of ground water to be withdrawn from the aquifer by each permitted well shall not exceed 0.46 acre-feet, an annual combined total amount of 2.3 acre-feet.
19. The allowed use of ground water for each well under this plan is in-house, up to 1,600 square feet of lawn and garden irrigation, and watering of up to four large domestic animals. Place of use for each well shall be limited to the lot on which the well is located.
20. To assure adequate return flows, at least one well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by any well.
21. A table showing total net annual depletions to the affected alluvial aquifer, as a percentage of pumping and in acre-feet per year, in ten-year increments, is attached hereto on Page 2 of Exhibit A. Depletions are based on a continuous annual withdrawal from the aquifer of 2.3 acre-feet. Replacement of depletions must be provided based on the acre-feet amounts shown in that table. Replacement requirements may be computed on a pro-rated basis between each ten-year value, or for simplicity may be equal to the amount shown in next succeeding ten-year increment.
22. Pumping under this plan is limited to a period of 300 years. The year of first use of this replacement plan shall be the calendar year of construction of a well permitted pursuant to this plan or permitting of an existing well pursuant to the plan.
23. Return flows from all use of ground water shall occur through individual on lot non-evaporative septic systems constructed to State and county health department standards.
24. The replacement plan shall provide for the required annual amount of replacement water for the first 100 years, and if pumping continues beyond 100 years for as long as pumping continues. So long as at least one well continues to pump and supply an occupied dwelling, the plan's required replacement obligation, shown on page 2 of Exhibit A, will be met. Should all wells cease pumping for residential use within the first 100 years, at least one well must either maintain pumping for replacement purposes, or an amended or alternate replacement plan must be applied for that will make the required replacement deliveries.
25. The applicant, or their successor (assumed herein to be a property owners association) must maintain permanent records containing the following items:
 - a. A listing of all well permits issued and wells constructed pursuant to this plan
 - b. The annual and cumulative amounts of water diverted by each individual well and by all wells in total.
 - c. Whether each individual well is serving an occupied dwelling.
 - d. Whether each individual well is serving irrigated landscaping, and amount of land being irrigated.
 - e. Whether each individual well is serving domestic animals, and the number of head served.
 - f. The return flows occurring from in-house use of each well, assuming a 90% return flow rate for in-house use.


26. The applicant shall form a property owners association to assure operation of the replacement plan. Each lot owner in the above-described future subdivision shall be a member of the association. This association shall be responsible for the operation of the plan, and shall prepare all notices and reports required by the plan and provide these to the Commission with any other information related to the operation of the replacement plan that may be requested by the Commission.
27. The applicant or their successor shall assure that replacement water is provided to the alluvium as is required under this plan. The amount of replacement water shall be calculated and reported on the accounting form acceptable to the Commission. The replacement water must equal or exceed the depletions to the alluvium on a yearly basis and must prevent any material injury to the water rights of other appropriators. No credit shall be claimed by the applicant for an oversupply of replacement water provided to the alluvium during previous years.
28. The applicant or their successor shall record and maintain permanent records of all totalizing flow meter readings, power meter readings and data concerning all other operations associated with the replacement plan which are necessary to allow replacement to occur on a yearly basis and to submit this information to the Commission on an annual basis for the calendar year just concluded by February 15th of the following year.
29. To insure appropriate control of the subject water right and source of replacement water by the lot owners in the future subdivision, and allow for each lot owner to obtain a well permit, the applicant shall either tie a share of the water right and annual allocation amount to each lot, if well permits will be applied for in the name of the applicant or property owners association, or transfer a share of the water right and annual allocation amount to each lot owner, if well permits will be applied for by each lot owner. Such transfers shall be by recorded deed, in accordance with the conditions of paragraph 23 of the Commission's Order for Determination No. 573-BD.
30. Any covenants adopted for the future subdivision should contain a description of the replacement plan and how the plan is to be administered, including the required limitations on water use for each lot.
31. A copy of this Findings and Order shall be recorded by the applicant in the real property records of El Paso County, so that a title examination of the above described 69.72 acre property, or any part thereof, shall reveal to all future purchasers the existence of this replacement plan. The terms and conditions of this replacement plan shall be considered to be a covenant on and running with the subject property.
32. In the event the permitted wells are not operated in accordance with the conditions of this replacement plan, they shall be subject to administration, including orders to cease diverting ground water.
33. The Commission retains jurisdiction to modify or revoke approval of this replacement plan, if monitoring or operating experience reveals that the plan results in any material injury to water rights of other appropriators or in unreasonable impairment to water quality.

Applicant: RMBG, LLC #2
Dawson Aquifer
Replacement Plan - Determination No. 573-BD

Dated this 27th day of June, 2007.


Dick Wolfe, P.E. for the
Executive Director
Colorado Ground Water Commission



By: 
Keith Vander Horst, P.E.
Supervisor, Designated Basins

Prepared by: ebt
FIND-RP13-2007