

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

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

DETERMINATION NO.: 4236-BD

AQUIFER: Laramie-Fox Hills

APPLICANT: Maddie Investments, LLC

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

FINDINGS

1. The application was received by the Commission on July 15, 2021.
2. The Applicant requests a determination of right to an allocation of designated groundwater (Determination) in the Laramie-Fox Hills aquifer (Aquifer) underlying 17.82 acres, generally described as Lot 62 of Peyton Ranches subdivision, generally described as a portion of the SE1/4 of the SW1/4 of Section 28 and a portion of the NE1/4 of the NW1/4, Section 33, all in Township 11 South, Range 63 West, 6th P.M., in El Paso County (Overlying Land). According to a Nontributary Groundwater Landownership Statement dated June 29, 2021, attached hereto as Exhibit A, the Applicant owns the 17.82 acres of land, which are further described in said Ownership Statement, and claims control of the right to the groundwater in the Aquifer underlying the land.
3. The Overlying Land located in a portion of the SE1/4 of the SW1/4 of Section 28, Township 11 South, Range 63 West, 6th P.M. is within the boundaries of the Upper Big Sandy Designated Groundwater Basin and within the Upper Big Sandy Ground Water Management District. The Overlying Land located in a portion of the NE1/4 of the NW1/4 of Section 33, Township 11 South, Range 63 West, 6th P.M. is within the boundaries of the Upper Black Squirrel Creek Designated Groundwater Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Commission has jurisdiction over the designated groundwater that is the subject of this Determination.
4. The Commission's Staff has evaluated the application relying on the claims to control of the groundwater in the Aquifer underlying the Overlying Land made by the Applicant.
5. The Applicant intends to apply the groundwater in the Aquifer underlying the Overlying Land to the following beneficial uses: domestic, irrigation (indoor and outdoor), agricultural, livestock, replacement, commercial, industrial and fish and wildlife. The Applicant's proposed place of use of the groundwater in the Aquifer underlying the Overlying Land is the above described 17.82 acres of Overlying Land.
6. Pursuant to section 37-90-107(7)(a), and in accordance with the Designated Basin Rules, the Commission shall allocate the groundwater in the Aquifer underlying the Overlying Land on the basis of the ownership of the Overlying Land.

7. The amount of water in storage in the Aquifer underlying the 17.82 acres of Overlying Land claimed by the Applicant is 535 acre-feet. This determination was based on the following as specified in the Designated Basin Rules.
 - a. The average specific yield of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 15 percent.
 - b. The average thickness of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 200 feet.
8. A review of the records in the Office of the State Engineer has disclosed that none of the groundwater in the Aquifer underlying the Overlying Land has been either previously determined to be allocated by the Commission, has been permitted for withdrawal by large capacity wells that have rights that were initiated prior to November 19, 1973 that are subject to section 37-90-107(7)(b), or has been permitted for withdrawal by existing small capacity wells withdrawing water under permits issued pursuant to section 37-90-105, C.R.S. The amount of designated groundwater in the Aquifer underlying the Overlying Land that is available for allocation in this Determination is 535 acre-feet.
9. Pursuant to section 37-90-107(7)(c)(III), an approved determination of a right to an allocation shall be considered a final determination of the amount of groundwater so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
10. Pursuant to section 37-90-107(7)(d), the Commission has authority to issue well permits pursuant to subsection 107(7) (i.e. permits for large capacity wells) for the withdrawal of designated groundwater from the Aquifer. Pursuant to section 37-90-107(7)(a) the Commission shall adopt the necessary rules to carry out the provisions of subsection (7). Pursuant to section 37-90-111(h), C.R.S., the Commission is empowered to adopt rules necessary to carry out the provisions of Article 90 of Title 37. In accordance with that authority, the Commission has adopted the Rules and Regulations for the Management and Control of Designated Ground Water (2 CCR 410-1) ("Designated Basin Rules", or "Rules").
11. Large capacity well permits issued pursuant to section 37-90-107(7) are subject to the following provisions of statute and the Designated Basin Rules.
 - a. Pursuant to section 37-90-107(7)(a) well permits issued pursuant to subsection 107(7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The 535 acre-feet of water in the Aquifer underlying the Overlying Land available for allocation in this Determination, if permitted for withdrawal by large capacity wells on the basis of an aquifer life of one hundred years, would result in an allowed average annual amount of withdrawal of 5.35 acre-feet per year.
 - b. Any amounts of groundwater in the Aquifer allocated in this Determination that are permitted for withdrawal pursuant to section 37-90-105, by small capacity well permits issued after the issuance of this Determination reduce the amount of water, and the allowed average annual amount of withdrawal, that may be withdrawn by wells permitted pursuant to section 37-90-107(7).

- c. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of groundwater from the Aquifer underlying the Overlying Land will not, 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 groundwater in the Aquifer underlying the Overlying Land is nontributary groundwater as defined in Rule 4.2.22 of the Designated Basin Rules. Pursuant to the Rules, no more than 98% of the amount of the groundwater in the Aquifer underlying the Overlying Land withdrawn annually shall be consumed.
12. Pursuant to section 37-90-105(1), the State Engineer has the authority to approve small capacity well permits. While water withdrawn from the Aquifer from beneath the Overlying Land by small capacity wells may consist of the groundwater allocated herein, the Commission recognizes that in approving small capacity permits the State Engineer is not bound by the terms and conditions of this Determination, and may approve small capacity permits based on standards and with such conditions as the State Engineer considers appropriate.
13. The ability of wells permitted to withdraw the authorized amount of water from this nonrenewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
14. On August 11, 2021, in accordance with Rule 9.1 of the Designated Basin Rules, written recommendations concerning this application were requested from the Upper Black Squirrel Creek Ground Water Management District and Upper Big Sandy Ground Water Management District. No written recommendations from the Districts were received.
15. In accordance with sections 37-90-107(7)(c)(II) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on August 19, 2021 and August 26, 2021. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with section 37-90-107(7) and the Designated Basin Rules, the Commission hereby determines a right to an allocation of designated groundwater in the Laramie-Fox Hills Aquifer underlying 17.82 acres of land, generally described as Lot 62 of Peyton Ranches subdivision, generally described as a portion of the SE1/4 of the SW1/4 of Section 28 and a portion of the NE1/4 of the NW1/4, Section 33, all in Township 11 South, Ranch 63 West, 6th P.M., further described in Exhibit A, subject to the following conditions.

16. The amount (i.e. volume) of water in the Aquifer underlying the 17.82 acres of Overlying Land allocated herein is 535 acre-feet (Underlying Groundwater).
17. The amount (i.e. volume) of Underlying Groundwater allocated herein shall be considered final, except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes, if such information indicates that the initial estimate of the amount of Underlying Groundwater in the Aquifer was incorrect.
18. Approval of this Determination meets the requirements of section 37-90-107(7)(d)(II), that requires a determination of groundwater to be withdrawn by a well be made prior to the granting of a well permit pursuant to section 37-90-107(7).

19. Well permits issued pursuant to section 37-90-107(7), (i.e. large capacity wells) and this Determination are subject to the following conditions.
- a. The total amount of Underlying Groundwater that may be withdrawn from the Aquifer by all large capacity wells permitted pursuant to this Determination may not exceed a volume of 535 acre-feet, less any amount of the Underlying Groundwater allocated herein permitted to be withdrawn by small capacity wells issued permits pursuant to section 37-90-105 after the issuance of this Determination. The amounts of water permitted to be withdrawn by such small capacity wells shall be considered to be one-hundred times the annual withdrawals permitted to be withdrawn by those wells.
 - b. The allowed average annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water shall be equal to the volume of water permitted to be withdrawn by that well (or well field) divided by one-hundred years.
 - c. The allowed maximum annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water may exceed the allowed average annual amount of withdrawal allowed by the well permit(s) as long as the total volume of water withdrawn by such well(s) does not exceed the product of the number of years since the date(s) of issuance of the well permit(s) times the allowed average annual amount of withdrawal allowed by the well permit(s).
 - d. The Applicant may pump the allowed average annual amount of withdrawal and the allowed maximum annual amount of withdrawal from one or more wells of a well field in any combination, so long as the total combined withdrawal of the wells does not exceed the amounts described in this Order.
 - e. No more than 98% of the amount of Underlying Groundwater withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the Underlying Groundwater withdrawn annually is being consumed.
 - f. The use of the Underlying Groundwater shall be limited to the following beneficial uses: domestic, irrigation (indoor and outdoor), agricultural, livestock, replacement, commercial, industrial and fish and wildlife. The place of use of the Underlying Groundwater shall be limited to the above described 17.82 acres of Overlying Land. The Underlying Groundwater that is the subject of this Determination may be reused and successively used to extinction to the extent dominion and control over the water is maintained and its volume can be distinguished from the volume of any stream system into which it is introduced to the satisfaction of the Commission. A portion of the Underlying Groundwater is located within the Upper Black Squirrel Creek Ground Water Management District and a portion of the Underlying Groundwater is located within the Upper Big Sandy Ground Water Management District where local District rules apply which may further limit the withdrawal and use of the subject designated groundwater.
 - g. The wells must be located on the above described 17.82 acres of Overlying Land.
 - h. No well shall be located within 600 feet of any existing large-capacity well in the same Aquifer unless a Waiver of Claim of Injury is obtained from the owner of the existing well or unless the Commission, after a hearing, finds that circumstances in a particular instance warrant that a well may be permitted without regard to this limitation.

- i. The wells must be constructed to withdraw water from only the Laramie-Fox Hills Aquifer.
 - j. The entire depth of each well must be geophysically logged prior to installing the casing in the same manner as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - k. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and permanently maintained by the well owner and submitted to the Commission, the Upper Black Squirrel Creek Ground Water Management District and the Upper Big Sandy Ground Water Management District upon request.
 - l. The well shall be marked in a conspicuous place with this determination number, the well permit number, and the name of the Aquifer. The well owner shall take necessary means and precautions to preserve these markings.
20. A copy of this Determination shall be recorded by the Applicant in the public records of the county in which the Overlying Land is located so that a title examination of the above described 17.82 acres of Overlying Land area, or any part thereof, shall reveal the existence of this Determination.
21. The right to an allocation of designated groundwater determined herein is a vested property right with specific ownership. Some or all of the water right may be transferred independent of the land under which the right originated. Any action taken that is intended to convey, transfer, and/or sell the subject water right shall explicitly identify this Determination number, the specific Aquifer, and the total amount (i.e. volume) of the right that is being conveyed.

Dated this 5th day of October, 2021.



Kevin G. Rein, P.E.
Executive Director
Colorado Ground Water Commission

By: _____



Joanna Williams, P.E.
Water Resource Engineer

Prepared by: jmw
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