

**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, AND PIKES PEAK RANGE RIDERS FOUNDATION

REPLACEMENT PLAN NO. 2 – 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 The allowed average annual amount of ground water to be withdrawn from the aquifer, in accordance with the conditions of the above determination of water right, shall not exceed 26.5 acre-feet for the North Tract, and 4.2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 actual depletion 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 10, 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 7.9 acre-feet of water for the well serving the existing care-taker residence and commercial venue (restaurant and horse arena), for a period of 300-years. The existing care-taker residence, and the commercial businesses all occur on the western 54.05 acres of the North Tract (The 10.05 acre Commercial Area and the 44.0 acre Latigo Trails Equestrian Center as depicted on the attached Figure 1).
 - c. On June 27, 2007, applicant RMBG, LLC #2 obtained approval of a replacement plan allowing the withdrawal of a portion of the Dawson aquifer water that was the subject of Determination of Water Right No. 573-BD. Specifically, that plan allowed the withdrawal of 2.30 acre-feet per year for a period of 300 years, consisting of 1.38 acre-feet of water per year from beneath the 9.55 acre Southern Parcel as described in Paragraph 1 (for use on the Southern Parcel), and 0.92 acre-feet per year from beneath the Northern Parcel (for use on the Proposed Filing No. 5 of the Northern Parcel as depicted on the attached Figure 1).
 - d. 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 presents depletions as a percentage of pumping and is attached hereto as Exhibit A. Staff has converted the percentage values to acre-feet per year amounts, the output of which is attached hereto as State's Exhibit A. The maximum combined depletions to both aquifers caused by the pumping of 7.9 acre-feet per year for 300 years will be 1.85% of pumping in the 300th year, which is equal to 0.15 acre-feet in that year.
 - e. Replacement of depletions is to be made to the Upper Black Squirrel Creek Alluvial Aquifer. The applicant plans to aggregate replacement water directly to the drainage of Black Squirrel Creek, which the subject property overlies at a point approximately nine miles up gradient of the Upper Black Squirrel Creek Alluvial Aquifer.
 - f. The source of replacement water would be septic system return flows from the existing care taker residence and commercial venue (restaurant and horse arena), which will be supplied water from wells permitted in accordance with the conditions of the subject determination and proposed replacement plan.

- i. The applicant applies estimated standard in-house use demand values (see July 17, 2007 Memorandum from the applicant) for the existing care-taker residence (which assume an occupancy of 4 persons). Based on these demand values, septic system return flows will contribute 0.27 acre-feet per year. At the maximum proposed levels of use, the commercial venture is estimated to contribute approximately 3.6 acre-feet per year via septic system return flows. Accepting septic system return flows as a replacement supply from both these sources is conditional upon the existing well being re-permitted to withdraw from the Dawson aquifer allocation (573-BD) pursuant to the subject replacement plan. Under the applicant's assumptions the return flows from the use of that well would exceed calculated depletions.
 - ii. The existing small capacity well serving the care-taker residence and the commercial business (permit no. 84139) will be re-permitted for the purposes of withdrawing water from the Dawson aquifer allocation pursuant to Determination of Water Right 573-BD and the subject replacement plan.
 - iii. A totalizing flow meter will be installed on each well withdrawing water pursuant to this replacement plan, and kept in good working order for the purpose of measuring withdrawals and calculating replacements made.
 - iv. The approved replacement plan will be recorded in the real property records of El Paso County.
 - g. Operation of the replacement plan involves using existing septic systems. Operation of the septic systems in a manner that is in compliance with State and County health department standards would prevent 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 19 and 26, 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.

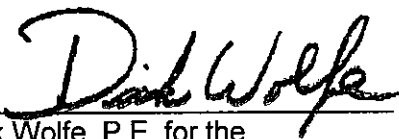
ORDER

15. 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 2,390 acre-feet of ground water from beneath the Northern Tract, as previously described, in accordance with Determination of Water Right No. 573-BD, is approved subject to the following conditions:
16. Well permits for the caretaker residence and commercial venue 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. The applicant must apply for and obtain a new large capacity well permit for the existing well (currently permitted under No. 84139), to provide for its operation pursuant to this replacement plan.
18. 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.
19. The allowed annual amount of ground water to be withdrawn from the aquifer shall not exceed a total of 7.9 acre-feet. This amount will allow for a well(s) to provide 0.39 acre-feet per year for the caretaker residence (estimated at 0.30 AF/yr for indoor use and 0.09 AF/yr for irrigation) and 7.5 acre-feet per year for the commercial venue (estimated at 4.0 acre-feet per year for the restaurant, plus 1.8 acre-feet per year for irrigation purposes, and 1.7 acre-feet per year for the horse facility).
20. The allowed use of ground water for each new well permit may include in-house, commercial, irrigation, replacement, and domestic and commercial animal watering. Place of use for each well shall be limited to the above-mentioned 54.05 acre area.
21. A table showing total net annual depletions to the affected alluvial aquifer in acre-feet per year is attached hereto as State's Exhibit A. Depletions are based on a continuous annual withdrawal from the aquifer of 7.9 acre-feet. Replacement of depletions must be provided based on the acre-feet amounts shown in the table of State's Exhibit A. 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. To assure adequate return flows, at least one well must be serving in-door care-taker or commercial uses in sufficient amounts so as to generate septic system return flows in amounts at least equal to the required replacements shown on State's Exhibit A, before any other uses are allowed to be served by any well.
23. 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 that the existing small capacity well (Permit No. 84139) is re-permitted and brought into compliance with the conditions of operation of this replacement plan. No new permits will be issued until this is done.
24. Return flows from all in-door use of ground water shall occur through individual on lot non-evaporative septic systems constructed and operated to State and county health department standards.
25. The applicant must provide the required annual amount of replacement water for the first 100 years, or for as long as the wells operate pursuant to this plan, whichever is longer. All individual wells may not begin pumping concurrently. Should all wells cease pumping for residential or commercial 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.
26. The applicant, or their successor, 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 or a commercial business.
 - d. Whether each well is serving irrigated landscaping, and the amount of land being irrigated.
 - e. Whether each individual well is serving animals, and the number of head served.
 - f. The return flows occurring from in-door use of each well, assuming a 90% return flow rate for in-door use.
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, including but not limited to the items listed in paragraph 25, which are necessary to document replacement occurs 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. 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.
- 30. 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.
- 31. 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.

Dated this 17th day of August, 2007.


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


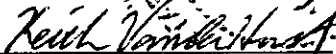

By: 
Keith Vander Horst, P.E.
Supervisor, Designated Basins

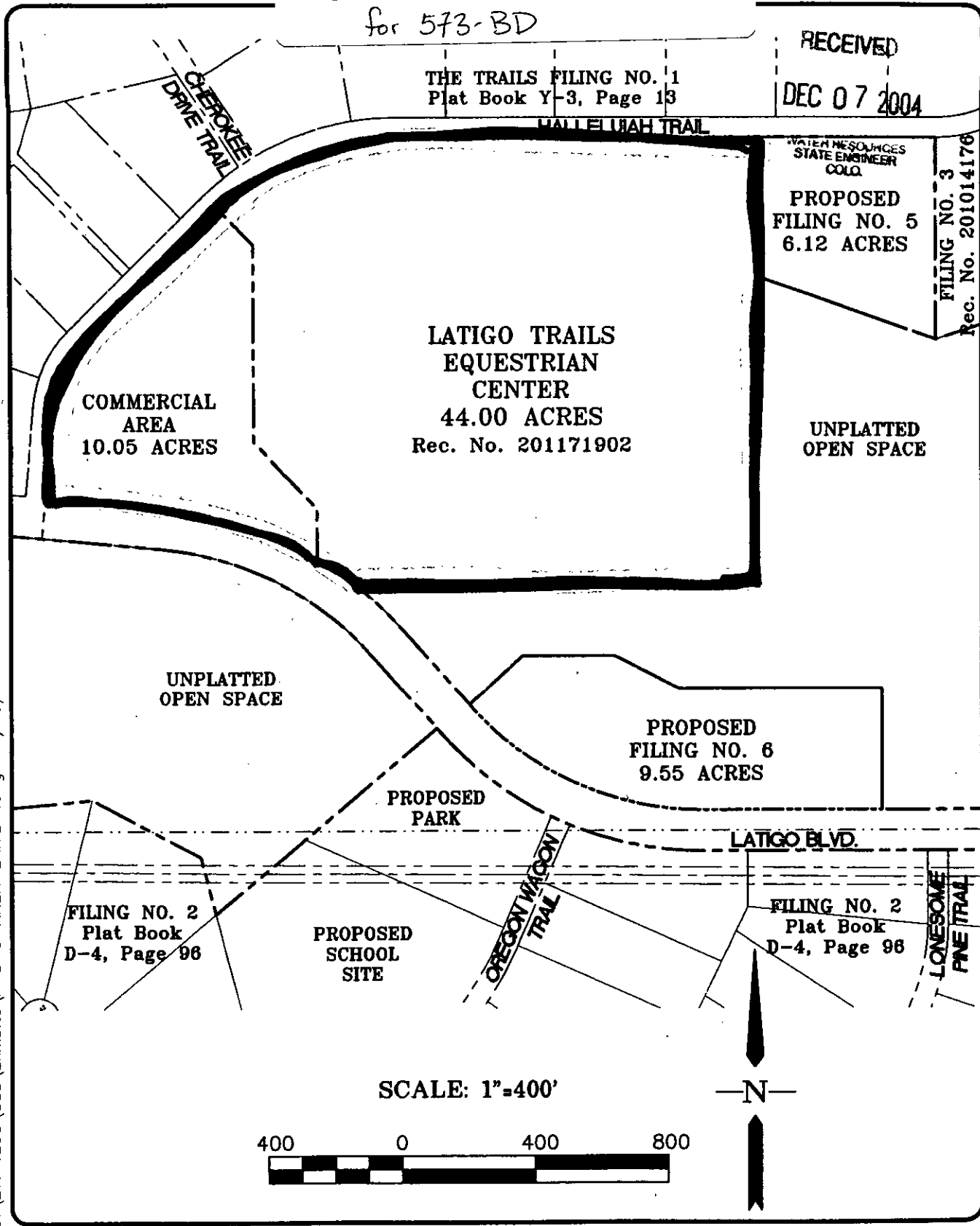
Figure 1. Replacement Plan #2
for 573-BD

RECEIVED
DEC 07 2004

THE TRAILS FILING NO. 1
Plat Book Y-3, Page 13

WATER RESOURCES
STATE ENGINEER
COLO.
PROPOSED
FILING NO. 5
6.12 ACRES

FILING NO. 3
Rec. No. 201014176



COMMERCIAL
AREA
10.05 ACRES

LATIGO TRAILS
EQUESTRIAN
CENTER
44.00 ACRES
Rec. No. 201171902

UNPLATTED
OPEN SPACE

UNPLATTED
OPEN SPACE

PROPOSED
FILING NO. 6
9.55 ACRES

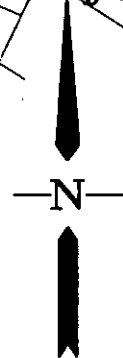
PROPOSED
PARK

FILING NO. 2
Plat Book
D-4, Page 96

PROPOSED
SCHOOL
SITE

FILING NO. 2
Plat Book
D-4, Page 96

SCALE: 1"=400'



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URS

9960 Federal Drive, Suite 300
Colorado Springs, CO 80921
719.531.0001 fax: 719.531.0007

LATIGO TRAILS
COMMERCIAL AREA
EQUESTRIAN CENTER
PROPOSED FILING NO. 5
PROPOSED FILING NO. 6

Figure
1

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

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WATER RESOURCES
 STATE ENGINEER
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Table I
 Latigo Trails Equestrian and Commercial Center
 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

Accounting Form
Latigo Trails Equestrian and Commercial Center
Case 05-GW-_____

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MATER RESOURCES
STATE ENGINEER
COLORADO

APR 06 2007

Accounting Period		From	To
		2304	2305
Division	Well Meter Reading	Base Use	
Well No.	Well Permit	gal.	af
(com)	This Oct. 31 col. a	col. c - col. d	col. a - col. b
(horses)	Last Oct. 31 col. b		
Total	This Feb. 28/29 col. c	1.48	5.93
	Last Dec. 1 col. d		2
		1.48	7.93

Alluvial Depletion		Factor	From	To
Alluvial Depletion Factor From Table 1 [years since pumping began round up to nearest 10 yrs]		1.85		
Total Withdrawal (1)		100		
Depletion		7.93		af
Total Base Use (1)		0.15		af
Alluvial Return Flow		4		
Net Accretion (Depletion) (3)-(2)		0.9		
		5.33		af
		5.18		af

Water Supply Summary		From	To
Total Withdrawal (1)		+	7.93
Total Withdrawal Through Last Year (5)		+	2371.1
Total		=	2379.0
Years Since Pumping Began		/	300
Average Annual Withdrawal		=	7.93

Table 1
(as %)

YRS	TOTAL	YRS	TOTAL
10	0.00	160	0.43
20	0.00	170	0.51
30	0.00	180	0.59
40	0.01	190	0.67
50	0.01	200	0.75
60	0.02	210	0.85
70	0.04	220	0.95
80	0.06	230	1.05
90	0.08	240	1.15
100	0.12	250	1.26
110	0.16	260	1.37
120	0.19	270	1.48
130	0.24	280	1.60
140	0.31	290	1.72
150	0.36	300	1.85

States Exhibit A
 Replacement Plan for 573-BD
 RMBG, LLC #2 and Pikes Peak Range Riders Foundation

Depletions and Required Delivery of Replacement Water

YRS (pumping 7.9 AF)	Upper Black Squirrel Creek (% of pumping)	Upper Black Squirrel Creek (AF/yr)	Kiowa- Bijou (% of pumping)	Kiowa- Bijou (AF/yr)	Total q/Q (% of Pumping)	Total (AF/yr)
10	0.00	0.00	0.00	0.00	0.00	0.00
20	0.00	0.00	0.00	0.00	0.00	0.00
30	0.00	0.00	0.00	0.00	0.00	0.00
40	0.00	0.00	0.01	0.00	0.01	0.00
50	0.00	0.00	0.01	0.00	0.01	0.00
60	0.00	0.00	0.02	0.00	0.02	0.00
70	0.01	0.00	0.03	0.00	0.04	0.00
80	0.01	0.00	0.05	0.00	0.06	0.00
90	0.01	0.00	0.07	0.01	0.08	0.01
100	0.02	0.00	0.10	0.01	0.12	0.01
110	0.03	0.00	0.13	0.01	0.16	0.01
120	0.03	0.00	0.16	0.01	0.19	0.02
130	0.04	0.00	0.20	0.02	0.24	0.02
140	0.06	0.00	0.25	0.02	0.31	0.02
150	0.07	0.01	0.29	0.02	0.36	0.03
160	0.09	0.01	0.34	0.03	0.43	0.03
170	0.11	0.01	0.40	0.03	0.51	0.04
180	0.13	0.01	0.46	0.04	0.59	0.05
190	0.15	0.01	0.52	0.04	0.67	0.05
200	0.17	0.01	0.58	0.05	0.75	0.06
210	0.20	0.02	0.65	0.05	0.85	0.07
220	0.23	0.02	0.72	0.06	0.95	0.08
230	0.26	0.02	0.79	0.06	1.05	0.08
240	0.29	0.02	0.86	0.07	1.15	0.09
250	0.32	0.03	0.94	0.07	1.26	0.10
260	0.36	0.03	1.01	0.08	1.37	0.11
270	0.39	0.03	1.09	0.09	1.48	0.12
280	0.43	0.03	1.17	0.09	1.60	0.13
290	0.47	0.04	1.25	0.10	1.72	0.14
300	0.51	0.04	1.34	0.11	1.85	0.15